

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:30 P.M. on March 10, 2005 in Room 231-N of the Capitol.

All members were present except:

Susan Wagle- excused

Committee staff present:

Emalene Correll, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Whitney Nordstrom, Committee Secretary

Conferees appearing before the committee:

Debra Billingsley, Kansas Board of Pharmacy

John Kiefhaber, Kansas Pharmacists Association

Jerry Slaughter, Kansas Medical Society

Representative Peggy Mast

Lorne Phillips, Kansas Department of Health and Environment

Gary Eichorn, Lyon County Sheriff

Bill Halvorsen, KBI

Others attending:

See attached list.

Hearing on HB 2155

HB 2155- Prescription refills

Upon calling the meeting to order Chairperson Barnett announced that there would be a hearing on **HB 2155**, an act concerning pharmacists and pharmacy; relating to prescription refills; amending K.S.A. 65-1637 and repealing the existing section. First the Chair requested that Norm Furse, Office of Revisor of Statutes, give a brief overview of the bill. In his overview Mr. Furse calls the Committee's attention to the handout of the Kansas Constitution-Bill of Rights. A copy of his handout is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

Chairperson Barnett asks the Committee for any questions and/or comments.

Senator Palmer asks who authored the above bill. Senator Gilstrap asked if Schedule 2 drugs are included in this bill. Senator Palmer asked what are some examples of Schedule 2 drugs. The Chair requested that Emalene Correll, Legislative Research Department, provide the Committee with a list of the different Schedules of drugs.

As there were no further questions, Chairperson Barnett called upon the first proponent conferee to testify. Debra Billingsley, Kansas State Board of Pharmacy, stated in her testimony that this legislation would be used sparingly and only in those instances where the patient has been receiving refills of maintenance medication and it would be in the patient's best interest not to go without his drug. We would respectfully request that this statute be amended to add this additional language as the Board believes it would be in the best interest of their patient's health, safety and welfare. A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

The Chair asks the Committee for any questions and/or comments.

Senator Journey asks what justified the civil liability section of this bill.

As there were no further questions and/or comments for Ms. Billingsley, Chairperson Barnett called upon the second proponent to testify. John Kiefhaber, Kansas Pharmacists Association, stated that emergency dispensing for previously written prescription drugs will be safe because of the involvement of the

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on March 10, 2005 in Room 231-N of the Capitol.

professional pharmacist, who routinely checks for proper drug usage, drug-to-drug interactions and proper dosage levels on all prescription medications. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

As there were no questions and/or comments for Mr. Kiefhaber, Chairperson Barnett called the Committee's attention to written testimony submitted by Jerry Slaughter, Kansas Medical Society, in support of **HB 2155**. A copy of his testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

As there were no further conferees, the Chair requested that Mr. Furse prepare a balloon amendment for the above bill.

Chairperson Barnett closed the hearing on **HB 2155**.

Hearing on Sub HB 2088

Sub HB 2088– An act concerning uniform vital statistics

The next order of business was a hearing on **Sub HB 2088**, an act concerning the uniform vital statistics act; amending K.S.A. 65-2409a, 65-2412 and 65-2434 and repealing the existing sections. First the Chair requested that Emalene Correll, Legislative Research, give a brief overview of the bill.

As there were no questions and/or comments for Ms. Correll, Chairperson Barnett called upon the first proponent conferee to testify. Representative Peggy Mast stated that **HB 2088** gives law enforcement the opportunity to prosecute although it is only about the same penalty as writing a bad check, at least it is a penalty for giving birth to a child and perhaps allowing him or her to suffocate in a garbage bag, drowning her, or who knows the myriad of other ways to taking your own child's life. A copy of her testimony is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

The Chair asked for any questions and/or comments for Representative Mast.

Senator Journey asked if offering this bill under a different chapter was ever considered.

As there were no further questions and/or comments for Representative Mast, Chairperson Barnett called upon the second proponent conferee to testify. Dr. Lorne Phillips, KDHE, stated in his testimony that KDHE supports this bill with an additional amendment. The current language does not take into account the provision of six months for filing a birth certificate and thereafter filing delayed certificate of birth as specified in K.S.A. 65-2419 and 65-2420a. A copy of his testimony is (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

As there were no questions for Dr. Phillips, the Chair called upon the third and fourth proponent conferees to testify. Sheriff Gary Eichorn, Lyon County Sheriff, and Bill Halvorsen, KBI, and stated that **HB 2088**, will greatly assist in cases involving a death of a newborn baby that was delivered without medical assistance. With this Bill in place, there will be a duty to report the death to authorities in order that a timely investigation can go forward. A copy of their testimony is (Attachment 7) attached hereto and incorporated into the Minutes as referenced.

Chairperson Barnett called attention to written testimony submitted by two individuals in support of **HB 2088**. A copy of their testimony is (Attachment 8 and Attachment 9)

As there were no further questions and/or comments and no further conferees, Chairperson Barnett closed the hearing on **HB 2088**.

CONTINUATION SHEET

MINUTES OF THE Senate Public Health and Welfare Committee at 1:30 P.M. on March 10, 2005 in Room 231-N of the Capitol.

Adjournment

As there was no further business, the meeting was adjourned at 2:25 p.m.

The next meeting is scheduled for Monday, March 14, 2005.

SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

GUEST LIST

DATE: March 10, 2005

NAME	REPRESENTING
John Kizhaber	ks. Pharmacists Association
Debra Billingsley	KS Bd of Pharmacy
Donna Calabrese	KDHE
Lorne A. Phillips, PhD.	KDHE
Anne Schubert	space
Kevin Mechtley	Inten
Jenny Davis	Conlee Consulting
Pam Smith	KS Funeral Directors Assn

Kansas Constitution – Bill of Rights

§ 18. **Justice without delay.** All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.

Norm Furse

*Senate Public Health & Welfare
3-10-05
Attachment #1*

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KANSAS BOARD OF PHARMACY
DEBRA BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

**Testimony concerning HB 2155: prescription refills
Senate Public Health and Welfare Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
March 10, 2005**

Mr. Chairman, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom are appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public.

Currently, a pharmacist may only refill a prescription if the prescription instructions state that the prescription may be refilled. Often a patient will not realize that he has no more refills until he goes to the pharmacy over the weekend. If the pharmacist can contact the physician the patient can get his prescription refilled. However, it is often difficult for the pharmacist to make contact with the physician over the weekend. Further, pharmacies often fax refill requests to the physician and they never get returned. Strict interpretation of our law wouldn't allow a pharmacist to dispense without further authorization. This leaves the patient in the precarious position of not having his blood pressure medicine or heart medication over the weekend.

This bill would permit a pharmacist to supply a patient with a small amount of drugs to get the patient through the weekend should the pharmacist be unable to reach the physician. This would only be permitted when the pharmacist knows the patient's drug regimen and believes that it would be necessary for the patient's health, safety and welfare that he not have his maintenance medication discontinued. This would be a provision that would be used on rare occasions and it would place judgmental responsibility on the pharmacist.

This language is law in Colorado and the Colorado Board of Pharmacy reported that they have had no problems with any abuses. It is used sparingly and only in those instances where the patient has been receiving refills of maintenance medication and it would be in the patient's best interest not to go without his drug. We would respectfully request that that this statute be amended to add this additional language as the Board believes it would be in the best interest of their patient's health, safety and welfare.

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

*Senate Public Health & Welfare
3-10-05
Attachment # 2*



Kansas Pharmacists Association

Kansas Society of Health-System Pharmacists

Kansas Employee Pharmacists Council

1020 SW Fairlawn Road

Topeka KS 66604-2275

Phone 785-228-2327 + Fax 785-228-9147 + www.kansaspharmacy.org

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TESTIMONY

Before the SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

By John L. Kiefhaber, Executive Director

KANSAS PHARMACISTS ASSOCIATION

Chairperson Barnett and members of the Committee:

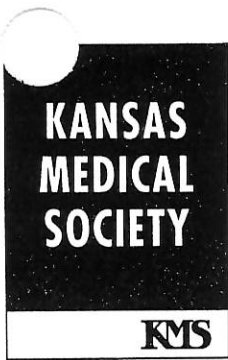
The 1300 members of the Kansas Pharmacists Association (KPhA) appreciate the opportunity to be heard **concerning HB 2155: "An Act ... relating to prescription refills ..."**

Kansas pharmacists support the changes proposed in the bill, which will alleviate problems for patients needing refills of prescription drugs at night or on weekends when access to their physician may be limited. Emergency dispensing for previously written prescription drugs will be safe because of the involvement of the professional pharmacist, who routinely checks for proper drug usage, drug-to-drug interactions and proper dosage levels on all prescription medications.

We also support the amendment put on in the House committee to restrict additional liability for prescribers when these emergency situations arise. Pharmacists will continue to apply their expert judgment on the necessity for the refill and the effectiveness of the prescription drug for the patient in all dispensing situations.

3/10/05

*Senate Public Health & Welfare
3-10-05
Attachment #3*



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To: Senate Public Health and Welfare Committee
From: Jerry Slaughter
Executive Director *Jerry Slaughter*
Re: HB 2155; Concerning emergency prescription refills
Date: March 9, 2005

The Kansas Medical Society appreciates the opportunity to appear today in support of HB 2155, which allows pharmacists to refill and dispense a prescription without the authorization of the prescriber.

Our only concern with the bill as it was originally introduced was that a physician or other prescriber could incur potential liability if a prescription were refilled without the prescriber's knowledge and authorization. We offered an amendment to address that concern, and the House Committee added it to the bill. The amendment, found on page 2, lines 25-29, makes it clear that if a prescription is refilled without the authorization of the prescriber, he or she will not incur any liability because of the dispensing of the medication.

We support the bill as it has been amended by the House Committee. Thank you for considering our comments.

*Senate Public Health & Welfare
3-10-05
Attachment #4*



TOPEKA

HOUSE OF
REPRESENTATIVES

PEGGY MAST
REPRESENTATIVE, 76TH DISTRICT
765 ROAD 110
EMPORIA, KANSAS 66801
(620) 343-2465

ROOM 446-N CAPITOL BLDG.
TOPEKA, KS 66612
(785) 296-7685

COMMITTEE ASSIGNMENTS

VICE-CHAIR: HEALTH & HUMAN SERVICES
UTILITIES
SOCIAL SERVICES BUDGET

TESTIMONY ON HB 2088

Baby Doe was born on October 22, 2001. I am told that his mother had been given money for an abortion, but she spent it on other things. To the best of my knowledge Shawwna was home alone when the baby was born. She placed her son in a plastic garbage bag and set the bag outside under the steps and that might have been the end of the story. On April 1, 2002, the neighborhood was shocked when dogs were dragging a little baby's body around the back yard in the neighborhood. Of course the authorities were contacted and the KBI, local law enforcement, a forensic pathologist from Kentucky and a nuclear DNA scientist from Pennsylvania were called in to determine the cause of death for little baby Doe.

Can you imagine the frustration of police officers, and these other individuals when they find that if they can not prove that the baby survived the birth, there is no way to prosecute? Of course, by the time of discovery, too much time had elapsed to be able to be certain. According to authorities, there are several incidents like this on a yearly basis. I met with the child death review board last year and they verified the need for addressing this problem.

HB 2088 gives law enforcement the opportunity to prosecute although it is only about the same penalty as writing a bad check, at least it is a penalty for giving birth to a child and perhaps allowing him or her to suffocate in a garbage bag, drowning her, or who knows the myriad of other ways to taking your own child's life.

With that, I stand for questions.

Senate Public Health & Welfare

3-10-05

Attachment #5

Testimony on Substitute for House Bill 2088
To
Public Health and Welfare
Presented by Lorne A. Phillips, Ph.D.
State Registrar and Director
Center for Health and Environmental Statistics
Kansas Department of Health and Environment

March 10, 2005

Chairperson Barnett and members of the Public Health and Welfare Committee, I am pleased to appear before you today to discuss Substitute for House Bill 2088.

This bill proposes to address when the parent(s) of a newborn child abandon the child with no intent to care for or to seek care for the child. The Uniform Vital Statistics Act is amended to impose a new criminal penalty for failure to comply with the filing of a birth certificate within five days of the birth and a death certificate before interment or disposal of the body. The proposed penalty for both infractions is a class A person misdemeanor. An amendment was made to the section addressing death certificates to exempt licensed funeral home directors and assistant funeral home directors from the criminal penalty.

The Kansas Department of Health & Environment supports this bill with an additional amendment. The current language does not take into account the provision of six months for filing a birth certificate and thereafter filing a delayed certificate of birth as specified in K.S.A. 65-2419 and 65-2420 (a):

65-2419. Delayed birth certificates. A person born in this state may file a birth certificate after the time herein prescribed, upon submitting such proof as shall be required by the secretary.

65-2420. "Same; procedure. (a) Certificates accepted subsequent to six (6) months after the time prescribed for filing with the state registrar shall contain the date of the delayed filing and be marked "delayed".

Rather than add the wording "within five days of the birth" regarding the filing of a birth certificate when the birth occurs outside an institution, we propose that an additional line be added to address the failure to file a certificate under the abandonment circumstance with no intent to care for or seek care for the child. The proposed amendment is attached.

Senate Public Health & Welfare
3-10-05
1 Attachment #6

Without this amendment, the Substitute for House Bill 2088 is in conflict with existing statutes K.S.A. 65-2419 and 65-2420 and we cannot support it. With the amendment, it addresses the issues intended by the bill and we can support it.

I thank you for the opportunity to appear before the Public Health and Welfare Committee and will gladly stand for questions the committee may have on this topic.

Substitute for HOUSE BILL No. 2088

By Committee on Health and Human Services

Jane Phillips

6-3

10 AN ACT concerning the uniform vital statistics act; amending K.S.A. 65-
11 2409a, 65-2412 and 65-2434 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 65-2409a is hereby amended to read as follows:

15 65-2409a. (a) A certificate of birth for each live birth which occurs in this
16 state shall be filed with the state registrar within five days after such birth
17 and shall be registered by such registrar if such certificate has been
18 completed and filed in accordance with this section. If a birth occurs on a
19 moving conveyance, a birth certificate shall indicate as the place of birth
20 the location where the child was first removed from the conveyance.

21 (b) (1) When a birth occurs in an institution, the person in charge of
22 the institution or the person's designated representative shall obtain the
23 personal data, prepare the certificate, secure the signatures required by
24 the certificate and file such certificate with the state registrar. The phy-
25 sician in attendance or, in the absence of the physician, the person in
26 charge of the institution or that person's designated representative shall
27 certify to the facts of birth and provide the medical information required
28 by the certificate within five days of the birth.

29 (2) When a birth occurs outside an institution, the certificate shall be
30 prepared and filed ~~within five days of the birth~~ by one of the following
31 in the indicated order of priority: (1) (A) The physician in attendance at
32 or immediately after the birth, or in the absence of such a person; (2) (B)
33 any other person in attendance at or immediately after the birth, or in
34 the absence of such a person; or (3) (C) the father, the mother or, in the
35 absence of the father and the inability of the mother, the person in charge
36 of the premises where the birth occurred.

37 (3) *The failure to file a certificate under this subsection (b) is a class*
38 *A person misdemeanor.*

**, when the parent(s) abandon the child with no intent
to care for the child or to seek care for the child,**



OFFICE OF

LYON COUNTY SHERIFF

425 MECHANIC STREET
EMPORIA, KANSAS 66801
PHONE (620) 342-5545 • FAX (620) 343-2074

GARY R. EICHORN
SHERIFF

RICHARD W. OLD
UNDERSHERIFF

March 10, 2005

Chairman and Members
Kansas Senate Committee on Health

Mr. Chairman and Members of the Committee,

I thank you for the opportunity to speak to you and express my support for HB 2088.

In Early April 2002, what appeared to be a newborn baby was found in the yard of a Lyon County residence. The baby was badly decomposed and had been partially eaten by dogs.

The investigation determined that the mother had gotten a ride to her mother's residence in October 2001, and gave birth while her mother was away for the day.

This woman said that she did not know if the baby was alive when it was born, but believed that it was dead when she recovered from the delivery. She discarded the baby in the trash, and called for a ride back to Emporia. The baby remained with the trash all winter and was removed by the dogs more than 5 months later.

This woman had three other children, all of whom had been taken away by court action.

This woman had avoided any prenatal care or any postnatal care for herself or her baby. Additionally, she admitted to using methamphetamine in general and to use of methamphetamine to induce labor.


HB 2088 will greatly assist in cases involving a death of a newborn baby that was delivered without medical assistance. With this Bill in place, there will be a duty to report the death to authorities in order that a timely investigation can go forward. Kansas law currently imposes a duty to report a traffic accident involving injury. This Bill is a logical extension of that same reasoning, and is not unreasonable given the magnitude of a baby's death.

In this case the KBI could not determine DNA to link the mother to the baby due to decomposition.

*Gary Eichorn
Bill Halvorson
Senate Public Health & Welfare
3-10-05
Attachment # 7*

This is not the only case of this nature in Kansas. However, this case is one of a very few that has had prosecution because of the lack of conclusive evidence, one way or the other, due to the passage of time from delivery to discovery of the death.

Respectfully,


Gary Eichorn, Sheriff

Dear Legislators:

My name is LaVeta Adams and I am a MSW student at Newman University. I have been serving as a volunteer and board member with a crisis pregnancy center and licenced adoption agency in Arkansas City since 1997. I currently serve as their intern and board secretary. Our agency provides a prenatal education program and guidance regarding pregnancy options to women who experience pregnancy.

While volunteering at this agency, I witnessed a woman who came in for our services. We lost contact with her and a few weeks later we found out what happened. I witnessed the director and the volunteers agonize over the loss of this woman's infant. There was an investigation which our volunteers had to participate in. They were devastated at the death of the infant and were not sure they could provide enough credible information to adequately assist the law enforcement personnel. Some volunteers were not sure they wanted to get involved in a legal case. Yet everyone wanted justice and a prosecution.

As a student social worker we are taught to be advocates. This tragic death did not only affect the life of the infant. The mother's life was definitely affected as were the Sherriff's, KBI, volunteers, agency personnel, community members and my life. We will never forget what we went through. I am advocating for Substitute House Bill 2088 be passed for everyone involved. In speaking with state representatives and my instructors I have been told that legislators listen to their constituents. Please impose penalties for unintended pregnancy and the unlawful disposal of infants. Please don't let these infant's deaths go unnoticed.

Thank you,
LaVeta Adams

Senate Public Health & Welfare
3-10-05
Attachment #8

Dear Concerned Legislators:

My name is Tim Durham and I am the director of an adoption agency and women's resource center in Arkansas City which provides prenatal education free to clients. Sometime in September of 2003, a woman came in requesting a pregnancy test. The results were "positive" and we talked with her about options concerning the pregnancy, including adoption. She was quite upset but agreed to enroll in a program we have which encourages a healthy pregnancy. She missed the first two appointments and, though we tried, we could not really connect with her again. Though our efforts to help clients make good decisions are quite rigorous, we respect privacy, realize the limits of our influence, and never try to coerce anyone to do anything. We were, frankly, concerned about her and hoped that she would engage us for guidance once again. After a few weeks, we were devastated to read in the paper that this client was under investigation and had, in fact, been charged with killing her baby.

Several key individuals at this agency had to help the sheriff in the investigation. We all wondered what we could have done differently or how this individual could have been helped even more. We were especially horrified with the details of this event and that, even with our best efforts, this child had possibly been killed and disposed of in a very disrespectful manner. We were also very disappointed that this client did not pursue what we thought was a reasonable and civilized plan of action that might require some sacrifice on her part, but would be best for everyone involved. Anyone involved with this case at our agency mourned the loss of this new life and were sickened at the thought of what might have actually happened to this innocent newborn.

We wondered at this time if it would be possible for someone to carry a child to term, deliver the baby, kill that baby or let the baby die, dispose of the baby's body, and simply hope that no one would notice and/or care. Without a law that directly and articulately addresses this tragic situation, it seems to me that this is indeed possible and perhaps has occurred already in other similar circumstances. We believe that these young, innocent children should be protected from this kind peril, which is the ultimate form of abuse, and that we have an obligation to do everything possible to prevent it. Stiffer penalties may be in order. Public awareness of adoption is a subject that cannot be over stressed. Legislators and those in the private agencies must work together to prevent this tragedy. I am certain that education can be a deterrent, but the law is certainly the final word in how we treat those that are unable to protect themselves.

Experiencing this tragedy firsthand was one of the most unpleasant experiences of my life. Preventing this from happening again is simply providing basic respect and protection for newborns who certainly have that right. It also sends a message that all children are valuable intrinsically. Most Kansans, I think, would consider this to be common sense. Please generate a statute that strongly condemns this action and would be congruent with the decency that is common to the people of Kansas.

Senate Public Health & Welfare
3-10-05
Attachment #9