Approved March 28, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on March 27, 1991 in room 531-N of the Capitol.

All members were present except:

Committee staff present:

Theresa Kiernan, Revisor of Statutes
Emalene Correll, Legislative Research
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Terry Larson, Kansas Alliance for the Mentally Ill
Yo Bestgen, Kansas Association of Rehabilitation Facilities
Paul M. Klotz, Association of Community Mental Health Centers of Kansas, Inc.
Martha K. Gabehart, Commission on Disability Concerns
Glen Yancey, Department of Social and Rehabilitation Services
Gina McDonald, Kansas Association of Centers for Independent Living
Virginia Lockhart, Association of Retarded Citizens
Jim Kaup, League of Kansas Municipalities

HB 2449 - Concerning zoning; relating to group homes.

Testimony in support of the bill was given by Laurie Class for Terry Larson with the Kansas Alliance for the Mentally Ill. (Attachment 1).

Yo Bestgen, Kansas Association of Rehabilitation Facilities, followed in support. (Attachment 2).

Sen. Gaines asked Ms. Bestgen to comment on the situation where patients are moved out of state hospitals into the community only to be returned. Ms. Bestgen said she will be attending meetings today between hospital superintendents and community providers who will be addressing this situation. They will be working together to resolve these problems rather than being divided as in the past. She added that she feels state hospitals could be eliminated if there is proper community support for the severely handicapped and mentally ill. State hospitals have been the only choice, but community living offers another option which should be available. Community living would take more funds to support, but if the funds were utilized in the proper way, this could be changed. Sen. Allen strongly disagreed with Ms. Bestgen's statement that she feels state hospitals could eventually be closed because he has seen cases where certain individuals could not be handled in the home, and parents have expressed this same sentiment. Ms. Bestgen felt that families could handle the difficult cases at home if given relief with community support. Sen. Ehrlich echoed Sen. Allen's comments about some handicapped patients at Winfield State Hospital which could not be cared for at home. The discussion was concluded with Sen. Petty's conclusion with Ms. Bestgen that the cost would be greater with community service, but it would be done in a more cost effective way as community services are supposedly half the price of hospital care.

Paul Klotz, Association of Community Mental Health Centers of Kansas, Inc., testified further in support of the bill. (Attachment 3). He added that the bill was designed not to close state hospitals but to down size them or to enable them to be used for other purposes. He noted that his organization supports home rule and clearly works with the county government when they move into a community and educates the community.

Martha Gabehart, Commission on Disability Concerns, continued with further

testimony in support. (Attachment 4).

Ms. Correll asked if the definition of "developmental disability" in the present law has presented a problem. Ms. Bestgen answered that it had not.

Next to testify in support was Glen Yancey, Department of Social and Rehabilitation Services. (Attachment 5).

Gina McDonald, Kansas Association of Centers for Independent Living, followed with further support for the bill. (Attachment 6).

Final testimony in support was given by Virginia Lockhart, Association of Retarded Citizens. (Attachment 7).

Jim Kaup, League of Kansas Municipalities, testified in opposition to the bill. (Attachment 8). As to the problem of the delay in getting a permit for group homes referred to in testimony, Mr. Kaup feels that the problem could be addressed by an amendment. This concluded the hearing on HB 2449, and it was taken under advisement.

The minutes of March 26 were approved.

The meeting was adjourned at 9:57 a.m.

Date: 3-27-91

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Martha Gabehart	Com. on Disability Concerns	Topeka
Glen Yancey	SRS - Rehab Services	Topeka
Gerry Ray	Johnson Co Commission	Olathe
Mary Ann Bane	ASSOC PCSS	Topeka
Virginia Lockhart	ARC - Kansas	Topeka
Gary Ingenthron	KDHE MH/MR Program	Topeka
Jim Kaup	League of Municipalities	Topeka
Paul M. Kb	Assoc. of CMHCs of Ks, Inc	Topeka
Kevin Siek	KCDC	"
Gina McDonald	Ks Assoc. Centers for Independent Living	Topeka

KANSAS AMI
KANSAS ALLIANCE FOR THE MENTALLY ILL
112 S.W. 6th, Ste. 305 • P.O. Box 675
Topeka, Kansas 66601
913-233-0755

March 27, 1991

TESTIMONY

TO: Members Senate Local Government Committee
FROM: Terry Larson, Kansas Alliance for the Mentally Ill, Kansas Mental Health Coalition
PRESENTED BY: Lori Class, Mental Health Association in Kansas, Kansas Mental Health Coalition
RE: House Bill 2449

House Bill 2449 is a significant step forward for persons with disabilities, including those who are mentally ill. The only objection we have heard is that it violates the spirit of local home rule authority.

The purpose of home rule is to allow cities and counties to enact laws that address situations which are local in nature. This includes most aspects of zoning. Local self-determination, however, is not a good argument for maintaining legal segregation. If a group home complies with all of the lot size and structural criteria, the "family" that resides in that dwelling, whether related or not, should not have to jump through more hoops than "traditional" families.

Thank you.

Senate L.G.
3-27-91
Attachment 1

Kansas Association of Rehabilitation Facilities

Jayhawk Tower • 700 Jackson • Suite 802 • Topeka, Kansas 66603

TO: Senate Local Government Committee
Senator Don Montgomery, Chair

FROM: Kansas Association of Rehabilitation Facilities

RE: HB 2449; Group Home Zoning

DATE: March 27, 1991

My name is Yo Bestgen and I am the Executive Director of the Kansas Association of Rehabilitation Facilities. I represent forty-two community based facilities in Kansas serving children and adults with mental retardation and developmental disabilities. These facilities provide early intervention, vocational rehabilitation and residential alternatives and services.

Today I would like to speak to you concerning the Kansas Statute on group home zoning. This law was passed in 1988 to provide the opportunity for community living in residential neighborhoods for individuals with disabilities. I have several issues to cover today. The impact of the current Kansas zoning law, the state laws compliance with the Federal Fair Housing Amendments Act of 1988 and why Kansas should amend the current law.

With the passage of the Kansas group home zoning law it was the intent to open up traditional single family areas to group homes. It was the expectation by those that advocated for the law that problems and concerns experienced prior to its passage would be reduced, and hopefully eliminated. That, unfortunately, has not been the case.

A primary barrier in the state law is the inclusion of the requirement of a special or conditional use permit. This requirement has continued to cause problems in the following areas:

1. Loss of access to certain properties due to the delay in obtaining such a permit, resulting in a financial burden to the sponsor seeking the property.

2. Additional financial burden due to the cost of obtaining such a permit. In Wichita, for example, the fee is $1,000 for the permit. In addition, there is staff time and attorney fees for the processing of the permit.

3. State funding sources for placements into the community are put 'at risk' of being lost by a Facility when they're delayed from opening a group home. This delay can deny a community placement to the individual, impairs the State's desire to serve people in the community who are waiting at home and in state institutions for services and causes a loss of economic growth to the community.

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Attachment 2

4. The greatest concern continues to be the invasion of the personal rights of the individuals who will live in the group home. The special use permit allows for a public hearing. This public hearing is "cloaked" in the language of land use. Such a hearing is to assure the local government that the home will adhere to building codes and meet the residential nature of the neighborhood. In fact, these public hearings have served to needlessly alarm residents and allow public embarrassment of the people who will be living in the homes. It is not unusual for a sponsor of a group home to decide not to seek housing in certain areas based upon the risk of public embarrassment of the residents.

   If land use is of concern, it is important to note that group homes must meet the same requirements of any other single family dwelling, whether or not there is a special use permit! In fact, group homes are under much greater scrutiny than their neighbors. These homes are monitored by the state and local Fire Marshal, state and county Health Departments, Department of Health and Environment, and the Department of Social and Rehabilitation Services on a regular basis. I would say to you that group homes are substantially monitored for health and safety standards.

   It should also be noted that concerns about traffic in residential areas or re-sale value of homes have never been substantiated. Even city planners, through published articles have recognized these issues as a faulty premise for restricting group homes.

   The Federal Fair Housing Amendments of 1988 established without question that acts of discrimination in housing will be penalized. It expressly prohibits inquiring into the nature and extent of a persons disability. These public hearings are not targeted at land use, but at the residents. The special/conditional use permit should be eliminated from the Kansas law.

The Kansas Attorney General issued an opinion in August, 1989, OR 122-89, which concludes that significant portions of the state law are in conflict with the Federal Fair Housing Act. In section 8 of the Federal Fair Housing Amendments Act it provides for enforcement by the United States Attorney General where the legality of any state or local zoning or other land use law or ordinance is called into question, and the enforcing federal agency (the Department of Housing and Urban Development) has indicated that "the act is intended to prohibit the application of restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of Handicapped individuals to live in the residence of their choice in the community." The opinion further articulates the non-compliance of the Kansas group home zoning law.

Finally, there is the question of why should Kansas move forward and change the current law? Why shouldn't we just wait until litigation is resolved and then act? First, it is simply good public policy. It provides for all Kansas citizens an opportunity for a choice in community living. In addition, it responds to the national effort to remove barriers of discrimination for individuals with disabilities and the state's initiative to reduce the population of the institutions. The Federal Fair Housing

Amendments Act of 1988 and the recent American's With Disabilities Act of 1990 both establish a clear message that this will no longer be accepted.

Litigation has occurred around the nation, including Kansas. The City of Russell, Kansas was found by HUD to be in potential violation of the Federal Fair Housing Amendments Act and backed away from prohibiting the opening of group homes. In fact, in October, 1990 the City welcomed the new residents to Russell with an open house. Two hundred Russell residents came to the opening and welcomed their new friends to the community. Unfortunately, the neighbors sued on their own volition. The Department of Justice has filed a law suit against the neighbors, based upon discrimination. The fact is that even if the original intent is not to discriminate, if that is the effect of ones actions then it is a violation of the law.

If Kansas responds now to what is good public policy it would also result in good fiscal policy. It would allay substantial money judgements and attorney fees. But most of all it would say to Kansas citizens with disabilities, that you too should enjoy the privilege and the opportunity to choose where you live.

I ask that you support HB 2449 and amend the Kansas Statute on group home zoning. Thank you for your time and consideration.

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. 2449
Honorable Don Montgomery, Chair
Local Government

By: Paul M. Klotz
March 27, 1991

Thank you for this opportunity to comment.

H.B. 2449 would go far in bringing Kansas zoning law into compliance with federal law relative to group homes. If the mentally ill and/or the mentally retarded are to have any meaningful life beyond institutions, **H.B. 2449** must be in place. To do less is discriminatory, not to mention expensive. The Kansas legislature has spoken over and over again that they want to serve these people in the community wherever possible. **H.B. 2449** will help that to happen.

Thank you.

Senate L.G.
3-27-91
Attachment 3

KANSAS DEPARTMENT OF HUMAN RESOURCES

Commission on Disability Concerns
1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877
913-296-1722 (Voice) -- 913-296-5044 (TDD)
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Joan Finney, Governor

Michael L. Johnston, Secretary

Testimony on HB 2449 to the Senate Local Government Committee by Martha K. Gabehart, Executive Director Kansas Commission on Disability Concerns March 27, 1991

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

Thank you for the opportunity to testify in support of HB 2449, the amendments to prohibit zoning practices which discriminate people with disabilities. KCDC supports HB 2449 because it brings our state law into line with the Fair Housing Amendments Act (FHAA) of 1988 and prohibits discrimination against people with disabilities.

The current law requires a special use permit in order to have a group home in a single family residence neighborhood and a public hearing on the issuance of the permit.

Attached is a copy of portions of the Congressional committee report on the Fair Housing Amendments Act of 1988. The committee's intention to prohibit zoning discrimination is stated in the last paragraph on page number 23 and in the third full paragraph on page 24. The second line states "The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive

Senate L.G.
3-27-91
Attachment 4

covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community."

Now even though special use permits may be required of every group of unrelated adults which live in a house in a single family residence neighborhood, the requirement has the effect of discriminating against people with disabilities. It would be interesting to find out how many special use permits are applied for which are not for groups homes, but for other groups of unrelated adults.

At the end of the third paragraph on page 24 it states that land use and zoning cases are to be litigated in court by the Department of Justice and would not go through the administrative process. Pages 61 through 63 outline the enforcement sections pertaining to private persons and the Attorney General. Relief includes actual and punitive damages, temporary injunctions, restraining orders, orders enjoining the defendant from engaging in such practice and ordering such affirmative action as may be appropriate. If the Attorney General intervenes, civil penalties up to $50,000 can be assessed for the first violation.

KCDC feels the Fair Housing Amendments Act is very clear about special use permits. KCDC urges your support of HB 2449.

\HB2449s

100TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
100-711

FAIR HOUSING AMENDMENTS ACT OF 1988

JUNE 17, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. EDWARDS of California, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1158]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1158) to amend title VIII of the Act commonly called the Civil Rights Act of 1968, to revise the procedures for the enforcement of fair housing, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fair Housing Amendments Act of 1988".

SEC. 2. SHORT TITLE FOR 1968 ACT.

The Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968) is amended by inserting after the comma at the end of the enacting clause, the following: "That this Act may be cited as the 'Civil Rights Act of 1968'.".

SEC. 3. REFERENCES TO 1968 ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes" (Public Law 90-284, approved April 11, 1968).

SEC. 4. SHORT TITLE FOR TITLE VIII.

Title VIII is amended by inserting after the title's heading the following new section:

"SHORT TITLE

"SEC. 800. This title may be cited as the 'Fair Housing Act'.".

SEC. 5. AMENDMENTS TO DEFINITIONS SECTION.

(a) MODIFICATION OF DEFINITION OF DISCRIMINATORY HOUSING PRACTICE.—Section 802(f) is amended by striking out "or 806" and inserting in lieu thereof "806, or 818".

(b) ADDITIONAL DEFINITIONS.—Section 802 is amended by adding at the end the following:

"(h) 'Handicap' means, with respect to a person—

"(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

"(2) a record of having such an impairment, or

"(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(i) 'Aggrieved person' includes any person who—

"(1) claims to have been injured by a discriminatory housing practice; or

"(2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"(j) 'Complainant' means the person (including the Secretary) who files a complaint under section 810.

"(k) 'Familial status' means one or more individuals' (who have not attained the age of 18 years) being domiciled with—

"(1) a parent or another person having legal custody of such individual or individuals; or

"(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

"(l) 'Conciliation' means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the Secretary.

"(m) 'Conciliation agreement' means a written agreement setting forth the resolution of the issues in conciliation.

"(n) 'Respondent' means—

"(1) the person or other entity accused in a complaint of an unfair housing practice; and

"(2) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 810(a).

"(o) 'Prevailing party' has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).".

SEC. 6. DISCRIMINATORY HOUSING PRACTICE AMENDMENTS.

(a) ADDITIONAL DISCRIMINATORY HOUSING PRACTICES.—Section 804 is amended by adding at the end the following:

"(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of—

"(A) that buyer or renter,

"(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

"(C) any person associated with that buyer or renter.

"(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of—

"(A) that person; or

"(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

"(C) any person associated with that person.

"(3) For purposes of this subsection, discrimination includes—

"(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if

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such modifications may be necessary to afford such person full enjoyment of the premises;

"(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

"(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that—

"(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

"(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

"(iii) all premises within such dwellings contain the following features of adaptive design:

"(I) an accessible route into and through the dwelling;

"(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

"(III) reinforcements in bathroom walls to allow later installation of grab bars; and

"(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

"(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as 'ANSI A117.1') suffices to satisfy the requirements of paragraph (3)(C)(iii).

"(5) As used in this subsection, the term 'covered multifamily dwellings' means—

"(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

"(B) ground floor units in other buildings consisting of 4 or more units.

"(6) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

"(7) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals.".

(b) ADDITIONAL PROTECTED CLASSES.—(1) Section 806 and subsections (c), (d), and (e) of section 804, are each amended by inserting "handicap, familial status," immediately after "sex," each place it appears.

(2) Subsections (a) and (b) of section 804 are each amended by inserting "familial status," after "sex," each place it appears.

(c) DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.—Section 805 is amended to read as follows:

"DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

"SEC. 805. (a) IN GENERAL.—It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

"(b) DEFINITION.—As used in this section, the term 'residential real estate-related transaction' means any of the following:

"(1) The making or purchasing of loans or providing other financial assistance—

"(A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or

"(B) secured by residential real estate.

"(2) The selling, brokering, or appraising of residential real property.

"(c) APPRAISAL EXEMPTION.—Nothing in this title prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.".

(d) ADDITIONAL EXEMPTION.—Section 807 is amended—

(1) by inserting "(a)" after "SEC. 807."; and

(2) by adding at the end of such section the following:

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a disease.[57] Indeed, Congress has defined the term "handicap" in the Rehabilitation Act to include drug addiction and to require that federal employers as well as recipients of federal financial assistance recognize drug addiction as a handicap.[58]

Aggrieved person. Provides a definition of aggrieved person to be used under this act. In *Gladstone Realtors* v. *Village of Bellwood,*[59] the Supreme Court affirmed that standing requirements for judicial and administrative review are identical under title VIII. In *Havens Realty Corp.* v. *Coleman,*[60] the Court held that "testers" have standing to sue under title VIII, because Section 804(d) prohibits the representation "to any person because of race, color, religion, sex or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." [61] The bill adopts as its definition language similar to that contained in Section 810 of existing law, as modified to reaffirm the broad holdings of these cases.

Familial status. The Committee intends to cover by this definition a parent or other person having legal custody, or that individual's designee, domiciled with a child or children under age 18. The Committee does not intend this definition to include marital status.

Prevailing party. Provides a definition of prevailing party to be used under this Act. This term makes clear that the same definition of prevailing party as used in the Civil Rights Attorney's Fees Act [62] is to be used in this Act.

ADDITIONAL DISCRIMINATORY HOUSING PRACTICES

Section 6(a) amends the list of discriminatory housing practices to prohibit discrimination on the basis of handicap. New subsection 804(f)(1) would make it unlawful to discriminate or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that individual, someone associated with that individual, or of a resident or potential resident.

New subsection 804(f)(2) would similarly prohibit discrimination against the same persons in the terms, conditions, privileges, or provision of services or facilities. This provision is intended to prohibit special restrictive covenants or other terms or conditions, or denials of service because of an individual's handicap and which have the effect of excluding, for example, congregate living arrangements for persons with handicaps. It would guarantee, for example, that an individual could not be discriminatorily barred from access to recreation facilities, parking privileges, cleaning and janitorial services and other facilities, uses of premises, benefits and privileges made available to other tenants, residents, and owners. To the extent that terms, conditions, privileges, services or facili-

[57] American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders," 3rd ed, 1980, pp. 163-179; World Health Organization, "International Classification of Diseases," 9th Rev., Clinical Modifications (ICD-9-CM) (1978), items 304 and 305; American Medical Association, Resolution 113 (1987), reprinted in U.S. Journal of Drug and Alcohol Dependence (July 1987).

[58] See, e.g., 43 Op. Att'y. Gen. (1977), *School Board of Nassau County* v. *Arline,* 107 S.Ct. 1123, 1130, n. 14 (1987).

[59] 441 U.S. 91 (1979).

[60] 455 U.S. 363 (1982).

[61] 455 U.S. 363, 373, emphasis original.

[62] 42 U.S.C. 1988.

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ties operate to discriminate against a person because of a handicap, elimination of the discrimination would be required in order to comply with the requirements of this subsection.

The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.

These new subsections would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been used to restrict the ability of individuals with handicaps to live in communities.[63] This has been accomplished by such means as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities.

The Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices. The Act is intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community. Under H.R. 1158, land use and zoning cases are to be litigated in court by the Department of Justice. They would not go through the administrative process.

Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities.[64] Such discrimination often results from false or over-protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose. These and similar practices would be prohibited.

New subsection 804(f)(3) sets out specific requirements to augment the general prohibitions under (f) (1) and (2). These include provisions regarding reasonable modifications to existing premises, "reasonable accommodation" and accessibility features in new multifamily housing construction.

New Subsection 804(f)(3)(A) makes it illegal to refuse to permit tenants with disabilities to make reasonable modifications, at his or her own expense, of existing premises if the modification is necessary for those persons' full enjoyment of the premises. During the hearing process, the Committee learned of instances in which landlords have refused to let tenants with handicaps make minor changes to their apartments, such as the installation of a lever door knob for a person with an artificial hand, or the installation

[63] See, e.g., *City of Cleburne* v. *Cleburne Living Center*, 473 U.S. 435 (1985).
[64] Id.

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tion (j), any person entitled to relied under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) ENTRY OF DECREE.—The clerk of the court of appeals in which a petition for enforcement is filed under subsection (1) or (m) shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary, the respondent named in the petition, and to any other parties to the proceeding before the administrative law judge.

(o) ATTORNEY'S FEES.—In any administrative proceeding brought under this section, or any court proceeding arising therefrom, the administrative law judge or the court, as the case may be, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 504 of title 5, United States Code, or by section 2412 of title 28, United States Code.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 813. (a) CIVIL ACTION.—(1)(A) An aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this title, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such 2-year period shall not include any time during which an administrative proceeding under this title was pending with respect to a complaint or charge under this title based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 810(a) and without regard to the status of any such complaint, but if the Secretary or a State or local agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the Secretary if an administrative law judge has commenced a hearing on the record under this title with respect to such charge.

(b) APPOINTMENT OF ATTORNEY BY COURT.—Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may—

(1) appoint an attorney for such person; or

(2) authorize the commencement or continuation of a civil action under subsection (a) without the payment of fees, costs,

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or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) RELIEF WHICH MAY BE GRANTED.—(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.

(d) EFFECT ON CERTAIN SALES, ENCUMBRANCES, AND RENTALS.—Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Secretary or civil action under this title.

(e) INTERVENTION BY ATTORNEY GENERAL.—Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under section 814(e) in a civil action to which such section applies.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 814. (a) PATTERN OR PRACTICE CASES.—Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(b) ON REFERRAL OF DISCRIMINATORY HOUSING PRACTICE OR CONCILIATION AGREEMENT FOR ENFORCEMENT.—(1)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the Secretary under section 810(g).

(B) A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2)(A) The Attorney General may commence a civil action in any appropriate United States district court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the Secretary under section 810(c).

(B) A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under section 810(c).

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(c) ENFORCEMENT OF SUBPOENAS.—The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this title, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d) RELIEF WHICH MAY BE GRANTED IN CIVIL ACTIONS UNDER SUBSECTIONS (a) AND (b).—(1) In a civil action under subsection (a) or (b), the court—

(A) may award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this title as is necessary to assure the full enjoyment of the rights granted by this title;

(B) may award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

(i) in an amount not exceeding $50,000, for a first violation; and

(ii) in an amount not exceeding $100,000, for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the extent provided by section 2412 of title 28, United States Code.

(e) INTERVENTION IN CIVIL ACTIONS.—Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 813.

RULES TO IMPLEMENT TITLE

SEC. 815. The Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.

EFFECT ON STATE LAWS

SEC. [815] *816.* Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

4-10

Kansas Department of Social and Rehabilitation Services
Testimony in Support of House Bill No. 2449

Mr. Chairperson and Members of the Committee:

In the past few years, since passage of the Fair Housing Amendments Act (FHAA) of 1988 and the Americans with Disabilities Act (ADA) of 1990, we have seen great progress in the evolution of civil rights for people with disabilities. Through access to employment, transportation, public accommodations, communications systems and housing, as guaranteed by these laws, people with disabilities will have the opportunity to work, pay taxes, and become full participants in our society.

SRS supports HB 2449 which amends the Kansas group home zoning law to match the provisions of FHAA. I'd like to comment on one specific aspect of this bill:

* Beginning with line 4 on page 2, this bill amends the definition of handicap. The first three points of this definition are consistent with ADA. However, the language regarding use of controlled substances is not consistent with ADA. HB 2449 adds the phrase "or addiction to" (line 10, page 2). 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. Although ADA does not specifically address housing, I think it is important that we begin to establish consistency in our definitions of disability. Therefore, 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.

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 the FHAA and the ADA. 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 you to avoid weakening amendments and to support HB 2449.

Glen Yancey
Acting Commissioner
Rehabilitation Services
Social and Rehabilitation Services
296-3911
March 27, 1991

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3-27-91
Attachment 5

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
SENATE LOCAL GOVERNMENT COMMITTEE
DON MONTGOMERY - CHAIR
03-27-91

My name is Gina McDonald and I represent the Kansas Association of Centers for Independent Living. (KACIL)

KACIL speaks in favor of HB 2449. This bill would offer the same rights and responsibilities to people with disabilities as temporarily non disabled people enjoy under the constitution of the United States.

The Fair Housing Amendments of 1989 and the Americans with Disabilities Act of 1991 for the first time in history gave people with disabilities laws that will allow them to demand equality in employment, transportation, public access, recreation, communication and housing. For the first time in our history, people with disabilities have laws to protect their civil rights.

HB 2449 will insure equitable treatment of people with disabilities who choose to live in group settings.

It would be inconceivable of this Committee to set restrictions on people and where they could live because of their race. You would not pass legislation approving the registration and special permit use for people of color to move into a neighborhood. It is just as discriminatory and just as inconceivable to think that you could justify the use of special permits or any other activities that are not required of other non-disabled people in neighborhoods.

Senate L.G.
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HB 2449 will help to insure that people can choose where they want to live and do not have to be voted favorably by the entire neighborhood. Special use permits send up red flags to neighbors and make it difficult or impossible for people to quietly move into neighborhoods. Special permits infer that people are different, and unfortunately, in our society people fear differences.

In the words of Martin Luther King, a great American, "It is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up an unjust posture, but, as we are reminded groups tend to be more immoral than individuals."

You can insure that civil rights of people with disabilities are upheld by voting favorably for HB 2449 with no weakening amendments.

Thank you for the opportunity to testify.

TESTIMONY ON H.B. 2449

I am Virginia Lockhart and I am presenting testimony for the Association of Retarded Citizens of Kansas in favor of the passage of H.B. 2449, which would bring Kansas into compliance with federal fair housing standards.

I am especially interested in the part of H.B. 2449 which eliminates special use permits as a local option and new Paragraph (f) which would eliminate restrictive covenants as a way of restricting the siting of small group homes.

For the first time individuals with mental retardation and other developmental disabilities are outliving their parents. When my daughter was born with Down Syndrome 25 years ago, the life expectancy of these children was not more than ten years. Now their life expectancy exceeds 50 years and it is increasing slowly.

This means that parents like me must not only plan and provide for the care of our children while we are living but we must also plan for their care after we are deceased. There are numerous parents with which I am acquainted who wish to leave their home in trust for their mentally retarded child to live in after the parents death. The only way this is economically feasible is if 2-3 other similarly disabled persons share the home and expenses - all under the supervision of a live-in house manager, and under the overall supervision of a community residential facility such as Sheltered Living in Topeka. I have reference to single family homes which could not accomodate more than a maximum of 2-3 individuals so we are talking about only very small group homes. Such homes left by parents for residences for their disabled children would be one way community residential facilities could accomodate those on their long waiting lists without the tremendous expense of constructing new larger group homes or remodeling larger older homes. However, we are finding that a great many homes, especially those in new sub-divisions have restrictive convenants which forbid the use of the home as the parents wish.

When I purchased my present home, I purchased it with the single thought that it would make a good residence for my daughter along with 1-2 other mentally retarded individuals to live in after my death. Before I purchased the home I asked the real estate agent if this would be a problem and was assured that it would not. It was not until later that I discovered there was a restrictive covenant on the house which would prohibit its use after my death for a small group home for my daughter.

If this bill were adopted with Paragraph (f) retained, I would be assured that my daughter would have a good and comfortable home to live in after my death, surrounded by familar things and places, where she would be well supervised and that she would not be placed in limbo waiting for her turn on the waiting lists. And Ladies and Gentlemen, you have no idea what peace of mind this would bring me.

3-27-91

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Attachment 7

League of Kansas Municipalities

Municipal Legislative Testimony

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Local Government
FROM: Jim Kaup, League General Counsel
RE: HB 2449; Group Home Zoning
DATE: March 27, 1991

By action of the League's Governing Body the League appears in opposition to that portion of HB 2449 which would amend K.S.A. 1990 Supp. 12-736(e).

Specifically, the League opposes the proposed amendments found at page 2, lines 38:43, and page 3, lines 1:13 and 18:22. The League has no position regarding the balance of the amendments to Supp. 12-736 proposed in HB 2449.

It is the League's understanding that the purpose of HB 2449 is to eliminate alleged "conflicts" between the Kansas statutes and the federal Fair Housing Amendments Act of 1988. The League questions the conclusion that has been reached of some that the state law in fact is in conflict with the federal law.

The League opposes the proposed amendments to Supp. 12-736(e) which would strike the present permissive statutory authority of a municipality to choose to require a special or conditional use group home permit. If so required, present law limits the purpose of such permits to "preserving the single family residential character of the area". The amendments to Supp. 12-736 not only repeal the authority to require such permits, they go on to provide a prohibition against zoning ordinances, resolutions or regulations "which subject group homes to regulations not applicable to other single family dwellings in the same zone or area" (page 2, lines 42:43, page 3, line 1). It appears to the League that the impetus for this proposed amendment comes from Attorney General Opinion No. 89-99. That opinion, issued to the City of Russell, dealt with the authority of cities to use Supp. 12-736 as the legal authority for the requirement of a special or conditional use group home permit. Essentially AGO 89-99 said that a city zoning regulation which required persons to obtain a special use permit before placing a group home for the mentally retarded in a single-family zoned area--but which made no similar requirement of a person who seeks to locate a group home for persons who are not similarly disabled--is invalid as violative of the federal Fair Housing Amendments Act of 1988 (42 U.S.C. Secs. 3604)(f)(1), P.L. 100-430). Consequently, according to AGO 89-99, because Supp. 12-736 specifically authorizes municipalities to require such special use permits, Supp. 12-736, as enacted by the 1988 Kansas legislature, is invalid.

It is the opinion of the League that AGO 89-99 overlooked a simple and fundamental point: Group homes for unrelated individuals, whether for persons who are developmentally disabled or for those who are not disabled, are not permitted uses in areas zoned exclusively for single-family residential uses. In other words, but for Supp. 12-736 no group home would be allowed in a single-family zoned area unless a city's or county's zoning regulations itself provided the means for such.

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Our reading of the federal law is that it does forbid a city from establishing procedural or substantive requirements for a special or conditional use group home permit for homes for the developmentally disabled or mentally ill that are more restrictive than the permit requirements for group homes for persons who are not developmentally disabled or mentally ill. However, that was not the issue presented by the City of Russell in AGO 89-99. In that instance, the City of Russell tried to require a special use permit of the only type of group home that would be permitted--by operation of Supp. 12-736--in areas otherwise zoned exclusively for single-family residential use.

The conclusion made by AGO 89-99 seems to follow from the fact that the City of Russell does not require a special use permit for "groups of similar size of other unrelated people (without disabilities...)." This point is irrelevant to the issue of conflict between Supp. 12-736 and the federal act. Far from discriminating against persons with developmental disabilities, Supp. 12-736 discriminates in favor of those persons by giving them a unique advantage--a statutorily-created right to reside in group homes located in residential areas otherwise zoned exclusively for single-family purposes.

Federal law does not require any state to pass laws such as Kansas did in enacting Supp. 12-736, declaring group homes for the developmentally disabled as permitted uses in single-family zoned areas. Nor does federal law forbid a state from allowing municipalities to require special or conditional use group home permits. The irony of AGO 89-99 is that it takes a state law that discriminates in favor of a class of persons protected by the Fair Housing Amendments Act of 1988 and, painting it with broad brush, concludes that because it grants permissive authority to require special use permits, it is legislation which unlawfully discriminates against the developmentally disabled. This conclusion is reached even though no one but the protected class has a statutory right to reside in a group home in a single-family zoned neighborhood.

We see little logic to the argument that Supp. 12-736 is discriminatory against persons with developmental disabilities because persons without developmental disabilities do not have to have a group home permit under the provisions of Supp. 12-736. Persons without disabilities have no statutory right at all to live in group homes in single-family zoned areas, although the developmentally disabled do have such a statutory right. By definition only group homes for the developmental disabled face a special use permit requirement because only those group homes can be placed in areas zoned so that a special use permit is necessary in the first place. The League believes it is incorrect to call Supp. 12-736 flawed legislation because it is discriminatory.

With respect to one of the other amendments proposed for Supp. 12-736, the League would merely note that the 1,000 foot spacing requirement which is now part of the Kansas law was placed in Supp. 12-736 at the insistence of those supporting the placement of group homes into single-family zoned neighborhoods. It was intended to serve as a state prohibition against local units of government concentrating group homes into particular neighborhoods or zoning districts.

League Recommendation for Action. The League respectfully asks this Committee to reject the above-discussed amendments to Supp. 12-736 if the reason for doing so is to remove the alleged conflict. We would note, in closing, that this alleged conflict between state and federal law has been a matter of some discussion and litigation in other parts of the country, where similar state laws exist. We would ask this Committee to give laws enacted by the 1988 Kansas legislature a presumption of validity. If in fact conflict exists such will be identified in the courts and the issue thereby resolved.