

Approved: February 14, 2006

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:30 P.M. on February 13, 2006, in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Mary Galligan, Kansas Legislative Research Department  
Renaë Jefferies, Revisor of Statutes' Office  
Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Elmer Zerr, Zerr Engineering, Colby  
Dale Owings, Penco Engineering, Plainville  
Scott Heidner, American Council of Engineering Companies of Kansas  
Tom Conley, Chief, Radiation and Asbestos Control Section, Kansas Department of Health and Environment

Others attending:

See attached list (not available on electronic copy).

The minutes for February 9, 2006, were approved.

The Chair opened the hearing on **HB 2715**.

Elmer Zerr, Zerr Engineering, Colby, spoke as a proponent. (Attachment 1) He noted that earlier legislation (**SB 396**) raised the fee for inspecting industrial portable gauges from \$300 to \$800, the fee being assessed per entity or company, not per unit. He stated that the fee is inequitable to small companies who own one unit when larger companies, owning numerous units, pay the same fee. He commented that the bill will correct the disparity between large companies and smaller ones.

Dale Owings, Penco Engineering, Plainville, testified in favor of the bill. (Attachment 2) He said his firm operates in 18 counties in northwest Kansas, working on small projects, mostly bridge repair. He explained that his contracts do not permit including gauge inspection as an expense, requiring his firm to absorb the cost of inspections. He likewise recommended the principle of structuring the fee per unit than per entity.

Scott Heidner, representing the American Council of Engineering Companies of Kansas, spoke as a proponent. (Attachment 3) He said the 70 member firms support the per-unit fee schedule, adding that the Kansas Department of Health and Environment (KDHE) must be properly compensated for inspections, especially since inspections by the Nuclear Regulatory

Commission (NRC) would triple the fees. He offered to work with KDHE to find an acceptable resolution that would be fair to the agency as well as to smaller and larger firms.

Mike Butler, Schwab-Eaton Civil Engineers, Manhattan, provided written testimony as a proponent. ([Attachment 4](#))

Tom Conley, Chief, Radiation and Asbestos Control Section, Kansas Department of Health and Environment, (KDHE) said the agency was not opposed to the bill if the changes could be made revenue-neutral, adding that without KDHE inspections, the federal government will assess much higher fees for their inspections. ([Attachment 5](#)) He suggested \$200 per unit to meet the agency's revenue requirements.

Conferees responded to members' questions: Mr. Heidner said 17 firms (out of 70) that he represents would pay more, the remainder less, noting that a \$200-per-unit increase would be an exorbitant increase for larger firms. Mr. Conley replied that the inspection process includes not only assessing the unit, but the procedures of use as well. He suggested alternatives, such as a base charge plus a per-unit fee, or perhaps a lower and higher fee for under or over 5 units. Mr. Heidner said the NRC assesses a per-company fee of \$2500. He also suggested modifications similar to Mr. Conley's recommendation.

Susan Kang, Policy Director, KHDE, said the agency was willing to work with the engineers to arrive an equitable resolution. The Chair received a commitment that Mr. Heidner, Ms. Kang, and Mr. Conley would work out a satisfactory solution to bring back to the committee.

A fiscal note was provided for the committee. ([Attachment 6](#))

The hearing was closed.

Staff Mary Galligan provided a briefing on [HB 2829](#), a bill to regulate clinics and facilities where office-based surgeries are performed. She said the bill enacts new law requiring the Secretary of KDHE to develop rules and regulations regarding these clinics, noting that the bill is similar to [HB 2503](#) that passed the legislature last year, except that the latter addressed only a sub-set—abortion clinics. This bill would cover any facility other than a licensed medical facility where office-based surgeries are performed; the Secretary is enjoined to give consideration to the Kansas Medical Society standards of care for clinics adopted by the Kansas Board of Healing Arts, standards which the Board made permanent on February 11, 2006. She stated that the bill sets forth enforcement procedures according to the Kansas Administrative Procedures Act and establishes fines for noncompliance. The Secretary is required to conduct a timely inspection upon receiving a complaint and submit the cost to the Board of Healing Arts for reimbursement; the Board of Healing Arts likewise must forward complaints to the Secretary, who must share pertinent information with the Board of Healing Art and the Board of Nursing.

Representative Bethell requested the committee consider for passage [HB 2649](#), commenting that he had worked with the Kansas Medical Society, the Kansas Association of Osteopathic Medicine, and other interested parties to amend the bill to eliminate opposition to it. Members discussed the best way to adopt the bill and its amendments. ([Attachment 7](#)) reflects the

amendments.) Jerry Slaughter, Executive Director, Kansas Medical Society, commented that one section was changed to reflect legislative intent rather than appearing to create a legal duty or right; another made the enforcement section consistent with the Healing Arts Act; another removed language that might be construed as assisted suicide. No action was taken on the bill.

The Chair opened discussion of **HB 2342** – allowing determination and pronouncement of death by ARNPs and RNs in adult care homes and licensed hospice facilities. A motion was made and seconded to change *and* to *or* in line 14; the motion passed.

Another motion was made and seconded to insert *physician assistants* where appropriate in the bill. The motion passed.

A motion was made and seconded to recommend the bill favorably as amended. Members discussed various issues raised by the bill. One member expressed concern that the pronouncement of death by an employee might limit rights of redress for the family of the deceased. A member commented that the bill establishes in statute what is already common practice and that issues of abuse of a resident are outside the parameters of the bill.

A motion to change the word *employee* to *acting within the scope of their duties* was, after discussion, withdrawn.

The motion passed.

The Chair adjourned the meeting. The next meeting is scheduled for Tuesday, February 14, 2006.



## ZERR ENGINEERING

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PH: 785-462-6992

P.O. BOX 889  
COLBY, KANSAS 67701-0889

1000 E. 4TH

Health and Human Services Committee  
525-S  
Kansas Legislature

Dear Chairman and Committee Members:

I wish to go on record that I support House Bill No. 2715 as published. At the present time, the annual licensing fee for an Industrial portable gauge (R., Page 4 of Bill) is \$800.00. The fee, as authorized by Senate Bill 396, is assessed per entity or company, not per unit owned. Our company's particular portable unit is a device which is primarily used in quality assurance testing of soil, bituminous pavement, and/or concrete slab densities on construction projects. Small consulting engineering firms and/or testing laboratories will generally own a single portable unit, but are subject to the same fees as large firms, who may own several portable units. The State of Kansas, primarily the Kansas Department of Transportation, does indeed own or lease many of these portable units, and is quite possibly the largest benefactor of the existing license fee structure. The annual licensing fee has increased at a rather quick pace, from \$300 in 2002-2004 to \$800 in 2005. A review of our records indicates that our unit (Troloxer Model Series 3400) was purchased in May, 1994 for \$4,550.00. At the existing fee rate, the unit will essentially be re-purchased every six (6) years! The current annual fee is also more than four (4) times the annual renewal fees paid for my land surveyor's license in Kansas and my engineer's licenses in Kansas, Oklahoma, Colorado, and Kansas combined.

The proposed bill does not suggest the licensing fees be abolished, merely revised. House Bill No. 2715 bases the fees on a payment per unit. The redistributing of the fees to a per unit basis is viewed as a much more equitable method of assessment since all entities will contribute proportionally.

Thank you for your attention.

Elmer G. Zerr, P.E.  
Zerr Engineering  
P.O. Box 889  
1000 East Fourth St.  
Colby, Kansas 67701-0889

*Attachment 1*  
*HHS 2-13-06*

February 15, 2006

Health and Human Services Committee  
525-S  
Kansas Legislature

Re: House Bill 2715

Dear Chairman and Committee Members:

I wish to thank you for the opportunity to testify on behalf of HB 2715 on Monday, February 13, 2006. The testimonies provided at the Committee meeting require some additional comments. Although the Kansas Department of Health and Environment (KDHE) does not oppose the change of the fee structure for industrial portable gauges from the existing per entity basis to the proposed per unit basis, they do not concur with the amount (\$25/unit), since this would cause an annual departmental revenue shortfall of some \$83,000. In order to remain revenue neutral, a fee of \$200/unit would be required. The alternative is for KDHE to terminate their agreement with the Nuclear Regulatory Commission (NRC), resulting in federal administration of the program at a cost of \$2,500/ year per entity. Compared to the existing \$800/entity fee structure, the \$200/unit offers greater parity for the small firms. The proposed fee would not adversely affect any entity owning and/or controlling less than five (5) units. Based on KDHE data, most of the entities own and/or control four (4) units or less.

The KDHE proposal would affect the entities which own and/or control large numbers of units. The existing fee structure has allowed the larger companies a substantial monetary advantage for many years. Most of the "large unit owners" are located in the large metropolitan areas and are national or international companies. The percentage of the restructured fees versus total annual revenue would still be less for the large entities than that of the small firms. Although Colby is located in a rather isolated area of the State, and considered a fuel/meal stop by many on their way to the ski slopes, it is home to some of us. Other than KDOT Area offices, the unit we have is the only portable gauge within an eighty (80) mile radius. If we were to discontinue providing testing services of the machine, the nearest replacement would be Plainville (100 miles east), Hays (105 miles east-southeast), or Garden City (100 miles south). For example, a hospital or library construction project located in Saint Francis, Goodland, Atwood, Oberlin, Oakley, etc., with specifications requiring field soils density testing, would realize a substantial increase in drive-time alone, thus increasing project costs.

I ask that the Committee consider the \$200/unit fee as suggested by KDHE.

Thank you.

Elmer G. Zerr, PE

*(submitted later)*

Office (785) 434-4611  
(785) 434-2145  
Fax (785) 434-4612

## PENCO ENGINEERING, P.A.

P. O. Box 392 - 711 NW 3rd St. (K-18 Hwy)  
Plainville, Kansas 67663

Dale K. Owings, P.E.  
President

Jerol J. DeBoer, P.E.  
Secretary/Treasurer

February 9, 2006

Health and Human Services Committee  
525-S  
Kansas Legislature

Re: House Bill No. 2715

Dear Chairman and Committee Members:

I would like to go on the record in support of House Bill No. 2715 as published. The current annual licensing fee for an industrial portable gauge is \$800.00 annually. Previously, we had been paying \$300 for a two year renewal.

Our company is a small consulting engineering firm that uses the portable gauge to test soil and bituminous mixtures for density. During some years, we have several projects that require the use of the gauge while other years we use the gauge very little.

The initial cost of our last portable gauge was \$4450. The current renewal fee of \$800 will pay for a new gauge in 6 years. The flat rate renewal fee for each entity appears to benefit large organizations such as KDOT and large testing firms that only conduct material testing. Small engineering consulting firms are burdened by a fee, when in fact we have a small percentage of the market. The larger organizations have a larger share of the testing market and a better ability to pay the fee.

I feel an appropriate fee is in order, one that is equitable with companies large and small. House Bill No. 2715 bases the fee on the number of machines, which I believe levels the playing field for all.

Sincerely,

Dale K. Owings, PE  
Penco Engineering  
Box 392  
711 NW Third St.  
Plainville, Kansas 67663

PROFESSIONAL ENGINEER – LAND SURVEYOR - LICENSED IN KANSAS AND NEBRASKA  
Road, Street and Bridge Design      Airport and Land Surveys      Water and Sewer Design

Attachment 2  
HHS 2-13-06



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Kansas

Affiliated with:  
American Council of Engineering Companies  
Kansas Society of Professional Engineers  
National Society of Professional Engineers  
Professional Engineers in Private Practice

TESTIMONY

TO: HOUSE HEALTH AND HUMAN SERVICES COMMITTEE  
FROM: SCOTT HEIDNER, EXECUTIVE DIRECTOR  
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF KS  
RE: HB 2175  
DATE: FEBRUARY 13, 2006

Mr. Chairman, members of the committee, thank you for the opportunity to appear today as a supporter of HB 2175. My name is Scott Heidner, and I serve as the Executive Director of the American Council of Engineering Companies of Kansas (ACEC Kansas). ACEC Kansas represents approximately 70 private consulting engineering firms employing thousands of Kansans.

HB 2175 remedies a licensure fee inequity that has developed over the last three years. Most of our member firms have material density gauges, used often in testing of substances such as soil, pavement, and concrete. The Kansas Department of Health and Environment (KDHE) has responsibility for licensing and inspecting these instruments. Three years ago, the fee for such work was \$300 per year for each firm owning these instruments. In the last three years that fee has grown to \$800 per firm.

For firms having a large number of these machines, that number is probably reasonable. However, for the firms with a small number of these machines (in many cases only one), this is a large expense. Going to a "per unit" fee of \$25 makes great sense, and we strongly support that change.

I would like to share a word of caution with the committee, however. Switching to a "per unit" criteria makes sense with the fee at \$25 per unit. If that fee were to grow any higher, however, it would quickly become something we oppose. We have firms in Kansas with as many as 50 of these machines. A jump to, say, \$100 per unit would drive the annual cost to those firms from \$800 to \$5,000. This would create another inequity, this time for the larger firms.

I would like to share a second word of caution as well. KDHE acts as the licensing and inspecting agency for these machines by choice. They could abdicate that duty and send it back to the federal agency. We want to avoid this result at almost any cost. Both the cost and administrative hassle of going through the federal agency is much worse than KDHE. Our firms work in other states that have the federal agency at the helm, and they universally testify to this fact. There is a real cost to KDHE to process these licenses and perform these inspections. We do not wish to see KDHE operate at a significant loss.

In closing, we strongly support HB 2175 as currently written. We are confident there is more than one way to change the fee schedule that would fix the current inequity, and also stand ready to work with all interested parties if there is a desire to try another approach. Thank you for your time, and I would entertain questions at the appropriate time.

Attachment 3  
HHS 2-13-06



# SCHWAB-EATON, P.A.

CIVIL ENGINEERS LAND SURVEYORS LANDSCAPE ARCHITECTS

February 8, 2006

State Capital  
Kansas Legislature  
Health and Human Services Committee  
300 SW 10<sup>th</sup> Street  
Room 525-S  
Topeka, KS 66612

Re: House Bill 2715

Chairman and Committee Members:

This letter is being written in support of House Bill 2715 regarding the annual licensing fee of "industrial portable gauges". The current annual fee, as set by Senate Bill 396, is \$800, up from \$300 just two years ago. The fee is a lump sum amount irregardless of the number of gauges a company or agency may own.

Our company owns three material density gauges which are categorized as "industrial portable gauges". A lump sum type of fee would be appropriate if each firm/agency had a similar number of gauges, but the fact is the numbers vary greatly from company to company. This type of fee would be akin to having a single, lump sum charge for a car license--- one car or a fleet of cars, the cost would be the same.

The point being, a lump sum fee for "industrial portable gauges" is grossly disproportionate. House Bill 2715 addresses the problem and we encourage your support and passage of the bill.

Very truly yours,

SCHWAB-EATON, P.A.

Mike Butler, President

Schwab-Eaton, P.A. • 1125 Garden Way • Manhattan, Kansas 66502 • Phone (785) 539-4687 • FAX (785) 539-6419

DIRECTORS: C. Michael Butler, P.E. • Chris Cox, P.E. • Bradley J. Fagan, P.E.

Attachment 4  
HHS 2-13-06



# KANSAS

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

## Testimony on House Bill 2715 Kansas Radiation Control Program Dedicated Fee Fund

Presented to  
House Health and Human Services  
by  
Thomas A. Conley, CHP  
Chief, Radiation and Asbestos Control Section  
February 13, 2006

Chairman Morrison and members of the committee, I am Tom Conley, Chief of the Radiation and Asbestos Control Section for KDHE. I appreciate this opportunity to appear before the committee to present alternatives to House Bill 2715. The bill seeks to amend K.S.A. 48-1606 to add a new fee category for industrial portable gauges setting the fee at \$25 per machine and to remove the Secretary's authority to set the fee for this category.

### **Background:**

By agreement effective January 1, 1965, Kansas became an Agreement State under Section 274 of the Atomic Energy Act of 1954, as amended, under which the Atomic Energy Commission (now the Nuclear Regulatory Commission) relinquished to Kansas portions of its regulatory authority to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium), and certain quantities of special nuclear materials. Through KDHE's radiation control program, Kansas continues to regulate 315 facilities licensed to use radioactive materials and about 2,450 facilities registered to use x-ray equipment. These facilities include industrial operations, research labs, medical and dental facilities, and security screening operations.

The Nuclear Regulatory Commission (NRC) evaluates agreement state radiation control programs, including Kansas, every four years. In response to criticism by the Nuclear Regulatory Commission that the Kansas program was not adequately staffed and did not have adequate resources or funding to fulfill its obligations under the agreement to regulate certain radioactive materials, KDHE in the 2004 legislative session sought legal authority to establish a radiation control fee fund.

K.S.A. 48-1606 was amended in 2004 to establish a series of radiation fee categories and, in response to concerns of the legislature, to set maximum limits on the fees for each. The

DIVISION OF ENVIRONMENT  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 400, TOPEKA, KS 66612-1367  
Voice 785-296-1535 Fax 785-296-8464 <http://www.kdhe.state.ks.us/>

*Attachment 5  
HHS 2-13-06*

Secretary of KDHE was given authority to set fees within the constraints of this statute. Subsequently, regulations were promulgated which set the fee for licenses authorizing the use of industrial portable gauges at \$800 per year; the maximum set by statute is \$1250 per year.

**Impact:**

Passage of House Bill 2715 as introduced will affect 104 of our licensees and have a significant negative impact on revenue generated by the Radiation Control Fee Fund. This group of licensees' fees generates about \$83,000 per year or approximately 10% of the program budget. The decrease in revenue will amount to approximately \$72,000/yr. As a result, it will be necessary to either increase fees to other licensees or to appropriate State General Funds to make up the difference. In addition, since the program does not currently track the number of gauges a licensee has (a maximum limit is placed on the license), we anticipate the need to adopt additional regulations to require inventory reporting and to establish a tracking system, both of which would increase program overhead and costs. In the event the NRC should terminate the Agreement, NRC, not the State of Kansas would license industrial portable gauges (as well as all other radioactive material) and the NRC fees for these licenses would be \$2,500/yr with additional fees for inspections set at \$152/hr. Kansas does not charge for inspections.

The Kansas radiation protection regulations are designed to protect workers and the public from unnecessary and harmful exposure to radiation. Under the current regulatory scheme, a license is issued to ensure that the holder of the license has in place the radiation safety procedures required for specific uses of radioactive materials, including portable industrial gauges, medical use, research, and manufacturing. Each of these uses has their own unique radiation safety issues and the safety measures required vary with the use and form of the device rather than the quantity of radioactive material.

Portable industrial gauges use sealed sources that, if handled properly, can be used safely by a qualified person. KDHE's regulatory role is to ensure that the license holder has proper procedures in place for the use, handling, transportation, and maintenance of the gauges; to ensure that proper monitoring of radiation levels is being conducted; and to ensure that emergency procedures exist in the event of an accident. These procedures are equally applicable whether the license holder has one gauge or many.

**Conclusion:**

KDHE is in the final stages of implementing needed improvements to the Kansas radiation control program, which were funded by increases in fees charged to the licensees and registrants. House Bill 2715 as introduced would significantly lower the fees for approximately one half the licensees, necessitating either an appropriation from the State General Fund in order to subsidize program funding at a level to fulfill its obligations under the NRC Agreement or a redesigned fee structure. To remain revenue neutral, a \$200 per unit annual fee is required. We appreciate your consideration of KDHE's position with respect to House Bill 2715.

Thank you.

## ATTACHMENT 1

### Alternatives:

We have explored several alternatives to the fee structure proposed in HB 2715. Currently, licensees possess from 1 to 92 devices. The following table compares each of these options to HB 2715 and the current fee.

**Radiation Fee Option Comparison**

	Current Fee	HB 2715	Min/Unit <sup>1</sup>	Max/Unit <sup>2</sup>	Graduated w/n Current Statute <sup>3</sup>
Per unit fee	N/A	\$25	\$25	\$200	
Base Fee	\$800	\$0	\$690	\$0	
<=5 Devices					\$700
>5 Devices					\$1,250
Subsidy needed to remain revenue neutral	0	\$71,675	\$0	\$0	\$0
Subsidy needed if \$1250 cap is applied	N/A	N/A	\$2,700	\$44,000	N/A

**Fiscal Impact on Top Five Licensees (104 licensees will be affected)**

City	Co	FACILITY	# OF GAUGES	CURRENT FEE	HB 2715	Min/Unit	Max/Unit	Graduated w/n Current Statute
TOPEKA	SN	KDOT	92	\$800	\$2,300	\$2,990	\$18,400	\$1,250
KANSAS CITY	WY	Maxim Technologies	43	\$800	\$1,075	\$1,765	\$8,600	\$1,250
LENEXA	JO	Terracon Consultants	37	\$800	\$925	\$1,615	\$7,400	\$1,250
LENEXA	JO	Geosystems Engineering	19	\$800	\$475	\$1,165	\$3,800	\$1,250
MANHATTAN	RL	Kansas State University	19	\$800	\$475	\$1,165	\$3,800	\$1,250
		TOTALS	461	\$83,200	\$11,525	\$83,285	\$92,200	\$82,150
		Minimum	1	\$800	\$25	\$715	\$200	\$700
		Maximum	92	\$800	\$2,300	\$2,990	\$18,400	\$1,250
		Average	4	\$800	\$111	\$801	\$887	\$790

<sup>1</sup> Minimum fee per device authorized with a base fee per license. Under this alternative, a \$690 base license fee would be charged plus \$25 per device authorized under the license.

<sup>2</sup> Maximum fee per device authorized with no base fee. This alternative would charge a flat \$200 per device.

<sup>3</sup> A graduated fee based on the number of devices authorized. This option could be accomplished by amending the current fee regulation [K.A.R. 28-35-147a(b)(16)] without amendment to the existing statute. To remain revenue neutral, we would propose a fee of \$700 for licenses authorizing five or fewer devices and a \$1,250 fee for licenses authorizing more than five devices.

## ATTACHMENT 2

### Comparable fees in adjacent states:

State	New Application	Annual fee	Amendment	Renewal	Inspection
Kansas	NA	800	NA	NA	NA
Nebraska	NA	850	NA	NA	NA
Colorado	1300	1850	NA	NA	1290
Oklahoma	1375	1375	NA	NA	NA
Iowa	1300	NA	325	1170	1927
Arkansas*	NA	1-5 gauges \$300 >5 gauges \$500	NA	NA	NA

\*Arkansas is the only adjacent state not 100% fee funded, program costs are subsidized by the state's general fund.

February 13, 2006

The Honorable Jim Morrison, Chairperson  
House Committee on Health and Human Services  
Statehouse, Room 143-N  
Topeka, Kansas 66612

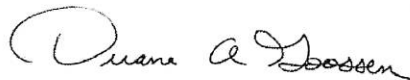
Dear Representative Morrison:

Subject: Fiscal Note for HB 2715 by Representative Jim Morrison

This is to notify you that the Division of the Budget is preparing a fiscal note for the bill indicated above. A request to provide fiscal effect information has been sent to one or more agencies or organizations, and we are awaiting a response from them to complete the fiscal note. This notice is to acknowledge that a hearing has been scheduled on the bill and to advise you of the status of the fiscal note in our continuing effort to provide useful and timely information on proposed legislation. As soon as the necessary information is received, the fiscal note will be completed and submitted to you for your deliberations.

If you have questions or more detailed information is desired, please contact us.

Sincerely,



Duane A. Goossen  
Director of the Budget

Attachment 6  
HHS 2-13-06

# HOUSE BILL No. 2649

By Committee on Health and Human Services

1-18

Representative Bethell, 3rd  
Balloon Amendment  
February 7, 2006

Attachment 7  
HHS 2-13-06

9 AN ACT concerning health care; relating to a pain patient's bill of rights;  
10 amending K.S.A. 60-4403 and 65-2837 and repealing the existing  
11 sections.

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

14 New Section 1. Sections 1 through 4, and amendments thereto, shall  
15 be known and may be cited as the "pain patient's bill of rights."

16 New Sec. 2. All Kansans have a right to:

- 17 (a) Have their report of pain taken seriously and to be treated with  
18 dignity and respect by doctors, nurses, pharmacists and other health care  
19 professionals;
- 20 (b) have their pain thoroughly assessed and promptly treated;
- 21 (c) participate actively in decisions about how to manage their pain;
- 22 (d) have their pain reassessed regularly and their treatment adjusted  
23 if their pain has not been eased;
- 24 (e) be referred to a pain specialist if their pain persists;
- 25 (f) get clear and prompt answers to their questions; and
- 26 (g) take time to make decisions regarding their pain treatment and  
27 refuse a particular type of treatment if so decided.

28 New Sec. 3. (a) A patient who suffers from moderate to severe pain  
29 may:

- 30 (1) Request or reject the use of any or all modalities to relieve pain;
  - 31 (2) choose from appropriate pharmacologic treatment options to re-  
32 lieve moderate to severe pain including opiate medications, without first  
33 having to submit to an invasive medical procedure such as surgery, de-  
34 struction of a nerve or other body tissue by manipulation or the implan-  
35 tation of a drug delivery system or device;
  - 36 (3) be informed by the patient's physician or physicians who are qual-  
37 ified to treat moderate to severe pain employing methods that include  
38 the use of opiates when the patient's physician refuses to prescribe opiate  
39 medication treatment for such pain; and
  - 40 (4) request and receive an identifying notice of a prescription from  
41 the patient's physician for purposes of emergency treatment or law en-  
42 forcement identification.
- 43 (b) A physician who uses opiate therapy to relieve moderate to severe

72

1 pain may prescribe a dosage deemed medically necessary to relieve the  
 2 pain.  
 3 New Sec. 4. Nothing in the pain patient's bill of rights shall be con-  
 4 strued to:  
 5 (a) Expand the authorized scope of practice of any licensed physician;  
 6 (b) limit any reporting or disciplinary provisions applicable to licensed  
 7 physicians and surgeons who violate prescribing practices; and  
 8 (c) prohibit the discipline or prosecution of a licensed physician for:  
 9 (1) Failing to maintain complete, accurate and current records that  
 10 document the physical examination and medical history of a patient, the  
 11 basis for the clinical diagnosis of a patient and the treatment of the  
 12 patient;  
 13 (2) writing false or fictitious prescriptions for federal or state con-  
 14 trolled substances;  
 15 (3) prescribing, administering or dispensing pharmaceuticals in vio-  
 16 lation of the provisions of the federal comprehensive drug abuse preven-  
 17 tion and control act of 1970 (21 U.S.C. 801 et seq.);  
 18 (4) diverting medications prescribed for a patient to the licensed phy-  
 19 sician's own personal use; and  
 20 (5) causing or assisting in causing the suicide, euthanasia or mercy  
 21 killing of any individual. (A) so long as it is not causing or assisting in  
 22 causing the suicide, euthanasia or mercy killing of any individual to pre-  
 23 scribe medical treatment for the purpose of treating moderate to severe  
 24 pain and (B) so long as the medical treatment is not also furnished for  
 25 the purpose of causing or assisting in causing death for any reason.

Please put insert A here

26 Sec. 5. K.S.A. 60-4403 is hereby amended to read as follows: 60-  
 27 4403. (a) A licensed health care professional who administers, prescribes  
 28 or dispenses medications or procedures to relieve another person's pain  
 29 or discomfort, ~~even if the medication or procedure may hasten or increase~~  
 30 ~~the risk of death,~~ does not violate K.S.A. 21-3406 and amendments  
 31 thereto unless the medications or procedures are knowingly administered,  
 32 prescribed or dispensed with the intent to cause death. A mid-level prac-  
 33 titioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments  
 34 thereto who prescribes medications or procedures to relieve another per-  
 35 son's pain or discomfort, ~~even if the medication or procedure may hasten~~  
 36 ~~or increase the risk of death,~~ does not violate K.S.A. 21-3406 and amend-  
 37 ments thereto unless the medications or procedures are knowingly pre-  
 38 scribed with the intent to cause death.  
 39 (b) A licensed health care professional, family member or other le-  
 40 gally authorized person who participates in the act of, or the decision  
 41 making process which results in the withholding or withdrawal of a life-  
 42 sustaining procedure does not violate K.S.A. 21-3406 and amendments  
 43 thereto.



Insert A

New Sec. 2. The Legislature finds and declares the following:

(a) A person suffering from pain should expect their report of pain to be taken seriously, and should expect to be treated with respect by health care professionals.

(b) A person suffering from pain should have access to and expect proper assessment and treatment of such person's pain, while retaining the right to refuse treatment.

(c) A person's health care professional may refuse to prescribe opiate medication for a patient who requests treatment for pain. However, that health care professional shall inform the patient that there are physicians who specialize in the treatment of pain with methods that include the use of opiate medication.

(d) A person suffering from pain may request that such person's physician provide an identifying notice of such person's prescription for purposes of emergency treatment or law enforcement identification.

(e) A health care professional treating a person who suffers from pain may prescribe opiate medications in a dosage deemed medically necessary to relieve such person's pain.

(f) A person suffering from pain has the option to request or reject the use of any or all modalities to relieve such person's pain, including the use of opiate medications to relieve pain without first having to submit to an invasive medical procedure such as surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or device.

Sec. 3. K.S.A. 65-2838 is hereby amended to read as follows: 65-2838. (a) The board shall have jurisdiction of proceedings to take disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist under K.S.A. 65-2836 and amendments thereto for disciplinary action authorized by K.S.A. 65-2836 and amendments thereto against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

(d) The board shall not take disciplinary action against any licensee for prescribing, dispensing or administering controlled substances, including opioid analgesics, for a legitimate medical purpose and in the usual course of professional practice. The board shall consider prescribing, ordering, administering or dispensing controlled substances for pain to be for a legitimate medical purpose if based

on sound clinical grounds. The board shall adopt guidelines for the use of controlled substances for the treatment of pain. In the event a licensee's use of controlled substances has been questioned by another regulatory or enforcement agency and such licensee has prescribed, dispensed or administered controlled substances, including opioid analgesics, in accordance with guidelines adopted by the board, the board shall support the licensee in response to the other regulatory or enforcement agency.

New Sec. 4. Nothing in this act shall be construed to prohibit disciplinary action by the state board of healing arts or interfere with the investigative authority of any law enforcement agency.