

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:38 a.m. on Monday, February 23, 2004, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Jay Emler
Senator Barbara Allen
Ken North, Security Consultant, Owner of North & Associates, Shawnee Mission, KS
Paul Morrison, John County District Attorney
Dr. Roger Bruning, Family Practice, Shawnee Mission Medical Center
Amy Campbell, Kansas State Ophthalmological Society
Tom Weiler, Sedgwick County Asst. District Attorney
Gary Robbins, Kansas Optometric Association
Jerry Slaughter, Kansas Medical Society

Others attending: See attached list.

Final Action:

SB 343 - Repeals K.S.A. 2003 Supp. 65-441a concerning hospitals

Chairman Vratil directed the Committee's attention to Senator Schmidt's Sub-Committee Report. (Attachment 1) He explained the bill, and called for discussion and final action on **SB 343**. Senator O'Connor made a motion to pass the bill out favorably and place it on the Consent Calendar, seconded by Senator Donovan. The motion carried.

SB 357 - Creating the Kansas notary public act

Chairman Vratil called for discussion and final action on **SB 357**, which was heard in Senator Schmidt's sub-committee. Senator Schmidt commented there were four areas (as noted in the written Committee Report - Attachment 1) the Sub-Committee thought should be considered by the whole Judiciary Committee. Those were: (1) The amount of the surety bond to be required. Current law requires \$7,500, the bill increases that to \$25,000 (page 4, line 13), (2) The education and exam requirements (page 6, lines 27 to 35), (3) The severity of the criminal penalty for violations of the law by the notary and others (page 10, lines 12 to 42), and (4) Whether the law should contain the short form certificate for notarial acts (pages 14 and 15).

Following discussion on the first item, Senator Schmidt made a motion to amend the bill from \$25,000 to \$10,000, seconded by Senator Donovan. The motion carried.

Mike Heim, Legislative Research Department, explained the second item of concern. The proposed legislation asks a notary to do more than is required presently, take more responsibility, and be subject to a criminal penalty. He added that there was also an education requirement which notaries currently do not have, and it basically amounted to the bill requiring more than the law did. Melissa Wangemann, Secretary of State's Office, said her office intended to put a test on the internet to ensure that applicants read the materials.

Senator Schmidt made a motion to strike Section 10 in its entirety, seconded by Senator Goodwin, and the motion carried.

Senator Schmidt commented on page 10, lines 12 through 42. He said the Sub-Committee was concerned about the severity of penalties that would be imposed on notaries if they violated the law. Committee

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:38 a.m. on Monday, February 23, 2004 in Room 123-S of the Capitol.

discussion followed. Ms. Wangemann, Secretary of State's Office, explained that the bill followed the Model Notary Public Act of 2002, and would modernize the Kansas notary law.

Senator Schmidt made a motion to amend page 10, lines 13, 22, 26, and 34, to be a Class C misdemeanor, the motion was seconded by Senator Goodwin, and the motion carried.

Senator Schmidt moved to recommend SB 357, as amended, favorably for passage, seconded by Senator Goodwin, and the motion carried. Senator Pugh requested his "no" vote be recorded.

SB 430 - Results of a survey or inspection report of an adult care home used only for determining compliance with state law; not admissible as evidence in a civil proceeding

Chairman Vratil called for discussion and final action on **SB 430**. He announced there was a balloon amendment that was agreed to by the interested parties. The amendment related to the admissibility into evidence of surveys or inspection reports. Senator Schmidt said he had worked with the parties to arrive at the agreeable language, and would distribute copies to the Committee members. The Chair announced that he would postpone final action on **SB 430** until the next meeting to give members time to study the balloon amendment.

SB 466 - Physicians and optometrists reporting to the division of motor vehicles medical information concerning a patient

Chairman Vratil opened the hearing on **SB 466**. Senator Barbara Allen, sponsor of the proposed bill, conceded her time to Johnson County District Attorney, Paul Morrison, and submitted her testimony as written. (Attachment 2)

Paul Morrison, Johnson County District Attorney, testified in support of **SB 466**. He said that KSA 8-255c allows physicians or optometrists to provide information to the medical advisory board of the Division of Motor Vehicles, when an individual lacks the mental or physical capacity to safely drive an automobile. He explained that the statute in its current form does not address issues of privacy and/or privilege which doctors oftentimes face when they decide whether or not to report a patient. Mr. Morrison stated the proposed bill updates the statute and specifically allows a physician to report these concerns without violating physician patient privilege. It also insures confidentiality of those reports. (Attachment 3)

Brief questions and discussion followed regarding the process of reporting someone, and if the individual knows the physician reported his condition or questionable behavior.

Dr. Roger M. Bruning, Medical Director, Shawnee Mission Medical Center, submitted written testimony in support of **SB 466**. (Attachment 4)

Amy Campbell, Kansas State Ophthalmological Society, submitted written testimony in favor of **SB 466**. (Attachment 5)

Chairman Vratil called the first neutral conferee, Tom Weiler, Sedgwick County District Attorney, who conceded his time, and stated that Sedgwick County supported **SB 466**. (no written testimony submitted)

Gary Robbins, Kansas Optometric Association, testified as neutral on the bill, and requested the deletion in line 34 of "except upon the order of a court of competent jurisdiction." He said his organization was comfortable with the bill, and wanted to emphasize the importance of reporting. He attached to his written testimony a copy of the Vision Form. (Attachment 6)

Chairman Vratil pointed out that the proposed bill actually strengthens the doctors' protection and confidentiality. Committee discussion followed.

Jerry Slaughter, Executive Director, Kansas Medical Society, spoke as a neutral conferee on **SB 466**. He submitted an amendment for the Committee's consideration which should overcome the Health Insurance Portability and Accountability Act of 1996. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:38 a.m. on Monday, February 23, 2004 in Room 123-S of the Capitol.

Committee discussion and questions followed. Martha Bean, Public Service Administrator for Driver Review, Kansas Motor Vehicle Department, answered several questions relating to current procedures.

Chairman Vratil closed the hearing on **SB 466**.

SB 388 - Statewide authority for capitol area security

Chairman Vratil opened the hearing on **SB 388**. Senator Jay Emler, sponsor of the bill, introduced Ken North, Security Consultant, and owner of North & Associates, who testified in support of **SB 388**. He stated he had done a security study and threat assessment for the Department of Administration about five to six years ago. He said one of the primary findings of the studies was that there was a significant amount of violence in the workplace. In 1999 his Company strongly recommended the extension of statewide authority to the Capitol Police, and the Department of Administration supported the proposal without any reservation. Mr. North added that given the range of state office locations throughout Kansas, this revision would ensure the potential for more timely responses to emerging security threats at other sites. (Attachment 8)

Committee discussion followed relating to the training of the Capitol Police. The training is the same as the training for Highway Patrol. Cpl. John Eichkorn, Kansas Highway Patrol, verified that the Capitol Police are certified law enforcement officers just as all other Kansas law enforcement officers.

Chairman Vratil closed the hearing on **SB 388**.

Final Action:

SB 461 - Limitations on acquisition of land by eminent domain by a port authority and county

Chairman Vratil called for discussion and final action on **SB 461**. Senator Goodwin, sponsor of the bill, distributed a map showing the area that would be taken into the proposed lake project. She reminded the Committee that 110 land owners would be affected by the project. (Attachment 9)

Considerable Committee discussion and questions followed. The Chairman noted that meeting time had elapsed, and announced that final action would continue on **SB 461** at the next meeting.

The meeting was adjourned at 10:34 a.m.

The next scheduled meeting is February 24, 2004.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Mon, Feb. 23, 2004

NAME	REPRESENTING
Linda Bernatt	KHCA
Cindy Luxem	KHCA

February 16, 2004

**Judiciary Subcommittee
Senator Derek Schmidt
Friday, February 13, 2004**

1. **SB 343** would repeal KSA 65-441a, the hospital conversion law, enacted in 2003 as SB 44 (Attachment 1), dealing with the purchase of Health Midwest by HCA, Inc.

Proponents. The repeal of KSA 65-441a was supported by Ron Hein, legislative council for HCA, Inc. (Attachment 2) and by the Kansas Hospital Association (Attachment 3). The 2003 law was declared unconstitutional by the Johnson County District Court.

Subcommittee Action. The Subcommittee recommended the full Committee act favorably on SB 343.

2. **SB 357** would enact the Model Notary Public Act of 2002 as recommended by the National Notary Association. The bill would repeal current Kansas law, which is loosely based on the Model Notary Act of 1973.

Proponents. The 38-section bill was supported by a representative of the Kansas Secretary of State's Office (Attachment 4).

Subcommittee Action. The Subcommittee recommended the full Committee decide the following four areas:

1. The amount of the surety bond to be required. Current law requires \$7,500, the bill increases this to \$25,000 (page 4, line 13).
2. The education and exam requirements (page 6, lines 27 to 35).
3. The severity of the criminal penalty for violations of the law by the notary and others (page 10, lines 12 to 42).
4. Whether the law should contain the short form certificate for notarial acts (pages 14 and 15).

MH/dg

Enclosures

Transfer of Hospital Assets

SB 44 concerns hospitals and provides for the transfer of hospital assets to a foundation created under the act. The term "hospital" is defined to include: those defined in KSA 65-425 that are not-for-profit pursuant to section 501(c)(3) of the Federal Internal Revenue Code and are licensed by the Department of Health and Environment; or Health Midwest, Inc. and any other similarly situated hospital holding company; or a licensed Kansas not-for-profit hospital that is a subsidiary or affiliate of a domestic or foreign hospital holding company.

The bill requires that, whenever there is a proposed change in control of a not-for-profit hospital by sale, merger, integration, or any other event that may result in a change or loss of the hospital's federal tax exempt status or forfeiture or amendment of the hospital's articles of incorporation that alters the original purpose of the hospital, and before there is any transfer or depletion of the hospital's assets, a new foundation must be formed and all Kansas assets of the hospital must be transferred to the foundation.

The foundation must be a Kansas not-for-profit corporation created for the purpose of determining the disposition of the transferred assets in a manner that effectuates as nearly as possible the manifested general charitable intention of the donor or donors. The board of directors of the foundation consists of 18 members appointed as follows: five by the Governor, five by the Attorney General, three by the President of the Senate, three by the Speaker of the House of Representatives, one by the Minority Leader of the Senate, and one by the Minority Leader of the House of Representatives. Board members must be a resident of one of the counties comprising the hospital's service area, serve without compensation and for a three year term.

The bill prohibits any foundation created under the act from making any loans to board members, officers, employees, and any other person or entity employed by or having a contract with the foundation. Further, the foundation shall not engage in any self-dealing for the benefit of any board member, officer, employee, or other person or entity having a contract with the foundation. Finally, the foundation, board members, officers, and employees are prohibited from any direct or indirect engagement in lobbying or otherwise attempting to influence legislation, advocating the nomination, election or defeat of any candidate for public office, or attempting to influence the outcome of any ballot initiative or issue. However, the foundation, board members, officers, employees or grant recipients are permitted to publicize the decisions and actions of the foundation, and to express individually held opinions as long as they are not expressed as being held by the foundation itself.

The provisions of the bill apply from and after January 1, 2003, and the bill is effective upon publication in the *Kansas Register*.



Donald A. Wilson
President

TO: Senate Judiciary Subcommittee on SB 343

FROM: Thomas L. Bell
Executive Vice President

RE: SB 343

DATE: February 13, 2004

The Kansas Hospital Association appreciates the opportunity to comment in support of Senate Bill 343. This bill would repeal the provisions of SB 44, passed during the 2003 legislative session.

There are several reasons to pass SB 343. First, the legislation that was enacted last session was done so with the intent to quickly affect a specific case – the purchase of Health Midwest by HCA. That case is over, and SB 44 has served its main purpose.

Second, last year the Johnson County District Court declared that SB 44 was unconstitutional. The Court found that SB 44 purported to confiscate the assets of a nonprofit corporation and, as such, was in derogation of private property rights and rights of individual ownership. The Court also found that the legislation would constitute a taking without compensation under the Kansas and U.S. Constitutions.

Finally, while SB 44 served the short-term purposes of the Legislature, it does not establish good, long-term policy for the state of Kansas. SB 44 fails in several respects to achieve the legitimate goal of government to oversee the disposition of charitable trust assets in the event of a sale of a private, non-profit hospital. The Bill is vague with regard to definitions and process and overly specific with regard to resulting control of assets sold, not to mention the fact that it contains serious constitutional shortcomings as noted by Judge Foster.

Clearly, government has an interest here. The fact that Kansas law in this area is currently in a state of confusion also argues for some type of legislative intervention. At the same time, any legislation must provide for certainty of process, flexibility of results and analysis of the transaction against predetermined criteria. Ideally, appropriate legislation would permit the Attorney General to review the proposed sale of a non-profit

hospital in an organized, established process that permits public input, but provides for a decision in light of predetermined criteria. The parties to the transaction should be allowed to suggest methods for preserving the charitable trust for the beneficiaries of that trust, and the resulting organization should be structured in a manner to assure community input. That organization should be charged with fulfilling the charitable trust's original purpose to the extent possible.

Rather than the detailed approach of SB 44 in structuring a resulting foundation, ideal legislation should allow flexibility of structure. One size does not fit all in developing a mechanism to maintain the charitable assets for their original purpose. For example, the charitable purpose to be preserved may well be different for nonprofit hospitals associated with a faith community than one created from an individual donation or one that is an unaffiliated private nonprofit. Thus, the resultant organization created to manage the charitable trust after a sale would necessarily be organized differently in each instance.

Any legislation should set forth an application and disclosure process, which would include information such as: the names of the buyer and seller; the purchase price and other terms; a financial and economic analysis from an independent appraiser; and the acquisition agreement. The legislation should also provide criteria for the Attorney General to use to determine whether the hospital board exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms of the sale and whether the acquisition affects the continued existence of accessible, affordable health care facilities that are responsive to the needs of the community.

The first step in the establishment of an efficient and appropriate long-term policy for our state is the repeal of SB 44. We look forward to providing any assistance we can as the Legislature moves forward. Thank you for your consideration of our comments.

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Senate Judiciary Sub-Committee

Testimony re: SB 343

Presented by Ronald R. Hein

on behalf of

HCA, Inc.

February 13, 2004

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for HCA, Inc. which is the nation's leading provider of healthcare services, composed of approximately 191 locally managed hospitals and 82 outpatient surgery centers, including four hospitals in Kansas, Wesley Medical Center, Menorah Medical Center, Overland Park Regional Medical, and Allen County Hospital.

HCA supports SB 343, which repeals K.S.A. 2003 Supp 65-441a, the hospital conversion law which was passed in 2003.

As you probably recall, this legislation was enacted during the period of the acquisition of Health Midwest, and its system of hospitals in Missouri and Kansas, by HCA. The bill was conceptualized, drafted, and passed in an inordinately fast period of time. Time was of the essence at that point because there were concerns that the Missouri Attorney General was going to be able to exert greater control over the proceeds of the sale of the assets than was appropriate. Kansas wanted to insure that any foundation created with proceeds applicable to the sale of HMW assets on the Kansas side of the border was appropriate for the fair market value of those assets located in Kansas.

In light of the urgency at that time, there were provisions put in the legislation which we believe are not sound public policy. At the time the legislation was being enacted, we communicated our concerns with the legislation to legislators, the Governor's staff, and others. However, HCA did not take a position on the bill, and made no effort to oppose the legislation because we understood the need for Kansas to protect their rights vis-a-vis the State of Missouri.

I also want to make it clear that HCA's interest in this type of legislation is not with the proceeds or the disposition of the proceeds. HCA's concern is with the process that governs any attempt at a merger and acquisition between two or more hospitals. Oftentimes, timing is very important in these types of transactions in order to protect the value of the assets during what is oftentimes a tumultuous time for the hospital which is



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Senate Judiciary Committee

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for sale. A process which takes too long can jeopardize the sale itself and ultimately can adversely affect the value of the assets, causing harm to all the parties involved, including the State of Kansas and any potential beneficiaries of the proceeds of the sale.

Therefore, we would strongly urge the legislature to pass this legislation thus repealing the current conversion statute. There is already in existence common law which permits the Attorney General to intervene in hospital conversions, to review the transaction to insure that the process and the value being paid is fair and equitable, and to protect the state's interests. Therefore, the repeal of this statute will not leave the state or the Attorney General without a remedy.

However, with that said, we have already conveyed to the Attorney General, and are conveying now to the legislature, our willingness to meet with General Kline, the Governor, the legislature, and others, to help to craft legislation to deal with the conversion process. Since our company has been involved in this process in this state and others on numerous occasions, we would offer to bring our expertise to the table and to provide whatever information we can to help insure that any legislation which is enacted provides an appropriate process for all of the parties involved, including the citizens of Kansas.

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



TESTIMONY OF THE SECRETARY OF STATE
ON SB 357
THE MODEL NOTARY PUBLIC ACT
FEBRUARY 13, 2004

Mr. Chairman and Members of the Subcommittee:

I appreciate the committee's introduction of and hearing on SB 357, which would enact the Model Notary Public Act of 2002.

The Model Notary Public Act of 2002 was drafted by a group of experts impaneled by the National Notary Association. The drafting committee included lawyers, professors, and bankers, along with experts in real estate and electronic/digital commerce, a Secretary of State, an Attorney General, and the former Register of Deeds of Johnson County, Kansas.

The Model Act modernizes the statutes governing notaries public. It updates the Model Notary Act of 1984 and the Model Notary Act of 1973, and adds technological changes to accomplish electronic transactions. Current Kansas notary laws are loosely based on the 1973 act, but do not include any amendments from the 1984 act, and therefore our act is sorely behind on revisions.¹

Because the act is a "model" and not a "uniform" act, it is not intended to create a uniform law from state to state; rather, it is intended to serve as a "model" for states to use in revising their notary laws. The Secretary of State has studied the model act over the course of three years. Our conclusion is the model act will improve Kansas notary laws and therefore should be adopted. We have omitted some sections of the model act, which I will explain.

Background Information on the Role of Notaries Public

The purpose of a notary public is to ensure against forgery and fraud by confirming that the person signing the document is in fact the person he says he is. Important documents used in business deals, real estate sales, automobile sales, and other transactions must be reliable evidence of the parties' commitment to the transaction. Proof of the signature's authenticity is necessary to ensure the legitimacy and validity of the transaction.

Notarization does not prove the truthfulness or validity of the underlying document. Notarization only serves to authenticate the *signature* on the document.

¹ Kansas notary law also includes the Uniform Law on Notarial Acts as promulgated by the National Conference of Commissioners on Uniform State Laws in 1984. SB 357 includes some cosmetic changes to the uniform act, but the substantive provisions of that act remain unchanged. Sections 28-36 of the bill contain the UNLA provisions.

The purpose of a notary public has evolved to include the duty to check the signer's ability to understand the document and the signer's willingness to sign the document. Kansas statutory law does not specifically require that the notary public determine the signing party's ability to understand or willingness prior to the notarization. The Model Act adds this component to a notary's duties.

The Secretary of State recommends the adoption of the Model Act for the following reasons:

Clear and Precise Direction to Notaries

The Model Act clarifies the role of a notary public by providing clear and precise guidance for the performance of notarial acts. Vague and ambiguous sections of current law would be replaced with specific requirements that are easy to understand and follow. A better understanding of notarial duties will encourage notaries to perform their duties correctly.

Increased Bond Amount

Current Kansas law requires notaries to obtain a \$7,500 bond. The \$7,500 amount dates back to 1984. The Model Act recommends a \$25,000 bond. It should be noted that no other state currently requires a \$25,000 bond, although this fact may change as states adopt the Model Act. The highest bond among the states is California at \$15,000, and the amount most often used among the states is \$10,000.

The drafting committee increased the bond amount to cover potential losses caused by notary misconduct. As values increase, so do the potential losses caused by notary negligence or mistake. The current amount of \$7,500 does not cover the average cost of a new car, for example, and a person who loses ownership of his car due to a fraudulent car title would be afforded a better chance of recovering losses with a \$25,000 bond.

Current Kansas law allows two personal sureties in place of a bond, meaning that two individuals may agree to cover the losses. Our bill draft eliminates this alternative to the bond because these two persons are not required to prove financial ability, and therefore this provision affords little to no protection to the public.

Education and Testing

The Model Act requires that notaries take a course of instruction and pass an examination prior to receiving their commissions. The Secretary of State chose to include this provision of the model act because of the number of complaints our office receives involving notary misconduct. We provide a handbook of laws and responsibilities to all notaries, but it is obvious more active education is required. Effective training and testing would confirm that notaries have a basic understanding of their duties.

\$10

Criminal Sanctions

477 The Model Act includes criminal sanctions against notaries and employers who misuse their notaries' commissions. While assessing criminal sanctions against notaries seems to be a bold addition, notary misconduct causes losses to individuals and should be punished.

Our bill does not include the following provisions of the Model Act:

Separate Chapter on Electronic Notaries

The Model Act separates regular notaries public from electronic notaries, resulting in a much longer law with duplicative provisions. Our office saw no reason to separate out the two types because the only difference is the manner in which the document is notarized (an inked signature on paper versus a digital/electronic signature on an e-document). Because technology in this area is not fixed, but is ever evolving, we delegated many of the requirements for electronic notarizations to rules and regulations. Rule and regulation authority would provide us the flexibility to move to more robust technology in future years if advantageous to notarial transactions.

Required Journals

The Model Act requires notaries to maintain a journal in which they memorialize information about each notarization they perform. The journal protects the notary from allegations of misconduct, and also provides evidence proving or disproving an alleged notarization. Although the Secretary of State recommends journals to all notaries—and and, in fact, the notaries in our office all maintain journals—we do not believe that government should mandate this action. However, 18 states have enacted a journal requirement.

Technical Points, Corrections

Lastly, I want to note for the committee's information that the revisor has included within the bill draft sections of Kansas law that are not being amended. The purpose of including these provisions is to relocate them into one uniform and comprehensive notary law. Thus the bill includes some sections that have no substantive changes. I also request some technical corrections to the bill draft, which are attached.

I appreciate the opportunity to appear on SB 357 and I would be happy to answer questions.

Kathy Sachs, E-Government
Deputy Assistant Secretary of State

Melissa Wangemann, Legal Counsel
Deputy Assistant Secretary of State

~~DD~~

**TECHNICAL CORRECTIONS TO SB 357
PROPOSED BY THE SECRETARY OF STATE**

1. Page 2, line 20. Strike "is" and insert "in"
2. Page 3, line 26. Strike "a" and insert "an" (subject to Revisor's style rules)
3. Page 6, line 43. Strike "by or for it"
4. Page 14, line 1. Strike "must" and insert "shall"
5. Page 14, lines 29, 40; Page 15, lines 9, 20, 30. Strike parenthesis around "County"
7. Page 16, lines 2-4. Should repealer include 53-101, 53-102, 53-103, 53-104, 53-105, 53-105a, 53-106, 53-107, 53-109, 53-113, 53-114, 53-115, 53-116, 53-117, 53-118, 53-119, 53-120, statutes that are being replaced with new provisions of SB 357.

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

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STATE CAPITOL, ROOM 120-S
TOPEKA, KANSAS 66612-1504
(785) 296-7353

February 23, 2004

Re: SB 466

Mr. Chairman:

Thank you for the opportunity to testify today in support of SB 466.

The idea for this bill originated from our Johnson County District Attorney, Paul Morrison. This legislation would allow a physician or optometrist to report to the appropriate authorities a condition in a patient that may, in the physician's or optometrist's professional judgment, prevent that patient from safely operating a motor vehicle.

This bill would allow such reporting without violation of the Physician-Patient privilege. Safeguards for physicians and optometrists have been built into the bill to ensure that a physician or optometrist has no duty to report.

I have attached to my testimony two recent news articles regarding the subject of older drivers that may be of interest to you. Thank you.

A handwritten signature in cursive script that reads "Barbara".

Barbara P. Allen
Senator, District 8

Senate Judiciary

2-23-04

Attachment 2

SB 466

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U.S.

Study: Oldest drivers more likely to die in crashes

Thursday, February 19, 2004 Posted: 5:14 AM EST (1014 GMT)

WASHINGTON (AP) -- Drivers in their late 50s and early 60s are among the safest on the roads, but motorists who reach retirement age are much more apt to get into an accident, a AAA study finds.

Drivers over 85 were nearly four times as likely to die in a crash as middle-aged drivers, according to the study released Wednesday by the AAA Foundation for Traffic Safety. The study found that as drivers grew older, they suffered increasingly from decreased perception and motor skills. Frailty also caused serious injury and death in crashes that might not kill younger people.

The study also found that the elderly were more likely to get into crashes while turning to the left, when drivers often must make quick judgments about whether to stop or go. Drivers over 65 were 25 percent more likely to get in a crash than middle-age drivers; drivers over 85 were 50 percent more likely to get in a crash.

Researchers have long suspected that older drivers were more likely to die in crashes, but the study quantifies that, AAA spokesman Mantill Williams said.

Bella Dinh-Zarr, AAA's director of traffic safety, said the study also makes clear that cases like last year's accident at a farmer's market in California, when an elderly man hit and killed 10 people, are anomalies, because seniors statistically are at greatest risk when involved in accidents. The 87-year-old driver in that case survived.

"The common misconception is that older



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VIDEO

A new study finds that motorists over the age of 65 have a greater risk of dying in an accident. CNN's Julie Vallese reports (February 19)

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drivers are a danger to others, but the reality is, older drivers are a danger to themselves," Dinh-Zarr said. "As a country, we should really be thinking of ways to help older drivers."

AAA did not recommend new laws to govern elderly drivers. Twenty-two states already have such laws. Florida requires drivers age 80 or older to have their vision checked when they renew their licenses, while New Hampshire and Illinois require road tests for those 75 and older.

AAA says seniors should consider taking specially designed driving courses; 35 states provide insurance discounts for drivers who take such courses. Older drivers also should assess their driving skills regularly along with their doctors, AAA said.

Dinh-Zarr said vehicles can be modified to help older drivers. Larger rear and side mirrors, larger and brighter dashboard displays and seat belts that are easier to lock would help, she said. Dinh-Zarr said seniors wear their seat belts more often than any other age group but often complain that the belts are difficult to put on.

She also said better lighting and signs at intersections and protected left hand-turn lanes would help decrease confusion among older drivers.

The study, by the Texas Transportation Institute, analyzed police records from 3.9 million crashes between 1975 and 1999. Those crashes caused 90,036 fatalities. During that time, the number of licensed drivers 75 or older in Texas increased faster than other age group; they now comprise more than 5 percent of Texas drivers.

The numbers in Texas are mirrored nationally. The number of people over 65 is expected to double over the next 30 years; by 2030, one in five Americans will be 65 or older, AAA said.

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Road risk increases for aging motorists

Push is on for older drivers' safety
KCS 2-19-04

By ROBERT A. CRONKLETON
The Kansas City Star

At 79, Lydia Carl of Prairie Village thinks she's a better driver than she was at 18, when she

First glance

■ A new study shows that people age 65 and older are much more likely to die in traffic accidents than people age 55 to 64.

■ Governments and organizations are working to make older drivers better or to get them off the road.

drove a Ford Model T to high school.

"I'm more observant now, and I am more careful," Carl said Wednesday. "I also obey the laws and the rules more now than I did back then."

But no matter how careful Carl is, or other drivers like her, a report released Wednesday showed that drivers over the age of 65 are almost twice as likely to die in car

crashes as drivers between the ages of 55 and 64.

The AAA Foundation for Traffic Safety found that as people reach 75, the probability of death or injury in car crashes increases further. Over 75, drivers were more than 2½ times as likely to die in car crashes. Over 85, drivers are almost four times as likely to die, compared to those between 55 and 64.

Often, older drivers are frail and can die from injuries that wouldn't be fatal to younger drivers, the report said.

But the study also found that older drivers are more likely to be involved in left-turn collisions; affected by illness or other physical problems; or suffer lapses in perception that could contribute to crashes.

"As we age, our reaction time and other cognitive skills can di-

See DRIVERS, A-8

HIGHER DEATH RATES

Drivers age 65 and older are at greater risk behind the wheel.

Likelihood of death, compared to drivers ages 55-64

Age 65 or older

1.78 times

Age 75 or older

2.59 times

Age 85 or older

3.72 times

Source: AAA Foundation for Traffic Safety

The Kansas City Star

DRIVERS: Seniors at greater risk

Continued from A-1

minish," Peter Kissinger, president of the traffic safety foundation, said in a news release. "For instance, our eyesight deteriorates to such an extent that by age 60 we require 10 times the amount of light necessary to see an object as when we were 16."

AAA also on Wednesday announced a "Lifelong Safe Mobility" campaign that focused on strategies to help save older drivers' lives.

Carl agreed that people's driving skills deteriorated as they got older.

"But a lot of times it is the other, younger driver that is the danger," said Carl, who was at the Overland Park Senior Neighborhood Center for lunch Wednesday. "They are the ones that cross the center line, tailgate or are lane hoppers. They also are more likely to cut in front of you."

Like many older drivers, Carl said she knew her limits. She said she went slower, signaled before changing lanes and allowed a lot of room between her car and the one in front of her. She also is having cataract surgery so she will be able to continue to drive.

One thing she fears is someone telling her that she no longer should be driving. She had that conversation with her father, who was driving well past his 90th birthday.

"I supposed there will be a day when I won't be able to drive," Carl said. "I dread to think about it. I don't like to wait for people. I'm independent."

The older driver is a growing concern among traffic safety officials because the population of senior citizens is increasing substantially. By 2030, one in five Americans will be 65 or older.

Older motorists are second only to teenage drivers when it comes to being the most likely group to sustain injuries or death in traffic wrecks. But Romell Cooks, regional administrator in Kansas City for the National Highway Traffic Safety Administration, said that comparing teen and older drivers could be misleading.

"What we have found in our research is that the significant older driver has a lot less exposure to danger, so you can't really compare the same number of fatalities to those who are 16 to 20," Cooks said.

Older motorists, Cooks said, drive less, travel at lower speeds, avoid rush hour and take less congested routes. They also tend to avoid long trips and nighttime driving.

Regarding left-turn collisions, the potential for such crashes is 25 percent higher for people 65 and older than it is for people 55 to 64. The risk increases to 50 percent for people 85 and older.

America's oldest man, 113-year-old Fred Hale Sr. of Baldwinsville, N.Y., knew the importance of avoiding left-turns. Hale, who drove until he was 107, would plan his routes carefully so he made only right turns and never crossed traffic, *The New York Times* reported in December.

Because physical ailments and perceptual lapses are more likely to contribute to wrecks among those older than 65, the AAA Foundation suggests that physicians and relatives of senior drivers help assess

SIGNS YOU MIGHT NEED TO STOP DRIVING

1. Vision problems, such as trouble distinguishing slightly different shades, high sensitivity to the glare from sunlight and headlights, and loss of peripheral vision.
2. Hearing loss.
3. Significant slowing of reaction time.
4. Inability to turn your neck far enough to check for cars behind you.

WHAT TO DO ABOUT SOMEONE ELSE

Source: AARP

1. Ride along with that person to get some sense of whether there's a problem.
2. Enlist the help of a neutral third party such as a physician, optometrist or hearing specialist to make an evaluation and to make a case. Also, the Rehabilitation Institute in Kansas City has a certified driver rehabilitation specialist

who evaluates driving ability.

3. Keep in mind that transportation needs continue, even if driving stops, and help develop an alternative transportation strategy.
4. If persuasion isn't working, consider appealing to your state motor vehicle office for a ruling on whether the person in question can drive safely.

The Kansas City Star

Where to call

Missouri and Kansas have programs in which people can report dangerous drivers.

■ In Missouri: Call 1-(573) 751-2730 and ask for a "driver condition report" to be mailed to you, or access the form at

www.dor.mo.gov/mvdl/ and click on "report unsafe drivers."

■ In Kansas: Call 1-(785) 296-3601 and ask for the driver review section, or send a letter to: Kansas Department of Revenue, Division of Vehicles, Driver Review Section, 915 S.W. Harrison St., Topeka, KS 66626.

For information on AARP's eight-hour Driver Safety Program:

■ Call 1-(888) 227-7669

■ In Kansas call (913) 648-0727

■ In Missouri call (816) 561-0044

■ Go to www.aarp.org/drive

For information on AAA's Lifelong Safe Mobility initiative, go to www.aapublicaffairs.com.

older drivers' skills.

Missouri and Kansas have programs in which people can report potentially dangerous drivers, regardless of the drivers' ages. Both states will investigate credible complaints and require the drivers to get medical certification that they are capable of driving, or the states can order a retest of their vision or driving skills.

Missouri allows the people filing the report to remain anonymous. In Kansas, drivers can find out who reported them.

Both states require older drivers to renew their licenses more frequently than middle-age drivers.

The AAA Foundation says that senior drivers benefit from taking refresher training or driver-improvement courses.

Shirley Smith, associate state coordinator of the AARP Driver Safety Program in Kansas, said courses like the one he has been teaching for 17 years gave drivers a chance to brush up on their driving skills. The class touches on when drivers should consider giving up the keys.

AAA's "Lifelong Safe Mobility" strategy includes:

■ Providing "Driving for Mature Operators" courses at 60 AAA clubs around the country.

■ Releasing this year a driver screening tool, both online and on a CD-ROM, to help drivers assess their abilities to drive safely.

■ Promoting safe road designs, such as intersection improvements, improved lighting, and better signs and road markings.

■ Launching an effort with the American Society on the Aging to encourage older drivers to work with occupational therapists to make sure their vehicles have equipment to accommodate their driving limitations.

The Associated Press contributed to this report.

To reach Robert A. Cronkleton, call (816) 234-5994 or send e-mail to bcronkleton@kcstar.com.

Testimony Regarding Senate Bill 466

Paul J. Morrison, District Attorney - Tenth Judicial District
February 19, 2004

Every year thousands of people die on our highways as a result of motor vehicle accidents. Tragically, most of these are preventable. One need only read the newspapers or watch the evening news to see that occasionally these deaths occur because someone was driving who has neither the mental nor physical capacity to safely do so.

Oftentimes physicians are the first to notice when an individual lacks the mental or physical capacity to safely drive an automobile. K.S.A. 8-255c allows physicians or optometrists to provide this information to the medical advisory board of the Division of Motor Vehicles. Unfortunately, this statute in its current form does not address issues of privacy and/or privilege that doctors oftentimes face when they decide whether or not to report a patient. This bill updates the statute and specifically allows a physician to report these concerns without violating their physician patient privilege. It also insures confidentiality of those reports.

I am told that this amendment to the statute will allow for greater reporting and hopefully savings of lives in the future.

Senate Judiciary
2.23-04
Attachment 3

Testimony Regarding Senate Bill 466

Roger M. Bruning, MD
Medical Director



February 19, 2004

I'm here today to offer my full support for this bill. A driver's license is a privilege granted by the state. The state therefore has the right to decide who qualifies as competent to receive a license. Age, knowledge and ability to drive are currently evaluated when a person applies for a license. Evaluations of a person's medical condition or mental competency except for a rudimentary vision exam are not currently being evaluated. The long cycle between retesting may allow significant deterioration to occur unless we allow physicians freedom to report their negative findings.

The current climate in our society for privacy and the legislation enforcing it has created an atmosphere that inhibits physicians from reporting patients that they feel may have impaired ability to drive. Fear of running afoul of HIPPA regulations, real or not, is one reason that physicians fear reporting medical information that may affect a person's ability to drive. Most physicians perceive the threat of prosecution for the release of medical information as real. Legislation to remove this fear would go a long way to improve the safety of our drivers.

Amendments to section (a) of K.S.A. 8-255c(protecting physicians from civil action or damages when they report in good faith their medical findings relating to a patients competence to drive) are necessary for the free flow of information. Conversely not requiring physicians to report their findings will allow patients and their families to consult physicians about their medical concerns. I am frequently asked to evaluate a patient's competence to drive. I believe that if my patients and their families knew that I was required to report my findings many would not seek my advice. If I believed that reporting my medical findings in good faith would subject me to civil actions and damages, I would not risk reporting these unsafe drivers.

Current legislation requires reporting of medical information when it is felt to be in societies best interest. Specific sexually transmitted diseases are required to be reported. Certain communicable diseases require physicians to report. Society rightfully believes suspected cases of child abuse must be reported. Drug testing and reporting is required for some job categories. Reporting medical conditions, which could impair a driver, seems in my mind to be even more important. When we consider the number of deaths and injuries on our highways, the need to report impaired drivers seems at least as important as above issues.

I hope you will support the passage of Senate Bill No. 466. I believe it is in the best interests of our citizens and the physicians of this state. Thank you for the opportunity to speak before this committee.

Senate Judiciary

2-23-04

Attachment 4

KSOS

Kansas State Ophthalmological Society

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Jemshed A. Khan, MD
AAO Councillor

**TESTIMONY PRESENTED TO
THE SENATE JUDICIARY COMMITTEE
February 23, 2004**

Amy A. Campbell, Executive Director

Thank you Mr. Chair for the opportunity to testify in favor of Senate Bill 466 on behalf of the Kansas State Ophthalmological Society.

It is our recommendation that the bill be accepted in its current form and would ask to have the opportunity to review any potential amendments.

Ophthalmologists are pleased to provide a service to their patients by completing the forms necessary for them to obtain their driver's license. When a patient develops a condition which makes it unsafe for him or her to operate a vehicle, we hope to prevent harm to the patient and to the public through a thorough medical evaluation and reporting.

In order to insure that M.D.s will continue to perform this service, it is important to maintain the language pertaining to the immunity from civil action and the voluntary nature of reporting.

If the Committee requires any further information regarding ophthalmology or the details of eye examinations relating to driver's licenses, we would be happy to answer them.

Senate Judiciary

2-23-04
Attachment 5

KANSAS OPTOMETRIC ASSOCIATION

1266 SW Topeka Blvd. • Topeka, KS 66612
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www.kansasoptometric.org

TESTIMONY ON SENATE BILL 466 Senate Judiciary Committee February 23, 2004

I am Gary Robbins, Executive Director of the Kansas Optometric Association. I appreciate the opportunity to appear before the Senate Judiciary Committee on Senate Bill 466. Our initial reaction was one of questioning whether or not this bill was needed and what problem needs to be addressed. Currently, optometrists and ophthalmologists routinely report their findings regarding the vision of their patients renewing their drivers' licenses to the Division of Vehicles.

The first sentence of subsection (b) is essentially covered in the current division of vehicles vision form because it asks the doctor if the patient can safely operate a motor vehicle at this time insofar as this person's vision is concerned. In subsection (b), line 29, Senate Bill 466 adds a new requirement for the doctor to report whether the condition is likely to be permanent or temporary.

If the committee wishes to pass Senate Bill 466, we would respectfully request the deletion in line 34 of "except upon the order of a court of competent jurisdiction."

Senate Judiciary

2-23-04

Attachment 6

NOTICE

IF RENEWING: YOU MAY RECEIVE YOUR VISION TEST FREE OF CHARGE AT THE DRIVER LICENSE EXAMINING STATION. If you fail to test 20/40 in at least one eye at the examining station, you will be required to take **THIS FORM** to a vision specialist. If you fail to test 20/60 in at least one eye by the vision specialist, your report may be forwarded, by the Examiner, to the DIVISION OF VEHICLES. Recent exam required (within past ninety (90) days).

FOR ANNUAL REVIEWS: Please have this form completed by your eye specialist. Return completed form, within sixty (60) days, to the DIRECTOR OF VEHICLES for review and recommendations regarding your driving privileges. Recent exam required (Within past ninety (90) days).

INSTRUCTIONS FOR LICENSED OPTOMETRIST/OPHTHALMOLOGIST

Please sign this report after completing the questions on the form below. No recommendations or suggestions as to which specialist to visit are given by the Driver License Examiners. The eye specialist assumes no responsibility in making this report other than that of truthfully representing the facts as they appear in his/her professional judgement.

NAME OF APPLICANT: _____ DL#: _____
Last First Middle

APPLICANT ADDRESS: _____ DOB: _____

APPLICANT'S SIGNATURE _____

VISION FORM TO BE COMPLETED BY OPTOMETRIST OR OPHTHALMOLOGIST

ACUITY	RIGHT EYE	LEFT EYE	BOTH EYES	FIELD OF VISION
PRESENT LENSES	20/	20/	20/	RT OF FIXATION:
WITHOUT LENSES	20/	20/	20/	LT OF FIXATION:
BEST CORRECTION	20/	20/	20/	TOTAL ANGLE:
BIOPTIC / TELESCOPIC	20/	20/		

(If prescribed for driving)

DO PRESENT, REG. LENSES PROVIDE FOR BEST POSSIBLE CORRECTION? YES _____ NO _____

ARE NEW REGULAR LENSES BEING PRESCRIBED? YES _____ NO _____

HAVE THEY BEEN FITTED? YES _____ NO _____

DIAGNOSIS OF VISUAL CONDITION: _____

I BELIEVE THIS PERSON CAN SAFELY OPERATE A MOTOR VEHICLE AT THIS TIME INsofar AS THIS PERSON'S VISION IS CONCERNED.

(This question may be omitted if visual acuity is better than 20/60 in at least one eye. Applicant must also meet all other qualifications required for issuance of a driver's license as determined by the Driver's License Examiner or the Director of Vehicles.)

YES _____ NO _____

AN ANNUAL VISION REPORT SHOULD BE REQUIRED: YES _____ NO _____

Applicant's physical/medical/mental condition should be evaluated: YES _____ NO _____

INDICATE BELOW WHICH RESTRICTIONS MAY APPLY TO PATIENT'S LICENSE IF ISSUED OR CONTINUED.

Maximum: Four (4) restrictions

- | | |
|--------------------------------|--|
| 1. _____ CORRECTIVE LENSES | 5. _____ WITHIN CITY LIMITS |
| 2. _____ DAYLIGHTS HOURS ONLY | 6. _____ LICENSED DRIVER FRONT SEAT |
| 3. _____ NO INTERSTATE DRIVING | 7. _____ DRIVING WITHIN A _____ MILE RADIUS OF HOME
(5-30 miles in 5 mile increments) |
| 4. _____ OUTSIDE BUSINESS AREA | 8. _____ OUTSIDE MIRROR |

Name of Optometrist/Ophthalmologist

(Please print) DATE OF EXAMINATION

Address

Phone

Signature of Optometrist/Ophthalmologist

DATE SIGNED







DE-44

Rev. (07/01)

6-2

KANSAS DRIVER LICENSE RENEWAL EXAMINATION

INSTRUCTIONS: READ THE DRIVER LICENSE RENEWAL HANDBOOK CAREFULLY BEFORE ANSWERING. Each question has only one correct answer. Circle the answer that you think is correct. A passing grade is five errors or less. When you have completed the examination take it to any Driver License Examining station for grading. **ALL LOCATIONS ARE CLOSED ON MONDAYS!**


- IF A LARGE TRUCK HAS A RIGHT TURN SIGNAL FLASHING BUT IS PARTIALLY BLOCKING THE LEFT LANE, YOU SHOULD:
 - ASSUME THE SIGNAL IS WRONG
 - MAINTAIN A SAFE FOLLOWING DISTANCE UNTIL TRUCK HAS COMPLETED MANEUVER
 - PASS TRUCK ON RIGHT AND TRY TO BEAT HIM TO THE INTERSECTION
- THIS YELLOW AND BLACK SIGN MEANS:
 - SHARP BUMP IN THE ROAD AHEAD
 - YOU ARE APPROACHING A ROAD WITH TWO-WAY TRAFFIC
 - YOU ARE APPROACHING A DIVIDED HIGHWAY
 - THE ROADWAY AHEAD IS UNDER CONSTRUCTION
- WHEN TWO CARS APPROACH AN UNCONTROLLED INTERSECTION FROM DIFFERENT STREETS AT THE SAME TIME, WHICH DRIVER HAS THE RIGHT OF WAY?
 - THE DRIVER ON THE LEFT
 - THE DRIVER ON THE RIGHT
 - NEITHER DRIVER
 - BOTH DRIVERS
- THIS SIGN MEANS:
 - SCHOOL CROSSING
 - SCHOOL ZONE
 - PEDESTRIAN CROSSING
- WHEN DRIVING IN FOG YOU SHOULD ALWAYS USE YOUR:
 - HIGH HEADLIGHT BEAMS (BRIGHT LIGHTS)
 - LOW HEADLIGHT BEAMS (DIM LIGHTS)
 - PARKING LIGHTS
 - EMERGENCY FLASHERS
- NEVER PASS A VEHICLE FROM THE REAR ON A TWO LANE HIGHWAY:
 - ON A HILL OR WHEN YOUR VIEW AHEAD IS OBSTRUCTED
 - ON A CURVE
 - NEAR AN INTERSECTION OF ROADS
 - ALL OF THE ABOVE
- WHEN APPROACHING AN INTERSECTION MARKED WITH A YIELD SIGN, YOU ARE REQUIRED TO:
 - KEEP THE SAME SPEED AND LOOK BOTH WAYS
 - STOP, THEN ENTER QUICKLY
 - SLOW DOWN AND STOP IF NECESSARY
 - STOP, THEN ENTER SLOWLY
- THIS SIGN MEANS:
 - WATCH FOR TRUCKS CROSSING ROADWAY
 - ALL TRUCKS TURN LEFT
 - NO TRUCK PARKING
 - TRUCKS MAY NOT ENTER
- UNDER NORMAL ROAD CONDITIONS, THE MINIMUM SAFE FOLLOWING DISTANCE IS:
 - 100 FEET
 - 2 SECONDS
 - ONE CAR LENGTH
 - FOUR CAR LENGTHS
- WHEN DRIVING AT NIGHT, YOU SHOULD DRIVE AT A SPEED WHICH WOULD ALLOW YOU TO STOP:
 - WITHIN 500 FEET
 - WITHIN THE DISTANCE LIGHTED BY YOUR HEADLIGHTS
 - WITHIN THREE CAR LENGTHS
- AT NIGHT, YOU MUST LOWER (DIM) YOUR HEADLIGHTS TO APPROACHING VEHICLES WITHIN HOW MANY FEET?
 - 100 FEET
 - 200 FEET
 - 300 FEET
 - 500 FEET
- THE SHAPE OF THIS SIGN MEANS:
 - STOP REQUIRED ONLY IF THERE IS OTHER TRAFFIC
 - REDUCE YOUR SPEED AND PROCEED SLOWLY
 - COME TO A COMPLETE STOP, THEN PROCEED IF WAY IS CLEAR
 - STOP REQUIRED ONLY IF GOING THROUGH THE INTERSECTION
- WHAT COLOR DENOTES THAT THERE IS A WORK ZONE UP AHEAD, AND THAT DRIVERS SHOULD USE CAUTION WHEN PASSING THROUGH?
 - RED
 - YELLOW
 - ORANGE
 - BROWN
- WHEN A SCHOOL BUS HAS STOPPED ON AN UNDIVIDED HIGHWAY AND IS DISPLAYING A STOP SIGN AND ALTERNATELY FLASHING RED LIGHTS, ALL DRIVERS ARE REQUIRED TO:
 - SLOW DOWN AND PROCEED WITH CAUTION
 - STOP WHEN APPROACHING FROM THE REAR ONLY
 - STOP AND REMAIN STOPPED UNTIL STOP SIGN HAS BEEN WITHDRAWN AND LIGHTS ARE NO LONGER FLASHING
- THIS YELLOW AND BLACK SIGN MEANS:
 - ROAD AHEAD IS TEMPORARILY BLOCKED
 - ROAD AHEAD IS FOR TWO-WAY TRAFFIC
 - EITHER LANE OF THE ROAD IS OPEN FOR TRAFFIC
 - PASSING PROHIBITED
- WHEN APPROACHING AN EMERGENCY VEHICLE FROM THE REAR THAT IS DISPLAYING FLASHING WARNING LIGHTS ON A HIGHWAY WITH MORE THAN ONE LANE IN EACH DIRECTION YOU MUST:
 - MAINTAIN LANE POSITION AND SPEED
 - SPEED UP TO PASS THE EMERGENCY VEHICLE QUICKLY
 - MOVE TO A LANE NOT ADJACENT TO THE EMERGENCY VEHICLE AND PASS WITH CAUTION
- THIS YELLOW AND BLACK SIGN MEANS:
 - SCHOOL ZONE AHEAD
 - SCHOOL CROSSING
 - PEDESTRIAN CROSSING
- MOTORCYCLES ARE ENTITLED TO A FULL LANE WIDTH JUST LIKE ANY OTHER VEHICLE.

TRUE FALSE
- AN ADVANCE WARNING SIGN AT A HIGHWAY-RAIL CROSSING ADVISES DRIVERS TO:
 - SLOW DOWN
 - LOOK AND LISTEN FOR A TRAIN
 - BE PREPARED TO STOP IF A TRAIN IS APPROACHING
 - ALL OF THE ABOVE
- WHAT DOES THE SOLID YELLOW LINE ON YOUR SIDE OF THE CENTER LINE MEAN:
 - YOU ARE NEAR AN INTERSECTION
 - YOU MAY PASS ON THE RIGHT
 - YOU ARE NEAR A BRIDGE
 - YOU MUST NOT CROSS OVER THE YELLOW LINE TO PASS
- HOW FAR BEFORE TURNING DOES THE LAW REQUIRE YOU TO GIVE A SIGNAL?
 - AT LEAST 50 FT.
 - AT LEAST 100 FT.
 - FAR ENOUGH AHEAD FOR THE CAR FOLLOWING YOU TO SEE
- A FIRST CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS CAN RESULT IN:
 - A FINE OF UP TO \$1000
 - A MINIMUM JAIL SENTENCE OF 48 HOURS
 - A DRIVERS LICENSE SUSPENSION
 - ALL OF THE ABOVE
- UNDER NORMAL CONDITIONS, A SAFE FOLLOWING DISTANCE BETWEEN YOUR CAR AND A MOTORCYCLE SHOULD BE:
 - THE SAME DISTANCE AS WHEN FOLLOWING ANOTHER CAR
 - LESS DISTANCE THAN WHEN FOLLOWING ANOTHER CAR
 - MORE DISTANCE THAN WHEN FOLLOWING ANOTHER CAR
- UNLESS PROHIBITED BY LOCAL ORDINANCE, YOU SHOULD EXPECT TO ENCOUNTER BICYCLES ON ALL STATE AND LOCAL ROADWAYS EXCEPT FOR THE INTERSTATE SYSTEM.

TRUE FALSE



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To: Senate Judiciary Committee
From: Jerry Slaughter
Executive Director 
Date: February 23, 2004
Subject: SB 466; concerning medical information reported to DMV

The Kansas Medical Society appreciates the opportunity to appear today as you consider SB 466, which amends the laws governing the reporting of certain medical information to the Division of Motor Vehicles. The bill is apparently designed to encourage and facilitate the reporting of medical information when a physician has reason to believe that his or her patient is not capable of safely operating a motor vehicle due to a medical condition.

Physicians are often faced with a dilemma – should they report a potentially unsafe driver to the state at the expense of breaching confidentiality and damaging the physician-patient relationship, or should they forgo reporting and risk being liable for potential future injuries to the patient or others? It's a difficult issue for physicians, because it can transform their role from patient advocate to patient reporter to potential defendant - when they are sued by the patient for making a report, or sued by a third party for not reporting.

Most states, including those surrounding Kansas, encourage, but do not require, reporting of mental or physical conditions which could affect a patient's ability to safely operate a motor vehicle. Our current law could best be categorized as one that allows such reports, but does not necessarily encourage them. The changes contained in SB 466 would appear to move Kansas into the group of states that encourages such reports. Virtually all states with similar laws provide immunity for good faith reports, as does our law. We strongly support the language in the bill which makes it clear that the change in law does not create a new duty to report.

Finally, there could be an issue relating to the new federal privacy law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA generally prevents physicians and others from releasing protected health information without a proper authorization from the patient. However, if a patient has a medical condition that would cause an "immediate and serious danger" to the public, then reporting such information without patient authorization is allowed. We have provided an amendment that the committee may want to consider, which should overcome the HIPAA threshold for release of information in such situations. We would be happy to respond to questions.

Senate Judiciary

2-23-04

Attachment 7

SENATE BILL No. 466

By Committee on Judiciary

2-6

9 AN ACT concerning driver's licenses; relating to medical information
10 reported to the division; amending K.S.A. 8-255c and repealing the
11 existing section.
12

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

13 Section 1. K.S.A. 8-255c is hereby amended to read as follows: 8-
14 255c. (a) No person reporting to the division or to the medical advisory
15 board in good faith any information that any such person may have re-
16 lating to the mental or physical condition of an applicant for *or a holder*
17 *of a driver's license shall be subject to a civil action for damages as a result*
18 *of reporting such information. ~~No Nothing in this section shall be con-~~*
19 *strued to create a duty to report, nor shall a physician or optometrist shall*
20 *be required by law to volunteer report information to the division or to*
21 *the medical advisory board as to the mental or physical condition of any*
22 *patient.*
23

24 (b) *A physician or optometrist may report to the division or to the*
25 *medical advisory board any person diagnosed or assessed as having a*
26 *disorder or condition that ~~may~~ in such physician's or optometrist's pro-*
27 *fessional judgment could prevent such person from safely operating a*
28 *motor vehicle. Such report shall state the diagnosis or assessment and*
29 *whether the condition is likely to be permanent or temporary. The exis-*
30 *tence of a privilege pursuant to K.S.A. 60-427, and amendments thereto,*
31 *shall not prevent a physician or optometrist from making a report. All*
32 *reports made to, and all medical records reviewed and maintained by, the*
33 *division pursuant to this section shall be kept confidential and shall not*
34 *be disclosed except upon the order of a court of competent jurisdiction,*
35 *pursuant to the request of the division or medical advisory board and*
36 *shall not be subject to subpoena, discovery or other demand in any other*
37 *administrative, criminal or civil matter.*

(delete)

or could constitute an immediate and serious danger to the public.

38 Sec. 2. K.S.A. 8-255c is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.



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SB 388

By Senator Jay Emler

Testimony Before The Kansas Senate Judiciary Committee

- Ken North

Senate Bill 388: Capitol Police Authority

A. Proposal Objective:

Under current law the Capitol Police are limited in the exercise of their powers and authority to Shawnee County.

Several years ago, a Kansas cabinet-level Secretary was threatened by a disgruntled former employee. The Governor instructed the Capitol Police to follow the Secretary home to her Lawrence residence for a period of time to assure her safety. Had it been necessary to take enforcement action in Douglas County, the Capitol Police escort would have been completely lacking any semblance of law enforcement authority.

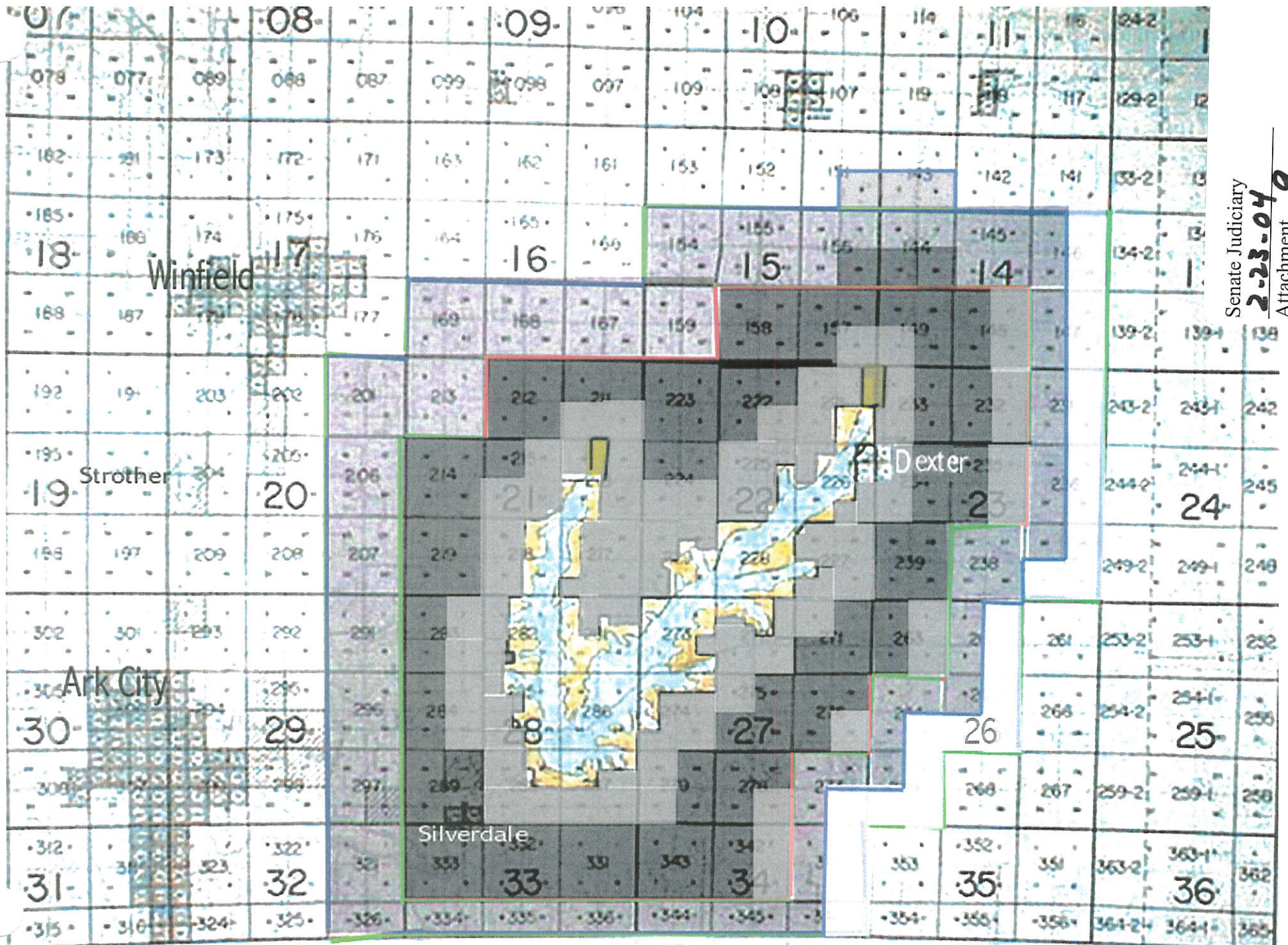
The 1999 North & Associates study of Capitol area security strongly recommended the extension of statewide authority to the Capitol Police and the Department of Administration supported that proposal without any reservation. Given the range of state office locations throughout Kansas, this revision would ensure the potential for more timely responses to emerging security threats at other sites.

B. Proposed Revisions:

K.S.A. 75-4503. Capitol area security patrol; creation, police powers of members; disposition of persons arrested; application of K-GOAL.

(b) Members of the capitol area security patrol shall have *statewide law enforcement powers and authority anywhere within the State irrespective of county lines.*

(c) All persons arrested by a member of the capitol area security patrol shall be turned over to the *Sheriff* to be dealt with in the same manner as other persons turned over to such department, except in cases of violation of the ordinances of the city of Topeka, any such person may be turned over to the police department of the city of Topeka to be dealt with by it in the same manner as other persons arrested by police officers of the Topeka police department.



1, 3 and 5 Mile Map of Port Authority Involvement