Approved: March 31, 2006
Date

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman James Barnett at 1:37 P.M. on February 22, 2006 in Room 231-N of the Capitol.

All members were present except:
Phil Journey- excused

Late Arrival:
Gilstrap 1:42
Haley 1:43

Committee staff present:
Emalene Correll, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Morgan Dreyer, Committee Secretary

Conferees appearing before the committee:
Linda DeCoursey - American Heart Association
Marley Baum - RN, Critical Care Unit Stormont Vail
Larry Leas - Kansas Health and Fitness Association
Brian Walburn - Walburn's Athletic Clubs

Others attending:
See attached list.

Hearing on SB 511–An act concerning health clubs; requiring the availability of an automated external defibrillator and the availability during business hours of a qualified person to operate such defibrillator

Upon calling the meeting to order, Chairman Barnett opened the hearing on **SB 511** , and asked Emalene Correll to review and explain the language on **SB 511** to the Committee.

Chairman Barnett called upon the first proponent conferee, Linda De Coursey, American Heart Association who stated that several years ago, the American Heart Association and the American College of Sports Medicine joined to make a scientific statement urging fitness clubs to install automated external defibrillators (AEDs) and train staff to use them. A copy of her testimony is (Attachment 1) attached hereto and incorporated into the Minutes as referenced.

The Chair called upon the second proponent conferee, Marley Baum, RN in the Critical Care Unit at Stormont Vail Regional Health Care in Topeka stated her experiences as a registered nurse dealing with patients that have needed a AED due to cardiac arrest. A copy of her testimony is (Attachment 2) attached hereto and incorporated into the Minutes as referenced.

Chairman Barnett called upon the first opponent conferee, Larry Leas, Kansas Health and Fitness Association stated many of his clubs have difibrillators, and others are moving in that direction, however, he does not believe a government mandate is necessary or desirable. A copy of his testimony is (Attachment 3) attached hereto and incorporated into the Minutes as referenced.

Next, the Chair called upon opponent conferee, Brian Walburn, Walburn's Athletic Clubs in Emporia who stated the way the bill is written, it could increase insurance costs, and since there is no liability waivers written into this bill, clubs will have increased exposure. A copy of his testimony is (Attachment 4) attached hereto and incorporated into the Minutes as referenced.

With no more conferees' to give testimony and no questions or comments from the committee, Chairman Barnett then closed the hearing on **SB 511.**

Action on SB 528–An act concerning public health; relating to the reporting of statistical data

MINUTES OF THE Senate Public Health and Welfare Committee at 1:37 P.M. on February 22, 2006 in Room 231-N of the Capitol.

regarding termination of pregnancies and SB 529–An act concerning abortion

The Chair asked Senator Jordan to review **SB 528** and **SB 529** and to explain amendments on those bills to the Committee. Senator Jordan stated that he and others who have helped work on this bill are proposing that they fold **SB 529** into **SB 528.** A copy of the attachments is (Attachment 5) attached hereto and incorporated into the Minutes as referenced.

Chairman Barnett asked for questions from the Committee for Senator Jordan. Questions came from Senators V. Schmidt, Wagle, and Emalene Correll regarding listed physical and mental disabilities, defining disabilities, current language in bill and added language to bill, and changing language in bill.

The motion was made by Senator Jordan to accept the amendments. It was seconded by Senator Palmer and the motion carried.

The Chair recognized Senator Haley who stated he remembered some concerns that were expressed during the hearing and that some of those people were with them today. He made some notes on the bill about concerns of an easier duplicity of line c) 1 which is line 33 on page one of the bill and subsection c) 4 which would be line 39. He was sorry he didn't make extensive notes but there was some discussion as to whether or not that language was already in statute or does it create a different one. He was wondering if the Chair would comment on that again.

The Chair referred the question over to Senator Jordan who stated that line 4 should be struck.

Senator Haley asked then what of c) 1 which is line 33 of the bill.

The Chair asked Norm Furse who stated that the material within brackets would be deleted. And if you look close that you will see in line 38 that there is a bracket there after the word "fetus" and line 40 there is a bracket before the semicolon..

The Chair OK's Norm Furse's explanation with Senator Haley.

Questions also came from Senators Wagle, and Brungardt regarding ID protection, ID numbers to report, giving ID numbers to physicians, and tracking abortion if it is confidential.

The motion was made by Senator Jordan for a conceptual amendment concerning reporting by a referring physician. It was seconded by Senator Palmer and the motion carried.

The Chair recognized Senator Haley who stated that he was not comfortable with thinking what could potentially be a change. Existing statute provides confidentiality without some sort of hearing on this and what effect it has, other than the representation of Dr. Philips, on existing statute. And for that reason Senator Haley requested that his no vote be recorded.

Questions came from Emalene Correll, and Senator Wagle regarding data collection, requirement of information, and data collection in two different categories.

The Chair asked if there were any more question on a conceptual motion. Seeing none, he continued with the motion and the motion carried.

The motion was made by Senator Jordan to move the bill out favorably as amended. It was seconded by Senator Gilstrap.

The Chair recognized Senator Haley who stated that "Thank you Mr. Chair, as the Committee knows this is a controversial measure about **SB 528** and **SB 529**, not only in substance which are in the remainder of two bills now, it was originally three bills, but certainly the procedure on how these matters have come before this Committee in this matter. I did question how it got here and I had questioned how the Committee heard it, and I continue to question whether or not we really do need the measure that is before us today. We had heard

from the professionals, those who are involved on a day to day basis with these reported requirements and there are still the questions to whether or not or why the Committee needs to have it at this time. I am concerned because, when the Committee should be focused on other issues regarding health care, access to care, prescription drugs among others. This attempt to once again grow reproductive health and the rights that have a chilling effect on Women in crisis pregnancies to make these decisions, becomes a waste of time, and a waste of effort. We only have a few moments here to address these issues Mr. Chair, and I would hope that our Legislature and certainly the Administration would do what they can to enhance access to care instead of provide the children. For that reason Mr. Chair I continue to question the procedures that brought this to us, this being **SB 528**, **SB 529**, and **SB 530** and I continue to oppose these measures. And I appreciate your indulgence because I really needed to get that off of my chest."

The Chair recognized Senator Jordan who stated "Thank you Mr. Chair, I am glad that Senator Haley got that off of his chest, now I want to get something off of my chest. I have made a conceptual motion in this Committee that these bills be introduced. I want to make it clear, I want to make it public that I did that. That motion was seconded don't know if Senator Haley was here or not but I did it and I am tired of the questioning being done. It was done, It was done as we normally do conceptual motions. I am sorry if Senator Haley has not brought forth some of the health care issues that are important to this State and has not introduced a bill. But I did introduce this bill and did introduce all three conceptually in one day in this Committee. I just want to make that very clear."

The Chair recognized Senator Palmer who stated "I would also like to make it known also to you that I was here, I did second that motion. And I find it insulting to my integrity that you would ever say that I did not do that, and I was here. Thank you."

The Chair recognized Senator Haley who stated "Let me certainly apologize publically to any of our colleagues who think that I would question their veracity or their integrity. I had hoped to have cleared this matter up by hearing the tape. I questioned leadership to let me hear how the motion was made and what exactly the phrase was that was used, because it was recorded that I was not here at that time. I think the matter could have been cleared up quite simply by hearing what the request to the conceptual motion was. That request has been denied by the Chair as is his prerogative to hear that. And so those questions persisted. I did not then nor do I now continue to question the veracity or truthfulness of any of the representations made by any of my colleagues. I would have liked to have heard the measure to see what exactly was stated in my absence and given I was not able to do that this matter has brought us to this point. But I will hope my colleagues in the Senate, please understand that I would never intentionally or unintentionally question your integrity.

Chairman Barnett continues that there has been a second to a motion.

The motion carries.

Senator Haley stated that he would like his no vote to be recorded.

Action on SB 469–An act concerning the behavioral sciences regulatory board; relating to impaired licensees

The Chair asks Norm Furse to review the bill and explain the new balloons that were handed out to the Committee. A copy of the balloons are (Attachment 6) attached hereto and incorporated into the Minutes as referenced.

The Chair calls upon Sky Westerlund to review and share the balloons that she came up with in working with Norm Furse that were handed out to the Committee. A copy of the balloons are (Attachment 7) attached hereto and incorporated into the Minutes as referenced.

Question came from Senators Haley, Barnett, and Palmer regarding Intervention Act, language to strike and replace, amendments on the first page, definition of the term "impairment," definition of the term "disability," taking off work as employee, compensation of time, and fiscal impact.

MINUTES OF THE Senate Public Health and Welfare Committee at 1:37 P.M. on February 22, 2006 in Room 231-N of the Capitol.

The motion was made by Senator V. Schmidt to adopt the amendments. It was seconded by Senator Haley and the motion carried.

The motion was made by Senator V. Schmidt to move the bill out favorably. It was seconded by Senator Haley and the motion carried.

The Chair announced that the final item on the agenda was for the Minutes to be approved for Public Health and Welfare Committee for February 2, 2006, February 8, 2006, February 9, 2006, February 15, 2006, and February 16, 2006.

The motion was made by Senator Palmer to approve the Minutes. It was seconded by Senator Wagle and the motion carried.

Adjournment

As there was no further business or time, the meeting was adjourned at 2:35 p.m.

The next meeting is scheduled for Wednesday, March 1, 2006.

No Attendance Sheet
was returned to Committee Secretary for
Senate Public Health and Welfare Committee

Feb. 22, 2006

American Heart Association®
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Heartland Affiliate
5375 SW 7th St.
Topeka, KS 66606
(785) 272-7056
(800) 242-8721
fax (785) 272-2425
www.americanheart.org

February 22, 2006

TO: Senate Committee on Public Health and Welfare

FROM: Linda J. De Coursey, Advocacy Director – Kansas

RE: SB 511 – Requiring availability of AEDs in health clubs

Mr. Chairman and members of the committee:

My name is Linda De Coursey and I am appearing on behalf of the American Heart Association in support of SB 511. The proposed bill would require that all health clubs in the state have an automated external defibrillator (AED) on the premises, and, during hours of business, have a person qualified to operate the defibrillator present. "Health club" is defined as a business offering facilities for the preservation, maintenance, encouragement, or development of physical fitness or well-being.

The mission of the American Heart Association is to reduce disability and death from cardiovascular disease and stroke. One of the ways to accomplish that goal is through the Emergency Cardiovascular Care (ECC) programs. ECC programs educate healthcare providers, caregivers and the general public on responding to cardiovascular emergencies, cardiac arrest and stroke. ECC is dedicated to increasing public awareness of the importance of early intervention and ensuring greater public access to defibrillation. ECC programs train from 6 to 8 million people every year.

Several years ago, the American Heart Association and the American College of Sports Medicine joined to make a scientific statement urging fitness clubs to install automated external defibrillators (AEDs) and train staff to use them.

An AED is about the size of a large textbook and is used to analyze the heart's rhythm and tell a bystander responding to an emergency whether to deliver an electrical shock to a victim of sudden cardiac arrest. This shock can lead to defibrillation that allows the heart to resume normal rhythm. Many more Americans are now exercising at health and fitness clubs, including more senior citizens and people with undiagnosed heart disease who may be at higher risk for cardiac arrest.

The good news is that if people are fit and they keep exercising, they decrease their risk of suffering a cardiovascular event. The bad news is that there are many people visiting fitness centers with undiagnosed coronary heart disease. Health clubs that are prepared for an emergency is critical to survival in the first few minutes after cardiac arrest.

Senate Public Health & Welfare Committee
Date: Feb. 22, 2006
Attachment #1

American Heart Association®
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Heartland Affiliate
5375 SW 7th St.
Topeka, KS 66606
(785) 272-7056
(800) 242-8721
Fax (785) 272-2425
www.americanheart.org

The chain of survival includes four steps: 1) early access to care/calling 9-1-1; 2) early cardiopulmonary resuscitation (CPR); 3) early defibrillation and 4) early advanced care.

Following cardiac arrest, survival rates drop about 7 percent to 10 percent for every minute that defibrillation is not delivered, and a person has only a 2 percent to 5 percent chance of survival if defibrillated beyond 12 minutes. Survival rates as high as 90 percent have been reported where defibrillation is achieved within the first minute after cardiac arrest.

With more and more people exercising, it is important that health clubs are prepared in case of an emergency of the heart. Thank you for allowing us to comment on this important matter. We urge your favorable consideration of SB 511. I would be happy to answer any questions on this topic.

February 22, 2006
S.B. 511 Automated External Defibrillator to be Available on Premises of Health Club.

Senator Barnett and Public Health and Welfare Committee Members:

Hello, my name is Marley Baum; I am a registered nurse in the Critical Care Unit at Stormont Vail Regional HealthCare here in Topeka. I am here today to support S.B. 511.

On a daily basis nurses, like myself, see the impact that Automated External Defibrillators or AED's can have on a person's life. I personally have been able to save patient's lives with the use of a defibrillator. I have cared for many patients whose lives have been saved because an AED was used in the community by trained personnel, and unfortunately I have taken care of patients who never regained consciousness after a sudden cardiac arrest because the patient did not receive defibrillation soon enough. When this occurs the families of these patients are faced with the burden of difficult decisions, such as whether or not to continue aggressive treatment measures or focus more on palliative care.

According to the American Heart Association, sudden cardiac arrest is responsible for more than 250,000 American deaths each year. The arrest is usually due to abnormal heart rhythms such as ventricular fibrillation. The only treatment for ventricular fibrillation is an electric shock to reset the heart's electrical cycle into a regular rhythm. The chances of survival following sudden cardiac arrests are about 50% if defibrillation is received within the first five minutes of the arrest. Those chances decrease by 7% to 10% with each minute thereafter, with little to no chance of survival after 10 minutes. If the arrest occurs outside a hospital setting the chance of survival is approximately 5%.

AED's were initially developed for emergency medical service providers, recently though the public has gained access to these devices. It is not uncommon to see them in airports, casinos, or golf courses. This has lead to many improvements in the designs that make them more efficient and easy to use. Many studies have shown that trained laypersons can safely and effectively use AED's in a public setting, thus increasing the number of survivors of sudden cardiac arrest. One study has shown that even sixth-graders can be effectively trained in their use.

Health Club facilities are a prime target for possible sudden cardiac arrest victims due to the wide variety of persons with known and unknown risk factors and underlying cardiac diseases that use the facility. Most often times the first sign of heart disease is cardiac arrest. Cardiac disease is the #1 cause of death in the United States. The implementation of AED's into health club facilities with trained personnel will increase survivor rates of sudden cardiac arrest and thus hopefully decrease the amount of deaths due to heart disease. The implementation of AED's into health club facilities with subsequent training of personnel should be considered gold standard for public health and safety.

Thank-you for your consideration on this very important public policy.

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Testimony of Larry Leas
Kansas Health and Fitness Association
Senate Committee on Public Health and Welfare
Senate Bill 511
February 22, 2006

Mr. Chairman, Senators - My name is Larry Leas and I am pleased to appear before you today on behalf of the Kansas Health and Fitness Association. That Association includes 70 fitness clubs across Kansas. I am a Director of Training at Gold's Gym, Olathe and Overland Park. Mr. Wade Ferguson, the owner of Gold's gym is out of the State today and could not attend. Mr. Ferguson is the President of the Kansas Health and Fitness Association.

I appear today in opposition to SB 511. Many of our clubs have defibrillators, and others are moving in that direction - however we do not believe a government mandate is necessary or desirable.

A mandate adds additional liability issues. A mandate does not take into consideration smaller clubs. It does not consider the extended hours that some facilities are now available - some 24 hours per day, and often time with minimal, or even no staff.

We also believe that SB 511 is overly broad. It would apply to any health related facility which charges a fee and which isn't specifically exempt. Golf courses, tennis courts, swimming pools would be covered, whether operated privately or by one of your cities or counties. Private businesses which offer exercise facilities for their employees, if they charge them any fee, would be required to not only have the equipment, but trained staff on duty all hours of operation.

Government mandates are not always the right solution, even if the goal is a commendable one. We would urge you not to pass SB 511.

Senate Public Health & Welfare
Committee
Date: Feb. 22, 2006
Attachment #3

Testimony of Brian Walburn
Senate Committee on Public Health and Welfare
Senate Bill 511
February 22, 2006

Dr. Barnett, Senators – My name is Brian Walburn. My father and I are the owners of Walburn's Athletic Clubs in Emporia.

SB 511 will have a major impact on small clubs. Financially we will incur thousands of dollars in equipment costs. What will happen if we don't have a trained staff person available? Will we have to close our club if our certified staff is sick or on vacation?

The way SB 511 is written it could increase insurance costs. Since there are no liability waivers written into this Bill, clubs will have increased exposure. This almost always translates into higher premiums. While the goal of this Bill may be lofty, so will be its price tag for clubs. The majority of health clubs in the state are small businesses that work hard and try to make ends meet. This government mandate will just make it harder for some clubs to stay in business.

Kansas health clubs provide an environment that promotes fitness and improves health throughout the state. If clubs cannot survive because of increased costs or cannot stay open at certain times due to lack of certified staff, more Kansans will be negatively affected than this legislation will help.

I would ask you not to support this legislation.

Senate Public Health & Welfare
Committee
Date: Feb. 22, 2006
Attachment #4

SENATE BILL No. 528

By Committee on Public Health and Welfare

2-8

AN ACT concerning public health; relating to the reporting of statistical data regarding termination of pregnancies; amending K.S.A. 65-445 and repealing the existing section.

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

Section 1. K.S.A. 65-445 is hereby amended to read as follows: 65-445. (a) Every medical care facility shall keep written records of all pregnancies which are lawfully terminated within such medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary. Every person licensed to practice medicine and surgery shall keep a record of all pregnancies which are lawfully terminated by such person in a location other than a medical care facility and shall annually submit a written report thereon to the secretary of health and environment in the manner and form prescribed by the secretary.

(b) Each report required by this section shall include the number of pregnancies terminated during the period of time covered by the report, the type of medical facility in which the pregnancy was terminated, information required to be reported under K.S.A. 65-6703 and amendments thereto if applicable to the pregnancy terminated, and such other information as may be required by the secretary of health and environment, but the report shall not include the names of the persons whose pregnancies were so terminated.

(c) Each report required by this section shall also include:

(1) Detailed reasons for late-term termination of a pregnancy;

(2) the disability status, if any, of the pregnant female terminating a pregnancy;

(3) details disclosing the specific fetal anomalies, including, but not limited to, diagnoses of Down syndrome or other disabilities that were made about the fetus;

(4) the number of teens terminating pregnancies by their state of residence.

~~(c)~~ *(d)* Information obtained by the secretary of health and environment under this section shall be confidential and shall not be disclosed in a manner that would reveal the identity of any person licensed to

past 22 weeks

including physical disabilities and mental disabilities such as depression, cognitive limitation, substance abuse and other conditions

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Senate Public Health & Welfare Committee
Date: Feb. 22, 2006
Attachment # 5

practice medicine and surgery who submits a report to the secretary under this section or the identity of any medical care facility which submits a report to the secretary under this section, except that such information, including information identifying such persons and facilities may be disclosed to the state board of healing arts upon request of the board for disciplinary action conducted by the board and may be disclosed to the attorney general upon a showing that a reasonable cause exists to believe that a violation of this act has occurred. Any information disclosed to the state board of healing arts or the attorney general pursuant to this subsection shall be used solely for the purposes of a disciplinary action or criminal proceeding. Except as otherwise provided in this subsection, information obtained by the secretary under this section may be used only for statistical purposes and such information shall not be released in a manner which would identify any county or other area of this state in which the termination of the pregnancy occurred. A violation of this subsection (c) is a class A nonperson misdemeanor.

~~(d)~~ *(e)* In addition to such criminal penalty under subsection (c), any person licensed to practice medicine and surgery or medical care facility whose identity is revealed in violation of this section may bring a civil action against the responsible person or persons for any damages to the person licensed to practice medicine and surgery or medical care facility caused by such violation.

~~(e)~~ *(f)* For the purpose of maintaining confidentiality as provided by subsections (c) and (d), reports of terminations of pregnancies required by this section shall identify the person or facility submitting such reports only by confidential code number assigned by the secretary of health and environment to such person or facility and the department of health and environment shall maintain such reports only by such number.

See attachment

Sec. 2. K.S.A. 65-445 is hereby repealed.

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

Renumber remaining sections accordingly

5-2

ATTACHMENT

Sec. 1. K.S.A. 65-2409a is hereby amended to read as follows: 65-2409a. (a) A certificate of birth for each live birth which occurs in this state shall be filed with the state registrar within five days after such birth and shall be registered by such registrar if such certificate has been completed and filed in accordance with this section. If a birth occurs on a moving conveyance, a birth certificate shall indicate as the place of birth the location where the child was first removed from the conveyance.

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

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

(3) The secretary of health and environment shall design and promulgate a form for an attempted abortion resulting in a live birth and provide copies to all relevant entities. This form shall show the mother's state of residence, the mother's age, and disability of the mother, the baby's anomalies, if any, determinable at birth or diagnosed in utero and the number of children the mother has given birth to and the health outcomes of such children. As used in this paragraph, the term disability is as defined in subsection (c)(2) K.S.A. 65-445, and amendments thereto.

(c) If the mother was married at the time of either conception or birth, or at any time between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered. If the mother was not married either at the time of conception or of birth, or at any time between conception and birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and of the person to be named as the father on a form provided by the state registrar pursuant to K.S.A. 38-1138 unless a determination of paternity has been made by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered.

(d) One of the parents of any child shall sign the certificate of live birth to attest to the accuracy of the personal data entered thereon, in time to permit its filing within the five days prescribed above.

(e) Except as otherwise provided by this subsection, a fee of $4 shall be paid for each certificate of live birth filed with the state

registrar. Such fee shall be paid by the parent or parents of the child. If a birth occurs in an institution, the person in charge of the institution or the person's designated representative shall be responsible for collecting the fee and shall remit such fee to the secretary of health and environment not later than the 15th day following the end of the calendar quarter during which the birth occurred. If a birth occurs other than in an institution, the person completing the birth certificate shall be responsible for collecting the fee and shall remit such fee to the secretary of health and environment not later than the 15th day of the month following the birth.

The fee provided for by this subsection shall not be required to be paid if the parent or parents of the child are at the time of the birth receiving assistance, as defined by K.S.A. 39-702 and amendments thereto, from the secretary of social and rehabilitation services.

(f) Except as provided in this subsection, when a certificate of birth is filed pursuant to this act, each parent shall furnish the social security number or numbers issued to the parent. Social security numbers furnished pursuant to this subsection shall not be recorded on the birth certificate. A parent shall not be required to furnish such person's social security number pursuant to this subsection if no social security number has been issued to the parent; the social security number is unknown; or the secretary determines that good cause, as defined in federal regulations promulgated pursuant to title IV-D of the federal social security act, exists for not requiring the social security number. Nothing in this subsection shall delay the filing or issuance of the birth certificate.

Senate Public Health and Welfare Committee
Date: Feb. 22, 2006
Attachment #6

Session of 2006

SENATE BILL No. 469

By Committee on Public Health and Welfare

1-27

AN ACT concerning the behavioral sciences regulatory board; relating to impaired licensees.

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

Section 1. (a) This section shall be known and may be cited as the impaired licensee treatment act.

(b) As used in this section:

(1) "Board" means the behavioral sciences regulatory board.

~~(2) "Impairment" means a physical or mental condition, or both, that renders a licensee unable or unfit to practice with reasonable skill, safety or competence due to a physical or mental disability or incapacity, or both, including, but not limited to, deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol.~~

(3) "Licensee" means an individual licensed by the behavioral sciences regulatory board.

(4) "~~Impaired licensee treatment~~ provider" means a board approved person, organization or program that evaluates, or causes to be evaluated, a licensee for impairment, and if warranted subsequently monitors the licensee for compliance with a course of treatment.

(5) "Professional" means a board approved person licensed or registered by the behavioral sciences regulatory board, licensed by the board of healing arts, or certified as a drug and alcohol treatment program through the ~~Kansas~~ social and rehabilitation services, including an individual treatment provider.

(c) (1) Any person may file a complaint or report with the board concerning any information or reasonable suspicion such person may have relating to ~~an alleged impaired licensee~~. Additionally, any report or complaint the board receives alleging a violation of a statute or regulation under the board's jurisdiction may be preliminarily assessed for ~~impairment issues if impairment reasonably appears~~ to be a factor related to the reported conduct.

(2) The board may investigate the report or complaint. In the alternative or additionally, if the board has reasonable cause to believe that a licensee is ~~impaired~~, the board may require the licensee who is the subject of the report or complaint to obtain a mental or physical evaluation, or

and by renumbering subsections

Treatment

department of

a physical or mental condition of a licensee which allegedly is rendering the licensee unable or unfit to practice

rule and

mental or physical conditions if such conditions reasonably appear

suffering from a mental or physical condition which is rendering the licensee unable or unfit to practice

both, from a board approved ~~impaired licensee~~ treatment provider or a board approved professional for the purpose of determining whether the licensee is ~~impaired~~. The ~~impaired licensee~~ treatment provider may refer the licensee to a physician or other licensed mental or physical health professional for a mental or physical evaluation, or both, for the purpose of determining whether the licensee is ~~impaired~~. Any costs associated with a licensee obtaining such an evaluation or evaluations shall be borne by the licensee.

(3) If the board requires a licensee to submit to such an evaluation or evaluations, the board shall receive and consider any other evaluation from one or more professionals of the licensee's choice. Any costs associated with a licensee obtaining such an evaluation or evaluations shall be borne by the licensee.

(4) The ~~impaired licensee~~ treatment provider or the board approved professional shall report the findings of the mental or physical evaluation, or both, to the board.

(d) (1) The board shall develop procedures for processing complaints or reports after receipt of the mental or physical evaluation, or both. The procedures may vary depending on whether:

(A) The initial complaint or report alleged a violation of a statute or regulation;

(B) ~~an impairment~~ is substantiated by the evaluation or evaluations;

(C) ~~an impairment~~, if substantiated, is likely to improve with a course of treatment; and

(D) the licensee can practice with reasonable skill, safety and competence during a course of treatment for the ~~impairment~~.

(2) If ~~an impairment is substantiated~~, the board may, but is not required to, divert the matter from a disciplinary proceeding, and may take any of the following actions in accordance with the Kansas administrative procedure act:

(A) Authorize the licensee to continue practicing on specified conditions, restrictions or limitations;

(B) suspend the license on specified conditions, restrictions or limitations;

(C) cancel the license upon the licensee's voluntary surrender of the license; or

(D) place the licensee on inactive status either by voluntary request of the licensee or by order of the board without a voluntary request of the licensee.

(3) As an alternative to subsection (b), the board may take any authorized disciplinary action if a licensee's ~~impairment~~ is substantiated by clear and convincing evidence or if the licensee has violated any applicable statute or regulation under the board's jurisdiction.

suffering from a mental or physical condition which is rendering the licensee unable or unfit to practice

rule and

a mental or physical condition which may render a licensee unable or unfit to practice

mental or physical condition

it is substantiated that a licensee is suffering from a mental or physical condition which is rendering the licensee unable or unfit to practice

mental or physical condition

rule and

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(4) Cost of any course of treatment required pursuant to subsection (b) or (c) shall be borne by the licensee.

(5) If a licensee practices in violation of any action taken by the board under subsection (d)(2) or if the board receives a report from the ~~impaired licensee~~ treatment provider pursuant to subsection (e)(2)(C) or (e)(2)(D), the board may suspend or revoke the license after providing notice and an opportunity to be heard in accordance with the Kansas administrative procedure act.

(e) (1) The board shall have the authority to enter into an agreement with ~~an impaired licensee~~ treatment provider or other professional to undertake those functions and responsibilities specified in the agreement and to provide for payment of administrative expenses from moneys appropriated to the agency for that purpose. Such functions and responsibilities may include any or all of the following:

(A) Contracting with providers of treatment programs;

(B) receiving and evaluating reports of suspected impairment from any source;

(C) intervening in cases ~~of verified impairment~~;

(D) referring an ~~impaired~~ licensee to a treatment program or to a licensed mental or physical health professional;

(E) monitoring the treatment and rehabilitation of ~~impaired~~ licensees;

(F) providing post-treatment monitoring and support of rehabilitated ~~impaired~~ licensees; and

(G) performing such other activities as agreed upon by the board and the ~~impaired licensee~~ treatment provider.

(2) The ~~impaired licensee~~ treatment provider or other professional shall develop procedures in consultation with the board for:

(A) Periodic reporting of statistical information regarding ~~impaired~~ licensee program activity;

(B) periodic disclosure and joint review of such information as the board considers appropriate regarding reports received, contacts, evaluations or investigations made and the disposition of each report;

(C) immediate reporting to the board of the name and results of any contact or investigation regarding any ~~impaired~~ licensee who is believed to constitute an imminent danger to the public or to self;

(D) reporting to the board, in a timely fashion, any ~~impaired~~ licensee who refuses to cooperate with the ~~impaired licensee~~ treatment provider or other professional or refuses to submit to treatment, or whose ~~impairment~~ is not substantially alleviated through treatment; and

(E) informing each participant of the ~~impaired licensee~~ treatment provider's or other professional's plan of the procedures, the responsibilities of participants and the possible consequences of noncompliance.

a

where a licensee is suffering from a mental or physical condition which is rendering the licensee unable or unfit to practice

who is suffering from a mental or physical condition which is rendering the licensee unable or unfit to practice

who are suffering from a mental of physical condition which is rendering the licensee unable or unfit to practice

under this act

has a physical or mental condition which is

mental or physical condition

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(3) Notwithstanding any other provision of law, any person making a report or complaint to the board, an impaired licensee treatment provider or any other professional shall not be liable to any person for any acts, omissions or recommendations made in good faith while acting within the scope of the authority granted or responsibilities imposed pursuant to this act. a

(f) (1) The reports and records made pursuant to this act, and amendments thereto, shall be confidential and privileged, including: a

(A) Reports and records of the board or an impaired licensee treatment provider or other professional; and

(B) reports and records made pursuant to this act to or by any board committee, employee or any consultant.Such reports and records shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant to subsection (d)(3).

(2) No person in attendance at any meeting of the board or board committee engaged in the duties imposed by this act and amendments thereto shall be compelled to testify in any civil, criminal or administrative action, other than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant to subsection (d)(3), as to any board committee discussions or proceedings.

(3) Nothing in this act shall limit the authority of the board to require an impaired licensee treatment provider or other professional to report to the board any mental or physical evaluation, action, recommendation or course of treatment of such impaired licensee treatment provider or other professional or to transfer to the board records and reports of such impaired licensee treatment provider's or other professional's proceedings or actions. Reports and records furnished to the board by any impaired licensee treatment provider or other professional shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant to subsection (d)(3). a

(4) A board committee or employee may report to and discuss its activities, information and findings with other committee members or employees without waiver of confidentiality or the privilege provided under this section, and the records of all such committees or employees relating to such report shall be confidential and privileged as provided under this section.

(5) Meetings of the board or a board committee in which a licensee's

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~~impairment~~ condition will be discussed may be conducted in a closed session.

(g) No person or entity which, in good faith, reports or provides information or investigates any licensee as authorized by this act, and amendments thereto, shall be liable in a civil action for damages or other relief arising from the reporting, providing of information or investigation except upon clear and convincing evidence that the report or information was completely false, or that the investigation was based on false information, and that the falsity was actually known to the person making the report, providing the information or conducting the investigation at the time thereof.

(h) (1) No person or entity shall be subject to liability in a civil action for failure to report as authorized by this act, and amendments thereto.

(2) In no event shall the board, a board committee, an ~~impaired licensee~~ treatment provider or other professional be liable in damages for the alleged failure to properly investigate, evaluate or act upon any report or complaint made pursuant to this act and amendments thereto.

(i) The board is authorized to adopt rules and regulations to implement the provisions of this act.

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

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PROPOSED ADDITIONAL AMENDMENT TO SB 469

On page 1, in line 32, before the period by inserting: ", or similarly licensed person or entity in another state"

Session of 2006

SENATE BILL No. 469

By Committee on Public Health and Welfare

1-27

AN ACT concerning the behavioral sciences regulatory board; relating to impaired licensees.

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

Section 1. (a) This section shall be known and may be cited as the ~~impaired licensee~~ treatment act.

(b) As used in this section:

(1) "Board" means the behavioral sciences regulatory board.

(2) "Impairment" means a ~~physical or mental condition, or both, that renders a licensee unable or unfit to practice with reasonable skill, safety or competence due to a physical or mental disability or incapacity, or both, including, but not limited to, deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol~~.

(3) "Licensee" means an individual licensed by the behavioral sciences regulatory board.

(4) ~~"Impaired licensee treatment provider" means a board approved person, organization or program that evaluates, or causes to be evaluated, a licensee for impairment, and if warranted subsequently monitors the licensee for compliance with a course of treatment~~.

~~(5) "Professional" means a board approved person licensed or registered by the behavioral sciences regulatory board, licensed by the board of healing arts, or certified as a drug and alcohol treatment program through the Kansas social and rehabilitation services, including an individual treatment provider.~~

~~(c) (1) Any person may file a complaint or report with the board concerning any information or reasonable suspicion such person may have relating to an alleged impaired licensee. Additionally, any report or complaint the board receives alleging a violation of a statute or regulation under the board's jurisdiction may be preliminarily assessed for impairment issues if impairment reasonably appears to be a factor related to the reported conduct.~~

(2) The board may investigate the report or complaint. In the alternative or additionally, if the board has reasonable cause to believe that a licensee ~~is impaired, the board may require the licensee who is the subject of the report or complaint to obtain a mental or physical evaluation, or~~

Amendments Proposed by KNASW

behavioral sciences

licensee's conduct has rendered the licensee unable to practice the licensee's profession with reasonable skill and safety

"treatment contractor" means a professional organization or professional program that has contracted with the board to evaluate or cause to be evaluated a licensee for impairment and, if warranted, subsequently monitors the licensee for compliance with a course of treatment.

(5) " Reportable incident" means an act by a licensee which (1) is or may be below the applicable standard of care and has reasonable probability of causing harm to a client; or (2) may be grounds for disciplinary action by the board.

Any person who has information relating to a reportable incident may file a complaint or a report with the board.

could be impaired, the board may refer the licensee to the treatment contractor for assessment for possible impairment.

SKY Westerlund

Senate Public Health & Welfare
Date: Feb. 22, 2006
Attachment #7

~~both, from a board approved impaired licensee treatment provider or a board approved professional for the purpose of determining whether the licensee is impaired. The impaired licensee treatment provider may refer the licensee to a physician or other licensed mental or physical health professional for a mental or physical evaluation, or both, for the purpose of determining whether the licensee is impaired. Any costs associated with a licensee obtaining such an evaluation or evaluations shall be borne by the licensee.~~

The treatment contractor may refer the licensee to a physician or other licensed mental health or physical health professional for evaluation for the purpose of determining a course of treatment and monitoring schedule. Any cost associated with the licensee obtaining such an evaluation or evaluations shall be borne by the licensee.

~~(3) If the board requires a licensee to submit to such an evaluation or evaluations, the board shall receive and consider any other evaluation from one or more professionals of the licensee's choice.~~ Any costs associated with a licensee obtaining such an evaluation or evaluations shall be borne by the licensee.

If the board refers the licensee to the treatment contractor, the board shall receive and consider the conclusions of the evaluation or evaluations from the treatment contractor.

~~(4) The impaired licensee treatment provider or the board approved professional shall report the findings of the mental or physical evaluation, or both, to the board.~~

(d) (1) The board shall develop procedures for processing complaints or reports after ~~receipt of the mental or physical evaluation, or both~~. The procedures may vary depending on whether:

receiving the conclusions of the evaluation or evaluations from the treatment contractor

(A) The initial complaint or report alleged a violation of a statute or regulation;

(B) an impairment is substantiated by the evaluation or evaluations;

(C) an impairment, if substantiated, is likely to improve with a course of treatment; and

(D) the licensee can practice with reasonable skill~~, safety and competence~~ during a course of treatment for the impairment.

and safety

(2) If an impairment is substantiated, the board may, but is not required to, divert the matter from a disciplinary proceeding, and may take any of the following actions ~~in accordance with the Kansas administrative procedure act~~:

(A) Authorize the licensee to continue practicing on specified conditions, restrictions or limitations;

(B) suspend the license on specified conditions, restrictions or limitations;

or

(C) cancel the license upon the licensee's voluntary surrender of the license~~; or~~

~~(D) place the licensee on inactive status either by voluntary request of the licensee or by order of the board without a voluntary request of the licensee~~.

(3) As an alternative to subsection (b), the board may take any authorized disciplinary action if a licensee's impairment is substantiated by clear and convincing evidence or if the licensee has violated any applicable statute or regulation under the board's jurisdiction.

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(4) Cost of any course of treatment required pursuant to subsection (b) or (c) shall be borne by the licensee.

(5) If a licensee practices in violation of any action taken by the board under subsection (d)(2) or if the board receives a report from the impaired licensee treatment provider pursuant to subsection (e)(2)(C) or (e)(2)(D), the board may suspend or revoke the license after providing notice and an opportunity to be heard in accordance with the Kansas administrative procedure act.

(e) (1) The board shall have the authority to enter into an agreement with ~~an impaired licensee treatment provider or other professional~~ to undertake those functions and responsibilities specified in the agreement and to provide for payment of administrative expenses from moneys appropriated to the agency for that purpose. Such functions and responsibilities may include any or all of the following:

(A) Contracting with providers of treatment programs;

(B) receiving and evaluating reports of suspected impairment from any source;

(C) intervening in cases of verified impairment;

(D) referring an impaired licensee to a treatment program or to a licensed mental or physical health professional;

(E) monitoring the treatment and rehabilitation of impaired licensees;

(F) providing post-treatment monitoring and support of rehabilitated impaired licensees; and

(G) performing such other activities as agreed upon by the board and the ~~impaired licensee treatment provider~~.

(2) The ~~impaired licensee treatment provider or other professional~~ shall develop procedures in consultation with the board for:

(A) Periodic reporting of statistical information regarding impaired licensee program activity;

(B) periodic disclosure and joint review of such information as the board considers appropriate regarding reports received, contacts, evaluations or investigations made and the disposition of each report;

(C) immediate reporting to the board of the name and results of any contact or investigation regarding any impaired licensee who is believed to constitute an imminent danger to the public or to self;

(D) reporting to the board, in a timely fashion, any impaired licensee who refuses to cooperate with the ~~impaired licensee treatment provider or other professional~~ or refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment; and

(E) informing each participant of the ~~impaired licensee treatment provider's or other professional's~~ plan of the procedures, the responsibilities of participants and the possible consequences of noncompliance.

a treatment contractor

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treatment contractor's

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(3) Notwithstanding any other provision of law, any person making a report or complaint to the board, ~~an impaired licensee treatment provider or any other professional~~ shall not be liable to any person for any acts, omissions or recommendations made in good faith while acting within the scope of the authority granted or responsibilities imposed pursuant to this act.

(f) (1) The reports and records made pursuant to this act, and amendments thereto, shall be confidential and privileged, including:

(A) Reports and records of the board or ~~an impaired licensee treatment provider or other professional~~ and

(B) reports and records made pursuant to this act to or by any board committee, employee or any consultant.Such reports and records shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in any civil or administrative action other than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant to subsection (d)(3).

(2) No person in attendance at any meeting of the board or board committee engaged in the duties imposed by this act and amendments thereto shall be compelled to testify in any civil, criminal or administrative action, other than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant to subsection (d)(3), as to any board committee discussions or proceedings.

(3) ~~Nothing in this act shall limit the authority of the board to require an impaired licensee treatment provider or other professional to report to the board any mental or physical evaluation, action, recommendation or course of treatment of such impaired licensee treatment provider or other professional or to transfer to the board records and reports of such impaired licensee treatment provider's or other professional's proceedings or actions.~~ Reports and records furnished to the board by any ~~impaired licensee treatment provider or other professional~~ shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding other than a proceeding pursuant to subsection (d)(2) or (d)(4) or a disciplinary proceeding by the board pursuant to subsection (d)(3).

(4) A board committee or employee may report to and discuss its activities, information and findings with other committee members or employees without waiver of confidentiality or the privilege provided under this section, and the records of all such committees or employees relating to such report shall be confidential and privileged as provided under this section.

(5) Meetings of the board or a board committee in which a licensee's

or treatment contractor

treatment contractor

treatment contractor

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impairment will be discussed may be conducted in a closed session.

(g) No person or entity which, in good faith, reports or provides information or investigates any licensee as authorized by this act, and amendments thereto, shall be liable in a civil action for damages or other relief arising from the reporting, providing of information or investigation except upon clear and convincing evidence that the report or information was completely false, or that the investigation was based on false information, and that the falsity was actually known to the person making the report, providing the information or conducting the investigation at the time thereof.

(h) (1) No person or entity shall be subject to liability in a civil action for failure to report as authorized by this act, and amendments thereto.

(2) In no event shall the board, a board committee, ~~an impaired licensee treatment provider or other professional~~ be liable in damages for the alleged failure to properly investigate, evaluate or act upon any report or complaint made pursuant to this act and amendments thereto.

[(i)] (j) The board is authorized to adopt rules and regulations to implement the provisions of this act.

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

or treatment contractor

(i) The board may deny, revoke, limit condition or suspend any license issued by the board in the event that the licensee, after being referred to a treatment contractor, has failed to comply with the course of treatment and monitoring schedule related to an impairment that may be below the applicable standard of care and has reasonable probability of causing harm to a client or may be grounds for disciplinary action by the board.

Re-letter sections accordingly