

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 92

As Amended by House Committee of the Whole

Brief*

SB 92, if enacted, would amend an existing statute to add the Department on Aging to those agencies to which mandated reports of the abuse, neglect, or exploitation of persons who are residents of adult care homes are made and investigated. Currently, the Departments of Social and Rehabilitation Services and Health and Environment are responsible for receiving and investigating reports of abuse, neglect, or exploitation of residents of adult care homes, hospitals, and state institutions.

Further amendments would require the investigation of claims that a resident is in a condition where food and water may not be withheld under amendatory language added to the Act for Obtaining a Guardian or Conservator, or Both. Amendments to a section of the latter act would delete existing language that requires a court order when a ward has not made a declaration or executed a durable power of attorney for health care that includes instruction as to the ward's wishes relating to the withdrawing or withholding of life-saving or life-sustaining care before consent to do so may be given by the guardian. In the place of the existing language, the amendments would require, if the guardian can prove beyond a reasonable doubt the ward's intent to withhold or withdraw life-sustaining procedures:

- The ward is to be afforded full and complete due process, including but not limited to, the right to court-appointed counsel, notice, hearing, subpoena power, discovery, payment of costs for experts if deemed indigent, and the right to a jury trial.
- A presumption in favor of continued treatment of the ward is created.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Any jury trial would require a unanimous verdict.
- In a jury trial, the court-appointed attorney should be from the state's advocacy and protective system, if available.
- Food and water could not be withheld without the express consent of the ward.
- Non-terminal physical or mental disability would not be considered a reason for withholding or withdrawing treatment.

Background

During the 2004 Legislative Session, KSA 39-1404 was amended to clarify the role of the Department on Aging in regard to the protection of adult care home residents from abuse, neglect, or exploitation. However, the Department was not added to the statute that lists agencies responsible for investigating abuse, neglect, or exploitation of residents of certain facilities. SB 92 was proposed to accomplish this change.

The House Committee of the Whole added the amendatory language that concerns the authority of a guardian to consent to the withholding or withdrawing of life-saving or life-sustaining procedures on behalf of a ward. The amendatory language is identical to language proposed in HB 2307 and SB 240.