

Approved: April 24, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Senator Wint Winter Jr. at
10:00 a.m. on April 8, 1991 in room 313-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

John Wine, Assistant Secretary of State
T. C. Anderson, Kansas Society of Certified Public Accountants
John R. Luttjohann, Foulston & Siefkin Law Offices
Martha Gabehart, Kansas Commission on Disability Concerns
Arthur Solis, Kansas Commission on Civil Rights
Ray Petty, Independence, Inc.
Paul Klotz, Association of Community Mental Health Centers of Kansas, Inc.
Lori Class, Kansas Alliance for the Mentally Ill and Kansas Mental Health Coalition
Yolande Destgen, Kansas Association of Rehabilitation Facilities
Mike Donnelly, Topeka Independent Living Resource Center, Inc., and
Kansas Association of Centers for Independent Living
Glen Yancey, Kansas Department of Social and Rehabilitation Services
Leroy Garvin, Topeka
David Goldstein, Jewish Community Relations Bureau/American Jewish Committee
Dr. Gordon Risk, American Civil Liberties Union of Kansas
Robert C. Londerholm, Hackler, Londerholm, Hinkle, Corder, Martin & Hackler, Chartered

The Chairman called the meeting to order by opening the hearing for HB 2535.
HB 2535 - amendments relating to corporations, limited liability companies and limited
partnerships.

John Wine, Assistant Secretary of State, testified in support of HB 2535. (ATTACHMENT 1)
Mr. Wine added that his office would not object to having the bill amended as would be suggested
by the Kansas Society of Certified Public Accountants.

T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants,
testified in support of amending HB 2539 into HB 2535. (ATTACHMENT 2) Mr. Anderson also
presented correspondence from Alson Martin, requesting an amendment to HB 2539.
(ATTACHMENT 3)

HB 2539 - amendments to the limited liability company act.

John R. Luttjohann, Foulston & Siefkin Law Offices, Wichita, testified in support of HB 2535
and amendment of HB 2539. (ATTACHMENT 4)

Additional material supporting HB 2535 with the amendment of HB 2539 from Alson Martin,
Shook, Hardy & Bacon, was distributed to the Committee. (ATTACHMENT 5 & 6)

As no other conferees appeared, this concluded the hearing on HB 2535.

Senator Morris moved to amend HB 2535 by inserting the contents of HB 2539 and including the
amendment offered by Mr. Martin to allow professional organizations to utilize a limited liability
company. Senator Kerr seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S Statehouse, at 10:00 a.m. on April 8, 1990.

Senator Morris moved to recommend HB 2535 favorable for passage as amended. Senator Kerr seconded the motion. The motion carried.

The Chairman turned the Committee's attention to SB 139.
SB 139 - Saline county law library fees authorized.

The provisions SB 139 were amended into SB 59 and signed into law by the Governor on March 4, 1991.

Senator Morris moved to dispose of SB 139 by recommending it Be Not Passed. Senator Bond seconded the motion. The motion carried.

The Chairman turned the Committee's attention to HB 2541 by opening the hearing.

HB 2541 - prohibiting discrimination based on disability.

Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns, testified in support of HB 2541. (ATTACHMENT 7)

Arthur Solis, Senior Legal Counsel of the Kansas Commission on Civil Rights, presented testimony in support of HB 2541. (ATTACHMENT 8)

Ray Petty, Executive Director of Independence, Inc., testified in support of HB 2541. (ATTACHMENT 9)

Paul Klotz, Association of Community Mental Health Centers of Kansas, Inc., testified in support of HB 2541. (ATTACHMENT 10)

Lori Class, Kansas Alliance for the Mentally Ill and the Kansas Mental Health Coalition, testified in support of HB 2541. (ATTACHMENT 11)

Yolande Destgen, Kansas Association of Rehabilitation Facilities, testified in support of HB 2541. (ATTACHMENT 12)

Mike Donnelly, Topeka Independent Living Resource Center, Inc., testified in support of HB 2541. (ATTACHMENT 13) Mr. Donnelly also presented written testimony for Gina McDonald, Executive Director of the Kansas Association of Centers for Independent Living in support of HB 2541. (ATTACHMENT 14)

Glen Yancey, Acting Commissioner of Rehabilitation Services of the Kansas Department of Social and Rehabilitation Services, testified in support of HB 2541. (ATTACHMENT 15)

Leroy Garvin, Topeka, testified in support of HB 2541, from his perspective and experiences as a "hyphenated" American. He expressed his opinion that the bill would help eliminate humiliation and degradation for some citizens, allowing all Americans to be treated as human beings.

David Goldstein, Executive Director of the Jewish Community Relations Bureau/American Jewish Committee, testified in support of HB 2541. (ATTACHMENT 16)

Dr. Gordon Risk, American Civil Liberties Union of Kansas, testified in support of HB 2541. (ATTACHMENT 17)

Robert C. Londerholm, from the law firm of Hackler, Londerholm, Hinkle, Corder, Martin & Hackler, Chartered, testified in support of HB 2541 if amended to allow "preference" to members of entities. (ATTACHMENT 18)

This concluded the hearing for HB 2541.

The meeting was adjourned until 1:30 p.m. on Tuesday, April 9, 1991.

Date 8 April 1991

VISITOR SHEET
Senate Judiciary Committee

(Please sign)

Name/Company

Name/Company

M. Hawer	Cap-Journal
Lori Class	Kansas Mental Health Coalition Mental Health Association in Kansas
Tammy Bothwell	Secretary of State
Glen Nancy	Rehabilitation Services - SRS
Lyn McDonald	KACIL
Martha Galehart	KS. Commission on Disability Commission
R G Tracy	KTLA
Beverly J. Londerholm	
Lynne Duv	KDOA
Theresa	KTLA

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE SENATE JUDICIARY COMMITTEE

April 8, 1991

House Bill No. 2535

H.B. 2535 would amend several statutes affecting corporate filings. The House vote was 123 - 2.

Sections one, four, five and six would make it easier for corporations to get extensions of time for filing annual reports. This bill would provide an additional 90 days to file extensions.

Sections one, four, five and six would also delete the requirement that annual reports contain information about a corporation's authorized shares, date of election of officers, and places of business. The information is either available elsewhere or rarely enquired about. The current requirement wastes public and private time and expenses when annual reports are returned for correction.

Section two changes a statutory definition used to compute franchise taxes. The change would bring the statute in conformity with the forms that we used from 1972 until January of this year. Failure to make this correction would reduce general fund revenues by at least \$300,000 annually.

Section three would reduce the financial burden of organizing a nonprofit organization by decreasing the fee that a nonprofit pays to file its articles of incorporation from \$75 to \$20. The reduction in revenue would be more than offset by Section five's increase in annual fees from \$5 to \$20. To assist nonprofits which recently incorporated, the increase would be delayed until 1993.

At our request the House deleted sections seven through ten. After initially recommending these changes, we learned that these changes were somewhat controversial and required more study.

We ask that the committee favorably recommend H.B. 2535 for passage. Thank you.

John Wine
Assistant Secretary of State

Senate Judiciary Committee
4-8-91
Attachment 1



Kansas Society of
Certified Public Accountants

FOUNDED OCTOBER 17, 1932

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

April 8, 1991

To the Senate Judiciary Committee:

I am T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants, and I appear before you today to ask you to support amending HB 2539 into HB 2535.

Last year you acted favorably on enacting the Kansas Limited Liability Company Act. HB 2539 contains some important technical amendments to that act. One would permit those covered by the professional corporation act to not only form general corporations, but also Limited Liability Companies.

The second would enhance the concept that Limited Liability Companies could be taxed as partnerships, ~~or corporations~~.

Senate Judiciary Committee
4-8-91
Attachment 2

SHOOK, HARDY & BACON

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A PARTNERSHIP INCLUDING PROFESSIONAL
CORPORATIONS

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OTHER OFFICES
ONE KANSAS CITY PLACE
KANSAS CITY, MISSOURI
19 BUCKINGHAM GATE
LONDON, ENGLAND

March 26, 1991

The Honorable John Solbach
House of Representatives
Statehouse, Room 115-S
Topeka, Kansas 66612

Dear Representative Solbach:

Perhaps I read it too quickly, but in reviewing House Bill 2539, I cannot find any language expressly allowing professional organizations, such as CPAs, to utilize a limited liability company. I would recommend that HB No. 2539, Section 7 be amended by adding a new subsection (Q) as follows: "Have and exercise all powers which may be exercised by a Kansas professional association (professional corporation) including employment of professionals to practice a profession, which shall be limited to the practice of one profession, except as provided in K.S.A. 17-2710."

This change is very important to the Kansas CPA Society and may be important to other professional groups as well. Since it is possible that the Kansas corporation code would be viewed as an exclusive method whereby professionals can do business other than general or limited partnerships, the statute should be made clear that professionals can practice through the limited liability company vehicle.

Very truly yours,



ALSON R. MARTIN, P.A.

ARM/bn

cc: T.C. Anderson
John Wine
Stan Andeel

10372724

Senate Judiciary Committee
4-8-91
Attachment 3

SHOOK, HARDY & BACON

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LONDON, ENGLAND

April 4, 1991

The Honorable John Solbach
House of Representatives
Statehouse, Room 115-S
Topeka, Kansas 66612

Re: Limited Liability Company; House Bill 2539

Dear Representative Solbach:

I am writing to follow up on my prior letter, a copy of which is attached. Please let me know when the hearings on House Bill on 2539 will be scheduled.

T. C. Anderson called in the response to my last letter. I think that the change I have suggested to the House Bill is useful and necessary. If we do not include it, then people will be able to form limited liability companies with professional groups joined together which cannot join together under the Professional Corporation Code, which would be the wrong result. The language now in the bill in Section 1 is appropriate.

I look forward to hearing from you when the hearing on the bill will be scheduled. It is very important that this bill pass this Session. Thank you so much.

Very truly yours,



ALSON R. MARTIN, P.A.

ARM:sk
Enclosure
cc: T. C. Anderson
John Wine
Stan Andeel

FOULSTON & SIEFKIN LAW OFFICES

700 FOURTH FINANCIAL CENTER BROADWAY AT DOUGLAS WICHITA, KANSAS 67202 (316) 267-6371 FAX: (316) 267-6345

ROBERT N. PARTRIDGE	FREDERICK L. HAAG	GLORIA G. FLENTJE	SUSAN L. SMITH	TIMOTHY B. MUSTAINE	PHILLIP A. GLENN	WILLIAM R. WOOD II
RICHARD C. HARRIS	RICHARD D. EWY	LARRY G. RAPP	WYATT M. WRIGHT	JEFFERY A. JORDAN	WILLIAM N. KIRK	THOMAS W. YOUNG
GERALD SAWATZKY	DARRELL L. WARTA	R. DOUGLAS REAGAN	JIM H. GOERING	TRISHA A. THELEN	ERIC K. KUMIN	
ROBERT L. HOWARD	HARVEY R. SORENSEN	JAY F. FOWLER	WYATT A. HOCH		ERIC F. MELGREN	Special Counsel
CHARLES J. WOODIN	JAMES M. ARMSTRONG	STEPHEN M. KERWICK	AMY S. LEMLEY		JAY M. RECTOR	STEPHEN M. BLAES
MIKEL L. STOUT	MARY KATHLEEN BABCOCK	GARY E. KNIGHT	DAVID R. EDWARDS	MARK D. ANSTOETTER	GAYE B. TIBBETS	ROBERT L. HEATH
BENJAMIN C. LANGEL	CHARLES P. EFFLANDT	JOHN J. MURPHY	JAMES P. RANKIN	KEVIN J. ARNEL	SUSAN H. TILTON	JOHN R. LUTTJOHANN
WILLIAM H. DYE	JAMES D. OLIVER	CHRISTOPHER M. HURST	DOUGLAS L. HANISCH	C. A. BEIER	STEWART T. WEAVER	
PHILLIP S. FRICK	GARY L. AYERS	VAUGHN BURKHOLDER	DOUGLAS L. STANLEY	JOAN M. BOWEN	CRAIG W. WEBB	Of Counsel
STANLEY G. ANDEEL	LINDA K. CONSTABLE	TERRY C. CUPPS	J. STEVEN MASSON	SHARON L. CHALKER	REBEKAH S. WHITEFORD	ROBERT C. FOULSTON

Retired JOHN F. EBERHARDT ROBERT M. SIEFKIN ROBERT C. FOULSTON (1888-1947) GEORGE SIEFKIN (1895-1954) GEORGE B. POWERS (1895-1987)

TO: The Honorable Wint Winter, Jr., Chairman
Senate Judiciary Committee

FROM: John R. Luttjohann

DATE: April 8, 1991

RE: House Bill 2535
House Bill 2535

Thank you for the opportunity to appear today on House Bill 2535. The bill deals with the Kansas Corporation law. We request that the provisions of House Bill 2539 which are technical revisions in nature be amended in to House Bill 2535.

House Bill 2539 deals with a relatively new concept which was passed in to law last year, the limited liability company. This type of business enterprise, while having the liability protection afforded a general corporation, is taxed as a partnership.

We would request that the changes contained in House Bill 2539, with the exception of Sections 2 and 3, which I understand are not simply technical corrections be passed in to law.

Section 1 clarifies that a professional association could organize as a limited liability company.

Page 8, line 6 adds the words "limited liability company" where there is a statutory reference to corporations.

Page 9, line 24 merely changes a statutory reference to an earlier provision.

Page 11, line 19 updates language in the current law.

Page 11, lines 35 through 42 provide definitional language which conforms the law relating to limited liability companies to the law relating to corporations.

Senate Judiciary Committee
4-8-91
Attachment 4

Page 12, line 3, strikes the reference to "general corporations" and inserts the terms "individual". I do not believe that this changes the substantive law.

Page 12, lines 5 and 6 specifically state that a limited liability should not be construed as a corporation.

Page 12, lines 39 through 43 changes references in the law from the term "bylaws" to the term "operating agreement", as that is the name of the document actually used by limited liability companies.

Page 13, lines 25 through 27 clarify language in the law, and conform to the term "members" used by limited liability companies.

Page 14, lines 7 and 8 update language relating to the required data to be contained in the name of a limited liability company.

Page 14, Section 10 provides clarifies the language and limits the data which must be provided in the articles of organization filed by a limited liability company.

Page 15, lines 5 and 6 changes a reference from "bylaws" to "operating agreement".

Page 15, Section 11 changes references from "certificate" to "articles".

Pages 15 and 16, Section 12 conforms the law to an earlier amendment, and limits the statute which defines when an amendment to the articles of organization is necessary.

Page 15, Section 13 updates the statutory language and provides that each member has one vote in choosing the company's management.

Pages 16 and 17, Section 14 updates the statutory language relating to management of the company.

Page 18, Section 15 specifically provides that transactions not in the ordinary course of business require approval of the members.

Page 18, Section 15 clarifies language relating to distribution of income, gain, loss, deductions and credits.

The balance of the bill simply updates language in the law.

I am advised that the provisions of the bill are a joint work product of members of the bar, C.P.A.'s and the Secretary of State's staff, and are viewed as technical changes.

MEMORANDUM

TO: Senator Wint Winter
FROM: John Luttjohann
DATE: April 5, 1991
RE: House Bills 2535 and 2539

Stan Andeel was involved in the drafting of House Bill 2539 and is very interested in its passage. It is technical clean-up with one exception. Sections 2 and 3 made their way in to the bill and have to do with corporate farming. The House Committee is not interested in moving the bill, I am told, because they don't want to open up the corporate hog farming issue. We have no interest in those sections at all. Since House Bill 2535 is scheduled for hearing at 9:30 on Monday, we would like to see the provisions in House Bill 2539, with the exception of sections 2 and 3, amended in to the bill.

These changes are critical since they will take certain language out of the statute and avoid an IRS challenge to the partnership tax treatment which is desirable for Limited Liability Companies.

House Bill 2535 is the Secretary of State's bill. John Wine has been contacted, and he has no problem with amending the non-controversial provisions of House Bill 2539 in to the bill.

I will plan to be at the hearing on Monday. Due to your heavy schedule, it would not really be necessary for us to testify unless you would like for us to do so.

Thank you for your consideration in this matter.

P.S. How about those Jayhawks?????

LAW OFFICES

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 LONDON, ENGLAND

April 5, 1991

VIA FAX # 913/296-6718
 Winton A. Winter, Jr.
 State Capitol Building
 Room 120 South
 Topeka, KS 66612

Re: HB 2535; HB 2539

Dear Wint:

I understand that the hearings have been set for 9:30 a.m. next Monday on HB 2535. Would it be possible to amend that bill to include the provisions of HB 2539?

Stan Andeel, John Wine and I, along with several other attorneys, have developed 2539 in order to improve our Limited Liability Company Act. I think it is a significant improvement over our current law. Sections 2 and 3 of that Bill are lengthy but merely intended to make the limited liability provisions correspond with the corporate farming provisions. The original Limited Liability Company Act simply prohibited limited liability companies from being engaged in agricultural activity. This was contained in Section 51 of the original Act.

If you could find a way to amend HB 2535 to include either all of the provisions of HB 2539 or all of the provisions except Articles 2 and 3 (if they are controversial, then leave them out) that would be tremendous.

I previously sent to you a letter recommending a change to the liability standard in our Professional Corporation Statute. I have enclosed a copy of that letter as well for your quick reference. I would propose that HB 2535 be amended to include that as well, if possible.

Thanks for your consideration.

Very truly yours,



ALSON R. MARTIN, P.A.

ARM/bn

Senate Judiciary Committee
 4-8-91
 Attachment 5

LAW OFFICES

SHOOK, HARDY & BACON

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19 BUCKINGHAM GATE
LONDON, ENGLAND

March 26, 1991

VIA FAX #913/843-0341

843-0811

Mr. Winton A. Winter, Jr.
STEVENS, BRAND, LUNGSTRUM, GOLDEN & WINTER
502 First National Bank Tower
P.O. Box 189
Lawrence, Kansas 66044

Re: Professional Corporation Statute

Dear Wint:

I am writing to propose an amendment to House Bill No. 2053 if it goes through the legislature.

I would suggest that the provision K.S.A. 17-2715 should be amended with respect to the standard of care of a professional practicing in a professional corporation. The change would be made by deleting the words in that section "unless such employee or shareholder was negligent in appointing or supervising that employee." Then the words in the next sentence "except as provided in this section" should also be deleted. This would put professionals on a liability with other owners of corporations; they would remain responsible for their own misconduct.

This change would be consistent with those states where there is an expressed provision with respect to the liability of individuals, namely see Ala. Code § 10-4-390 (Supp. 1985); Alaska Stat. § 10.45.140 (1962); Hawaii Rev. Stat. § 416-153 (1976); KY Rev. Stat. Ann. § 274.055 (Baldwin 1981); La. Rev. Stat. Ann. § 12.807 (West 1969) MD. Rev. Stat. Ann. tit. 13. § 708 (1963); Minn. Stat. Ann. § 319A.10 (West Supp. 1986) Nev. Rev. Stat. § 89.060 (1979); N.D. Cent. Code § 10-31-0-9 (1985) S.C. Code Ann. § 35-51-70 (Law Co-op 1976); S.D. Codified Laws Ann. § 47-13A-7 (1983); Tex. Stat. Ann. art. 1528e(16) (Vernon 1980).

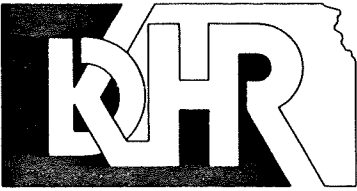
Very truly yours,



ALSON R. MARTIN, P.A.

ARM/bn
10372420

Senate Judiciary Committee
4-8-91
Attachment 6



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 to the
Senate Judiciary Committee
by Martha K. Gabehart, Executive Director
Kansas Commission on Disability Concerns
April 8, 1991

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 of rights under 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.

Presently, 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 of any kind or for 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 for the other protected populations for the federal government. Having this ability to process complaints on the state level will

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4-8-91
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Testimony on HB 2541
by Martha K. Gabehart
Page 2

make resolution of complaints faster and less expensive.

Without passage of HB 2541, employment and housing complaints would have to be processed at the regional offices of the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development in Kansas City, Missouri. It presently takes from 150 to 250 days to process an employment complaint at the federal level. The Kansas Act Against Discrimination does not allow that much time for complaint processing. Also, KCCR has offices in three locations in Kansas which makes the time and expense of travel less of an issue.

Public accommodation complaints will have to be handled in the courts since the ADA provides for only that recourse. If the KAAD provided the same protection as the ADA, complaints could be handled by KCCR, making it less expensive for consumers and businesses alike.

The solution to the problem of complaint processing is to pass HB 2541, bringing the Kansas Act Against Discrimination into compliance with the federal anti-discrimination laws.

In summary, passage of HB 2541 will allow complaints to be handled at the state level. It will also send a clear message to Kansans with disabilities that they are considered as equals to Kansans without disabilities. We urge you to pass HB 2541 without amendments.

\hb2541s

JOAN FINNEY, GOVERNOR

STATE OF KANSAS



COMMISSION ON CIVIL RIGHTS

LONDON STATE OFFICE BLDG.—8TH FLOOR
900 S.W. JACKSON ST.—SUITE 851 S.
TOPEKA, KANSAS 66612-1258
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ROBERT G. LAY
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ARTHUR W. SOLIS
SENIOR LEGAL COUNSEL

ARTHUR R. BRUCE
SUPERVISOR OF COMPLIANCE

WILLIAM V. MINNER
FIELD SUPERVISOR

LINDA L. AUWARTER
OFFICE MANAGER

FRANCIS W. RAMIREZ, CHAIRPERSON
TOPEKA

JOSEPH VILLARREAL
OVERLAND PARK

ADOLPH HOWARD
KANSAS CITY

ALYCE HAYES BROWN
TOPEKA

FRANCIS ACRE
DODGE CITY

ROBERT WESLEY
INDEPENDENCE

ANN PAPAY
ULYSSES

HOUSE BILL 2541

The Kansas Commission on 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 lose that windfall, which currently amounts to approximately \$90,000 per year.

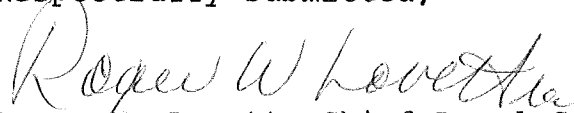
Senate Judiciary Committee
4-8-91
Attachment 8

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 handicap under 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

April 8, 1991

Testimony in support of House Bill 2541
Presented by Ray Petty, Independence, Inc.
Senate Judiciary Committee; April 8, 1991

Mr. Chairman and Members of the Committee:

My name is Ray Petty and I am the Executive Director of Independence, Inc., a not-for-profit corporation based in Lawrence whose mission is to enhance opportunities for people with disabilities to live successful lives in their communities.

House Bill 2541 is the culmination of years of effort by disability rights advocates who are invested in securing the same rights for people with disabilities that all other citizens of Kansas enjoy. Many of you are aware of recent landmark legislation passed by Congress in the past few years - the Fair Housing Act Amendments in 1988 and the Americans with Disabilities Act of 1990. H.B. 2541 has been crafted to bring the Kansas Acts Against Discrimination into compliance with those very important federal mandates.

I urge this committee to help us set the record straight by making it clear in no uncertain terms that all people of this state will enjoy access to public accommodations, will have equal opportunity for employment, and will be treated with dignity and respect in terms of other services and opportunities which the general public takes for granted. This is a bill whose time has come. Help us pursue our goals of making it possible for everyone to be treated according to their talents and skills as opposed to the limiting perceptions and erroneous stereotypes which often control essential opportunities for people with disabilities. By clarifying to a simple, widely understood standard for the class to be protected and the rules of the game, the public education and technical assistance aspects of this arena will be greatly simplified through a much-simplified.

Thank you for your time and attention.



Independence, Inc.

THE LAWRENCE INDEPENDENT LIVING
RESOURCE CENTER

Ray Petty

Executive Director

1910 HASKELL • LAWRENCE, KANSAS 66046
913-841-0333

Senate Judiciary Committee

4-8-91

Attachment 9



**Association of Community
Mental Health Centers of Kansas, Inc.**

835 SW Topeka Avenue, Suite B, Topeka, KS 66612
Telephone (913) 234-4773 Fax (913) 234-3189

**TESTIMONY ON H.B. 2541
SENATE JUDICIARY COMMITTEE
Honorable Wint Winter, Jr., Chair**

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Kermit George
Past President
Hays

Paul M. Klotz
Executive Director
Topeka

**Paul M. Klotz
April 8, 1991**

Thank you for this opportunity to comment.

The mentally ill are not now included in the Kansas Act Against Discrimination. Yet these Kansas citizens are probably the population most discriminated against in this state and in the country. The mentally ill are perceived as dangerous when in fact as taken as a total population as against the nonhandicapped populations, these persons have the least violent behavior of any other individual group of people. In fact and unfortunately, when these people do exhibit violence it is usually against themselves, rather than others.

With mental health reform as passed by the 1990 Session of the Legislature, many of these people will be returned to the community. It is most imperative that these people be protected in their choice of housing, jobs and social life.

We urge your support of H.B. 2541.

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KANSAS ALLIANCE FOR THE MENTALLY ILL

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

LORI CLASS

April 8, 1991

TESTIMONY

TO: Members, Senate 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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TO: Senate Judiciary Committee
Senator Wint Winter, Chair

FROM: Kansas Association of Rehabilitation Facilities

RE: HB ²⁵⁴¹ 2514; an act amending the Kansas Act Against
Discrimination

DATE: April 8, 1991

The Kansas Association of Rehabilitation Facilities supports HB 2514 to amend the Kansas Act Against Discrimination. The KARF is an association representing forty-two community based facilities serving children and adults with mental retardation and developmental disabilities.

These amendments were drafted to bring our State law into compliance with the American's With Disabilities Act which was signed into law in July, 1990. Let me share with you one piece of testimony offered by a conferee before Congress. Judith Heumann, a founder of the World Institute on Disability, reflects the thoughts of many Kansans with disabilities. She said, "When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was a fire hazard. I was forced to go into home instruction, receiving one hour of education twice a week for 3 1/2 years. My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.

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a wheelchair.

When I was 19, the house mother of my college dormitory refused me admission into the dorm because I was in a wheelchair and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because I was disabled by polio.

At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forcibly remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchair.

These are only a few examples of discrimination I have faced in my 40-year life. I successfully fought all of these attempted actions of discrimination through immediate aggressive confrontation or litigation. But this stigma scars for life."

I represent community providers who serve persons who are not so articulate and not so aggressive in acting upon their own behalf in protecting their personal rights.

I ask that you support HB 2541 and bring Kansas into compliance with the American's With Disabilities Act. It will allow the opportunity for all Kansas citizens to be treated with equity and respect.

Thank you for this opportunity to speak on behalf of Kansas citizens with disabilities.

12-7/2

TOPEKA INDEPENDENT LIVING RESOURCE CENTER, INC.

Testimony on House Bill 2541 Amending the KAAD

Presented to the Senate Judiciary Committee,

Honorable Senator Wint Winter, Chairman

By Michael Donnelly, Executive Director

Topeka Independent Living Resource Center

04-08-91

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 handicapped" 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

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HOME OF

TRAN/ASSIST

3258 S. Topeka Blvd. • Topeka, Kansas 66611 • 913-267-7100 Voice/TDD Attachment 13

sections.

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 necessary 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 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
SENATOR WINT WINTER, CHAIRPERSON
APRIL 8, 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

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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.

In addition, HB 2541 adds references to reasonable accommodation consistent with ADA. 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% 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.

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Glen Yancey
Acting Commissioner
Rehabilitation Services
Social and Rehabilitation Services
296-3911
April 8, 1991

Testimony of David H. Goldstein

On HB 2541



Judiciary Committee

Kansas Senate

April 8, 1991

5801 W. 115th Street, Suite 203
Overland Park, Kansas 66211-1824
(913) 469-1340 FAX: (913) 451-9358

I'm David Goldstein, Executive Director of the Jewish Community Relations Bureau/American Jewish Committee. We are located in Overland Park and represent members of the Jewish community throughout the state of Kansas including Johnson County, Lawrence, Manhattan, Newton, Topeka and Wichita.

I am here today to support HB 2541 especially the amendment which would ban discrimination in non-profit fraternal and social organizations.

The notorious incident last December at the Kansas City Country Club in Mission Hills, exposed the anachronistic bigotry that still lurks in the hearts and minds of a few powerful people. An eminently qualified individual was rejected for membership solely because of his religion. The people of Kansans were repulsed by this blatant act of discrimination. HB 2541 would prevent such embarrassing incidents from happening in the future.

What HB 2541 would not do, is prevent organizations

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BI-STATE ADVISORY COMMITTEE - KANSAS: Lawrence, Frances Degen Horowitz, David M. Katzman, Siegfried Lindenbaum, Manhattan, Philip W. Becker, Charlotte L. Edelman, Sheila Hochhauser, Newton, Dr. Charles M. Benjamin, Topeka, Jerome Frieman, Dr. Mark Greenberg, Rabbi Lawrence P. Karol, Leslie Kulick, Alan Wisman, Elaine Zlotky, Wichita, Joan S. Beren, Mark Blum, W.C. Cohen, Jr., Rabbi Kenneth Emert, Ivonne Goldstein, Leonard Goldstein, Beverly Jacobson, Marian Klebanoff, Mary Umansky, MISSOURI: Joplin, Jack Fleischaker, Harry Ludmeyer, Jay Neil Rosenberg, St. Joseph, Grace S. Day, Stanley R. Fishman, Rabbi Jeff Glickman, Milton Litvak, Richard A. Optican, Springfield, Bobbie Lurie.

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from applying legitimate criteria in their selection process. In this, it is consistent with the civil rights laws of our state that cover other forms of discrimination. You have rejected the argument based on " the private right to chose" in those situations and I trust will do so here.

Although there may be a few Jewish individuals that would wish to exclude Christians from what have been predominately Jewish country clubs, I can assure you that the vast majority of the Jewish community strongly supports HB 2541, I would respectfully request that you do the same.

To: Senate Judiciary Committee

From: Gordon Risk, M.D., American Civil Liberties Union of Kansas

Re: H.B. #2541

This is an excellent bill which should do much to eliminate discrimination against the disabled in Kansas. We wholeheartedly support it. We are particularly pleased that the Kansas House has chosen to end the exemption of non-profit fraternal and social associations and corporations from the anti-discrimination provisions that would otherwise apply to them as places of public accommodation. 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 may be used as a basis for excluding membership applicants. The initial rejection of Henry Bloch'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 judgment in agreement with U.S. Supreme Court decisions. (3)

- (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)

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HOUSE BILL NO. 2581
KANSAS ACT AGAINST DISCRIMINATION
BEFORE THE SENATE JUDICIARY COMMITTEE, SENATOR WINT WINTERS, CHAIRMAN
APRIL 8, 1991

Statement by Attorneys, Robert C. Londerholm and Eugene T. Hackler

1. House Bill No. 2581 attempts to conform to new Federal Legislation against discrimination with particular concerns on "disability" discrimination in public accommodations and in housing. Some amendments are necessary to conform to Federal Law.
2. House Bill No. 2581 has made a new but too broad a definition of "public accommodations" and has removed the words from the prior act which are:

"Public accommodations do not include a
nonprofit fraternal or social association
or corporation."
3. The Amended House Bill No. 2581 appears to prohibit nonprofit fraternal or social associations or corporations that are affiliated, sponsored or recognized by religious organizations from granting admission or use preference to members of their own religious faith or denomination.
4. It is suggested that the Senate amend House Bill No. 2581 by including a provision which states:

"Nothing in this act shall prohibit admission
or use preferences in religiously sponsored
or affiliated nonprofit fraternal or social
organizations or corporations from granting
admission or use preferences to members of
their own religious faith or denomination."
5. Preferential admission or use promises are made to sponsoring or affiliated religious groups as a part of fund-raising.
6. While an in-depth analysis of federal laws and regulations is not included in this statement, the Senate should be aware of some measures that are generally applicable: 42 U.S.C. Sec. 2000d, which prohibits discrimination on the basis of race, color or national origin in any program or activity receiving federal assistance; 42 U.S.C. Sec. 3604, which generally prohibits discrimination in housing on the basis of race, color, religion, sex or national origin; 42 U.S.C. 3607, which permits a religious entity or nonprofit organization operated or controlled by a religious entity to limit or give preference in the sale, rental or occupancy of dwellings

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it owns or operates for other than a commercial purpose to persons of the same religion, unless membership in the religion is restricted on the basis of race, color or national origin; and 42 U.S.C. Sec. 2000a(b), which defines "public accommodation."

7. Among our clients are:

The Ev. Lutheran Good Samaritan Society--
General Tax Counsel

The Missouri-Kansas Synod of the Evangelical
Lutheran Church in America (Bishop's Counsel)

The Salvation Army
(Kansas Tax Counsel)

Jewish Federation of Greater Kansas City
(Kansas Tax Counsel)

Faith Handicapped Village (Bethesda Lutheran Home, Olathe)

and some other Kansas nonprofit church affiliated
nursing homes and homes for aging.

Respectfully submitted,

Robert C. Londerholm and

Eugene T. Hackler

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MARTIN & HACKLER, CHTD.
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