

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by the Chair, Rep. Carol Dawson, at approximately 9:00 a.m. on February 23, 1996 in Room 514-S of the Capitol.

All members were present except: Rep. Bob Tomlinson, Excused

Committee staff present: Dennis Hodgins, Legislative Research Department  
Carolyn Rampey, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Donna Luttjohann, Committee Secretary

Conferees appearing before the committee: Ron Smith, KS Bar Association  
Jim Shetlar, United We Stand  
Mark Tallman, KASB

Others attending: See attached list

**Continue hearing on:**

**HB 3000: Prescribing certain standards governing ethics and conduct for public officers and employees**

Chair Dawson recognized Ron Smith to speak to the bill. He made suggested amendments available to the committee. See Attachment 1.

Jim Shetlar was recognized as a proponent of the bill by Chair Dawson. He testified that his organization supports legislation that eliminates the influence buying of legislation. See Attachment 2.

Mark Tallman was recognized by Madam Chair Dawson. Mr. Tallman testified that his organization had concerns regarding the bill and strongly object to the provisions of Section 37 of the bill. See Attachment 3.

Madam Chairman Dawson commented that a new balloon for the bill was in the works and what differences it had in contrast with the original bill. She announced that the Committee would continue the hearing at noon or upon adjournment of the House.

Rep. Tanner expressed his frustration with the short amount of time that was given to study and understand this lengthy of a bill.

The Madam Chair adjourned the meeting at approximately 10:00 a.m. and announced that the next meeting would be February 23, 1996, at 12:00 noon at the Capitol with the room number to be announced.



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Comments are listed section by section in boxes at the conclusion of each section. *Suggested amendments are in 12 point type, boldface, italics.*

**HOUSE BILL No. 3000**  
**By Committee on Governmental Organization and Elections**  
**2-12**

AN ACT relating to governmental ethics and conduct; concerning public officers and employees; prescribing certain standards governing ethics and conduct; amending K.S.A. 21-3902, 21-3910, 25-901, 25-904, 25905, 25-4148, 25-4149, 25-4153, 46-215, 46-216, 46-217, 46-222, 46224, 46-225, 46-226, 46-227, 46-228, 46-232, 46-239, 46-240, 46-242, 46-246a, 46-253, 46-255, 46-256, 46-257, 46-258, 46-266, 46-267, 46-269, 46-270, 46-271, 46-272, 46-274, 46-275 and K.S.A. 1995 Supp. 25-4143, 25-4145, 46-233, 46-236, 46-237, 46-265, 46-268, 75-4301a and 75-4304 and repealing the existing sections.

*Be It Enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 46-215 is hereby amended to read as follows: 46.

*(a) The legislature finds that responsible representative government requires public awareness of the efforts of lobbyists to influence the public decision making process in both the legislative and executive branches of state government. The effective public disclosure of the identity and extent of the efforts of lobbyists to influence the conduct of governmental actions may serve to increase public confidence in the integrity of government.*

This new subsection is lifted from the new federal lobbying law. However, HB 3000 does not regulate lobbying like the federal act.

*(b) As used in K.S.A. 46-215 to 46-280, inclusive, and any amendments thereto, and K.S.A. 46-248a, unless the context otherwise requires, the words and terms defined in K.S.A. 46-216 to 46-231, inclusive, and any amendments thereto, shall have the meanings therein ascribed thereto.*

14 Sec. 2. K.S.A. 25-4153 is hereby amended to read as follows: 25-4153.

115 (a) The aggregate amount contributed to a candidate and such candidate's  
116 candidate committee and to all party committees and political committees and  
117 dedicated to such candidate's campaign, by any political committee or any person  
118 except a party committee, the candidate or the candidate's spouse, shall not exceed  
119 the following:

120 (1) For the pair of offices of governor and lieutenant governor or for other state  
121 officers elected from the state as a whole, ~~\$2,000~~ \$1,000 for each primary election  
122 cycle (or in lieu thereof a caucus or convention of a political party) and an equal  
123 amount for each general election cycle;

124 (2) for the office of ~~member of the house of representatives~~, district judge,  
125 district magistrate judge, district attorney, member of the state board of education or  
126 a candidate for local office, ~~\$500~~ \$250 for each primary election cycle (or in lieu  
127 thereof a caucus or convention of a political party) and an equal amount for each  
128 general election cycle.

129 (3) For the ~~office of~~ offices of member of the house of representatives and state  
130 senator, ~~\$1,000~~ \$350 for each primary election cycle (or in lieu thereof a caucus or  
131 convention of a political party) and an equal amount for each general election cycle.

133 However, you may want to discuss whether to increase the  
134 amounts individual human beings can give from personal  
135 checking accounts, while keeping cash and other entity  
136 contributions at the lower amounts. With disclosure aspects  
137 of current law, enhanced individual contributions will help put  
138 the emphasis on individual giving.

140 (b) For the purposes of this section, the face value of a loan at the end of the  
141 period of time allocable to the primary or general election cycle is the amount  
142 subject to the limitations of this section. A loan in excess of the limits herein  
143 provided may be made during the allocable period if such loan is reduced to the  
144 permissible level, when combined with all other contributions from the person  
145 making such loan, at the end of such allocable period.

146 (c) For the purposes of this section, all contributions made by unemancipated  
147 children under 18 years of age shall be considered to be contributions made by the  
148 parent or parents of such children. The total amount of such contribution shall be  
149 attributed to a single custodial parent and 50% of such contribution to each of two  
150 parents.

151 (d) The aggregate amount contributed to a state party committee by a person  
152 other than a national party committee or a political committee shall not exceed  
153 \$15,000 in each calendar year; and the aggregate amount contributed to any other  
154 party committee by a person other than a national party committee or a political  
155 committee shall not exceed \$5,000 in each calendar year. The aggregate amount

156 contributed by a national party committee to a state party committee shall not exceed  
157 \$25,000 in any calendar year, and the aggregate amount contributed to any other  
158 party committee by a national party committee shall not exceed \$10,000 in any  
159 calendar year. The aggregate amount contributed to a party committee by a political  
160 committee shall not exceed \$5,000 in any calendar year.

161 (e) Any political funds which have been collected and were not subject to the  
162 reporting requirements of this act shall be deemed a person subject to these  
163 contribution limitations.

164 (f) Any political funds which have been collected and were subject to the  
165 reporting requirements of the campaign finance act shall not be used in or for the  
166 campaign of a candidate for a federal elective office.

167 (g) The amount contributed by each individual party committee of the same  
168 political party other than a national party committee to any candidate for office, for  
169 any primary election cycle at which two or more candidates are seeking the  
170 nomination of such party shall not exceed the following:

171 (1) For the pair of offices of governor and lieutenant governor and for each of the  
172 other state officers elected from the state as a whole, \$2,000 for each primary  
173 election cycle (or in lieu thereof a caucus or convention of a political party);

174 (2) for the office of ~~member of the house of representatives~~, district judge,  
175 district magistrate judge, district attorney, member of the state board of education or  
176 a candidate for local office, \$500 for each primary election cycle (or in lieu thereof a  
177 caucus or convention of a political party).

178 (3) For the ~~office of~~ offices of member of the house of representatives and state  
179 senator, \$1,000 for each primary election cycle (or in lieu thereof a caucus or  
180 convention of a political party).

181 (h) When a candidate for a specific cycle does not run for office, the contribution  
182 limitations of this section shall apply as though the individual had sought office.

183 (i) No person shall make any contribution or contributions to any candidate or  
184 the candidate committee of any candidate in the form of money or currency of the  
185 United States which in the aggregate exceeds \$100 for any one primary or general  
186 election, and no candidate or candidate committee of any candidate shall accept any  
187 contribution or contributions in the form of money or currency of the United States  
188 which in the aggregate exceeds \$100 from any one person for any one primary or  
189 general election cycle.

190 (j) No political committee shall accept, make, offer to make or solicit any  
191 contribution from any other political committee.

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676 Sec. 12 K.S.A. 25-905 is hereby amended to read as follows: 25-905. Every  
677 person who shall violate any of the provisions of K.S.A. ~~25-903 or 25-901~~, 25-904,  
678 ~~section 9, section 10 or section 11, as amended and amendments thereto~~, or who  
679 shall fail, neglect or refuse to comply with any of the provisions thereof, shall be  
680 deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any  
681 sum not exceeding ~~one thousand dollars (\$1,000)~~ \$1,000. ~~The conviction of any~~  
682 ~~person of a violation of any of the provisions of K.S.A. 25-903, as amended, shall at~~  
683 ~~once vacate any office held by him, and such person shall be disqualified from~~  
684 ~~holding any public office for a period of two (2) years: Provided, That the penalties~~  
685 ~~and forfeitures herein imposed shall not apply to candidates for city of the third class~~  
686 ~~or township offices.~~

687 Upon the failure of any candidate for nomination or election to any city of the  
688 ~~first or second class, school district, community junior college, county or state office~~  
689 ~~treasurer appointed pursuant to K.S.A. 25-901 and~~  
690 ~~25-904, and section 9 of this act, and amendments thereto, to file his statement of~~  
691 ~~expenses as provided in K.S.A. 25-904, as amended any report required by section~~  
692 ~~10 and amendments thereto, it shall be the duty of the officer with whom such~~  
693 ~~statement-report should be filed, within ten (10)-10 days from the expiration of the~~  
694 ~~time for filing such statement-report and before any action is brought to enforce the~~  
695 ~~penalties above provided, to notify such candidate that he has failed the candidate~~  
696 ~~for whom a report has not been filed, of such failure to file such statement report or~~  
697 ~~cause such report to be filed, and in case such candidate files such statement-report~~  
698 ~~is filed within ten (10)-10 days from the time of receiving such notice is given, and~~  
699 ~~such statement-report shows that he the treasurer has not expended a sum greater~~  
700 ~~than permitted by law otherwise violated the provisions of such section, then the~~  
701 ~~penalties and forfeitures herein provided shall not be imposed upon such candidates~~  
702 ~~treasurer unless such statement-report is shown to be untrue. No individual who has~~  
703 ~~failed to file any report, and no candidate on whose behalf no report has been filed,~~  
704 ~~shall be eligible to become a candidate for any office subject to the provisions of~~  
705 ~~this act until the fine therefor has been paid.~~

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This section may have constitutional problems if ever tested. The right to run for political office is one of the political "privileges and immunities" conferred on all citizens except convicted felons. [Section 1 of the Kansas Bill of Rights.] It is also protected by the First Amendment. You are punishing these persons in this section for failure to file a document. Further, you are punishing the candidate for the failures of the treasurer. Fines and other penalties are much more appropriate than loss of political rights fundamentally impacting their exercise of free speech guarantees. The

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Kansas constitution, bill of rights sec. 5, states "All persons shall have the right to *freely publish, write and speak on all topics ...* being subject only to *abuse of that right.*" This is a proactive provision – granting power directly to people, not limiting the power of government, as the First Amendment does.

727 Sec. 13 K.S.A. 21-3902 is hereby amended to read as follows: 21.  
 728 (a) Official misconduct is any of the following acts committed by a public officer  
 729 or employee in the officer or employee's public capacity or under color of the officer  
 730 or employee's office or employment:  
 731 (1) Using or authorizing the use of any aircraft, as defined by K.S.A. -201, and  
 732 amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto,  
 733 or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's  
 734 or employee's control or direction, or in the officer's or employee's custody,  
 735 exclusively for the private benefit or gain of the officer or employee or another.  
 736 (2) Knowingly and willfully failing to serve civil process when required by law.  
 737 (3) Using confidential information acquired in the course of and related to the  
 738 officer's or employee's office or employment for the private benefit or gain of the  
 739 officer or employee or another or to maliciously cause harm to another. As used in  
 740 this section, "confidential" means any information that is not subject to mandatory  
 741 disclosure pursuant to K.S.A. -221, and amendments thereto.  
 742 (4) Except as authorized by law, knowingly, willfully and with the intent to  
 743 reduce or eliminate competition among bidders or prospective bidders on any  
 744 contract or proposed contract:  
 745 (A) Disclosing confidential information regarding proposals or communications  
 746 from bidders or prospective bidders on any contract or proposed contract; (B)  
 747 accepting any bid or proposal on a contract or proposed contract after the deadline  
 748 for  
 749 acceptance of such bid or proposal; or (C) altering any bid or proposal submitted by  
 750 a bidder on a contract or proposed contract.  
 751 (5) Except as authorized by law, knowingly destroying, tampering with or  
 752 concealing evidence of a crime.  
 753 (6) Knowingly and willfully submitting to a governmental entity a claim for  
 754 expenses which is false or duplicates expenses for which a claim is submitted to  
 755 such governmental entity, another governmental or private entity.  
 756 (7) *Entering into or performing, in whole or in part, a contract or agreement in*  
 757 *violation of section 71, and amendments thereto.*  
 758 (b) The provisions of subsection (a)(1) shall not apply to any use of persons or  
 759 property which:  
 760 (1) At the time of the use, is authorized by law or by formal written policy of the  
 761 governmental entity; or  
 762 (2) constitutes misuse of public funds, as defined in K.S.A. 21-3910 and  
 763 amendments thereto.  
 764 (c) (1) Official misconduct as defined in subsections (a)(1) through (a)(4) is a  
 765 class A nonperson misdemeanor.  
 766 (2) Official misconduct as defined in subsection (a)(5) or (a)(7) is:  
 767 (A) A severity level 8, nonperson felony if the evidence is evidence of a crime  
 768 which is a felony; and

768 (B) a class A nonperson misdemeanor if the evidence is evidence of a crime  
 769 which is a misdemeanor.  
 770 (3) Official misconduct as defined in subsection (a)(6) is:  
 771 (A) A severity level 7, nonperson felony if the claim is for \$25,000 or more;  
 772 (B) a severity level 9, nonperson felony if the claim is for at least \$500 but less  
 773 than \$25,000; and  
 774 (C) a class A nonperson misdemeanor for a claim of less than \$500.  
 775 (4) Upon conviction of official misconduct a public officer or employee shall  
 776 forfeit such officer or employee's office or employment.  
 777 (d) *"Private benefit or gain" exists or arises when the public officer or employee*  
 778 *or an associated person or related person of such officer or employee, receives,*  
 779 *obtains, exerts control over or otherwise converts to personal or business use the*  
 780 *object, information, right, interest or resource constituting such personal gain.*  
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This is a difficult definition in practice. If you take the phrase above, where the phrase "private benefit or gain" is used, and substitute the definition in (d), subsection (d) looks like this:

(1) Using or authorizing the use of any aircraft, as defined by K.S.A. -201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the *public officer or employee or an associated person or related person of such officer or employee, receives, [who] obtains, exerts control over or otherwise converts to personal or business use the object, information, right, interest or resource constituting such personal gain* of the officer or employee or another.

It would make more sense if defined narrower.

831 New Sec. 17. Unless otherwise permitted by law, no state officer or  
832 employee or related person or associated person thereof shall enter into any  
833 contract or agreement to provide goods or services which is to be paid, in  
834 whole or in part, out of moneys or funds appropriated by an act of a state  
835 agency or budgeted by a municipality as defined in K.S.A. 25(d), and  
836 amendments thereto, unless such contract or agreement has been awarded  
837 through a process of competitive bidding **or are payments set by rules**  
838 **and regulations of an executive branch agency which**  
839 **administers the agency's budget**, and a copy of such contract **or**  
840 **agency budget** is filed with the commission. ~~All~~ **If the rates are set**  
841 **by competitive bid**, such contract awards shall be made as a result of  
842 original bid takings, and no awards from negotiations after bidding shall be  
843 allowed.  
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845 There are some fundamental decisions that need to be made  
846 here. Who do you want to be eligible to serve in the  
847 legislature or the state workforce? This provision makes it  
848 more difficult for certain persons to serve in the legislature.  
849 However, when you get into a situation where you are  
850 determining who can run for office, or conditioning that if they  
851 run for office to a *citizen's* legislature that they must get rid  
852 of partnerships, relatives and entangling alliances, you are  
853 making a direction change in the direction of state  
854 government.

855 A citizen's legislature is based on the concept that citizens  
856 serving in the legislature will have conflicts of interest. A  
857 lawyer votes on law-related bills. A farmer votes on  
858 agriculture bills. A physician votes on medical-related bills.  
859 The key is disclosure of the conflict before voting. This is  
860 done through filing substantial interest forms.

861 In full time legislatures, and the Congress, it makes more  
862 sense to require lawmakers to give up their substantial  
863 interests, or put them in blind trusts. Such legislatures pay  
864 their legislators considerably more than you are paid. Then  
865 when they vote they (supposedly) are voting only their  
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constituents' views, onot their own personal conflict of  
interest.

You must decide which model of government you want to use  
to regulate Kansas governmental affairs.

#### Competitive bidding

Further, competitive bidding is not always the most effective  
way to hire professional services. Negotiation statues exist  
for hiring attorneys to collect bills at the KU Medical Center.

Sec. 17 would prohibit the partners of a lawyer-legislator who  
wants to handle some indigent defendant cases from taking  
those cases even for the same rate that all other lawyers  
handle the same sort of case. Most BIDS contracts are not  
competitively bid. The rate is established by rule and  
regulation of the agency. Each private lawyer handling such  
cases is paid \$50 per hour.

Further the new definition of "associated person" in Sec.  
43(a) would prevent even employees of the lawyer-legislator  
from handling the cases, even though the associate is being  
paid a salary. Ironically, if a lawyer is sharing office space  
with another solo practice lawyer, and the lawyers have an  
agreement to "cover cases for each other" like partners, they  
probably are NOT associated persons even though they may  
share fees. Thus a "salaried" lawyer is associated (thus  
limiting state contracting ability) but a fee-splitting solo  
attorney who is not a partner is not limited. Odd.

The effect of this law if enacted will be the immediate  
ostracizing of current professionals from their partnerships or  
associations with other professionals. If the lawyer is married  
to his or her partner, that sort of split is not going to be  
conducive to remaining in the legislature.

You must answer the main question: do you want  
professionals – all professionals – to be able to serve in the  
legislature? If the answer is yes, but only lawyers who do not  
have partnerships or associates, then you are limiting the  
pool of protetial lawyers who can serve. The same is true of

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a physician who wants to serve in the legislature but whose partner handles Medicaid cases.

If you want professionals to serve in the Kansas legislative process then you must be careful about lawyers like these that make it hard to serve unless they are independently wealthy, retired, or can survive in solo practice.

This section continues that system of seeking public servants who have fewer ties to the business and professional world. That has serious ramifications from the Privileges and Immunities clause of the state constitution, which has been held to mean that all citizens have equal political rights. Sec. 2 of the bill of rights is defined as a "political right" consisting of "the right and power to participate in the establishment or management of government, or to exercise the right of suffrage and to hold office." *Herken v. Glynn*, 151 Kan. 855, 867, 101 P.2d 946

This section of HB 3000 says we are not all equal, politically. In a nation that tries very hard not to splinter into wealth-based factions, that may be an unhealthy development in a citizens' legislature. In a citizen's legislature, the best regulation of this situation is disclosure. Disclosure of conflicts of interest is what then allows citizen legislators to vote on those conflicts.

If the section is needed at you may want to includes these amendments.



934 New Sec. 18. No state officer or employee shall participate in making an  
935 appropriation to provide money or funds for any contract or agreement to  
936 provide property, goods or services by such state officer or employee or an  
937 associated person or related person thereof which is to be paid, in whole or  
938 in part, out of funds appropriated by a state agency unless such contract or  
939 agreement has been awarded through a process of competitive bidding *or*  
940 *are payments set by rules and regulations of an executive*  
941 *branch agency which administers the agency's budget*, and a  
942 copy of such contract *or agency budget* is filed with the commission.  
943 ~~All~~ *If the rates are set by competitive bid*, such contract awards  
944 shall be made as a result of original bid takings and no awards from  
945 negotiations after bidding shall be allowed.

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Section 17 prohibits the elected professional or associates/partners from entering into contracts. Section 18 prohibits the elected professional from voting on appropriations or contracts for goods or services unless the contract is competitively bid. Again, BIDS contracts are not competitively bid, they are set by rule and regulation.

Another policy decision is whether negotiated contracts are to be considered the same as a competitively bid contract.

If the section is needed at you may want to includes these amendments.

961 New Sec. 19. No state officer or employee shall solicit or receive any  
962 money in addition to that received by the officer or employee in such  
963 officer's or employee's official capacity for advice or assistance on lobbying  
964 the state legislature.  
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If a legislator gives a corporation advice on who to hire to lobby the legislature and then receives a campaign contribution, is that a loophole in the intent of this section? A state officer/employee is a legislator. Is it illegal for a legislator to tell a potential client who the legislature feels the corporation should NOT hire? I am aware of the situation that potential could exist that this section attempts to curb. However, I'm not sure it gets the job done.

975 Sec. 20. K.S.A. 1995 Supp. 46-236 is hereby amended to read as follows:  
976 46-236. No state officer or employee, candidate for state office or state  
977 officer elect, *for the private benefit or gain of such officer or employee shall*  
978 *solicit any present, future, promised or contingent economic opportunity,*  
979 *gift, loan, gratuity, special discount, favor, hospitality, employment, or*  
980 *service from any person known to have a special interest, under*  
981 *circumstances where such officer, employee, candidate or state officer elect*  
982 *knows or should know that a major purpose of the donor in granting,*  
983 *providing or arranging for the same is or could be to influence the*  
984 *performance of the official duties or prospective official duties of such*  
985 *officer, employee, candidate or state officer elect, and no contract or*  
986 *agreement proscribed by this section shall be valid or enforceable in a*  
987 *court of law. Except when a particular course of official action is to be*  
988 *followed as a condition thereon, this section shall not apply to:*

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990 **The last new section making such contracts invalid in a court**  
991 **is redundant. It is against public policy to enforce a contract**  
992 **that is proscribed by law.**

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994 (1) Any contribution reported in compliance with the campaign finance act or  
995 *K.S.A. 25-901, 25-904, section 9, section 10 or section 11, and amendments thereto;*  
996 (2) a commercially reasonable loan or other commercial transaction *entered into*  
997 *in the ordinary course of business; or*  
998 (3) any solicitation for the benefit of any charitable organization which is  
999 required to file a registration statement with the secretary of state pursuant to K.S.A.  
1000 17-1740, and amendments thereto, or which is exempted from filing such statement  
1001 pursuant to K.S.A. 17-1741, and amendments thereto, or for the benefit of any  
1002 educational institution or such institution's endowment association, if such  
1003 association has qualified as a nonprofit organization under paragraph (3) of  
1004 subsection (c) of section 501 of the internal revenue code of , as amended.  
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1006 Sec. 21. K.S.A. 1995 Supp. 46-237 is hereby amended to read as follows: 46-  
1007 237.

1008 (a) No state officer or employee, candidate for state office or state officer elect  
1009 shall, *for such officer, candidate or employee's private benefit or gain*, accept, or  
1010 agree to accept any *present, future, promised or contingent* economic opportunity,  
1011 gift, loan, gratuity, special discount, favor, hospitality, *employment*, or service  
1012 having an aggregate value of \$40 or more in any calendar year from any one person  
1013 known to have a special interest, under circumstances where such person knows or  
1014 should know that a major purpose of the donor is to influence such person in the  
1015 performance of their official duties or prospective official duties.

1016 (b) No person with a special interest shall offer, pay, give or, *make or otherwise*  
1017 *arrange for any present, future, promised or contingent* economic opportunity, gift,  
1018 loan, gratuity, special discount, favor, hospitality, *employment* or service having an  
1019 aggregate value of \$40 or more in any calendar year to any state officer or employee,  
1020 candidate for state office or state officer elect *for such officer, candidate or*  
1021 *employee's private benefit or gain* with a major purpose of influencing such officer  
1022 or  
1023 employee, candidate for state office or state officer elect in the performance of  
1024 official duties or prospective official duties.

1025 (c) No person licensed, inspected or regulated by a state agency shall offer, pay,  
1026 give or, *make or otherwise arrange for any present, future, promised or contingent*,  
1027 economic opportunity, gift, loan, gratuity, special discount, favor, hospitality,  
1028 *employment* or service having an aggregate value of \$40 or more in any calendar  
1029 year to such agency or, *for the private benefit or gain of such officer, candidate or*  
1030 *employee*, to any state officer or employee, candidate for state office or state officer  
1031 elect of that agency.

1032 (d) Hospitality in the form of recreation, food and, beverages and continuing  
1033 education seminars which are provided by an organization which usually charges a  
1034 fee for such seminar so long as the seminar discusses legislative matters and for  
1035 which continuing education credits may be obtained from a licensing agency either  
1036 in this or other states, are presumed not to be given to influence a state officer or  
1037 employee, candidate for state office or state officer elect in the performance of  
1038 official duties or prospective official duties, except when a particular course of  
1039 official action is to be followed as a condition thereon. For the purposes of this  
1040 subsection, the term recreation shall not include the providing or the payment of the  
1041 cost of transportation or lodging. *For the purpose of this section, state officers or*  
1042 *employees, and candidates for state offices and state officers elect shall pay the full*  
1043 *fee or charge, if any, which other participants at such seminar pay to receive such*  
1044 *credits.*

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1046 **KBA supports subsection (d). The provision of information to**  
1047 **public policy makers should not be a gift merely because it**

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**has extrinsic value. Information obtained at such seminars  
allows legislators to do their job better.**

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(e) Except when a particular course of official action is to be followed as a condition thereon, this section shall not apply to:

(1) Any contribution reported in compliance with the campaign finance act and amendments thereto or K.S.A. 25-901, 25-904, section 9, section 10 or section 11 of this act and amendments thereto; or

(2) a commercially reasonable loan or other commercial transaction entered into in the ordinary course of business.

(f) No state officer or employee shall accept any payment of honoraria for any speaking engagement except that a member of the state legislature or a part-time officer or employee of the executive branch of government shall be allowed to receive reimbursement in the preparation for and the making of a presentation at a speaking engagement in an amount fixed by the Kansas commission on governmental standards and conduct prior to the acceptance of the speaking engagement. Nothing in this section shall be construed to prohibit the reimbursement of state officers and employees for reasonable expenses incurred in attending seminars, conferences and other speaking engagements.

(g) The provisions of this section shall not be applicable to or prohibit the acceptance of gifts from governmental agencies of foreign nations except that any gift accepted from such foreign governmental agency, having an aggregate value of \$100 or more, shall be accepted on behalf of the state of Kansas.

(h) No legislator shall solicit any contribution to be made to any organization for the purpose of paying for travel, subsistence and other expenses incurred by such legislator or other members of the legislature in attending and participating in meetings, programs and activities of such organization or those conducted or sponsored by such organization, but nothing in this act or the act of which this act is amendatory shall be construed to prohibit any legislator from accepting reimbursement for actual expenses for travel, subsistence, hospitality, entertainment and other expenses incurred in attending and participating in meetings, programs and activities sponsored by the government of any foreign nation, or any organization organized under the laws of such foreign nation or any international organization or any national, nonprofit, nonpartisan organization established for the purpose of serving, informing, educating and strengthening state legislatures in all states of the nation, when paid from funds of such organization and nothing shall be construed to limit or prohibit the expenditure of funds of and by any such organization for such purposes.

1125 Sec. 25. K.S.A. 46-217 is hereby amended to read as follows: 46-217.

1126 (a) "Economic opportunity" means any purchase, sale, lease, contract, option, or  
1127 other transaction or arrangement involving property, *goods* or services wherein a  
1128 state officer or employee or candidate for state office may gain a ~~personal economic~~  
1129 *private benefit or gain*, but not including any gift.

1130 (b) "*Private benefit or gain*" exists or arises when a state officer or employee or  
1131 an associated person or related person of such officer or employee receives, obtains  
1132 or exerts control over or otherwise converts to personal or business use the object,  
1133 information or resource constituting such personal gain.  
1134

1135 This is the second time this phrase is defined, and slightly  
1136 different than the former. Is there any reason why this phrase  
1137 is defined differently than previously?

1138  
1139 This definition is very important to the overall scheme of the  
1140 act. Yet the definition is imprecise. What is "control" or  
1141 "conversion?" What is "the object, information or resource?"

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1143 A resource might include giving a lawmaker a ride to and  
1144 from a restaurant in my car. That gives him relief from  
1145 having to drive his own car, thus avoiding depreciation and  
1146 normal wear and tear on his car. Is that "resource" an illegal  
1147 act since it enures to the legislator's private gain?  
1148

1179 Sec. 26. K.S.A. 46-225 is hereby amended to read as follows: 46-225.

1180 (a) "Lobbying" means: ~~(1) promoting or opposing in any manner any~~  
1181 ~~official action or nonaction by the legislature on any legislative matter or~~  
1182 ~~the adoption or nonadoption of any rule and regulation by any state agency;~~  
1183 ~~or by direct communication with an officer or employee of such agency for~~  
1184 ~~the purpose of influencing such officer or employee in the performance of~~  
1185 ~~their official duties in relation thereto.~~

1186  
1187 The new definition of lobbying now requires "official" action.  
1188 What is official action or nonaction? If I encourage a  
1189 committee chair not to take up a bill, is that "action?" The  
1190 old phrase was any "action or nonaction" by legislators ... etc.  
1191 The new phrase is "official action or nonaction." The latter  
1192 phrase is a SMALLER subset of the former. I presume you  
1193 mean that a legislator casts a vote for or against a bill or  
1194 legislative matter, or executive agency rule. If that is what  
1195 you mean you should define "official action." "Official action"  
1196 is used four times in the current lobbying code, but it is  
1197 nowhere defined. Nor is it defined in this bill.

1198  
1199 Under this definition, "direct communication ... for the  
1200 purpose of influencing" would include any letter written to my  
1201 legislator or public officials. I presume this means direct  
1202 lobbying efforts, not grassroots lobbying. Direct means  
1203 direct. Not indirect. Indirect communications - from me to  
1204 my members to urge them to contact you, or a newspaper ad  
1205 urging citizens to contact legislators - are exempt from  
1206 reporting, correct? If so, then later in the bill we need to  
1207 eliminate the need to report mass media expenses or  
1208 communications costs to others, the so-called grassroots  
1209 lobbying expenses.

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1211 (2) ~~entertaining any state officer or employee or giving any gift,~~  
1212 ~~honorarium or payment to a state officer or employee in an aggregate value~~  
1213 ~~of \$40 or more within any calendar year, if at any time during such year the~~  
1214 ~~person supplying the entertainment, gifts, honoraria or payments has a~~  
1215 ~~financial interest in any contract with, or action, proceeding or other matter~~  
1216 ~~before the state agency in which such state officer or employee serves, or if~~

1187 ~~such person is the representative of a person having such a financial~~  
1188 ~~interest.~~

1189 ~~(e)(b) "Lobbying" does not include any expenditure from amounts~~  
1190 ~~appropriated by the legislature for official hospitality.~~

1191 ~~(d)(c) "Lobbying" does not include representation of a claimant on a~~  
1192 ~~claim filed by the claimant under K.S.A. 46-907 and 46-912 to 46-919,~~  
1193 ~~inclusive, and amendments thereto in proceedings before the joint~~  
1194 ~~committee on special claims against the state.~~

1195 ~~(e)(d) "Lobbying" does not include bona fide personal or business~~  
1196 ~~entertaining.~~

1197 ~~(f) No legislator may be hired as a lobbyist to represent anyone before~~  
1198 ~~any state agency.~~

1199 ~~(e) "Lobbying" does not include any activity before an agency of the~~  
1200 ~~executive branch of state government, the essential characteristics of which~~  
1201 ~~is or has been determined to be the practice of law by the judicial branch of~~  
1202 ~~state government.~~

1203  
1204 This language clarifies that lobbying is not representing  
1205 another person or entity before the executive branch of  
1206 government. The Attorney General, for example, in AG  
1207 Opinion 93-100 has determined that appearances before the  
1208 Board of Tax Appeals is the practice of law. The opinion  
1209 relies heavily on case law from our Supreme Court.  
1210 Lobbying is not the practice of law, since lay-persons engage  
1211 in lobbying. It goes without saying that practicing law before  
1212 courts is not lobbying.

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1214 ~~(f) "Lobbying activities" means lobbying contacts and efforts in~~  
1215 ~~support of such contacts, including preparation and planning activities,~~  
1216 ~~research and other background work that is intended, at the time it is~~  
1217 ~~performed, for use in contacts, and coordination with the lobbying activities~~  
1218 ~~of others.~~

1219 ~~(1) promoting or opposing official conduct on identifiable legislative~~  
1220 ~~matters,~~

1221 ~~(2) the formulation, modification, or adoption of a rule, regulation,~~  
1222 ~~executive order, or any other program, policy, or position of state~~  
1223 ~~government;~~

1224 (3) the administration or execution of a state program or policy  
1225 (including the negotiation, award, or administration of a state contract,  
1226 grant, loan, permit, or license); or  
1227 (4) the nomination or confirmation of a person for a position subject to  
1228 confirmation by the state senate.

This language is part of the federal act, and defines what activities are considered lobbying, giving four examples. Where "federal" was used, I substituted "state"

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1234 (5) Exceptions. A "lobbying contact" does not include a  
1235 communication that is  
1236 (A) made by a representative of a media organization if the purpose of  
1237 the communication is gathering and disseminating news and information, or  
1238 editorial opinions, to the public;

Subsection (f)(5)(A) is the media exemption and exempts reporters who are asking questions of lawmakers. It covers editorials promoting or opposing official action, however, an editorial by definition is a third party grassroots lobbying technique which is exempted from coverage because a direct communication is not an indirect communication. On the theory never argue with anyone who buys ink by the barrel, I've included an editorial exemption, too. However, this exemption does not cover a newspaper editor, owner or reporter who asks legislators to promote or oppose specific legislation, such as increases in the legal publications fee law. Such a contact is being a lobbyist; two or more such contacts and they must register and report.

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1257 (B) made in a speech, article, publication or other material that is  
1258 distributed and made available to the public, or through radio, television,  
1259 cable television, political newsletters, or other medium of mass  
1260 communication;

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Sec. 11 of the bill of rights to the Kansas Constitution states, "The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; ..." To define such topics as a lobbying contact would probably be contrary to Sec. 11, and raise free speech concerns. Hence this exception. The exception is part of the Federal Act. The only addition is "political newsletters." In *West Virginia v. Fury*, the W. Va. Supreme Court ruled that political newsletters were the "press" for free speech considerations.

(C) made on behalf of a government of a foreign country or a foreign political party and which is disclosed under the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

Subsection (f)(5)(C) is an exemption that is in the federal act. Foreign governments may lobby in Kansas, but it is unlikely. To be exempt from our law, the government would have to have registered and disclosed under the federal act, which they are required to do to lobby Congress.

(D) a request for a meeting, a request for the status of an action, or any other similar administrative request, if the request does not include an attempt to influence a state officer or employee designated under KSA 46-285 and amendments thereto or a legislator or employees of the legislature designated under KSA 46-285 and amendments thereto;

Requests for bill status where there is no attempt to influence ought not be a lobbying contact. Source: federal act.

(E) made in the course of participation in an advisory committee of the executive, legislative or judicial branch of government,

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Lobbyists who serve on government advisory committees with state officials ought not be labeled as making a lobbying contact. Source: federal act.

*(F) testimony given before a committee, subcommittee, or task force of the state legislature, or submitted for inclusion in the minutes or public record of any government hearing conducted by such committee, subcommittee, or task force;*

The federal act makes this exemption. I don't personally care. I am "lobbying" because I am employed to lobby, not because of my appearances before committees. However, you may have persons who come into Topeka and appear on a single, localized bill, once in the House and once in the Senate. Without this exemption, they are lobbyists and must register even if they do nothing else. Source: federal act.

*(G) information provided in writing in response to an oral or written request by legislator, executive branch official, or candidates for public office, or their respective staffs for specific information;*

When I discuss legislative matters with lawmakers that are one MY agenda, I am lobbying. When I am asked to discuss or give an opinion (or do research) by the lawmaker on issues on which we have no position, then it ought not be a lobbying contact. Again, this won't affect institutional lobbyists, only the "occasional" citizen-opiner. Source: federal act.

*(H) required by subpoena, civil investigative demand, or otherwise compelled by statute, regulation, or other action of the state legislature, or any state agency;*

If compelled to appear before an investigative committee of the legislature, that should not be

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considered a lobbying contact. "Involuntary lobbying" is an oxymoron. Source: federal act.

*(I) made in response to a notice in the state register or other similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications;*

Similar reasoning as to subsection (G). Source: federal act.

*(J) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;*

Similar reasoning as to subsection (H). Source: federal act.

*(K) made to an official in an agency with regard to (1) a judicial proceeding or a criminal or civil law enforcement inquiry, investigation, or proceeding; or (2) a filing or proceeding that the government is specifically required by statute or regulation to maintain or conduct on a confidential basis, if that agency is charged with responsibility for such proceeding, inquiry, investigation, or filing;*

Similar reasoning as to subsection (H). Source: federal act.

*(L) made in compliance with written agency procedures regarding an adjudication pursuant to the state administrative procedures act, or other agency procedural requirements by law;*

Similar reasoning as to subsection (H). Source: federal act.

*(M) a written comment filed in the course of a public proceeding or any other communication that is made on the record in a public proceeding;*



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Similar reasoning as to subsection (I). Source: federal act.

*(N) a petition for agency action made in writing and required to be a matter of public record pursuant to established agency procedures;*

Similar reasoning as to subsection (I). Source: federal act.

*(O) made on behalf of an individual with regard to that individuals benefits, employment, or other personal matters involving only that individual, except that this clause does not apply to any communication with - (1) a state officer or employee designated under KSA 46-285 and amendments thereto, or (2) a legislator or employees of the legislature designated under KSA 46-285 and amendments thereto (other than the individuals elected representative or senator, or employees who work for such persons under their direct supervision), with respect to the formulation, modification, or adoption of private legislation for the relief of that individual;*

Anybody – including registered lobbyists – ought to be able to discuss legislative matters with their own personal representative or senator without it becoming a lobbying contact. Source: federal act.

*(P) a disclosure by an individual that is protected under the amendments made by the Whistleblower Protection Act of 1989, under the Inspector General Act of 1978, or under another similar provision of state law;*

Whistleblower exemption, if the person contacted by the whistleblower is a legislator or other state officer or employee. They are not lobbying. See, e.g., Sub. for SB 474 in the House Commerce Committee. Source: federal act.

*(Q) made by (1) a church, its integrated auxiliary, or a convention or association of churches that is exempt from filing a Federal income tax*

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*return under paragraph 2(A)(i) of section 6033(a) of the Internal Revenue Code of 1986, or (2) a religious order that is exempt from filing a Federal income tax return under paragraph (2)(A)(iii) of such section 6033(a);*

This has been called the Rush Limbaugh amendment. The lack of this subsection in the 1993 federal lobbying act scuttled the entire act when the talk radio hosts blasted away. Subsection (Q) was included prominently in the 1995 federal act, and had everyone's blessing.

*(R) between (1) officials of a self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act) that is registered with or established by the Securities and Exchange Commission as required by that Act or a similar organization that is designated by or registered with the Commodities Future Trading Commission as provided under the Commodity Exchange Act; and (II) the Securities and Exchange Commission or the Commodities Future Trading Commission, respectively; relating to the regulatory responsibilities of such organization under that Act, and,*

I am uncertain who these people are, so the exception will not be widely used. However, these same people are exempt from making "lobbying contacts" in the federal act and ought to be so in Kansas, for consistency's sake. Or, you could take out subsection (R) and let them come in on their own.

*(f) No legislator or legislative employee designated pursuant to KSA 46-285 may be hired as a lobbyist to represent anyone before any state agency.*

current law, slightly amended.

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Sec. 27. K.S.A. 46-222 is hereby amended to read as follows: 46-222.

(a) "Lobbyist" means: ~~(1) Any person employed in considerable degree for lobbying; (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property; or (3) any person who incurs expenses or makes or arranges for expenditures in an aggregate amount of \$100 or more, exclusive of personal travel and subsistence expenses, in any calendar year for or related to lobbying.~~ (1) *Any person employed in considerable degree for lobbying; any individual who is employed or retained by a represented person for financial or other compensation for services that include two or more lobbying contacts;* (2) any person formally appointed as the primary representative of an organization or other person to lobby in person on state-owned or leased property *and who is not employed to lobby but whose primary duties include lobbying or making lobbying contacts;* or (3) ~~any person who makes expenditures in an aggregate amount of \$100 or more, exclusive of personal travel and subsistence expenses, in any calendar year for lobbying~~ *any individual who on their own behalf or on behalf of another person makes a lawful campaign contribution under the campaign finance act which, in the aggregate, equals or exceeds \$100. No contributor under the campaign finance act needs to register or file a report as a lobbyist unless within two years from the date of such last contribution, such contributor promotes or opposes official action on legislation or rules or regulations of any state executive branch agency.*

"In considerable degree" is ambiguous and vague. We recommend discarding it.

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I have totally reworked this 46-222. In this amendment we discard the \$100 expense threshold and go to a system of two or more lobbying contacts makes you a lobbyist and must register. Note the exceptions, however, in the KSA 46-225, as amended below. The definition of lobbying contacts in subsection (b) comes from Sec. 3 of S. 1060, the new federal lobbying act.

"Lobbying contacts" is defined in KSA 46-225, below. The two "contacts" threshold is not appropriate for a contributor-lobbyist. They may only make one phone call or write one letter. Thus while the ordinary lobbyist has an exemption for contacts with his or her own legislator about local or personal legislative matters. The contributor-lobbyist does not have such exemptions. One contact after making a contribution and they must register.

Subsection (3) regarding making major campaign contributors an "inchoate lobbyist," who is required to register only if he or she later contacts legislators or the executive branch and wants something, is my own personal view. Lobbyists compete with major campaign contributors for the time and attention of a legislator. If both are seeking official changes of policy, then both should report. Lobbyists now report. This amendment makes contributors report - IF they later lobby. The \$100 is arbitrary. You can set it higher or lower. You can make all contributors "inchoate lobbyists." This can be a throw-away if you want, but persons who make major contributions and later promote or oppose official action are people wanting access, just as sure as the sun comes up in the East. The only difference is their means of establishing access.

If the contributor makes contributions but makes no later requests of the legislator or state government official, no lobbying report needs to be filed. Civil fines, not misdemeanors, would compel the contributors to register. These contributions and names go into the CGSC computer. Carol's office could inform major contributors of their

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obligation to register IF within two years of their contribution they promote or oppose legislation.

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(b) Lobbyist shall not include: (1) Any *elected* state officer or any individual elected to office which is filled by election by the qualified electors thereof ~~or employee engaged in carrying out the duties of their office;~~ (2) ~~the employer of a lobbyist, if such lobbyist has registered the name and address of such employer under K.S.A. 46-265 and amendments thereto;~~ (3) ~~any nonprofit organization which has qualified under paragraph (3) of subsection (c) of section 501 of the internal revenue code of 1954, as amended, which is interstate in its operations and of which a primary purpose is the nonpartisan analysis, study or research of legislative procedures or practices and the dissemination of the results thereof to the public, irrespective of whether such organization may recommend a course of action as a result of such analysis, study or research;~~ (4) (2) any justice or commissioner of the supreme court or judge of the judicial branch or employee or officer of the judicial branch or, any member of a board, council or commission who is appointed by the supreme court or who is elected or appointed to exercise duties pertaining to functions of the judicial branch, when such person is engaged in performing a function or duty for the judicial branch; or (5) (3) any appointed member of ~~an~~ any advisory council, commission or board, who serves *any state agency* without compensation other than amounts for expense allowances or reimbursement of expenses as provided for in subsection (e) of K.S.A. -3223 and amendments thereto, when such member is engaged in performing a function or duty for such council, commission or board.

**Subsection (b)(1) Policy Question:**  
I have made no recommended changes here. However, state agency heads who promote or oppose official action on legislaion are lobbying. If I appear on the same bill and promote or oppose, I am lobbying. Why are we treated differently simply because one is a "lobbyist" and the other is a cabinet official or agency head? If citizens have to register, shouldn't state officials when the battle is over the same issue? No big deal, but something to think about.

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Sec. 28. K.S.A. 46-224 is hereby amended to read as follows: 46-224.

(a) "State agency" means *the legislative branch of state government, including but not limited to, the legislature, legislators, legislative committees and, councils and officers and employees thereof, and the executive branch of state government, including but not limited to, all executive departments, institutions, offices, officers, employees commissions, boards and authorities of the state, but does not include municipalities and other political subdivisions the courts or any officer or office of the judicial branch of state government or the courts or any officer thereof for any municipality, as defined by K.S.A. 25-901(d), and amendments thereto.*

(b) "~~Rules and regulations~~" means rules and regulations required by law to be filed with the secretary of state, and does not include rules adopted by the judicial branch or any court.

1572 Sec. 29. K.S.A. 1995 Supp. 46-265 is hereby amended to read as follows:  
1573 46-265.

1574 (a) Every lobbyist shall register with the secretary of state by completing  
1575 and signing a registration form prescribed and provided by the commission.  
1576 Such registration shall show the name and address of the lobbyist, the name  
1577 and address of the person compensating the lobbyist for lobbying, the  
1578 purpose of the employment and the method of determining and computing  
1579 the compensation of the lobbyist. Before engaging in lobbying, every  
1580 lobbyist shall register with the secretary of state by completing and signing  
1581 an affirmed registration statement, verified in accordance with K.S.A. 53-  
1582 601, and amendments thereto, on a form prescribed and provided by the  
1583 commission.

This phrase "Before engaging in lobbying" is difficult because of the expanded definition of who is a lobbyist (KSA 46-222(a) amendments herein). Grassroots lobbyists have to "engage in lobbying" before they run up the \$100 bill that kicks them over the threshold and into the must-register category. Again, this problem is eliminated if we purge the statutes of references to grassroots lobbying.

The better way is to require registration with two weeks of being hired, or within two weeks of making an initial lobbying contact.

1595  
1596 (b) "Registered advocate" means a lobbyist who has completed and  
1597 filed a registration statement as required by subsection (a).

1598 (c) Each registration required by subsection (a) shall, in addition to  
1599 such additional information and materials required by the commission  
1600 consistent with the purposes and provisions of this act, include:

1601 (1) If the lobbyist is an individual, a recent black and white photograph,  
1602 the size of which shall be prescribed by the secretary of state;

1603 (2) if the lobbyist is not an individual;

1604 (A) a list of all lobbyists who are partners, owners, officers, agents or  
1605 employees of such lobbyist; and

1606 (B) the name and title of a partner, owner or officer of the lobbyist who  
1607 is responsible for filing statements and reports and keeping records  
1608 required by this act on behalf of such lobbyist and a statement signed by the  
1609 designated responsible person that such responsible person has read and is

1610 familiar with the laws of Kansas relating to lobbying and has read and is  
1611 familiar with the Lobbyist's Code of Professional Responsibility.

1612 (3) The lobbyist's full name, business address and business telephone  
1613 number;

1614 (4) the full name and address of each represented person represented by  
1615 such lobbyist;

This is the first time in the bill that "represented person" is used. It is used throughout the bill. Why this phrase and not the more generic term, "client?"

1620  
1621 (5) if the lobbyist is receiving compensation for lobbying or  
1622 reimbursement for lobbying expenses, the name and address of each person  
1623 compensating or reimbursing such lobbyist for lobbying or lobbying  
1624 expenses;

1625 (6) the lobbying interests of each represented person;

1626 (7) purpose or purposes for which such lobbyist intends to lobby on  
1627 behalf of the represented person;

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Subsection (7) raises interesting questions. If the purpose of this phrase "purpose or purposes" can be answered generally, e.g. "all matters pertaining to lawyers, the practice of law, and the courts," then this provision (7) is no problem. However, later in this act, you prohibit the ability of a lobbyist to have a conflict of interest unless the client's consent to the conflict after full disclosure. Conflicts of interest are fact-specific. Full disclosure would require knowledge of actual provisions in bills that raise the conflict and how such a conflict arises. In other words, you would need to know the exact proposed language of an exact bill in order to know whether a conflict exists. This leads me to conclude that this phrase "purpose or purposes for which a lobbyist intends to lobby" would require bill-specific registration, that is, we would have to register that we intend to lobby on HB 3000, 2438, 3001, etc etc etc.

If so, this raises a problem. Obviously we cannot register on a bill unless we know which bill. Assume I am listening to a bill discussion on which I am not registered. If something

comes up, can I be asked a question or can I lobby a legislator about this bill if I have not registered on it?  
  
Does this provision prevent me from speaking to a question of a lawmaker who asks me to "opine" on a legal subject that I have no Association interest? If I am not registered to lobby on HB 3000 and someone asks me a question, must I go register before I can answer?

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(8) a list of the entities or agencies whose legislative or administrative actions the lobbyist will attempt to influence for each represented person; and

(9) the method of determining and computing the compensation of the lobbyist.

(d) "Certified lobbyist" means a lobbyist who, in addition to completing and filing a registration statement as required by subsection (a), also files a registration statement verified in accordance with K.S.A. 53601, and amendments thereto, on a form prescribed and provided by the commission which registration form shall, in addition to such additional information and materials required by subsection (c) and the commission consistent with the purposes and provisions of this act, include a statement that:

(1) The lobbyist has read and is familiar with the laws of Kansas relating to lobbying;

(2) the lobbyist will obey all laws and regulations governing lobbying in the state of Kansas;

(3) the lobbyist will lobby at all times subject to the Lobbyist's Code of Professional Responsibility;

(4) the lobbyist agrees to present only accurate and truthful information to the state officer or employee who is or becomes the subject of such lobbyist's lobbying efforts and will not participate in nor permit, with such lobbyist's knowledge, an effort to deceive or attempt to deceive the state officer or employee who is or becomes the subject of such lobbyist's lobbying efforts with regard to any material fact pertinent to any pending or proposed legislative or administrative action;

Is there a penalty if legislators do not follow my "accurate and truthful information?" Is this really necessary? A lobbyist who lies will lose credibility and effectiveness.

(5) the lobbyist will not represent falsely, either directly or indirectly, that the lobbyist can control the official action of the state officer or employee who is or becomes the subject of such lobbyist's lobbying; and

(6) the lobbyist's verification, under K.S.A. 53-601, and amendments thereto, of the information contained in such lobbyist's registration statement and any amendments thereto.

(e) Before engaging in lobbying on behalf of a represented person, every lobbyist shall file or cause to be filed with the secretary of state an authorization signed by the represented person or an authorized agent of the person compensating such lobbyist for lobbying on behalf of such represented person.

See comments to Section 29(a).

(f) Except as provided in subsection (g), if any change occurs in any of the information contained in a registration statement filed pursuant to this section, an appropriate amendment shall be filed with the secretary of state within 10 days after the change.

(g) If such change includes the name of a person to be represented by the lobbyist, the registration statement or statements of such lobbyist shall be amended and such amendment filed to show such change prior to the lobbyist's engaging in any lobbying on behalf of such represented person. If such change includes a change in the information required by subsection (c)(2)(A), the registration statement or statements of such lobbyist shall be amended and such amendment filed to show such change prior to the lobbyist's engaging in any lobbying.

(h) If the lobbyist is hired or compensated or to be compensated for lobbying by or for more than one ~~employer-represented~~ person or is to be engaged in more than one ~~employment-representation~~, the relevant facts listed above shall be separately stated for each ~~employer-represented~~ person and each ~~employment-representation~~. ~~Whenever any new lobbying employment or lobbying position is accepted by a lobbyist already registered as provided in this section, such lobbyist shall report the same on forms prescribed and provided by the commission before engaging in any lobbying activity related to such new employment or position, and such report shall be filed with the secretary of state.~~

(i) When a lobbyist is an employee of a lobbying group or firm which contracts to lobby and not an owner or partner of such entity, the lobbyist

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1726 shall report each ~~client~~ *represented person* of the group, firm or entity  
1727 whose interest the lobbyist represents.  
1728 (j) Whenever the lobbying of a lobbyist ~~concerns~~ *appears to concern* a  
1729 legislative matter, the secretary of state shall promptly transmit copies of  
1730 each registration and each report filed under this act to the secretary of the  
1731 senate and the chief clerk of the house of representatives.  
1732 (b) ~~(k)~~ On or after October 1, in any year any person may register as a  
1733 lobbyist under this section for the succeeding calendar year. Such  
1734 registration shall expire annually on December 31, of the year for which the  
1735 lobbyist is registered. In any calendar year, ~~before engaging in lobbying,~~  
1736 persons to whom this section applies shall register or renew their  
1737 registration as provided in this section. ~~Except for employees of lobbying~~  
1738 ~~groups or firms, every person~~ *Each lobbyist* registering or renewing  
1739 registration who anticipates spending \$1,000 or less for lobbying in such  
1740 registration year on behalf of ~~any one employer~~ *a represented person* shall  
1741 pay to the secretary of state a fee of \$30 for lobbying for each such ~~employer~~  
1742 ~~represented person. Except for employees of lobbying groups or firms, every~~  
1743 ~~person~~ *Each lobbyist* registering or renewing registration who anticipates  
1744 spending more than \$1,000 for lobbying in such registration year on behalf  
1745 of ~~any one employer~~ *a represented person* shall pay to the secretary of state  
1746 a fee of \$250 for lobbying for ~~each such employer~~ *represented person*. Any  
1747 lobbyist who at the time of initial registration  
1748 anticipated spending less than \$1,000, on behalf of any ~~one employer~~  
1749 ~~represented person~~, but at a later date spends in excess of such amount,  
1750 shall, within three days of the date when expenditures exceed such amount,  
1751 file an amended registration form which shall be accompanied by an  
1752 additional fee of \$220 for such year *for each such represented person*. Every  
1753 person registering or renewing registration as a lobbyist who is an employee  
1754 of a lobbying group or firm and not an owner or partner of such entity shall  
1755 pay an annual fee of \$300. The secretary of state shall remit all moneys  
1756 received under this section to the state treasurer, and the state treasurer shall  
1757 deposit the same in the state treasury to the credit of the Kansas commission  
1758 on governmental standards and conduct *lobbyist registration fee fund*.  
1759 (e) ~~(l)~~ Any person who has registered as a lobbyist *on behalf of*  
1760 *themselves or another person* pursuant to this act may file, upon termination  
1761 of such person's lobbying activities *for one or more represented persons*, a  
1762 statement terminating such person's registration as a lobbyist *for such one*  
1763 *or more represented persons*. Such statement shall be on a form prescribed  
1764 by the commission and shall state the name and address of the lobbyist, the

1765 name and address of the *represented person and the person or persons*  
1766 compensating the lobbyist for lobbying *on behalf of such represented person*,  
1767 and the date of the termination of the lobbyist's lobbying activities.  
1768 (d) ~~(m)~~ No person who has failed or refused to pay any civil penalty  
1769 imposed pursuant to K.S.A. 46-280, and amendments thereto, shall *engage*  
1770 *in lobbying nor solicit nor accept any present, future, promised or*  
1771 *contingent compensation for lobbying nor be hired nor employed as a*  
1772 *lobbyist nor be authorized or permitted to register as a lobbyist in*  
1773 accordance with this section until such penalty has been paid in full.  
1774 (n) *Every person other than an individual hiring, employing or*  
1775 *compensating any lobbyist to engage in lobbying shall register with the*  
1776 *secretary of state by completing and signing a registration form prescribed*  
1777 *and provided by the commission. Such registration shall show the name and*  
1778 *address of the represented person and the person hiring, employing or*  
1779 *compensating any lobbyist on behalf of such represented person and the*  
1780 *name and address of every lobbyist hired, employed or compensated by*  
1781 *such person. Such registration shall, unless terminated by an amended*  
1782 *registration form, expire annually on December 31, of the year for which*  
1783 *such employer is registered.*  
1784 (o) *No space or facilities in the state capitol shall be assigned to or*  
1785 *utilized by any registered lobbyist other than a certified lobbyist, except for*  
1786 *space or facilities made available for use by the general public.*  
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What on earth does subsection (o) mean? Is this meant to clean out the lobbyist message room? Some of the members of KSAE may not be certified lobbyists, but want a place to receive messages and faxes. They may not be "certified," but they are taxpayers, aren't they?

1794 New Sec. 30. The provisions of this section, and amendments thereto, shall  
1795 constitute and may be cited as the "Lobbyist's Code of  
1796 Professional Responsibility."

1797 (a) (1) Except as otherwise provided, a lobbyist may lobby on behalf of more  
1798 than one person.

1799 (2) A lobbyist shall not lobby on behalf of a person if the representation of that  
1800 person will be directly adverse to another represented person on whose behalf such  
1801 lobbyist is lobbying or, as proscribed by subsection (b), has lobbied or has been  
1802 retained to lobby during the immediately preceding 12 months unless the lobbyist  
1803 reasonably believes that such representation will not adversely affect the interests of  
1804 such other person and the lobbyist's lobbying relationship with the other person and  
1805 such lobbyist has advised in writing, each represented person about the other  
1806 representation.

1807  
1808 Does the term "person" in this new section mean lobbying  
1809 within an association? Or does "person" mean two separate  
1810 entities? If there are two "sections" of a single association  
1811 with fundamentally different ideas on a bill, and the Board  
1812 takes a position in favor of one but contrary to the other, does  
1813 this mean that the lobbyist cannot represent the Board? Or is  
1814 it meant to prohibit lobbying on behalf of two separate entities  
1815 directly adverse to each other? Ambiguous.

1816  
1817 (3) A lobbyist shall not lobby on behalf of a person if the representation  
1818 of that person may be substantially limited by the lobbyist's responsibilities  
1819 to another represented person or to a third person or by the lobbyist's own  
1820 interests unless the lobbyist reasonably believes the representation will not  
1821 be adversely affected and such lobbyist has advised, in writing, the person  
1822 represented about the lobbyist's potentially conflicting interests or  
1823 responsibilities.

1824 (4) When representation of multiple represented persons in a single  
1825 matter is undertaken by a lobbyist, any written advice required by this  
1826 section shall include explanation of the conflict of interest implications of  
1827 the common representation of the several represented persons and the  
1828 advantages and risks that may be involved.

1829 (b) (1) A lobbyist who has formerly lobbied on behalf of a represented  
1830 person in a matter shall not thereafter lobby on behalf of another  
1831 represented person in the same or a substantially related matter in which  
1832 that person's interests are materially adverse to the interest of the first such  
1833 person unless either:

1834 (A) Each represented person consents in writing after being advised in  
1835 writing of the previous representation; or (B) the lobbyist filed a termination  
1836 of lobbying statement as permitted by K.S.A. 46-265, and amendments  
1837 thereto, terminating such lobbyist's lobbying relationship with the first such  
1838 represented person more than 12 months prior to commencing lobbying on  
1839 behalf of the second such represented person.

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The 12-month period is unreasonable. What compelling interest does the state have in enforcing a 12-month period between taking on a second client with an adverse interest? Section (b)(1) is similar to the Model rules governing attorneys. There is no 12-month period in those rules.

Rule 1.9 on conflict of interest states:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

As you can see there is no 12-month period in this rule.

(2) A lobbyist shall not use information obtained by such lobbyist through the course of lobbying on behalf of a represented person to the disadvantage of such person when such information is not generally known or otherwise disclosed unless such person consents in writing to such use.

(c) A lobbyist shall not knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a represented person on whose behalf such lobbyist is engaged to lobby unless the transaction and terms on which the lobbyist acquires the interest are fair and reasonable to such person and are fully disclosed and transmitted in writing to such person in a manner which can be reasonably understood by such person and



1872 such person is given a reasonable opportunity to terminate the lobbyist's  
 1873 representation of such person.  
 1874 (d) A lobbyist shall not accept compensation for lobbying on behalf of a  
 1875 person from a person other than the represented person unless the  
 1876 represented person consents in writing thereto.  
 1877 (e) (1) Except as otherwise provided, lobbyists may associate in lobbying  
 1878 firms with other lobbyists.  
 1879 (2) Any lobbyist who is associated or becomes associated with another  
 1880 lobbyist or lobbyists in a lobbying firm shall not knowingly represent any  
 1881 person as a lobbyist if any other member or associate of such lobbying firm  
 1882 would be prohibited from doing so.  
 1883 (3) When a lobbyist has terminated an association with a lobbying firm,  
 1884 the lobbying firm is not prohibited from thereafter representing a person  
 1885 with interests materially adverse to those of a person represented by the  
 1886 formerly associated lobbyist unless the matter is the same or substantially  
 1887 related to that in which the formerly associated lobbyist represented the  
 1888 person and any lobbyist remaining in the lobbying firm has information  
 1889 which is material to the matter and which was obtained by such lobbyist  
 1890 through the course of lobbying on behalf of such person and such  
 1891 information is not generally known or otherwise disclosed unless such  
 1892 formerly represented person consents in writing.  
 1893 (f) A lobbyist shall not enter into an agreement for, charge, or collect and  
 1894 illegal or clearly excessive fee for lobbying. A fee for lobbying is clearly  
 1895 excessive when, after a review of the facts, a lobbyist of ordinary prudence  
 1896 would be left with a definite and firm conviction that the fee is in excess of a  
 1897 reasonable fee.  
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The Commission will be "reviewing" these facts and making the "ordinarily prudent lobbyist" decision. Lawyers are disciplined when they levy a "clearly excessive" fee. That requires a clear and convincing evidence standard. The Commission is made up of people who, by law, have not lobbied or they cannot serve on the commission. Carol Williams has not lobbied for a private entity that I'm aware of, and has not had the experience of setting a "fee" for such services. Yet these are the people who would be asked to define what is a reasonable fee? Judges are given authority in the legal profession to assess "reasonable fees." However, judges come from the ranks of practicing attorneys. In

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subsection (f), with all respect, the judges under this provision have no practical experience setting fees.

Suggestion: a "reasonable fee" test already exists in statutes, at KSA 7-121b. It is taken from the Model Code of Professional Conduct, Rule 1.5(a).

(g) A lobbyist shall not enter into or offer to enter into an arrangement for, charge or collect a contingent fee for lobbying.

This issue is redundant here. It is covered in KSA 46-267.

(h) A lobbyist shall not enter into or offer to enter into an arrangement for, charge, collect or pay a referral or finder's fee for the referral of a person to a lobbyist *unless the person seeking representation is aware of the referral contract, the referral fee is reasonable, and the client consents to the referral.*

I am uncertain how big an issue referral fees are. The use of a referral fee, under proper conditions, does not impact conflict of interest concerns, which is the primary reason for anti-referral fee legislation. While this prohibition is based on the Model Rules of Professional Conduct, there are exceptions to this prohibition in the lawyer's code and one of them is if the client knows about the referral fee, the referral fee is reasonable, and the client consents to the referral. The proposed amendment is offered.

(i) Except for expenses incurred or expenditures made or arranged for which are reported under subparts (G) through (J) of subsection (a) or subparts (7) through (10) of subsection (b) of K.S.A. 46-269, and amendments thereto, a lobbyist or lobbying firm shall not share lobbying fees with non-lobbyists. A lobbyist shall not form a partnership with a non-lobbyist if any of the activities of the partnership consist of lobbying.

The same problems with amendments to Sec. 36 apply here.

(j) (1) A lobbyist shall not divide a fee for lobbying with another lobbyist who is not a partner in or associate of a lobbying firm unless:

1949 (A) The person on whose behalf the lobbyist is lobbying consents to the  
1950 employment of the other lobbyist after a full disclosure that a division of fees  
1951 will be made;

1952 (B) the division is made in proportion to the services performed and  
1953 responsibility assumed by each lobbyist; and

1954 (C) the total fee of all of the lobbyists does not clearly exceed reasonable  
1955 compensation for all lobbying services rendered to the represented person.

1956 (2) This rule does not prohibit payments to a former partner or associate  
1957 pursuant to a separation or retirement agreement.  
1958

1959 Subsection (j) appears to allow fee divisions and referral  
1960 fees that is contrary to subsection (h) above, even without my  
1961 suggested amendment.  
1962

1963 (k) A lobbyist shall not withdraw from employment until such lobbyist  
1964 has taken reasonable steps to avoid foreseeable prejudice to the lobbying  
1965 interests of a person represented by such lobbyist including, but not limited  
1966 to:

1967 (1) Giving due notice to such person;

1968 (2) delivering to such person all papers and property to which such  
1969 person is entitled; and

1970 (3) otherwise complying with applicable laws and rules.  
1971

1972 This rule is similar to the MRPC for lawyers. However,  
1973 clients of lawyers have an absolute right to terminate the  
1974 services of their lawyer with or without cause. Lobbying  
1975 contracts, like other contracts, may create rights, duties and  
1976 liabilities that are upheld in a court of law. Subsection (k)  
1977 does not take into account the provisions of the contract.  
1978

1979 (l) Any written consent of a person represented by a lobbyist required by  
1980 the Lobbyist's Code of Professional Responsibility shall be filed by the  
1981 lobbyist with the secretary of state prior to the commencement of any  
1982 lobbying activity which caused the consent to be required.

1983 (m) No lobbyist shall:

1984 (1) Do anything with the purpose of placing any state officer or employee  
1985 under personal obligation to the lobbyist;

1986 (2) deceive or attempt to deceive any state officer or employee with  
1987 regard to any material fact pertinent to any pending or proposed legislative  
1988 or administrative action;

1989 (3) cause or influence the introduction of any bill or amendment thereto  
1990 for the purpose of thereafter being employed to secure its passage or defeat;  
1991 or

1992 (4) represent falsely, either directly or indirectly, that such lobbyist can  
1993 control the official action of any state officer or employee.

1994 (n) A lobbyist shall not make contributions, as defined by K.S.A. 25, and  
1995 amendments thereto, to a political committee, as defined by K.S.A. 25-4143,  
1996 and amendments thereto.

1997 (o) A lobbyist having knowledge that another lobbyist has committed a  
1998 violation of this code of professional responsibility that raises a substantial  
1999 question as to that lobbyist's honesty, trustworthiness or fitness as a lobbyist  
2000 in other respects shall report such knowledge to the Kansas commission on  
2001 governmental standards and conduct.  
2002

2003 I realize that the bill attempts to turn 46-265 into a  
2004 professional code, but the legislature needs to think this  
2005 through very carefully. Who will handle the complaints? You  
2006 are creating an "administrative court" where disgruntled  
2007 opponents will file charges against each other?  
2008

2009 Lawyers already are subject to a Model Rules of Professional  
2010 Conduct promulgated by the Supreme Court and our rules  
2011 apply the MRPCs to lawyers who lobby. However, the  
2012 legislature is not a court room. Litigation creates of measure  
2013 of finality. The *sin qua non* of the legal profession's rules of  
2014 conduct is to enforce client-confidentiality requirements while  
2015 at the same time enforce counter-veiling rules that make a  
2016 lawyer's primary allegiance to the court and judicial process.  
2017 Thus the Model Rules of Professional Conduct we cannot lie  
2018 in order to protect our clients. Nor can we take advantage of  
2019 other parties. And we must adhere to all court orders.  
2020

2021 THESE RESTRICTIONS ARE NOT PRESENT IN THE  
2022 ETHICS OF THE BUSINESS OR THE LOBBYING WORLD.  
2023 That is why similar ethics requirements may not be useful in  
2024 the lobbying arena. The purpose of the business world is to

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make money and provide jobs. Seeking legislation to help in that effort (or hinder competitors) is an activity as old as Plato's Democracy in ancient Greece. Unlike the courtroom, for those businesses who fail in their legislative attempts today, there always is next year. Not so with litigants in the civil or criminal justice arena, who by the doctrine of *res judicata* are given one shot at a judgment or verdict. Lobbyists *usually* do not need to protect client confidences, nor are they expected to have allegiance to the legislature rather than their clients. Lawyers already are subject to the Model Rules of Professional Conduct even if the only calling they have had in their practice is lobbying. (*In re Pendergast*, 247 Kan. 322, 799 P.2d 474 (1990).

In *Eastern Railroad Conference v. Noerr Motor Freight*,<sup>1</sup> the U.S. Supreme Court ruled government regulation via the Sherman Antitrust Act inapplicable to settle a fight between truckers and railroads even though the sole purpose of the lobbying campaign in question was to destroy competitors with restrictive state laws. "It is neither unusual or illegal for people to seek action on laws in hopes it may bring about an advantage to themselves and a disadvantage to their competitors. The court has expressly recognized this fact in *U.S. v. Rock Royal Coop*, where it said, 'if ulterior motives of corporate aggrandizement stimulate their activities, their efforts would not be rendered thereby unlawful. ...' The Court made this decision even though the campaign admitted *to deliberate deception of public officials*.<sup>2</sup>

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<sup>1</sup>365 US 127 (1961).

<sup>2</sup>*Eastern Railroad, Id.*, 365 U.S. at 145.

2054 Sec. 31. K.S.A. 46-232 is hereby amended to read as follows: 46-232.  
2055 (a) No state officer or state officer elect shall engage in lobbying nor  
2056 solicit nor accept any present, future or promised or contingent  
2057 compensation for lobbying nor be hired or employed as a lobbyist while  
2058 serving as an officer.

2060 Does the phrase "nor be hired or employed as a lobbyist"  
2061 mean no officer can lobby while serving as that officer? Or  
2062 EVER?? The way the section reads, it means no such officer  
2063 can be employed as a lobbyist. Forever?? You would have  
2064 to have a strong, compelling state interest to make that sort  
2065 of blanket prohibition merely by having been a state officer.

2066  
2067 What about a situation where a lobbyist for XYZ Association  
2068 runs for the House, is elected, takes a leave of absence, with  
2069 the understanding that he would serve only for one term, and  
2070 then be rehired at the old lobbying position? Is that a "future  
2071 ... contingent compensation?" Is it illegal if the present,  
2072 future or promised contingency occurs before the person  
2073 even runs for office? I think you would have a hard time  
2074 upholding that law under those conditions.

2075  
2076 (b) No state officer or employee shall engage in lobbying his own any  
2077 state agency, if he such employee solicits or accepts compensation  
2078 specifically attributable to such lobbying, other than that provided for the  
2079 performance of his such employee's official duties.

2080 (c) Nothing in this section shall prohibit a state officer or employee from  
2081 lobbying without compensation other than that which he such employee is  
2082 entitled to receive for performance of his such employee's official duties.

2083 (d) No associated person or related person shall be employed as or  
2084 engage in lobbying during any period or involving any state agency not  
2085 permitted for the state officer or employee with whom the person is  
2086 associated or related.

2087 (e) From and after July 1, 1996, no state officer or employee shall  
2088 engage in lobbying nor solicit nor accept present, future, promised or  
2089 contingent compensation for lobbying nor be hired or employed as a  
2090 lobbyist within one year following the date of resignation from or the

2091 expiration of the term of any such state officer's or employee's office or  
2092 employment.

2093 These limitations on after-service employment may infringe  
2094 on two constitutional provisions. First, because of the current  
2095 definition of "lobbying," it may be a First Amendment  
2096 violation to prohibit former legislators from writing new  
2097 legislators about future issues during this period. Under the  
2098 new definitions, the act of "direct communications to ...  
2099 influence" is lobbying. Nowhere in our law do we have an  
2100 exception from lobbying when a citizen lobbies their own  
2101 legislator.

2102  
2103 Second, the section may be unreasonable. Why should we  
2104 make it illegal for a former attorney in the Department of  
2105 Transportation who leaves state employment and lobbies for  
2106 the Trial Lawyers on matters having nothing to do with his  
2107 former employment?

2108  
2109 Suggest deletion of (e).  
2110

2141 Sec. 33. K.S.A. 46-269 is hereby amended to read as follows: 46-269.  
2142 Each report under K.S.A. 46-268, and amendments thereto, shall disclose  
2143 the following: (a) The full name and address of each person who has paid  
2144 compensation for lobbying to the lobbyist or has paid for expenses of  
2145 lobbying by the lobbyist during the period reported.  
2146 (b) The aggregate amount or value of all expenditures made, except for  
2147 expenses of general office overhead, by the lobbyist or by the lobbyist's  
2148 employer for or in direct relation to lobbying during the reporting period, if  
2149 such expenditures exceed \$100. Individual expenditures of less than \$2 shall  
2150 not be required to be reported under this subsection. Such expenditures shall  
2151 be reported according to the following categories of expenditures:  
2152 (1) Food and beverages provided as hospitality;  
2153 (2) entertainment, gifts, honoraria or payments;  
2154 (3) mass media communications;  
2155 (4) recreation provided as hospitality;  
2156 (5) communications for the purpose of influencing legislative or  
2157 executive action; and  
2158 (6) all other reportable expenditures made in the performance of services  
2159 as a lobbyist. With regard to expenditures for entertainment or hospitality  
2160 which is primarily recreation, food and beverages, only amounts expended  
2161 on a state officer or employee or on such officer or employee's spouse shall  
2162 be considered to be for or in direct relation to lobbying. Notwithstanding the  
2163 requirements of this subsection and subsection (c), no lobbyist shall be  
2164 responsible to report any expenditure by the lobbyist's employer of which  
2165 such person has no knowledge.  
2166 (a) Each report under K.S.A. 46-268, and amendments thereto, shall, in  
2167 addition to the full name and address of the lobbyist filing the report and  
2168 such additional information and materials required by the commission  
2169 consistent with the purposes and provisions of this act, include:  
2170 (1) The full name and address of each person who has paid  
2171 compensation for lobbying to the lobbyist or has paid for or otherwise  
2172 discharged or satisfied expenses or expenditures of lobbying incurred,  
2173 made or arranged for by the lobbyist during the period reported.  
2174 (2) The aggregate amount or value of all expenses incurred and  
2175 expenditures made or arranged for by the lobbyist or by any of such  
2176 lobbyists or represented persons, if such person is not a lobbyist required to  
2177 file a report under this section, for or in direct relation to lobbying the  
2178 legislature or one or more legislators or the governor, with respect to

2179 legislative matters, during the reporting period. Such expenses and  
2180 expenditures shall be reported according to the following categories:  
2181 (A) Food and beverages provided as hospitality;  
2182 (B) entertainment, gifts, honoraria or payments;  
2183 (C) ~~mass media communications~~;  
2184 ~~(D) recreation provided as hospitality~~;  
2185 ~~(E) (D) direct communications for the purpose of influencing~~  
2186 legislative action;

The definition of "lobbying" has changed in Section 26(a) to mean direct communications with lawmakers and officials. Indirect communications – encouraging third parties or "grassroots" to contact legislators about issues – appear to be exempt from regulation and reporting under the new federal act, and under Section 26(a). This is a conforming amendment to Sec. 26. If you are reporting only direct expenses of contacting lawmakers, you do not need to report mass media expenditures. Adding "direct" to subsection (D) is clarifying.

2198  
2199 ~~(F)(E)~~ dues, membership payments or assessments or similar payments  
2200 made to any person who incurs or makes or arranges for lobbying related  
2201 expenditures or expenses in an amount in excess of 5% of its total  
2202 expenditures or \$10,000 in any calendar year;  
2203 (G) (F) compensation for the reporting period paid, owed or promised to  
2204 any of the reporting lobbyist's employees who spend all or a part of two or  
2205 more days during the reporting period engaged in lobbying;

"All or a part of" language, coupled with "two or more days" ... "engaged in lobbying" means writing letters to legislators for the lobbyist's signature. "Direct communications" is the definition of lobbying under the previous section. Taken broadly the typing of one letter per day, for two days, satisfies this phrase, and thus the entire salary for the lobbyist's employee is reportable. Is that intended?

2214  
2215 ~~(H)(G)~~ unless the reporting lobbyist has incurred no expenses or has  
2216 made or arranged for no expenditures reportable pursuant to subparts (A)

2217 through (F) and (I) or (J) during the reporting period, payments, if any,  
2218 made to lobbyists other than the reporting lobbyist;  
2219 (I) expenses incurred or expenditures made or arranged for that, if the  
2220 lobbyist were otherwise lawfully engaged in the business of lobbying for  
2221 profit, could be deducted as business expenses pursuant to section 162 of  
2222 the internal revenue code of 1986 (26 USCA 162), which are not otherwise  
2223 included in the amount or values of subparts (A) through (H);  
2224 (J) all other expenses incurred and expenditures made or arranged for  
2225 and goods, services and resources used or consumed by the reporting  
2226 lobbyist or used to support or assist the reporting lobbyist in the lobbyist's  
2227 performance or rendering of services as a lobbyist not reported under  
2228 subparts (A) through (I); and  
2229

The "used or consumed" language in (J) used to "support or assist" the lobbyist in performing duties is reported. This would include virtually everything else that is an expense of lobbying, including outside research, paper, paper clips, printer toner, etc. etc. One can argue it includes salaries, too.

Under (J), It would be simpler to submit my budget.

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2239 (K) Payments made to lobbyists other than the reporting lobbyist who  
2240 did not timely file any report required of them under this section during the  
2241 immediately preceding reporting period. With regard to expenses or  
2242 expenditures for entertainment or hospitality which is primarily recreation,  
2243 food or beverage, only amounts incurred, expended or arranged for on a  
2244 state officer elect or a state officer or employee or on such officer or  
2245 employee's immediate family shall be considered to be for or in relation to  
2246 lobbying. Notwithstanding the requirements of this subsection and  
2247 subsection (c), no lobbyist shall be responsible to report any expenditure by  
2248 a represented person or by any person compensating such lobbyist on  
2249 behalf of such represented person of which such lobbyist has no knowledge.  
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Expanding reporting to the officer's "immediate family" is new. This is undefined. Does this include children, stepchildren, or in-laws?

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2254 Individual expenses or expenditures of less than \$2.00 shall not be  
2255 required to be reported under this section. For each expense or expenditure  
2256 required to be reported under subparts (F), (G), (H) and (K) of this section,  
2257 the lobbyist shall report the full name and address of the person to whom  
2258 the expense is owed or to whom the expenditure was made. For all expenses  
2259 or expenditures arranged for but not paid for or satisfied or otherwise  
2260 discharged by the reporting lobbyist, the lobbyist shall report the full name  
2261 and address of the person with or through whom the lobbyist arranged for  
2262 each such expense or expenditure.

2263 (b) Except as required to be reported pursuant to subsection (a), the  
2264 aggregate amount or value of all expenses incurred and expenditures made  
2265 or arranged for by the lobbyist or by any of such lobbyist's represented  
2266 persons if such person is not a lobbyist required to file a report under this  
2267 section, for or in relation to lobbying during the reporting period. Such  
2268 expenses and expenditures shall be reported according to the following  
2269 categories:

- 2270 (1) Food and beverages provided as hospitality;
- 2271 (2) entertainment, gifts, honoraria or payments;
- 2272 (3) mass media communications;
- 2273 (4) recreation provided as hospitality;
- 2274 (5) **Direct** communications for the purpose of influencing legislative  
2275 action;
- 2276 (6) dues, membership payments, assessments or similar payments made  
2277 to any person who incurs or makes or arranges for lobbying related  
2278 expenditures or expenses in an amount in excess of either 5% of its total  
2279 expenditures or \$10,000 in any calendar year;

2280  
2281 The definition of "lobbying" has changed in Section 26(a) to  
2282 mean direct communications with lawmakers and officials. Indirect communications – encouraging third parties or  
2283 "grassroots" to contact legislators about issues – appear to be  
2284 exempt from regulation and reporting under the new federal  
2285 act, and under Section 26(a). This is a conforming  
2286 amendment to Sec. 26. If you are reporting only direct  
2287 expenses of contacting lawmakers, you do not need to report  
2288 mass media expenditures. Adding "direct" to subsection (D)  
2289 is clarifying.  
2290

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2292 (7) compensation for the reporting period paid, owed or promised to any  
2293 of the reporting lobbyist's employees who spend all or a part of two or more  
2294 days during the reporting period engaged in lobbying;  
2295 (8) unless the reporting lobbyist has incurred no expenses or has made  
2296 or arranged for no expenditures reportable pursuant to subparts 1 through  
2297 6 and 9 or 10 during the reporting period, payments, if any, made to  
2298 lobbyists other than the reporting lobbyist;  
2299 (9) expenses incurred or expenditures made or arranged for that, if the  
2300 lobbyist were otherwise lawfully engaged in the business of lobbying for  
2301 profit, could be deducted as business expenses pursuant to section 162 of  
2302 the internal revenue code of 1986 (26 USCA 162), which are not otherwise  
2303 included in the amount or values of subparts 1 through 8;  
2304 (10) all other expenses incurred and expenditures made or arranged for  
2305 and goods, services and resources used or consumed by the reporting  
2306 lobbyist or used to support or assist the reporting lobbyist in the lobbyist's  
2307 performance or rendering of services as a lobbyist not otherwise included  
2308 in subparts 1 through 9; and  
2309 (11) payments made to lobbyists other than the reporting lobbyist who  
2310 did not timely file any report required of them under this section during the  
2311 immediately preceding reporting period. With regard to expenses or  
2312 expenditures for entertainment or hospitality which is primarily recreation,  
2313 food or beverage, only amounts incurred, expended or arranged for on a  
2314 state officer elect or a state officer or employee or on such officer or  
2315 employee's immediate family shall be considered to be for or in relation to  
2316 lobbying. Notwithstanding the requirements of this subsection and  
2317 subsection (c), no lobbyist shall be responsible to report any expenditure by  
2318 a represented person or by any person compensating such lobbyist on  
2319 behalf of such represented person of which such lobbyist has no knowledge.  
2320 Individual expenses or expenditures of less than \$2.00 shall not be required  
2321 to be reported under this section. For each expense or expenditure required  
2322 to be reported under subparts 6, 7, 8 and 11 of this section, the lobbyist  
2323 shall report the full name and address of the person to whom the expense is  
2324 owed or to whom the expenditure was made. For all expenses or  
2325 expenditures arranged for but not paid for or satisfied or otherwise  
2326 discharged by the reporting lobbyist, the lobbyist shall report the full name  
2327 and address of the person with or through whom the lobbyist arranged for  
2328 each such expense or expenditure.  
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This final few reporting requirements are so broad that we've concluded that a lobbyist who doesn't let his or her CPA file these reports is courting disaster. On the other hand, since nearly everyone is a lobbyist, the CPAs will be very busy. Eight reports per year per lobbyist?

**Suggestion:**

The Congress, two years ago, required all persons who lobby – including busiessses and nonprofits and individuals – to pay a lobbying tax. They do this by creating a form that accountants for corporations and certain nonprofits file with the IRS. For example, 9% of the dues of KBA members is not deductible on federal income tax returns because of our lobbying program. By law we report this to members each January.

Why re-invent the wheel? For institutional lobbying organizations like corporations and associations, the budget for lobbying varies from year to year, but not by much. Why not allow the filing of a copy of the federal form we file with the IRS to be our "disclosure" under the Kansas act?

This can be accomplished by adding a new subsection (12):

(12) In lieu of any other report to be filed under this section, a lobbyist may report the lobbying expenditures pursuant to section 6033(b)(8) of the Internal Revenue Code of 1986. Such report shall be deemed to satisfy the requirement to report expenses under this section if a contemporaneous copy is filed with the secretary of state of the form filed in accordance with section 6033(b)(8)."

The federal act requires only one filing per year but provides income and expense numbers far in excess of what is currently provided now and meets the expansion in the new language of this section. I can do this without having to hire my CPA.

2398 New Sec. 34. Except as disclosed as a part of any report required or  
2399 permitted by K.S.A. 46-269, and amendments thereto, the campaign finance  
2400 act (K.S.A. 25-4142 et seq., and amendments thereto), or K.S.A. -901, 25-  
2401 904, section 9, section 10, section 11 and section 12 of this act, and  
2402 amendments thereto, no person shall, while lobbying or engaged in  
2403 lobbying, make, arrange for, or otherwise provide for any present, future,  
2404 promised or contingent voluntary transfer, whether direct or indirect,  
2405 absolute or conditional, of any type or in any manner, whether by sale,  
2406 exchange, grant, gift, lease or any other conveyance, to any state officer or  
2407 employee or any associated person or related person thereof for such officer  
2408 or employee's private benefit or gain, as defined by K.S.A. -3902, and  
2409 amendments thereto, of any money, property, compensation, fund,  
2410 instrument, property, vehicle, machinery, equipment, supplies, facilities,  
2411 time, human labor, information or other resource, right or property interest  
2412 or the use, control or possession thereof, on terms or conditions not  
2413 otherwise available to members of the public except for information to be  
2414 used by a state officer or employee in performing a function or duty of such  
2415 person's office or employment.  
2416

2417 What does Sec. 34 mean? What is intended? What is a  
2418 "promised or contingent voluntary transfer?" The term  
2419 "promised or contingent" is used throughout the act, but  
2420 never defined. A cursory review of current statutes on  
2421 my Westlaw CDROM discloses no definition of that  
2422 phrase. I cannot even find "promised" used in the same  
2423 sentence with "contingent" in the statutes. This section  
2424 needs some heavy definitions in order to warn people  
2425 what conduct not to engage in.  
2426



2427 Sec. 35. K.S.A. 46-267 is hereby amended to read as follows: 46-267.  
2428 (a) No person shall pay or accept or agree to pay or accept or arrange for  
2429 a third party to pay or agree to pay present, future, promised or contingent  
2430 compensation, or any part thereof, for lobbying which is contingent upon  
2431 the result achieved or attained.  
2432 (b) Except as provided by section 30, and amendments thereto, in the  
2433 Lobbyist Code of Professional Responsibility, no person shall pay or accept  
2434 or agree to pay or accept present, future, promised or contingent  
2435 compensation, or any part thereof, for the referral of a person or persons to  
2436 a lobbyist for lobbying services..  
2437 (c) No lobbying contract or agreement shall be valid or enforceable in a  
2438 court of law unless it is in writing, signed by all parties thereto and was  
2439 executed prior to the lobbyist's commencement of lobbying for the  
2440 represented person under such contract or agreement. Any such lobbying  
2441 contract or agreement shall be invalid and unenforceable unless such  
2442 lobbyist complies with all lobbying laws and lobbyist reporting  
2443 requirements of this act.  
2444

2445 KSA 46-267 is simply a contingent fee ban. Contingent fee  
2446 bans were appropriate back in frontier days due to the nature  
2447 of lobbying and a complete lack of disclosure laws on  
2448 substantial interests of lawmakers. Such limitations on the  
2449 right to contract are probably not valid anymore. One state,  
2450 Montana, has ruled contingent lobbying fee bans  
2451 unconstitutional as an equal protection denial, because large  
2452 corporations can pay lobbyists by the hour while small  
2453 businesses fighting large corporations perhaps cannot, thus  
2454 creating unequal access to the legislative process. I suggest  
2455 46-267 as it currently reads be stricken and be amended to  
2456 read as follows:  
2457

2458 ***46-267. No person shall pay or accept or agree to pay***  
2459 ***or accept compensation, or any part thereof, for***  
2460 ***lobbying which is contingent upon the result achieved***  
2461 ***or attained if such lobbyist's client can reasonably***  
2462 ***afford to pay such lobbyist a salary, a fixed fee or an***  
2463 ***hourly fee to lobby. A contingent fee may be allowed***

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***in all other circumstances, but such contingent fee contract shall be valid and enforceable in a court of law only if it is in writing, signed by all the parties to the contract and was executed prior to the lobbyist undertaking any lobbying contacts regarding the subject matter of the lobbying. Such contract shall be invalid unless the lobbyist complies with all laws and reporting requirements of this act. Any such contract shall be a net fee contract, that is, the lawful expenses of lobbying shall be deducted from the amounts recovered before the percentage amounts are applied. Any lobbyist whose compensation is in whole or in part contingent on the outcome of legislation shall disclose such facts on their registration form.***

2480 New Sec. 36. Except for expenses incurred or expenditures made or  
2481 arranged for which are reported pursuant to subparts (G) through (K) of  
2482 subsection (a) and subparts 7 through 11 of subsection (b) of K.S.A. 46-269,  
2483 and amendments thereto, no lobbyist shall pay or divide a fee for lobbying  
2484 services with any non-lobbyist or with a lobbyist not properly registered  
2485 pursuant to K.S.A. 46-268, and amendments thereto.  
2486

2487 KSA 46-268, referenced here, is the general registration  
2488 statute for all lobbyists. The right to contract is pretty sacred.  
2489 If the client is aware of the referral fee, the fee is reasonable  
2490 and agrees to the referral fee, I do not understand the harm  
2491 being eliminated.  
2492

2561 Sec. 40. K.S.A. 46-274 is hereby amended to read as follows: 46-274.  
2562 Unlawful lobbying is  
2563 (1) lobbying without being registered as provided by this act, or  
2564 (2) lobbying when a current or required amended report ~~under meeting~~  
2565 *the requirements of K.S.A. 46-268 and 46-269, and amendments thereto, or*  
2566 *a current or required amended registration meeting the requirements of*  
2567 *K.S.A. 46-265, and amendments thereto* has not been filed and is past due.  
2568 Unlawful lobbying is a class B misdemeanor.  
2569

2570 Making a crime out of lobbying could mean charging  
2571 someone with a misdemeanor for simply not filing a report  
2572 about political activities, which is suspect categorization  
2573 under the First Amendment. We suggest that you  
2574 decriminalize the lobbying process and substitute a civil fine  
2575 as your enforcement tool. Congress did that recently. There  
2576 is another practical reason. If the offending "lobbyist" is out  
2577 of state, you cannot extradite anyone back to Kansas to face  
2578 a misdemeanor. A civil fine can be enforced in another state  
2579 just like any civil judgment. All you need to amend is 46-288  
2580 as follows:

2581  
2582 KSA 46-288. Violations of state governmental ethics laws;  
2583 civil fine.

2584 The commission, ~~in addition to any other penalty~~  
2585 ~~prescribed under K.S.A. 46-215 through 46-286, and amendments~~  
2586 ~~thereto, may recommend to the attorney general the assessment of~~  
2587 ~~assess~~ a civil fine after proper notice and an opportunity to be  
2588 heard, against any person for a violation pursuant to K.S.A. 46-  
2589 215 through 46-286, and amendments thereto, in an amount not to  
2590 exceed \$5,000 for the first violation, not to exceed \$10,000 for the  
2591 second violation and not to exceed \$15,000 for the third violation.  
2592 *Subsequent violations may result in an amount to be set by the*  
2593 *trier of fact in a civil action that is subject to the limits imposed by*  
2594 *KSA 60-3701 et seq., as amended. The attorney general shall*  
2595 *bring such action in the district court of Shawnee County under*  
2596 *this section and for each subsequent violation. A judgment against*  
2597 *the lobbyist or the client and may be enforced as a civil judgment*  
2598 *against the judgment debtor. No such judgment may be paid in*  
2599 *whole or in part from any candidate campaign fund or political*

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*action committee fund. All fines assessed and collected under this section shall be remitted promptly to the state treasurer. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the Kansas commission on governmental standards and conduct fee fund.*

HOUSE GOVT ORG &  
ELECTIONS  
February 23, 1996  
Attachment 1-33

2607 Sec. 41. K.S.A. 46-275 is hereby amended to read as follows: 46-275.  
2608 Giving false lobbying information is intentionally  
2609 (1) making a false or incomplete statement on any registration paper  
2610 under K.S.A. 46-265,-; or  
2611 (2) making a false or incomplete report under K.S.A. 46-268 and 46; or  
2612 (3) *making any false statement or misrepresentation of the facts or*  
2613 *providing a document containing a false statement in violation of section*  
2614 *42, and amendments thereto.* Giving false lobbying information is a class B  
2615 misdemeanor.  
2616  
2617 

Decriminalize. The federal government's new lobbying law 2618 uses civil fines, not crimes, to deter conduct. See the 2619 above.
---

  
2620

2621 New Sec. 42. No person, while lobbying, may:  
2622 (a) Knowingly or willfully make any false statement or misrepresentation  
2623 of the facts to a state officer or employee; or  
2624 (b) knowing a document to contain a false statement, cause a copy of the  
2625 document to be received by a state officer or employee without notifying  
2626 such member, in writing, of the truth.

2627  
2628  
2629 Sec. 43. K.S.A. 46-227 is hereby amended to read as follows: 46-227.

2631 (a) "Associated person" means a person associated with a state officer or  
2632 employee in a partnership, limited partnership, *limited liability partnership*,  
2633 association, *limited liability company* or professional service corporation as  
2634 a partner or officer.

2635 (b) "Related person" means any person which, if such person had any  
2636 ownership interest such ownership interest would be attributable to such  
2637 person under section 318 of the Federal internal revenue code of 1986 (26  
2638 USCA 318).

2639 (c) "Represented person" means the person or persons on whose behalf  
2640 or in whose interest a lobbyist lobbys.

2641  
2642 Associated person is broadly defined, and uses the terms to  
2643 be defined in the definition itself, (even though this is current  
2644 law). The phrase "associated with" (current law) does not  
2645 make it clear whether a lawyer-legislator who has an  
2646 "associate" (employee) creates an associated person. Striking  
2647 the phrase "as a partner or officer" does not clarify this  
2648 ambiguity. It would appear to hook into the definition an  
2649 "associate," even though the associate employee is not a  
2650 partner or director of a corporation or partnership. This  
2651 terminology is important because of the new limitations on  
2652 contracting ability of "associated" or "related" persons.

2653  
2654 "person associated with" a state officer, does that mean an  
2655 individual or the broader definition of "person?"

2656  
2657 Why not use "client" rather than "represented person?"  
2658

2135 (k) "Lobbyist" means any person who makes expenditures in an  
2736 aggregate amount of \$100 or more in any calendar year for lobbying.  
2737 Lobbyist shall not include:  
2738 (1) Any local governmental officer engaged in carrying out the duties of  
2739 their office;  
2740 (2) any judge, officer or employee of district, magistrate or municipal  
2741 courts, engaged in carrying out the duties of their office; or  
2742 (3) any appointed member of an advisory council, commission or board  
2743 of any governmental subdivision, who serves without compensation other  
2744 than reimbursement for expenses incurred in performing a duty or function  
2745 of such council, commission or board engaged in carrying out the duties of  
2746 their office.  
2747 (l) "Lobbying" means promoting or opposing any official action or  
2748 nonaction by any local governmental subdivision by direct communication  
2749 with a local governmental officer or employee of such subdivision for the  
2750 purpose of influencing such officer or employee in the performance of their  
2751 official duties in relation thereto. Lobbying does not include bona fide  
2752 business or personal entertaining or any activity before any agency of the  
2753 governmental subdivision, the essential characteristics of which is or has  
2754 been determined to be the practice of law by the judicial branch of state  
2755 government.  
2756 (m) "Associated person" means a person associated with a local  
2757 governmental officer or employee in a partnership, limited partnership,  
2758 limited liability partnership, association, limited liability company or  
2759 professional service corporation.  
2760 (n) "Related person" means any person which, if such person had any  
2761 ownership interest, such ownership interest would be attributable to such  
2762 person under section 318 of the Federal internal revenue code of 1986 (26  
2763 U.S.C.A. 318).  
2764 (o) "Public agency" means the state, the legislature, legislators,  
2765 legislative committees and councils, all executive departments and officers,  
2766 institutions, offices, officers, commissions, boards and authorities of the  
2767 state, any state agency, as defined by K.S.A. 46-224, and amendments  
2768 thereto, any municipality as defined by K.S.A. 25-901(d), and amendments  
2769 thereto, or any political or taxing subdivision of the state or of any  
2770 municipality or any other entity whose officers, directors, members or  
2771 trustees are determined by public election or by election by the qualified  
2772 electors thereof to state, local or other public office, or any person, office,

2773 officer, agency, agent, employee or instrumentality thereof except an  
2774 individual acting in their individual capacity, receiving, expending or  
2775 supported in whole or in part by public money or funds appropriated by  
2776 acts of the state legislature but does not include any person solely by  
2777 reason of payment from public money or funds in exchange for such  
2778 person's property, goods or services.  
2779 (p) "Person" means any individual, committee, corporation,  
2780 partnership, limited partnership, limited liability partnership, limited  
2781 liability company, proprietorship, trust, joint venture, organization,  
2782 association or unincorporated association.  
2783 (q) "Represented person" means the person on whose behalf or in whose  
2784 interest a lobbyist lobbys.  
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Do you need to redefine these terms? To apply all the new state lobbying definitions to local units of government requires a much simpler amendment, doesn't it?

2912 New Sec. 49. Each report under section 48, and amendments thereto,  
2913 shall disclose the following: (a) The full name and address of each  
2914 person who has paid compensation for lobbying any governmental  
2915 subdivision to the lobbyist or has paid for or otherwise discharged or  
2916 satisfied expenses or expenditures of lobbying incurred, made or arranged  
2917 for by the lobbyist during the period reported.  
2918 (b) The aggregate amount or value of all expenses incurred and  
2919 expenditures made or arranged for by the lobbyist or by any of such  
2920 lobbyist's represented persons if such person is not a lobbyist required to file  
2921 a report under this section for or in direct relation to lobbying any  
2922 governmental subdivision during the reporting period. Such expenses and  
2923 expenditures shall be reported according to the following categories:  
2924 (1) Food and beverages provided as hospitality;  
2925 (2) entertainment, gifts, honoraria or payments;  
2926 (3) travel or lodging;  
2927 (4) recreation provided as hospitality;  
2928 (5) *direct* communications for the purpose of influencing local  
2929 governmental action;  
2930 (6) ~~mass media communications;~~  
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2936 (7) dues, membership payments or assessments or similar payments  
2937 made to any person who incurs, makes or arranges for lobbying related  
2938 expenditures or expenses in an amount in excess of either 5% of its total  
2939 expenditures or \$10,000 in any calendar year;  
2940 (8) compensation for the reporting period paid, owed or promised to any  
2941 of the reporting lobbyist's employees who spend all or a part of two or more  
2942 days during the reporting period engaged in lobbying;  
2943 (9) unless the reporting lobbyist has incurred no expenses or has made or  
2944 arranged for no expenditures reportable pursuant to subparts 1 through 6  
2945 and 9 or 10 during the reporting period, payments, if any, made to lobbyists  
2946 other than the reporting lobbyist;  
2947 (10) expenses incurred or expenditures made or arranged for that, if the  
2948 lobbyist were otherwise lawfully engaged in the business of lobbying for  
2949 profit, could be deducted as business expenses pursuant to section of the

To be consistent with "direct communications" language in Section 45(l), you need to eliminate reporting of mass media expenses and all other indirect communication costs.

2950 internal revenue code of 1986 (26 USCA 162), which are not otherwise  
2951 included in the amount or values of subparts 1 through 8;  
2952 (11) all other expenses incurred and expenditures made or arranged for  
2953 and goods, services and resources used or consumed by the reporting  
2954 lobbyist or used to support or assist the reporting lobbyist in the lobbyist's  
2955 performance or rendering of services as a lobbyist not otherwise included in  
2956 subparts 1 through 9; and  
2957 (12) Payments made to lobbyists other than the reporting lobbyist who  
2958 did not timely file any report required of them under this section during the  
2959 immediately preceding reporting period.  
2960 With regard to expenses or expenditures for entertainment or hospitality  
2961 which is primarily recreation, food and beverages or for travel or  
2962 lodging, only amounts incurred, expended or arranged for on a local  
2963 governmental officer or employee or on such officer or employee's  
2964 immediate family shall be considered to be for or in direct relation to  
2965 lobbying. Notwithstanding the requirements of this subsection and  
2966 subsection (d), no lobbyist shall be responsible to report any expenditure by  
2967 the lobbyist's represented person or by any person compensating such  
2968 lobbyist on behalf of such represented person of which such lobbyist has no  
2969 knowledge. Individual expenditures of less than \$2.00 shall not be required  
2970 to be reported under this subsection. For each expense or expenditure  
2971 required to be reported under subparts (7), (8), (9) and (12) of this  
2972 subsection, the lobbyist shall report the full name and address of the person  
2973 to whom the expense is owed or to whom the expenditure was made. For all  
2974 expenses or expenditures arranged for but not paid for or satisfied or  
2975 otherwise discharged by the reporting lobbyist, the lobbyist shall report the  
2976 full name and address of the person with or through whom the lobbyist  
2977 arranged for each such expense or expenditure.  
2978 (c) Whenever an individual lobbyist contributes to a single special event,  
2979 such lobbyist shall report only the aggregate amount or value of the  
2980 expenditure contributed by such lobbyist.  
2981 (d) No expense or expenditure made, incurred or arranged for, required  
2982 to be reported by this section, shall be reported by more than one lobbyist.  
2983 (e) Every lobbyist which receives payments, makes payments or incurs  
2984 expenses or expects to receive payments, make payments or incur expenses  
2985 in connection with activities which are reportable pursuant to this act shall  
2986 keep detailed accounts, records, bills, and receipts as shall be required by  
2987 regulations adopted by the secretary of state to expedite the performance of  
2988 all obligations imposed by this act. Records in support of every report or

3037 Sec. 52. K.S.A. 1995 Supp. 75-4304 is hereby amended to read as  
3038 follows: 75-4304.  
3039 (a) No local governmental officer or employee shall, in the capacity of  
3040 such an officer or employee, make or participate in the making of a contract  
3041 with any person or business by which the officer or employee is employed or  
3042 in whose business the officer or employee *or any member of such officer's or*  
3043 *employee's household or family or any associated person or related person*  
3044 *thereof* has a substantial interest.  
3045 (b) No person or business shall enter into any contract where any local  
3046 governmental officer or employee, acting in that capacity, is a signatory to  
3047 or a participant in the making of the contract and is employed by or has a  
3048 substantial interest in the person or business.  
3049 (c) A local governmental officer or employee does not make or  
3050 participate in the making of a contract if the officer or employee abstains  
3051 from any action in regard to the contract.  
3052 (d) *No individual shall, while a local governmental officer or employee*  
3053 *or within two years after the conclusion of service as a local governmental*  
3054 *officer or employee, be interested pecuniarily either directly or indirectly in*  
3055 *any contract with the governmental subdivision of which, the individual is*  
3056 *or was an officer or employee.*  
3057 (d)(e) This section shall not apply to the following:  
3058 (1) Contracts let after competitive bidding has been advertised for by  
3059 published notice *and for which not less than two bona fide bids have been*  
3060 *received*; and  
3061 (2) contracts for property or services for which the price or rate is fixed  
3062 by law.  
3063 (e)(f) Any local governmental officer or employee who is convicted of  
3064 violating this section shall forfeit the office or employment.

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Subsection (d) prohibits for two years contracting with a local unit of government for which the individual was an officer or employee even if the employee did not work on the contract or have anything to do with its creation.

The rule governing lawyer movement from successive government to private employment, MRPC 1.11, ties down the language more specifically, such as:

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(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

The blanket ban in the rule goes too far.



3117 New Sec. 55. (a) No person shall pay or accept or agree to pay or accept  
3118 present, future, promised or contingent compensation, or any part thereof,  
3119 for lobbying any governmental subdivision which is contingent upon the  
3120 result achieved or attained.

3121 (b) No person shall pay or accept or agree to pay or accept compensation,  
3122 or any part thereof, for the referral of persons to a lobbyist for lobbying  
3123 services.

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3125 The suggested language and reasoning previously  
3126 regarding contingent fee contracts should be  
3127 incorporated here.

3128

3129 New Sec. 56. Unlawful lobbying of governmental subdivision is (1)  
3130 lobbying a governmental subdivision without being registered as provided  
3131 by this act, or  
3132 (2) lobbying when a current or required amended registration or report  
3133 under sections 47, 48 and 49, and amendments thereto, has not been filed  
3134 and is past due. Unlawful lobbying is a class B misdemeanor.

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3136

Decriminalize. Fines only.

3137

3191 Sec. 61. K.S.A. 1995 Supp. 46-233 is hereby amended to read as follows:  
3192 46-233.

3193 (a) No state officer or employee shall in the capacity as such officer or  
3194 employee be substantially *or materially* involved in the preparation of or  
3195 participate in the making of a contract with any person or business by which  
3196 such officer or employee is employed or in whose business such officer or  
3197 employee or any member of such officer's or employee's immediate  
3198 household or family or any associated person or related person thereof has  
3199 a substantial interest and no such person or business shall enter into any  
3200 contract where any state officer or employee, acting in such capacity, is a  
3201 signatory to, has been substantially involved in the preparation of or is a  
3202 participant in the making of such contract and is employed by such person  
3203 or business or such officer or employee or any member of such officer's or  
3204 employee's immediate household or family or any associated person or  
3205 related person thereof has a substantial interest in such person or business.  
3206 Substantial interest means "substantial interest" as defined by K.S.A. 46-  
3207 229, and amendments thereto, and any such interest held within the  
3208 preceding twelve months of the act or event of participating in the  
3209 preparation of making a contract. Whenever any individual has, within the  
3210 preceding two years participated as a state officer or employee in the making  
3211 of any contract with any person or business, such individual shall not accept  
3212 employment with *or compensation from* such person or business for ~~one~~  
3213 ~~year~~ *two years* following termination of *or resignation from* employment as  
3214 a state officer or employee.

3215 (b) No individual shall, while a ~~legislator~~ *state officer or employee* or  
3216 ~~within one year~~ *two years* after the expiration of ~~a term as legislator~~ *service*  
3217 *as a state officer or employee*, be interested pecuniarily, either directly or  
3218 indirectly, in any contract with the state, ~~which contract is funded in whole~~  
3219 ~~or in part by any appropriation or is authorized by any law passed during~~  
3220 ~~such term, except that the prohibition of this subsection (b) shall not apply~~  
3221 ~~to any contract interest in relation to which a disclosure statement is filed as~~  
3222 ~~provided by K.S.A. 46-239, and amendments thereto.~~

3224 Adding "materially" to the phrase "substantially" does not help  
3225 clarify what level of involvement is actionable here.

3226 A citizen's legislature should be very careful about putting  
3227 post-service restrictions on future employment because of  
3228 service to government. In the long run, people will not go  
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into government service if they are effectively barred from moving into the private sector in areas of interest that they served in while in government. I realize this is current law, but the whole theory of "revolving door" needs reexamination. It's one thing to do it in Congress or states with full time legislatures. It is another to do it in citizen legislatures. The two year provision is overly broad.

Is the amount being paid to former lawyer-legislators or government lawyers who are taking indigent defense cases "set by law?" Often these amounts are billed to the Board of Indigent Defense Services and the amounts actually paid are "negotiated" down. Would this statute impact these attorneys - many of whom have never participated in the letting of the contract?

Subsection (b) is unreasonable. It literally says if I am a former state officer, I cannot engage in statutory contracts (like BIDS) or even contracts negotiated by bid. The contract may be for a service entirely different than the agency you served in during state service. You will need a very strong public record as to why this sort of prohibition is necessary to raise the confidence of Kansans. The right to engage in state contract bidding is a First Amendment right and under our state bill of rights, a political right and privilege granted all citizens, unless you have a compelling state interest to the contrary.

Suggest retaining all of (b).

(c) No individual, while a legislator or within one year after the expiration of a term as a legislator, shall represent any person in a court proceeding attacking any legislative action taken or enactment made during any term such individual served as a legislator as being unconstitutional because of error in the legislative process with respect to such action or enactment unless such legislator voted no upon the enactment of the measure and declared on the record, during such term, that such legislation was unconstitutional. The prohibition of this subsection (c) shall not apply to a current or former legislator charged with a violation of such legislative action or enactment.

3270 (d) Subsections (a) and (b) shall not apply to the following:  
3271 (1) Contracts let after competitive bidding has been advertised for by  
3272 published notice *and for which not less than two bona fide bids have been*  
3273 *received; and*  
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3275 Why do we penalize a perfectly good competitive bid  
3276 because other competitors chose not to bid and it was the  
3277 only bid submitted?

3278  
3279 (2) contracts for property or services for which the price or rate is fixed  
3280 by law.  
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3282 New Sec. 62. (a) Prior to accepting testimony, written or oral, or  
3283 evidence during hearings accepting testimony or evidence on a bill or bills  
3284 before any legislative committee, the chairperson of any legislative  
3285 committee, or the members of any duly convened legislative committee upon  
3286 the affirmative vote of not less than two-thirds of the members in  
3287 attendance, may require that all persons submitting testimony, written or  
3288 oral, or evidence provide such committee with a written affirmation in  
3289 substantial compliance with the following form:

3290 AFFIRMATION OF TESTIMONY

3291 I hereby affirm that the testimony that I present to the \_\_\_\_\_ legislative committee  
3292 holding hearings on \_\_\_\_\_ on the \_\_\_\_\_ day of 19 \_\_\_\_, is true and correct.  
3293 \_\_\_\_\_

3294 (b) Contempt of a legislative committee is:

3295 (1) Refusing to affirm the truth of testimony presented to a legislative  
3296 committee when required by such committee; or

3297 (2) failing to present testimony which is true and correct, after having  
3298 affirmed that the testimony to be presented was in fact true and correct.

3299 Contempt of a legislative committee is a class C misdemeanor.  
3300

3301 Busy prosecutors are going to be reluctant to spend much  
3302 time on a "C" misdemeanor. You will see as many  
3303 prosecutions here as we see prosecutions for adultery,  
3304 another "C" misdemeanor.

3305 Further, if the defendant lives in another state and lies,  
3306 you cannot extradite for a misdemeanor. Lobbyists or  
3307 citizens wanting to avoid liability for subsection (b) will simply  
3308 meet you in your office or in the halls. The crime only  
3309 applies to "testimony" presented to a committee.

3310 If you want to set up an elaborate oath swearing system  
3311 for all witnesses, then our perjury statutes (a felony) would  
3312 apply. However, that is expensive. Doing this on the cheap  
3313 may cause First Amendment problems. Who decides the  
3314 testimony presented was not "true and correct?"  
3315

3352 Sec. 67. K.S.A. 46-239 is hereby amended to read as follows: 46-239.  
3353 (a) No state officer or employee shall accept employment in any  
3354 representation case, unless such officer or employee has properly filed the  
3355 disclosure statement prescribed by this section.  
3356 (b) Any state officer or employee who is employed in any representation  
3357 case shall, not later than 10 days after the acceptance of employment for  
3358 such case or on the first appearance before the state agency involved  
3359 (whichever occurs first), file on a form prescribed and provided by the  
3360 commission a disclosure statement as provided in this section.  
3361 (c) Any individual, *while a state officer or* within one year after the  
3362 expiration of a term as a ~~legislator~~-state officer, who contracts to perform  
3363 any service for a state agency other than the legislature, shall not later than  
3364 10 days after the acceptance of such contract, file a disclosure statement as  
3365 provided in this section. Any agency of the state of Kansas which enters into  
3366 a contract with any legislator, or any member of a firm of which such  
3367 legislator is a member, under which the legislator or the member of such  
3368 firm is to perform services for such agency for compensation shall make a  
3369 report on a form prescribed and provided by the commission giving the  
3370 name of the state agency, the purpose of the employment and the method of  
3371 determining and computing the compensation for such employment. All  
3372 such forms shall be filed quarterly in the office of the secretary of state.  
3373 (d) The disclosure statement required by this section shall be filed with  
3374 the secretary of state in all cases. Any individual who files a statement may  
3375 file an amended statement  
3376 (or, if permitted by the secretary of state, amend the original filing) at  
3377 any time after the statement is originally filed. Copies of each such  
3378 statement shall forthwith upon filing be transmitted by the secretary of state  
3379 to  
3380 (1) in the case of members of the house of representatives, the chief clerk  
3381 of the house of representatives, or  
3382 (2) in the case of senators, the secretary of the senate. In addition to the  
3383 foregoing, a copy of every disclosure statement shall be transmitted by the  
3384 secretary of state to the state agency involved, if the state agency is other  
3385 than a part of the legislative branch.  
3386 (e) The disclosure statement provided for by this section shall be signed  
3387 by the person making the same and shall state  
3388 (1) the name of the employer,  
3389 (2) the purpose of the employment and

3390 (3) the method of determining and computing the compensation for the  
3391 employment in the representation case.  
3392 (f) Any person who is employed in a representation case and who is  
3393 required to file a disclosure statement pursuant to this section may file, upon  
3394 termination of such person's employment in such representation case, a  
3395 termination statement with the secretary of state. Such statement shall be on  
3396 a form prescribed and provided by the commission and shall state  
3397 (1) the name of the employer,  
3398 (2) the state agency involved in the case, and  
3399 (3) the date of the termination of employment. The secretary of state  
3400 shall transmit a copy of such statement to the state agency involved.  
3401 (g) Failure to file a true disclosure statement is intentionally  
3402 (1) failing to file a disclosure statement when and where required by this  
3403 section, or  
3404 (2) filing a disclosure statement under this section which contains any  
3405 material misrepresentation or false or fraudulent statement. Failure to file a  
3406 true disclosure statement is a class B misdemeanor.  
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Why is failure to file a statement a crime? Decriminalize,  
decriminalize, decrimanilze!! Why not make it a civil penalty  
instead of a crime?

TESTIMONY PRESENTED TO THE HOUSE COMMITTEE  
ON GOVERNMENTAL ORGANIZATION AND ELECTIONS

HB 3000

February 23, 1996

By Jim Shetlar

Thank you, Madame Chair, and Members of the Committee:

My name is Jim Shetlar and I appear before you as the Chairman of a State Task Force on Campaign Finance, Lobbying and Ethics Reform for United We Stand of America of Kansas. In that capacity, I am here to speak as a proponent of HB 3000.

As some of you may be aware, United We Stand of America of Kansas is a public interest organization that represents individual voters and taxpayers of the State of Kansas with its number one priority, both at the State and National level, being campaign finance, lobbying and ethics reform.

United We Stand has supported positive legislation that eliminates influence buying of legislation, both on the lobbying side and on campaign finance. Representatives of our task force have appeared and presented testimony to both Senate and House Committees over the last two years and most recently and zealously last fall to the interim committee chaired by Senator Mark Parkinson and Senator Bill Brady.

It is our opinion that the public demands that something more than just nipping at the edges be done in this area. Yet, based upon our appearances, both before the Senate and House committees, we are convinced that if anything positive in Kansas happens in this area, it is going to have to come from the House. United We Stand watched with frustration last Spring when bills were debated in the Senate and the committee never even voted on said bills. Besides just voting, we would like to see this committee have recorded votes on this bill.

During the Interim Committee hearings last fall, we heard that much of the legislation in other States in this area was the result of scandals. Many lobbyists and legislators in Kansas have drawn on this analysis and in turn argued that there is no scandal in Kansas and as such nothing should be done. United We Stand sees the situation quite differently.

United We Stand has taken notice of and closely monitored events such as the following:

1. Phantom of the Opera tickets in Kansas City, Missouri and dinner on the plaza;

HOUSE GOVT ORG & ELECTIONS  
February 23, 1996  
Attachment 2-1

2. Plaza lights with lobbyist fundraisers for legislators;
3. Sporting events with lobbyists and legislators with the Kansas City Chiefs and Kansas City Royals in Kansas City, Missouri; and athletic events within the state;
4. Golf outings;
5. Events taking place at recreational resorts outside of the State of Kansas;
6. Fund raising events for legislators; and
7. The representative from Western Kansas' questionable sale of his farm land at an inflated value to a corporation instrumentally involved in corporate hog farming following his efforts in passing legislation for corporate hog farming. I would point out that the circumstances surrounding this representative's actions was one of the primary topics discussed on the area of ethics at our State convention of United We Stand in Wichita in November.

Last fall, I looked to the lobbyists in the hearing rooms, many of which were obviously professionals, and posed the question "wouldn't you too welcome recognizing your professionalism and not being placed in a wine and dine or fundraising situation with legislators." At that same time, I witnessed Pete McGill stand up before the committee and indicate an objection that he had been hit up by legislators for campaign finance contributions or support for different fundraising events. Obviously, we view lobbying and campaign finance as two integral parts that have to be dealt with together.

It has been our policy in Kansas as it relates to lobbying, campaign financing and ethics reform to support items such as:

1. Separate checks;
2. Limits on campaign contributions of \$250 for State Representatives and \$500 for State Senator
3. No contributions by PACS, unions or corporations;
4. No out-of-state contributions;
5. A 5-year revolving door.

United We Stand stands for good positive government for all the people in the State of Kansas, and we commend Madame Chairman, Representative Nichols and other people that may be responsible for the drafting of said piece of legislation as well as Senator Parkinson, Senator Brady and other people that have attempted in

HOUSE GOVT ORG & ELECTIONS  
February 23, 1996

Attachment 2-2



good faith to move positive legislation forward.

I also commend Rebecca Rice for standing up as a lobbyist and indicating that something positive needs to be done. I commend anybody, who, within their own organization, tries to make it a better profession.

I say to legislators and lobbyists, that if you attempt to ostracize lobbyists or legislators that have tried to introduce legislation that United We Stand believes is the right thing, this may backfire on you.

I would like for you to know that many of us in the United We Stand movement voted against forming a third political party in Kansas. I would also like to point out, though, that initially after what we have witnessed over the last year in legislation in Kansas, I think many of us believe that we have no other choice. I hope you prove us wrong.



**TO:** House Committee on Governmental Organizations and Elections  
**FROM:** Mark Tallman, Director of Governmental Relations  
**DATE:** February 22, 1996

**RE:** Testimony on H.B. 3000 - Governmental Ethics and Conduct

Madam Chairman and Members of the Committee:

We appreciate the opportunity to appear before the committee on H.B. 3000. Rather than attempt to offer specific comments on the major parts of the bill, I would like to offer a statement on those issues which we feel most directly affect our members.

First, in the area of election reform, KASB has adopted a policy position in support of bringing all unified school district elections under the state campaign finance act. The only condition on that support is a belief that candidates who receive and spend small amounts on elections should continue to be able to file an affidavit that exempts them from more extensive reporting requirements.

Second, we have no philosophical objection to reporting whatever lobbying expenditures that Legislature believes is appropriate and reasonable. However, we do not believe that school boards or other local units should be singled out for more extensive additional reporting requirements.

Third, we strongly object to the provisions in this bill (Section 37) which appear to almost totally eliminate the ability of locally elected school boards and other officials to advance an agenda before the Legislature, State Board of Education and other governmental agencies, or perhaps to even offer meaningful comment on legislative and policy matters.

Nothing requires school boards to engage in legislative advocacy or to belong to organizations which do (such as KASB). If they do, that decision should be made by those locally elected officials. Expenditures on lobbying, lobbyists or membership in organizations like KASB are and should be public record. If you assume a strict definition of lobbying, this bill would prohibit any school officials from communicating with you in any manner that could be construed as promoting or opposing legislative action. We do not see how this benefits either legislators or local units. This would, in fact, silence the elected representatives of the citizens of each local unit and their employees acting in an official capacity. The beneficiaries of government - employee groups, clients, suppliers - would be able to continue to lobby for greater benefits and more extensive rights from local units, while the local unit would be powerless to respond. School board members, who draw no salary, could only speak as individuals, on their own time and at their own expense.

School districts are also extensively regulated by the State Board of Education. Over the past several years, KASB and individual members have been at the center of efforts to address the issues of paperwork, academic focus and local autonomy under QPA. If school boards were unable to "lobby" the State Board, the influence of the Department of Education would be much greater. There would be far less counter-balance by those who actually have to carry out the regulations of the State Board.

Finally, we frankly have no position on the issue of local lobbying regulations, for the simple reason that our association has never considered the issue. We will be happy to study this issue with our membership if this portion of the bill does not pass this session.

Thank you for your consideration.