

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 21, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Jeff King- excused
Representative Jim Ward- excused
Representative Colloton-excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Robert Waller-Executive Director of the Kansas Board of Emergency Medical Services

Others attending:

No guest list attached.

Chairman Kinzer introduced a bill covering the Kansas Open Records as a result of the Special Committee on Judiciary interim study. The bill was accepted as a committee bill without objection.

Representative Kleeb introduced a bill covering Electronic Home Detention Act that would provide electronic sentencing for non-risk, non-violent offenders. The bill was accepted as a committee bill without objection.

Representative Yoder introduced a bill regarding appearance bonds. He explained you have to pay a bond that you will appear in court and this bill covers some modifications. The bill was accepted as a committee bill without objection.

The hearing on **SB 223- Emergency medical services board, authority to issue subpoenas**, was opened.

Jason Long, Office of Revisor of Statutes, provided an overview of the bill. This bill would amend K.S.A. 65-6111, which provides the powers and duties of the Emergency Medical Services Board. Current law grants the Board authority to adopt rules and regulations regarding emergency medical services and to conduct hearings on all regulatory matters. This bill would grant the Board access to all documents, reports, records or other physical evidence of a person being investigated by the Board, and to all documents, reports, records or other physical evidence maintained by any clinic, laboratory, pharmacy, medical care facility or any other private public agency when such evidence relates to a matter the board is investigating. The bill would also grant the Board authority to issue subpoenas to compel a witness to testify or to produce evidence.
(Attachment 1)

Proponents:

Robert Waller, Executive Director of the Kansas Board of Emergency Medical Services appeared before the committee. He explained the Board believes the language in this bill merely establishes within law, access to information that is necessary in their investigations to protect the citizens of the State while conducting their duties. They believe this bill would provide them the same level of access to information to investigate and close cases as other regulatory agencies. (Attachment 2)

There were no opponents.

Neutral written testimony was provided by the Kansas EMS Association. (Attachment 3)

The hearing on **SB 223** was closed.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on January 21, 2010, in Room 346-S of the Capitol.

Hearing on **SB 224- Emergency medical services board authorized to assess civil fines** was opened.

Jason Long, Office of Revisor of Statutes, provided an overview of the bill. This bill would enact new law granting the Emergency Services Board the authority to access a civil fine for violations of the law or rules and regulations governing the practice of a licensee. Currently the Board has authority to revoke, suspend or limit a certificate issued to a licensee. This bill as it was originally introduced would have authorized the Board to assess a civil fine of not more than \$1000 “in addition to” any other sanctions. The Senate committee amended the bill replacing the words “in addition to” with “in lieu of”. Any fines collected would be submitted to the treasurer to be credited to the state general fund. (Attachment 4)

Proponents:

Robert Waller, Executive Director of the Kansas Board of Emergency Medical Services appeared before the committee. Mr. Waller gave some examples of cases where they would like the option to levy a fine rather than revoke, suspend or limit their license. (Attachment 5)

Additional questions by the committee were addressed to and answered by Mr. Waller.

Opponent:

Written testimony was provided by the Kansas EMS Association in strong opposition of the bill. (Attachment 6)

The hearing on **SB 224** was closed.

The next meeting is scheduled for January 25, 2010.

The meeting was adjourned at 4:10 p.m.

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



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Legislative Information System

Overview of SB 223

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

January 21, 2010

The Emergency Medical Services Board (Board) is the regulatory agency that oversees first responders, emergency medical technicians and ambulance services. Senate bill 223 would amend K.S.A. 65-6111, which provides the powers and duties of the Board, to grant the Board investigatory and subpoena powers. These powers could be exercised when the Board is investigating matters of professional competence, unprofessional conduct or the mental or physical ability of a licensee to perform authorized activities.

Current law grants the Board authority to adopt rules and regulations regarding emergency medical services and to conduct hearings on all regulatory matters. SB 223 would grant the Board access to all documents, reports, records or other physical evidence of a person being investigated by the Board, and to all documents, reports, records or other physical evidence maintained by any clinic, laboratory, pharmacy, medical care facility or any other private or public agency when such evidence relates to a matter of the board is investigating.

The bill also grants the Board authority to issue subpoenas to compel a witness to testify or to produce evidence. Any person who is subpoenaed may petition the Board to revoke, limit or modify the subpoena. The Board must revoke, limit or modify the subpoena if, in its sole discretion, it determines that the evidence in question: (1) is unrelated to any disciplinary action;

(2) is not relevant to the subject matter of the investigation; or (3) is not described with sufficient particularity in the subpoena. The bill also provides for the court to enforce a subpoena or revoke, limit or modify when petitioned to do so by the Board or a subpoenaed individual.

The bill provides that the disclosure of any of the information received by the Board pursuant to K.S.A. 65-6111 for any purpose other than the investigation is a class A misdemeanor. All records and any other information which might identify a patient or the patient's family is deemed confidential and shall not be disclosed. Also, any law that deems doctor-patient communications privileged is not applicable with respect to investigations conducted under K.S.A. 65-6111, however, the Board and its staff are required to keep all patient names confidential during the course of the investigation.

Section 2 of the bill amends K.S.A. 65-6130 to grant the Board the same subpoena power when regulating ambulance services.



KANSAS

DENNIS ALLIN, M.D., CHAIR
ROBERT WALLER, EXECUTIVE DIRECTOR

MARK PARKINSON, GOVERNOR

BOARD OF EMERGENCY MEDICAL SERVICES

Testimony

Date: January 21, 2010
To: House Judiciary Committee
From: Robert Waller, Executive Director
RE: 2009 Senate Bill 223

Chairman Kinzer and members of the House Judiciary Committee, my name is Robert Waller. I am the Executive Director for the Kansas Board of Emergency Medical Services (KBEMS). I would like to provide testimony on 2009 Senate Bill 223.

2009 SB 223 amends current law (K.S.A. 65-6130) to allow the Investigation Committee of the Kansas Board of Emergency Medical Service to issue subpoenas in acquiring information above merely the "operation of ambulance services and the conduct of attendants". Under current law, the Board has no subpoena power regarding educational, training, hospital records, QA/QI records, personnel records, operational records (DEA drug repository), or criminal history records when conducting an investigation. The language was in part taken from current language contained with the Board of Nursing and Board of Healing Arts statutes.

Through the current Investigation process, respondents have replied to the request for records and have provided all documents. However, in reading current law, the respondents have had no legal responsibility to provide the level of documentation current requested. KBEMS would request passage of 2009 SB 223 to afford the Investigations Committee the same level of access to information to close cases as other regulatory agencies. The language does not attempt to gain or access any information than is currently being accessed within law for an agency with the regulatory responsibility outlined by the State. KBEMS believes the language merely establishes within law access to information (through the Investigatory process) that is necessary to protect the citizens of that State while conducting its duties.

Conclusion

Thank you for allowing me to testify in support of Senate Bill 223. KBEMS believes the language above is purely a clarification of activities currently engage in by the Board. KBEMS hopes for passage of the bill, and therefore a continuation of current investigative processes and duties.

The Kansas EMS Association



Testimony Senate Judiciary Committee Senate Bill 223

This testimony is to show that the Kansas EMS Association remains neutral on Senate Bill 223. The bill, which would give the Board of EMS Subpoena power in certain instances, is not a bill that causes our organization much angst nor does it cause tremendous excitement. We would ask however, what problem are we trying to fix? Often it seems that someone writes legislation because it seems like the right thing to do, in this case we are unaware of problems relating to information not being forthcoming in the EMS community.

Ambulance services should be willing to share documents, as long as they do not violate existing regulations (Federal or State), and it is related to an investigation, a case involving the service or a complaint to the Board of EMS. While we do feel that the intent of the bill is to handle the above mentioned circumstances it is worth noting that bill should not be intended to be used for regular quality assurance reviews by the Board of EMS. We are adamant that quality care cannot and should not be enforced through regulation; it is a local process that should include the Local EMS service, the Medical Director/Society and representatives of the area departments that are involved in the delivery of direct patient care.

If the Board of EMS is involved in a local service delivering better patient care it should be because of helping on the front end and being proactive rather than waiting until there is a problem and using new found subpoena power to be reactive.

Ultimately our association, which represents 117 ambulance services and 1,250 EMS attendants remains neutral and the passage of this bill does not necessarily hurt Kansas EMS but nor does it benefit Kansas EMS.

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

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Legislative Information System

Overview of SB 224

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

January 21, 2010

Senate bill 224 would enact new law granting the Emergency Medical Services Board (Board) the authority to assess a civil fine for violations of the law or rules and regulations governing the practice of a licensee. Currently, the Board has authority to revoke, suspend or limit a certificate issued to a licensee. SB 224 as it was originally introduced would have authorized the Board to assess a civil fine of not more than \$1,000 *in addition to* any other sanctions. The Senate committee amended the bill replacing the words “addition to” with “lieu of.” As it currently reads, the bill authorizes the Board to issue a civil fine instead of imposing other penalties. All fines collected would be submitted to the treasurer to be credited to the state general fund.



KANSAS

DENNIS ALLIN, M.D., CHAIR
ROBERT WALLER, EXECUTIVE DIRECTOR

MARK PARKINSON, GOVERNOR

BOARD OF EMERGENCY MEDICAL SERVICES

Testimony

Date: January 21, 2010
To: House Judiciary Committee
From: Robert Waller, Executive Director
RE: 2009 Senate Bill 224

Chairman Kinzer and members of the House Judiciary Committee, my name is Robert Waller. I am the Executive Director for the Kansas Board of Emergency Medical Services (KBEMS). I would like to provide testimony on 2009 Senate Bill 224.

2009 SB 224 would grant the Kansas Board of Emergency Medical Services the ability to assess a civil fine against any person granted a license or certificate to practice emergency medical services by the Board for a violation of a law. The civil fine would not exceed \$1,000.

The Investigations Committee conducts an estimated 50 investigations per year. The KBEMS Board diligently reviews all cases in a manner that takes into account current law, precedent, and the impact of its decisions upon the individual and community. The ability to issue civil fines would be added to the ability of the Board to deny, revoke, limit, modify, or suspend a certificate. The bill, as introduced, would represent no additional operating costs or revenue to KBEMS. Civil fines would be deposited in the State General Fund, and therefore KBEMS would not have access to the monies imposed from fines.

Amendments

The Senate Committee on Federal and State Affairs amended the bill to add the words "in lieu of" to ensure that the KBEMS Investigation Committee would not both "deny, revoke, limit, modify, or suspend a certificate" and levy a civil penalty upon an attendant. The KBEMS Board supports that amendment, and offers no further changes to the bill.

Conclusion

Thank you for allowing me to testify in support of Senate Bill 224.

The Kansas EMS Association



Testimony

Senate Judiciary Committee
Senate Bill 224

This testimony is in strong opposition to Senate Bill 224, giving the Kansas Board of EMS the ability to levy civil penalty (fines) against certified EMS attendants. The bill has a drastic and immediate negative impact on EMS delivery in Kansas.

Most services in the State of Kansas are facing shortages of willing and able personnel to fulfill their mission on a regular basis. Many of the licensed services in our state are staffed by dedicated volunteers who are providing their service for no more than the satisfaction of helping their neighbor. Recruitment and/or retention of EMS providers is consistently rated the number one problem facing EMS agencies nationally. This bill does nothing but DISCOURAGE people from entering the EMS profession. For personnel that do enter the field as career, they do so knowing that it is the love of EMS not the financial windfall in their chosen vocation that drives their selection.

All that said we do not know any EMS person that has "up to \$1,000" to sitting around waiting to see what the Board of EMS may do to them. The bill specifically says that this is in lieu of any other penalty prescribed by law. That interpretation sounds as if you can not be criminally charged, have your certification be affected or other known penalties that the Board of EMS will then order a fine so that the person can in fact "be in trouble". We would argue that the current laws and regulations very specifically spell out what punishment can and cannot happen if you are found in violation of said laws and regulations. Additionally, we feel that if someone does not meet current "sentencing guidelines" already prescribed then the case probably ought to be dismissed.

We all support making the Kansas EMS system better, the possibility of levying fines against the people who are out there providing this valuable pre-hospital service does exactly the opposite of that. It damages EMS delivery in Kansas by discouraging current attendants from continuing their EMS calling and prevents new recruits from being called in to service.

The Kansas EMS Association very strongly opposes Senate Bill 224 and asks that you defeat the bill in your committee.