

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE COMMITTEE.

The meeting was called to order by Chairperson Senator Susan Wagle at 12:00 p.m. on April 10, 2002 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Mr. Norm Furse, Revisor of Statutes
Ms. Emalene Correll, Kansas Legislative Research Department
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee:

Others attending: See attached guest list.

Final action on HB2285 - an act concerning optometry; relating to contact lens

Upon calling the meeting to order, Chairperson Susan Wagle asked the Committee to turn to HB2285 in their books. She stated there were some technical amendments that needed to be made to the bill and asked Mr. Norm Furse, Revisor of Statutes, to explain them.

Mr. Furse said that the main technical amendment could be found on page 3. He stated that what the bill does is separate out for regulatory purposes, the board of examiners in optometry for those persons who are licensed optometrists and the board of healing arts for persons who are licensed to practice medicine and surgery (ophthalmologists). In essence, he stated, this verbiage on page 3 sets out what needs to be done to pull the two boards apart so that the board of examiners in optometry would have control of the persons who are registered as licensees and disciplinary actions if there are violations of this act by their licensees and the board of healing arts would have control over their licensees and disciplinary actions. Mr. Furse stated that in the middle of the balloon, is similar language (see lines 15 thru 25) for the board of healing arts except money is deposited in healing arts fee fund. He suggested that what needs to be done is set up a separate section for the board of healing arts similar to this language for the board of optometry so that pulls that material out of those two entities.

On page 1 of this balloon, the change is just to specify sections 1 to 5 refer to this act, and it may be 1 to 6 when he pulls the healing arts act language out. On page 2 of New Sec. 4., there are two additional items:

1) in line 5 it states, "persons who fall within the scope of section 3, and amendments thereto, may dispense contact lenses through the mail upon meeting..." He ask that the Committee consider limiting this to read after the word mail, "to Kansas residence", since the state of Kansas does not have the authority to say whether it can dispense prescriptions generally through the mail;

2) in lines 33 and 34, it states "refer all to questions relating to eye care for the lenses prescribed to the licensee" and then refers to "licensed to practice medicine and surgery". But here, of course, Mr. Furse said, the act has licensed optometrists and licensed ophthomologists. He suggests that the Committee delete "licensed to practice medicine and surgery".

He then referred to a third item on page 3, lines 12 and 13 stating that when the bill gets recut, it would relate to both boards. He stated, the bill reads, "Upon a finding of any violation of this act or any optometry law in Kansas, the board may assess a civil fine." Currently, both the board of healing arts statutes and optometry licensure act statutes have a civil fine penalty, so the need to repeat "or any optometry law in Kansas" is unnecessary, as there is already a civil penalty similar to this, thus tie it down just to the prescription lens part of the act.

Mr. Furse then passed out the statues for both the healing arts act and the optometry law regarding civil fines of which the optometry law is already covered (in 65.1526), stating this would be considered a technical deletion. A copy of Mr. Furse's balloon is (Attachment 1) attached hereto and incorporated into the Minutes by reference.

Chairperson Wagle then asked if there were questions of Mr. Furse. The lone question came from Senator Brungardt who referred to the interpretation "mail" on page 2, line 5, asking if this referred to businesses such as FedEx and UPS.

The Chair then commented that she does not feel the technical cleanup is controversial. She also reminded the Committee that Mr. Furse wanted an amendment that is not on page 2 adding "to Kansas residence", page 3 striking the words on lines 12 "or any optometry law in Kansas", and the license to practice medicine and surgery on page 2, lines 33 and 34. She then stated that since this is the technical, she would entertain one motion for this cleanup. Senator Seineger then made a motion that the Committee adopt the technical cleanup. It was seconded by Senator Harrington, and the motion carried.

Next the Chair announced that the Committee has been requested to consider several amendments. She stated that first she wanted to put the consumer first and one thing the Committee does as a Public Health Committee is make sure everyone in Kansas has access to care at the best price. She then stated she would pass out all of the amendments and let the Committee act.

The first amendment was requested during the hearing by the Kansas Optometric Association. A copy of this amendment is (Attachment 2) attached hereto and incorporated into the Minutes by reference.

The second is an amendment on page 1 that the Chair requested because she stated, she felt like prescriptions should be readily available to patients for contact lens prescriptions. The Chair mentioned that this was a one page amendment deleting the words "upon request". A copy of this amendment is (Attachment 3) attached hereto and incorporated into the Minutes by reference.

The next three amendments were requested from 1-800-CONTACTS:

The first amendment, found on page 1, Sec. 2 new (d), requests that when ophthalmologists or optometrists are asked to verify a prescription within four hours during regular business hours subsequent to the receipt of the request. A copy of this amendment is (Attachment 4) attached hereto and incorporated into the Minutes by reference.

In the second amendment, also found on page 1, line 24, 1-800-CONTACTS requested that a "period of less than 12 months" be changed to a "period of less than 24 months". A copy of this amendment is (Attachment 5) attached hereto and incorporated into the Minutes by reference.

In the third amendment, 1-800-CONTACTS requested that in New Sec.3, line 41, it has been requested is that instead of the board of optometry regulating the contact lens providers that language is stricken. A copy of this amendment is (Attachment 6) attached hereto and incorporated into the Minutes by reference.

The Chair then announced that Senator Steineger would like to move that we adopt the amendment that strikes "upon request" and this makes it an automatic release for prescriptions. Senator Harrington seconded the motion and the motion carried.

The Chair commented on the remaining amendments stating that the biggest problem the contact lens providers are having from her communication to both sides, is that they are having a problem being regulated by the board of optometry and it is felt that this board would not be fair regulation and the AG was really unacceptable to optometrists, but did feel like if we had to move the regulation they would prefer, and there was a willingness, to be moved to KDHE or to the board of pharmacy. This amendment, the Chair stated, was not being offered before the Committee today.

A discussion ensued among Senators Brungardt, Wagle, Praeger, Haley, Jordan, Harrington, and Barnett, and Ms. Correll and Mr. Furse ranging from interpretation of the law, enforcement mechanism that works but is fair, the need for a funding source, conflict of interest, mail order pharmaceutical dispenser in competition with the pharmacist, co-mingling fees, violation of statute, verification of prescriptions, collection of fees, to if this were moved to the pharmacy board would this change enforcement on civil penalties.

The Chair then announced that again, she does not have an amendment to place the contact lens providers under pharmacy, AG, or KDHE and feels the people would like for the Committee to deal with the question of where is that the fairest place to regulate the mail order contact lens and that it is for this Committee to decide.

The Chair then recognized Senator Barnett who asked if the Board of Healing Arts was discussed and the Chair answered, "Yes, this was a possibility". She stated that she has been visiting with both sides all morning and the optometrist definitely prefer not to have the regulation removed, but, asking Mr. Gary Robbins, in behalf of the Kansas Optometric Association, if the regulation of this were moved, where would he prefer this to go. Mr. Robbins responded with the board of healing arts or pharmacy, assuming all of the penalties and everything stays the same, if you are talking about the registered pharmacies. She then asked 1-800-CONTACTS, that since they do not want to be under the board of optometry. Mr. Steve Kearney, in behalf of 1-800-CONTACTS, responded, any of the above places would be preferable and in order of preference to them would be KDHE and then the board of pharmacy.

A discussion then ensued between Senators Wagle and Salmans and Mr. Furse regarding the registration for a dispenser and the cost according to the way the bill is drafted when it was under the board of optometry. Mr. Furse referred to page 2, line 8, stating the bill reads "registration fees shall not exceed the annual fee for an initial or renewal permit." It was agreed that the dollar amount was \$150.00 which would have to be approved by rules and regs, then it would be back under a state statute.

The Chair then asked for any suggestions from the Committee on what they want to do. Senator Harrington made a conceptual motion to place the regulation under the board of healing arts of dispensers and enforcement and registration, so that the fees would go to the healing arts. Senator Steineger seconded the motion. The motion carried.

The Chair then recognized Mr. Furse who then stated that this would leave the New Sec.4 and those requirements as amended by the Committee, and basically, this would change in New Sec. 5, the registration enforcement from optometry to healing arts.

The next order of business was the Kansas Optometric Association amendments. The Chair suggested that the Committee make sure these were not in conflict with what they just did. She did mention that there were problems on page 1 regarding lenses changing the color of a person's eyes. A motion was made to adopt all of the Kansas Optometric Association's amendments. This was seconded by Senator Steineger. The motion carried.

The Chair then recognized Senator Haley who asked if the Committee had dealt with the first sentence on page 2 in the technical cleanup, to practice medicine and surgery. He stated he remembers dealing with it on line 33, but didn't not remember this being in the motion. The Chair recognized Mr. Furse who stated that this was okay because they have excluded the optometrists in line 43 on page 1, the K.S.A. 65-1505 reference.

The Chair then stated that it has been moved by Senator Praeger that the Committee pass the bill as amended favorably. Seconded by Senator Steineger. The motion carried.

In the final order of business, the Chair stated that there are some issues in the Committee, including occupational therapists, naturopaths, physical therapists, the bill that was heard yesterday, so they would be meeting at a later date. She thanked the Committee for their patience and for working together today.

Adjournment

Adjournment time was at 1:30 p.m.

The next meeting is on call of the Chair.

CONTINUATION SHEET