

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Representative Joann Freeborn at 3:30 p.m. on February 13, 2003 in Room 231-N of the Capitol.

All members were present except: Representative Larry Powell - excused
Representative Daniel Thimesch - excused

Committee staff present: Raney Gilliland, Legislative Research
Emalene Correll, Legislative Research
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Secretary

Conferees appearing before the committee: Sarah Holbert, CARES, PO Box 314, Concordia, KS 66901
Michael Byington, KS Relay Service Inc., 700 SW Jackson Ste 704, Topeka, KS 66603
Mark Coates, KS Association for the Blind & Visually Impaired, 924 S. KS Avenue, Topeka, KS 66612
Ann Byington, Guide Dog Users of Kansas, 700 SW Jackson Ste 704, Topeka, KS 66603
Sanford Alexander, Board of Directors Guide Dog Foundation, Smithtown, NY, 5321 Plaza Lane, Wichita, KS 67208
Shelly May, KS Council on Developmental Disabilities, 915 SW Harrison, Rm 141, Topeka, KS 66612-1570
Martha Gabehart, KS Commission on Disability Concerns, 1430 SW Topeka, KS 66612
Robin Pool, 7901 E. 87th Street, Derby, KS 67037
Dee Winter, 8117 159th Road, Winfield, KS 67156

Others attending: See attached sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She announced that the committee would be working two bills today before the hearing on **HB2197**. The first bill to be discussed is **HB2219**.

HB2219: Repeal of requirement that Secretary of Health and Environment publish all department policies, guidelines and standards.

Language brought forth was in the form of a substitute bill.

Proposed Substitute for HB2219: Concerning certain documents of the secretary of health and environment.

Mary Torrence, Revisor of Statutes, explained the proposed substitute bill.

Rep. Dan Johnson made a motion Proposed Substitute for HB2219 be adopted. Rep. Lee Tapanalli seconded the motion. Motion carried.

Rep. Tom Sloan made a motion Proposed Substitute for HB2219 be passed favorably. Rep. Mary Compton seconded the motion. Motion carried. Rep. Lee Tapanelli will carry the bill on the House Floor.

The Chairperson opened **HB2223** for discussion and possible action.

HB2223: Solid waste terminology; conformity to federal law.

Rep. Tom Sloan made a motion HB2223 be passed and placed on consent calendar Rep. Ted Powers seconded the motion. Motion carried

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT at 3:30 p.m. on February 13, 2003 in Room 231-N of the Capitol.

Chairperson Freeborn reviewed the committee agenda for next week. Tuesday, February 18, hearing and possible action on **HB2218**- Hazardous waste; unlawful acts, technical correction; and hearing on **HB2196**- Storage tanks; applicability of certain prohibitions. On Thursday, February 20, possible action on bills previously heard, hearing on **HB2247**- Environmental use controls; prohibition or restriction of activities on or use of property where contamination has occurred; and Review of Management of Federal Aid Funds by Secretary Mike Hayden, KS Department of Wildlife and Parks and staff.

The Chairperson opened the hearing on **HB2197**.

HB2197: Assistance animals for handicapped and disabled persons.

Emalene Correll, Legislative Research Department, explained the bill.

Chairperson Freeborn welcomed Sarah Holbert, Canine Assistance, Rehabilitation, Education and Services (CARES), to the committee. She testified in support of the bill. CARES began placing canine assistants with persons in 1994. Since that time they have placed over 330 assistance dogs in 26 different states, Puerto Rico and Peru. 57% of their placements work here in the State of Kansas. Public access, protection under the law, as well as the ability to punish violators, will give Kansas citizens working with assistance dogs the assurance that the partnerships they have with their dogs will have been given every consideration by the people chosen to represent them in Topeka. (See attachment 1)

Michael Byington, Kansas Relay Service Inc., was welcomed. He testified in support of the bill and appeared as a consultant today. He can say with considerable certainty what the bill would do, why the coalition of people who worked on it feel it is essential, and what some of the problems are with the current set of statutes on guide, service, and hearing assistance dog access. This legislation is the process of several years of hard work and evolution. In light of federal law, and in light of the differing types of training processes available for guide, service, hearing assistance, and professional therapy dogs, this is probably the best researched and most comprehensive set of statute reforms among many which have been introduced in various states. (See attachment 2)

Mark Coates, Legislative Chair, Kansas Association for the Blind and Visually Impaired, Inc. (KABVI), was welcomed to the committee. He testified in support of the bill. KABVI has been an advocacy organization working on access issues for blind and visually impaired Kansans for over 80 years. KABVI was the organization that first asked the Kansas Legislature for access laws for guide dogs nearly 70 years ago. The organization has kept track of the progress of these statutes ever since they were passed, and have been involved throughout the process of working with the other disability groups, who are now also using assistance dogs, in putting this legislation together. (See attachment 3)

Ann Byington, President, Guide Dog Users of Kansas, was welcomed. She testified in support of the bill on behalf Guide Dog Users of Kansas, an affiliate organization of Guide Dog Users Inc., a nationwide consumer group of blind persons who attain independence by traveling with guide dogs. This bill not only addresses issues hitherto not included in access legislation, but more importantly because the crafting of this legislation marks a positive compromise and coalition effort of diverse groups, guide, hearing and service dog users, dog trainers and professional therapeutic dog handlers. (See attachment 4)

Sanford Alexander, Board of Directors, Guide Dog Foundation, Smithtown, N.Y., was welcomed to the committee. He testified in support of the bill and believes it is the product of several years of work by a growing coalition of groups in Kansas interested in seeing that guide, service and hearing dogs are afforded the rights and protection they deserve that will ensure their human partners full enjoyment of the independence they are intended to help provide. It has grown in strength through hard work, to resolve sincere differences between the various components making up the coalition. It has also benefitted from the several years of effort by Coalition of Assistance Dog Organizations (CADO), which has been wrestling with the same issues on a national level. (See attachment 5)

Shelly May, Kansas Council on Developmental Disabilities, was welcomed. She testified in support of the bill as the bill includes definitions and protections for animals that promote the independence, health and

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safety, and inclusion of people with disabilities. The Council also supports the identification requirements for service animals and their handlers and penalties for interference, injury or destruction of such animals. Passage of this legislation not only recognizes the value and necessity of service animals, it reinforces Kansas' commitment to independence and inclusion for all citizens. (See attachment 6)

Martha Gabehart, Kansas Commission on Disability Concerns, was welcomed to the committee. She testified in support of the bill and believes guide and assistance dogs are important means of mobility and assistance to a significant segment of people with disabilities. With their help, these animals make it possible for people to live independently and work. The proposed changes to the current statutes regarding guide and assistance animal. These changes are necessary because current law does not have any special penalty for these actions. (See attachment 7)

Committee questions of the proponents and discussion followed.

Chairperson Freeborn welcomed Robin Pool, Founder/Executive Director and lead-trainer at Paws-Up, Inc., to the committee. She testified in opposition to the bill and has concerns about the use of language within the bill. She believes it does nothing but violate the civil rights of people with disabilities. The ADA was designed to protect the rights of individuals with disabilities by not requiring those who are accompanied by an assistance dog to carry or produce documentation or identification as a condition of equal access. She believes this bill only creates segregation by allowing someone with no qualifications within the disability and/or assistance dog community to stop someone like herself at the front door of a business and detain them for as long as they need to view their documentation/identification prior to entering the establishment. (See attachment 8)

Dee Winter, resident of Winfield, KS, former dog trainer and presently involved with Paws-Up, Inc., was welcomed to the committee. She testified in opposition to the bill and has concerns about several issues proposed. She believes the bill should not include both service dogs and therapy dogs in one bill. While both issues should be addressed they should be handled as separate bills. The Americans with Disabilities Act of 1990 was created to protect the disabled person not the service dog. This bill clearly violates civil rights to privacy under the Constitution of the United States. She wonders who will enforce the law if interference and/or damage to a service dog is made a felony. (See attachment 9)

Written testimony only, in opposition to the bill, was submitted by Kirk W. Lowry, Attorney, Topeka Independent Living Resource Center, (See attachment 10) and Sharon Thomas, Wichita, Kansas. (See attachment 11)

Committee questions of the opponents and discussion followed.

The Chairperson closed the hearing on **HB2197** and appointed a sub-committee to discuss the bill, Rep. Joann Freeborn, Chairperson; Rep. John Faber; and Rep. Donald Betts.

The meeting adjourned at 5:30 p.m. The next meeting is scheduled for Tuesday, February 18, 2003.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 13, 2003

NAME	REPRESENTING
MARK COATES	K A B V I
Michael Byington	KRST/TAP
Anthony A. Fedale	ADA coordinator - Admin.
Ann Byington	Guide Dog Users of KS
Dee Winter	self / Paws-Up Inc
Robert Pool	Self / Paws-Up, Inc.
Charles Everett	Guest
Jolene Benham	Interpreter
Brenda Ludwig MSW	Advocacy / Self
Sam Eldridge	Trainer

Sarah Holbert, CEO

Megan Lewellyn, Canine Assistance Director

Amanda Blackwood, Administration
Director

Carrie Pickett, Apprentice Trainer



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1-785-243-1079 (fax)

February 13, 2003

Chairperson Freeborn and Members of the Environment Committee:

I would like to thank you on behalf of the CARES staff and it's Board of Directors for hearing testimony on HB 2197. I would also like to sincerely thank Rep. Joann Freeborn for her support by accepting our bill into her committee.

CARES began placing canine assistants with persons in 1994. Since that time we have placed over 330 assistance dogs in 26 different states, Puerto Rico and Peru. 57% of our placements work here in the state of Kansas.

While we are not the largest training facility, we have placed a large number of dogs in specific areas of disabilities that are not being addressed by other schools in the United States. Follow-up to the original team placement is a constant challenge. We do not find we have a significant increase of concerns regarding people with one type of disability to whom we have given a canine assistant over another at the time of our follow-up visit. In fact, professional therapy dogs, for instance, are used and maintained at a very high level of excellence, because the majority of their use is in school settings where it is imperative that they demonstrate outstanding manners. High standards of behavior are emphasized for all assistance dogs working in and with the public.

Because of the willingness of the following organizations to participate in the preliminary construction of this bill;

Byington Advocacy Consultants of Kansas,
CARES, Inc.,

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Attachment 1*

Guide Dog Users of Kansas,
Guide Dog Federation,
Kansas Advocacy & Protective Services (KAPS),
Kansas Association for the Blind & Visually Impaired, Inc. (KABVI),
Kansas Commission of Disability Concerns,
Kansas Specialty Dog Service,
Statewide Independent Living Council of Kansas (SILCK)
and the Topeka Independent Living Resource Center,

national organizations, as well as federal agencies, are very interested in the results brought about by the collaboration between the state of Kansas and the above organizations. These groups have worked together to bring the possibility of sound and fundamental disability centered legislation to the citizens. The passing of this bill will bring that hard work to fruition. It is quite possible that the precedent that Kansas sets with legislation will have an impact on what happens with future ADA and Dept. of Housing policies as well as interpretation of those policies by the Dept. of Justice. Groups have met on the national level to try to accomplish the very bill that you have in front of you.

Public access, protection under the law, as well as the ability to punish violators, will give Kansas citizens working with assistance dogs the assurance that the partnerships they have with their dogs will have been given every consideration by the people chosen to represent them in Topeka.

In the last six months we have received more complaints about canine assistance teams being denied public access than ever before. Many businesses are willing to "risk" telling a person they cannot bring their dog into their business, because there is not enough incentive for them to comply with the state law and the threat of federal involvement is almost non-existent. You may have read in the last year the struggle of the man and his service dog who were denied access to a restaurant in the Kansas City area, he continues to fight this issue that is still not resolved today. And in the audience are Dr. Lilianna Mayo, Lima, Peru and Dr. Judith LeBlanc, Professor Emeritus Kansas University, Lawrence, Kansas. Each have a canine assistant with them trained by CARES, Inc. Lilianna and Judith have traveled extensively in the United States as well as internationally. On one of their trips, a man very boldly told the story of how he had also flown with his "pet" dog. He had put a harness on him and masqueraded the dog as a "guide dog." Unfortunately, this story is growing only too common. We feel the identification requirement section of this bill addresses this issue by giving protection to both legitimate canine assistance owners and the businesses they enter.

The ADA at this point has such a "gray area" regarding "service animals" that only through the court system will we finally know what is going to be

considered acceptable under that federal legislation. We support the exclusion of this definition, "service animal", from the bill.

A major step forward for canine assistance will be the passing of this bill. The next step will be the education of our prosecutors, law enforcement officers, our attorneys and the general public.

Thank you so much, for considering our proposals and hearing our testimony on the change in the current legislation. To work within our system of democracy is a right that I truly feel honored and privileged to be a part of.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Holbert".

Sarah Holbert, CEO



Kansas Relay Service, Inc.

700 SW Jackson Street, Suite 704
Topeka, Kansas 66603-3758

Voice 785-234-0307 • TDD 785-234-0207 • Fax 785-234-2304

February 13, 2003

TO: House Environment Committee

FROM: Michael Byington *MB*

SUBJECT: Support for House Bill 2197

We have been working on this legislation so long, I have had something to do with it while in three different jobs. When a coalition of disabled and blind individuals and representatives of facilities which train guide and service dogs, first came to me, I was employed as an Advocate with Envision, a service provider for people who are blind and/or developmentally disabled. I then left Envision and opened Byington Advocacy Consulting of Kansas (BACK), and the same folks asked me to work with them again in my private capacity. I now am Director of Kansas Relay Service Inc. (KRSi). KRSi operates two programs which help people who have many types of disabilities meet their needs for telecommunications access. About 60% of the people KRSi serves are deaf or hearing impaired. Another roughly 15% to 20% of those served are blind or visually impaired. Needless to say, my current clientele continues to have a lot of interest in this legislation and they have made sure to tell me to finish what I started and keep working with the coalition backing it. KRSi normally does not work directly with legislation, but under these circumstances, I have received permission from my superiors to talk with you about the legislation even though the last time I checked, dogs do not constitute telecommunications devices. I also am here in the capacity of President of the Kansas Association for the Blind and Visually Impaired, Inc. (KABVI). This is a volunteer job I do outside of my employment, but working with KABVI, or some of the other blindness and disability groups over the past 20 years or so, I have done a lot of work on this body of law and have been at least somewhat involved with every set of adopted or proposed amendments to it.

I am thus here as a consultant today. I can tell you with considerable certainty what the bill would do, why the coalition of people who worked on it feel it is essential, and what some of the problems are with the current set of statutes on guide, service, and hearing assistance dog access.

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Attachment 2*

The first thing which is added to the existing statutes is a definition section. This has been a deficit in the existing legislation. Although limited functional definitions of guide dogs, service dogs, and hearing assistance dogs have been present in the existing legislation, the definitions have not been clear or easy to find. There are particularly some deficits in the service dog explanations in current law. For example, a dog which helps a person who has epilepsy avoid seizures, or be aware of an onset of a seizure is not clearly included under current statutory definitions. The proposed legislation includes provisions for a type of service to be provided to be that of helping during, or preventing, a medical emergency. This would now more clearly cover seizure alert and seizure prevention functions of a dog.

The proposed legislation not only better defines the different types of assistance dogs, it defines what types of animals do NOT qualify as service animals. (See (f), line 39 on page one.) This is important, because with the lack of specificity in the current State law, and with extremely broad standards in the Americans with Disabilities Act concerning assistance animals, standards which are quite frankly generating some inconsistent and often very bad case law around the country, the current guide, service, and assistance dog access law in Kansas has been rendered less effective and less enforceable.

Current State statutes have different levels of access for each type of assistance animal. The statutes describing levels of access are slightly different in current statutes for guide dogs, service dogs, and hearing assistance dogs. I realize I just finished stating that very broad and general standards regarding assistance animal access in the Americans With Disabilities Act are generating some bad case law; nonetheless, one thing the ADA provisions make clear, and which has been upheld in almost all case law, is that a dog who meets the definition of a guide, service, or hearing assistance dog, and who is providing assistance to a person who has a disability, should have the same rights of public access regardless of the variety of disability the handler may have. This is because the access rights are in fact predicated on the civil rights of the PERSON WHO HAS THE DISABILITY. To state that a guide dog can go some places where, for example, a hearing assistance dog can not go, is to state that the blind PERSON using the one type of dog has more right of access than the deaf person who is using another type of dog. Obviously this does not provide for equal treatment. The legislation you have before you will bring the defined access standards into alignment regardless of the type of whether the dog meets the definition of a guide dog, service dog, or hearing assistance dog.

Also, currently to injure, harass, taunt, or even murder a guide, service, or hearing assistance dog, or to allow an uncontrolled pet to damage a guide, service, or hearing assistance dog, is only punishable as would be the case if such behaviors were to occur toward a farrel dog in an alley. The training of most guide, service, or hearing assistance dogs, however, especially when done

by a specializing school or training program, brings the monetary worth of the dog to anywhere from \$10,000.00 to \$25,000.00. Also, a disabled person whose dog is murdered, or rendered unable to perform its functions due to criminal actions of others may cause the person who has a disability to be unable to go to employment, travel in the community, or experience other medical dangers because of the loss of the dog. These losses can go on for several weeks or months while a new dog is being trained for the individual or the existing dog is being re-trained. Beginning on line 34 of page two, the proposed legislation includes penalties of a magnitude to fit the monetary value and impact of the crime of damaging a guide, service, or hearing assistance dog.

The proposed legislation defines, for the first time in statute, what constitutes a professional therapy dog. These are dogs who work with therapists who are also professional dog handlers, and these teams work with patients or clients in institutional settings or community based facilities and locations. The work of a professional therapy dogs and their handler, for example, may cause them to have to travel from facility to facility. A person who has a disability preventing them from driving may be qualified as a handler of a professional therapy dog, and such person may need to use public transportation in order for the professional therapy dog to accompany them to the places where they work together. New Section 8 in the legislation concerning the access of professional therapy dogs provides for access standards to allow this kind of access.

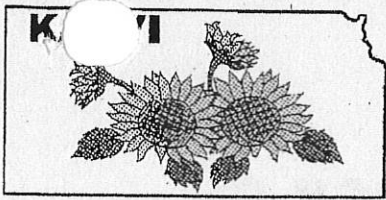
Existing statutes have, from their inception, placed responsibilities on the guide, service, or hearing assistance dog's disabled handler or trainer. If such a dog does any type of damage in a public accommodation, the disabled handler or trainer is liable for paying for the damage. These standards remain in the proposed legislation, but they will be more enforceable because the categories of dogs are better defined.

This brings us to one of the most important additions contained in the proposed legislation. That is provisions for identification. As I explained, the coalition of disability interests and service and guide dog training facilities in Kansas have been working on changes in the guide, service, and hearing assistance dog access statutes of our State for some time. We have floated earlier versions of legislation to amend these statutes in recent previous sessions of the Kansas Legislature. The last time we had legislation before a committee, many members objected to a lack of specific identification requirements in the bill. This time we have added a quite specific identification section. This is a little controversial as it relates to the ADA, but a few other States, including California, have taken similar postures. During the Clinton Administration, the Department of Justice under Attorney General Reno released an guidance circular suggesting that under the provisions of the ADA, personnel in charge of public accommodations may not request identification of a person with a disability who is accompanied by a dog to determine if the dog is a guide,

service, or hearing assistance dog. I must emphasize, however, that this is only an opinion of a former attorney general. It is not tested with case law, and the very limited case law which has been generated on the issue has been broad ranging. As identification provisions were one thing, however, which many Legislators have told us they want to see, and as the members of the coalition working on the legislation felt strongly that identification would be helpful in resolving questions, we have added the section. The question then has arisen about guide, service, and hearing assistance dogs who may have been user trained, or trained by private, professional trainers not affiliated with school or facility based training programs. The manner in which the identification section is written is very specific, but it does not prevent whoever trained the dog from producing the required identification. Does this mean that there may still from time to time be questions which arise about whether a particular dog falls within one of the categories within the proposed legislation? Yes, such questions could still arise, but the proposed amendments offer a great many more tools to use in resolving the questions than are featured in existing law.

Each time we have introduced comprehensive legislation to update the guide, service, and hearing assistance statutes over the past several years, there have been a few people who have shown up to oppose the legislation. I understand that there are some opponents to this bill as well. It would seem that no matter how careful the coalition has been to garner a broad spectrum of input into the process, people emerge with concerns. That is certainly the manner in which the democratic system can work, and people have a right to oppose legislation no matter how many have worked on it and feel it is a good idea. The last several opponents to the bills, however, have expressed objections to the legislation which were inaccurate. They have suggested that the legislation would create problems that are in fact more prevalent under existing statutes, and which the proposed legislation moves a long way toward resolving.

Are the proposed statutes perfect? Probably not. If you think about it, few PERFECT statutes have ever been crafted. Will some issues have to be resolved through case law? Probably. That is the way much legislation is refined and the reason our system of laws and justice in the United States have executive, legislative, and judicial branches. The legislation before you, however, is the process of several years of hard work and evolution. In light of federal law, and in light of the differing types of training processes available for guide, service, hearing assistance, and professional therapy dogs, this is probably the best researched and most comprehensive set of statute reforms among many which have been introduced in various states. We would ask you to look at how much better these proposed statutes are than current law, and we would ask you to adopt this legislation.



**Kansas Association for the Blind
and Visually Impaired, Inc.**

**TESTIMONY BEFORE THE
HOUSE ENVIRONMENT
COMMITTEE: HOUSE BILL 2197**

**Presented by: MARK COATES,
LEGISLATIVE CHAIR**

February 13, 2002

**This is my first year to work on
Legislation for the Kansas
Association for the Blind and
Visually Impaired (KABVI). I only
became legally blind two years
ago. I only got appointed to this
job because they kicked Michael**

Byington up to the Presidency of the organization.

I may be new at this, but KABVI certainly is not. We have been an advocacy organization working on access issues for blind and visually impaired Kansans for over 80 years. KABVI was the organization that first asked the Kansas Legislature for access laws for guide dogs nearly 70 years ago. The organization has kept track of the progress of these statutes ever since we first got them passed, and we have been involved throughout the process of working with the other disability groups, who are

now also using assistance dogs, in putting this legislation together.

I am not the expert here today. That, I will leave up to assistance dog trainers, handlers, and users. I am not going to act like I know more than I do, but I have worked with the guide dog interests within KABVI. I believe in the positive impact of the organization, and of the guide dog teams working in our Kansas communities.

KABVI carried the amendments before this Legislature in the 1980s which clearly added

restaurants and eating places to the list of public accommodations where guide dogs and their blind handlers can enter. This same access was also extended to service dogs working with other disability groups. Now, however, there are so many types of assistance dogs, restaurant personnel, as an example, need to have a way to know who is a credible service or guide dog as opposed to someone's pet. This legislation goes a long way toward better definitions and identification.

Responsible guide dog users, and later service and hearing dog users also joined in these responsibilities, have always, from when the statutes were first written, been legally liable for any damage to public accommodations done by the dog. The changes we are now proposing in the law do not change this. The law will continue to contain protection for both the access of the assistance dog user, and for the protection of the public accommodation owner or manager to be assured that dogs admitted are in fact covered

**under the mutual protections of
the law.**

Environment Committee

Ann Byington, President, Guide Dog Users of Kansas

I represent Guide Dog Users of Kansas, an affiliate organization of Guide Dog Users Inc., a nationwide consumer group of blind persons who attain independence by traveling with guide dogs. I am a proponent of HB 2197 because this bill not only addresses issues hitherto not included in access legislation, but more importantly, because the crafting of this legislation marks a positive compromise and coalition effort of diverse groups--guide, hearing and service dog users, dog trainers and professional therapeutic dog handlers.

When I received my first guide dog in 1970, each state had its own access laws. The Americans with Disabilities Act had not been dreamed of, let alone passed, there were no national or state consumer groups advocating for access rights of guide dog users and the whole arena of hearing,, service and therapeutic dog training did not exist. There was little or no recourse for a person/dog team if they were either injured by a reckless driver or attacked by a loose, uncontrolled dog. The current legislation evolved through the efforts of blind consumers who were refused admittance to rental housing, restaurants, grocery stores, public transportation, hotels, motels and places of recreation when accompanied by their guides, and as a result of forward-thinking Kansans whose aim is to better the lives of the disabled community. Kansas now boasts at least two training schools, upward of 150 appropriately selected, trained and tested dog/person teams, and what may prove to be the most comprehensive piece of access legislation in the country.

Please also note that this legislation is not only concerned with the access of dog/person teams and their protection; but also addresses the business owner's right to verify the training and validity of the dog/person team's need to seek access. It has long been the custom of guide dog training schools to provide picture identification and the relevant statutory citations for owners to present to businesses when this right is questioned.

As the Delta Society will attest, the human-animal bond is a powerful one. Unfortunately, it has lead to the abuse of access rights here in Topeka by persons utilizing untrained, out of control dogs. Though current legislation makes the disabled person liable for damage his dog causes, the business owner often fears adverse press and, even though he can refuse service to the dog/person team in question, is reluctant to do so. Additionally, untrained dogs with access to the public facilities, transportation and recreational venues frequented by properly selected, trained and tested dogs pose a significant threat to these dogs and their handlers. And finally, there is the real problem of persons claiming to have a disability in order to bring their pets into

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places of public access, not because the dog performs a task to mitigate a disability, but simply because the human-animal bond overrides any compunction to obey the law.

H.B. 2197 reflects hours of frank, thoughtful, honest compromise of a wide range of stakeholder. Guide Dog Users of Kansas urges you to pass HB 2197 out of committee and to support its passage into law. HB 2197 provides a "win-win" access law for the disability community, dog trainers and handlers invested in the betterment of that community as well as the business, transportation, housing and recreation communities of Kansas.

February 11, 2003

Madame Chair, members of the Environment Committee:

My name is Sanford Alexander and I have been a guide dog user for over 34 years. Born in Wichita, I spent a majority of my childhood in New York and later lived in Pennsylvania and New Jersey prior to being able to successfully return to Kansas. I have travel many thousands of miles a year for over 30 years on business and pleasure and have used every form of public transportation except oceanliner. I present this background to demonstrate that I have worked a guide dog in a variety of settings.

I have also been active in advocacy efforts for many years. I currently serve on the Kansas Rehabilitation Services State Rehabilitation Council and have just been appointed as a member of the Services for the Blind advisory committee upon which I have served for a number of years in a different capacity. Earlier in my career, I worked for the National Accreditation Council on Agencies Serving the Blind and Visually Impaired and I have been active in Guide Dog Users, Inc. a national membership organization of over 1100 guide dog users. I have worked with a project undertaken by GDUI to bring the major entities in the service and guide dog spheres together and attended the Coalition of Assistance Dog Organizations (CADO) meeting held in San Antonio last month.

Today I am speaking to you as a guide dog user and as a member of the board of directors of the Guide Dog Foundation, located in Smithtown, New York, a school deeply committed to providing all possible assistance to graduates in all areas including public access.

HB2197 is the product of several years of work by a growing coalition of groups in Kansas interested in seeing that guide, service and hearing dogs are afforded the rights and protection they deserve that will ensure their human partners full enjoyment of the independence they are intended to help provide. It has grown in strength through hard work, to resolve sincere differences between the various components making up the coalition. It has also benefited from the several years of effort by CADO which has been wrestling with the same issues on a national level.

In the final analysis, the Bill is simple. Its major aim is to eliminate some of the worst problems encountered by disabled persons using assistance dogs. Bill, my sixth guide, is not simply a tool; nor, is he merely a good friend. He is a partner who has devoted his life to providing me safe, convenient travel for the price of a pat on the head and a heart-felt hug. He has not yet had occasion to save my life (that I am aware of) but his five predecessors each had several such commendations on their records. What Bill means to me cannot easily be put into words that fairly reflect how I feel about him or explain how much is owed to him.

It also took a substantial amount of time out of my busy schedule to train with Bill. A sum of resources estimated at

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between \$25,000 and \$50,000 are expended by the Foundation and other schools across the country to provide a partner such as Bill. The vast majority of these funds are received from a generous public dedicated to underwriting the noble goal of assisting disabled individuals in achieving a higher degree of independence and freedom.

As much of an increase as the penalties contained in HB2197 for someone harassing Bill and me while working on the street, or hurting Bill through an act of selfishness beyond understanding, or replacing him because he was killed by a thoughtless person, represents, it cannot begin to fill the sorrowful void such acts create.

The embarrassment, humiliation and inconvenience resulting from an ignorant hotel clerk or restaurant manager when they refuse public access to a guide dog, can only be repaid in the proposed penalties if such behavior becomes extinguished.

There is another aspect of the Bill to which I would like to draw your attention. We have taken great care in crafting definitions that describe guide, hearing, service and professional therapy dogs. The first three categories are working directly with a disabled individual, providing service through the execution of a trained task that mitigates the individual's disability. This is a definition that makes a clear distinction between an assistance dog and a pet. Many people have pets and derive an immense amount of pleasure from their company. Many will spend untold sums of money to provide medical care and dote on their pets in ways that would be seen as indulgent were they human children. This, however, does not qualify such dogs as service or assistance dogs. The CADDO, working with the U.S. Department of Justice in trying to clarify and strengthen definitions of service animals used in Federal legislation, has stressed that a dog must be trained to provide a specific task that mitigates the person's disability in order to qualify as an assistance dog. Simply put, guide dogs help people who are blind, hearing dogs help people who are deaf and service dogs assist people with disabilities other than blindness or deafness. Put another way, if the dog does not fall into one of these categories, it is a pet and does not enjoy public access rights or the other protection we are seeking under HB2197.

We also feel it is important for the protection of our rights and for the rights of those members in the public obliged to afford us access with our working dogs, to be able to demonstrate that we are disabled and that our dog has been trained. There is, therefore, provision in HB2197 for identification mechanisms. We believe our proposals protect both the public providing access and the privacy rights of the disabled individual seeking to enjoy these rights.

The fourth category of working dog in HB2197 is the "professional therapy dog". This dog may not necessarily be working with a disabled individual but is trained in recognized tasks performed by dogs providing the type of support helpful in educational and therapy settings. They will meet most of the remaining criteria for any assistance dog but not enjoy unfettered public access.

HB2197 opens doors that have been closed to many disabled people, it provides assurances for public representatives opening their doors to such dogs that their property and business rights are protected and it offers a level of protection against intentional harassment or harming of a working dog. It accomplishes all of these laudable goals without any cost to the State or the public; while, at the same time, ensuring that violators of the law will, indeed, pay a fair price for their ill-intentioned deeds. I urge your support for this important Bill.

Sanford J. Alexander, III
5321 Plaza Lane
Wichita KS 67208
316-652-0852



Kansas Council on Developmental Disabilities

KATHLEEN SEBELIUS, Governor
DAVE HEDERSTEDT, Chairperson
JANE RHYS, Ph. D., Executive Director
kcdd@alltel.net

Docking State Off. Bldg., Room 141, 915 SW Harrison
Topeka, KS 66612-1570
Phone (785) 296-2608, FAX (785) 296-2861
<http://nekesc.org/kcdd>

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

COMMITTEE ON ENVIRONMENT

2/13/03

Testimony in Regard to H.B. 2197. AN ACT concerning persons with disabilities; relating to assistance dogs and other assistance animals; amending K.S.A. 39-1001, 39-1102, 39-1103, 39-1107, 39-1108 and 39-1109 and repealing the existing sections.

Madame Chairperson, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities in support of H.B. 2197 concerning persons with disabilities and relating to assistance dogs and other assistance animals.

The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. We receive no state funds. The Council is composed of individuals who are appointed by the Governor, including representatives of the major agencies who provide services for individuals with developmental disabilities. At least 60% of our membership are people who experience a developmental disability or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

The Council supports H.B. 2197 as the bill includes definitions and protections for animals that promote the independence, health and safety, and inclusion of people with disabilities. The Council also supports the identification requirements for service animals and their handlers and penalties for interference, injury or destruction of such animals. Passage of this legislation not only recognizes the value and necessity of service animals, it reinforces Kansas' commitment to independence and inclusion for all citizens.

Thank you for the opportunity to speak with you today.

Shelly May, Grants Manager
Kansas Council on Developmental Disabilities
915 SW Harrison, Room 141
Topeka, KS 66612-1570
785 296-2608

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**Testimony before the House Environment Committee
by Martha K. Gabehart, Executive Director
Kansas Commission on Disability Concerns
February 13, 2003
3:30 – 5:30 p.m. – Room 231-N**

Thank you, Madam Chairwoman, and members of the Committee. I appreciate this opportunity to testify in support of House Bill 2197.

The Kansas Commission on Disability Concerns (KCDC) is a unit within the Kansas Department of Human Resources charged with providing information to the Governor, the Legislature, and to State agencies about issues of concern to Kansans with disabilities. Guide and assistance dogs are important means of mobility and assistance to a significant segment of people with disabilities. With their help, these animals make it possible for people to live independently and work. The proposed changes to the current statutes regarding guide and assistance dogs institute punishment for hurting, intimidating or killing a guide or assistance animal. These changes are necessary because current law does not have any special penalty for these actions. In several cases around the country, guide and assistance dogs have been hurt, intimidated or killed – leaving the person with a disability without means of mobility or assistance. Most states, including Kansas, regard these animals as pets and do not punish offenders in proportion to the damage that is caused by the loss of the use of these dogs. Also, acquisition of these animals costs \$10,000 or more, in addition to the time required for training and orientation with its new owner.

The Kansas Commission on Disability Concerns supports House Bill 2197 and encourages you to pass it favorably.

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February 13, 2003

Dear Committee Members;

I am writing today as a qualified individual with a disability who also is a handler of an owner-trained service dog. I have been a resident of Kansas my entire life, I hold a bachelors degree in Business Management, a degree in medical assisting, and I have been a service dog handler for the past 11 years. I am the Founder/Executive Director and lead-trainer at Paws-Up, Inc. a non-profit organization founded in 1998 that provides training, education, and support to individual with disabilities who wish to enhance their lives through the partnership of an assistance dog. As you can tell, helping others achieve the level of independence that I have through the partnership of an assistance dog is my life's goal.

I am very concerned about the use of language within HB 2197 as it does nothing but violate the civil rights of people with disabilities. The ADA was designed to protect the rights of individuals with disabilities by not requiring those who are accompanied by an assistance dog to carry or produce documentation or identification as a condition of equal access.

The ADA created a right to public access to the person with the disability, not the assistance dog. Some are confused by this fact, and the fact that the ADA is set in place to create equality within our society for individuals with disabilities. Again, this bill does nothing but strip away at this equality and constitutional right.

HB 2197 only creates segregation by allowing someone with no qualifications within the disability and/or assistance dog community to stop someone like myself at the front door of a business and detain me for as long as they need to view my documentation/identification prior to entering the establishment.

Within this bill, an individual like myself would be required to "list" the various tasks my assistance dog does for me. This is a violation of privacy, as by the very act of listing what my dog does to mitigate my disability will in fact force me to tell a perfect stranger with again, no qualifications, the private details of my personal disability. This is unconstitutional!

To give a generic example of how this required "listing," can in fact expose a medical condition is to list such task like; (alerts to seizures, alerts to panic attacks, alerts to name being called). Taking this violation one step further within the example, "an individual who is hearing impaired has to tell the teenage store clerk that her dog alerts her to a variety of sounds, and one of the sounds is her name being called. This kid now has her name that is listed on her documentation, and the tasks her hearing dog performs for her. As a teenage joke, this young clerk decides to follow her around the store and call out her name. She cannot hear this kid, but the dog does and responds as he was trained by cueing his disabled handler over and over, while this young clerk is having a good time watching this dog do his "trick!" This bill's requirements to "list" the dog's trained tasks is not only a violation in our right to privacy, but gives uneducated, irresponsible strangers enough personal information to cause harm to the person with a disability and their assistance dog without the person with a disability even knowing what is happening.

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The section of this bill that refers to "Professional" therapy dog handlers being given the same public access that a person with a disability has when accompanied by their assistance dog only opens up an arena for even more confusion within the general public. Lumping therapy dog issues within the same bill as assistance dog issues is like comparing apples to oranges, and each issue would be best served by keeping them separated by two different bills.

As a professional within both the assistance dog and therapy dog community, I can tell you that the general public is often very confused when it comes to therapy dogs and what role they actually play within our society. If this bill was allowed to pass, and gave public access for therapy dog handlers, the assistance dog user who needs their dog to be with them in every public establishment, might begin being hassled by store owners/employees trying to determine the difference between those who are true assistance dog users, those who are really "Professional" therapy dog handlers, and those who now would have easier means to "pretend" they have a real working dog.

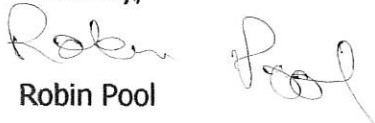
How are landlords going to have the ability to say, "No pets allowed" when anyone who takes a few obedience classes, slaps a cape on their dog, creates a fake ID, and then tells the landlord that they are a "Professional" therapy dog handler and their dog is allowed public access and cannot be treated as a pet. This really could be a big problem!

As a professional assistance and therapy dog trainer, I agree that therapy dogs have their benefits within society, and at times are needed to work in public. However, the way this bill is worded, it allows therapy dog handlers public access at anytime, rather than when they are just working. An assistance dog cannot be in public while not working (i.e. a non-disabled person cannot take a trained assistance dog into a public place and be granted public access), likewise a "professional" therapy dog handler should not be allowed to take their therapy dog in a public place if it is not working as well.

Again, to remove confusion, a separate bill should be created to outline the working boundaries of a therapy dog and it's "professional" handler. The bill would not be lumped with the rights given to people with disabilities by ADA and their needs to be accompanied by an assistance dog.

I would be happy to work with members of this committee to draft a bill(s) that protects businesses from those who might falsely claim that their pet is an assistance dog, or the untrained person claiming that they are a "professional" therapy dog handler, yet still ensure the rights of individuals with disabilities and their assistance dogs. Working together will, in the end, give the state of Kansas a law that will benefit both individuals with disabilities, those who wish to work as a "professional" therapy dog handler, and the business community.

Sincerely,


Robin Pool

7901 E. 87th St. South
Derby, Kansas 67037
PH: (316)-789-0372

February 13, 2003

Good Afternoon Ladies and Gentlemen:

My name is Dee Winter of Winfield, KS. I have lived in Kansas for over fifty years. I have a Bachelor's Degree from Wichita State University and am currently working on my Masters Degree in Business Management. While I am a qualified person with disabilities this is fairly new to me considering I have only been disabled for a little over two years. I have trained dogs for over 30 years and have achieved many AKC obedience titles on over 150 dogs during that time span. I currently am involved with Paws-Up, Inc located in Mulvane as lead-trainer. We provide training and support to persons with disabilities by teaching them how a service dog can provide them with the independence they deserve.

I have made it a point to study the laws of our land and upon reading HB 2197 proposal I am really concerned about several issues proposed. First of all, this bill should NOT include BOTH service dogs AND therapy dogs in one bill. They are completely different issues as issues pertaining to bicycles and motorcycles. While both issues should be addressed they should be handled as separate bills.

The Americans with Disabilities Act of 1990 was created to protect the disabled person not the service dog. This bill clearly violates my civil rights to privacy under the Constitution of the United States. This bill will require me to have to list what my service dog does for me to any McDonald's teenage employee that wants to know why I am in a wheelchair. It is my right to keep my disability private as it is your right to keep private whether or not you have had a vasectomy or not, or whether or not you practice safe sex.

While I am thrilled that there is an attempt to make interference &/or damage to a service dog a felony, who is going to enforce this law? There are already so many laws on the books that cannot be enforced or have any teeth in them. Why bother with another one. What I can see happening and am predicting will happen, is the State of Kansas will be subjected to law suits for discrimination because of what you all are allowing to happen with the passage of this bill.

Does the State plan on hiring someone to "test" service/assistance dogs? What are going to be their qualifications? Are they going to be disabled or able bodied? Where will their offices be located? Most disabled people live on fixed incomes and will not be able to travel to other parts of the state to be tested. How often will the dogs have to be tested? How will the tester be able to know what I need my service dog to do for me? Am I going to have to provide them with all of my medical records? I surely hope not. While I would not have any trouble getting the certifications needed if this bill were to pass as written, there are many owner-trained dogs in the state that might. People with disabilities have been and will continue to train their own service/assistance dogs. Just because they are disabled does not mean that they are incompetent. The way this bill

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reads it does nothing but segregate and discriminate against the sector of the disabled community. By requiring the documentation/identification to list the trainer's name, phone number, and any other pertinent information will only add confusion to the business owners when the owner is the actual trainer. This fact alone will allow the public sector to be able to deny the disabled access to their businesses if they so choose.

Walker, my service dog here, could put any center trained dog to shame. I have only had him eight months and look how well behaved he is. He would put many parents to shame with his behavior because he is better behaved than a lot of kids today are. He was picked up on the streets of Wichita and was rescued from the city dog pound before I got him. When it first was decided a service dog could help me, I contacted one of the state's service dog programs. I was told I would have to wait two to four years before I would even be considered to receive a service dog and then would have to be willing to pay several thousands of dollars. I am 61 years old and frankly I don't want to wait two to four years to be able to gain my independence again. So, I trained my own service dog. Being allowed to train my own service dog has allowed me the freedom of independence I want, need and deserve. However, the passage of this bill will open doors to the public sector to discriminate against me and my owner-trained assistance dog, regardless of the fact that he mitigates my disabilities, as the ADA requires.

In conclusion, I am willing to put my money where my mouth is and offer to assist the members of this committee to draft a bill or bills if necessary to protect not only all service/assistance dogs including owner-trained service dogs but also the business owners and local governments. If we can work together, Kansas can end up with a law that benefits both people with disabilities and the business community. I would hope that Kansas would become one of the states that other states want to model after.

Thank you for your time,


Dee Winter

TOPEKA INDEPENDENT LIVING RESOURCE CENTER

Kirk W. Lowry

Attorney

501 S.W. Jackson Street

Topeka, Kansas 66603-3300

(785) 233-4572, TDD (785) 233-1815, Fax (785) 233-7196

February 13, 2003

The Honorable Joann Freeborn
Chair, House Environment Committee

Re: HB 2197

Dear Chairperson Freeborn and Members of the Committee:

The Topeka Independent Living Resource Center is a private non-profit charitable organization that advocates for the civil and human rights of people with disabilities. We have opposed 2001 HB 2211 and 2002 HB 2715 on service animals. We support the general purpose of Kan. Stat. Ann. §§ 39-1101 to 39-1109 to codify and support the right to a service animal and to provide for criminal penalties for violations. Of course, the State may define "service animal" in any way it wants to for the purpose of criminal responsibility. This definition may be narrower than the definition used for purposes of the Kansas Act Against Discrimination or the Americans with Disabilities Act. This discrepancy may cause confusion and conflict. A uniform standard would benefit all parties involved. In the alternative, we request an amendment that would make it clear that this statutory definition is not applicable to the Kansas Act Against Discrimination, the Americans with Disabilities Act, or the Rehabilitation Act.

We are opposed to the limited definition of a service animal and the distinction between a service animal and guide dog, service dog, hearing assistance dog, assistance animal, professional therapy dog, and an animal for comfort, protection, or personal defense.

The bill is in conflict with the Americans with Disabilities Act. Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(ii), makes it illegal for a public accommodation to discriminate against a person with a disability. Discrimination includes failure to make reasonable modifications in policies,

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practices, or procedures, unless it would result in a fundamental alteration in the nature of the public accommodation. The Department of Justice issued regulations to enforce Title III. 28 C.F.R. § 36.302(c) provides that, “Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.” 28 C.F.R. § 36.104 defines “service animal” as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.”

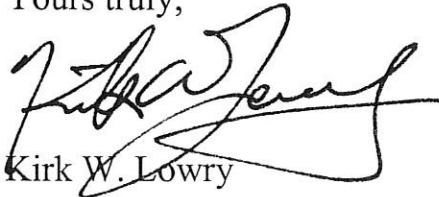
The Department of Justice issued an ADA Business Brief in October 2001 and updated it in April of 2002. I have attached this for the committee. The DOJ says:

“Businesses may ask if an animal is a service animal or ask what tasks the animal has been trained to perform, but cannot require special ID cards for the animal or ask about the person’s disability.”

The bills restrictive definition of service animal will cause confusion and conflict regarding civil and criminal enforcement of the rights of people with disabilities to use a service animal.

Discrimination against people with disabilities in the use of service animals is a substantial problem. Criminal conduct against a service animal is not a substantial problem. This bill does more harm than good. We oppose HB 2197.

Yours truly,

A handwritten signature in black ink, appearing to read "Kirk W. Lowry", written over a horizontal line.

Kirk W. Lowry

Attachment: April 2002 DOJ Business Brief: Service Animals

From: "Sharon Thomas" <mnsajt@gbronline.com>
To: <freeborn@house.state.ks.us>
Date: Mon, Feb 10, 2003 6:40 PM
Subject: House Bill 2197 -completed email

To Whom It May Concern;
c/o Mary Ann Graham

I just found out about House Bill 2197 today. Unfortunately my husband is having two surgeries this week and I am unable to speak in person at the upcoming hearing for House Bill 2197.

I have been assisted by Service Dogs for many years. I have been a resident of Idaho, Oklahoma and Kansas while being assisted by Service Dogs. In 1998 I helped bring about the original Service and Therapy Dog Day in Alaska, Connecticut, Georgia, Idaho, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, New Jersey and Utah. I have the original proclamations with their envelopes as well as the Kansas State flag that flew over Topeka (capitol) for Kansas Service & Therapy Dog Day (12/18/1998) as well as the United States flag that flew over Washington DC (capitol) on the same day.

I have been a Kansas registered voter since 1998. I own my own home. One of my children owns a home & works in Wichita and the other goes to college in Wichita. My husband is one of the aircraft workers that has received his layoff notice. I am proud to have lived in Kansas since 1998 and wanted to spend the rest of my life here -- until I read the wording of House Bill 2197! My birthday is February 13, but rather than celebrating or spending it with my husband following his surgeries -- I would prefer to be in front of you describing my dismay at what is in House Bill 2197.

My disabilities are not usually obvious or outwardly apparent. I have been to multiple doctors and through continuing ssi reviews in Idaho, Oklahoma and Kansas over the past decade. If you are not disabled then you may not understand all that this physically & mentally requires! It has been proven over and over again through multiple doctors, three different state agencies and US Government agencies that I am disabled AND my Service Dog assists me with those disabilities. Yet with House Bill 2197 you want me to PROVE that I am DISABLED & WHY as well as HOW my SERVICE DOG ASSISTS me over and over again - EVERY day at ANY place I go!

I do not wish to share my personal medical information with one more person. Especially someone who in turn may use it against me or share it with whomever they know. If I were to have to share what my medical conditions are then so should the Therapy Dog handlers/trainers -- but wait they wouldn't necessarily have any medical information to disclose because Therapy Dogs aren't trained to help that specific individual. So again I would be the only one possibly putting my health and life in peril or at the very least changing my quality of life by giving out information to whomever should ask for it! I am not even going to go into the identity fraud issue because I think it is blatantly obvious.

As far as how my Service Dog assists me? What is to keep the 'door greeter' from telling everyone what service dog tasks my service dog is trained to do for me or that same 'door greeter' actually wanting to 'test' my Service Dog. If they were to know what my Service Dog does for me then they could possibly jeopardize my health or my life by saying a command that would cause my Service Dog to shift attention to the person using the command.

I know this is a time in our country when we are to be more vigilant and alert, but I didnt think I needed to worry about being at risk of being ridiculed and harassed in my every day tasks just for being 'medically challenged'. I thought we were supposed to live our life as normally as possible, but how is that possible for Disabled Kansans if House Bill 2197 passes? It appalls me that Kansas is trying to actually make it easier for someone to devalue my life by putting my medical history as well as what I use to assist in the problems therein; up for public scrutiny and judgment by whomever happens to cross my path outside of my own home. I cannot imagine the stigmas that I and other Disabled Kansas will have to accept as part of our life if this action is passed.

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Attachment II*

I try to stay active in the Service Dog community as much as my health will allow. I will be posting the action taken on this bill to all that I can as I believe it will adversely affect Service Dog users nationwide if passed. Please advise me of the final action:

I would hope that you would be able to read this at the hearing before the Environment Committee in my absence.

Please consider NOT passing House Bill 2197!

Thank you for hearing me.

Sharon Thomas
1441 Haskell Street
Wichita, Kansas 67213
316-303-1441

CC: "M & S Thomas" <Mnsajt@gbronline.com>