

Approved March 6, 1987  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at  
Chairperson

3:30 ~~xxx~~/p.m. on February 23, 1987 in room 313-S of the Capitol.

All members were present except: Representatives Bideau and Peterson, who were excused

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Mary Jane Holt, Secretary

Conferees appearing before the committee:

Molly Daniels, Kansas Department on Aging  
Yo Bestgen, Kansas Association of Rehabilitation Facilities  
George Puckett, Kansas Restaurant Association  
Norman Wilks, Kansas Association of School Boards  
George Barbee, Kansas Consulting Engineers, Kansas Lodgine Association, Travel Industry  
Association of Kansas and the Kansas Vocational Association  
Elizabeth Taylor, Kansas Association for Education of Young Children and Kansas Alcohol  
and Drug Addiction Counselors Association  
T. C. Anderson, Executive Director, Kansas Society of Certified Public Accountants  
David Litwin, Kansas Chamber of Commerce and Industry, and Kansas Coalition on Tort Reform  
Jeff Chanay, Kansas Independent Oil and Gas Association  
Richard Mason, Kansas Trial Lawyers Association  
Janet Stubbs, Executive Director, Home Builders Association of Kansas  
Jim Sullins, Kansas Motor Car Dealers Association  
Tom Bell, Kansas Hospital Association  
Representative Heinemann  
Marcia Saville, President, Board of Directors, Kansas Childrens Service League  
Representative Knopp  
Representative Graeber

Hearing on S.B. 27 and S.B. 28

Molly Daniels testified volunteer work provides self-esteem and a feeling of purpose to many retired people. Their contributions are positive not only for themselves but also for the organization and the community. Many senior citizens contribute their time to organizations as directors and officers. The Kansas Department on Aging supports the favorable passage of S.B. 27 and S.B. 28, (see Attachment I).

Yo Bestgen informed the Committee she was testifying in support of S.B. 27 and S.B. 28 which limits the liability of directors, officers and volunteers of nonprofit organizations, (see Attachment II).

George Puckett testified S.B. 27 and S.B. 28 will not cover the volunteers and officers and directors within the Kansas Restaurant Association. He requested the bills be amended to include all volunteers of nonprofit organizations, including those in the 501(c)(6) tax exempt status, (see Attachment III).

Norman Wilks testified in support of the concept of S.B. 27 and S.B. 28. He proposed an amendment to include all organizations exempt from federal income tax pursuant to section 501(c)(3)(4)(5) and (6) of the Internal Revenue Code of 1984, as amended, but not to include medical care facilities as defined in K.S.A. 65-425, and amendments thereto, or in the alternative, all charitable and educational organizations under 501(c), (see Attachment IV).

George Barbee testified in support of amending S.B. 27 and S.B. 28 to include 501(c)(6) organizations, (see Attachment V).

Elizabeth Taylor recommended amending S.B. 27 and S.B. 28 to include 501(c)(6) in addition to 501(c)(3).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 23, 1987.

T. C. Anderson testified that organizations covered by S.B. 27 and S.B. 28 should be expanded to include 501(c)(6) groups, if not all 501(c) groups, (see Attachment VI).

David Litwin testified in support of S.B. 27 and S.B. 28. He recommended amending these bills to include sections 501(c)(5) and (6) of the Internal Revenue Code, (see Attachment VII).

Jeff Chanay recommended amending the bills to include all 501(c) organizations regardless of classification, (see Attachment VIII).

Richard Mason testified in support of the concept of S.B. 27 and S.B. 28, but opposed the bills because it is inappropriate to provide carte blanche immunity to any class of individuals. If the definition of charitable organizations is amended to include 501(c)(4)(5) and (6), he recommended an amendment to require organizations to carry a minimum general liability insurance coverage.

Janet Stubbs urged the Committee to amend S.B. 27 to include 501(c)(6) entities, and to recommend the bill for passage, (see Attachment IX).

Jim Sullins testified in support of an amendment to include 501(c)(6) organizations.

Ron Smith testified the Kansas Bar Association generally supports both S.B. 27 and S.B. 28. He stated both bills are exceptions to the comparative negligence rule, (see Attachment X).

Tom Bell proposed an amendment covering hospital volunteers who are not directly involved in patient care.

Testimony was received from Bob Runnels, Executive Director, Kansas Catholic Conference, supporting passage of S.B. 28, (see Attachment XI).

The hearing was closed on S. B. 27 and S.B. 28.

Hearing on H.B. 2320 - Release of persons unable to make bond under municipal court procedure

Representative Heinemann testified that H.B. 2320 amends K.S.A. 12-4213, that the person shall be released on the person's personal recognizance to appear at a later date if the person has not made bond, has not appeared before the municipal court within 12 hours after arrest and if no warrant has been issued for the person's arrest.

The hearing was closed on H.B. 2320.

Hearing on H.B. 2269 - Certain mortgages declared void.

Representative Heinemann testified every four years the legislature adopts a proposal that voids all mortgages and deeds which have been filed prior to a certain date.

The hearing was closed on H.B. 2269.

Hearing on H.B. 2317 - Adoption social assessment and background information requirements

Representative Heinemann explained the bill exempts a brother, sister, grandparent, aunt or uncle from obtaining an assessment by a court designated social worker of the advisability of the adoption.

Marsha Saville testified in opposition of H.B. 2317. She stated it was wrong to assume that all brothers, sisters, grandparents, aunts and uncles are qualified to serve as parents; that obtaining a home assessment is not cumbersome for a potential adoptive parent; and that home assessments are not unduly costly, (see Attachment XII).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 23, 1987.

The hearing was closed on H.B. 2317.

Hearing on H.B. 2251 - Overpayment of child support credited toward future support

Representative Knopp testified this bill amends the income withholding act relating to computation of arrearage. The amendment states that in computing whether there is an amount due and unpaid under an order of support, any amounts which have been paid in excess of that specified in the order of support shall be credited against support thereafter becoming due pursuant to such order.

Jim Robertson of Social and Rehabilitation Services submitted an amendment which clarifies that the support payments have to be current before any amount can be credited forward, (see Attachment XIII).

Hearing on H.B. 2288 - Availability of S.R.S. file to guardian ad litem before hearing under code for care of children.

Representative Graeber testified H.B. 2288 requires Social and Rehabilitation Services provide the child's guardian ad litem any records or reports in their custody, which are necessary to the conduct of a hearing, not less than 48 hours, excluding Saturdays, Sundays and legal holidays, before a hearing pursuant to the code for care of children.

The Chairman announced the remaining bills on the agenda for today would be heard at a later date.

A motion was made by Representative Joan Wagon to introduce as Committee bills, a bill request by Representative Vancrum dealing with civil procedure relating to redemption of real property, and a bill request by the Sedgwick County Law Library Committee amending portions of the Johnson County, Wyandotte County and Sedgwick County library laws. The motion was seconded by Representative Whiteman. The motion passed.

The meeting was adjourned at 5:10 p.m. The next meeting will be Tuesday, February 24, 1987 at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE Feb. 23, 1987

HOUSE JUDICIARY

NAME

ORGANIZATION

ADDRESS

<u>NAME</u>	<u>ORGANIZATION</u>	<u>ADDRESS</u>
Elizabeth Taylor	Ks. Alcoholism & Drug Addiction Counselors Ks. Assn. for the Education of Young Children	Topeka
Jim R. Sunda	United Way	Topeka
Ye Beston	Ks. Assn. of Rehab. Facilities	Topeka
Jim Robertson	CSE/SRS	Topeka
Joan Knox	Employment Resource Center	Topeka
HAROLD PITTS	KCOA	Topeka
Marcia Saville	Kansas Children's Service League	Topeka
Norm Wilks	Ks. Assoc. of School Boards	TOPEKA
Molly Daniels	Ks. Dept on Aging	Topeka
Del. [unclear]	KCCF	Topeka
GEORGE RUCKETT	KS RESTAURANT ASSOCIATION	WICHITA
Jeff Chaney	Ks. Independent Oil & Gas Assn.	Topeka
Kevin M. Hill	Student	"
George Barbee	Barbee & Assoc's	Topeka
John Miller	Kansas Legal Assistants Society	Topeka
John Blythe	Ks. Farm Bureau	Manhattan
JIM SULLINS	Ks MOTOR CAR DEALERS ASSN.	TOPEKA
JANET STUBBS	Home Bldrs. ASSN. of Ks.	"
Richard Mason	KTIA	"
T.O. Anderson	KSEPA	Topeka
Chip Wheelen	McGill & Associates	Topeka
WALTER PUNN	EISO GA	✓
MARY E. TURKINGTON	Kansas Motor Carriers Assn	Topeka
Tom Whitaker	Ks Motor Carriers Association	Topeka
KEITH R. LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS	"



TESTIMONY ON SB 27 and SB 28  
TO  
HOUSE JUDICIARY COMMITTEE  
BY  
KANSAS DEPARTMENT ON AGING  
FEBRUARY 23, 1987

Bill Summaries:

SB 27 would limit civil liability of directors and officers of certain nonprofit organizations.

SB 28 would limit civil liability of volunteers of certain nonprofit organizations.

Bill Briefs:

SB 27:

- 1) Directors or officers of certain charitable nonprofit organizations would not be held liable in a civil action for damages arising from their activities as individual directors or officers or as a board unless that conduct was willful or wanton or intentionally tortious.
- 2) Negligent or wrongful acts or omissions of directors or officers would be imputed to the organization.
- 3) Act would apply to officers and directors of charitable or educational organizations exempt from federal income tax under IRC §401(c)(3).
- 4) Act would apply only to causes of action occurring on or after July 1, 1987.

SB 28:

- 1) Volunteers of certain nonprofit charitable organizations would not be held liable in a civil action for damages arising from their activities as volunteers unless that conduct was willful or wanton or intentionally tortious.
- 2) Negligent or wrongful acts or omissions of volunteers would be imputed to the organization.
- 3) Act would apply to volunteers of charitable or educational organizations exempt from federal income tax under IRC §401(c)(3) except for medical care facilities.
- 4) Act would apply only to causes of action occurring on or after July 1, 1987.

Bill Testimony:

As the only state agency charged directly to work with and on behalf of the more than 400,000 Kansans that are age 60 and over, the Kansas Department on Aging is in a unique position to detect the needs of elder Kansans as they approach and enter the retirement years.

From KDOA's contact with various senior organizations and agencies, it is clear that many Kansans turn to volunteering after retirement, after the death of a spouse, or after children have grown up and moved out of the home. Volunteer work provides self-esteem and a feeling of purpose to many who face this type of transition later in life. Regardless of the motivation of the individual volunteer, their contributions are positive not only for themselves but also for the organization and ultimately the community. For this reason, any efforts to encourage volunteering are applauded by KDOA.

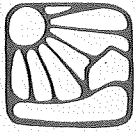
KDOA therefore supports SB 28. At a time when the issue of liability insurance is becoming a major news item, SB 28 will help to alleviate the fear of those who are afraid to volunteer due to the possibility of being held personally liable for damage awards.

For the same reasons, KDOA supports SB 27. Many senior citizens contribute their time to organizations as directors and officers; they have the same fears of personal liability. SB 27 reduces those fears. Furthermore, SB 27 is a much needed asset to the many organizations providing services for seniors, who have difficulty finding or retaining directors and officers because of these same concerns.

Recommended Action:

The Kansas Department on Aging supports the favorable passage of SB 27 and 28.

MD:mj  
2/20/87



# Kansas Association of Rehabilitation Facilities

Jayhawk Tower • 700 Jackson • Suite 802  
Topeka, Kansas 66601 • 913-235-5103

TO: House Judiciary Committee

FROM: Kansas Association of Rehabilitation Facilities (KARF)

RE: SB 27 - Limiting liability of directors and officers of nonprofit organizations.

SB 28 - Limiting liability of volunteers of nonprofit organizations.

DATE: February 23, 1987

## 1.0 Position Statement

1.1 KARF supports SB 27 and SB 28 which limits the liability of directors, officers and volunteers of nonprofit organizations.

## 2.0 Justification

2.1 The cost of directors and officers insurance has increased by 58% from 1985 to 1986 as reflected in a survey of twenty KARF facilities.

2.1.1 Limiting liability of directors, officers and volunteers could potentially impact liability insurance rates and reduce a trend of spiraling costs.

2.2 Individuals are less willing to serve on a Board of Directors or as a volunteer due to fear of liability.

2.2.1 Limiting liability of directors, officers and volunteers will increase the ability of the nonprofit organizations to attract valued community participants.





The Kansas Restaurant Association

359 South Hydraulic, Wichita, Kansas 67211 (316)267-8383

My name is George Puckett, and I represent the Kansas Restaurant Association, a statewide group of foodservice managers and owners representing the foodservice industry. Our state headquarters is located in Wichita, and it is with some degree of embarrassment that I admit, until last week, I believed that SB 27 and SB 28 protected our volunteer officers and directors within our association, which has a 501(c)(6) tax-exempt status. In fact, our staff is in the process of notifying our members today that they are not protected as volunteer leaders who represent their trade, and the same privilege apparently does not exist with protecting one's career in the same fashion one protects his/her school or church, according to SB 27 and SB 28. This is extremely unfair in my opinion, and will come as a big surprise to our members who currently are under the impression these bills will help protect them as volunteer leaders. I again emphasize, our directors and officers are voluntary, who are most likely the same important individuals who take an active part in the leadership of their churches, schools, and community chests, etc., as well. Our state association has a tax exempt status and has always been defined as an educational organization. No one from the foodservice industry is required to participate in KRA and, as with school or church committees, our leadership consists of those same important individuals who contribute their time.

KRA discussed the need for directors and officers (D & O) insurance in 1984, following 51 years of not having this type of liability insurance. We decided to purchase a \$1,000,000 liability policy in 1985, for a fee of approximately \$740.00. At the end of 1985, no claims having been made, KRA was advised by our insuror, that the D & O premium would not be renewable until a later date, due to the problems in the insurance industry. We waited, having no D & O insurance in 1986, until November 19, 1986, when our insuror contacted us advising that our carrier was ready to re-activate our policy for the annual fee of \$6,615.00, for 1987, or for \$13,436.96, if we wanted to make it retroactive back to the end of 1985. Naturally, our first reaction was to laugh,... until we realized what a non-laughing matter it was! To date we have still been unable to find a new carrier at an affordable price to a small state trade association. We desperately need the assistance of our state legislature, now!

Therefore, KRA is requesting that SB 27 and SB 28 be amended to include all volunteers of non-profit organizations, including those in the 501(c)(6) tax-exempt status.

Attachment III  
House Judiciary 2/23/87

KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

TESTIMONY ON SENATE BILL NO. 27 & 28  
BEFORE THE HOUSE JUDICIARY COMMITTEE

BY

NORMAN D. WILKS, DIRECTOR OF LABOR RELATIONS  
Kansas Association of School Boards

February 23, 1987

Mr. Chairman, members of the committee, thank you for the opportunity to appear on behalf of the Kansas Association of School Boards.

We support the concept of Senate Bill 27 and 28. We believe directors, officers, and volunteers of charitable and educational organizations should be free from individual liability. The organization should continue to be responsible for the acts of its officers, directors, and volunteers.

The concept of the bill should be applied to all charitable and educational organizations, or the alternative organizations under 501(c)(3)(4)(5) and (6). The concept of limiting individual liability to willful or wanton misconduct, or intentional tortious conduct is beneficial to all 501(c) organizations. Civic leagues, labor organizations, business leagues, chambers of commerce, volunteer clubs, etc., should be included.

In our opinion, section 1(a)(1) of the bill should be amended to include all organizations exempt from federal income tax pursuant to section 501(c)(3)(4)(5) and (6) of the Internal Revenue Code of 1984, as amended, but not to include medical care facilities as defined in K.S.A. 65-425, and amendments thereto, or, in the alternative, all charitable and educational organizations under 501(c).

We support passage of the bill with the above amendment.

## STATEMENT

DATE: February 23, 1987  
TO: House Judiciary Committee  
FROM: George Barbee, President  
RE: SB-27 and SB-28

Mr. Chairman and members of the Committee, my name is George Barbee and I am president of Barbee & Associates, an association management company. We represent four associations that are classified by the Internal Revenue Service as 501 (C)(6), which are non-profit tax exempt organizations. I appear today on behalf of the Kansas Consulting Engineers, the Kansas Lodging Association, the Travel Industry Association of Kansas and the Kansas Vocational Association to urge you to expand the provisions of SB-27 and SB-28 to include 501 (C)(6) organizations.

These bills presently include 501 (C)(3) organizations which may be a few professional associations, but generally are educational or fraternal organizations or churches. There is little difference in some of the 501 (C)(3) organizations and those under 501 (C)(6), but the benefits are that those that are organized as a (C)(3) receive a bit more favorable tax treatment in the tax codes.

501 (C)(6) organizations are defined as "business leagues, chambers of commerce, real-estate boards, boards of trade or professional footballs leagues not organized for profit and no part of the net earnings which enures to the benefit of any private shareholders or individual." The tax code also defines a business league as an "association of persons having some common business, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons."

It has become very difficult to convince quality volunteers to serve on our boards of directors in light of the current litigation crisis that is being experienced in America. A situation that has caused associations to find directors and officers insurance rates to increase as much as 400% in the last three years, if you could find a company to write it at all. Most associations simply cannot afford the cost and directors are reluctant to expose themselves to potential litigation.

We are not asking that a wronged person be barred from taking action against the association but rather that the directors and volunteers on committees be immune. The association would still be subject to action in civil cases.

I do not believe that the measure would affect the cost of insurance or the availability because the association would continue to be responsible for its acts. Inclusion of those that are organized as a (C)(6) would just provide the directors, officers and volunteers with some shelter that would allow associations the ability to recruit from a broader base the quality volunteers.

On behalf of the Kansas Consulting Engineers, the Kansas Lodging Association, Travel Industry Association of Kansas and the Kansas Vocational Association, I urge you to include 501 (C)(6) organizations within both SB-27 and 28.

Thank you for the opportunity to appear today and if you have any questions, I would be glad to answer them.



# Kansas Society of Certified Public Accountants

FOUNDED OCTOBER 17, 1932

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460

KANSAS HOUSE JUDICIARY COMMITTEE

SBs 27 AND 28

MONDAY, FEBRUARY 23, 1987

Mr. Chairman, members of the committee. I am T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants.

I appear before you today to ask that the organizations covered by Senate Bills 27 and 28 be expanded to include 501 (c)(6) groups, if not all 501 (c) groups.

Mr. Chairman, the volunteers and officers and directors of the Kansas Society are an integral part of the success of the KSCPA. In fact our annual audit report contains a footnote which reads, "A substantial portion of the Society's functions are performed by unpaid volunteer officers and committees. The value of this contributed time is not reflected in the accompanying financial statements as it is not susceptible to objective measurement or valuation."

However, I can assure you that without volunteers, the Kansas Society, would not be the active organization it is today. Do the officers, directors and volunteers worry about their potential liability resulting from KSCPA service? I can tell you one director asked for a copy of our errors and omissions policy prior to agreeing to serve. I can also assure you our entire Board of Directors spent over 2 hours debating which policy we should purchase.

Mr. Chairman, our situation may be unique, but I don't think so. We also have a 501 (c)(3) Educational Foundation. Why should its officers, directors and volunteers be exempt, while some of the same people would not be for their activities with the Society.

Finally, I'm concerned for our volunteers and directors because of what happened to me as a member of the U.S.D. 501 Board of Education.

Being sued individually for \$300 million was an interesting experience. Its some times difficult to get a bank loan in such situations. It was impossible to sell real estate other than the place of residence.

I'm hopeful the committee will see fit to expand SBs 27 and 28.

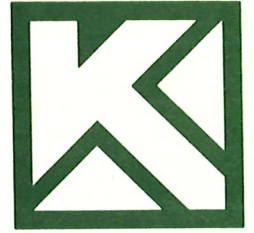
Thank you.

Attachment VI  
House Judiciary 2/23/87

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 27 and SB 28

February 23, 1987

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Judiciary Committee

by

David Litwin

Mr. Chairman, members of the committee. My name is David Litwin, representing the Kansas Coalition for Tort Reform and the Kansas Chamber of Commerce and Industry. We appreciate the opportunity to testify in support of SB 27 and SB 28.

The Kansas Coalition for Tort Reform is a federation of diverse groups that share the view that certain changes in our civil justice system are needed for two general purposes: 1) to make that system more efficient, more just, and less costly, and 2) to provide, over the long term, a more stable environment that would permit the writing of high quality liability insurance at affordable rates.

The Coalition's membership includes the following: Kansas Chamber of Commerce and Industry; Kansas Farm Bureau; Kansas Contractors Association; Independent Insurance Agents of Kansas; Kansas Railroad Association; Wichita Area Chamber of Commerce; Kansas Motor Carriers Association; Kansas Society of Architects; Kansas Medical Society; Kansas Hospital Association; Associated General Contractors of Kansas; Kansas Association of Broadcasters; Kansas Grain and Feed Dealers Association; Kansas Association of Property and Casualty Insurance Cos., Inc.; Kansas Consulting Engineers; Kansas Engineering Society; Kansas Motor Car Dealers Association; Kansas Lodging Association; Kansas Petroleum Council; Kansas Independent Oil and Gas Association; American Insurance Association; Kansas League of Savings Institutions; Wichita Independent Business Association; Western Retail Implement and Hardware Association; Alliance of American Insurers; Kansas Telecommunications Association; National Federation of Independent Business/Kansas; Merrell Dow Pharmaceuticals, Inc., Overland Park; Hutchinson Division, Lear Siegler, Inc., Clay Center; Becker Corporation, El Dorado; The Coleman Co., Inc., Wichita; FMC Corporation, Lawrence; Puritan-Bennett Corp., Overland Park; and Seaton Media Group, Manhattan.

SB 28 would extend to volunteers of charitable and educational organizations protection from liability similar to that which SB 27 would apply to their directors and officers. The two bills are complementary and, we feel, are an appropriate response to the increasing difficulty that nonprofit organizations are finding in attracting and retaining qualified people as board members and workers. This problem arises due to the spreading fear of lawsuits. Many solid citizens would like to donate their time and expertise to worthy nonprofit causes, but in our increasingly lawsuit-conscious society they often feel it's too much to ask that they also put their personal assets and income at risk. Adequate insurance is too often unavailable or unaffordable.

However, we do ask that the class of organizations that would be helped by these bills be expanded to include, in addition to 501(c)(3) charitable and educational organizations, labor, agricultural, and business organizations/chambers of commerce, of the types described in sections 501(c)(5) and (6) of the Internal Revenue Code. These organizations are also increasingly finding similar difficulties in attracting and retaining qualified volunteer board members and other workers. Their missions may not be, strictly speaking, charitable or educational, but they are no less essential to the orderly and vigorous functioning of our society. If they are hobbled by inability to find the people needed to do their work on a volunteer basis, we are all, in the long run, the losers.

It's important to emphasize that we are not suggesting that the organizations themselves should be exempt from liability. To the contrary, as both SB 27 and SB 28 explicitly state, their liability would not be affected by these bills, and the negligence of a volunteer would be imputed to the organization for the purpose of apportioning liability under comparative fault principles.

Thank you again for this opportunity. If there are any questions, I will be happy to answer them.



**KANSAS INDEPENDENT OIL & GAS ASSOCIATION**

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

February 24, 1987

TO: House Committee on the Judiciary

RE: SB 27 & SB 28

KIOGA wishes to make a brief appearance on SB 27 and SB 28 which would limit civil liability to directors and officers of certain non-profit organizations (SB 27) and to volunteers of non-profit organizations (SB 28).

KIOGA is a 50 year old 501(c)(6) organization. It has a 60-man Board of Directors and it functions through its many volunteer members and committees.

KIOGA is compelled to pay in excess of \$1,000 annually for liability insurance for officers, directors and volunteers, only because of the fear that someone in these days of everyone suing everyone else on a whim, will file a cause of action against the KIOGA officers, directors or volunteers.

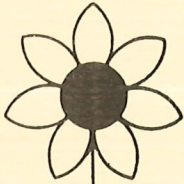
We would urge the Committee to consider dropping the reference to sub-section (3) of the IRS list of defined exempt organizations and merely extend SB 27 and SB 28 to all Section 501(c) organizations regardless of classification.

Thank you for your consideration.

Jeffrey Chanay  
for KIOGA

Attachment VIII  
House Judiciary 2/23/87





# HOME BUILDERS ASSOCIATION OF KANSAS, INC.

Executive Director  
JANET J. STUBBS

## OFFICERS

*President*  
RICHARD HILL  
3321 Valleywood Drive  
Manhattan, Kansas 66502  
(913) 539-2309

*1st Vice President*  
M. S. MITCHELL  
1215 Forest  
Wichita, Kansas 67203  
(316) 265-9812

*Treasurer*  
BOB HAWORTH  
South Industrial Area 348  
East Ave. A  
Salina, Kansas 67401  
(913) 823-7168

*Secretary*  
TOM WOLTKAMP  
1725 Grove  
Topeka, Kansas 66614  
(913) 233-1448

H.B.A. ASSOCIATIONS  
Central Kansas  
Dodge City  
Hutchinson  
Manhattan  
Montgomery County  
Pittsburg  
Salina  
Topeka  
Wichita

PAST PRESIDENTS  
Lee Haworth 1965 & 1970  
Warren Schmidt 1966  
Mel Clingan 1967  
Ken Murrow 1968  
Roger Harter 1969  
Dick Mika 1971-72  
Terry Messing 1973-74  
Denis C. Stewart 1975-76  
Jerry D. Andrews 1977  
R. Bradley Taylor 1978  
Joel M. Pollack 1979  
Richard H. Bassett 1980  
John W. McKay 1981  
Donald L. Tasker 1982  
Frank A. Stuckey 1983  
Harold Warner, Jr. 1984  
Joe Pashman 1985  
Jay Schrock 1986

TESTIMONY FOR  
HOUSE JUDICIARY COMMITTEE  
FEBRUARY 23, 1987

BY  
JANET J. STUBBS, EXECUTIVE DIRECTOR  
HOME BUILDERS ASSOCIATION OF KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS JANET STUBBS, EXECUTIVE DIRECTOR FOR HOME BUILDERS ASSOCIATION OF KANSAS. I AM APPEARING TODAY TO REQUEST THAT ASSOCIATIONS WITH 501(C)(6) TAX STATUS BE INCLUDED IN THIS LEGISLATION.

THE MEMBERS OF THE BOARD OF DIRECTORS OF HBAK ARE VOLUNTEER MEMBERS APPOINTED TO SERVE IN THEIR CAPACITY ON OUR BOARD. THEY RECEIVE NO COMPENSATION OR EXPENSE REIMBURSEMENT. THEREFORE, WE ARE EXPECTING THEM TO CONTRIBUTE THEIR TIME AND TRAVEL EXPENSES AS WELL AS EXPOSE THEMSELVES TO LAWSUITS FOR DECISIONS THEY MAKE WHILE FULFILLING THEIR RESPONSIBILITIES AS DIRECTORS.

WITHOUT PROTECTION PROVIDED BY SB 27, ASSOCIATIONS SUCH AS OURS WILL FIND IT INCREASINGLY DIFFICULT TO OBTAIN BOARD MEMBERS. THEREFORE, WE URGE YOU TO AMEND SB 27 TO INCLUDE 501(C)(6) ENTITIES AND RECOMMEND THE BILL FOR PASSAGE.



Attachment IX  
House Judiciary 2/23/87



February 23, 1987  
SB 27

**KANSAS BAR  
ASSOCIATION**

1200 Harrison  
P.O. Box 1037  
Topeka, Kansas 66601  
(913) 234-5696

Mr. Chairman. Members of the House Judiciary Committee. I am

Ron Smith, KBA Legislative Counsel.

KBA supports this legislation as an appropriate response to the ability of nonprofit corporations to attract and keep qualified directors and officers for their non-paid positions.

It should be noted that subsection (b) of SB 27 is an exception to the comparative negligence statute in Kansas, KSA 60-258a, says that every joint tortfeasor is liable to the claimant in a percentage to be determined by the trier of fact based on the evidence. From a practical point, while you are relieving the individual officer or director of liability for ordinary negligence if not otherwise required to be insured by law, that portion of the total negligence to the claimant imputed to the officer or director is to be picked up by the "charitable organization."

However, not to have subsection (b) would implement a partial charitable immunity contrary to the 1956 Noel v. Menninger Foundation case which abolished charitable immunity.

If the appropriate circumstances arise, the charitable organization might allege that the legislature has given partial immunity to

some individuals solely because of their relationship with the codefendant charitable organization that is not burdened upon for-profit corporations, or other nonprofit corporations. In other words, this exception to the general statute may cause the charitable organization to pay a greater verdict than it would otherwise be required under KSA 60-258a.

Example: Assume a Director of a nonprofit day care center hires an employee who has worked around children before, and has been inattentive in the past. The director by checking references could have determined such propensity. A child is incorrectly supervised and is severely injured at the day care center. The child has \$100,000 of damages. The jury determines that the director was 50% negligent for hiring the employee, the corporation itself was 25% vicariously liable, and the employee was 25% negligent because of the carelessness.

1. If the day care center was a for-profit corporation, under KSA 60-258a the director (or D/O insurance) pays half the verdict, and the corporation pays only 25%. The employee is responsible for 25%. Child collects \$25,000 from the corporation and may or may not collect from the director or the employee.
2. If the corporation is a not-for-profit filed under Section 501(c)(3), then under SB 27 the corporation pays all the liability of the director and the corporation: \$75,000.

Whether this difference in treatment will be constitutional is, of course, difficult to predict. Certainly the important thing is to encourage persons to help guide and work for nonprofit corporations, and this change in the law may be needed for that purpose, and to that end KBA supports the bill.



**KANSAS BAR  
ASSOCIATION**

1200 Harrison  
P.O. Box 1037  
Topeka, Kansas 66601  
(913) 234-5696

February 23, 1987  
SB 28

Mr. Chairman. Members of the House Judiciary Committee. I am  
Ron Smith, KBA Legislative Counsel.

The Kansas Bar Association generally supports this legislation conferring limited civil liability on volunteers performing services for charitable organizations.

This legislation comes from the 1986 interim studies on Tort Liability. While the intent is clear and worthwhile, the language of the bill itself needs some work.

It should be pointed out that it is only the volunteer to which limited immunity for ordinary negligence is granted under the bill; the bill does not grant immunity to the charitable organization. In fact, the charitable organization must absorb the percentage of negligence charged to the immune volunteer. As such, this is an exception to the several liability rule of KSA 60-258a. The legislature does so, of course, to insure adequate volunteer services to certain 503(c)(3) corporations.

KBA generally supports the bill's concept. Such immunity should be granted carefully. We suggest the following amendments in conceptual form:

1. The definition of "volunteers" in line 30 should not include professionals exercising independent professional judgment directly for the nonprofit corporation. This exclusion should include all licensed professionals included in the Professional Corporation Act. We offer several reasons:

(1) We fundamentally believe that the provision of professional services to a nonprofit corporation by a licensed professional should not alleviate that professional of the consequences of his or her negligence. Professionals giving their time and talents to nonprofit organizations do so for a variety of reasons, but should not have lower standards of care for the professional work they do for the 503(c)(3) corporation. The nonprofit corporation itself can make agreements with professions for indemnification in certain instances which act as a form of immunity. However, we do not think state statutes should make that determination.

(2) To the extent the professional is negligent, that person's share of negligence contributing to the total negligence is absorbed by the nonprofit corporation, which means that the nonprofit corporation is going to be liable for the professional's malpractice.

Example: If an architect negligently designs a building for the YMCA, and it falls down and hurts a customer, under the customer will sue the YMCA and the architect. Comparative negligence will apportion liability. Under SB 28, the YMCA would be fully liable for the architect's professional malpractice.

(3) To the extent the professional who is "volunteering" talents to the nonprofit corporation is a health care provider, any negligence committed

hereunder is an exception to liability under our Medical Malpractice Statutes.

2. Subsection (b) also is unclear as to what liability a volunteer has regarding insurance if that volunteer is supposed to carry \$25,000 minimum auto insurance, and does not. Where public policy requires insurance up to stated limits, the volunteer should be liable to those limits. Again, if the volunteer isn't liable, the nonprofit organization is going to pick up the tab.

3. Finally, KBA does not advocate certain minimum insurance requirements; the decision to insure and limits of coverage ought to still be with the governing body of the entity, or the volunteer.

TESTIMONY  
KANSAS CATHOLIC CONFERENCE

HOUSE JUDICIARY COMMITTEE  
S.B. 28 - February 23, 1987  
3:30 p.m.

Mr. Chairman, and members of the Senate Judiciary  
Committee:

My name is Bob Runnels. I am Executive Director of  
the Kansas Catholic Conference.

I come today to speak in support of Senate Bill 28.  
This bill reaches and serves a greater need than a similar  
bill (S.B. 27) which covers only Volunteer 501(c)(3) Board  
of Director members.

Voluntarism is unique to the United States ... no  
other country in the world has developed within its people  
the spirit of giving of time and money as in our country.  
Certainly this is a mark of the goodness of our people ...  
yes even more it is a sign of the greatness of our citizens ...  
it is a strong underpinning of our Republic.

Do people who give so freely to charitable organizations  
deserve a measure of protection under law ... protection from  
harassment suits ... I think so.

I ask that Senate Bill 28 be reported favorably for  
passage.

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Attachment XI  
House Judiciary 2/23/87

TESTIMONY ON HOUSE BILL 2317

by Marcia Saville  
President of the Board of Directors of  
Kansas Children's Service League

Before House Judiciary Committee  
February 23, 1987

Thank you Mr. Chairman and Members of the Committee. My name is Marcia Saville and I am the President of the statewide board of directors of Kansas Children's Service League. KCSL is a private non-profit agency providing a wide range of services to children and their families. We have over 90 years of experience with adoption in Kansas. That experience includes conducting home assessments of potential adoptive parents, placing children for adoption, providing counseling for adoptive families and their children, and assisting adult adoptees who are searching for information about their background.

I appear today on behalf of KCSL to oppose House Bill 2317. Although we are certain of the good intentions behind this bill, we fear that in practice it will take away some valuable protections for children.

There are three reasons we object to the bill. First and foremost, we believe it is wrong to assume that all brothers, sisters, grandparents, aunts and uncles of children are qualified to serve as parents of those same children. Given our society's increasing



knowledge of the extent of physical abuse, sexual abuse and emotional abuse imposed on children by their relatives, we think that an adoptive home assessment of a relative is essential for the protection of the child. In most instances, we are confident that the biological parents who would choose to have a relative adopt their child would make a wise and careful decision. But, in our experience, we do see instances of relatives putting undue pressure on the biological parent to turn the child over to them for adoption. And very young parents especially may find it hard to resist a relative's plan, even though such a plan may not be in their child's best interest.

The second point we would like to make is that obtaining a home assessment is not cumbersome for a potential adoptive parent. One visit to the home by a licensed social worker or child-placing agency is all that is required. Particularly in the case of older children--who are often the subjects of relative adoptions--even that one visit gives the child the opportunity to object to being adopted by a relative who has, for example, sexually abused him or her.

Our third point is that home assessments are not unduly costly. It is possible to obtain an assessment for as little as \$100 or \$150. And if cost were a barrier for a potential adoptive family, it is our

understanding that the court can order SRS to prepare the assessment at no cost to the family. A minimal investment of funds at the outset, prior to an adoption, seems a small price to pay to provide some minimal protection to children who will be inheriting new parents for life.

In conclusion, we think the current statute requiring a brother, sister, grandparent, aunt or uncle to obtain an adoptive home assessment should be retained. Even if no problems are found in 90% of relative adoptions, we think the requirement is an essential protection for the rest of the cases where an objective assessment may alert the court to relatives who would not make good parents.

Thank you.

## HOUSE BILL No. 2251

By Representative Knopp

2-10

0017 AN ACT amending the income withholding act; relating to  
0018 computation of arrearages; amending K.S.A. 1986 Supp. 23-  
0019 4,106 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1986 Supp. 23-4,106 is hereby amended to  
0022 read as follows: 23-4,106. As used in K.S.A. ~~1985~~ 1986 Supp.  
0023 23-4,105 through 23-4,118, *and amendments thereto:*

0024 (a) "Arrearage" means the total amount of unpaid support  
0025 which is due and unpaid under an order of support, based upon  
0026 the due date specified in the order for support or, if no specific  
0027 date is stated in the order, the last day of the month in which the  
0028 payment is to be made. *In computing whether there is an*  
0029 *amount due and unpaid under an order of support, any amounts*  
0030 *which have been paid in excess of that specified in the order of*  
0031 *support shall be credited against support thereafter becoming*  
0032 *due pursuant to such order.*

and any amount past due

0033 (b) "Income" means any form of periodic payment to an  
0034 individual, regardless of source, including but not limited to  
0035 wages, salary, trust, royalty, commission, bonus, compensation as  
0036 an independent contractor, annuity and retirement benefits and  
0037 any other periodic payments made by any person, private entity  
0038 or federal, state or local government or any agency or instru-  
0039 mentality thereof. "Income" does not include: (1) Any amounts  
0040 required by law to be withheld, other than creditor claims,  
0041 including but not limited to federal and state taxes, social secur-  
0042 ity tax and other retirement and disability contributions; (2) any  
0043 amounts exempted by federal law; (3) public assistance pay-  
0044 ments; and (4) unemployment insurance benefits except to the  
0045 extent otherwise provided by law. Any other state or local laws

0046 which limit or exempt income or the amount or percentage of  
0047 income that can be withheld shall not apply.

0048 (c) "Obligee" means the person or entity to whom a duty of  
0049 support is owed.

0050 (d) "Obligor" means any person who owes a duty to make  
0051 payments under an order for support.

0052 (e) "Order for support" means any order of a court, or of an  
0053 administrative agency of another jurisdiction, authorized by law  
0054 to issue such an order, which provides for payment of funds for  
0055 the support of a child, or for maintenance of a spouse or ex-  
0056 spouse living with a child for whom an order of support is also  
0057 being enforced, and includes such an order which provides for  
0058 modification or resumption of a previously existing order; pay-  
0059 ment of an arrearage accrued under a previously existing order; a  
0060 reimbursement order, including but not limited to an order  
0061 established pursuant to K.S.A. 39-718a and amendments thereto;  
0062 or an order established pursuant to K.S.A. 23-451 *et seq.* and  
0063 amendments thereto.

0064 (f) "Payor" means any person or entity owing income to an  
0065 obligor or any self-employed obligor.

0066 (g) "Public office" means any elected or appointed official of  
0067 the state or any political subdivision or agency of the state, or any  
0068 subcontractor thereof, who is or may become responsible by law  
0069 for enforcement of, or who is or may become authorized to  
0070 enforce, an order for support, including but not limited to the  
0071 department of social and rehabilitation services, court trustees,  
0072 county or district attorneys and other subcontractors.

0073 (h) "Title IV-D cases" means those cases required by part D  
0074 of title IV of the federal social security act (42 U.S.C. § 651 *et*  
0075 *seq.*), as amended, to be processed by the department of social  
0076 and rehabilitation services under the state's plan for support  
0077 enforcement.

0078 Sec. 2. K.S.A. 1986 Supp. 23-4,106 is hereby repealed.

0079 Sec. 3. This act shall take effect and be in force from and  
0080 after its publication in the statute book.