

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:33 A.M. on January 25, 2007, in Room 123-S of the Capitol.

All members were present except:

David Haley arrived, 9:35 A.M.  
Barbara Allen arrived, 9:40 A.M.  
Derek Schmidt- excused

Committee staff present:

Athena Anadaya, Kansas Legislative Research Department  
Bruce Kinzie, Office of Revisor of Statutes  
Nobuko Folmsbee, Office of Revisor of Statutes  
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Larry Buening, Executive Director, Kansas Board of Healing Arts  
Charles L. Wheelen, Kansas Association of Osteopathic Medicine  
Cindy Lash, Audit Manager, Legislative Division of Post Audit  
Dan Morin, Director of Government Affairs, Kansas Medical Society

Others attending:

See attached list.

The hearing on **SB 39--Search warrant; affidavit or testimony supporting probable cause; availability to homeowner, when; statute of limitation tolled** was opened.

Senator Journey testified in support, indicating this bill would provide citizens access to information used to obtain a search warrant if no charges have been filed within one year. Occasionally, individuals are mistakenly identified and this bill would help those victims to determine whether to proceed with civil lawsuits (Attachment 1).

Written testimony in opposition to **SB 39** was submitted by:

Ed Klumpp, Kansas Association of Chiefs of Police (Attachment 2)

There being no further conferees, the hearing on **SB 39** was closed.

The hearing on **SB 40--Creating the crime of automated teller machine robbery and aggravated automated teller machine robbery** was opened.

Senator Journey spoke in support, stating that often crimes involving automated teller machines (ATM) can continue for hours or days. This bill will increase the criminal penalties imposed for the crimes of robbery and aggravated robbery at an ATM (Attachment 3).

There being no further conferees, the hearing on **SB 40** was closed.

The hearing on **SB 81--Fingerprinting and criminal history background checks required by the board of healing arts** was opened.

Larry Buening appeared in support. The bill would authorize the State Board of Healing Arts to require fingerprinting and conduct criminal background checks on applicants for any credential issued by the Board (Attachment 4).

Charles Wheelen testified in support, providing a friendly amendment to add the word "original" on page 1, line 13 to read "As part of an original application" (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:33 A.M. on January 25, 2007, in Room 123-S of the Capitol.

Cindy Lash provided neutral testimony, stating that **SB 81** corresponds to a recommendation made by the Legislative Division of Post Audit (Attachment 6).

Dan Morin provided neutral testimony, indicating fingerprinting and criminal background checks are becoming increasingly common in general employment hiring and the health care licensing process. Mr. Morin suggested the State of Kansas should consider expanding fingerprinting and criminal background checks for applicants for any kind of license issued by the state (Attachment 7).

There being no further conferees, the hearing on **SB 81** was closed.

Final action continued on **SB 37--Concerning the crime of smoking in indoor areas.**

Senator Betts informed the committee that he has decided to withdraw, at this time, the amendment he offered yesterday.

Senator Allen moved to reconsider Senator Haley's amendment from January 24. The Chairman indicated that since Senator Allen voted on the prevailing side, she has the right to offer a motion to reconsider which requires no second. Following discussion, the motion to reconsider was made. Motion carried. Chairman Vratil reminded the committee they were now back on Senator Haley's original motion to amend, seconded by Senator Betts. Motion failed.

Senator Vratil moved to amend the bill as recommended by the Office on Judicial Administration regarding the division of monies collected to be distributed in accordance with current law in K.S.A. 20-350 (Attachment 8). Senator Bruce moved, Senator Goodwin seconded, to adopt the amendment. Motion carried.

The Chairman announced final action on **SB 37** will continue next week.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is January 29, 2007.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/25/2007

NAME	REPRESENTING
Shi Faust	KDHE
Rodrick Bremby	KDHE
<del>Harvey Lowman</del>	KDHE
Jeff Bortel	KISA
Carolyn Maddendong	Ks St Ws Assn
Alex Burgoon	
Jack Shannon	
Sierra Wright	Ottawa Youth in Gov.
Sara Ann	Ottawa Youth in Gov.
Jill J Francis	Ottawa Youth in Government
LARRY BUENING	BD OF HEALING ARTS
William Deer	Federal Consulting
Mark Stafford	Bod of Healing Arts
Doug Wareham	Kansas Bankers Assn.
Matthew Goddard	Heartland Community Bankers Assn.
Star Jones	John Peterman
Linda DeCoursey	American Heart Assn.
LISA BENLON	AMER. CANCER SOC.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1/25/07

NAME	REPRESENTING
Mary B. Lebeck	KSBK
Alex Gagn	KSBK
Julie Johnson	Emporia Ks
Blaine Plummer	Emporia KS
JIM CLARK	KBA
Brenda Jordan	Public Defenders; FHLP
Robyn Horton	As motor carriers Assoc.
Tom Whitaker	" "
DAN MORIN	KS Medical Society
Lisa Wilson	OSA
Cindy Lash	Post Audit
Brenda Hancock	KSC
Chip Wheelan	Asn of Osteopathic Med.
Phil Brady	KLBA
Kyle Smith	KBI
Flora Oprie Williams	LPA
Molly Cople	LPA
Heber Reddy	KSC

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 4/25/07

NAME	REPRESENTING
Paula Marnet	KDHE
Ron Seeber	Hiro Law Firm

## SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT  
P.O. BOX 471  
HAYSVILLE, KS 67060

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TOPEKA

SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT), CHAIR  
HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

**Testimony Before the Senate Judiciary Committee  
In Support of Senate Bill 39  
January 25<sup>th</sup>, 2007**

Senate Bill 39 amends K.S.A. 22-2502 giving the homeowner, lessee, or occupant of any property who was subject of a search warrant, was searched, and no charges have been filed for a period of one year after the date of search access to the affidavit used to obtain the search warrant. It also tolls the statute of limitations for any potential civil cause of action during that one-year period.

The intent of this bill is not to hinder in any way criminal investigations or criminal justice system in the state of Kansas. On rare occasions from time to time mistakes are made. Individuals whose rights have been violated in these errors deserve to have access to the documents originating the court order to breach their Fourth Amendment rights under the United States Constitution and similar provisions in the Kansas Constitution.

The incident that precipitated this legislation comes from Wichita where a gentleman was mistakenly identified as the BTK killer. His home searched by law enforcement and so much of his personal information broadcast that his identity was clearly demonstrated. While I don't recall whether his name was used by the news media, he was successful in suing one of the TV stations in Wichita, however, the stress caused by this incident and what followed possibly caused a heart attack prior to the completion of the appeal the jury's verdict. Perhaps a one-year time frame is too short considering the inordinate amount of time it is now taking to file criminal charges in simple drug and DUI cases and I would not object to any amendment as long as the civil statute of limitations is tolled during that time period. I believe citizens who have been wronged deserve their day in court and this legislation will help give them the information necessary to determine whether there is reason to go forward with any civil lawsuit against law enforcement or that agency's political subdivision in the state of Kansas for negligence or intentional infliction of any tort.

Respectfully submitted,

Senator Phillip B. Journey  
State Senator 26<sup>th</sup> District

Senate Judiciary

1-25-07

Attachment 1

**WRITTEN TESTIMONY TO THE SENATE JUDICIARY COMMITTEE  
IN OPPOSITION TO SB 39**

**Presented by Ed Klumpp  
On behalf of the  
Kansas Association of Chiefs of Police**

January 25, 2007

This testimony is in opposition of SB39, at least in its current form. While it is not our belief that search warrant affidavits should be forever sealed, the opening of them to public availability after a one year period causes us concern. Nor is it our belief that persons claiming to be harmed by actions relating to the search warrant should not have access to the affidavit or testimony leading to the issuance of the warrant, provided there will be no harm to an ongoing criminal investigation or to witnesses providing factual information for a search warrant. The bill in its current form does not provide for any objection by law enforcement or prosecutors in cases where the proposed time based release would cause harm to an ongoing investigation or create danger of physical harm to persons who provide information leading to the issuance of the warrant. It also does not allow for any judicial review of such law enforcement or prosecutor objection.

The proposed release after one year is inconsistent with the statute of limitations for criminal investigations. It is not that uncommon for difficult investigations, particularly those of violence, to take more than one year to bring charges. These are the cases that are most easily jeopardized by release of information provided to law enforcement. These are also the cases where potential harm to witnesses is highest.

We strongly urge the Committee to consider the following revisions if this bill is to move forward:

1. Provide for a filing by the homeowner, lessee, or occupant requesting release of the affidavit or testimony leading to the issuance of the search warrant.
2. Provide for judicial review of information provided by the prosecutor, law enforcement, and the requestor to determine if the release of information will potentially harm an ongoing investigation or create a potential to endanger witnesses named in the affidavit or testimony.
3. An absolute release of the information should only occur after the expiration of the statute of limitations for the crime being investigated.
4. If the desire of the committee is to continue down the path of a time certain release that is less than the statute of limitations, allow for the judge to release the affidavit or testimony but to redact information that could lead to the identification of witnesses whose safety could be jeopardized or information that could jeopardize the investigation.

It is our belief that while the intentions of this bill are good, as currently written unintended negative consequences will result from its passage. Such consequences include a high potential for derailed investigations, endangered witnesses, and increased reluctance of witnesses to come forward with crime solving information.

Senate Judiciary

1-25-07

Attachment 2

The Kansas Association of Chiefs of Police is supportive of protecting the rights of persons subjected to searches of their property and we are supportive of accuracy in search warrant affidavits and testimony. We firmly believe citizens should be allowed an avenue of recourse if a witness knowingly provides false information leading to a search warrant. However, in the process of providing that recourse we cannot jeopardize investigations and the safety of witnesses that have provided factual information in cases where no such false information has been presented. These are the cases where criminal suspects often desire to seek revenge or to quiet a potential witness in a future criminal proceeding the suspect may face. As written, SB 39 will provide an avenue for real criminals to identify potential witnesses against them in future proceedings exposing those witnesses to intimidation and reprisal, and to identify investigative information the criminal can use to thwart the investigation, destroy or conceal evidence, and otherwise escape accountability for their criminal act.

We urge you to not favorably pass SB 39 in its current form.

Ed Klumpp  
Chief of Police-Retired  
Topeka Police Department

Legislative Committee Chair  
Kansas Association of Chiefs of Police  
E-mail: [eklumpp@cox.net](mailto:eklumpp@cox.net); Phone: (785) 235-5619; Cell: (785) 640-1102



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TOPEKA

## SENATE CHAMBER

## COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE  
(JOINT), CHAIR  
HEALTH CARE STRATEGIES  
JUDICIARY  
PUBLIC HEALTH AND WELFARE  
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE  
OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

**Testimony in Support of Senate Bill 40  
Before the Senate Judiciary Committee  
January 25<sup>th</sup>, 2007**

Thank you for the opportunity to address the Senate Judiciary Committee and offer comments and support of Senate Bill 40. Senate Bill 40 is a piece of legislation that is very important to the residents of Sedgwick County and the state of Kansas. It is a simple piece of legislation with two sections. It is important to the residents of Sedgwick County and the state of Kansas due to the extraordinary nature of crimes perpetrated involving automatic teller machines and their customers. This bill supplements K.S.A. 21-3426 and 21-3427 with two new classes of robbery. Senate Bill 40 increases the criminal penalties imposed for the crimes of robbery and aggravated robbery at an automatic teller machine, from a Level 5 PF to a Level 4 PF and from a Level 3 PF to a Level 2 PF, respectively.

While many of us are aware of the violent and sadistic nature of the Carr murders in Wichita, other ATM crimes in Wichita have been similarly brutal. ATM crimes are not your normal everyday robbery where the criminal approaches the victim, demands money or property and then leaves upon receipt. These crimes tend to go on for hours, or even days, as the criminal must repeatedly approach the ATM machines to remove more and more money each time. In many cases, the victim is terrorized for an extended period of time, far greater than common robbery.

My experience in the criminal justice system consists of working on over 60,000 criminal and traffic cases with over 20 years of experience in Kansas court. I practice mainly in the area of criminal and traffic law and have reviewed thousands of police reports. I have spoken with hundreds of victims of violent crime and understand in many respects the pain they are forced to endure.

I want to thank the committee for it's time and attention in this matter and urge the committee to pass this bill out with a favorable recommendation, and I will stand for questions.

Respectfully submitted,

Senator Phillip B. Journey  
State Senator 26<sup>th</sup> District

Senate Judiciary

1-25-07  
Attachment 3

# KANSAS BOARD OF HEALING ARTS

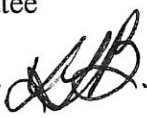
LAWRENCE T. BUENING, JR.  
EXECUTIVE DIRECTOR



KATHLEEN SEBELIUS  
GOVERNOR

## MEMORANDUM

**TO:** Senate Judiciary Committee

**FROM:** Lawrence T. Buening, Jr.   
Executive Director

**DATE:** January 24, 2007

**RE:** Senate Bill No. 81

Thank you for the opportunity to appear before you on behalf of the State Board of Healing Arts in support of S.B. No. 81. The Board requested introduction of this bill through the Public Health and Welfare Committee. Simply stated, the bill authorizes the State Board of Healing Arts to require certain individuals to be fingerprinted and submit to a national criminal history record check for the purpose of determining initial and continuing qualifications and suitability to obtain or maintain a license. Those persons include applicants for any credential issued by the Board and those already licensed who are the subject of an investigation.

As the State Board of Healing Arts does not often appear before this Committee, you may not have a great deal of knowledge about the Board. The Board was created in 1957 by combining the three separate boards that regulated medical doctors, osteopathic doctors and chiropractors. The Board currently consists of 15 members appointed by the Governor. The Board regulates over 21,000 individuals in 13 different health care professions. The number of individuals regulated in each profession is attached as "Exhibit 1". Under the Healing Arts Act (K.S.A. 65-2801 et seq.), the Board regulates medical doctors, osteopathic doctors and chiropractors. The Board also regulates physician assistants (K.S.A. 65-28a01 et seq.), physical therapists and physical therapist assistants (K.S.A. 65-2901 et seq.), podiatrists (K.S.A. 65-2001 et seq.), occupational therapists and occupational therapy assistants (K.S.A. 65-5401 et seq.), respiratory therapists (K.S.A. 65-5501 et seq.), athletic trainers (K.S.A. 65-6901 et seq.), naturopaths (K.S.A. 65-7201 et seq.), and radiologic technologists (K.S.A. 65-7301 et seq.).

**MEMBERS OF THE BOARD:**

CAROLINA M. SORIA, D.O., PRESIDENT  
Goddard

BETTY MCBRIDE, Public Member, VICE-PRESIDENT  
Columbus

VINTON K. ARNETT, D.C., Hays  
MICHAEL J. BEEZLEY, M.D., Lenexa  
RAY N. CONLEY, D.C., Overland Park  
GARY L. COUNSELMAN, D.C., Topeka  
FRANK K. GALBRAITH, D.P.M., Wichita  
MERLE J. "BOO" HODGES, M.D., Salina

SUE ICE, Public Member, Newton  
MARK A. McCUNE, M.D., Overland Park  
CAROL SADER, Public Member, Prairie Village  
ROGER D. WARREN, M.D., Hanover  
NANCY J. WELSH, M.D., Topeka  
JOHN P. WHITE, D.O., Pittsburg  
RONALD N. WHITMER, D.O., Ellsworth

235 S. Topeka Boulevard, Topeka, Kansas 66603-3068  
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Senate Judiciary  
1-25-07  
Attachment 4

Within each of the practice acts, there is authority to issue different types of permits, licenses or certificates. For instance, the Healing Arts Act has provisions for temporary permits (K.S.A. 65-2811(a)), postgraduate permits (K.S.A. 65-2811(b) through (d)), special permits (K.S.A. 65-2811a), institutional licenses (K.S.A. 65-2895), certification of licensed dentists to administer anesthetics (K.S.A. 65-2899), temporary license for visiting professor (K.S.A. 65-28,100) as well as additional types of licenses under K.S.A. 65-28,123, 65-28,124 and 65-28,125.

The authority for the Federal Bureau of Investigation to conduct a criminal record check for a noncriminal justice licensing purpose is based upon Public Law 92-544. Pursuant to that law, the FBI is empowered to exchange identification records with officials of state government for purposes of licensing if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General has delegated this approval authority to the FBI. Attached as "Exhibit 2" is a copy of an e-mail from Assistant Director of the Kansas Bureau of Investigation advising that the FBI has pre-approved the language of S.B. No. 81.

In 1998, the Federation of State Medical Boards (FSMB) recommended that medical boards conduct criminal background checks on physicians applying for licenses. FSMB reaffirmed this policy in April 2001 and has continued to encourage all state medical boards to require any applicant with a criminal history report to appear before the board for questioning to evaluate the applicant's degree of risk to the public if granted a license.

The Board has been considering the issue of criminal background checks for more than two years. In December 2004, a Committee was formed to study the issue. The Committee recommended and the Board adopted a resolution to request introduction of a bill. S.B. No. 523 was introduced last session, but did not receive a hearing. Since that time, we have worked with the KBI and the Board of Nursing. S.B. No. 107 was introduced by the Board of Nursing and is substantially the same as S.B. No. 81.

The November 23, 2001 issue of *AMNews* reported that, at that time, seven states required physicians to submit fingerprints as part of criminal background checks for medical licensure. The FSMB Legislative Services Report advised that as of January 31, 2005, 13 states had the authority to require state and federal criminal background checks. According to the e-mail attached as "Exhibit 3", as of January 22, 2007, 34 states now have the authority to do criminal background checks, with 28 of these requiring fingerprints and a national FBI check. Kansas is one of the six states that have the authority to do a state background check---K.S.A. 65-2339a(c). This statute is not broad enough to meet the FBI requirements for statutory authorization required by Public Law 92-544 in order for the criminal background check to be performed by that organization.

Starting in June 2006, the Legislative Division of Post Audit conducted a performance audit of the Board resulting in a Performance Audit Report being issued in October 2006. Several recommendations were made for improving the Board's performance, including the following:

“1. To ensure that the Board has all recommended information pertaining to applicants coming from other states-both professional and personal-Board staff should re-introduce a bill this session which would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.”

The Board has also received letters from the Medical Society of Sedgwick County, the Kansas Association Medical Staff Services, and the Kansas Academy of Family Medicine supporting the authority of the Board to perform criminal background checks. In the 2005 Session, the Legislature enacted K.S.A. 2006 Supp. 7-127 authorizing the Supreme Court to require applicants for admission to practice law in Kansas to be fingerprinted and submit to a national criminal history record check.

In conclusion, the Board urges your favorable consideration of S.B. No. 81. Nationwide there has been increasing interest in performing criminal background checks. This is in response to a desire from that public that there be accountability of the health care professions. Health care providers should not view the process as degrading, as an indignity or as an affront to their integrity. Rather, it should be seen as another way to uphold the professionalism of the health care professions and to better ensure patient safety.

Thank you for allowing me to appear before you. I would be happy to respond to any questions.

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## STATISTICS

### County Breakdown

### Licensee / Registrant Statistics Updated January 16, 2007

LICENSEES	Active	Exempt	Federal	Inactive	Military	TOTAL
Medical Doctors	6,377	836	239	1,698	229	9,379
Osteopathic Doctors	676	53	25	148	15	917
Chiropractic Doctors	880	30	1	165	7	1,083
Podiatric Doctors	114	3	3	16	1	137
Physician Assistants	668	0	31	30	5	734
Respiratory Therapists	1,654	0	0	0	1	1,655
Occupational Therapists	1,240	0	0	0	0	1,240
Occupational Therapy Assistants	325	0	0	0	0	325
Physical Therapists	1,821	0	0	78	2	1,901
Athletic Trainers	302	0	0	12	0	314
Radiologic Technologist	2,692	0	0	0	0	2,692
<b>Total Licensees</b>	<b>16,749</b>	<b>922</b>	<b>299</b>	<b>2,147</b>	<b>260</b>	<b>20,377</b>
REGISTRANTS	Active	Exempt	Federal	Inactive	Military	TOTAL
Physical Therapist Assistants	1,062	0	0	0	0	1,062
Naturopathic Doctors	19	0	0	0	0	19
Contact Lens Distributors	4	0	0	0	0	4
<b>Total Registrants</b>	<b>1,085</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,085</b>

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**Kansas State Board of Healing Arts**  
 235 S. Topeka Boulevard - Topeka, KS 66603-3068  
 Phone: (785) 296-7413 - Toll Free: 1-888-886-7205 - Fax: (785) 296-0852  
[| Disclaimer](#) |  
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[| State of Kansas Web Site](#) |

" EXHIBIT 1 "

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**From:** Lawrence T. Buening [mailto:lbuening@ink.org]  
**Sent:** Monday, January 22, 2007 2:46 PM  
**To:** Dave Sim  
**Cc:** 'Mary Blubaugh'  
**Subject:** RE: Criminal Background Bill

Just to let you know that the bill is now S.B. No. 81 and will have a hearing in the Senate Judiciary Committee at 9:30 a.m. this Thursday, January 25 in Room 123-S

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
785-296-3680

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**From:** Dave Sim [mailto:Dave.Sim@kbi.state.ks.us]  
**Sent:** Friday, January 12, 2007 1:09 PM  
**To:** Lawrence T. Buening  
**Subject:** RE: Criminal Background Bill

Larry –

The FBI has reviewed and your bill is pre-approved.

That means that if the language of the final, enrolled bill is the same as the draft that they reviewed, we will be given access to the national database. If, however, there are changes to the pertinent portions describing that national check, we should repeat the process and ask for another review.

Please keep me apprised of your progress on this.

Dave

David G. Sim  
Assistant Director  
Kansas Bureau of Investigation  
(785) 296-8265

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**From:** Lawrence T. Buening [mailto:lbuening@ink.org]  
**Sent:** Monday, January 08, 2007 1:07 PM  
**To:** Dave Sim  
**Subject:** FW: Criminal Background Bill

Agent Sim: Attached is a draft of a proposed bill the Kansas State Board of Healing Arts will be asking to be introduced in the 2007 Legislature. I would very much appreciate it if you would review the bill and also have it reviewed by the FBI for approval of language. For your information, the State Board of Healing Arts licenses or otherwise regulates individuals in 13 health care professions—medical doctor, osteopathic doctor, chiropractor, podiatrist, physical therapist, physical therapist assistant, physician assistant, occupational therapist, occupational therapy assistant, respiratory therapist, naturopathic doctor, athletic trainer and radiologic technologist. Please advise if you have any questions. Thank you for your assistance.

Lawrence T. Buening, Jr.  
Executive Director  
Kansas State Board of Healing Arts  
785-296-3680

“ EXHIBIT 2 ”

1/23/2007

4-5

## Lawrence T. Buening

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**From:** Robin Ayers (FSMB) [RAyers@fsmb.org]  
**Sent:** Monday, January 22, 2007 4:33 PM  
**To:** Lawrence Buening; James Rawson (FSMB); JHofferer@fsmb.org  
**Subject:** RE: Kansas Senate Bill No. 81

Larry- I am sorry I am chiming in late on this- I am out on maternity leave and just saw this email. . Here are the most recent numbers we have. 34 Boards run CBC's with 28 running both state and federal and 6 running state only.

### NCIC

1. Arkansas
2. California-
3. California-O
4. Delaware
5. Florida
6. Florida-O
7. Georgia
8. Idaho
9. Illinois
10. Iowa
11. Kentucky
12. Louisiana
13. Michigan
14. Michigan-O
15. Nebraska
16. Nevada
17. Nevada-O
18. New Jersey
19. New Mexico
20. North Carolina
21. North Dakota
22. Oklahoma
23. Oregon
24. South Carolina
25. Tennessee
26. Tennessee-O
27. Texas
28. Wisconsin

### State Only

1. Kansas
2. Maine
3. Massachusetts
4. Oklahoma-O
5. Virginia
6. Washington

-----Original Message-----

From: Lawrence Buening  
Sent: Mon 1/22/2007 3:20 PM  
To: James Rawson (FSMB); Robin Ayers (FSMB); JHofferer@fsmb.org  
Cc:  
Subject: Kansas Senate Bill No. 81

Our bill for authority to obtain fingerprints and have an FBI criminal background check done will be heard in the Senate Judiciary Committee this Thursday. Is

1  
"EXHIBIT 3"

4-6



Testimony  
Senate Judiciary Committee  
**Senate Bill 81**  
By Charles L. Wheelen  
January 25, 2007

Thank you for the opportunity to express our reservations about SB81. We appreciate the value of performing background investigations on those individuals applying for their first license to practice in Kansas, for reinstatement of a license, or during the course of a Board investigation of a licensee. We do not, however, believe it is necessary to fingerprint or perform criminal investigations of physicians who have already been licensed. This would be an unnecessary expenditure of resources. Furthermore, it is our understanding that the Board of Healing Arts has no intention of imposing the fingerprint requirement on established licensees. For these reasons we recommend a simple amendment that would clarify legislative intent as follows:

Section 1. (a) As part of an original application for or reinstatement of any license, registration, permit or certificate or in connection with any investigation of any holder of a license, registration, permit or certificate, the state board of healing arts may require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The state board of healing arts is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of healing arts may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license, registration, permit or certificate.

(b) Local and state law enforcement officers and agencies shall assist the state board of healing arts in taking and processing of fingerprints of applicants for and holders of any license, registration, permit or certificate and shall release all records of adult and juvenile convictions, adjudications, expungements and nonconvictions to the state board of healing arts.

(c) The state board of healing arts may fix and collect a fee as may be required by the board in an amount necessary to reimburse the board for the cost of fingerprinting and the criminal history record check. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the healing arts fee fund.

Thank you for your attention to our concerns. We respectfully request that you adopt our amendment prior to recommending passage of SB81.

Senate Judiciary

1-25-07  
Attachment 5





LEGISLATURE OF KANSAS  
**LEGISLATIVE DIVISION OF POST AUDIT**

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**Information for the Senate Judiciary Committee Regarding SB 81**

Cindy Lash, Audit Manager

January 25, 2007

Mr. Chairman and members of the Committee, thank you for allowing me to appear before you to provide information from our October 2006 audit on the Board of Healing Arts. Question 2 of that audit, which dealt with the Board's background investigations of potential licensees, is attached.

One of the recommendations we made regarding background investigations was that the Board re-introduce a bill in the 2007 Session that would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.

Here's why we made that recommendation:

- The Federation of State Medical Boards has identified recommended practices for conducting background checks for medical licensure. One of those recommended practices is that the applicant should pass a criminal background check.
- State law allows the Board of Healing Arts to obtain criminal background checks on applicants from the KBI, but doesn't give the Board the authority to collect fingerprints, which the FBI must have to conduct a national background search.

*According to the Federation of State Medical Boards, 19 state medical boards are authorized to check federal and state criminal records, while 8 (including Kansas) can check only state criminal records.*

- Past criminal activity is one of the behaviors the Board of Healing Arts attempts to identify in its application process. Currently, it relies on applicants to self-report that information, and investigates any such behavior reported. With the ability to request a criminal background check, the Board would be less dependent on applicants to self-report incidents that could negatively affect their ability to receive a license to practice.
- Doctors are not immune from brushes with the law. In a sample of 44 out-of-State doctors we reviewed who applied for a license in Kansas, 4 doctors answered "yes" to the question "Have you ever been arrested, fined, charged with or convicted of a crime, indicted, imprisoned or placed on probation?"

Finally, as auditors, we think its always better to verify information, if feasible, than to rely on self-reported data.

Senate Judiciary

1-25-07  
Attachment 6



# **PERFORMANCE AUDIT REPORT**

**Board of Healing Arts: Reviewing Issues  
Related to Complaint Investigations, Background  
Investigations, and Composition of the Board**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
October 2006**

**Question 2: Does the Board Conduct Background Investigations That Would Enable It To Know Whether Physicians Applying for Licensure Have Had Malpractice or Negligence Problems in Other Jurisdictions Before Being Licensed in Kansas?**

**ANSWER IN BRIEF:** *This question focuses only on the four professions considered to be “physicians” according to Board staff: medical doctors, chiropractors, podiatrists and osteopaths. The Board obtains generally thorough background information from all applicants, and independently verifies much of that information for medical doctors and osteopaths, although it only recently began to collect national data on malpractice payments. Board staff don’t verify all they could for chiropractors, and have chosen not to obtain national malpractice reports for chiropractors and podiatrists.*

*Finally, the Board isn’t authorized to conduct FBI criminal history checks, which is the only way to obtain criminal history data for out-of-State applicants. For the applicant files we reviewed, the Board followed its process for checking backgrounds, and made reasonable decisions on licensing out-of-State applicants. In the last three years, the Board has licensed only one doctor whose license had been revoked in another state. That state had set aside the revocation and instead put the doctor on probation about two years before the doctor applied to Kansas, and the Board knew of all this when granting a Kansas license.*

***Although It Has No Formal Policies and Procedures for Doing So, The Board Obtains Generally Adequate Background Information About Most Out-of-State Applicants***

This question is focused on background investigations for out-of-State applicants, however the practices the Board follows are the same regardless of where the applicant is from. Typically, Kansas’s applying for a license will be new doctors, while out-of-State applicants might be either new or experienced doctors.

The Federation of State Medical Boards has identified recommended practices for conducting background checks for medical licensure. We concluded that following these practices should identify significant problems with malpractice, negligence, or other areas of concern during the application process. According to those recommendations:

the applicant should:

- provide a list of other jurisdictions where he or she has been licensed
- identify any jurisdictions where he or she has been denied or surrendered a license
- report all sanctions, judgments, awards, and convictions
- be physically and mentally capable
- not have been found guilty of conduct that would be grounds for disciplinary action
- pass a criminal background check

the medical licensure board should:

- verify the applicants' credentials with national and professional databases and other 3rd party sources

**The Board has no written policies or procedures for conducting background investigations.** This is a problem because written procedures and assignment of duties help reduce errors, misunderstandings, omitted procedures, duplicative efforts, and the like. Written policies and procedures also help ensure that all applicants are treated consistently, and that records are properly maintained.

Board licensing clerks have a checklist showing all the items that must be received for an application to be complete (such as transcripts, reports from the appropriate professional association and from all states where the doctor has previously been licensed, and documentation of disciplinary issues), but there is no written guidance on what to do with this information, how to interpret it, when it must be passed to the supervisor or Executive Director for review, and so on.

**In practice, the Board requests appropriate information from applicants, but doesn't verify as much of that information as it could.** The information requested directly from applicants is consistent with the information suggested by the Federation of State Medical Boards, with the exception of passing a criminal background check. For example, the Board asks applicants to provide a list of other jurisdictions where they have been licensed, to identify any jurisdictions where they have been denied or surrendered a license, and to report all sanctions, judgments, awards, and convictions.

As *Figure 2-1* shows, the Board independently verifies a great deal of the information provided by medical and osteopathic doctors, but verifies far less of the information provided by chiropractors and podiatrists. We found that information on chiropractors is readily available from the Federation of Chiropractic Licensing Boards, which has an "Official Actions Database" with information about education, states of licensure, board actions, and federal sanctions. Board staff told us they were aware this database was being developed, but were not aware it was available for use.

In addition, the Board has not made it a priority to verify malpractice payments made on behalf of applicants. Although the National Practitioner Databank has compiled this information for medical doctors and osteopaths for 16 years, the Board only

**Figure 2-1  
Information Checked by the Board of Healing Arts  
For Physicians Applying for a License in Kansas**

Type of Information Reviewed:	Medical Doctors	Osteopaths	Chiropractors	Podiatrists
American Medical Association / American Osteopathic Association / American Podiatric Medicine Association reports showing:				
Education	X	X		X
States of Licensure	X	X		n/a
Federal Sanctions	X	X		n/a
Federation of State Medical Boards' / Federation of Podiatric Medicine Boards' Disciplinary Data	X	X		X
Reports received directly from other state licensing agencies verifying license status and discipline	X	X	X	X
Self-reported responses by the applicant to 21 disciplinary questions on the application	X	X	X	X
National databases of malpractice reports (The Board just began doing this in June)	X	X		
n/a - not included in Association report Source: Board staff and LPA review of the above listed documents				

began to request it in June 2006 because staff think it may now have sufficient information. Board staff have chosen not to pursue similar information for chiropractors and podiatrists from another databank which has been in existence for nine years. Staff said they have accessed the information on an ad hoc basis for legal purposes, but found the information is not always reliable, and not all applicants are in the database.

**Although criminal background checks are a recommended practice, the Board currently can't conduct FBI checks, and it doesn't conduct KBI checks on applicants.** According to the Federation of State Medical Boards, 27 state medical boards are authorized to conduct criminal background checks – 19 can check federal and state criminal records, while eight can check only state criminal records. Kansas is one of the eight states that has statutory authority to conduct State-level criminal background checks. However, the Board doesn't have the authority to collect fingerprints, which the FBI must have to conduct a national background search.

Agency officials said they don't run a KBI check on applicants because it seems unfair to conduct a criminal background checks on applicants who are Kansans, when they can't conduct a similarly focused check on applicants from another state. While it may be preferable to have thorough criminal background checks on all applicants, the inability to do so doesn't seem like a good reason not to conduct the criminal background checks authorized by statute.

The Board has pursued authorization for fingerprints; for example, it requested introduction of a bill in 2006 allowing it to require applicants to be fingerprinted, which would have made FBI background searches possible. That bill did not pass. Even within the Board, there are differences of opinion on fingerprinting. A Board committee reviewing the issue cited a number of arguments against criminal background checks, including cost, delays in the application process, expectation of few positive results, and the likelihood that health care providers might perceive being fingerprinted as demeaning.

***Staff Followed Agency Practices for Background Checks, and Given the Available Information, Made Reasonable Recommendations For Licensing Out-of-State Applicants***

We reviewed the Board’s background checks for a sample of 44 out-of-State doctors who applied for a license in Kansas between December 2004 and June 2006. For each applicant we reviewed files and found the following:

- the Board’s checklist for background review had been completed, and all required documentation, including reports from other states where the applicant had been licensed, had been received
- all “yes” answers to disciplinary questions on the application (which indicate some type of past problem) were appropriately pursued by staff, and the subsequent decision on whether to recommend the applicant for licensure appeared to be reasonable. **Appendix C** contains the full list of 21 disciplinary questions.

**Although about one-third of applicants reported some type of past disciplinary issue, it appeared to us that Board staff reviewed sufficient information and were justified in recommending licensure.** Fifteen of the 44 applicants we reviewed (34%) answered yes to one or more disciplinary questions, and their applications were further evaluated by Board staff. The questions they most frequently answered “yes” to include:

# of “yes” Responses	Question
9	Have you ever been a defendant in a legal action involving professional liability (Malpractice) or had a professional liability claim paid in your behalf or paid such a claim yourself?
4	Have you ever been arrested, fined, charged with or convicted of a crime, indicted, imprisoned or placed on probation?

Positive responses to these questions could indicate problems that might cause the Board to deny or limit a license, but our review showed that the actual behavior documented didn’t rise to that level, and often wasn’t related to medical knowledge or experience. Some of the events reported include:

6-6

- an arrest for shoplifting 35 years before the application
- indecent exposure (a college prank)
- a cattle-branding offense
- failure to appear for an auto emission offense
- the clinic where the doctor was a resident was a defendant in a lawsuit. The plaintiff received \$2.4 million.
- the doctor was a defendant in a lawsuit involving a medication error resulting in the patient's death. The lawsuit was dismissed with prejudice, which means it can't be re-filed.
- the doctor was involved in four malpractice cases. One was dismissed and three were withdrawn.

**There's no way the Board can ensure it's aware of all adverse information that might be available about an applicant.** The Board asks applicants to self-report negative incidents through a variety of questions on the application form. But it has no assurance that all incidents have been reported. If the behavior resulted in a medical licensing board in another state taking disciplinary action, or in a malpractice award to a plaintiff, that information will have been independently reported to the Board of Healing Arts. However, the Board has no way to know if applicants have fully disclosed behaviors that didn't result in official action against a license, or arrests and convictions in other states. Within the limits of a reasonable background investigation, licensing agencies must focus on information that's already collected, compiled, or readily available.

**In the last three years, the Board has licensed only one medical doctor whose license had been revoked by another state.** One of the concerns behind this audit was whether the Board was licensing doctors whose license had been revoked elsewhere, either knowingly or because they hadn't identified the revocation.

We asked the Federation of State Medical Boards, a national not-for-profit organization which maintains a physician data center, including disciplinary histories, to run the list of doctors licensed in Kansas since June 2003 against their database. The Federation has data only on medical doctors and osteopaths. Although we have no way to verify the accuracy of this data, we reviewed the Federation's methodology and it seemed sound.

The Federation identified one doctor licensed in Kansas since June 2003 who had a license previously revoked by another state. Because of alcoholism, this doctor had surrendered his medical license in Colorado in 1993, which automatically caused a review of his license status in New York. Officials there chose to revoke his license in 1993. The doctor then participated in the Monitored Treatment Program in New Mexico from 1993 to 1999 with restrictions on his New Mexico license. He completed the program, and those

restrictions were removed in 1999, making his New Mexico license fully active. The State of Maryland licensed him in 2000. The State of New York set aside the revocation in January 2002 but put him on a 3-year probation with restrictions on his license. The doctor applied for a license in Kansas in October 2003.

The application file showed that Board staff in Kansas were aware of the previous New York revocation – the doctor self-reported it, and the Federation report of the doctor’s disciplinary history also identified the revocation. Staff recommended the application be approved because the alcoholism issues had been addressed, and the doctor subsequently had been practicing in New Mexico for almost 10 years with no reported problems with alcohol. The Kansas application was approved in April 2004.

**CONCLUSION**

Although the Board conducts thorough background checks of medical and osteopathic doctors who have been licensed in another state before applying to Kansas, the Board could do more to check and verify information about chiropractors and podiatrists. The application requirements include proof of residency completion, answers to a series of professional conduct questions, and verifications from other states and organizations detailing issues the doctor has had in the past. Based on the application requirements, the Board should know all past actions taken against a doctor by a licensing authority, and any malpractice claims made against a doctor. In the last three years, only one doctor who was previously revoked by another state subsequently applied to Kansas. The Board can’t be positive of an applicant’s criminal history because it doesn’t have the authority to do FBI criminal background checks.

**RECOMMENDATIONS**

1. To ensure that the Board has all recommended information pertaining to applicants coming from other states– both professional and personal– Board staff should re-introduce a bill this session which would require applicants to be fingerprinted at a law-enforcement center, and allow the Board to submit those prints to the KBI and FBI for a background check.
2. The Board should continue to pursue readily available information on podiatrists and chiropractors applying for licensure in Kansas.
3. To ensure that all applicants are treated consistently, that records are maintained properly, and that errors and duplicative efforts are reduced, the Board should develop written policies and procedures for conducting background investigations of both in-State and out-of-State applicants.



## APPENDIX C

### 21 Disciplinary Questions Asked on Application for Licensure For Medical Doctors, Osteopaths, Chiropractors and Podiatrists

The Board of Healing Arts asks 21 Yes/No disciplinary questions on the application for the above listed professions. Documentation must be provided for all yes answers. The questions are as follows:

1. Have you ever been rejected for membership or notified by or requested to appear before any medical, osteopathic or chiropractic society?
2. Have you ever been denied the privilege of taking an examination administered by a licensing agency?
3. Have you ever been denied a license to practice the healing arts or other health care profession?
4. Have you ever been denied staff membership with any licensed hospital, nursing home, clinic or other hospital care facility?
5. Have you ever been warned, censured, disciplined, had admissions monitored, had privileges limited, had privileges suspended, been put on probation, or ever been requested to withdraw from any licensed hospital, nursing home, clinic or other hospital care facility in which you have trained, been a staff member, been a partner or held hospital privileges?
6. Have you ever been requested to resign, withdraw or otherwise terminate your position with a partnership, professional association, corporation, or other practice organization, either public or private?
7. Have you ever, for any reason, lost American Board certification?
8. Has any licensing disciplinary agency limited, restricted, suspended, or revoked a license you have held?
9. Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary agency?
10. Have you ever been notified or requested to appear before any licensing or disciplinary agency?
11. Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary agency?
12. Within the last 2 years have you used any alcohol, narcotic, barbiturate, other drug affecting the central nervous system, or other drug which may cause physical or psychological dependence, either to which you were addicted or upon which you were dependent?
13. Within the last 2 years have you been diagnosed or treated for any physical, emotional or mental illness or disease, including drug addiction or alcohol dependency, which limited your ability to practice the healing arts with reasonable skill and safety?
14. Within the last 2 years have you used controlled substances which were obtained illegally or which were not obtained pursuant to a valid prescription order or which were not taken following the direction of a licensed health care provider?
15. Have you ever engaged in the practice of the healing arts while any physical or mental disability, loss of motor skill or use of drugs or alcohol, impaired your ability to practice with reasonable skill and safety?
16. have you ever been denied a Drug Enforcement Administration (DEA) or state bureau of narcotics or controlled substances registration certificate or been called before or warned by any such agency or other lawful authority concerned with controlled substances?
17. Have you ever surrendered your state or federal controlled substances registration or had it restricted in any way?
18. have you ever been arrested, fined, charged with or convicted of a crime, indicted, imprisoned or placed on probation?
19. have you ever been a defendant in a legal action involving professional liability (Malpractice) or had a professional liability claim paid in your behalf or paid such a claim yourself?
20. have you ever been denied provider participation in any State Medicaid or Federal Medicare Programs?
21. Have you ever [been] terminated, sanctioned, penalized, or had to repay money to any State Medicaid or Federal Medicare Program?



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**To:** Senate Judiciary Committee

**From:** Dan Morin  
Director of Government Affairs

**Date:** January 24, 2007

**Subject:** SB 81; concerning the state board of healing arts; fingerprinting and criminal history record checks.

The Kansas Medical Society appreciates the opportunity to submit the following comments on SB 81, which permits the Board of Healing Arts to obtain fingerprints and conduct a nationwide criminal records check on applicants for licensure and licensees. The board would then have the ability to identify those with a criminal history and evaluate the applicant's degree of risk to the public in determining fitness for licensure.

Fingerprinting has long been a procedure reserved for the criminal element of our society or for identification purposes for those in dangerous jobs and civil background checks for those who serve our most vulnerable residents. Civil fingerprint checks are submitted to the FBI based upon a specific federal law authorizing a national fingerprint background check, or based upon a state statute or a municipal ordinance, if authorized by a state statute, authorizing a national background check in compliance with Public Law 92-544. The FBI currently has two fingerprint holdings – criminal and civil. The civil fingerprint file predominantly contains the fingerprints of individuals who have served or are serving in the U.S. military or have been or are employed by the federal government. Criminal background checks are becoming increasingly common in the general employment hiring and health care licensing process. In addition to the fingerprint check, all civil submissions undergo a name-based search of the subject against the wanted person file and the terrorist watch list located within the national crime information center.

We do not oppose giving the Healing Arts Board the authority to require that applicants for licensure submit fingerprints and be subject to a criminal background check. In fact, the State of Kansas should consider expanding fingerprinting and background checks for applicants for any kind of license that is issued by the state. Public Law (Pub. L.) 92-544 is broad and allows the FBI to exchange criminal history record information with officials of state and local governments for employment, licensing, which includes volunteers, and other similar noncriminal justice purposes, if authorized by a state statute.

Thank you for the opportunity to offer these comments.

Senate Judiciary

1-25-07  
Attachment 7



State of Kansas

## Office of Judicial Administration

Kansas Judicial Center  
301 SW 10<sup>th</sup>  
Topeka, Kansas 66612-1507

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January 23, 2007

Senator David Wysong  
300 SW 10<sup>th</sup> Avenue  
Room 141-E  
Topeka, KS 66612

Dear Senator Wysong:

Thank you so much for considering an amendment to 2007 SB 37 to make the disposition of fines paid for smoking violations consistent for fines paid for violations of other Kansas statutes, as provided by K.S.A. 2007 Supp. 20-350. This would relieve the clerks of the district court from the time-consuming job of checking the underlying statute every time a fine is paid to ascertain whether the disposition of the fine will be pursuant to K.S.A. 2007 Supp. 20-350, as are all other fines, or whether the disposition of the fine will be as provided in SB 37. This would also mean that clerks will not have to separately account for these funds because their distribution differs from that of other fines.

This amendment would be accomplished by deleting Section 4(c) of the bill, which provides for the split of funds between local entities and the State General Fund, and by deleting Section 5 of the bill, which provides the exception to K.S.A. 2007 Supp. 20-350. A balloon amendment is attached.

With this amendment, the disposition of all fines for smoking violations would be pursuant to K.S.A. 2007 Supp. 20-350, a copy of which is attached. The distribution would be 11.99% to the Crime Victims Compensation Fund, 2.45% to the Crime Victims Assistance Fund, 2.01% to the Community Alcoholism and Intoxication Programs Fund, 2.01% to the Department of Corrections Alcohol and Drug Abuse Treatment Fund, and 0.17% to the Boating Fee Fund, with the balance credited to the State General Fund.

Please let me know if any additional information would be helpful to you.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Porter".

Kathy Porter  
Executive Assistant to Judicial Administrator

KP:mr  
Attachments

cc: Senator Vratil

Senate Judiciary

1-25-07  
Attachment 8

1 \$300 for a second violation within a calendar year and a fine of not more  
2 than \$500 for each additional violation within a calendar year. Each day  
3 of a continuing violation shall be deemed a separate violation.

4 (b) Any person found guilty of failing to post signs as required by this  
5 act K.S.A. 21-4011, and amendments thereto, is guilty of a class C non-  
6 person misdemeanor punishable by a fine of not more than \$50. In ad-  
7 dition, the department of health and environment, or local department  
8 of health, may institute an action in any court of competent jurisdiction  
9 to enjoin repeated violations of this act.

10 ~~(c) All moneys received by the clerks of the district court from the~~  
11 ~~payment of fines collected as a result of a conviction of any persons for~~  
12 ~~violation of any provision of this section shall be remitted in the following~~  
13 ~~manner:~~

14 ~~(1) Seventy five percent of any such fine for a violation occurring~~  
15 ~~within the corporate limits of a city, town or city and county shall be~~  
16 ~~remitted to the treasurer or chief financial officer of such city, town or~~  
17 ~~city and county and the remaining 25% shall be remitted to the state~~  
18 ~~treasurer who shall deposit the entire amount in the state treasury to the~~  
19 ~~credit of the state general fund.~~

20 ~~(2) Seventy five percent of any fine for a violation occurring outside~~  
21 ~~the corporate limits of a city or town shall be remitted to the treasurer of~~  
22 ~~the county in which the city or town is located, and the remaining 25%~~  
23 ~~shall be remitted to the state treasurer who shall deposit the entire amount~~  
24 ~~in the state treasury to the credit of the state general fund.~~

25 Sec. 5. K.S.A. 2006 Supp. 20-350 is hereby amended to read as fol-  
26 ~~lows. 20-350. (a) Except for fines and penalties authorized to be paid~~  
27 ~~pursuant to K.S.A. 21-4012, and amendments thereto, or to counties pur-~~  
28 ~~suant to K.S.A. 19-101e, and amendments thereto, and subsection (b),~~  
29 ~~and amendments thereto, all moneys received by the clerk of the district~~  
30 ~~court from the payment of fines, penalties and forfeitures shall be remit-~~  
31 ~~ted to the state treasurer in accordance with the provisions of K.S.A. 75-~~  
32 ~~4215, and amendments thereto. Upon receipt of each such remittance,~~  
33 ~~the state treasurer shall deposit the entire amount in the state treasury~~  
34 ~~to the credit of the state general fund, except as provided in K.S.A. 74-~~  
35 ~~7336, and amendments thereto, or K.S.A. 8-1345, and amendments~~  
36 ~~thereto.~~

37 ~~(b) Except as provided by K.S.A. 2006 Supp. 20-368, and amend-~~  
38 ~~ments thereto, all moneys received by the clerk of the district court from~~  
39 ~~the payment of bail forfeitures shall be remitted to the state treasurer in~~  
40 ~~accordance with the provisions of K.S.A. 75-4215, and amendments~~  
41 ~~thereto. Upon receipt of each such remittance, the state treasurer shall~~  
42 ~~deposit the entire amount in the state treasury and shall credit equal~~  
43 ~~portions of such remittance to the indigents' defense services fund and~~

1 the state general fund.  
2 ~~(c) The chief judge may invest any moneys on deposit in the district~~  
3 ~~court account if the moneys are not immediately required for the pur-~~  
4 ~~poses for which they were collected or received. Such moneys may be~~  
5 ~~invested in: (1) Time deposits, open account or certificates of deposit, for~~  
6 ~~periods not to exceed six months, or savings deposits, in commercial banks~~  
7 ~~located in the county, except that amounts invested which are not insured~~  
8 ~~by the United States government shall be secured in the manner and~~  
9 ~~amounts provided by K.S.A. 0-1402, and amendments thereto; (2) United~~  
10 ~~States treasury bills or notes with maturities not to exceed six months; or~~  
11 ~~(3) savings and loan associations located in the county. No investment of~~  
12 ~~more than the amount insured by the federal deposit insurance corpo-~~  
13 ~~ration shall be made in any one savings and loan association. Interest~~  
14 ~~received from the investment of moneys pursuant to this subsection shall~~  
15 ~~be remitted to the state treasurer in accordance with the provisions of~~  
16 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of each such~~  
17 ~~remittance, the state treasurer shall deposit the entire amount in the state~~  
18 ~~treasury to the credit of the state general fund.~~  
19 ~~(d) Upon application of a party to an action in which such party claims~~  
20 ~~ownership of moneys held by the district court, the chief judge may invest~~  
21 ~~such moneys in the same manner as provided by subsection (c). Interest~~  
22 ~~received from the investment of moneys pursuant to this subsection shall~~  
23 ~~become the property of the person found to be the owner of the moneys.~~  
24 Sec. 6. K.S.A. 65-530 is hereby amended to read as follows: 65-530.  
25 (a) As used in this section:  
26 (1) "Day care home" means a day care home as defined under Kansas  
27 administrative regulation 28-4-113, a group day care home as defined  
28 under Kansas administrative regulation 28-4-113 and a family day care  
29 home as defined under K.S.A. 65-517 and amendments thereto.  
30 (2) "Smoking" means possession of a lighted cigarette, cigar, pipe or  
31 burning tobacco in any other form or device designed for the use of  
32 tobacco.  
33 (b) Smoking within any room, enclosed area or other enclosed space  
34 of a facility or facilities of a day care home during a time when children  
35 who are not related by blood, marriage or legal adoption to the person  
36 who maintains the home are being cared for, as part of the operation of  
37 the day care home, within the facility or facilities is hereby prohibited.  
38 Nothing in this subsection shall be construed to prohibit smoking on the  
39 premises of the day care home *10 feet away from the entryway* outside  
40 the facility or facilities of a day care home, including but not limited to  
41 porches, yards or garages.  
42 (c) Each day care home registration certificate or license shall contain  
43 a statement in bold print that smoking is prohibited within a room, en-

# Kansas Legislature

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## 20-350

### Chapter 20.--COURTS

#### Article 3.--DISTRICT COURTS

**20-350. Disposition of money received by clerk; investment of moneys held; disposition of interest.** (a) Except for fines and penalties authorized to be paid to counties pursuant to K.S.A. 19-101e, and amendments thereto, and subsection (b), and amendments thereto, all moneys received by the clerk of the district court from the payment of fines, penalties and forfeitures shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, except as provided in K.S.A. 74-7336, and amendments thereto, or K.S.A. 8-1345, and amendments thereto.

(b) Except as provided by K.S.A. 2006 Supp. 20-368, and amendments thereto, all moneys received by the clerk of the district court from the payment of bail forfeitures shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit equal portions of such remittance to the indigents' defense services fund and the state general fund.

(c) The chief judge may invest any moneys on deposit in the district court account if the moneys are not immediately required for the purposes for which they were collected or received. Such moneys may be invested in: (1) Time deposits, open account or certificates of deposit, for periods not to exceed six months, or savings deposits, in commercial banks located in the county, except that amounts invested which are not insured by the United States government shall be secured in the manner and amounts provided by K.S.A. 9-1402, and amendments thereto; (2) United States treasury bills or notes with maturities not to exceed six months; or (3) savings and loan associations located in the county. No investment of more than the amount insured by the federal deposit insurance corporation shall be made in any one savings and loan association. Interest received from the investment of moneys pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Upon application of a party to an action in which such party claims ownership of moneys held by the district court, the chief judge may invest such moneys in the same manner as provided by subsection (c). Interest received from the investment of moneys pursuant to this subsection shall become the property of the person found to be the owner of the moneys.

**History:** L. 1976, ch. 146, § 45; L. 1977, ch. 109, § 16; L. 1978, ch. 108, § 9; L. 1981, ch. 134, § 1; L. 1989, ch. 239, § 2; L. 1990, ch. 94, § 1; L. 1998, ch. 52, § 4; L. 1999, ch.

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57, § 23; L. 2001, ch. 5, § 76; L. 2006, ch. 44, § 3; July 1.

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## 74-7336

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES

#### Article 73.--CRIME VICTIMS COMPENSATION BOARD

**74-7336. Disposition of district court fines, penalties and forfeitures.** (a) Of the remittances of fines, penalties and forfeitures received from clerks of the district court, at least monthly, the state treasurer shall credit 11.99% to the crime victims compensation fund, 2.45% to the crime victims assistance fund, 2.01% to the community alcoholism and intoxication programs fund, 2.01% to the department of corrections alcohol and drug abuse treatment fund and 0.17% to the boating fee fund. The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit grant moneys as provided in subsection (a), from the crime victims assistance fund, to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

**History:** L. 1989, ch. 239, § 31; L. 1995, ch. 243, § 8; L. 2001, ch. 200, § 18; L. 2001, ch. 211, § 17; L. 2004, ch. 125, § 6; L. 2006, ch. 85, § 17; Jan. 1, 2007.

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