

## MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE

The meeting was called to order by Chairman Jim Barnett at 1:32 p.m. on February 16, 2010, in Room 546-S of the Capitol.

All members were present.

## Committee staff present:

Nobuko Folmsbee, Office of the Revisor of Statutes  
 Renae Jefferies, Office of the Revisor of Statutes  
 Iraida Orr, Kansas Legislative Research Department  
 Terri Weber, Kansas Legislative Research Department  
 Amanda Nguyen, Intern, Kansas Legislative Research Department  
 Jan Lunn, Committee Assistant

## Conferees appearing before the Committee:

Jerry Slaughter, Kansas Medical Society  
 Kathleen Lippert, Acting Director, Kansas Board of Healing Arts (KBOHA)  
 Bob Williams, Executive Director, Kansas Association of Osteopathic Medicine  
 John Kiefhaber, Kansas Chiropractic Association  
 Pam Scott, Executive Director, Kansas Funeral Directors Association  
 Mack Smith, Executive Secretary, Kansas State Board of Mortuary Arts  
 Sheri L. Smiley, Staff Attorney, Kansas Secretary of State

## Others attending:

See attached list.

Senator Barnett called attention to follow-up information from the hearing of February 8, 2010, related to **SB 448 - Vital statistics; maternal and child health surveillance and monitoring** submitted by Suzanne Wikle, Kansas Action for Children. Ms. Wikle has provided information in response to a question from Senator Kelly concerning a surrounding a state side-by-side comparison of infant mortality indicators and outcomes (Attachment 1).

**SB 500 - Healing arts; exception from prohibited acts for individuals who earned a degree from an accredited healing arts school or college**

Renae Jefferies, Office of the Revisor of Statutes, indicated this legislation would allow doctors to use the appropriate academic designation without a license as long as the designation is not used with intent of misleading the public, patients, or other health care providers to believe the person is engaged in the practice of healing arts.

Jerry Slaughter, Executive Director, Kansas Medical Society, appeared in support of **SB 500**. He indicated the legislation makes a largely technical change in the Healing Arts Act to allow those persons who have earned an academic degree and are unlicensed to use that academic designation as long as there is no intent to mislead the public (Attachment 2). He suggested an amendment that provides additional clarity which is in subsection (d) beginning on line 29: ". . . from an accredited healing arts school or college and if the use of such word or initials are not used with the intent of representing or is not misleading to the public, patients . . . "

Kathleen Lippert, Kansas Board of Healing Arts, concurred with Mr. Slaughter's proposed amendment, and she indicated her support of **SB 500**. (Attachment 3) Ms. Lippert clarified this legislation codifies the ruling issued in *State v. Thomas* (33 Canape.2d 73) while ensuring the KBOHA retains the ability to protect Kansas citizens from unauthorized and unsafe practice of medicine.

Bob Williams, Kansas Association of Osteopathic Medicine, stood in support of **SB 500** (Attachment 4).

John Kiefhaber, Kansas Chiropractic Association, encouraged passage of **SB 500** including the proposed amendment (Attachment 5).

CONTINUATION SHEET

Minutes of the Senate Public Health and Welfare Committee at 1:30 p.m. on February 16, 2010, in Room 546-S of the Capitol.

Upon a motion by Senator Schmidt and a second by Senator Pilcher-Cook to adopt the amendment presented, the motion carried.

Upon a motion by Senator Schmidt and a second by Senator Pilcher-Cook to pass out favorably **SB 500** as amended; the motion passed.

**SB 506 - Crematory operators, licensure, fees**

Terri Weber, Legislative Research Department, indicated **SB 506** would enact new law creating licensure requirements for crematory operators, would amend existing law to increase statutory maximum limits for certain fees and would amend laws governing the cremation process.

Pam Scott, Kansas Funeral Directors Association, spoke in support of **SB 506** indicating that persons who actually operate the cremation chamber should be licensed as crematory operators and should receive appropriate training (Attachment 6).

Mack Smith, Kansas State Board of Mortuary Arts, reported the contents of the bill had been in process for approximately two years seeking input from the Cremation Association of North America as well as the Kansas Funeral Directors Association. Mr. Smith requested several amendments which are attached to his testimony (Attachment 7).

Senators discussed the various proposed amendments; Senator Schmidt suggested inserting a date certain for rules and regulations. Mr. Smith elaborated on the amendments he suggested appearing on page 4 in Section 7. (a) (1) (line 18), Section 7. (e) lines 31 through 37, and on page 11, Section 15, line 36 which indicates the act shall take effect on July 1, 2011..

Senator Schmidt moved to adopt the amendments included in Mack Smith's testimony, to add the effective date for rules and regulations by January 1, 2011, and to strike the word "funeral" in front of director on page 9, line 17. Senator Brungardt seconded the motion which passed.

Upon a motion by Senator Schmidt and a second by Senator Brungardt to favorably pass out **SB 506** as amended, the motion carried.

**SB 508 - Discount card; filing requirements with the secretary of state**

Nobuko Folmsbee, Revisor of Statutes Office, explained that **SB 508** amends current law by creating requirements for suppliers who sell discount cards and suppliers who market, advertise, or distribute discount cards.

Shari Smiley, staff attorney in the Kansas Secretary of State's Office, clarified that healthcare card suppliers offer discounts on services from participating doctors, pharmacies, etc., who have agreed to accept the discount card. These cards are not considered insurance and are unregulated in the State of Kansas. Because of this, fraud and deception to consumers can occur. To help protect consumers, the supplier is subject to the consumer protection code. This means the supplier is required to file a bond or a surety account with the Secretary of State's Office. This bill contains six provisions to amend the supplier's filing process. The bill also amends current law concerning a supplier who **sells** any discount card that requires the supplier to name a resident agent (for annual filing).

Senators discussed the differences between suppliers who market, advertise or distribute discount cards as opposed to suppliers who sell the cards. The proposed legislation addresses the two groups and requirements for both. Ms. Smiley submitted proposed amendments to the current statute which is attached to her testimony (Attachment 8).

Ms. Folmsbee suggested several technical amendments; Ms. Smiley indicated she was receptive to incorporating these suggestions into the proposed legislation.

Senator Barnett indicated **SB 508** would be scheduled for final action at a later date, and he

CONTINUATION SHEET

Minutes of the Senate Public Health and Welfare Committee at 1:30 p.m. on February 16, 2010, in Room 546-S of the Capitol.

closed the hearing.

**SB 475 - Defining funeral services for the purpose of regulating funeral directors.**

Nobuko Folmsbee, Office of the Revisor of Statutes, reviewed recommendations for proposed amendments to this legislation which was originally heard on February 11, 2010. New language was added which exempts persons engaged in providing cremation services for five consecutive years prior to the Act's effective date from apprenticeship requirements which is a prerequisite for licensure as a funeral director. The exemption applies if the individual applies for funeral director licensure within six months of the effective date of the legislation.

Senator Schmidt moved to adopt the amendments submitted and discussed; Senator Brungardt seconded the motion which passed.

Senator Schmidt moved SB 475 as amended be passed out favorably; Senator Kelly seconded the motion. The motion carried.

Chairperson Barnett adjourned the meeting at 2:34 p.m.



Health Indicator/Outcome	National	Kansas	IA	MO	NE	OK	CO
<b>Infant Mortality Rate</b> <i>Number of deaths (under 12 months) per 1,000 live births</i> <i>Source: KIDS COUNT Data Year: 2006</i>	6.7	7.1	5.1	7.4	5.6	8	5.7
<b>Low-birthweight babies (percent)</b> <i>Percent of live births weighing less than 5.5 pounds</i> <i>Source: National KIDS COUNT Data Year: 2006</i>	8.30%	7.20%	6.90%	8.10%	7.10%	8.30%	8.90%
<b>Births to mothers who smoked during pregnancy (percent)</b> <i>Source: National KIDS COUNT Data Year: 2006</i>	N.A.	16.70%	N.A.	N.A.	16%	N.A.	N.A.
<b>Medicaid Family Planning Waiver</b> <i>Source: Kaiser State Health Facts</i>	27 States	No	Yes (200% FPL)	Yes (185% FPL)	No	Yes (185% FPL)	No
<b>Medicaid Eligibility for Women with Children</b> <i>Source: Kaiser State Health Facts</i> <i>*Note: Childless women are not eligible in any of the listed states for Medicaid</i>	N/A	32% FPL	83% FPL	25% FPL	58% FPL	47% FPL	66% FPL
<b>Medicaid Eligibility for Pregnant Women</b> <i>Source: Kaiser State Health Facts</i>	N/A	150% FPL	300% FPL	185% FPL	185% FPL	185% FPL	200% FPL
<b>PRAMS State</b> <i>Source: Centers for Disease Control</i>	N/A	No	No	Yes	Yes	Yes	Yes



**To:** Senate Public Health and Welfare Committee

**From:** Jerry Slaughter  
Executive Director

**Date:** February 16, 2010

**Subject:** SB 500; Concerning the Healing Arts Act and the use of academic degrees

The Kansas Medical Society appreciates the opportunity to appear in support of SB 500, which this committee introduced at our request. This legislation makes a largely technical change in the Healing Arts Act to clarify that unlicensed MDs, DOs, and DCs can use their earned academic degree initials (“MD”, for example) without violating the Healing Arts Act, so long as they are not engaged in the practice of the healing arts, or misleading the public or other health care providers as being so engaged.

In response to a 2004 Kansas Court of Appeals decision in *Kansas State Board of Healing Arts v. Thomas*, the Board has begun prosecuting unlicensed physicians for practicing medicine without a license when using their earned academic degree on business cards, or stationery, or when signing their names to correspondence. In *Thomas*, the Court ruled that a Johnson County dentist (Steven L. Thomas, DDS) who received a medical degree from a Caribbean medical school after eight weeks of training was not entitled to use the term “MD” because the use of the term would be confusing to other medical professionals and the public.

The Court relied upon a literal reading of a couple older sections of the Healing Arts Act in reaching its decision. Though the Court applied that portion of the Act literally, it also said that the Act’s statutory scheme as it relates to an unlicensed individual’s use of the initials “MD” was overbroad and should be narrowed. The unintended consequences of the Court’s interpretation of the Act (written in 1957), is that even a retired physician could not use the “MD” designation without maintaining a license.

In other words, under the interpretation of the law in *Thomas*, a physician in a purely administrative capacity, or a retired physician, could not use the initials “M.D.” without being licensed by the Healing Arts Board, even if he or she was not practicing medicine.

It is not our intent with this bill to allow MDs, DOs, or DCs to avoid having to be licensed if they are truly engaged in the practice of the healing arts, or if they are holding themselves out to the public to be so engaged. Nor do we want to tie the hands of the Board, or place any impediments to proper enforcement of the law and protection of the public. However, our view is that the language in the Healing Arts Act on this point is in

fact quite overbroad, and was never intended to prevent a person from using an academic degree that he or she earned, without being licensed, so long as they are not misleading the public about their licensure or practice status. In essence, this bill codifies the Court's recommendation in *Thomas*.

After several discussions with the Board, we would like to offer an amendment that further clarifies the issue, and ensures the Board can carry out its enforcement functions in the best interest of the public. We would like to suggest an amendment to SB 500 in subsection (d), beginning on line 29, as follows:

*(d) It shall not be considered a violation of this act if an unlicensed person appends to such person's name the word "doctor" or the letters "M.D.", "D.O." or "D.C.", if such person has earned such professional degree from an accredited healing arts school or college, and if the use of such word or initials are not used with the intent of representing or is not misleading to the public, patients or other health care providers that such person (1) is engaged in the practice of the healing arts within this state; or (2) is licensed to practice the healing arts in this state.*

We appreciate your consideration of our comments, and would urge that you adopt the suggested amendment above, and report SB 500 favorably for passage, as amended. Thank you.

February 16, 2010

TO: Public Health and Welfare Committee  
FROM: Kathleen Selzler Lippert, Interim Executive Director

**RE: Senate Bill 500, Amending K.S.A. 65-2867**

Dear Chairman Barnett and Committee Members:

The Kansas State Board of Healing Arts supports SB 500. This bill proposes to amend K.S.A. 65-2867 and allow unlicensed medical doctors, doctors of osteopath, and doctors of chiropractic to use the initials of their academic designation and refer to themselves as "Dr." so long as it does not mislead or misrepresent to the public that this individual is engaged in the healing arts, or is licensed by the Board.

The Kansas Medical Society has worked closely with the Kansas State Board of Healing Arts to amend this statute. The Board's impetus behind amending this statute is to codify the 2004 ruling issued in *State v. Thomas* (33 Kan.App.2d 73). The appellate court held that the statute as currently written is overbroad and that the Board of Healing Arts only has authority to "ban those uses of the term MD designation that may potentially mislead the public, patients, other healthcare practitioners or hospitals concerning the user's license or unlicensed status."

KSBHA supports SB 500 because it codifies the *Thomas* ruling while still ensuring that the Board retains the ability to carry out its greatest purpose of protecting the citizens of Kansas from the unauthorized, unsafe practice of medicine.

The passage of the SB 500 will not result in any fiscal impact to the Kansas State Board of Healing Arts.

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Date:  
Attachment:

02/16/10





## TESTIMONY

Senate Committee on Public Health and Welfare  
February 16, 2010  
SB 500

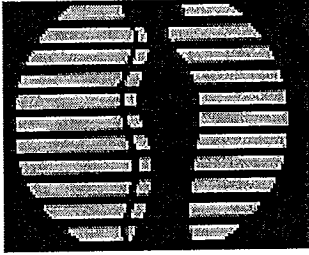
My name is Bob Williams, Executive Director of the Kansas Association of Osteopathic Medicine. Thank you for this opportunity to address the committee regarding SB 500.

The Kansas Association of Osteopathic Medicine (KAOM) is in support of SB 500. SB 500 permits medical doctors, doctors of osteopathic medicine, and doctors of chiropractic medicine who have graduated from an accredited school of healing arts to use their appropriate academic designation without licensure as long as the use of the designation is not used with the intent of misleading the public, patients, or other health care providers that the person is licensed or engaged in the practice of healing arts.

The academic designation used by physicians is based on years of dedicated medical education. It is an "earned degree" that does not expire when the physician chooses to discontinue practicing medicine or renew his medical license. Physicians employed by a university to teach, employed in an administrative position, or simply retired, may choose not to renew or seek a medical license from the Kansas State Board of Healing Arts. However, these physicians should be allowed to use their earned academic designation without concern they are in violation of the law. When SB 500 was discussed by the KAOM membership, several retired D.O.s, who no longer practice medicine and have not renewed their license with the Board of Healing Arts, were surprised they would be considered in violation of Kansas law by continuing to use their D.O. designation.

We encourage your support of SB 500.

Thank you.



Kansas  
Chiropractic  
Association

**TESTIMONY**

Before the  
Senate Committee on Public Health and Welfare  
February 16, 2010

**“AN ACT ... concerning the healing arts act ... regarding an exception to prohibited acts ...”**

**Chairperson Barnett and members of the Committee:**

The members of the Kansas Chiropractic Association, representing doctors of chiropractic practicing throughout the state of Kansas, wish to stand in support of S.B. 500, concerning the use of the titles M.D., D.O., or D.C. by holders of those academic degrees.

We support this new provision within the existing Healing Arts Act if there is no intent by unlicensed individuals to mislead the public and if the person is not engaged in practice with patients.

Thank you for the opportunity to speak.

**JOHN L. KIEFHABER**  
KCA Executive Director

Senate Public Health and Welfare  
Date:  
Attachment:

02/16/10



**KANSAS FUNERAL DIRECTORS ASSOCIATION**

1200 S. Kansas Avenue Topeka, KS 66612  
785-232-7789 Fax 785-232-7791 www.ksfda.org

February 16, 2010

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**EXECUTIVE DIRECTOR**

PAM SCOTT  
*Topeka*

To: Senate Public Health and Welfare Committee

From: Pam Scott, Executive Director

Re: Senate Bill No. 506

Chairman Barnett and members of the Committee, I appear before you today on behalf of the Kansas Funeral Directors Association (KFDA) in support of Senate Bill No. 506.

Consistent with the KFDA's position that persons who sell cremation service and have direct contact with the cremation consumers should be licensed funeral directors, we believe it is also important that persons who actually operate the cremation chamber should be licensed as crematory operators and receive appropriate training.

Although the crematory operator may not be the person that actually meets with families to explain the cremation process, to obtain proper authorizations, and to guide the family through the cremation process, such persons should be thoroughly educated, trained and accountable through licensure. The cremation process should be regulated from death until the cremated remains are delivered to the family.

To operate a safe and effective crematory, proper training is a must. Cremation certification programs cover all aspects of cremation. It is vital that a crematory operator have an understanding of chain of custody protocols to assure the right body is cremated and that cremated remains are delivered to the appropriate person. It is also important that they receive thorough instruction on how to properly operate the cremation chamber and that they are knowledgeable of Kansas' extensive cremation laws to assure the public is protected.

Since certification programs are not inexpensive and are not always offered at convenient locations, we are asking for a July 1, 2011 effective date to assure crematories currently in operation have time to comply.

The KFDA supports this legislation which is consistent with its position that all that provides cremation services should be licensed to assure they receive proper education and training and are accountable to the public.

Senate Public Health and Welfare

Date:

02/16/10

Attachment:

# KANSAS

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## ADMINISTRATIVE STAFF

Mr. Mack Smith, Executive Secretary  
Mr. Francis F. Mills, Inspector  
Ms. Mary J. Kirkham, Administrative Specialist

Tuesday, February 16, 2010

Chairman Barnett and Members of the Senate Public Health and Welfare Committee:

My name is Mack Smith, and I am the executive secretary to the Kansas State Board of Mortuary Arts (KSBMA). Thank you for the opportunity to meet with you today and to ask for your support of **Senate Bill 506** that was requested for introduction by the KSBMA.

The bill's current wording is almost two years in the making. We have done our best of using input from everyone possible by placing wording on our agency's website, working with the best authority in cremation, the Cremation Association of North America (CANA) as well as receiving input from with the Kansas Funeral Directors Association (KFDA). At their board meeting of January 22, 2010, CANA amended their Model Cremation Law. Because of the CANA amendments, I would like to request the following amendments to SB 506:

- 1) On page four (4), section seven (7) on line 18: add "**or consumable**" after combustible and before materials.
- 2) Also on page four (4), again in section seven (7) on line 31: eliminate everything in lines 31-37 after (e) "Cremation" means . . . and replace with: **mechanical and/or thermal or other dissolution process that reduces human remains to bone fragments. Cremation includes the processing and usually includes the pulverization of the bone fragments.**
- 3) We would like to request that the bill be **effective July 1, 2011** instead of after publication in the statute book.

Requested amendments one and two are a result of CANA amendments. Amendment three is at the request of the KFDA. It would allow additional time for the required training mentioned in the bill and would also allow for additional time for the KSBMA to write the necessary regulations.

With the cremation rate continuing to increase in Kansas and across the country and the increased technical changes made by manufacturers to produce crematories that can handle higher volumes, the KSBMA believes the time has come to license individual crematory operators. Current law requires licensure of crematories to a crematory operator in charge of the crematory. This bill would license the individual crematory operators requiring training and continuing education that would be approved by the KSBMA. We anticipate charging a \$50 biennial license fee. We have included changes in KSA 65-1727 that would allow a crematory operator's license. In addition, we are requesting increases to fee maximums. The board does not anticipate fee increases prior to January 1, 2012--and hopefully not until January 1, 2014. Because it is necessary to amend this statute to include a crematory operator license fee, we thought that it made sense to increase other maximums at this time in order to save having to open the statute again in the future.

SB 506 would require licensure of anyone operating a crematory retort/chamber. Completion of six (6) hours of training that would be approved by the board is required and could be provided by an individual that has completed that training. Example: If an individual from a crematory completed the training, he or she could submit an application to the board, that if approved, would allow he or she to provide training to other crematory operators. The board anticipates that two (2) hours of continuing education will be required when renewing a crematory operator license.

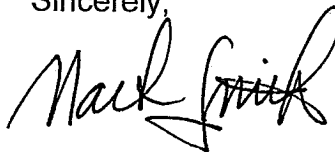
The exact license fee and the number of continuing education hours required will be defined in regulation if SB 506 becomes law.

The board has worked with representatives of CANA in putting together this bill. As previously stated, we have asked for--and have received, input from the KFDA and licensees. That input is included in the way the bill currently reads.

I thank you for the opportunity to be with you today. I will do my best to answer any questions and would ask for your support in approving SB 506 as amended.

Thank you very much!

Sincerely,



Mack Smith, Executive Secretary  
Kansas State Board of Mortuary Arts

enclosure: SB 506 mark-up of requested amendments

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1 branch establishment/crematory license or renewal fee under this section  
2 in lieu of a separate license or renewal fee for each facility.

3 (c) The state board of mortuary arts may license embalmers via en-  
4 dorsement from another state: (1) if the individual has been licensed for  
5 at least five years and has completed at least five consecutive years of  
6 active practice in embalming; (2) has passed the national examination  
7 written by the international conference of funeral service examining  
8 boards; and (3) has not had any adverse action taken against such licensee  
9 by the state board in which licensure is held. The original fee for such  
10 endorsement license and the renewal fee shall be in the amounts fixed  
11 by the board in accordance with the provisions of this section.

12 (d) Fees paid to the board are not refundable.

13 Sec. 7. K.S.A. 65-1760 is hereby amended to read as follows: 65-  
14 1760. As used in this act, unless the context clearly shows otherwise:

15 (a) "Alternative container" means a receptacle, other than a casket,  
16 in which dead human bodies are transported to the crematory and placed  
17 in the cremation chamber for cremation. An alternative container shall  
18 be (1) composed of readily combustible materials suitable for cremation,  
19 (2) able to be closed in order to provide a complete covering for the dead  
20 human bodies, (3) resistant to leakage or spillage, (4) rigid enough for  
21 handling with ease, and (5) able to provide protection for the health,  
22 safety and personal integrity of crematory personnel.

*or consumable*

23 (b) "Authorizing agent" means a person legally entitled to authorize  
24 the cremation and final disposition of specific dead human bodies as de-  
25 fined in K.S.A. 65-1734, and amendments thereto.

26 (c) "Board" means the state board of mortuary arts.

27 (d) "Cremated remains" means all human remains recovered after  
28 the completion of the cremation of a dead human body, which may pos-  
29 sibly include the residue of any foreign matter including casket material,  
30 bridgework or eyeglasses, that was cremated with the dead human body.

31 (e) "Cremation" means the ~~reduction of a dead human body to es-~~  
32 ~~sential elements through direct exposure to intense heat and flame and~~  
33 ~~the repositioning or movement of the body during the process to facilitate~~  
34 ~~reduction, the processing of the cremated remains after removal from the~~  
35 ~~cremation chamber, placement of the processed remains in a cremated~~  
36 ~~remains container and release of the cremated remains to an appropriate~~  
37 ~~party.~~

*mechanical and/or  
or other dissolution  
process that reduces  
human remains to  
bone fragments.  
Cremation includes  
the processing and  
usually includes the  
pulverization of  
the bone fragments.*

38 (f) "Cremation chamber" means the enclosed space within which the  
39 cremation of a dead human body is performed. Such chambers shall be  
40 used exclusively for the cremation of human remains.

41 (g) "Crematory" means a business premises that houses the crema-  
42 tion chamber and holding facility where dead human bodies are cre-  
43 mated. A crematory shall be maintained at a fixed and specific street

*(OVER)*

1 (e) A violation of this section or any provision of this act is hereby  
2 declared to be a class A nonperson misdemeanor.

3 Sec. 13. K.S.A. 65-1768 is hereby amended to read as follows: 65-  
4 1768. (a) The crematory operator in charge of a crematory, located or  
5 doing business within the state, shall apply for and obtain a crematory  
6 license from the board for each crematory.

7 (b) An application for a new license is required if the crematory has  
8 a change in ownership, name, location or a change in the crematory op-  
9 erator in charge. Such application shall be made to the board at least 30  
10 days prior to the change of ownership, name or location or change in the  
11 crematory operator in charge.

12 (c) The crematory license fee and crematory license renewal fee shall  
13 be fixed by the board under K.S.A. 65-1727, and amendments thereto.  
14 The disposition of all funds collected under the provisions of this act shall  
15 be in accordance with the provisions of K.S.A. 65-1718, and amendments  
16 thereto.

17 (d) A crematory license shall expire every two years on a date estab-  
18 lished by the board. To continue operation of a crematory, a crematory  
19 operator in charge shall submit a biennial renewal application form and  
20 the crematory license renewal fee to the board before the expiration date  
21 of such license.

22 (e) A crematory license shall be judged delinquent on midnight of  
23 the expiration date and may only be renewed after that day by payment  
24 of a renewal fee and a reinstatement fee in an amount equal to the re-  
25 newal fee.

26 (f) It is unlawful for any person who is not an operator in charge of  
27 a crematory *or a crematory operator* under this act to operate a crematory  
28 ~~or~~ hold oneself out as operating a crematory *or engage or attempt to*  
29 *engage in the business of crematory operator.*

30 (g) The Kansas university medical center shall be exempt from this  
31 statute for the purpose of cremating remains donated for dissecting, dem-  
32 onstrating or teaching purposes.

33 Sec. 14. K.S.A. 65-1760, 65-1763, 65-1764, 65-1765, 65-1766 and 65-  
34 1768 and K.S.A. 2009 Supp. 65-1727 and 65-1762 are hereby repealed.

35 Sec. 15. This act shall take effect and be in force ~~from and after its~~  
36 ~~publication in the statute book~~ *on July 1, 2011.*

TESTIMONY OF THE SECRETARY OF STATE  
ON SB 508  
DATE: February 16, 2010

Mr. Chairman and Members of the Committee:

The secretary of state appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 508, a bill regarding healthcare card suppliers.

A healthcare card supplier offers discounts on services from participating doctors, pharmacists, etc., who have agreed to accept the card. They are not considered insurance and are not regulated in the State of Kansas. Because of this, there is the potential for fraud and deception on the part of the supplier when they sell the card to consumers. To help protect consumers, the healthcare card supplier is subject to the consumer protection code. A healthcare card supplier is required to file a bond or a surety account with our office to financially protect the consumer in case there has been a violation under the current law. This serves as assurance to the consumer that there will be money available if they were in fact defrauded.

This bill includes six provisions to amend the health care card filing process:

1. It clarifies that the supplier file an annual notice on a form that is prescribed by this office so that we have the correct name, address and contact person.
2. It requires that a healthcare card supplier file a bond with our office, not a surety account. Currently a company may file a surety account in lieu of filing a surety bond. This requires that an asset with a value of \$50,000.00 be placed in the account, but there is no penalty or remedy for what would happen if the asset decreased in value, and there is no provision for the Secretary of State to accept or reject the filing even if the asset used to fund the account was clearly risky. Funding a surety account with a risky investment potentially decreases the available amount for a damaged consumer to collect against. A surety bond is a much safer option than a surety account. A surety bond is more of an "insurance" policy with an annual premium that is payable to any person and the attorney general for the benefit of any person who is violated by the act. We recommend that the surety bond be approved by the attorney general as the attorney general is the one with enforcement power in case there is a violation of the Act.
3. It amends the law so that when a bond is cancelled the surety must give notice to both the secretary of state and the discount card company. Currently the law only requires that notice be given to the Secretary of State and we are then responsible to forward the cancellation on to the company. This seems nonsensical.
4. It clarifies the law to state that the annual due date of the renewal of the application follows the month when the supplier first filed their annual notice with this office. It is currently unclear if this is supposed to be an annual notice based on January 1, or based on the date they first filed with our office.



5. a. It clarifies the requirement to appoint a resident agent. The law requires that if a supplier is going to "sell" a healthcare card they must file not only a bond, but also appoint a resident agent under KSA 60-306. KSA 60-306 requires that a resident agent be appointed every three years. This is very confusing for suppliers in that they have to annually file the bond with us but then remember to file a resident agent appointment every three years.

b. This bill amends current law to say that a supplier who **sells** any discount card be required to name a resident agent as part of their annual filing so that there is no longer a need to keep track of the three year period.

c. For a supplier who does not sell, and does not file the annual notice, this bill maintains the resident agent filing requirement with the three year period. Current law requires that a supplier who "markets, promotes, advertises or otherwise distributes" any discount card be required to file an appointment of resident agent under KSA 60-306, but not a bond. We recommend keeping the three year filing period as prescribed by KSA 60-306, for those suppliers as they are not required to do any type of annual filing under the current law. We have amended SB 508 to clarify the difference between the filings for a supplier who "sells" and for a supplier who "markets, promotes, advertises, or otherwise distributes" a healthcare card. The amendment is attached hereto as exhibit "A" and we ask that the revisor be directed to correct SB 508 accordingly.

6. This bill also updates the name of the fee fund that the filing fee is to be applied to.

I appreciate the opportunity to appear today and would be happy to answer questions.

Sheri L. Smiley, Staff Attorney  
Kansas Secretary of State

**50-1,101. Same; unlawful acts; promotion or sale of discount card by supplier; conditions on; registration of supplier; financial responsibility.**

(a) Any supplier who markets, promotes, advertises or otherwise distributes any discount card in Kansas shall not make misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by such discount card or the access to any range of discounts offered by such discount card.

(b) Any supplier who sells any discount card in Kansas shall:

(1) *File an annual notice with the Secretary of State of the intention to sell the discount card on a form as prescribed by the Secretary of State to be signed under penalty of perjury.*

(2) State in bold and prominent type that such discount is not insurance on all advertisements and on all discount cards;

(3) have a separate contract with each health care provider or network of health care providers listed in conjunction with the discount card;

(4) not make misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by such discount card or the access to any range of discounts offered by such discount card; and

(5)

(A) Except as provided in subparagraph (B), provide each prospective customer before purchase or at the time of the confirmation required by K.S.A. 50-672, and amendments thereto, a written list for each type of service offered in conjunction with the discount card containing the name, address, and phone number of the closest 25 health care providers in the prospective customer's service area that are contractually bound to honor the discount card. The written list of providers may be provided electronically if requested in that format by the prospective customer.

(B) Unless the supplier has complied with subparagraph (A), the supplier of the discount card must provide the customer a 30-day right to cancel and shall mail the written list required by subparagraph (A) of paragraph 4 within seven calendar days of the date of the transaction.

(6) Make available to each customer on an ongoing basis thereafter through a toll-free telephone number, the internet, or in writing upon request, the name, address and phone number of all health care providers in such customer's service area who are contractually bound to honor the discount card.

(7) Maintain a surety bond in the amount of \$50,000 issued by a surety company ~~authorized to do business in this state.~~ *The surety bond shall be submitted to the secretary of state along with the annual notice. Each surety bond shall be approved by the Kansas Attorney General prior to filing.* ~~or establish and maintain a surety account in the amount of \$50,000 at a federally insured bank, savings and loan association or federal savings bank located in this state.~~ Each surety bond and surety account shall be subject to the following:

(A) A copy of the bond ~~or a statement identifying the depository, trustee and account number of the surety account,~~ and thereafter proof of annual renewal of the bond ~~or maintenance of the surety account,~~ shall be filed with the secretary of state *with the annual notice.* Each such filing shall be accompanied by a filing fee of no more than \$250 to cover the cost of filing and administration. Fees received

under this act by the secretary of state shall be deposited in the state treasury to the credit of the information and copy service *services* fee fund.

~~(B) A surety account shall be maintained until two years after the date that the discount card company ceases operations in the state. Funds from any surety account shall not be released to the discount card company without the specific consent of the attorney general.~~

(B) No surety on a discount card company bond shall cancel such bond without giving written notice thereof to the secretary of state *and discount card company*. ~~Whenever the secretary of state receives notice of a surety's intention to cancel a discount card company's bond, the secretary of state shall notify the affected discount card company that, Unless such discount card company files another \$50,000 surety bond with the secretary of state or establishes a \$50,000 surety account on or before the cancellation date of such discount card company's surety bond, then such discount card company will no longer be authorized to do business in this state as a discount card company.~~

(D) The bond ~~or surety account~~ shall be in favor of any person and the attorney general for the benefit of any person who is damaged by any violation of this act, including any violation by the supplier or by any other person which markets, promotes, advertises or otherwise distributes a discount card on behalf of the supplier. The bond shall cover any violation occurring during the time period during which the bond is in effect.

(E) Any person claiming against the bond ~~or surety account~~ for a violation of this act may maintain an action at law against the discount card company and against the surety or trustee of the ~~surety account~~. The aggregate liability of the ~~surety or trustee of the surety account to all persons damaged by violations of this act may not exceed the amount of the surety bond or account.~~

(8) *The month in which the supplier files its first annual notice with the secretary of state is the month in which its filings are due annually thereafter.*

**50-1,103. Same; resident agent; registration requirement.** (a) Any supplier who sells, markets, promotes, advertises or otherwise distributes any discount card in Kansas shall designate a resident agent, who is a resident of Kansas, ~~for service of process, and a registered office in Kansas, for service of process.~~ *such resident agent The supplier who sells any discount card shall register file annually with the secretary of state pursuant to K.S.A. 60-306 and amendments thereto the resident agent's name and registered office address, which shall be a street address, on the annual notice form prescribed by the secretary of state to be signed under penalty of perjury. Any supplier who markets, promotes, advertises or otherwise distributes any discount card in Kansas shall designate a resident agent who is a resident of Kansas for service of process and such resident agent shall register with the Secretary of State pursuant to KSA 60-306 and amendments thereto on forms are prescribed by the Secretary of State.*

(b) *Change of resident agent or registered office address. An appointment shall be amended, in writing, and filed with the secretary of state whenever the resident agent name or registered office address is no longer accurate on a form as prescribed by the secretary of state. Each such filing shall be accompanied by a filing fee of no more than \$75 to cover the cost of filing and administration. Fees received under this act by the*

*secretary of state shall be deposited in the state treasury to the credit of the information services fee fund.*