

Approved

5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary

The meeting was called to order by Representative John M. Solbach at
Chairperson

3:30 ~~xxx~~/p.m. on March 22, 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Heinemann, Scott, Carmody and Gregory who were excused.

Committee staff present:

Jill Wolters, Office of Revisor of Statutes

Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Kyle Smith, Assistant Attorney General for the KBI

Martha Gabehart, Executive Director, Kansas Commission on Disabilities Concerns

Gordon Risk, representing the American Liberties Union of Kansas

Richard Smith, Assistant Attorney General, Civil Division

Barclay Clark, Kansas City Attorney, Shook, Hardy and Bacon

Bud Grant, Executive Director, Ks. Retail Council, Ks. Chamber of Commerce & Industry

Frances Kastner, Director, Governmental Affairs, Ks. Food Dealers Assoc.

Camille Nohe, Assistant Attorney General

NOTE: The meeting scheduled for 3/21/91 was cancelled and held on 3/22/91.

The Chairman called for reconsideration of SB 171, crimes and punishment, statutory conflict resolution.

Representative Rock made a motion that the motion to recommend SB 171 for passage be reconsidered. Representative Garner seconded the motion. The motion carried.

Representative Rock made a motion that SB 171 be passed. Representative Garner seconded the motion. The motion failed.

The Chairman appointed a sub-committee to study SB 171. Sub-committee members are: Representative Everhart, Chairperson; Representative Garner and Representative Parkinson.

The Chairman called for sub-committee report on HB 2212, cigarettes, prohibitions regarding minors, sample cigarettes and vending machines.

Representative Garner, sub-committee chairman, reported the sub-committee unanimously had agreed to delete all provisions that would result in changing to criminal law and leave the current criminal provisions as they are. A balloon bill showing proposed changes was distributed. (See Attachment # 1).

Representative Garner made a motion that the sub-committee report be adopted. The motion included that HB 2212 be taken from the table. Representative Parkinson seconded the motion. The motion carried. Representative Garner moved that HB 2212 be passed as amended. Representative Allen seconded the motion. The motion carried.

The Chairman called for hearing on SB 292, creating the crime involving the laundering of money.

Kyle Smith, Assistant Attorney General for the KBI, appeared in support of SB 292. (See Attachment # 2).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 22, 1991

Committee questions followed.

The Chairman asked if Mr. Smith would want to recommend SB 292 for interim study. Mr. Smith said the legislation is already permitted under federal law; that the legislation will not take away anyone's rights or impose any additional liabilities; that state and local authorities would be allowed to investigate these same kind of crimes; therefore, interim study would not be appropriate.

Written testimony was submitted by James W. Clark, Executive Director, Kansas County and District Attorneys Association. (See Attachment # 3).

The Chairman appointed a sub-committee to study SB 292. Sub-committee members are: Representative Smith, Chairman; Representative Hamilton and Representative Lawrence.

There being no further conferees, the hearing on SB 292 was closed.

The Chairman called for hearing on HB 2541, prohibiting discrimination based on disability.

Martha K. Gabehart, Executive Director, Kansas Commission on Disabilities Concerns, appeared in support of HB 2541. (See Attachment # 4). Ms. Gabehart also distributed fact sheet from Center for Accessible Housing (Attachment # 5) and pamphlet, entitled "The Americans with Disabilities Act" (Attachment # 6). Ms. Gabehart noted a needed technical correction and one additional amendment.

Gordon Risk, representing the American Liberties Union of Kansas, appeared in support of HB 2541. (See Attachment # 7).

Mr. Risk noted that David Goldstein, Executive Director of the Jewish Community, Relations Bureau/American Jewish Committee had been present to testify on 3/21/91; that the meeting had been cancelled and Mr. Goldstein was unable to return to testify on 3/22/91; however, written testimony was submitted. (See Attachment # 8).

Richard Smith, Assistant Attorney General, Civil Division, appeared in support of HB 2541. (See Attachment # 9). Mr. Smith proposed an amendment on Page 15, Line 5, to change the proposed date of March 31, 1991.

The Chairman noted that no opponents had been scheduled to testify on HB 2541.

There being no further conferees, the hearing on HB 2541 was closed.

The Chairman called for action on HB 2541.

Representative Hamilton made a motion that HB 2541 be amended to change the enactment date from March 31 to July 1. Representative Everhart seconded the motion. The motion carried.

Representative Vancrum made a motion that HB 2541 be amended on Page 3, Lines 13 and 14 by striking the last sentence after the word "facility". Representative Sebelius seconded the motion. The motion carried.

Representative Sebelius made a motion that HB 2541 be passed as amended. The motion died for lack of a second.

Representative Sebelius made a motion that HB 2541 be further amended to include the recommendations of the Kansas Department of Human Resources. (See Attachment # 4).

A committee member asked if there is a fiscal note for HB 2541. The Chairman said the fiscal note will be brought up before final action is taken on the bill.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Judiciary,
room 313-S, Statehouse, at 3:30 xx a.m./p.m. on March 22, 1991

A committee member requested time to review a prior bill dealing with the definition of disability.

Written testimony was submitted for the record by the following:

Bonnie Byington, Kansas Association for the Blind and Visually Impaired, Inc. (Attachment # 10).
Glen Yancy, Acting Commissioner, Rehabilitation Services, SRS, (Attachment # 11).
Gina McDonald, Executive Director, Kansas Association of Centers for Independent Living. (Attachment # 12).
Michael Donnelly, Executive Director, Topeka Independent Living Resource Center. (Attachment # 13).
Terry Larson, Kansas Alliance for the Mentally Ill, Kansas Mental Health Coalition (Attachment # 14).
Brian Atwell, LINK, Inc. Hays, Kansas, (Attachment # 15).
Mike Oxford, Coordinator, Independence, Inc. (Attachment # 16).
Roger W. Lovett, Chief Counsel, Kansas Commission on Civil Rights, (Attachment # 17).
Duane McCord, a Topeka citizen, (Attachment # 18).
Glen White, Director of Training Research and Training Center, K. U. (Attachment # 19).

The Chairman called for consideration of the minutes of the meetings of February 7, 11, 12, 13, and 14, 1991.

Representative Sebelius made a motion that the minutes of the meetings be approved as submitted. Representative Rock seconded the motion. The motion carried.

The Chairman Called for hearing on SB 30, service charge on worthless checks.

Barkley Clark, Kansas City Attorney, Shook, Hardy and Bacon, appeared in support of SB 30. (No written testimony was furnished.) Mr. Clark gave background and intent of the bill which overturns an Attorney General's opinion, (90-93) concerning the amount that a merchant or a check collection company can charge when a check is returned for insufficient funds.

Committee questions followed.

Bud Grant, Executive Director, Kansas Retail Council, Kansas Chamber of Commerce and Industry, appeared in support of SB 30. (See Attachment # 20).

There were no committee questions.

Frances Kastner, Director, Governmental Affairs, Kansas Food Dealers Association, appeared in support of SB 30. (See Attachment # 21).

Camille Nohe, Assistant Attorney General, appeared in support of SB 30. (See Attachment # 22).

There being no further conferees, the hearing on SB 30 was closed.

The meeting adjourned at 5:20 P.M. The next scheduled meeting is March 25, 1991, 3:30 P.M. in room 313-S.

HOUSE BILL No. 2212

By Representatives Baker, Allen, Brown, Flottman,
Fuller, Lawrence and Samuelson

2-12

9 AN ACT concerning cigarettes and tobacco products; prohibiting
10 certain acts and ~~providing penalties for violations~~; amending
11 K.S.A. ~~79-3300~~, 79-3321 and ~~79-3322~~ and repealing the existing
12 sections; ~~also repealing K.S.A. 79-3390~~.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 ~~New Section 1. As used in sections 2 and 3:~~

16 (a) "Cigarettes" has the meaning provided by K.S.A. 79-3301 and
17 amendments thereto.

18 (b) "Furnish" means sell, buy for, give or otherwise furnish.

19 (c) "Person" means any individual, association, partnership, lim-
20 ited partnership, corporation or other entity.

21 (d) "Retail dealer" has the meaning provided by K.S.A. 79-3301
22 and amendments thereto.

23 (e) "Retailer" has the meaning provided by K.S.A. 79-3370 and
24 amendments thereto.

25 (f) "Tobacco products" has the meaning provided by K.S.A. 79-
26 3370 and amendments thereto.

27 New Sec. 2. (a) No person shall furnish or attempt to furnish
28 any cigarette or tobacco product to any person under 18 years of
29 age.

30 (b) Violation of this section is a class A misdemeanor for which
31 the fine shall be not less than \$500.

32 (c) It shall be a defense to a prosecution under this section if:

33 (1) The defendant is a retailer or a licensed retail dealer, or an
34 employee thereof; (2) the defendant sold the cigarettes or tobacco
35 products to the person with reasonable cause to believe that such
36 person was 18 or more years of age; and (3) to purchase the cigarettes
37 or tobacco products, the person exhibited to the defendant a draft
38 card, driver's license, birth certificate or other official or apparently
39 official document purporting to establish that such person was 18 or
40 more years of age.

41 New Sec. 3. (a) No person under 18 years of age shall possess,
42 obtain, purchase or attempt to possess, obtain or purchase any cig-
43 arette or tobacco product.

HJUD
ATTACH # 1
3-22-91

Attachment # 1

1 (b) Any person who violates this section is a juvenile offender
2 under the Kansas juvenile offenders code. Upon adjudication thereof
3 and as a condition of disposition, the court shall require the offender
4 to pay a fine of not less than \$100 nor more than \$500.

5 (c) In addition to any other penalty provided for a violation of
6 this section, the court may order the offender to do either or both
7 of the following:

8 (1) Perform 40 hours of public service; or

9 (2) attend and satisfactorily complete a suitable educational or
10 training program dealing with the effects of tobacco, drugs or other
11 chemical substances when ingested by humans.

12 Sec. 4. K.S.A. 79-3309 is hereby amended to read as follows:

13 79-3309. (a) Whenever the director ~~shall have~~ *has* reason to believe
14 that any dealer in cigarettes has violated any of the provisions of
15 the cigarette tax law, ~~or whenever the director has reason to believe~~
16 *that a retail dealer has violated section 2*, the director shall notify
17 such dealer by registered or certified mail of the director's intention
18 to suspend or revoke the license or licenses of such dealer. Within
19 10 days after mailing such notice, such dealer may request a hearing
20 in writing before the director. The hearing shall be conducted in
21 accordance with the provisions of the Kansas administrative proce-
22 dure act. If, after such hearing, it appears to the satisfaction of the
23 director that such dealer has violated any of the provisions of the
24 cigarette tax law, the director ~~is hereby authorized and empow-~~
25 ~~ered to may~~ suspend or revoke the license or licenses of any such
26 dealer and ~~may~~, in addition, *may* deny the application of any such
27 dealer for a license or licenses for a portion of the succeeding calendar
28 year for such period as the director determines is necessary but in
29 no case for a period ending more than one year following the date
30 upon which such license or licenses were suspended or revoked.

31 (b) The suspension or revocation of the vending machine oper-
32 ator's master license shall suspend or revoke all vending machine
33 permits issued to such vending machine operator for the term of
34 such suspension or revocation of such license.

35 (c) If any dealer ~~shall continue~~ *continues* to sell cigarettes at
36 any dealer establishment or from a vending machine, after having
37 notice or knowledge of the suspension or revocation of a license or
38 permit issued to such dealer for such establishment or vending ma-
39 chine, or ~~shall continue~~ *continues* for more than 10 days after
40 becoming delinquent in the payment of any tax, penalty or interest,
41 to sell cigarettes, the state shall be entitled, in any proceedings
42 brought for such purposes, to have an order and judgment restraining
43 and enjoining such unlawful sale and no bond shall be required for

1 ~~the issuance of any such restraining order or injunction.~~

2 ~~Sec. 5.~~ K.S.A. 79-3321 is hereby amended to read as follows: _____ Section 1.

3 79-3321. It shall be unlawful for any person:

4 (a) To possess, except as otherwise specifically provided by this
5 act, more than 200 cigarettes without the required tax indicia being
6 affixed as herein provided.

7 (b) To mutilate or attach to any individual package of cigarettes
8 any stamp that has in any manner been mutilated or that has been
9 heretofore attached to a different individual package of cigarettes or
10 to have in possession any stamps so mutilated.

11 (c) To prevent the director or any officer or agent authorized by
12 law, to make a full inspection for the purpose of this act, of any
13 place of business and all premises connected thereto where cigarettes
14 are or may be manufactured, sold, distributed, or given away.

15 (d) To use any artful device or deceptive practice to conceal any
16 violation of this act or to mislead the director or officer or agent
17 authorized by law in the enforcement of this act.

18 (e) Who is a dealer to fail to produce on demand of the director
19 or any officer or agent authorized by law any records or invoices
20 required to be kept by such person.

21 (f) Knowingly to make, use, or present to the director or agent
22 thereof any falsified invoice or falsely state the nature or quantity
23 of the goods therein invoiced.

24 (g) Who is a dealer to fail or refuse to keep and preserve for
25 the time and in the manner required herein all the records required
26 by this act to be kept and preserved.

27 (h) To wholesale cigarettes to any person, other than a manu-
28 facturer's salesman, retail dealer or wholesaler who is:

29 (1) Duly licensed by the state where such manufacturer's sales-
30 person, retail dealer or wholesaler is located; or

31 (2) exempt from state licensing under applicable state or federal
32 laws or court decisions including any such person operating as a
33 retail dealer upon land allotted to or held in trust for an Indian tribe
34 recognized by the United States bureau of Indian affairs.

35 (i) To have in possession any evidence of tax indicia provided for
36 herein not purchased from the director.

37 (j) To fail or refuse to permit the director or any officer or agent
38 authorized by law to inspect a carrier transporting cigarettes.

39 (k) To vend small cigars, or any products so wrapped as to be
40 confused with cigarettes, from a machine vending cigarettes, nor
41 shall a vending machine be so built to vend cigars or products that
42 may be confused with cigarettes, be attached to a cigarette vending
43 machine.

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1 (l) To sell cigarettes to any person under 18 years of age.
2 ~~(m) For any person under 18 years of age to purchase~~
3 ~~cigarettes.~~

(l) To sell cigarettes to any person under 18 years of age.
(m) For any person under 18 years of age to purchase cigarettes.

4 ~~(n) (l) To sell cigarettes to a retailer or at retail that do not bear~~
5 ~~Kansas tax indicia or upon which the Kansas cigarette tax has not~~
6 ~~been paid.~~

(n)

7 ~~(o) (m) To sell cigarettes without having a license for such sale~~
8 ~~as provided herein.~~

(o)

9 ~~(p) (n) To sell cigarette vending machines without having a li-~~
10 ~~cence as provided herein for sale of vending machines.~~

(p)

11 ~~(q) Who is a dealer, or any person on behalf of a dealer, to give~~
12 ~~away, or distribute or sell for less than cost, any package of ciga-~~
13 ~~rettes, including packages of sample cigarettes, on premises open to~~
14 ~~the public, except that a dealer may, so long as not otherwise pro-~~
15 ~~hibited by law: (1) Give away cigarettes on premises which are closed~~
16 ~~to the public and which are owned, leased or rented by the dealer;~~
17 ~~or (2) give cigarettes to friends or family members of the dealer.~~

18 ~~(r) Who is a retail dealer to fail to maintain in a conspicuous~~
19 ~~place at each dealer establishment a sign, in a size and form pre-~~
20 ~~scribed by the director, stating "We [require ID for tobacco~~
21 ~~purchase]"~~

(q)

22 ~~(s) To vend cigarettes from a vending machine located on prem-~~
23 ~~ises open to the public unless such machine is in the view of and~~
24 ~~supervised by a person 18 or more years of age who is employed~~
25 ~~on such premises.~~

(r)

do not sell tobacco products to persons under 18

general

26 Sec. 6. K.S.A. 79-3322 is hereby amended to read as follows:
27 79-3322. (a) Any person who violates any of the provisions of this
28 act, except as otherwise provided in this act, shall be guilty of a
29 misdemeanor and upon conviction shall be punished by a fine of
30 not more than \$1,000 or imprisonment for not more than one year,
31 or by both. In addition thereto any person found liable for any license
32 or permit fee or tax imposed under the provisions of this act shall
33 be personally liable for such license or permit fee or tax plus a
34 penalty in an amount equal to 100% thereof.

35 (b) Any person who violates this act by distributing sample
36 cigarettes or sample smokeless tobacco to any person under 18
37 years of age shall be guilty of a misdemeanor and upon con-
38 viction shall be punished by a fine of not less than \$500 nor
39 more than \$2,500 or imprisonment for not more than one year,
40 or by both.

41 (c) Any agent, employees or others who aid, abet or otherwise
42 participate in any way in the violation of this act or in any of the
43 offenses hereunder punishable shall be guilty and punished as prin-

5-1

1 cipals to the same extent as any person violating the act.

2 Sec. 7. ~~K.S.A. 79-3309, 79-3321, 79-3322 and 79-3300~~ are hereby is

3 repealed. → 2

4 Sec. 8. ~~This act shall take effect and be in force from and after~~

5 its publication in the statute book. → 3



JAMES G. MALSON
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612-1837

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ROBERT T. STEPHAN
ATTORNEY GENERAL

TESTIMONY

KYLE G. SMITH, ASSISTANT ATTORNEY GENERAL
ON BEHALF OF ROBERT T. STEPHAN, ATTORNEY GENERAL AND
THE KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING SENATE BILL 292
MARCH 21, 1991

Mr. Chairman and Members of the Committee:

I am Kyle G. Smith, Assistant Attorney General assigned to the Kansas Bureau of Investigation's Narcotic Strike Force. On behalf of Attorney General Bob Stephan and the Kansas Bureau of Investigation (KBI), I want to thank you for the opportunity to address you in support of Senate Bill 292.

Senate Bill 292 addresses a current gap in our statutory arsenal in the drug war. It's purpose is to provide appropriate penalties and hence deterrence to those persons involved in the drug trade on the financial end, i.e. money laundering. We can attack drug dealers by attacking the profits of drug dealing.

The vast amounts of cash generated by the illegal drug trade not only corrupt our youth by luring them into a deadly world of ostentatious wealth and easy money, but can also have a corrupting influence on a business community. The potential for high profits in return for simple money transfers or forgetting to file a federal form has tempted businessmen, attorneys, and financial institutions across this country. It would be naive to think that it is not occurring here in Kansas.

HJD
Attachment # 2
3-22-91

Under current Kansas law there is no crime for a person to go around converting small bills into large, even though that agent or "smurf" has full knowledge that these are drug profits and that he is working for drug dealers. There is no state law against an attorney or an accountant setting up, with full knowledge of his client's business, a drug laundering operation including sham corporations, multiple accounts, and off-shore multiple money transfers.

Money laundering has three primary stages. The first stage is called the placement stage. This is the conversion of cash into legitimate investments by placing it in banks, security brokers or other businesses involved in handling cash. It is at this stage that drug traffickers are most exposed and the opportunity is greatest for detection and prosecution. At the placement stage the drug trafficker has four choices: 1) the money can be hidden or spent as cash, which besides the obvious security risks, fails to draw any interest; 2) the money can be smuggled out of the country, which statistics show is occurring more and more frequently; 3) the money can be placed in the aforementioned financial institutions or through businesses which handle large amounts of cash, e.g. precious metal dealers, brokers, casinos; or 4) or the money can become mingled with a legitimate business's legal income.

The second stage is called layering, which as it's name implies, is the process of clouding the paper trail generated by financial documents by creating layers of transactions through wire transfers, money orders, cashiers checks, travel vouchers and letters of credit.

The third stage is integration back into the economy turning the drug proceeds into useable wealth through sham loans, purchases through nominees, or purchases of legitimate businesses, which can in turn be used to launder additional drug proceeds. This bill attacks all three phases of laundering.

Subsection (a) addresses those individuals who knowingly or intentionally receive or acquire proceeds or engage in transactions involving proceeds from the illegal drug trade.

Subsection (b) deals with those individuals who knowingly or intentionally provide finances or property that they know will be used to violate the drugs laws.

Subsection (c) addresses those individuals who are supervising, directing or facilitating the transportation or transfer of proceeds known to be derived from the drug trade.

Subsection (d) addresses the problem of 'structuring', wherein criminals structure payments to avoid federal cash payment reports and currency transaction reports. For example, a drug dealer may go to four different banks and purchase a \$9,000 cashier check at each bank to use in the purchase of a \$36,000 airplane for his drug trade. The drug dealer has structured his finances to avoid the \$10,000 trigger that requires federal reporting. This would itself be a crime and has been used successfully in the federal system to place a drug dealer on the dilemma of either causing the reporting of financial transactions or committing a crime in an attempt to conceal those transactions.

The activity made illegal under Kansas law in Senate Bill 292 is already prohibited under federal law. As such, this statute will not expose any businesses or individuals to new liability, but would only broaden the authority to investigate such crimes to state and local agencies and their greater resources.

A second point is that for prosecution for any of these offenses it must be shown that a person intentionally or knowingly gets involved with drug money. This should protect the innocent vendor or businessman who unknowingly finds himself to have dealt with drug dealers.

While I don't believe that this statute would result in numerous prosecutions, the handful of individuals who are involved in money laundering that come to light each year could be appropriately punished.

We respectfully request that you pass Senate Bill 292. Thank you.

OFFICERS

Rod Symmonds, President
James Flory, Vice-President
Randy Hendershot, Sec.-Treasurer
Terry Gross, Past President



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EXECUTIVE DIRECTOR • JAMES W. CLARK, CAE

TESTIMONY IN SUPPORT OF

SENATE BILL NO. 292

The Kansas County and District Attorneys Association appears in Support of Senate Bill 292. Like forfeiture of property, the bill is one more weapon that attacks the ability of drug dealers to profit from their illicit activity. It does so by allowing the tracing of ill-gotten profits into more legitimate activities, and punishing those responsible. It sends the message to drug dealers, and those who assist them, that even though you have made a drug sale without being caught in the act, you will never be able to enjoy the money you made without subjecting yourself, and those you do business with, to further jeopardy.

The Senate Judiciary Committee amended the bill, beginning with line 16, which would have created an exception to application of the bill to transactions between defendants and their lawyers. By recognizing that there is a nexus between such transactions, such language would have created a new right for drug dealers that is not enjoyed by any other criminal, much less a law-abiding citizen. The U. S. Supreme Court has held that a defendant has no right under the Sixth Amendment to pay their attorney with ill-gotten gains, Caplin & Drysdale, Chartered v. United States, 109 S. Ct. 2646 (1989); United States v. Monsanto, 109 S. Ct. 2657. Such language would have given back such a right to drug dealers in Kansas, because it also based its protection on section 10 of the Kansas bill of rights, thus recognizing independent state grounds over which the United States Supreme Court has no jurisdiction.

We urge the House Judiciary Committee to recommend SB 292 favorably for passage as amended by the Senate Judiciary Committee.

HJUD
Attachment # 3
3-22-91

**Commission on Disability Concerns**

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877

913-296-1722 (Voice) -- 913-296-5044 (TDD)

913-296-4065 (Fax)

Joan Finney, Governor

Michael L. Johnston, Secretary

**Testimony on HB 2541, Amendments to the
Kansas Act Against Discrimination****March 21, 1991****Given by Martha K. Gabehart, Executive Director
Kansas Commission on Disability Concerns**

The opinions given here are those of the Kansas Commission on Disability Concerns (KCDC) and do not necessarily reflect those of the Administration.

The purpose of HB 2541 is to provide equal protection under our state anti-discrimination law, the Kansas Act Against Discrimination (KAAD), as provided by the current federal anti-discrimination laws. The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in employment and public accommodations. The Fair Housing Amendments Act (FHAA) of 1988 prohibits discrimination on the basis of disability and familial status in housing.

KAAD only protects the rights of people with physical disabilities in employment and public accommodations. There is no protection for people with mental disabilities and there is no protection in housing for anyone with a disability or families with children under the age of 18.

Because KAAD does not provide equal protection, the Kansas Commission on Civil Rights (KCCR) cannot contract with the federal government to handle complaints on the state level. KCCR presently handles discrimination complaints on the other protected populations. Protection of rights should be no different for people with disabilities and people with families.

*HJVP
Attachment # 4
3-22-91*

Testimony on HB 2541
by Martha K. Gabehart
Page 2

There is one technical correction that needs to be made.

1. Line 42, page 3 through line 1, page 4 should read "Disability does not include current, illegal use of ~~or addiction~~ to a controlled substance as defined in section 102 of the federal controlled substance act (21 U.S.C. 802), *in housing discrimination.*" And add "*In employment and public accommodation discrimination, "disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the Controlled Substances Act (21 U.S.C. 812), when the covered entity acts on the basis of such use.*"

There is one additional amendment we are requesting.

1. Line 26, page 5 should read "groups *and people with disabilities* in the state and to further good will among such groups."

This amendment would require KCCR to educate the public concerning people with disabilities. We eliminate discrimination through education .

In summary, without the passage of HB 2541, the State of Kansas will not be able to handle complaints concerning discrimination against people with disabilities. It would also indicate the state's position concerning the status of Kansans with disabilities - that of less than equal to Kansans without disabilities. We hope that Kansas considers its citizens with disabilities as equals to the nondisabled population.

Center for Accessible Housing

FACT SHEET

The Fair Housing Amendments Act of 1988,

A Summary of Provisions Relating to Discrimination Based on Disability

The Fair Housing Amendments Act was signed by President Reagan in September 1988 and became effective on March 12, 1989. The Act is intended to strengthen enforcement of Fair Housing requirements and to extend civil rights protections for families with children and persons with disabilities. It has three broad purposes in relation to people with disabilities:

- to end segregation of the housing available to people who have disabilities;
- to give people with disabilities greater opportunity to choose where they want to live;
- to assure that reasonable accommodations be made to the individual needs of people with disabilities in securing and using housing.

Availability and Conditions for Occupancy: It is unlawful to discriminate in the sale or rental of housing, or to discriminate in the terms, conditions, services or facilities provided because of a person's disability or family status. There is a limited exemption for housing designed and operated for elders.

Reasonable Accommodations: The landlord or rental agent cannot refuse to make reasonable accommodations in rules, policies, practices, and services to afford a person with a disability equal opportunity to occupy and enjoy full use of a unit.

Reasonable Modifications: It is unlawful to refuse a person with a disability permission to make reasonable modifications to the premises at his/her own expense if such modifications are necessary to allow full use of the premises. The landlord may grant permission for a modification subject to an agreement that the renter will make reasonable restorations of the interior of the unit to its original conditions before terminating occupancy.

Design and Construction Requirements: The Act establishes the following seven design standards for all newly constructed, multi-family housing of four or more units ready for first occupancy on or after March 13, 1991. Exceptions are if the last building permit was issued prior to January 13, 1990 or if the site is determined to be impracticable.

- At least one building entrance must be on an accessible route;
- All public and common use areas must be readily accessible to and usable by people with disabilities;
- All doors providing passage into and within all premises must be sufficiently wide for use by persons in wheelchairs;

A Research and Training Center of the
National Institute on Disability and Rehabilitation Research

HJUD
Attachment #5
3-22-91

- All ground floor units and all units on floors served by elevators must have the following:
- An accessible route into and through the dwelling;
 - Accessible light switches, electrical outlets, thermostats, and other environmental controls;
 - Reinforcements in bathroom walls to allow installation of grab bars around toilet, tub and shower when needed;
 - Kitchens and bathrooms configured so that a person using a wheelchair can maneuver about the space.

Compliance with ANSI standards A117.1 will satisfy these requirements. Accessibility guidelines will also be issued by HUD to provide technical assistance in meeting the design requirements. If a State has a Fair Housing Law certified by HUD to provide substantially equivalent protection and remedies to the Act, compliance with State law is sufficient.

HUD itself is not required to review the design and construction of all multifamily dwellings covered by the Act. The Act instructs HUD to encourage inclusion of the Federal requirements in State and local procedures for design review and approval of newly constructed dwellings.

The Complaint Process: Any person who believes that they have been discriminated against may file a complaint within one year or initiate an action in federal court within two years of the event. Complaints may be filed in person or by mail. Information may initially be provided by phone to HUD. HUD will put the complaint in writing and send it to the complainant for signature.

The HUD Fair Housing Complaint Hotline 1-800-424-8590. In a State that has a Fair Housing Law that provides protection and remedies which are substantially equivalent to the Act, the State enforcement agency may receive the complaint directly or by referral from HUD.

Remedies and Damages: After a complaint has been filed, HUD or the State enforcement agency must complete an investigation and make a determination of reasonable cause within one hundred days. If this deadline is not met, HUD or the State agency must notify the complainant in writing stating the reasons for the delay.

In addition to the issuance of orders, Fair Housing complaints may result in the imposition of fines to cover actual damages such as out of pocket expenses and lawyers' fees. Civil penalties also may be imposed ranging from a maximum of \$10,000 for a first offense to a maximum of \$50,000 for a third violation.

For more information, write to:

Center for Accessible Housing
School of Design
North Carolina State University
Box 8613
Raleigh, NC 27695-8613
Voice and TDD 919.737.3082
FAX 919.737.3023

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section



The Americans with Disabilities Act

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The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

I. Employment

► Employers with 15 or more employees may not discriminate against qualified individuals with disabilities. For the first two years after July 26, 1992, the date when the employment provisions of the ADA go into effect, only employers with 25 or more employees are covered.

► Employers must reasonably accommodate the disabilities of qualified applicants or employees, unless an undue hardship would result.

► Employers may reject applicants or fire employees who pose a direct threat to the health or safety of other individuals in the workplace.

► Applicants and employees are not protected from personnel actions based on their current illegal use of drugs. Drug testing is not affected.

► Employers may not discriminate against a qualified applicant or employee because of the known disability of an individual with whom the applicant or employee is known to have a relationship or association.

► Religious organizations may give preference in employment to their own members and may require applicants and employees to conform to their religious tenets.

► Complaints may be filed with the Equal Employment Opportunity Commission. Available remedies include back pay and court orders to stop discrimination.

II. Public Accommodations

► Public accommodations such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers, may not discriminate on the basis of disability, effective January 26, 1992. Private clubs and religious organizations are exempt.

► Reasonable changes in policies, practices, and procedures must be made to avoid discrimination.

► Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities so that they can have an equal opportunity to participate or benefit, unless an undue burden would result.

► Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing the services must be offered, if those methods are readily achievable.

► All new construction in public accommodations, as well as in "commercial facilities" such as office buildings, must be accessible. Elevators are generally not required in buildings under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center, mall, or a professional office of a health care provider.

► Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered area (and the bathrooms, telephones, and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Elevators are required as described above.

► Entities such as hotels that also offer transportation generally must provide equivalent transportation service to individuals with disabilities. New fixed-route vehicles ordered on or after August 26, 1990, and capable of carrying more than 16 passengers, must be accessible.

► Public accommodations may not discriminate against an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

➤ Individuals may bring private lawsuits to obtain court orders to stop discrimination, but money damages cannot be awarded.

➤ Individuals can also file complaints with the Attorney General who may file lawsuits to stop discrimination and obtain money damages and penalties.

III. Transportation

Public bus systems

➤ New buses ordered on or after August 26, 1990, must be accessible to individuals with disabilities.

➤ Transit authorities must provide comparable paratransit or other special transportation services to individuals with disabilities who cannot use fixed route bus services, unless an undue burden would result.

➤ New bus stations must be accessible. Alterations to existing stations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered area (and the bathrooms, telephones, and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations.

➤ Individuals may file complaints with the Department of Transportation or bring private lawsuits.

Public rail systems

➤ New rail vehicles ordered on or after August 26, 1990, must be accessible.

➤ Existing rail systems must have one accessible car per train by July 26, 1995.

➤ New rail stations must be accessible. As with new bus stations, alterations to existing rail stations must be made in an accessible manner.

➤ Existing "key stations" in rapid rail, commuter rail, and light rail systems must be made accessible by July 26, 1993, unless an extension of up to 20 years is granted (30 years, in some cases, for rapid and light rail).

➤ Existing intercity rail stations (Amtrak) must be made accessible by July 26, 2010.

➤ Individuals may file complaints with the Department of Transportation or bring private lawsuits.

Privately operated bus and van companies

➤ New over-the-road buses ordered on or after July 26, 1996 (July 26, 1997, for small companies), must be accessible. After completion of a study, the President may extend the deadline by one year, if appropriate.

▶ Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public.

▶ Other private transportation operations, including station facilities, must meet the requirements for public accommodations.

▶ Individuals may file complaints with the Attorney General or bring private lawsuits under the public accommodations procedures.

IV. State and local government operations

▶ State or local governments may not discriminate against qualified individuals with disabilities. All government facilities, services, and communications must be accessible consistent with the requirements of section 504 of the Rehabilitation Act of 1973.

▶ Individuals may file complaints with Federal agencies to be designated by the Attorney General or bring private lawsuits.

V. Telecommunications Relay Services

▶ Companies offering telephone service to the general public must offer telephone relay services to individuals who use telecommunications devices for the deaf (TDD's) or similar devices.

▶ Individuals may file complaints with the Federal Communications Commission.

This document is available in the following accessible formats:

- Braille
- Large Print
- Audiotape
- Electronic file on computer disk and electronic bulletin board
(202) 514-6193

For additional information contact:



Coordination and Review Section
Civil Rights Division
U. S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118



(202) 514-0301 (Voice)
(202) 514-0381 (TDD)
(202) 514-0383 (TDD)

CRD-10

GPO : 1990 - 273-170

To: House Judiciary Committee

From: Gordon Risk, MD, The American Civil Liberties Union of Kansas

Re: House Bill #2541

This is an excellent bill which should do much to eliminate discrimination against the disabled in Kansas. We wholeheartedly support it. We would, however, like to broaden it to outlaw discrimination, which currently exists, in the business and professional life of this state. Other states and municipalities in this country(1) have already enacted laws prohibiting discrimination in clubs which offer services to the public and which are thus not distinctly private. These are clubs where business is conducted, where membership fees may in fact be deducted as a business expense, and where race, national origin, and religion are used as a basis for excluding membership applicants. The initial rejection of Henry Block's membership application by the Kansas City Country Club on the basis of religion and Tom Watson's subsequent resignation were well publicized. Rarely do such rejections achieve such notoriety, and many, who know they would be automatically rejected as a consequence of invidious discrimination, never apply.

The New York City ordinance describes the purpose of these laws.

"The government has a compelling interest in providing its citizens an environment where all persons, regardless of race, creed, color, national origin or sex, have a fair and equal opportunity to participate in the business and professional life of the city, and may be unfettered in availing themselves of employment opportunities. Although city, state and federal laws have been enacted to eliminate discrimination in employment, women and minority group members have not attained equal opportunity in business and the professions. One barrier to the advancement of women and minorities in the business and professional life of the city is the discriminatory practices of certain membership organizations where business deals are often made and personal contacts valuable for business purposes, employment and professional advancement are formed. While such organizations may avowedly be organized for social, cultural, civic or educational purposes, and while many perform valuable services to the community, the commercial nature of some of the activities occurring therein and the prejudicial impact of these activities on business, professional and employment opportunities on minorities and women cannot be ignored."(2)

The State of Kansas has, we think, the same interest in providing all of its citizens equal business and professional opportunities and equal protection of the laws. We do not believe that such associations can claim First Amendment protection, a judgement in agreement with U.S. Supreme Court decisions.(3)

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The deletion of one sentence in the definition of a public accommodation, page 3, lines 13-14, will accomplish these objectives. The sentence we want deleted reads:

"Public accommodations do not include a nonprofit fraternal or social association or corporation."

The change would be simple, but the effect hopefully significant. One technical change in the bill is also suggested.(4)

We urge the committee to pass this bill, but that it also be strengthened by incorporating the changes we have suggested. This would be a fitting way of celebrating the two-hundredth anniversary of our Bill of Rights.

Notes:

1. California, Minnesota, New York City, Chicago, San Francisco, and others.
2. Local Law No. 63 of 1984, 1, App. 14-15.
3. Board of Directors of Rotary International v. Rotary Club, 481 U.S. 537 (1987) and New York State Club Association v. New York City, 487 U.S. 1 (1988).
4. We suggest that the term "business motive" on page 10, line 12, be amended to read "business necessity," a change that would make the language consistent throughout the bill.

Testimony of David H. Goldstein
On HB2541
Judiciary Committee
Kansas House of Representatives
March 21, 1991

I'm David Goldstein, Executive Director of the Jewish Community Relations Bureau/American Jewish Committee. Our offices are located in Overland Park and we represent members of the Jewish community throughout the state of Kansas.

I am here today to support HB2541 including the amendments suggested by the American Civil Liberties Union.

The incident in December at the Kansas City Country Club in Mission Hills sent a message to my community that no matter how successful you have become, how many college degrees you have, how many charity drives you have led, no matter how decent a human being you may be, you are not good enough to associate with us because you are Jewish. The message said that contrary to the American creed, individual accomplishment and excellence is irrelevant, only your religion counts.

We believe that in 1991 in the state of Kansas, that is the wrong message. It does not reflect the views of our fellow citizens or the government. As it turned out it did not even reflect the position of the leaders of the country club. We respectfully urge you to approve HB2541 including the deletion of the sentences which excludes non-profit fraternal and social organizations from the requirements of the civil rights law.

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JCRB

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3-22-91



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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Testimony of Richard D. Smith
Assistant Attorney General
Before the House Judiciary Committee
House Bill No. 2541
March 21, 1991

Chairman and Members of the Committee:

I am Richard Smith, an assistant attorney general. On behalf of Attorney General Robert T. Stephan, I ask for your support of House Bill No. 2541. This bill provides valuable amendments to the Kansas act against discrimination and places Kansas' protection of the rights of individuals with disabilities above those protections accorded by the Americans with Disabilities Act (ADA), a piece of landmark federal legislation.

House Bill No. 2541 helps ensure equality in two areas: employment and housing. In the area of employment, House Bill No. 2541 provides greater access to all levels of employment as the same requirements apply to employers, labor organizations, employment agencies, and joint labor-management committees. An important feature of the bill is that it requires these four entities to make

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reasonable accommodations for the known physical or mental limitations of employees or prospective employees. The ADA likewise places this requirement upon these entities. However, the ADA "phases in" over a two-year period the obligation to make reasonable accommodations, and then places the obligation only on those entities with 15 or more employees. House Bill No. 2541 places this obligation on those entities with 4 or more employees and requires them to begin making accommodations within the year. As with the ADA, House Bill No. 2541 will not push the covered entities into financial ruin. The accommodations are not required if the accommodations would impose an undue hardship on the operation of the business of the entity.

In the area of housing, House Bill No. 2541 takes a new approach. The Kansas act against discrimination has historically prohibited discrimination in the sale or rental of residential property against persons with disabilities. However, the act has done little to promote greater accessibility to housing. House Bill No. 2541 corrects this oversight. Design and construction of multi-family residential real property occurring in the future will need to meet the standards established by the American National Standards Institute (ANSI). By changing the focus to the promotion of greater accessibility, House Bill No. 2541

ensures that accessible housing will be available in the future.

House Bill No. 2541 promotes greater accessibility in the areas of employment and housing. On behalf of Attorney General Stephan, I encourage your support of House Bill No. 2541. Thank you.



Kansas Association for the Blind and Visually Impaired, Inc.

AN AFFILIATE
OF THE
AMERICAN COUNCIL
OF THE BLIND

RESOLUTION 9011

WHEREAS the Kansas Act Against Discrimination was adopted to insure the State of Kansas fully enforces the intent of the Civil Rights Act of 1964, and

WHEREAS the Kansas Commission on Civil Rights is the enforcement entity assigned by the State of Kansas to enforce the Kansas Act against Discrimination, and

WHEREAS in addition to the above duties, the Kansas Commission on Civil Rights was, by action of the Kansas Legislature and Governor, given enforcement powers concerning aging discrimination through passage of a separate act, and

WHEREAS the enforcement powers given to the Kansas Commission on Civil Rights by the Kansas Act against Discrimination contain only very limited and weak provisions with reference to discrimination against the physically and/or sensory disabled, and

WHEREAS the newly adopted Americans With Disabilities Act by comparison offers strong civil rights protections for all disabled people, and

WHEREAS, the spirit of the Americans With Disabilities Act will not truly be implemented in Kansas until the passage a state act paralleling the Americans With Disabilities Act and resulting strengthened state enforcement are in place;

THEREFORE BE IT RESOLVED that the Kansas Association for the Blind and Visually Impaired Inc., in convention assembled, September 1990, at Topeka, urges the Kansas Legislature and Governor to adopt a Kansas act paralleling the Americans With Disabilities act, and to give to the Kansas Commission on Civil rights, increased posers of enforcement with reference to discrimination against the disabled;

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to: Governor Mike Hayden; Gubernatorial Candidate Joan Finney; Michael Lechner, Kansas Commission on Disability Concerns; Michael Donnelly, Kansas Association of Centers for Independent Living, and selected members of the Kansas Legislature.

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Kansas Department of Social and Rehabilitation Services
Testimony in Support of House Bill No. 2541

Mr. Chairperson and Members of the Committee:

On July 26, 1990, President George Bush signed the Americans with Disabilities Act, a landmark event in the evolution of civil rights for American citizens. Through access to employment, transportation, public accommodations and communications systems, as guaranteed by ADA, people with disabilities will have the opportunity to work, pay taxes, and become full participants in our society.

Just as with previous civil rights legislation, however, empowerment of people with disabilities will not be accomplished quickly or easily. Systematic change will occur only through:

- * Adherence to the provisions of ADA;
- * Development of effective policy for its implementation; and
- * Strong rehabilitation and independent living programs which empower people with disabilities to achieve competitive employment and community independence, increasing their earnings and reducing their reliance on public assistance.

SRS supports HB 2541 which amends the Kansas Act Against Discrimination to match the provisions of ADA. I'd like to comment on a few of the specific provisions of this bill:

- * Beginning with line 37 on page 3, this bill amends the definition of disability. The first three points of this definition (lines 38-41, page 3) are consistent with ADA. However, the language regarding use of controlled substances (lines 42-43 on page 3, and line 1 on page 4) is not consistent with ADA. HB 2541 adds the phrase "or addiction to" (line 42, page 3). This phrase would exclude individuals who are recovering from substance abuse who are not current users of illegal substances from protection against discrimination. In spite of the recovery process, these individuals are still considered to have an addiction. SRS recommends that the Committee consider amending this definition to more closely match the definition outlined in Sections 104 and 510 of ADA. Under ADA, the definition of disability does not include any individual currently using illegal drugs, but does include an individual who:
 - Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
 - Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
 - Is erroneously regarded as engaging in such use, but is not engaging in such use.

ADA does not prohibit reasonable policies or procedures, including drug testing, to ensure that a person who claims protection because of rehabilitation is not still using drugs.

- * HB 2541 adds references to reasonable accommodation consistent with ADA (lines 2-10, page 4). Members of the Committee may be interested to know that reasonable accommodations aren't necessarily expensive. 85% of all accommodations cost less than \$500, according to the Dole Foundation. 50%

*HJUD
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of all accommodations cost nothing, according to the U.S. Department of Labor.

HB 2541 also updates the Kansas Act Against Discrimination to conform with provisions of the Fair Housing Amendments Act of 1988. It makes little sense to protect an individual from employment discrimination if the same individual can't get the accessible transportation or housing they need to maintain employment. Therefore, SRS supports the proposed changes which prohibit discrimination in the sale, rental or financing of housing to persons with disabilities, and which set standards of access for newly constructed multi-family housing.

As members of the Kansas Legislature, you can play a major role in helping to assure equality, full citizenship and productive participation for Kansans with disabilities through development of public policy which supports the implementation of ADA and the Fair Housing Amendments Act.

As President Bush said when he signed ADA: "Together we must remove the physical barriers we have created and the social barriers we have accepted. For ours will never be a truly prosperous nation until all within it prosper."

I urge your support of HB 2541.

Glen Yancey
Acting Commissioner
Rehabilitation Services
Social and Rehabilitation Services
296-3911
March 21, 1991

KANSAS ASSOCIATION OF CENTERS FOR INDEPENDENT LIVING

3258 South Topeka Blvd. ~ Topeka, Kansas 66611 ~ (913) 267-7100 (Voice/TDD)

Gina McDonald
Executive Director

TESTIMONY TO JUDICIARY COMMITTEE JOHN M. SOLBACH, CHAIRPERSON MARCH 21, 1991

Member agencies:

Thank you for the opportunity to testify today. I am Gina McDonald, Executive Director of the Kansas Association of Centers for Independent Living. I am testifying in support of HB 2541 with some minor word changes.

ILC of Southcentral Kansas
Wichita, Kansas
(316) 942-8079

Independence, Inc.
Lawrence, Kansas
(913) 841-0333

The Americans with Disabilities Act of 1990, which was signed into law by President Bush on July 26, 1990, represents the most sweeping civil rights victory for people who experience disabilities in our history.

Independent Connection
Salina, Kansas
(913) 827-9383

This landmark legislation will positively impact over 43 million Americans with disabilities and their friends, families and in fact the entire United States because it has put one more crack in the heart of discrimination. Only when discrimination against all people has ended will America truly be free.

LINK, Inc.
Hays, Kansas
(913) 625-2521

Resource Center for
Independent Living
Osage City, Kansas
(913) 528-3105

House Bill 2541 will amend the Kansas Act against Discrimination to bring it in line with the Americans with Disabilities Act.

Resource Network
for the Disabled
Atchison, Kansas
(913) 367-6367

It is crucial that State law mirror the ADA. These amendments will bring implementation of laws under the direction of the Kansas Civil Rights Commission and the State Attorney General.

The WHOLE PERSON, Inc.
Kansas City, Missouri
(816) 361-0304

Three Rivers Independent
Living Resource Center
Wamego, Kansas
(913) 456-9915

KACIL supports the amendments to the KAAD and asks for your support of this important bill.

Topeka Independent
Living Resource Center
Topeka, Kansas
(913) 267-7100

HJUD
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3-22-91

IOPEKA INDEPENDENT LIVING RESOURCE CENTER, INC.

Testimony on House Bill 2541 Amending the KAAD

Presented to the House Judiciary Committee,

Honorable Rep. John Solbach, Chairman

By Michael Donnelly, Executive Director

Topeka Independent Living Resource Center

03-22-91

Thank you for the opportunity to provide this testimony concerning the proposed amendments to the Kansas Act Against Discrimination (KAAD).

DISCRIMINATION - it comes across as such a scary word. Yet, everybody discriminates in one form or another in their daily lives. Let me explain, Webster's dictionary defines discrimination as a "showing of partiality or prejudice . . .". We all discriminate in different areas of life. For example clothing, foods, living situations, employment preferences and in fact, in how we treat persons of difference. What this means is that discrimination is not always negative. For example, to choose clothing of a higher quality, of a style you prefer of color you like is not bad. But, people who are not given equal opportunity to participate in a full and active life because of disability is yet another issue.

The current version of the KAAD provides that individuals of different race, religion, color, sex, physical handicap, national origin or ancestry may not be excluded from employment, free and public accommodation and/or housing solely by reason of that difference. However, a person with a disability not readily recognized by the naked eye is not covered and yet experiences the same discrimination that those with a "physical handicap" are protected from. In addition to those with unseen disabilities, persons viewed as having a disability, although they don't, also experience discrimination. The term "physical handicap" is simply too narrow. We must include all persons with disabilities in all sections.

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3-22-91

HOME OF

TRAN ASSIST

3258 S. Topeka Blvd. • Topeka, Kansas 66611 • 913-267-7100 Voice/TDD

So what forms does this discrimination take? I'll share some personal examples. In 1984 I applied to be a computer operator with a small company. After an interview and explanation of the job, the manager of the company explained that although I was well qualified and just the kind of person he was looking for, he could not offer me the job. He further explained that the reason he could not offer me the position, was because he did not want to raise the computer the six (6) inches necessar for me to perform the essential functions of the job. Consequently, my family of three continued to survive (barely) on supplemental security income. Was this discriminatory? _____. (you fill in the blank)

Another example, recently myself and several colleagues went to a restaurant within a one block radius of our office for lunch. Since several smokers were included in the group, we asked to sit in the smoking section. The host responsible to seat us looked at me and said "the smoking section is up there, will you have trouble getting up the steps?" Obviously, exclusion from any section of the restaurant because of disability is a discriminatory practice.

What we are asking for in these amendments is neither outrageous nor costly. These proposed amendments are simply changes that will provide equal opportunity, equal access and an equally dignified ability for people with disabilities to participate in every aspect of life in the community. Interestingly enough, as I returned to my office yesterday from sitting in on the SRS budget hearings I passed the Kansas Expo Center on South Topeka Blvd, were three semi trailers with the saying "Bill of Rights Tour". All too often if he has a disability, Bill's rights are ignored. And, in Kansas there is not a whole lot Bill can do about it.

Discrimination takes many forms. Discriminating tastes are not all bad. Discriminatory practices are an abhorrence to a civilized, democratic society. Support HB2541.



KANSAS ALLIANCE FOR THE MENTALLY ILL

112 S.W. 6th, Ste. 305 • P.O. Box 675
Topeka, Kansas 66601
913-233-0755

March 21, 1990

TESTIMONY

TO: Members, House Judiciary Committee
FROM: Terry Larson, Kansas Alliance for the Mentally Ill, Kansas
Mental Health Coalition
RE: House Bill 2541

House Bill 2541 represents a significant step forward for persons who suffer from serious mental illnesses. The stigma associated with diseases of the brain has allowed discrimination to persist against this population when discrimination against other groups was considered abhorrent.

Mental illness means that a person's brain is not functioning the way it was intended. The brain is diseased which can result in severe mood disorders or severe thought disorders. It is no more possible for a person suffering from schizophrenia, for example, to get his or her brain working right than for a person suffering from paraplegia to get his or her legs working right. However, there are numerous medications available to control the symptoms of mental illness to allow for as high of quality of functioning as possible. It is these drugs and accompanying community support systems that make it possible for our mentally ill citizens to live in their own residences, utilize public accommodations, and work.

People are fearful of mental illness because they don't understand it. Much media attention, often incorrect, is given to a perpetrator of a violent crime who is mentally ill. Most criminal offenders, however, are not mentally ill; and persons who are mentally ill are much more likely to be the victims of violent crimes.

Persons who are mentally ill have needs and goals just like everyone else. A vote for House Bill 2541 recognizes citizens with disabilities, including mental illnesses, for what they are: People.

Thank you.

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Testimony of Brian Atwell, Hays, Kansas regarding House Bill No.2541
21 March 1991

Thank you for this opportunity to speak and thank you for addressing the important issue of the Kansas act against discrimination.

I have had personal experiences with discrimination because I am a person who has a disability. I am glad that my state is concerned about protecting its citizens against discrimination. Passage of this bill will strengthen that protection and allow citizens like me to work out solutions to such discrimination on the local level.

There are two important points I want to make about this bill. The first is that passage of HB 2541 is necessary in order to bring Kansas law up to date with the fairly recent passage of federal legislation, specifically the Fair Housing Act Amendments and the Americans with Disabilities Act. Most of the changes in this bill specifically respond to the wording and definitions now in federal law, bringing the Kansas law into line with federal law. Terms like "disability" instead of "handicap" and "public accommodation" with the accompanying federal definition will provide an important consistency between our state law and the federal law.

The second point I want to make is that I by far prefer local remedies should future discrimination occur. If it becomes necessary for me to take legal action to insure my rights, the cost of filing a federal complaint and traveling to federal hearings could be prohibitive. If that is true for me, and I am employed full-time, how much more true will it be for people who are not employed to seek action. This bill provides for civil action in district court of our own counties--a much fairer remedy for all parties as a first legal step in responding to discrimination.

I urge you to approve this bill.

HJUD

Attachment #15

3-22-91

TESTIMONY IN SUPPORT OF HOUSE BILL 2541

Many of us have been trying to amend the Kansas Act Against Discrimination for quite some time. While the need to amend our State's civil rights statutes is more urgent now than ever due to changes in Federal law, the basic changes being called for in this bill and the need for such changes remain the same as in years past.

You have already heard about the need for our state law to come into line with the Fair Housing Act Amendments and the Americans with Disabilities Act. These federal laws already provide the protections we are asking for under our state law. It only makes sense to wrap all of the anti-discrimination laws into one package. It should make understanding and complying with such laws easier and should reduce the need to write different bodies of regulations to implement the laws. If we do not amend the Kansas Act Against Discrimination, we will be forced to deal with separate federal statutes and regulations such as the Fair Housing Act Amendments, The Americans with Disabilities Act, The Rehabilitation Act and others. It will also be much more productive to resolve discrimination issues on the state and local level instead of having to rely on the federal government.

I would like to emphasize that the only way to end discrimination against people with disabilities is to provide reasonable accommodations. This is one case where we hope that our state will follow the example of the federal government and end legal discrimination in Kansas.

Thank you for your time and attention.

Mike Oxford, Coordinator
Independence, Inc.
Lawrence, Kansas

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HOUSE BILL 2541

The Kansas Commission o Civil Rights fully supports the provisions of House Bill 2541. The primary purpose of this amendment is to bring the housing portion of the Kansas Act into conformity with the provisions of Title VIII of the Civil Rights Act of 1964 as amended by Congress in 1989.

For the past several years, the Kansas Commission on Civil Rights has contracted with the U. S. Department of Housing and Urban Development to investigate complaints of unlawful housing discrimination which have been filed with both agencies. As the Kansas Commission is charged with investigating all complaints filed with it in any event, regardless of whether or not we have a contract with HUD, money received from HUD constitutes a windfall to the State. But if Kansas law is not in conformity with federal law by the Fall of 1992, HUD will no longer contract with us. Kansas will loose that windfall, which currently amounts to approximately \$90,000 per year.

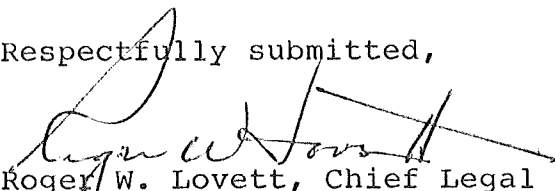
A secondary, but still very important purpose of the proposed amendment to the Act, is to provide that the same definition of disability be used in the employment and public accommodations portion of the Act as is proposed to be used in the housing portion. The definition of physical handicap now appearing in the Act is a classic "Catch 22" situation. The condition under

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consideration must be a "substantial disability but unrelated to such person's ability to engage in a particular job or occupation." Our Supreme Court has held in effect that if the condition does not interfere with one's ability to engage in a particular job, it is not substantial. The definition proposed in this bill is modeled after the definitions in the Americans with Disabilities Act and the 1989 Title VIII amendments.

The Americans with Disabilities Act will be administered by the Equal Employment Opportunity Commission with which the Commission also contracts to investigate dual-filed complaints. This contract ranges upward to \$400,000 per year. While EEOC has not to date made any requirement upon us to conform our Act to federal law, we certainly cannot assume that it will not. But if we do conform we can certainly look forward to enhancements to our contracts, as the dollar amount is based upon the number of investigations which we complete and upon which EEOC can draw.

Respectfully submitted,



Roger W. Lovett, Chief Legal Counsel
Kansas Commission on Civil Rights
900 SW Jackson, Suite 851-South
Topeka, Kansas 66612-1258
913-296-3206

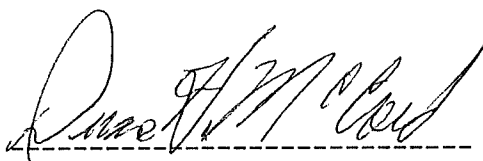
March 21, 1991

HB2541-SUPPORT OF RECOMMENDED AMENDMENT BY
ACLU

My name is Duane McCord. I am writing in support of the amendment recommended by the American Civil Liberties Union concerning HB2541, to remove the phrase found on lines 13-14 on page 3, "public accommodations do not include a non-profit fraternal or social association or corporation".

It is my understanding that removing the above wording would make it illegal to discriminate on the basis of race in fraternities in Kansas. Speaking for myself as a minority who attended the University of Kansas a number of years ago, I observed the fraternities and sororities to be essentially segregated. Certain areas of the campus were for Whites and certain areas were for Blacks. While there were groups that were integrated, most were not. If you were Black, you were expected to join the Black fraternities and sororities.

The incident at the University of Kansas last year concerning the pizza delivery person being harassed because of her minority status by white fraternity students shows a continuation of the real attitudes of some members of the fraternities. This incident rips the cover off the hidden racist attitudes still present in some of the organizations. Making fraternities and sororities subject to the anti-discrimination law would go a long way to encourage change in this area.



Duane McCord
1423 Van Buren
Topeka, Kansas

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March 21, 1991

Glen W. White
2608 Bond Place,
Lawrence, KS 66049

Mr. Chairman and Members of the Committee:

My name is Glen White. I live in Lawrence and am currently Director of Training at the Research and Training Center on Independent Living located at KU. Today I would like to speak in favor of House Bill 2541, known as the Kansas Act Against Discrimination, which, when passed into law, will help to reduce discrimination against people with disabilities.

Our nation has progressed from the days of Selma, Alabama -- where blacks had to ride at the rear of the bus. The law now allows people of all races to ride anywhere on the bus. I do find it disconcerting, however, that over 25 years have passed since those days in Selma, but people with physical disabilities are still fighting just to get on the bus.

As a person who has been disabled for over 25 years, I would like to share some personal experiences that I have had in being unfairly discriminated against over the past year.

A group of friends from my church and I bought Royals tickets for a special "group night." I went with my friends to the assigned seating up in the upper decks, but when I tried to sit with my friends, I was told that I would have to sit in the "wheelchair section." In the wheelchair section at Royals Stadium, I can only bring one person with me to watch the game, since there is only one

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standard stadium seat directly in front of where wheelchair users sit for the wheelchair user's friend or family member. I have a wife and two children who also like to go to baseball games. I imagine that many of you have gone to an occasional Royals ballgame with your family. How would you like to be told that only one member of your family can sit with you in the designated seating area that the management chooses for you? This seating is segregated -- all wheelchairs must be seated in this special area. If that were not bad enough, because of the upper deck overhang, a wheelchair user can only see the bottom half of the Royals outfield scoreboard!

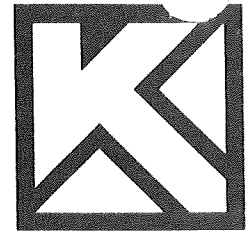
I have also had negative experiences with building codes that have allowed buildings that have been significantly remodeled to discriminate against me by not providing adequate access through minor curb cuts or ramps. I recently went to two Lawrence eating establishments that have had extensive remodeling in recent months. I was surprised that there was no access to the front entrance from the parking lot. At the other establishment, several graduate students and I were to meet with graduate students from several other University of Kansas departments for a happy hour. When I arrived, I was disappointed that there were two main levels for patrons, with access available only on the main level. Since about half of the graduate students were also on the second level, I was denied the opportunity to meet with them, because there was no access to the second level. To me that is discrimination. I was

not able to enjoy the full privileges of unhampered access that my colleagues enjoyed.

In the last year, I have been looking for life insurance to protect my family in the untimely event of my death. I carefully shopped for the best life insurance offers. To my surprise and frustration, the best offer I could get was double what the "standard rate" was due to my spinal cord injury. Never mind if I have excellent health, swim 4 days a week, and don't smoke. My personal record has no impact upon unfair actuarial ratings that take worst-case scenarios of persons with disabilities and apply them across the board. Thus, for my life insurance protection, I pay what amounts to smoker's rate premiums. I sincerely believe that this is discriminatory. Many of my peers with disabilities are in similar situations when they try to find life or health insurance they can afford. Unfortunately, often times they cannot afford to buy the insurance they need.

I would urge each of the committee members to give Bill 2541 their full support to protect citizens with disabilities from discrimination that citizens of other races, religions, colors, sex, national origins or ancestry enjoy. House Bill 2541 offers people with disabilities such protection from discrimination.

LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

500 Bank IV 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 30

March 21, 1991

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Judiciary Committee

by

Bud Grant
Executive Director
Kansas Retail Council

Mr. Chairman and members of the Committee:

My name is Bud Grant, and I appear today in support of SB 30 on behalf of the Kansas Retail Council and the Kansas Chamber of Commerce and Industry.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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The purpose of SB 30 is to clarify any questions which may have arisen as a result of an Attorney General's opinion issued this summer relating to the amount the receiver of a worthless check may charge as a "service charge." This opinion stated that when HB 2581, passed by the 1990 legislature, became law, one of the amendments to the bill limited all service charges to \$10. This happened without the understanding of interested parties and without discussion in the committees or on the floor of either house.

SB 30 simply returns us to where we were before HB 2581. While the statutes have defined the amount of the service charge, the court in the case of *Merrel v. Research and Data, Inc.*, No. 49331, stated:

Where a sign setting forth the fees to be charged on returned checks is conspicuously posted in a place of business so that the person cashing a check or giving a check for merchandise cannot help but see it, there is a presumption of fact that the one giving a check in that place of business saw the sign and assented to its terms.

The court goes on to say:

Authorizing the holder of a bad check to demand and receive a service charge of not more than \$3 (the statutory amount at that time) in addition to the face amount of the check does not by its terms or by implication prohibit the parties from expressly contracting for a larger service charge. The only limitation on such an express agreement is the common law rule that it may not be unconscionable.

Allowing a person who purchases goods or services to pay by check, as opposed to cash, is a privilege granted by the person offering the goods or services. Should the check prove to be worthless, that person should not be forced to lose money in collecting for the check. The \$10 service charge is not enough. The cost of restricted mail and limited personnel time can easily exceed the \$10. I urge you to return the law to where it was at this time last year and recommend SB 30 favorable for passage.



EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

March 21, 1991

HOUSE JUDICIARY COMMITTEE SUPPORTING SB 30

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1st VICE-PRESIDENT
SKIP KLEIER
Carbondale

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Abilene

JOE WHITE
Kingman

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. We represent the retailers, wholesalers and distributors of food products.

As you know, ALL the cost of doing business is figured into the price of any goods or service. Among the major costs in the grocery store business is theft of all sorts -- bad checks, shoplifting, shopping carts, internal theft etc. At various times we have asked for legislative assistance in addressing those major concerns. In 1986 a beneficial bill was passed to permit retailers to collect the amount of the bad check, plus damages of triple the amount of the check with a minimum of \$100 and maximum amount of \$500, as set by the Court, plus collection costs which were not unreasonable and were posted where the checks were cashed.

We appreciated your consideration of OUR problem, and at the same time understood the frustrations encountered by business people who did not have that same recourse when they were given an insufficient fund check for re-existing debts. Throughout the campaign to include others who could use the "triple-damage bad check bill" we held firm to our stance to not oppose any bill that would benefit the honest Kansan if it did NOT change the intent of the original law.

We relied upon the conferees to present data which would not weaken that law while HB 2581 made it's way through the legislative process in 1990. From conversations with numerous legislators and conferees, we believe they were as surprised as we were with the interpretation of HB 2581, passed in 1990. With that thought in mind, we worked with Senator Salisbury, and those involved with the original measure, to amend the statutes to correctly reflect the intent of HB 2581 which was to NOT LIMIT THE SERVICE FEE to \$10 and instead allow a reasonable amount.

We believe that SB 30 will accomplish our goal and we have no problem with the amendments made by the Senate Committee. We respectfully ask your favorable consideration of this bill and I will be happy to answer any questions you may have.

Frances Kastner
Frances Kastner, Director
Governmental Affairs, KFPA

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
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Testimony on Behalf of
Attorney General Robert T. Stephan
Presented by
Camille Nohe
Assistant Attorney General

House Judiciary Committee
Re: Senate Bill No. 30
March 22, 1991

On behalf of Attorney General Stephan, I am here to testify in favor of Senate Bill No. 30.

The Attorney General supports Senate Bill No. 30 which amends K.S.A. 1990 Supp. 16a-2-501 (the worthless check provision of the Consumer Credit Code) and K.S.A. 1990 Supp. 60-2610 (which establishes civil liability for worthless checks) to allow a service charge of more than \$10.00 if that higher amount is established by a written notice posted conspicuously.

Both of those statutes were amended by the 1990 Legislature to include recovery of a maximum service charge of \$10.00.

Prior to those amendments the Kansas Supreme Court in 1979 had established the right of merchants to expressly contract for the amount of the service charge by use of a conspicuously posted sign. The only limitation was whether that amount was

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unconscionably high. The 1990 amendments altered that Supreme Court decision by imposing a \$10.00 limit on the amount of a service charge.

Senate Bill No. 30 would return the matter to the pre-1990 amendment status and bring Kansas statutory law into conformance with the preexisting case law. That is, merchants could again contract for the amount of the service charge by use of a written notice posted conspicuously, being limited only by what would be unconscionably high.

I ask your support of Senate Bill No. 30. Thank you.