



Kansas Association of Code Enforcement

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Rep Mark Hutton, Wichita, Chairman
House Commerce, Labor and Economic Development Committee
Kansas Legislature

Re: HB 2665, AN ACT concerning city and county inspections of rental property.
TESTIMONY IN OPPOSITION

Honorable Representative Hutton,

The Kansas Association of Code Enforcement (KACE) is opposed to HB 2665.

KACE has been providing code enforcement training for code enforcement officers in Kansas for 24 years, since organizing in 1992. In 2015, the organization had 99 code enforcement members from 49 municipal and county jurisdictions across the state.

The KACE Board of Directors has authorized this letter and offers any information and assistance that we can to clarify the benefit and need for effective and manageable rental inspection and/or licensing programs. This bill does not support effective and manageable programs.

The wording of the Bill is vague and non-specific and appears to be in contradiction of a Kansas Attorney Generals opinion with cited cases that was written in 2002 (Opinion 2002-16) as well as in contradiction to opinions written in a "4th Amendment - Search and Seizure" review published by the United States Printing Office.

Issues with Section 1. (a):

The requirement to obtain a search warrant when there is a consenting occupant will be unnecessarily burdensome on cities and the courts as well as cost prohibitive. For example (using census data from 2009-2013):

- **The State of Kansas, based on census data from 2009-2013 has approximately 400,794 non-owner occupied units. Assuming only half are cities that have rental inspection programs, 200,794 would be subject to a program inspection. On a three year inspection cycle, approximately 66,944 warrants would have to be issued by Kansas courts every year for those cities to conduct a rental inspection program.**

In addition, the language does not differentiate between interior and exterior inspections. Exterior property inspections from public property, from property curtilage between the street and the front door and from adjacent properties with permission of the property owner do not require warrants and the current language suggests this law would attempt to require warrants for such inspections.

Issues with Section 1. (b)

The wording here could also be construed to forbid an exterior inspection without a warrant for which there is no constitutional basis. In addition, past opinions have exempted interior searches conducted with the consent of the occupant, from 4th amendment protection.

Issues with Section 1. (c)

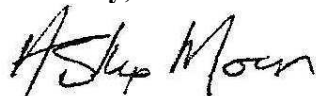
- Determination of whether a tenant is subject to an eviction proceeding will be difficult, if not impossible, not to mention additionally cost prohibitive and bears no relationship to periodic inspections which are scheduled.
- Complaints by a tenant may be retaliatory but that does not negate the responsibility to maintain health and safety for the tenant and other tenants in the building at large.
- Regarding notification, many if not most cities make it a standard practice to notify the owner, as well as the tenant, of periodic inspections, even though owners can reside out of state or even out of the country creating another burdensome cost.
- Many programs require a local agent, authorized by the owner, to receive notifications and the wording does not seem to allow for that.

Rental Property licensing and/or inspection programs have the purpose of a) protecting the health and safety of occupants of rental property and b) discovering and counteracting construction and maintenance practices by property owners that violate code requirements and place the health and safety of tenants, members of the public that are non-owner occupants, at risk.

Responsible property owners/landlords generally welcome periodic inspections since they:

- Help manage and mitigate their risk as a landlord in providing services to the public
- Assist them with early detection of unacceptable tenant practices, thus protecting their investment.
- Assist with marketing their properties as having been inspected for safety and code compliance

Sincerely, on behalf of the Board of Directors of KACE,



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