Approved: 3-29-06
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on March 9, 2006 in Room 241-N of the Capitol.

All members were present.

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renae Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:
Josh Bender, Legislative Direactor, Student Legislataive Awareness Board, K.U.
James A. Schneider, Lawrence landlord
Ed Jaskinia, Associated Landlords of Kansas
Matt Hoy, Lawrence Apartment Association
Alicia Smiley, Property Management, Lawrence
Gary Hefley, Landlord, Wichita
Clark Lindstrom, Landord, Wichita
Patrick DeLapp, Landldord
Gary Hefley, Wichita
Martin Moore
Louise Kirkpatrick, Housing and Credit Counseling, Inc.
Jeff K. Cooper, Attorney at Law
Bradley Dean Denney, Neodesha
Roger Mills, Richmond

Others attending:
See attached list.

The Chairman opened the hearing on **SB 380 - Amendments to the residential landlord and tenant act; inventory of premises, security deposit, automatic renewal classes**.

Staff gave a briefing on **SB 380** concerning the residential landlord and tenant act.

Josh Bender, Legislative Director for the University of Kansas Student Senate, testified as a proponent to **SB 380.** One of the primary concerns is the use of automatic renewal clauses within one year lease agreements. This abusive practice requires tenants to inform their landlord of their intention to vacate the rental unit at the end of the lease agreement otherwise the lease renews for another year. The renewal date can be arbitrarily set by the landlord. Most of the pre-determined lists contain provisions that make them non-inclusive and are therefore ineffective upon termination. Bargaining is not an available option when it comes to the pre-determined lists. **SB 380** allows for a pre-termination walkthrough of the rental unit, much like the initial inventory, in order to identify cleaning deficiencies caused by the resident (Attachment 1).

James A. Schneider, and his wife are "mom and pop" landlords in Lawrence and testified in opposition to **SB 380**. They had no objections to the general provisions and general ideas; however, they respectfully asked for consideration of several small modifications (Attachment 2).

Ed Jaskinia, Associated Landlords of Kansas, testified as an opponent to **SB 380**. This bill attempts to alter an extremely fair and time proven law, known as The Kansas Residential Landlord-Tenant Act. Kansas is the one state that has resisted changing the law to "fix" minor faults, knowing full well how "fixing" something can sometimes create unpleasant surprises. We have always opposed opening this law for minor problems and will continue to do so (Attachment 3).

Matthew H. Hoy, testified as an opponent on behalf of the Lawrence Apartments Association, Inc. which unanimously voted to oppose **SB 380**. This bill would make renting more expensive as landlords would likely have to increase their staff size in order to satisfy the onerous inspection provisions. Even in complexes of

modest size, the pre-termination inspection scheduling would consume a substantial amount of staff time. **SB 380** is a statewide solution which would dramatically revise the Kansas Residential Landlord and Tenant Act. In analyzing tenant rental decisions, price is the most important element in a tenant's rental decision. This bill would result in sharp increases in both rent and security deposits for tenants. **SB 380** is a troubling attempt to revise well-settled law and, unfortunately, would likely increase litigation as landlords and tenants seek to understand and apply its provisions (Attachment 4).

Martin Moore, landlord, Lawrence, testified in opposition to **SB 380**. This bill unfairly penalizes 100% of Kansas landlords for the actions of a few. We aren't convinced the proposed pre-move out inspection would accomplish its intended effect. It is often impossible to accurately assess the condition of the apartment until it is completely vacant (Attachment 5).

Alicia Smiley, having been in property management for 13 years, testified as an opponent to **SB 380**. While every effort is made to conduct a move-in inspection, on occasion for whatever reason, a move-in is not conducted. In those instances a tenant who receives a property in good condition could cause extensive damage to a unit without consequence. The current law already protects the tenants with a move in and a move out inspection. Most landlords have written policies, agreed to by the tenant prior to move in, stating what the most common damage/cleaning items cost. The tenants know before hand the costs of damage or cleaning and, therefore, should have an idea of what the costs would be. They do not have to wait to see what the charges would be (Attachment 6).

Gary Hefley, landlord, Wichita, testified as an opponent to **SB 380**. This legislation would not be fair to landlords and would increase the costs of housing. Tenants want quality affordable housing. There are only two ways a landlord can recover money from a highly taxed business, and those are to raise rents or defer maintenance. Neither of these methods would work to enhance the quality or affordability of Kansas housing (Attachment 7).

Clark Lindstrom, certified property manager, testified in opposition to **SB 380.** The existing Landlord Tenant Act already provides for a proper balance of protection for both the landlord and tenant. This bill would be bad for the state's landlords and would not achieve what is sought to be accomplished for tenants (Attachment 8).

Patrick DeLapp, landlord, testified in opposition to **SB 380** as it would be bad law and would cause a lot more problems in renting homes (Attachment 9).

Written testimony in opposition to **SB 380** was distributed: Brandy Sutton, Attorney, Lawrence (Attachment 10) and Louise Kirkpatrick, Housing and Credit Counseling, Inc. (Attachment 11).

The Chairman closed the hearing on **SB 380.**

The Chairman continued the hearing on **SB 461: Workers compensation; preexisting condition, permanent partial general disability; supplemental functional disability compensation.**

Jeff Cooper, representing Kansas Trial Lawyers Association, testified in opposition of **SB 461**. The current law in workers compensation contains an incentive for employers to return workers to work by providing that an employer only pays functional impairment if accommodated work is provided. Those workers who are returned to work with limitations and disabilities are not on equal footing with other workers in the State of Kansas when it comes to competing for jobs. The injured workers who are returned to accommodated positions have restrictions and disabilities that would preclude them from going out in the open labor market and competing on equal footing with individuals who do not have limitations and disabilities. It is important to keep in mind that those limitations and disabilities are the result of the work-related injury suffered by the injured worker. This bill would remove the incentive to return injured workers to work by allowing employers to evade work disability by claiming the injured worker was not returned to work or accommodated work was eliminated due to "economic reasons"(Attachment 12).

Bradley Dean Denney, Neodesha, testified as an opponent to **SB 461**. Mr. Denney was injured on the job in

2001 at Farmland Industry. Farmland's doctor estimated he had a 42% loss of the use of his body without considering the traumatic diabetes or the heart and kidney problems suffered because of the accident. He returned to work 5 ½ months after his terrible accident in a greatly accommodated job. Farmland denied much needed medical care seriously jeopardizing his life and health. The Division of Workers Compensation initiated an investigation into Farmland's apparent violation of the "fraud and abuse" provisions of the Kansas Workers Compensation Act. Since the investigation began, Farmland has resumed providing medical treatment, but thousands of dollars of medical bills remain unpaid and the investigation is still ongoing. This state already has taken away many benefits of the worker's compensation act that would make the original authors of the bill burn with anger. The bill no longer provides adequate protection to the workers that have made this state great (Attachment 13).

Written testimony was distributed in opposition to **SB 461:** Timothy Short, Attorney, Pittsburg, (Attachment 14).

The meeting adjourned at 11:00 a.m. The next meeting will be March 10, 2006.

COMMERCE AND LABOR COMMITTEE

Date March 9, 2006

NAME	AGENCY
ALICIA SMILEY	FIRST MANAGEMENT
MATTHEW HAY	LAWRENCE APARTMENTS ASSOC.
MARTIN MOORE	ADVANCO - Lawrence
Lynn McKinney	Concerned citizen on Workers Comp w/R. Fincher
Sue Dancho	Sprint
Irene Ruiz	Injured Worker
DELMER CORBER	CONCERNED CITIZEN
Randall Carnegie	Concerned Citizen w/Rodney Fincher
George Kirby	Concerned Citizen on Work Comp w/R. Fincher
Lee Ralph	Concerned Citizen
Tom Schweyder	Concerned Citizen
Roger Miller	Voter
Ricky L Hall	Voter
JUDITH BAIN	SPRINT
John Ostrowski	KS-AFL-CIO
Roger Fincher	Kansas Workplace Coalition
Heather Venneman	Kans. Workplace Coalition
Scott Meyer	Injured Worker
Michelle Rabe	KS Workplace Coalition
Robert Reed	KS Workplace Coalition
Tom Tunbull	VOTER
STEVE STAAB	CONCERNED LANDLORD
Jim Cox	Plumbers & Pipefitters LU 441
Lee Hendricks	Voter
Dennis Phillips	KSCFF
Ed Redmon	KSCFF
BRIAN MALONE	KTLA

COMMERCE AND LABOR COMMITTEE

Date March 9, 2006

NAME	AGENCY
Jeff Cooper	KTLA-
Brad Denney	Own
Timothy A. Short	Attorney
Carol Cast	KDOL
Jose Castillo	KDOL
Chad Munsbacker	Teamsters 696
W.T. Leker	Ks. AFL-CIO
Theresa (Tess) Raydo	Landlords of Do Co.
Ken Zalle	Work Injured
Vicki Argo Vicki Argo	VERY CONCERNED WORKER
Sara Pfeffer	Voter / Injured Person
(Carol Dodds) Milt Dodds	~~Attorney~~ Injury with wife (Concerned Person)

SLAB STUDENT LEGISLATIVE AWARENESS BOARD

Testimony of Josh Bender
Legislative Director for the University of Kansas Student Senate
Before the Committee on Commerce and Labor, Kansas State House of Representatives
March 9th, 2006

Mr. Chairman and Members of the Committee -

I am pleased to present my testimony this morning regarding Senate Bill 380, the amendments to the Kansas Residential Landlord Tenant Act. Since late spring of 2005, the Student Legislative Awareness Board has been actively pursuing solutions to an increasingly tenuous struggle between landlords and tenants in the State of Kansas. Our goal is to amend current law in such a way as to create an equitable relationship between landlords and tenants.

SB 380 addresses three major concerns with the current Kansas Residential Landlord Tenant Act:

Automatic Renewal Clauses

One of our primary concerns is the use of automatic renewal clauses within one year lease agreements. This abusive practice requires tenants to inform their landlord of their intention to vacate the rental unit at the end of the lease agreement otherwise the lease renews for another year (See *Appendix A* for examples). The renewal date, however, can be arbitrarily set by the landlord at any date between the signing of the lease and the termination of the lease. This provision of the lease is frequently in small print, buried

SLAB Student legislative awareness board
410 Kansas Union • Jayhawk Blvd • Lawrence, KS 66045-7548 • (785) 864-1267 • Fax: (785) 864-5041 • www.ku.edu

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Atch #1

in the middle of a contract, and written in confusing legal language. Few provisions in the act allow for legal recourse of tenants when an automatic renewal is utilized without their knowledge.

SB 380 seeks to standardize the practice of automatic renewals by limiting the renewal date to 90 days before the termination of the lease, a number agreed upon during dialogues with landlords within the community. It also provides for two written notifications: first, within the lease the automatic renewal clause shall be on a separate page and shall require the signature of the tenant demonstrating an understanding of the clause prior to signing the lease. Second, one month prior to the renewal date the tenant shall receive written notification of the approaching renewal date.

Written notification prior to the renewal date provides tenants with adequate time to determine whether they desire to retain residency. While the 90 day policy allows landlords adequate time to assess their occupancy numbers for the coming year. This system creates a fair model of utilizing an automatic renewal policy which benefits both parties. (See *Appendix B* for example of acceptable written notification).

Arbitrary Lists of Predetermined Charges

Our other major concern is the use of arbitrary, predetermined lists of charges when assessing damages for which tenants are liable (See *Appendix C* for examples). These charges are frequently higher than actual costs needed to return the rental unit to its original condition, excluding typical wear and tear.

Even when the tenant has prior knowledge and consented to the list this policy is still unfair. Such a policy assumes that the tenant has some knowledge of market value for

repairs. These lists are extremely arbitrary; they do not always reflect actual costs. In the list we provided for you (*Appendix C),* a light bulb is $2.00 (plus a minimum of one-half hour of labor at $40 per hour), a bulb which can be bought retail for under $.50 cents (plus corporations buy materials, in bulk, at wholesale and as cheaply as possible). That is a 300% mark up (all told $22 to change one light bulb). This is a perfect example of price gauging regardless of the amount of work necessary because the tenant is paying a flat rate.

Most of the pre-determined lists contain previsions that make them non-inclusive and are therefore ineffective upon termination. According to the contract in *Appendix C,* "You [the tenant] can and will be charged for cleaning, repairing and/or replacing and item that is not on this list." And "Please note that this is *NOT* an all-inclusive list." We feel the weakness of these lists as far as contractual obligation and their arbitrary nature precludes them from benefiting tenants in any way. Renters are the only party contractually obligated to the arbitrary list. At any time the cost of repairs exceeds the listed price landlords are able to charge more. If this policy was truly to favor tenants, as some would argue, they would provide a list of estimates of actual costs that is not contained in the contract. We do not want to bind either party to arbitrary lists.

Bargaining is not an available option when it comes to these lists. Often it is a take or leave it policy because there is a high demand for cheap housing, especially in a limited housing market, where a handful of companies control the majority of available housing units. A tenant's ability to rent outside this system is minimal.

Our amendment eliminates the use of these arbitrary amounts in favor of charging tenants for all materials, supplies, and labor *at cost*. In no case shall a tenant be charged

above the actual damages suffered by the landlord. Courts have routinely determined that landlords are only able to recoup actual expenses.

Even when a tenant is successful in challenging such provisions, it does little to change the policies of landlords. If a landlord maintains two hundred units and is challenged legally by one tenant, they are still successful with their abusive policy 99.5% of the time. There is no disincentive to change their policies. By amending the act with clear, simple language, we allow every tenant the opportunity to understand that such policies should not be implemented by the landlord. Doing this keeps predetermined lists out of leases and out of courts.

Pre-termination Walkthroughs

SB 380 allows for a pre-termination walkthrough of the rental unit, much like the initial inventory, in order to identify cleaning deficiencies caused by the resident. Such a walkthrough would occur within one month before termination of the lease by request of the tenant, giving the tenant the opportunity to remedy these problems before the termination of the lease in order to avoid deductions from the security deposit. By addressing these concerns together prior to the final inspection, it creates a more respectful environment which reduces conflict, both legal and otherwise. Pre-termination walkthroughs also reduce the work necessary after the final inspection.

BACKGROUND:

History

In spring of 2005 the Student Legislative Awareness Board (SLAB) was contacted by a law student whom worked at Legal Services for Students (LSS), a student funded campus program whose sole function is to provide legal council to students. She expressed concern over a number of practices which were being utilized by landlords, primarily in Lawrence and Manhattan. In recent years well over half of LSS's case load has come from landlord-tenant disputes almost exclusively over automatic renewal clauses and arbitrary, predetermined lists of charges. It was at this student's urging that SLAB began investigating possible remedies for these problem areas.

This fall, SLAB began researching the issues and how other states deal with similar problems. After meeting with landlords, tenants, and lawyers, and reading hundreds of pages of landlord-tenant legislation from across the United States, we finally crafted solutions to these ever growing problems. Throughout the process we sought to protect the rights of tenants without placing an unfair burden upon landlords. We feel SB 380 accomplishes that goal.

On February 8th, 2006 SB 380 was heard by the Senate Judiciary Committee. Prior to that hearing we worked with members of the committee in order make compromises and favorably amend the legislation. The committee amendments addressed certain landlord concerns will the bill. The amendments and the subsequent bill passed the committee unanimously. Committee of the whole, during Senate session, amended the bill again to further address concerns of the landlords. The bill before you today has

been thoroughly scrutinized by multiple parties and still accomplishes the major goals of the legislation without placing a burden upon landlords.

Kansas Residential Landlord-Tenant Act vs. the Uniform Landlord Tenant Act

Opponents of SB 380 will most likely appeal to the Uniform Landlord Tenant Act as justification for not addressing these problems. They will state that the Kansas version is "the purest version of the Uniform Landlord Tenant Act in the nation." However, upon closer examination one finds over 20 major differences between the two acts. Only two of these differences benefit tenants, one of which was added several years ago by Senator Derek Schmidt of Independence. The remaining changes overwhelmingly benefit landlords.

Most notably, the Kansas Residential Landlord-Tenant Act provides no punishment for landlords when they willingly violate the law; whereas the uniform act has strict enforcement of provisions.

Justification

Over 50% of Lawrence (a town of ~80,000) rents and almost half of those renters are students. This is not only an issue that affects students; it is an issue affects the entire community. As noted earlier there are very few disincentives for landlords to change their policies. While a tenant can publicize landlord misgivings, it does little to create change in a limited housing market with large demand.

Opponents of SB 380 will also claim that the solution to these problems is in the education of the public. While continuing education is a vital part of the housing

market, education does not prevent unfair practices. A limited housing market provides very few venues of recourse for tenants aside from filing law suites, a process which requires resources in order to ensure success. Courts have routinely determined that some of these practices are illegal under the law, but it has done little to solve the problem. It should not take creative legal work for a tenant to benefit from the law.

It was noted earlier that when a landlord faces few legal ramifications for their abusive policies there is no disincentive to change policies. Simple, straight forward language placed within the Kansas Residential Landlord Tenant Act allows all tenants and landlords to address the legality of practices. Everyone will be on the same page; this inevitably reduces legal conflict.

We firmly believe that only a small portion of Kansas landlords implement these policies with which we disagree. Such policies benefit landlords who act to make money over running a fair business. Landlords who act in good faith are placed at a disadvantage. By ensuring the elimination of these policies we benefit the landlords with sound practices and protect the rights of tenants.

Appendix A

1.1:

3. LEASE TERM

3.1 INITIAL TERM: The initial term of this Lease Contract begins on the 11th_ day of _August_ 2005_, and ends at midnight on the 6th_ day of _August_, 2006__. At the end of this lease term, this Lease Contract will automatically renew for an additional twelve (12) month period and will automatically increase to market rent, unless either party gives written notice of termination or intent to move out as required by paragraph 8.1

Taken from Portions of a Rental Agreement from Lawrence, Kansas

1.2:

8. MOVE-OUT

8.1 MOVE-OUT NOTICE: Before moving out, you agree to give our representative advance written notice as provided below. Your move-out notice will not release you from liability for the full term of the Lease Contract or renewal term. You will still be liable for the entire Lease Contract term if you move out early (paragraph 3.7) except under the military clause (paragraph 3.6). YOUR MOVE-OUT NOTICE MUST COMPLY WITH EACH OF THE FOLLOWING:

- Your move-out notice must be in writing using our move-out form. Oral move-out notices will not be accepted and will not terminate your Lease Contract.
- Your move-out notice cannot terminate the Lease Contract sooner than the end of the Lease Contract or renewal period.
- Our representative must receive your written 60-day move-out notice no later than the last day of the month preceding the 60 days before the termination date. For example: If your lease contract ends on August 9th, your move-out notice must be received by May 31st.

YOUR NOTICE IS NOT ACCEPTABLE IS IT DOES NOT COMPLY WITH ALL OF THE ABOVE: If we terminate the Lease Contract, we must give you the same advance notice unless you are in default.

Taken from Portions of a Rental Agreement from Lawrence, Kansa

Appendix B

Pg 1

Dear [Tenants],

We really enjoy having you as a resident and you are very important to us!

It is coming up on that time of the year to renew your lease. Your lease expires on July 31, 2006. To say "thank you" we would like to keep your rental rate of $XXX.XX the same for the following term.

Attached you will find a lease addendum for the upcoming lease term. To renew your lease all you need to do is sing the addendum and return it to our office or if you will not be renewing we must receive your notice to vacate in writing as soon as possible.

Relative to the security deposit, we are including KSA 58-2550(d) to answer any questions you might have. From the Kansas Landlord-Tenant Act:

> "A tenant is not permitted to use the deposit as rent or deduct it from rent. In the event a tenant does, s/he forfeits the deposit and remains liable for rent, unless otherwise provided in the rental agreement."

We would like to thank you for your past association and look forward to your continued residency. Please let us know if you have any questions.

Sincerely

XXXXXXX

STOP!!! Before you think about moving to another community – consider this:

- New security deposit for your new home
- Hiring a moving company and truck rental
- Utilities need to be disconnected
- New deposits to reconnect utilities
- Time to look for another home
- New application fees
- Address changes

This document is an addendum and forms a part of the original Rental Agreement dated [5-31-05] entered into between Residents(s) [tenant names] and Landlords [rental company] for the property known as [rental unit address] for use as a private residence only. The terms of this Rental Addendum are agreed to control over any Rental Agreement

The terms of this Rental Addendum are agreed to control over any Rental Agreement to which this addendum specifically refers. All provisions of the above referenced Rental Agreement are incorporated herein and are hereby modified or supplemented to conform herewith but all other respects are to e and shall continued in full force.

The following provision of the Rental Contract dated [5/31/05] and herby amended to read as follows:

Contract. The term of this lease shall commence on [August 1, 2006]. And expire at 4:00 pm on [July 31, 2007] (Expiration Date). Resident understands and agrees that any renewal of this Rental Agreement must be completed and signed by both parties no later than [April 1, 2007]. Failure to complete the renewal of this Rental Agreement by said date shall mean the property is available to be leased to another party anytime after the stated expiration date. Verbal move-out notice is not sufficient under any circumstances. If Resident fails to give written move out notice 120 days prior to the expiration date of this lease or if Resident moves out without rent being paid in full for the entire lease, Resident(s) agrees to pay the cost-of-reletting charge of $300 plus continued liability for the future rentals and other damages or charges to which the Landlord is entitled. It is not the intent of the management to receive double rent on any dwelling. Residents also agree that the Landlord had the right to show any prospective tenant the dwelling with proper and reasonable notice.

Taken from Portions of a Renewal Notification from Lawrence, Kansas

Appendix C

Move Out Cost Schedule

If prior to moving out you do not clean the items listed below and/or leave them in satisfactory condition, the following charges will be deducted from your security deposit or will be owed to the Landlord if the security deposit is insufficient to cover the charges. You will be charged the listed amount for each instance in which an item listed must be cleaned or repaired. The Prices given are average prices only. If Landlord incurs a higher cost for cleaning or repairing an item, you will be responsible for paying the higher cost. **Please note that this is NOT an all-inclusive list and repair/replacement charges do NOT reflect the hourly labor charge of $40 per hour (1/2 hour minimum).** You can and will be charged for cleaning, repairing and/or replacing an item that is not on this list.

CLEANING

Kitchen:	
Stove (Wipe)	$ 15.00
Oven (Clean)	$ 50.00
Refrigerator	$ 25.00
Freezer	$ 25.00
Dishwasher	$ 15.00
Microwave	$ 10.00
Sink	$ 10.00
Counter	$ 15.00
Cabinets	$ 15.00
Light Fixture (per)	$ 5.00
Floor	$ 20.00
Bathroom:	
Tub/Shower	$ 50.00
Toilet	$ 20.00
Sink	$ 10.00
Counter	$ 10.00
Cabinet	$ 10.00
Mirror	$ 5.00
Floor	$ 20.00
Light Fixture (per)	$ 5.00
General:	
Mini-Blinds (per)	$ 10.00
Window (per)	$ 15.00
Utility Closet	$ 5.00
Ceiling Fan Blades	$ 10.00
Exterior Dorr	$ 10.00
Washer/Dryer	$ 15.00
Vent Grate (per)	$ 5.00
Light Fixture (per)	$ 5.00
Baseboards (room)	$ 5.00
Patio/Deck	$ 25.00
Trash Removal (bag)	$ 25.00
Furniture Removal	Varies
Carpet Cleaning	Min $ 100.00
Carpet Stain Removal	Varies
Odors - Including smoke	$ 50.00

REPAIRS & REPLACEMENTS

Repairs & Replacements + Labor (Min $20.00)	
Oven Burner	$ 40.00
Broller Pan	$ 30.00
Ranger Burner	$ 15.00
Drip Pan (per)	$ 2.50
Ice Trays (set)	$ 2.00
Shower Rod	$ 20.00
Towel Bar	$ 15.00
Switch Plate	$ 5.00
Light Bulb (Vanity)	$ 4.00
Light Bulb (60W)	$ 2.00
Globe (exterior)	$ 20.00
Globe (interior)	$ 20.00
Replacements-Includes Labor	
Mail Box Lock	$ 30.00
Lock (exterior)	$ 50.00
Lock (interior)	$ 3.00
Light Fixture	$ 30.00
Door (exterior)	$300.00
Door (interior)	$100.00
Window	$125.00
Mini-Blind	$ 25.00
Window Screen	$ 35.00
Smoke Alarm	$ 75.00
Fire Extinguisher	$125.00
Ceiling Fan	$150.00
Microwave	$ 50.00
Closet Shelves	$100.00
Mirror	$ 50.00
Patio Blinds	$150.00
Linoleum (per yard)	$ 15.00
Woodwork	Varies
Cabinets & Doors	Varies
Carpet Patch	Min $ 40.00
Paint (per wall)	Min $ 50.00

Taken from Portions of a Rental Agreement from Lawrence, Kansas

Testimony of James A. Schneider regarding Bill 380

This is the first time that I have testified before a State law making body. Consequently, if the format of my presentation is awkward or inappropriate, I apologize.

Background relevant to the issue at hand (Bill 380): My wife and I are "mom and pop" landlords in Lawrence, Kansas. Over the years, we have acquired 43 rental units within 17 houses. Because of location and circumstances, nearly all of our units have Kansas University (KU) students as tenants. Nearly all of our leases are 12 month leases starting August 1st of one year and ending July 30th of the next year. The August 1st to end-of-July lease period corresponds to the KU school year. Further, in Lawrence, where a large portion of rental units are rented by students (nearly ½ of all Lawrence rental units, as per 1990 census data), and where most leases correspond to the KU school year, there is a huge turnover of rental units July 30th and July 31st. Those two dates, in Lawrence, are hectic times for both students and landlords. Attending to the procedures and paperwork involved in checking-out tenants leaving rental units---and, attending to the procedures and paperwork involved in checking-in new tenants coming into rental units, has to be accomplished within 1 or 2 days (i.e., July 30th & 31st). ---With that background, I am ready to discuss Bill 380:

As amended, I have no objection to the general provisions and general ideas put forth in Bill 380. I do, however, respectfully ask that the Committee consider several small modifications in the section of Bill 380 pertaining to the "pre-termination inspection" (pages 1 &2). Please be clear, the modifications do not intend to alter the idea of providing a "pre-termination inspection" for a tenant. The intent of the modifications is (a) to add clarity and safeguards, and (b) to streamline the pre-termination inspection process (streamlining of process would be most helpful to both students and landlords during a hectic end-of-July in Lawrence).

Before listing the suggested modifications, let me strongly endorse the change that was made on page 1, lines 37 & 38. Specifically were "14 days" was changed to "30 days." --- If the "14 days" wording would have remained, we would have found it extremely difficult to comply. Specifically, if the wording would have remained "no earlier than 14 days, but no later than seven days before the termination or end of the lease..." My wife and I would be in big trouble. –If all 43 of our tenants opted for a pre-termination inspection, it would be nearly impossible to coordination times for an inspection with our 43 tenants within a 7 day window. **PLEASE, keep the changed wording: "no earlier than *30 days*, but no later than seven days before termination..."**

Suggested Modification #1: On page 1, line 40, of Bill 380, I respectfully ask that the word **"written"** be inserted before the word "request." The line would read as follows: **"upon the *written* request of the tenant, shall make a pre-termination..."**
Reason for requested modification: In over a ¼ century of landlording we have only needed to go to court once (to collect rent and gain possession). ---If the wording on page 1, line 40 of Bill 380 remains as is, after their tenancy was over, an unscrupulous tenant could conceivably sue a landlord for not providing a pre-termination inspection as required by law----even though the tenant never requested the pre-termination inspection, they could claim that they verbally requested such an inspection. To keep things businesslike, it would be most helpful if we could get a written request. My wife and I do not have a problem with supplying a pre-termination inspection; however, having a written request would be most helpful during the busy end-of-July turn-around. (Currently, we send out a letter outlining what we except regards cleaning, etc., before end-of lease.) Which lead to Modification #2:

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Suggested Modification #2: On page 1, lines 37 through 42. (again referring to the tenant's request for a pre-termination inspection), the current wording (lines 37-42) would allow a tenant to make a request for a pre-termination inspection--- 8 or even 7 days before the termination or the end of lease. --The landlord would be required, by law, to provide that pre-termination inspection "no later than seven days before the termination or end of the lease..." On such short notice, and with the law requiring the pre-termination inspection to be done "no later than seven days..." we could not comply. This concern/problem is another reason to have the tenant's request for the pre-termination inspection in writing---More specifically, I suggest adding a sentence after the sentence where in the word "written" was inserted. For clarity, the following is what I am suggesting; the modified sentence and the added sentence would read as follows:

> **At a reasonable time no earlier than 30 days, but no later than seven days, before the termination or the end of lease date, the landlord, or the landlord's designated representative, upon *written* request of the tenant shall make a pre-termination inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. *The tenant's written request for a pre-termination inspection must be delivered to the landlord no later than 30 days prior to termination or end of lease date, to allow landlord time to comply the required 48 hours written notification and pre-termination inspection deadlines specified herein.***

---Requiring a tenant's written request for a pre-termination inspection achieves two things: (a) It provides a landlord proper notice, and more importantly, (b) It prevents a tenant from making an unreasonable, last-minute request for a pre-termination inspection. For example, regards point (b), if a landlord received a tenant's written request for pre-termination inspection and the postmark on the letter was dated 5 days before the termination or end of lease; then, the landlord would have evidence that the tenant had made an unreasonable request (even though the date typed on the tenant's letter may have indicated the request was made 40 days before termination or end of lease). *---I request the adding of the word "written" and adding the above suggested sentence, to avoid confusion, misunderstandings,------and court time.*

Suggested Modification #3: On page 1, line 43, I respectfully request the word "written" be dropped and "48" be changed to "24" hours. -----Lines 42 & 43 (page 1) and Line 1 & 2 (page 2) are talking about coordinating mutually convenient times for the landlord and tenant to make a tenant requested pre-termination inspection--- From experience, I have found that coordinating with tenants is best done by phone. By phone tenant and landlord have a better chance of coordinating mutually convenient times----AND, during that same phone conversation, when the time of pre-termination inspection is set, the tenant knows exactly when the pre-termination inspection is to occur---thus, notification is given ---the use of a phone is a more efficient, a more practical way of achieve what the tenant desires—a pre-termination inspection. During the busiest time of the rental year, a written 48 hours notice is highly inefficient AND, in this case, the "written" notice adds no protection for anyone (tenant or landlord).

I appreciate the opportunity to give this testimony. Thank you for your time.

Sincerely,

James A. Schneider
3708 Stetson Drive
Lawrence, Kansas 66049

Jaskinia
President
(913) 207-0567

James Dunn
Vice President (Zone 1)
(785) 843-5272

The Associated Landlords of Kansas

Dr. A c
Vice President (Zone 2)
(785) 238-3760

Gary Hefley
Vice President (Zone 3)
(316) 722-7107

P.O. Box 4221 • Topeka, Kansas 66604-0221

The Associated Landlords of Kansas (TALK) was created in 1981 by a group of people from across Kansas to "Promote a strong voice in the legislature, a high standard of ethics, and provide educational opportunities for landlords." Some of our members helped create The Residential Landlord-Tenant Act of 1975, a model of fair law for both landlords and tenants. Our organization consists of members in 19 chapters across the state, and new chapters are in the process of being formed.

In this 2006 legislative session, we continue to work for fair and decent housing for all. We have listed below some of the issues that are of interest to us in this legislative session.

SB 380

This bill attempts to alter an extremely fair and time proven law, known as The Kansas Residential Landlord-Tenant Act. This law is the purest form of the model Landlord-Tenant Law proposed by the federal government in 1975. Kansas is the one state that has resisted changing the law to "fix" minor faults, knowing full well how "fixing" something can sometimes create unpleasant surprises. We have always opposed opening this law for minor problems, and will continue to do so. We hope that you will as well.

If we can be of help to you in these or any other areas concerning property, tenants, or landlords, please feel free to contact us.

Ed Jaskinia, President

ZONE 1
Landlords of Lawrence Inc.
Landlords of Johnson County, KS Inc.
K.C.KS. Landlords Inc., serving Wyandotte Co.
Eastern Kansas Landlords Assc., serving Miami Co.
nklin Co. Landlords Assc.

ZONE 2
Landlords of Manhattan Inc.
Geary County Landlords Inc.
Jackson County Landlords Assc.
Shawnee County Landlords Assc.
Salina Rental Property Providers Inc.
South Central Kansas Landlord Assc.
Serving Sumner County

ZONE 3
Central Kansas Landlords Assc.
Bourbon County Landlords Assc.
Cherokee County Landlords Assc.
Crawford County Landlords Assc.
Montgomery County Landlords Assc.
Allen County Landlords Assc.
Rental Owner Inc., serving Sedgwick County
Labette County Landlords Assc.

Comm. Labor
3-9-06
Atch #3

SLAB STUDENT LEGISLATIVE AWARENESS BOARD

SB 380: Landlord Tenant Amendments

- **Minimizes Legal Conflict-** many of the proposed amendments seek simply to standardize common practices of landlords. Ensuring that all parties involved in a rental agreement are clear on the rules **minimizes legal conflict**.
- **Protects Tenant Rights-** this proposal protects renters from policies and rental agreements not administered in good faith. A small minority of landlords have implemented **policies** which courts have routinely determined as **illegal.** Clarifying ambiguous language and instituting enforcement measures eliminate these unfit policies.
- **Rights for Landlords-** a substantial majority of landlords act in good faith regarding rental properties. In no way do these amendments take away rights of landlords or their legal remedies for dealing with delinquent tenants. These changes will reduce unfair market competition and therefore **benefit landlords with sound practices**.

YOU CAN BE CLEAR ON THE RULES BY SIMPLY READING BEFORE YOU SIGN, AND THEN REVIEW IT IF NECESSARY.

The proposed amendments to the Kansas Residential Landlord Tenant Act focus on a number of facets: **1)** the standardization of automatic renewal clauses. They uniform the notification process and restrict the renewal date to ninety days before the end of a lease. In order to educate tenants and landlords about a practice we need to standardize the implementation of that policy, **2)** eliminate the use of a pre-determined arbitrary set of charges used to determine damages. Landlords can still provide their tenants an *at cost* estimate, but neither party is contractually bound, **3)** ensure that if interest is accrued on a security deposit then it will benefits the tenant, **4)** allow for a pre-termination inspection of the property, by request of the tenant only, to identify the work necessary to return the unit to the same level of cleanliness at initial date of occupancy.

WE WOULD DO WELL TO REMIND BOTH LANDLORDS AND TENANTS THAT EITHER PARTY MAY CHOOSE TO NOT RENEW A RENTAL AGREEMENT. A TENANT MAY DECIDE MONTHS IN ADVANCE THAT THEY WANT TO STAY WITH OR LEAVE THEIR CURRENT LANDLORD. A LANDLORD MAY DO THE SAME.

Most landlords in Kansas do not utilize automatic renewal clauses or arbitrary, pre-determined lists of charges regarding damages; yet, these sections are the focus of the legislation. **It is important to note that most landlords in Kansas will be unaffected by these subtle yet vital amendments.**

THIS STATEMENT IS ABSOLUTELY FALSE.

SLAB Student legislative awareness board
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slab | student legislative awareness board

Testimony of Josh Bender
Legislative Director for the University of Kansas Student Senate
Before the Committee on Judiciary, Kansas State Senate
February 8, 2006

Mr. Chairman and Members of the Committee -

I am pleased to present my testimony this morning regarding Senate Bill 380, the amendments to the Kansas Residential Landlord Tenant Act. Since late spring of 2005, the Student Legislative Awareness Board has been actively pursuing solutions to an increasingly tenuous struggle between landlords and tenants in the State of Kansas. Our goal is to amend current law in such a way as to create an equitable relationship between landlords and tenants. We have prepared SB 380 and its amendments in order to address these concerns.

SB 380 addresses six major concerns with the current Kansas Residential Landlord Tenant Act:

Automatic Renewal Clauses

One of our primary concerns is the use of automatic renewal clauses within one year lease agreements. This abusive practice requires tenants to inform their landlord of their intention to vacate the rental unit at the end of the lease agreement otherwise the lease renews for another year (See Appendix A for examples). The renewal date, however, can be arbitrarily set by the landlord at any date between the signing of the lease and the termination of the lease. This provision of the lease is frequently in small print, buried in the middle of a contract, and written in confusing legal language. Few provisions in the act allow for legal recourse of tenants when an automatic renewal is utilized without their knowledge.

IN UNIVERSITY TOWNS, NEW STUDENTS BEGIN LOOKING FOR HOUSING IN EARLY SPRING FOR THE FALL SEMESTER. THE LANDLORD NEEDS TO KNOW IN ADVANCE WHETHER THE CURRENT TENANT IS PLANNING TO RETURN, AN EMPTY HOME ON AUG 1 IS MORE THAN LIKELY AN EMPTY HOME FOR THE YEAR.

SB 380 seeks to standardize the practice of automatic renewals by limiting the renewal date to ninety days before the termination of the lease, a number agreed upon during dialogues with landlords within the community. It also provides for two written notifications: first, within the lease the automatic renewal clause shall be on a separate page and shall require the

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signature of the tenant demonstrating an understanding of the clause prior to signing the lease. Second, a month prior to the renewal date the tenant shall receive written notification of the approaching renewal date.

IF A PARTY TO A CONTRACT DOES NOT READ AND UNDERSTAND IT BEFORE SIGNING IT, WHAT WOULD LEAD SOMEONE TO BELIEVE THAT THEY WOULD READ THIS PART?

Written notification prior to the renewal date provides tenants with adequate time to determine whether they desire to retain residency. While the ninety day policy allows landlords adequate time to assess their occupancy numbers for the coming year. This system creates a fair model of utilizing an automatic renewal policy which benefits both parties.

SEE ABOVE

Arbitrary Lists of Predetermined Charges

Our other major concern is the use of arbitrary, predetermined lists of charges when assessing damages for which tenants are liable (See Appendix B for examples). These charges are frequently higher than actual costs needed to return the rental unit to its original condition, excluding typical wear and tear.

VERY FEW LANDLORDS USE THESE FORMS. THEY ARE USED AS A COURTESY TO THE TENANT SO THAT THEY WILL KNOW IN ADVANCE WHAT THEIR FAILURE TO CLEAN AND REPAIR WILL COST THEM. THESE FORMS CAME INTO EXISTENCE IN THE 1980'S AS A REQUIREMENT BY SECTION 8 IN FACT, HUD REQUIRES THEIR USE BY THE HOUSING AUTHORITIES IN KANSAS. (SEE LETTER ON PAGES 10-13 OF THIS PACKET)

Our amendment eliminates the use of these arbitrary amounts in favor of charging tenants for all materials, supplies, and labor *at cost*. In no case shall a tenant be charged above the actual damages suffered by the landlord. Courts have routinely determined that landlords are only able to recoup actual expenses.

Even when a tenant is successful in challenging such provisions, it does little to change the policies of landlords. If a landlord maintains two hundred units and is challenged legally by one tenant, they are still successful with their abusive policy 99.5% of the time. There is no disincentive to change their policies. By amending the act with clear, simple language, we allow every tenant the opportunity to understand that such policies should not be implemented by the landlord. Doing this keeps predetermined lists out of leases and out of courts.

Initial Inventory

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Under current statute, initial inventories of a rental unit are required to be completed jointly by the landlord and tenant within five days of the tenant taking possession. No court in the state will award a landlord damages unless they make a good faith attempt to complete the initial inventory with the tenant. When a landlord attempts to claim damages after neglecting the initial inventory, they are willingly breaking statute.

LANDLORDS AND TENANTS MUST CO-OPERATE ON SETTING A TIME TO DO THE INSPECTION. TENANTS ROUTINELY BECOME "UNAVAILABLE" AFTER RECIEVING THE KEY. THE REAL SOLUTION TO THIS PROBLEM IS FOR BOTH LANDLORDS AND TENANTS TO ~~MUST~~ BECOME SMART ENOUGH TO NEITHER GIVE OR ACCEPT THE KEY UNTIL THE INSPECTION IS COMPLETE. TO MY KNOWLEDGE, NO COURT WILL ALLOW DAMAGES IF AN INSPECTION HAS NOT BEEN DONE.

SB 380 provides a disincentive for this irresponsible behavior. The financial disincentive is addressed within the Uniform Landlord Tenant Act (drafted by the National Conference of Commissioners on Uniform State Laws) and SB 380 corrects this disparity.

Security Deposits

THIS HAS BEEN REMOVED FROM THE BILL

Two concerns arise in relation to the return of security deposits at the termination of the lease. In the best case scenario, a security deposit is held without interest, in security by the landlord. In the event that a landlord chooses to place a security deposit in an interest bearing account, any interest accrued is also property of the tenant. SB 380 states that no deposit shall be held in an interest bearing account without the interest benefiting the tenant.

When damages assessed by the landlord exceed 5% of the final value of the security deposit, the landlord must provide invoices, work receipts, etc. documenting the actual cost of restoring the rental unit to its original condition. As per the provisions of SB 380 regarding predetermined lists of charges, landlords can only charge for actual damages. This allows the tenant the opportunity to verify the deductions from the deposit.

$400 DEPOSIT
× 5 PERCENT
$20.—

Pre-termination Walkthroughs

SB 380 allows for a pre-termination walkthrough of the rental unit, much like the initial inventory, in order to identify damages caused by the resident. Such a walkthrough would occur approximately one week before termination of the lease by request of the tenant, giving the tenant the opportunity to remedy these problems before the termination of the lease in order to avoid deductions from the security deposit. By addressing these concerns together prior to the final inspection, it creates a more respectful environment which reduces

WE COULD AVOID ALL NEED FOR RECEIPTS AND DOCUMENTATION IF TENANTS WOULD SIMPLY CLEAN AND/OR REPAIR THEIR HOMES BEFORE LEAVING.

SOME LANDLORDS NOW TELL TENANTS THAT THEY WILL DO THIS. MOST DO NOT.

A VERY SIMPLE SOLUTION TO THIS IS FOR THE TENANT TO HAVE HIS/HER FRIENDS DO A CRITICAL LOOK-SEE OF EACH OTHERS HOMES. IF THE PROBLEMS ARE NOT OBVIOUS TO THE TENANT OR THEIR FRIENDS, THEN THEY WILL CERTAINLY NOT BE OBVIOUS TO THE LANDLORD.

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conflict, both legal and otherwise. Pre-termination walkthroughs also reduce the work necessary after the final inspection.

BACKGROUND:

History

In spring of 2005 the Student Legislative Awareness Board (SLAB) was contacted by a law student whom worked at Legal Services for Students (LSS), the campus department whose sole function is to provide legal council to students. She expressed concern over a number of practices which were being utilized by landlords, primarily in Lawrence and Manhattan. In recent years well over half of LSS's case load has come from landlord-tenant disputes almost exclusively over automatic renewal clauses and arbitrary, predetermined lists of charges. It was at this student's urging that SLAB began investigating possible remedies for these problem areas.

This fall, SLAB began researching the issues and how other states deal with similar problems. After meeting with landlords, tenants, and lawyers, and reading hundreds of pages of landlord-tenant legislation, we finally crafted solutions to these ever growing problems. Throughout the process we sought to protect the rights of tenants without placing an unfair burden upon landlords. We feel as though SB 380 accomplishes that goal.

Kansas Residential Landlord-Tenant Act vs. the Uniform Landlord Tenant Act

Opponents of SB 380 will most likely appeal to the Uniform Landlord Tenant Act as justification for not addressing these problems. They will state that the Kansas version is "the purest version of the Uniform Landlord Tenant Act in the nation." However, upon closer examination one finds over 20 major differences between the two acts. Only two of these differences benefit tenants, one of which was added several years ago by Senator Derek Schmidt. The remaining changes overwhelmingly benefit landlords.

Most notably, the Kansas Residential Landlord-Tenant Act provides no punishment for landlords when they willingly violate the law; whereas the uniform act has strict enforcement

IT DOES NOT PROVIDE FOR PUNISHMENT FOR TENANTS WHO WILLFULLY VIOLATE THE LAW.

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of provisions. This is why parts of SB 380 call for financial disincentives for landlords who willingly violate statute.

WHY DOES IT NOT PROVIDE FOR "FINANCIAL DISINCENTIVES" FOR TENANTS WHO WILLFULLY VIOLATE STATE STATUTE.

Justification

Over 50% of Lawrence (a town of ~80,000) rents. Almost half of all renters are students. This is not only an issue that affects students, it is an issue affects the entire community. As noted earlier there are very few disincentives for landlords to change their policies. While a tenant can publicize landlord misgivings, it does little to create change in a limited housing market with large demand.

THERE IS A SIX (6) PERCENT VACANCY RATE IN LAWRENCE, KS. LANDLORDS THROUGHOUT THE STATE ARE COMPLAINING ABOUT THE SHORTAGE OF GOOD TENANTS.

Opponents of SB 380 will also claim that the solution to these problems is in the education of the public. While continuing education is a vital part of the housing market, education does not prevent unfair practices. A limited housing market provides very few venues of recourse for tenants aside from filing law suites, a process which requires resources in order to ensure success. Courts have routinely determined that some of these practices are illegal under the law, but it has done little to solve the problem. It should not take creative legal work for a tenant to benefit from the law.

EDUCATION IS IMPORTANT! HCCI, A TENANT - LANDLORD ORGANIZATION BASED IN TOPEKA WITH AN OFFICE IN LAWRENCE, HAS OFFERED TO THE STUDENT LEADERS A CLASS ON TENANT RIGHTS AND RESPONSIBILITIES. THEY HAVE ALSO OFFERED FREE ACCESS ON THE INTERNET TO THEIR KANSAS TENANT HANDBOOK. UNFAIR PRACTICES EXIST IN EVERY SEGMENT OF SOCIETY. TO ARGUE THAT EDUCATION WILL NOT GREATLY IMPROVE THE SITUATIONS THEY DESCRIBE IS DENIAL IN ITS PUREST FORM.

It was noted earlier that when a landlord faces few legal ramifications for their abusive policies there is no disincentive to change policies. Simple, straight forward language placed within the Kansas Residential Landlord Tenant Act allows all tenants and landlords to address the legality of practices. Everyone will be on the same page; this inevitably reduces legal conflict.

We firmly believe that only a small portion of Kansas landlords implement these policies with which we disagree. Such policies benefit landlords who act to make money over running a fair business. Landlords who act in good faith are placed at a disadvantage. By ensuring the elimination of these policies we benefit the landlords with sound practices and protect the rights of tenants.

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Appendix A

1.1:

3. LEASE TERM

3.1 INITIAL TERM: The initial term of this Lease Contract begins on the 11th_ day of _August_ 2005_, and ends at midnight on the 6th_ day of _August_, 2006__. At the end of this lease term, this Lease Contract will automatically renew for an additional twelve (12) month period and will automatically increase to market rent, unless either party gives written notice of termination or intent to move out as required by paragraph 8.1

Taken from Portions of a Rental Agreement from Lawrence, Kansas

1.2:

8. MOVE-OUT

8.1 MOVE-OUT NOTICE: Before moving out, you agree to give our representative advance written notice as provided below. Your move-out notice will not release you from liability for the full term of the Lease Contract or renewal term. You will still be liable for the entire Lease Contract term if you move out early (paragraph 3.7) except under the military clause (paragraph 3.6). YOUR MOVE-OUT NOTICE MUST COMPLY WITH EACH OF THE FOLLOWING:

- Your move-out notice must be in writing using our move-out form. Oral move-out notices will not be accepted and will not terminate your Lease Contract.
- Your move-out notice cannot terminate the Lease Contract sooner than the end of the Lease Contract or renewal period.
- Our representative must receive your written 60-day move-out notice no later than the last day of the month preceding the 60 days before the termination date. For example: If your lease contract ends on August 9th, your move-out notice must be received by May 31st.

YOUR NOTICE IS NOT ACCEPTABLE IS IT DOES NOT COMPLY WITH ALL OF THE ABOVE: If we terminate the Lease Contract, we must give you the same advance notice unless you are in default.

Taken from Portions of a Rental Agreement from Lawrence, Kansas

Appendix B

Move Out Cost Schedule

If prior to moving out you do not clean the items listed below and/or leave them in satisfactory condition, the following charges will be deducted from your security deposit or will be owed to the Landlord if the security deposit is insufficient to cover the charges. You will be charged the listed amount for each instance in which an item listed must be cleaned or repaired. The Prices given are average prices only. If Landlord incurs a higher cost for cleaning or repairing an item, you will be responsible for paying the higher cost. **Please note that this is NOT an all-inclusive list and repair/replacement charges do NOT reflect the hourly labor charge of $40 per hour (1/2 hour minimum).** You can and will be charged for cleaning, repairing and/or replacing an item that is not on this list.

CLEANING		REPAIRS & REPLACEMENTS	
Kitchen:		***Repairs & Replacements + Labor (Min $20.00)***	
Stove (Wipe)	$ 15.00	Oven Burner	$ 40.00
Oven (Clean)	$ 50.00	Broller Pan	$ 30.00
Refrigerator	$ 25.00	Ranger Burner	$ 15.00
Freezer	$ 25.00	Drip Pan (per)	$ 2.50
Dishwasher	$ 15.00	Ice Trays (set)	$ 2.00
Microwave	$ 10.00	Shower Rod	$ 20.00
Sink	$ 10.00	Towel Bar	$ 15.00
Counter	$ 15.00	Switch Plate	$ 5.00
Cabinets	$ 15.00	Light Bulb (Vanity)	$ 4.00
Light Fixture (per)	$ 5.00	Light Bulb (60W)	$ 2.00
Floor	$ 20.00	Globe (exterior)	$ 20.00
		Globe (interior)	$ 20.00
Bathroom:			
Tub/Shower	$ 50.00	***Replacements-Includes Labor***	
Toilet	$ 20.00	Mail Box Lock	$ 30.00
Sink	$ 10.00	Lock (exterior)	$ 50.00
Counter	$ 10.00	Lock (interior)	$ 3.00
Cabinet	$ 10.00	Light Fixture	$ 30.00
Mirror	$ 5.00	Door (exterior)	$300.00
Floor	$ 20.00	Door (interior)	$100.00
Light Fixture (per)	$ 5.00	Window	$125.00
		Mini-Blind	$ 25.00
General:		Window Screen	$ 35.00
Mini-Blinds (per)	$ 10.00	Smoke Alarm	$ 75.00
Window (per)	$ 15.00	Fire Extinguisher	$125.00
Utility Closet	$ 5.00	Ceiling Fan	$150.00
Ceiling Fan Blades	$ 10.00	Microwave	$ 50.00
Exterior Dorr	$ 10.00	Closet Shelves	$100.00
Washer/Dryer	$ 15.00	Mirror	$ 50.00
Vent Grate (per)	$ 5.00	Patio Blinds	$150.00
Light Fixture (per)	$ 5.00	Linoleum (per yard)	$ 15.00
Baseboards (room)	$ 5.00	Woodwork	Varies
Patio/Deck	$ 25.00	Cabinets & Doors	Varies
Trash Removal (bag)	$ 25.00	Carpet Patch	Min $ 40.00
Furniture Removal	Varies	Paint (per wall)	Min $ 50.00
Carpet Cleaning	Min $ 100.00		
Carpet Stain Removal	Varies		
Odors - Including smoke	$ 50.00		

Taken from Portions of a Rental Agreement from Lawrence, Kansas

Fr: "Darrel Eklund" <deklund@cox.net>
Subject: Fw: DAMAGE AND REPAIR CHARGES
Date: Fri, March 3, 2006 10:09 am
To: "Ed Jaskinia" <Ed@WeSellHomes2You.com>
Cc: "Darrel and Margie Eklund" <deklund@cox.net>

Ed,

This is the response I got from John Johnston, Executive Director, Topeka Housing Association. He has okayed it for use regarding SB 380.

Darrel

----- Original Message -----
From: John Johnston
To: Darrel Eklund
Cc: Sophie George
Sent: Friday, March 03, 2006 8:46 AM
Subject: RE: DAMAGE AND REPAIR CHARGES

Interesting.

HUD requires that we have, post, and routinely share a list of maintenance charges with Public Housing tenants. I've asked Sophie George to forward you a copy. The dollar figures on this list are used in calculating the charges for tenant caused damages during the lease period, and for calculating the amount that tenants owe at move-out for tenant caused damage.

his was before I came to THA, and you undoubtedly know more about this than I do, out as I understand it, the Section 8 Program used to pay landlords for damages caused by Section 8 tenants. It may be that the list of charges that dates to the 80's had something to do with this. Perhaps landlords had to provide Section 8 a list of their charges, up front, in order to get paid for damages that occurred later.

As to whether this is a good idea---in theory, tenants are less likely to be in court claiming that charges are improper or excessive if they were given a list of the charges when the moved in. In practice, I suspect this may have limited deterrant value. So far as I can tell we hear from our chronic complainers regardless of the number of pieces of paper we have them sign. Another obvious down side is that this works only if you update the charges list on a regular basis or include a caveat with the list that the charges listed may not apply.

On balance, though, having just come out of a nasty, expensive lawsuit over something we did properly, I am inclined to suggest that a list "can't hurt, might help." It does not cost a lot to have and use a list of charges---a couple of hundred bucks a year at most. If this deters one legal hassle every tem years you are going to be money ahead.

If you are interested, I'll ask someone here turn our list into a fill in the blanks form that SCLA could distribute to its members.

-----Original Message-----
From: Darrel Eklund [mailto:deklund@cox.net]
Sent: Thursday, March 02, 2006 9:52 PM
To: John Johnston
Cc: Darrel and Margie Eklund
Subject: DAMAGE AND REPAIR CHARGES

John,

A few months ago, one of our SCLA members sent me an old SCLA document, dated November 16, 1984. It stated as follows:
"The following is a list of common tenant caused damages and the cost that tenant will incur and be held liable for. With the reading and signing of this list, the tenant hereby agrees to accept said charges and to pay for all damage and cleaning expenses incurred by management and agrees that the charges are fair in nature." Following this statement was a list of 36 items and a charge was listed for each item.

The SCLA member stated that this list was published in the SCLA Newsletter in 1993 and again in 1995. He suggested that we should review and revise the list and publish it in our Newsletter again. I have two questions.

1. Do you think it would be a good idea to publish such a list in our Newsletter and to encourage landlords to consider using it in their leases?
2. Do you know if HUD has ever taken a position on the merits of including a list such as this in a rental lease?
3. Do you know of any recent list that might be more up to date than our old 1984 list?

Darrel

Download this as a file

These are used only when I cannot get someone to clean the unit. In 30 days usually I use what I was charged to clean the unit by the cleaning people and the Contractors that repairs each item. Painting and Carpet repairs are pro rated as to their life expectancy.

MAINTENANCE AND MOVE OUT CHARGES

1. Listed charges are estimates for the most commonly used items.
2. Labor charges are for work by owner calculated at $15.00 per hour.
3. Labor charges for contractors will be charged to the tenant as charged by contractor.
4. Charges for items not listed below will be billed according to time and material.

PAINTING:

	1 Bedroom	2 Bedrooms	3 Bedrooms
Labor	$160.00	$190.00	$220.00
Material	$ 50.00	$ 60.00	$ 70.00
Total:	$210.00	$250.00	$290.00
Monthly Deduction:	$ 4.67	$ 6.33	$ 7.44

CLEANING:(Cost includes labor:)

Kitchen complete:	$110.00	Bathroom complete:	$30.00
Stove & oven only:	$ 65.00	Tub and tile:	$15.00
Refrigerator:	$ 25.00	Toilet:	$15.00
Kitchen cabinets:	$ 20.00	Abandoned Unit Cleanup:	$75.00
Sink and countertops:	$ 10.00	Trip to dump:	$20.00
Floor:	$ 15.00		

CLOGGED PLUMBING: Total charged by plumber.

LOCK CHARGES:

Rekey & Master:	$52.00	Replace interior lock	$25.00
Make key	$ 2.00	Replace deadbolt:	$60.00
Replace exterior lock:	$50.00		

WINDOWS OR OTHER GLASS: Total charged by Glass Company.

SCREENS: $20.00 each

DOORS:

Exterior door:	$275.00	Interior door:	$60.00

BLINDS: All windows: $20.00 each

STORM DOOR: $125.00

REPLACEMENT AND/OR REPAIR CHARGES:(Material Only)

Light bulb:	$ 2.00	Garbage disp:	$140.00
Smoke det. battery:	3.00	Furnace filter	5.00
Carbon det. sensor:	22.50	Range filter	20.00
Toilet tank lid	20.00	Thermostat	45.00
Toilet paper holder	10.00	De-flea	125.00
Toilet seat	15.00	De-bug	65.00
Shower head	9.00	Holes:	
Faucet handles	7.50 ea.	Nail size	1.00 ea
Faucet	65.00	Large size	By job
Outlet plate	1.50	Dryer vent	15.00
Floor tile(Sq. Ft.)	2.00	Outside light	35.00
Mirror	45.00	Storm door:	
Closet bar	12.50	Closer	17.50
Drawer replacement	25.00	Handle	17.50
Drawer & cabinet knob	1.00	Chain	10.00
Shower curtain rod	15.00	Screen	20.00
Shower curtain	12.50	Glass	30.00
Shower curtain hooks	4.50	Registers, floor	15.00
Light globe	7.50	Window mech.	15.00
Clean blinds	5.00	Smoke det.	15.00
Carpet replacement	15.00 Sq. Yd.	Carbon det.	45.00
Carpet clean	.50 Sq. Ft.	Skirting (16" section)	3.00
Refrigerator	As chg. by serviceman		
Pet stains and odor	See carpet replacement		

Items not listed above will be charged to the tenant at the same price it cost the owner.

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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:37 AM

From : Joe Robb <JoeRobb@robblaw.com>
Sent : Friday, March 3, 2006 10:33 AM
To : <Vote-No-SB380@hotmail.com>
Subject : SB 380

Please advise who is on the committee so that those of us who might know them can contact them. As the matter moves forward please also advise key legislators whom you need help with.

The bill adds to our management and administrative time meaningfully and thus we will raise rents about $40 a unit. Thankfully our units and market will bear this increase. I would guess the college markets which are the ones pushing this will bear an increase also. I also know, as an attorney, that we see very few landlords that are unfair with tenants in deposits. It seems that the legislature is working on a problem to make many landlords do things because of a very few problem landlords and I can't help but think it is overkill. Yours, Joe Robb

Joseph N. Robb
Somers, Robb and Robb
110 East Broadway, Box 544
Newton, KS 67114-0544
316 283 4560
316 283 5049 (fax)
joerobb@robblaw.com
Website: www.robblaw.com

Joseph N. Robb, Member
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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:53 AM

From : Randy Ellis <rdellis@planetkc.com>
Reply-To : rdellis@planetkc.com
Sent : Thursday, March 2, 2006 2:48 PM
To : Vote-NO-SB380@hotmail.com
Subject : SB380

Ed, please forward along my opposition to Senate Bill 380. I sat in the committee hearing at the State House and listened to the speakers in favor of this bill. They freely admitted this was a University town problem, sighting only Lawrence, Manhattan, and Wichita. They stated numerous grievances, but were unable to substantiate any of them with leases, receipts, or witnesses.

I spoke with the student advocates after the committee meeting. It was clear that the problems they are trying to solve with this Bill are the result of one company who manages several properties in Lawrence.

The Kansas Tenant/Landlord Act has a good balance for the protection of both the Tenants and the Landlords. Let's not open up a can of worms to try and fix a perceived problem. There are already resources available to educate Landlords and Tenants. Education appears to be the solution. HCCI offered educational solutions at the committee hearing.

I vote "NO" for Senate Bill 380.

Sincerely,
Randy Ellis

3-15

Retired Physician

Alex Scott, M.D.
835 W. 5th Street
Junction City, KS 66441
(913) 238-3760

Retired Legislator

Feb.7, 2006

Mr. Chairman and Members of the Committee:

For an extended period of time the present Landlord and Tenant Act has served quite equitably in relations between owner and renter. Efforts to change a functional statute may well change the balance to the advantage of one or another of the parties in agreements made under that law.

The provisions being proposed for changing the act on pages one and two pose changes that appear to be spelling out by day and time how inspections are to be made, penalties for failure to meet schedules carved in stone, and spell out some rather heavy penalties--two months rent for example.

Bad landlords (and they do exist) usually become known by their reputations and except in a tight market suffer vacancies. Renters, being more mobile, escape this consequence, but not forever.

Property owners will build where there is a chance to have good income on their investment, while tenants will seek the best lodging for their rental payments. This is merely a restating of the fact that money goes where it is treated best.

I shall be glad to stand for questions.

3-16

From : Rhonda Franks <franks5@satelephone.com>
Sent : Friday, March 3, 2006 2:19 PM
To : <Vote-No-SB380@hotmail.com>
Subject : SB 380

March 3, 2006

I am opposed to SB 380.

The increased number of inspections will increase rents to tenants.

Being required to provide invoices of actual costs will also create additional charges to the tenants. (If there are damages, most times it does exceed 5% of a security deposit—especially for those apartment complexes which collect deposits less than that allowed by law. Many apartment complexes, at least in Topeka, only collect $100-150 in security deposits.) If I have to have an actual invoice—I will be hiring a cleaning company, a painting contractor, a door and window contractor etc which will make repairs charged back to tenants much higher than when I do the work myself. It will also at times cause repairs to take longer, resulting in longer vacancies also increasing rent costs and/or charges for unpaid rent during a broken lease period.

Allowing a tenant to recover the security deposit due PLUS an amount equal to 2 months rent is inconsistent with what is allowed to a landlord when a tenant violates a portion of the tenant/landlord act. The penalties to the party in fault (landlord or tenant) should be consistent and fair—as in the current law.

The proposed bill requires a landlord to notify the tenant in advance of his right to an inspection. Plain language in a lease isn't sufficient? If we fail to notify a tenant of a right to a pre-termination inspection we face owing the tenant the security deposit due plus 2 months rent? Tenants are supposed to be adults and capable of reading and entering into a fair rental agreement. As landlords, it should not be our responsibility to "babysit" a tenant thru everyone phase and step of the rental procedure. I already require all my tenants to read the lease, I explain the lease paragraph by paragraph in plain language—it takes a good hour to get a lease signed. I don't believe that I should be required to constantly be "babysitting" a tenant. As an adult myself, I have no one "babysitting" myself through life. A tenant has all the same resources available that I do to become educated in the procedures of everyday life—information on the web, schools, attorneys, support groups, professional organizations, and so forth.

The correct law works and is not broken. Don't fix what is not broken.

Rhonda Franks

3-17

Osage County Landlord

12 rental properties and 1 47-site mobile home park

785 633 4961

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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:34 AM

From : Patricia McBride <morningstarfamily@sbcglobal.net>
Sent : Friday, March 3, 2006 9:21 PM
To : Vote-No-SB380@hotmail.com
Subject : SB380

The hearing committee must understand that the present Landlord-Tenant Act covers very well what SB 380 is trying to do. We as landlords comply with the Landlord Tenant Act to provide safe, habitable and non-hazardous dwellings for tenants. By doing what the SB 380 states, this will make it not only highly time consuming, inefficient, but also expensive. This will cause undue problems for the individual landlord and put him/her at a great disadvantage when competing with government housing, etc. For instance, how would a pre-move inspection help as a lot could happen by the move-out time and then the tenant state "you didn't say anything about this earlier!" And we can go on and on about other parts of SB 380.
We really desire to return a security deposit as we appreciate tenants who take some pride in their surroundings and leave places clean, undamaged, etc.
It all boils down to the fact that tenants need to abide by the lease agreements, leave their tenancy in an appropriate condition, and just be responsible!
Sincerely,
Patricia and Gordon McBride Independence, KS

3-19

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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:31 AM

From : Gary Hefley <ghefley@cox.net>
Sent : Sunday, March 5, 2006 8:41 PM
To : <Vote-No-SB380@hotmail.com>
Subject : SB380

Bob:

I've contacted several of the Wichita people, and asked them to write letters to you're e-mail and contact their Senators. I think I'll be in Topeka Thursday for the Committee hearing. Maybe I'll bring some more from Wichita. Here's some of my ideas.

Thanks for the info. Hef.

I understand the Senate is considering changing the Kansas Landlord /Tenant Law. Re: SB380, which would require Kansas landlords to do the following.

1. If the landlord doesn't do the move-in inspection within 5 days (which is required by present law) the landlord would forfeit any chance of recovering damages in court at move out.

As you can see, this could be a disaster to a landlord who for some reason was unable to do an inspection during the 5 days. It would allow tenants to destroy the property, without right to recovery of damages. We have had tenants refuse to do a move in inspection.

2. A pre-move out inspection within 24 hours may be required if requested by the tenant.

As a landlord I think a re-inspection, to inform the tenants of potential move out charges, and give them a copy of the move in list, is a great idea. We presently request our tenants allow this type inspection, prior to moving. However, the 24 hour requirement could be a problem, for many reasons.

3. You must give the tenant an itemized list of deficiencies that may result in money being withheld from their security deposit.

This sounds like a great idea, except that some tenants have a tendency to cover up damages, which are not discernable by the landlord until after move out. Would these items be recoverable? An itemized list sounds easy, but may take some time to document.

4. If deductions exceed 5% of the security deposit, the landlord must provide "invoices which document the actual cost or actual cost estimates and quotes of material, supplies and labor".

This would mean that if a landlord withheld $11.00 for damages from a $200.00 deposit, he would be required to get an estimate from some outside company to install 4 light bulbs, and send a copy to the tenant after move-out. As you can see this would not only be a burden on the landlord, but would add cost for the tenants damage claim. Many landlords have their own maintenance crew for clean up, and make readies. Would these landlords make up their own estimates? I don't think the students want this.

5. If a landlord fails to comply with the above a tenant **shall** recover the full security deposit **plus** an amount equal to 2 months rent.

What about this is fair to the landlord? When we here the Legislature or tenants talk about housing, the buzz word is always "quality affordable housing". How are any of these changes to the law going to achieve that goal?

General Statement:

There are only two ways a landlord can recover money from a highly taxed business, and those are, to

3-20

raise rents, or defer maintenance. As you know neither of these will work to enhance the quality, or affordability of Kansas housing.

From : Pat Miller <pat_281232@msn.com>
Sent : Monday, March 6, 2006 7:00 PM
To : <Vote-No-SB380@hotmail.com>
CC : "Gary & Gayla Hefley" <ghefley@cox.net>, "Robert Ebey" <reb124@sunflower.com>, <Ed@WeSellHomes2You.com>
Subject : Kansas Residential Lordlard and Tenant Act as Amended --Proposed New Changes

Why Vote NO to Senate Bill 380?

HERE ARE JUST A FEW REASONS:

1. **Inequitable** penalty provisions
2. **Unilateral** development and submittal -- no coordination/consultation with landlord/rental groups
3. **Inconsistent** with current housing statutes and laws; housing and building code requirements; general contract statutes and law; ordinances, etc.
4. **Micro-Manages** the same provisions within the current law
5. **Unrealistic time constraints** required
6. **Supersedes and/or duplicates** existing local ordinances and requirements, e. g. inspections, licenses etc.
7. **Severely erodes "due process" for all parties** currently available when both sides of a particular case/issue are presented to and determined by the court.
8. **Forces increased rents** because of more time-consuming requirements and paperwork.
9. **Punishes good landlords and managers** in an attempt to control bad landlords.
10. **Unnecessary**

There are already enough laws on the books to more than adequately control every aspect of rental property. THEY NEED TO BE ENFORCED rather than to layer more and more requirements through revised or new legislation.

Respectfully submitted:

Pat Miller

Pat Miller,* 3601 Amidon
Wichita, Kansas 67204-3821
(316) 838-4365
* **Member of:** Rental Owners, Inc., **(ROI)** Wichita; Landlords of Lawrence, **(LOL)** Lawrence, and University Place Neighborhood Association **(UPA)** Lawrence.

To: Commerce and Labor Committee

Dear sir:

Evidently the young man who wrote bill SB380 has been done a wrong and is seeking revenge. This bill is not fair to tenants or landlords. The Kansas Landlords/ Tenants Law allows both the tenants and landlords to come to an agreement 14 days after the tenant moves out of the property. If there is no agreement, then the court can be brought in to decide. This law protects both landlords and tenants

Sincerely,
Howard Thompson
Howard and Marilyn Thompson
Member of the Montgomery County Landlords Ass'n

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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:43 AM

From : Darrel Eklund <deklund@cox.net>
Sent : Friday, March 3, 2006 5:59 AM
To : <Vote-No-SB380@hotmail.com>
CC : "Darrel and Margie Eklund" <deklund@cox.net>
Subject : SB 380

My wife and I urge the Kansas Legislatures to vote NO on SB 380.

The bill requires additional property management responsibilities that significantly increase the cost to all Kansas landlords. It is not possible to determine or reasonably estimate the cost of cleaning a rental dwelling unit prior to the tenant moving out of the unit. Very often tenants leave significant amounts of trash, spill stuff on the floors, turn the electricity off and cause food to spoil in the refrigerator, etc. These types of expenses for cleaning could not be recovered by the landlord, as these problems can't be observed before the move-out. If a tenant turns off the gas, water pipes freeze and burst, after the pre-termination inspection, this bill would prevent the landlord from recovering the cost of cleaning up the resulting mess.

This bill forces landlords and property managers to prepare two separate work orders on each dwelling unit. One work order pertains to work that represents normal wear and tear repairs. The second work order is for work that is chargable to the tenant and is beyond normal wear and tear. Hence, if there is a large hole in a wall, which represents damage beyond normal wear and tear and the wall needs to be painted as a result of normal wear and tear; the landlord must repair the hole in the wall and paint it, prior to preparing and painting the entire wall. This is an inefficient and causes additional cost to the landlord.

There are numerous other problems inposed by the bill, that we don't have adequate time to comment on.

Darrel Eklund, President
Shawnee County Landlord Association

3-24

From : s <zwooba@sbcglobal.net>
Sent : Friday, March 3, 2006 1:02 AM
To : Vote-No-SB380@hotmail.com
Subject : Vote NO

Dear ,

Where there is not protection for neighbors property worth thousands and thousands of dollars from those we must entrust it to without anything more than a credit check (all that is allowed landlords in reality), there is not a rule of law. The rule of law should protect landlords from tenants as well as protect tenants from landlords. The balance seems to me to have swung so far to the side of the tenant that the landlord has no protection at all. And thus rental property will go downhill--fast.

Tenants daily demonstrate excellent strategies for avoiding--and they seem especially skilled at avoiding the initial walkthrough probably because they already get an advantage in court if the walkthrough is not completed in five days, in many cases. Some tenants move in and disappear for 10 days after arrival, since students don't start classes until the middle of the month. Some landlords have had tenants move in wihtout the landlord's knowledge prior to the past tenant moving out, even when the tenant was told by the landlord that this was not acceptable or was precluded by the lease. Outgoing tenants have made threats if landlord's don't allow them to use their rental space, during their tenancy, to house a "friend's" things (i.e. the incoming tenant). A new tenant asked to move their things out for the inspection would then be difficult all year. Leases are getting longer and longer to cover the creative terrors people think up to keep walkthroughs from occuring (etc) without the messed up carpet being covered with incoming boxes, to prevent tenants from skipping out on utilities and letting pipes freeze, to avoid new and ever more impossible to control liabilities.

Some tenants move one party in--one roommate--and the second one does not show up for a few months. Others who are going to study abroad don't move in until the second semester. What will the proposed law do in those situations when the tenant wasn't present for the walkthough is in Italy or vacationing in Greece or Colorado and doesn't want to pay to have the walls and woodwork repainted after they painted everything black.

It's not fair to ask us to anticipate everything they might think of to do to the apartment to damage it prior to their actually moving all their things out.

Landords are people and we have rights also; yet we cannot legally chase tenants down. Tenants can be very very hard or impossible to locate even when those things would benefit them. A tenant can write a note making a request for an item to be repaired and then be absent or refuse admittance to repairmen over and over to cause problems or to assert dominance, if inclined.

If one requires landlords to corner Houdinis or forfeit the right to sue for damages, we simply cannot do the job and keep property up at affordable monthly rental amounts. If we raise rents too high, tenants will ask for rent control. It's hard enough now to do this with taxes and insurance so high. Rest assured, rentals are more expensive because insurance companies have some understanding of the problems that can arise to property due to tenant issues. We cannot be asked to do more impossible tasks, surely. It seems to me we are already asked to do impossible tasks already with some tenants.

Many problems arise because parents claim, against evidence, that their children, whom they send off to school without much knowledge of how to respect, read, or do anything but get out of a lease (parents are quite creative about his also if their child changes plans or drops out of school), could possibly have painted the wood cabinets red without permission, and they don't want to be liable if they know better, either. They seem unable to believe that their children could be so noisy that the 80 year old neighbor--who has just returned from surgery from the hospital--cannot sleep. And I have witnessed that even the parents in some cases do not care about their chilren's lack of respect, adherence to laws, and courtesy. They do not want to be liable. They want their way. An elderly neighbor (80 plus) told me a father of a neighboring noisy tenant had stood on his porch and intimidated him for asking his wife to move her car out of his driveway, and had asked her to move it more forcefully when she flatly refused.

Many tenants are troubled by what happens when they leave an apartment, in my opinion, because they do not read the lease. Even when I go through a lease and have them initial a synopses of certain important points, they still reliably do not remember or perhaps just do not want to comply with the basic points in the lease.

Tenants who are abusive of landlords (and many are abusive of landlord) may be abusive only because the landlord would not make an exception for them even if you explain that they are not entitled to exceptions you have denied others, and to grant them exceptions would possibly give other tenants a right to sue. They just don't care. They can be retailiative if you ask them to turn their sound down.

And when retaliative, they can be very very creative in doing damage that will cost the landlord but which is not obvious in an initial walkthrough. It is difficult enough, even when leaving time for repairs between tenants when the apartment is not occupied and no rent is collected from anyone, to find out all the things the former tenant may have done. To have to provide a list of possible things a damage deposit COULD be witheld for doing only leaves the landlord open to the undyingly creative and abusive tenants. Sadly, these individuals are not a small percentage of some markets.

The less experienced and mature the tenant is, themore they think landlords and laws are there to serve them and they owe nothing back. Many students come from backgrounds of privilege where they have this attitude anyway.

One landlord recently found, for instance, that heating ductwork in a locked furnace room was tampered with after a moveout, and fortunately discovered the subtle change before the landlord, who lived in the building, or the new incoming tenant (two weeks from their move in date) died or was made ill as a result. I make no assumptions as to the intent of the tenant in question, but I have many concerns after this experience.

3-25

A firecracker down a sewer because the landlord asked for money due or sound and party noise reduction is hard to discover in a walk through. And that can cost more than the whole rental year's rent for the apartment, certainly, and inconvenience or cause other tenants in the building to have a cause of action. Pouring plaster of paris in plumbing or other harmful chemicals is another issue of concern that makes me think my days as a landlord are numbered also. Retaliation can occur because a rule was enforced that kept property and other residents safe, but if the tenant is not a mature and responsible person of whatever age, and if such retaliation or threats are common (and I think they are), then perhaps the law must be reviewed in light of these possibilities.

We as landlords have less and less control over who rents from us because all we can really use without concern is a credit check. References are useless because within minutes of giving a bad credit reference, irate and in my opinion irresponsible parents have called the landlord to threaten a law suit if the landlord did not give a good reference and pass along their problem child to another unsuspecting landlord, even if it was vastly deserved and understated. We are creating citizens who cannot take responsibility.

I think it is a good idea to submit estimates of damages over a certain amount, but 30 days is not always enough time to get estimates during busy move-in/move-out times at KU and other college areas in many many cases. If you want documentation, allow time for it because workmen do not have time to give free estimates and landords do not have time to meet the paints, carpenters, plumbers, electricians, plasterers, and appliance repairmen involved in some move-out repairs in order to get a reasonable estimate especially when tenants who may have moved in or who may remain in the apartment will not allow access.

I hope our representatives will understand the exuberance and lack of experience in costs, repairs, business, leases, and the difficulties and expenses that some of the supporters of this legislation might have and the financial rationalization that might occur with some parents. I realize that some landlords have given up on apartment repair and some tenants have had nightmares. We hear those stories also.

But landlords have lived nightmares, of that I can attest and swear. Landlords live in fear of what their tenants might do.

And those tenants without adequate integrity treat leases as if they were jokes. I hope you will not give them an undo boost by providing extra escape routes when they already have so many escape routes from even the best lease. Where there is not protection for property worth thousands and thousands of dollars from those we must entrust it to without anything more than a credit check, there is not a rule of law.

We as landlords need to be assured that courts will give us fair hearing concerning damages without making barriers to legitimate claims.

Students have free legal counsel, nearly free access to small claims court, and in my opinion that gives them many unfair advantages anyway.

Landlords, especially those renting out in their home or having only one rental, may be elderly people who cannot afford the stress and legal costs of all the hassles many students have put them through by abuse of leases and property, if not abuse of the landlord directly.

I feel it is extremely unfair to have this group attempt to dominate the legislation when they are in fact not experienced enough with paying bills, fixing property, and meeting the many demands of responsible living in a demonstrable way.

Most sincerely,
Mary Weeks

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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:40 AM

From : <kim.hilgenberg@faa.gov>
Sent : Friday, March 3, 2006 6:58 AM
To : Vote-No-SB380@hotmail.com
Subject : SB380 comments

Attachment : pic10700.gif (0.07 MB)

This bill appears to be extremely unreasonable in the expectations placed upon the landlord.

The notification requirements are not workable. Not is it reasonable to expect landlords that complete their own repairs to have "invoices" to provide to the tenant. Often times, landlords do not hire contractors to complete cleaning or damage repair.

I am against this bill.

(Embedded image moved to file: pic10700.gif)

3-27

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vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:38 AM

From : <p.barkley@sbcglobal.net>
Sent : Friday, March 3, 2006 9:20 AM
To : <Vote-No-SB380@hotmail.com>
Subject : SB380

Six of us formed an LLC and bought 18 existing rental homes from a previous owner last summer. We are trying our best to fix up and/or make necessary repairs to keep the houses in good condition for the benefit of the renters and to protect our investment. While our rent rates are somewhere near average, we are losing money each month and have taken stringent measures to reverse the negative cash flow. For example, we had to eliminate help with property management. And we have had to postpone some repairs. The proposed changes in SB380 could very likely make the difference whether we survive as a small business or have to lose a significant amount of our investment. I would strongly urge the defeat of SB380 in its present form, especially items that would change the present Landlord/Tenant Law that potentially would increase costs for the owners of rental property. One example of concern is a pre-move out inspection. How are we protected for the damage that occurs after the inspection through the move of the tenant? We are trying to offer decent places for our renters to live. Please help us provide affordable homes for those who need these services.

Thanks,

Paul Barkley

2742 SW Chauncey Ct

Topeka, KS 66614

3-28

msn® Hotmail®

vote-no-sb380@hotmail.com Printed: Wednesday, March 8, 2006 11:39 AM

From : <Lawcmiller@aol.com>
Sent : Friday, March 3, 2006 8:02 AM
To : Vote-No-SB380@hotmail.com
Subject : Re: Senate Bill 380

Mr. Ebey;

Thanks for the information about the draconian provisions of the new proposed landlord/tenant legislation, SB 380. I have reviewed the provisions of the proposed statute, and am appalled that the legislature would believe such legislation is necessary or appropriate.

The proposed legislation would place an unreasonable burden on landlords not only with regard to checking in new tenants; but also with regard to checking out tenants when their tenancy ends. The time constraints in the proposed new legislation are both unreasonable and unworkable. Further, they are unnecessary. The present statute provides ample safeguards for tenants, to protect them from any potentially abusive landlord.

I urge my Senator to vote no.

Chris Miller

3-29

February 8, 2006

Senate Bill No. 380 – Testimony for Housing & Credit Counseling, Inc.
Louise Kirkpatrick, Tenant/Landlord Counselor

Housing and Credit Counseling, Inc. (HCCI) has provided Tenant and Landlord counseling and education for over 30 years. HCCI Tenant/Landlord counselors are the only persons in the state of Kansas who specifically assist persons with education and information regarding the residential Landlord and Tenant relationship.

I am appearing today as a neutral speaker. I offer my comments on the proposed changes to the Kansas Residential Landlord and Tenant Act based on my four years experience as a Tenant/ Landlord counselor. I appreciate the hard work of the KU students working for the proposed changes. They are attempting to address areas that often impact the student populations.

The Kansas Residential Landlord and Tenant Act (KRLTA) has, since its July 1, 1975 introduction, provided a relatively clear and concise framework for residential for Landlord/Tenant relationships

The Act provides basic definitions, limits the areas to which it applies, specifies rights and responsibilities for both tenants and landlords, provides the method for addressing areas of noncompliance and/or terminating a tenancy, provides a process for recovering damages, and includes specific protections.

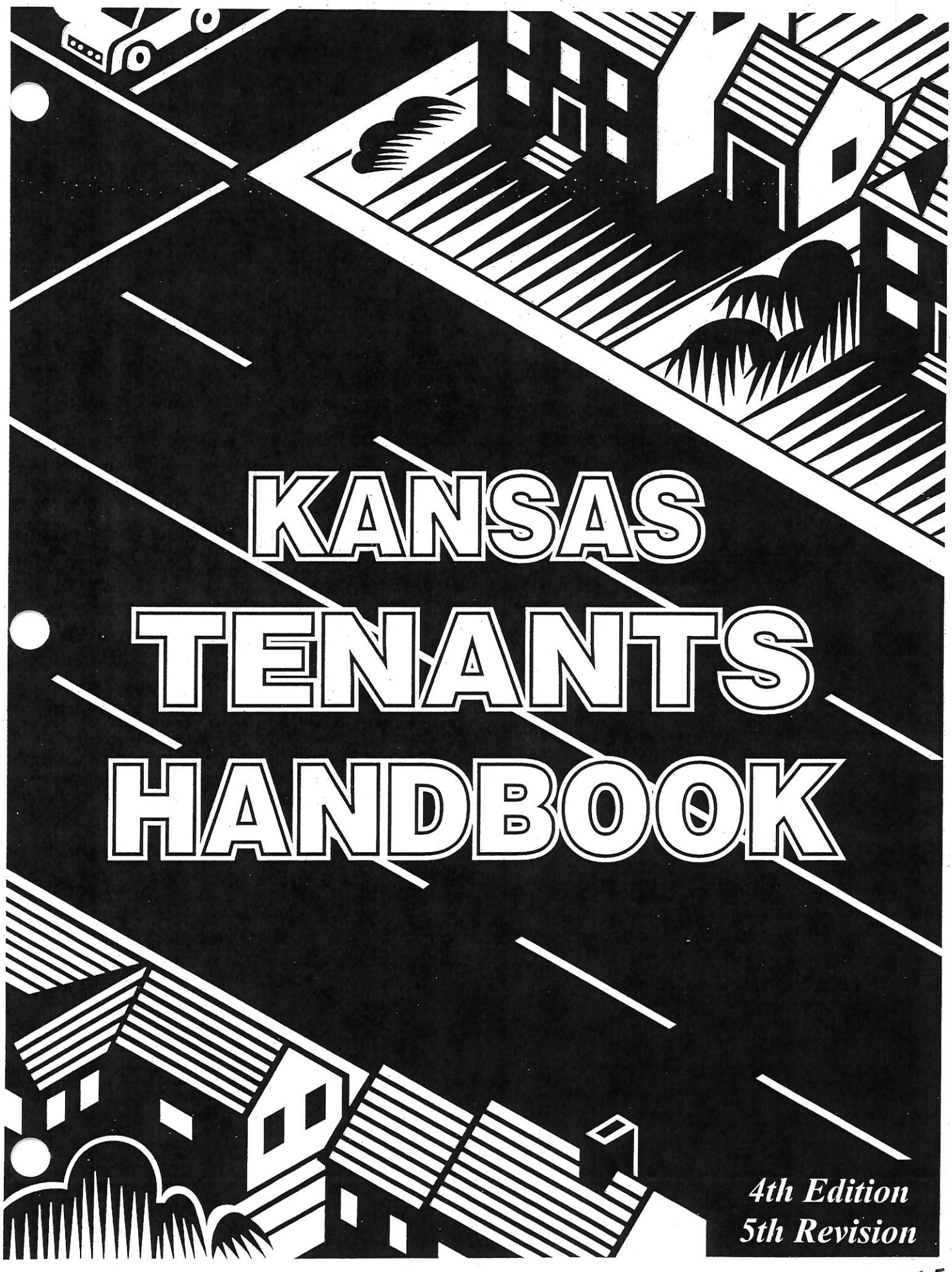
There are areas in which disputes have occurred; but for the most part, the Act provides a workable tool for residential tenancies in which both the tenants' and landlords' rights and responsibilities are defined and protected.

The proposed changes seek to establish a more exact process and to clarify that process providing more protection to the parties. Based on the clear wording of the Act plus court decisions that have provided guidance, I believe radical changes are not necessary. Perhaps education and enforcement would be more beneficial.

The proposed changes have the potential to cause more confusion without realization of the desired benefits. Proposed procedures could become very burdensome and leave either or both parties with very grey areas if verification of actions were to be needed. In some places, value judgments are required; and these may vary from person to person and time to time. Much would be open to interpretation, preference, or personal opinion instead of being made clearer.

The proposed changes have merit based on their intent and the goal is understandable; however, the KRLTA was written to address the complete residential rental picture. It has been, for the most part, effective in that regard.

I will not discuss each proposed change, but am available to answer questions and to provide clarity regarding what may be unintended consequences produced by the changes.



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SHANNON C. OURY†
JASON B. LONG
EMILY A. DONALDSON

RICHARD B. STEVENS
1899--1991

JOHN W. BRAND
1907-1971

*ADMITTED IN KANSAS AND MISSOURI
†ADMITTED IN KANSAS AND COLORADO

March 7, 2006

Via Facsimile and U.S. Mail

Representative Donald Dahl
Kansas House of Representatives
Chairman – Commerce and Labor Committee
Kansas State Capitol – Room 128-S
Topeka KS 66612

Re: Senate Bill 380

Dear Representative Dahl:

I am pleased to be writing to you on behalf of Lawrence Apartments Association, Inc. (the "**LAA**"). The LAA is comprised of more than twenty different apartment owners who collectively represent more than 2,800 rental units in Lawrence.

The members of the LAA have met to review and discuss Senate Bill 380 ("**SB 380**") and the potential ramifications which will result if this bill becomes law. Unfortunately, given the rapid pace of SB 380, LAA members have not been able to fully review and consider all of the potential problems SB 380 would create if enacted. Notwithstanding the quick pace SB 380 has enjoyed in the Kansas Senate, LAA members have, however, been able to identify significant and numerous problems such that the LAA has voted **unanimously to oppose Senate Bill 380**.

The LAA's opposition to SB 380 is based on issues such as:

1. **SB 380 Will Make Renting More Expensive**.

A. Pre-Termination Inspection. To comply with SB 380, Landlords will likely have to increase their staff size in order to satisfy the onerous inspection provisions. Even in complexes of modest size, the pre-termination inspection scheduling would consume a substantial amount of staff time. As a result of the increased staffing necessary to comply with SB 380, **tenants would see additional rent increases** to cover the additional Landlord expense. Moreover, even though a pre-termination inspection has been

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completed, tenants will remain in possession of their units and still must thereafter return the unit to its lease commencement condition. As a result, **great effort and additional expense would be incurred for essentially no benefit**.

B. Security Deposit. Because of market pressures, Landlords have responded to Tenant's demands including the advent of minimal security deposits. SB 380 requirements regarding applying portions of the security deposit only after separately invoicing items in excess of 5% of the security deposit will encourage Landlords to **increase security deposits making the commencement of a rental arrangement more expensive for tenants**.

2. **SB 380 Imposes Substantial Obligations on All Landlords Throughout Kansas**. The LAA understands the proponents of SB 380 are primarily comprised of students at the University of Kansas. The LAA understands some examples of landlord overreaching have been alleged. However, much of the alleged difficulties would likely be overcome if the adults entering into these arrangements spent additional time educating themselves with regard to their rights and responsibilities. In any event, **SB 380 is a statewide solution which will dramatically revise the Kansas Residential Landlord and Tenant Act**. If changes to the Kansas Residential Landlord and Tenant Act are necessary, industry organizations together with tenant groups should spend time meeting to work on balanced legislative solutions.

3. **Passage of SB 380 Would be a Pyrrhic Victory for Tenants**. SB 380 would not improve a typical tenant's rental arrangements. In most studies analyzing tenant rental decisions, **price is the most important element in a tenant's rental decision**. As previously stated, Landlords (many who see extremely thin and falling profit margins) will pass through to tenants the costs of complying with SB 380. As a result SB 380 would be a "victory" for tenants in name only; the practical effect would result in **sharp increases in both rent and security deposits for tenants**.

4. **Current Law is Well-Settled and Balances Landlord and Tenant Rights**. The Kansas Residential Landlord and Tenant Act became law in 1975. Over 30 years later that legislation has produced very few reported case decisions. The lack of numerous reported case decisions is a testament to how well-drafted our law is and how well landlords and tenants understand their respective rights and obligations. Our statutes governing landlord/tenant relationships are generally considered well balanced and closely resemble the original model landlord and tenant act. SB 380 is a troubling attempt to revise well-settled law and, unfortunately, **would likely increase litigation as landlords and tenants seek to understand and apply its provisions**.

LAA members are responsible landlords in a very competitive industry driven by strong and swift market forces. No tenant is forced into a rental arrangement against their will. As all adults do each day, tenants must make informed decisions regarding their contractual rights and obligations. The issues SB 380 appears to be addressing are currently influenced by tenants when tenants utilize the existing powerful market forces and simply choose the rental arrangements which are governed by the most favorable rental contracts. SB 380 if enacted, however, will impose significant burdens and costs on landlords throughout the state and all Kansas tenants will pay the cost.

The LAA respectfully opposes Senate Bill 380 and urges you to do the same.

Very truly yours,
STEVENS & BRAND, L.L.P.

Matthew H. Hoy
mhoy@stevensbrand.com

MHH:cc

Testimony for Martin Moore RE: Senate Bill 380
March 9, 2006

Good Morning!

My name is Martin Moore. I've been the apartment business for almost 25 years, and my family has been involved with multi-family properties for 40 years. We currently own and manage of hundreds of Kansas apartments.

We are opposed to this bill because it unfairly penalizes 100% of Kansas Landlords for the actions of a few. This Bill would require every Kansas Landlord to increase time spent conducting apartment surveys by 50%. The end result would be increased rents and security deposits for all Kansas tenants. We believe that if a minority of Kansas Landlords are the problem, separate legislation should be drafted that **only** penalizes those Landlords, and not 100% of Kansas Landlords.

We have many concerns about the practical application of the legislation, and are not convinced the proposed pre-move out inspection would accomplish its intended effect. Imagine you are a single manager of an apartment complex, approaching the busiest time of the year. Your time is spent marketing apartments to prospective tenants, fielding telephone calls for maintenance and make-readies, collecting rents and preparing bank deposits, preparing various operating reports, and checking tenants in and out of their residences. **Asking this individual to arrange and conduct a number of additional inspections is unfair….especially because……..**

Often it is impossible to accurately assess the condition of the apartment until it is completely vacant. People have moving boxes and belongings scattered across their apartments. Their furniture and electrical equipment cover the floors. When they move out the walls and doors are frequently banged and rubbed against. Not only will the pre-move-out inventory will tend to be inaccurate when its taken, it won't reflect the ultimate "move-out" condition…..the tenant is in control of the apartment until the "official" move-out inventory occurs.

There are many unforeseen complications with enforcing this bill.
How will subleases be handled? Will the return of security deposits be delayed due to these additional requirements? Will Landlords start using more expensive subcontractors because of the difficulties in using in-house labor and recovering costs? It appears the proposed legislation could result in increased litigation between landlords and tenants.

This legislation has the potential for lots of aggravation without achieving the intended results. Please do NOT pass this bill. If a small percentage of Kansas landlords are improperly charging tenants for cleaning and damages, then it seems more appropriate to create legislation that penalizes those few, instead of penalizing all Kansas landlords.

Thank you for your time,

Martin Moore

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TESTIMONY OF
ALICIA SMILEY
TO THE
HOUSE COMMERCE AND LABOR COMMITTEE
ON SENATE BILL NO. 380

March 9, 2006

Chairman Dahl, and Members of the House Commerce and Labor Committee:

My name is Alicia Smiley and I have been in property management for 13 years. I feel with my experience, I have an excellent idea of what is fair to residents and landlords.

While every effort is made to conduct a move-in inspection, on occasion for whatever reason, a move-in is not conducted. In those instances a tenant who receives a property in good condition could cause extensive damage to a unit without consequence.

The amount of time and cost that would be involved in inspecting apartments twice at move-out is just not feasible. It would require additional manpower and ultimately result in increased rental rates. Increased rental rates are not in the best interest of the tenants.

The current law already protects the tenants with a move in and a move out inspection. Most landlords also have an addendum to the lease stating what is required to be done in order to get the deposit refunded. Adding an additional move out inspection days before the scheduled move out offers no benefit. Tenants could do additional damage or create other charges after the initial inspection while moving furniture, etc out of the units and then be surprised at the charges. It could create a free for all for the tenants when moving out, where they would have little or no concern for the property.

I would also like to testify that changing the time of refund from 30 days to 21 days would also require additional manpower. The current 30 day time frame is already difficult to meet when waiting on vendors or sub-contractors for invoices and bids. Shortening that time frame to 21 days will create an enormous hardship to the landlords.

I strongly disagree with the proposal which would require providing invoices as well as itemizing deductions with actual costs of supplies and labor because it is too time consuming. Many of the items we charge for are repeat items such as blinds and drip pans. Based upon our experience, we know how long it takes to hang the average blind or how long it takes to change out drip pans. If we have to itemize these charges and provide copies of receipts, instead of working off a charge list, not only will this be too time consuming, but the labor costs will be passed on to the tenants.

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Again, most landlords have written policies, which are provided to and agreed to by the tenant prior to move in, stating what the most common damage/cleaning items cost. The tenants know before hand the costs of damage or cleaning and therefore should have an idea of what costs will be and do not have to wait to see what the charges come out to be. Knowing these charges before hand also provides an incentive for the tenant to return the unit in good repair – just as it was when they moved in.

These additional steps will create further time constraints for preparing the apartment for the next tenant; result in increased overhead and operation costs to the Landlord; higher rents; and good tenants paying for the actions of bad tenants.

Thank you for your consideration.

Gary Hefley

From: "Gary Hefley" <ghefley@cox.net>
Sent: Wednesday, March 08, 2006 8:47 PM
Subject: Fw: SB380

Sent: Wednesday, March 08, 2006 4:56 PM
Subject: SB380

From: Gary & Gayla Hefley
367 N. Brunswick St.
Wichita, Ks. 67212

To: Chairman of the Commerce and Labor Committee
The Honorable Donald Dahl
and all members of that committee

I understand the Senate has passed a bill that would change existing Kansas Landlord/Tenant Law. Re:Senate Bill SB380. My understanding is that these changes were requested by a group of students from KU in Lawrence, Ks. that feel they have been wronged by their landlords. This bill is now being reviewed by your committee for consideration by the House.

Mr. Chairman and committee members, I do not support this bill as passed by the Senate, for the following reasons.

If passed as it reads now it would require Ks. landlords to do the following.

1. Ref. Pg.1, lines 25/30 If the landlord doesn't do the move-in inspection within the 5 days (which is now required by present law) the landlord would forfeit any chance of recovering damages in court at move out.

As you can see, this could be a disaster to a landlord who for some reason was unable to do an inspection during the 5 days. It would allow tenants to destroy the property, without the landlord having any right to recovery of damages. I have had a few tenants refuse to sign a move in inspection sheet.

2. Ref. Pg. 1 lines 36/43, Pg. 2 lines 1/35 A pre-termination inspection may be required, if requested by the tenant. This inspection would require a itemized list of **cleaning** deficiencies that may result in money being withheld from their security deposit.

As a landlord I think a pre-termination inspection, to inform the tenants of potential move out charges, and give them a copy of the move in inspection list, is a great idea. We presently request our tenants allow these type inspection, prior to moving. However this only addresses cleaning charges, and not damages, the word **repairs** has been removed from the wording. Should the landlord not inform the tenant of repairs they will be charged for? Tenants are cleaver at covering up damages to property on pre-termination inspections. They hang mirrors over damaged doors, pictures or posters over holed in walls. Would these damages be recoverable if not on the move out inspection list?

3. Ref. Pg. 4 lines 1/12 If deductions exceed 5% of the security deposit, the landlord must provide "invoices which document the actual cost, or actual cost estimates and quotes of material, supplies and labor.

This would mean that if a landlord withheld more than $10.00 for damages from a $200.00 deposit, he would be required to get an estimate from some contractor to install 4 lightbulbs, and send a copy to the ex-tenant. As

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you can see this would not only be a burden on the landlord, but would add cost to the tenants damages. Many landlords have their own maintenance crew for clean up, and make readies. Would these landlords make up their own estimates? **I don't think the students want this.**

4. Skip to Pg. 5 lines 21/33 If a lease contains an automatic renewal clause, it must be on a separate piece of paper with a separate signature, and must be explained in detail by the landlord. In addition the landlord **must** notify the tenant in writing 30 to 60 days prior to the end of the lease that this clause, calling it to their attention.

As a landlord I guess I could live with another piece of paper in every lease, but to notify a tenant on a lease that is automatically renewable for 30 days at the end of a one year lease could run into a real hassle for the landlord. I've had a tenant live in the same unit for over 20 years, when the original lease was for 1 year, with an automatic renewal to continue in 30 day increments. Would I have to notify this tenant every month for the 20 years? What has happened to personable responsibility? Are collage students not capable of reading and understanding what they sign?

5. Back to Pg. 4 lines 13/16 If the landlord fails to comply with any of the above, the tenant **shall** recover the deposit, **plus** an amount equal to two months rent.

How is this in any way fair to a landlord trying his best to provide affordable housing? When we talk to Legislators or tenants about our business, they all want to talk about **"quality affordable housing"**. How are any of these changes to the law going to achieve that goal? There are only two ways a landlord can recover money from a highly taxed business, and those are, **to raise rents, or defer maintenance**. As you know neither of these will work to enhance the quality, or affordability of Kansas housing.

I thank the committee for allowing me to convey my concerns. I hope you and your House colleges will decide this change would be a bad change to a good law.

Gary Hefley
Wichita

February 9, 2006

Good morning Chairman Dahl and honorable members of the Commerce and Labor Committee. My name is Clark Lindstrom. I live at 138 N. Prescott Ct., Wichita, Ks.

I appreciate the opportunity to appear before you today and speak in opposition to SB 380. I am a Certified Property Manager with the National Association of Realtors Institute of Real Estate Management. I am employed as a Regional Property Manager for The Peterson Companies, which is based in Shawnee Mission, Ks. We own and manage over 3800 apartment homes in Kansas City, Lawrence, Topeka, Emporia and Wichita. I also represent the Apartment Association of Greater Wichita, which consists of over 150 members who manage approximately 10,000 apartment homes in that City.

I believe SB 380 adversely amends the Kansas Landlord Tenant Act. This proposed bill is poor public policy because it was prepared and submitted by the University of Kansas Student Legislative Awareness Board based on academics and not any real concerns or legal challenges by your respective constituents, concerned tenants, or other groups representing tenants against landlords. There were no Senate sponsors either.

The amended wording in paragraph (b), lines 25 through 30, on page one, presumes the tenant who is moving in to a rental dwelling will cooperate with the move in inspection and this amendment would negatively impact landlords if they are not able to get a tenant to sign off on a form, move in condition inventory document, or if there is refusal to do so. We, who operate in the real world of leasing rentals, continually experience tenants who are more focused on getting their personal property moved in than doing necessary paperwork during and after the date of occupancy or possession. This amendment potentially would unjustly reward those tenants who defraud a landlord out of the last month's rent, cause physical damage to the rental space beyond the cost to restore the unit, or who just skips out without the statute required 30 days written notice.

The amended wording in paragraph (c), lines 36 through 43, and line 1 through 32, on the second page, will complicate an existing process for both tenants and landlords and it simply is not workable. I am not aware of any neighboring state that has this type of "pre-termination" inspection. It is already the right of every tenant to request a move out inspection with the landlord. I hope the committee realizes that many, if not most, of vacating residents may already have their mail forwarded and would not receive mailed notification of the tenant's right to the pre-termination inspection. Placing notices on the door of the apartment may not constitute legal service or sufficient notification. This amendment assumes both parties are going to be cooperative and available to perform this additional duty. The term "pre-termination inspection" needs to be clearly defined. In the daily operations of multi-family property management, the existing process of accommodating responsible and concerned tenant's requests to perform a move out condition inspection generally works well. You should also understand that this effort, by its nature and based upon my 25 years in the Multi-Family Management Industry, is sometimes very confrontational and causes notable conflict if there is disagreement about the tenant's perceived definition of the move in/move out rental condition when compared to the landlord's. I respectfully submit to the members of this Committee that my definition of a "reasonably" cleaned apartment, after being occupied for periods of months or years, may be significantly opposite from each of yours. These amendments

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statutorily expect the landlord to give 48 hours prior "written notice" of the date an inspection is going to occur. I believe this is unreasonable and simply does not work in the majority of situations where a tenant just wants to leave and the landlord just wants possession as quickly as possible so the rental can be made ready for the next occupant. I'm here to tell you the truth that even when a vacated tenant is given the opportunity to rectify "cleaning deficiencies;" their minds, possessions, and interests are focused on where they have moved and the work, most often, does not get done. In my personal experiences, some have expressed the desire to correct move out condition deficiencies, but most all do not return to do so in the timeframe that is often necessary to be able to have the rental available for the next tenant, because, in many, if not most instances, this inspection is presently being done on or closely after the last day of tenancy. Even if they do return in an attempt to avoid deductions from the security deposit, this does not insure or secure that there will not still be deductions from the security deposit for costs to achieve the respective landlord's level of expectations, much less the same level of cleanliness the unit was in at the initial date of occupancy or upon delivery of possession.

These proposed amendments simply do not fix what is being assumed to be broken. Specifically, lines 18 through 25, on page two, are quite obviously written by someone that doesn't know what they are talking about nor is there an understanding of how the existing statues work. It is not reasonable to expect a landlord or any designated agent to provide an itemized written statement, on the spot, identifying all possible deficiencies that may result in a deduction from the security deposit, but you can bet the vacating tenant will expect this to be definitive. As other experienced landlords will tell you, many times, some of the above normal wear and tear damages to carpet, appliances, fixtures, and elsewhere in the rental dwelling, are not discovered until the make ready process commences. One example; pet damage, unless it is obviously on the surface of the fabric, will not present itself until cleaning. It makes no sense whatsoever to leave a copy of the pre-termination inspection itemized statement inside the premises if the tenant has already vacated or given possession of the rental. There is also the legal question begging to be answered as to whether doing so provides proper legal process of service or notification to the tenant. This, quite simply, is a waste of time, money, and effort.

I conclude my testimony today by stating that the existing Landlord Tenant Act already provides for a proper balance of protection for the both the landlord and tenant. The Senate Judiciary Committee allowed these flawed amendments to pass out of committee and onto the Senate floor without testimony from tenants stating there is a problem to be fixed. Relying upon the drafted wording provided by an unknown number of quasi legal individuals from the University of Kansas Student Legislative Awareness Board to amend Kansas State Statutes because they might believe "it's a good thing" is, in reality and all practicality, not. I respectfully request no favorable action be taken on this legislation. It's bad for the State's landlords and, in my opinion, will not achieve what is sought to be accomplished for tenants. Thank you for the opportunity to provide testimony today. I am will attempt to answer any questions the Chairman or Members of the Committee may have.

Peterson

Testimony on SB 380
Commerce and Labor Committee

My name is Patrick DeLapp, I'm a landlord and have been for close to 20 years.

In short I'm against this Senate Bill #380, for many reasons. Those reasons are outlined below

1. Under the bill a landlord could not make a claim against the Damage deposit unless a move-in inspection was completed within 5 days of possession by the occupant.

   Currently, the 3rd District Court of the state of Kansas follow this reasoning of not allowing deduction of minor damage if one does not have a move-in inspection. However, for major damage they don't require it.

   In some cases there is no question the damage was caused by the tenant. The house is trashed, holes in walls spray paint on walls and ceiling, etc. The courts properly award damages even if no move-in inspection was performed.

   When I was in College myself I remember going to a party which was an "open" party. Meaning, signs were put up and eveybody was welcome. What popular right now is pay parties in which for a small charge you can drink the beer that is provided from a Keg. At that one part I went to they were so many people that the floor collapsed into the basement.

   If bill had become law back then the poor landlord could not collect from the tenant for the collapsed floor because a move-in inspection was not done. That nonsense and the landlord should be able to make a claim against the tenant.

2. I would also be required to give the tenant a written notice of a right to a pre-termination of cleaning charges that maybe applied to the deposit.

   Sorry Guys the most I could say and see with all the furniture there is to leave the house as clean as you found it, less normal where and tear. Should I give them an estimate on my moving all the furniture, cleaning stove and refrigerator. That stuff is there, and it has to be dealt with one way or the other.

   What about smoke damage to the unit from cigarette smoke, incense, or an unopen flue on a gas fireplace? These can't be seen unless pictures are down and the soot area in the form of an outline.

3. If 5% or more is deducted form the security deposit one must provide actual estimate and

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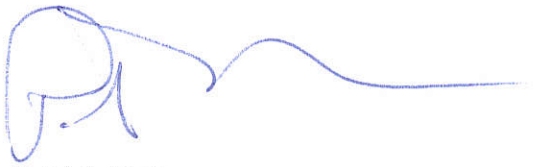
quotes of materials supplies and labor. The security deposit in Kansas unless on has a pet or the unit is furnished is held at one rent or less. The work involve in providing this information is a lot and would eat up the deposit in a hurry providing this information.

If the charges are unreasonable it can be challenged but just take a look at what it cost to get work done around your own house when you have to hire a professional to do it.

If I fail to do what this bill say's I have to pay back the security deposit and an additional 2 months rent. WHAT NONSENSE !!

Committee member please kill this bill. It is bad law and will cause a lot more problems in renting out homes.



Patrick DeLapp
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Topeka, KS 66604
(785)357-6007

TESTIMONY OF
BRANDY L. SUTTON
TO THE
HOUSE COMMERCE AND LABOR COMMITTEE
ON SENATE BILL NO. 380

March 9, 2006

Chairman Dahl, and Members of House Commerce and Labor Committee:

Thank you for the opportunity to present remarks on Senate Bill 380 regarding the Kansas Landlord Tenant Act and Security Deposits.

The Kansas Residential Landlord Tenant Act is modeled upon the Uniform Residential Landlord Tenant Act which has been adopted in numerous states. This act was drafted by the National Conference of Commissioners on Uniform State Laws and adopted in 1975 in Kansas with the goal of balancing the Landlord-Tenant relationship.

Senate Bill 380 seeks to skew what was designed to be a fair and balanced act. The first change is to 58-2548(b) which currently requires that a joint inventory be conducted within five days of move-in. Although there is not a stated penalty for failure to conduct a move-in inventory, the Kansas Court's have held that the absence of an inventory does not preclude damages. However, it shifts the burden of proof to the Landlord to prove that the damages did not exist at the time of move in. Senate Bill 380 would create a mandatory penalty of two months rent for any Landlord who fails to conduct a move in inspection if they withhold any funds whatsoever from a security deposit. If passed without an inventory a Tenant would have no impetuous to keep a unit in good repair. The tenant could virtually destroy the unit and still recover a windfall of two months rent from their landlord.

The next modification is to 58-2548(c) which seeks to create a new set of duties for the Landlord. These modifications place the Landlord in the position of parenting the Tenant and relieve the Tenant of virtually all responsibility in the contractual relationship. These modifications are poorly drafted and confusing; however, it appears that they seek to create a new "preliminary" move-out inspection where the Landlord is required to notify the tenant of their rights under the Landlord Tenant Act. The Landlord is then required to do a preliminary move-out inspection and advise the Tenant in writing of what should be done to repair any damages created during the tenancy.

Senate Bill 380 would also prohibit a Landlord from earning interest on a deposit "without the earnings benefiting the tenant" . This language leaves a large margin for interpretation and speculation as to what would "benefit" a tenant. One would speculate that this is an attempt to create mini-escrow accounts for each tenant's security deposit. Given that most security deposits are less than $750.00, this would create an accounting

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nightmare. In addition, there is nothing in the current act which prohibits a tenant from negotiating a "benefit" in their lease agreement.

The next set of changes is to the procedure for returning a security deposit to a tenant. First, it would shorten the time frame from thirty to twenty-one days. Next, it would require the landlord to include invoices for the materials and supplies to the tenant. The inclusion of these invoices is unreasonable for a laundry list of reasons the most striking of which is that most Landlords in an attempt to keep down costs (and ultimately rents) perform a large portion of the work themselves. This would deprive Landlords' of their "sweat equity".

While the proponents of Senate Bill 380 have in mind the protection of tenants, one of the unintended consequences will be increased rents. In order to comply with these new provisions, landlords will be forced to use outside labor for repairs and to hire additional staff. Finally there will always be those savvy tenants who are able to use these modifications as a tool to avoid paying damage to a property and to recover a windfall from a Landlord, resulting in the costs of repairs no longer being placed upon the tenant causing the damage but rather passed on to subsequent tenants. This bill may be aimed at helping the tenant, but instead would only cause more problems, additional cost and inconvenience for all those involved.

I respectfully request consider my remarks as you work your way through this issue and reject Senate Bill 380.

Thank you again for your time and consideration.

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Testimony for SB 380 before Commerce and Labor Committee, 03/09/06
Louise Kirkpatrick, Housing and Credit Counseling, Inc. – Neutral position

HCCI assists both Landlords and Tenants in the prevention and resolution of landlord-tenant problems. We assist over 3000 Kansans a year in counseling and education programs and also publish the Kansas Tenants Handbook, the Kansas Landlord's Handbook and other Tenant-landlord publications. So, our testimony is "Neutral" because we do not favor one side or the other, we see both sides of issues, and we also see that there can be unintended unfavorable consequences, with the best of intentions, when attempts are made to solve limited issues with broad solutions.

KSA 58-2548, Move-in Inventory – a written inventory within 5 days of move in is currently required by the law. It is a good protection for both landlords and tenants. Proposed changes "muddy" this clear mandate by discussing an "out" if a "good faith effort is made, these changes do not provide a remedy for a tenant who sign move-in inventories with which they do not agree, and it is unlikely the courts would be willing to deny landlords damages solely because the inventory was not completed.
RECOMMENDATION: No Change

KSA 58-2548, proposed addition Pre-Termination Inspection There certainly are issues where apartment complexes and other landlords attempt to use standard lists of charges that seem excessive and are billed to people after they move out (of town), making recourse difficult. KSA 58-2550 now says that the security deposit can be retained for "…..damages….itemized…." Whereas the original proposed amendment was broadly stated regarding pre-termination inspection for all damages, it now refers only to regarding cleaning charges. Though it is well-intended, there is no way, on a mass basis, that this provision will help most tenants. **RECOMMENDATION: Do not add the Pre-Termination Inspection language to the KRLTA**

General Observation: Service of Notices causes problems – Many tenant-landlord conflicts are based on proper notification. Proposed amendments greatly increase the number and time of notifications, greatly increasing chance for breakdown in communications, lost notices, and disputes regarding receipt of notices. **RECOMMENDATION: Avoid adding additional notice requirements to landlords and tenants if at all possible.**

KSA 58-2550(c): Security Deposit Return in 30 days – 30 days to return is currently required by law, the 14 day requirement within it is confusing and rarely used. Proposed changes simplify the law by eliminating the 14-day discussion, they are much clearer and align with court decisions.
RECOMMENDATION: Wording as proposed.

KSA 58-2550(b): Allowable Deductions from Security Deposits – After proposed changes, amendments and counter-amendments, the new language basically says exactly what the old language said, though possibly slightly better stated. **RECOMMENDATION: Either the old language or the new language are fine.**

KSA 58-2550(c): Documentation of Actual Damages – The law currently requires an itemized list of deductions. Currently, if a landlord tries to withhold unreasonably, a tenant has the opportunity to challenge the landlord directly and/or to go to Small Claims Court. The law allows landlords to charge what is "reasonable", and does not address when or whether the work gets done. The proposed language seeks to require copies of statements or quotes. Such a requirement could result in hopeless amounts of paperwork and confusion, to no gain for tenants. **RECOMMENDATION: Either add no language, or add limited language that prohibits using predetermined cost lists and clarifies that landlords will not charge tenants any more than ACTUAL damages.**

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KSA 58-2550(d): Penalties to Landlords for Non-Return of Security Deposits – Currently the law provides that a judge MAY assess a penalty of 1 ½ times the amount due if a landlord has failed to return a security deposit, or return it timely, and the tenant goes to court to get it. This penalty is sometimes awarded, but is certainly diminished if the amount of money in question is not great. The proposed language seeks to not only increase the amount to twice the rent instead of twice the amount due, but also seeks to make the award automatic by saying SHALL. Assuming the intent of the proponents is to get timely and fair settlements directly between landlords and tenants, the change to the word SHALL should motivate more landlords for the desired change. Having the penalty tied to the amount of the rent instead of the amount due seems like a good idea at first, but it does not envision the wide variety of situations that might exist. **RECOMMENDATION: It would seem that changing the word MAY to SHALL, while leaving the rest of the language in the section the same, will accomplish the desired intent.**

KSA 58-2570: Termination of lease, automatic renewal clauses - The KRLTA currently does not address this issue. In many college communities, the practice is to have simple one-year leases (without renewal clauses) that run from August through July, then offer leases for the next year starting in January (forcing the conscious choice of whether to renew, or otherwise knowing that the lease will definitely end because the unit has been rerented, well in advance of the summer). The proposed language seeks to solve the early renewal problem legislatively. Perhaps a better solution would be to change the practice in Kansas' college towns. **RECOMMENDATION: If Kansas chooses to address this issue at all in the law, the state should simply add language to this section that limits automatic renewal clauses to no more than 60 days before the end of the lease. There should be no additional language regarding notices by and to either party.**

Senate Bill 380 - An Act concerning the residential landlord and tenant act; amending KSA 58-2548 and 58-2570 and repealing the existing sections

Rental description under current law:
(for this example, lease is one-year, beginning Aug. 1 and ending July 31.

Date	Tenancy Activity	Landlord Responsibility	Tenant Responsibility
Before Aug.1	Tenant looking for unit, Landlord showing unit, Application presented.	Provide application; screen applicants; rent to first qualifying applicant; disclose any special agreements, restrictions, provisions. Notify applicant accepted/denied.	Know what is needed & can afford; Look at unit before applying; Provide complete, accurate information on application.
Aug 1	1 Yr. Lease begins	Complete lease w/ tenancy information; Give Tenant copy of lease; Deliver unit in compliance with lease terms, state law, city code	Read lease, ask questions if any, sign lease, Accept unit, pay rent, pay security deposit
Aug 1 – Aug 5	Move-In Inventory – do together, written record, both sign, both have copy	Conduct inventory with Tenant,	Participate in Move-In inventory with Landlord
Tenancy	**Ending, No renewal**	**Tenant will vacate, Return**	**possession.**
July 1 or earlier	Notice of intent to terminate by Tenant or Landlord	LL to terminate, notify Tenant on or before rent due date, OR # of days stated in lease.	T to terminate, notify Landlord on or before rent due date, OR # of days stated in lease.
July 31	End of lease.		Tenant to have vacated, cleaned unit, returned possession (keys) of unit in as good a condition as when received, except for normal wear and tear.
July 31 – End of August	Tenancy ended	Landlord to inspect unit, determine damages if any attributable to tenancy, determine amount of security deposit to return to Tenant.	
Aug 31	End of 30 days allowed to determine damages and return security deposit or itemized list	Landlord to return security deposit or itemized list of damages/amounts withheld in no event to exceed 30 days after return of possession.	
Aug 31 or after	Security deposit or itemized list forwarded by LL, received by T	Landlord returns security deposit, itemized list, and/or bill for damages.	Tenant receives, if does not agree, can challenge through communication and/or court action.

Rental description *AS AMENDED*:
(for this example, lease is one-yr, beginning Aug. 1, ending July 31)

Date	Tenancy Activity	Landlord Responsibility	Tenant Responsibility
Before Aug.1	Tenant looking for unit, Landlord showing unit, Application presented.	Provide application; screen applicants; rent to first qualifying applicant; disclose any special agreements, restrictions, provisions.	Know what need & can afford; Look at unit before applying; Provide complete, accurate information on application.
Aug 1	1 Yr. Lease begins	Present lease w/ tenancy information; Deliver unit in compliance with lease terms, state law, city code	Read lease, ask questions if any, sign lease, Accept unit, pay rent, pay security deposit
Aug 1 – Aug 5	Move-In Inventory: do together, written record, both sign, both have copy – *or make good faith effort to conduct within first 5 days.*	Conduct inventory with Tenant	Participate in Move-In inventory with Landlord
Tenancy	**Ending, No renewal**	**Tenant will vacate, Return**	**possession.**
July 1 or earlier	At least one full rent period before end of lease term	Notify Tenant on or before rent due date, OR # of days stated in lease.	Notify Landlord on or before rent due date, OR # of days stated in lease.
Reasonable time after notification of intent to terminate & before end of lease	*Pre-termination inspection notification timeframe*	*LL to notify, in writing: T may request pre-termination inspection, T may be present during inspection.*	*T must request pre-termination inspection*
After receipt of request for pre-term inspection		*LL to contact T re mutually agreed upon time to schedule Pre-termination inspection*	*T to respond to LL re mutually agreed upon time to schedule Pre-termination inspection*
Sometime after request for Pre-T inspection		*If request withdrawn, no inspection.*	*Tenant may withdraw request for Pre-termination inspection.*

At least 48 hrs. prior to pre-term inspection	*No mutually agreed upon date, time for Pre-termination inspection.*	*LL to schedule Pre-termination inspection, provide written notice of date, time.*	*Tenant still requests pre-termination inspection*
July 1 – July 24	*Pre-termination inspection conducted.*	*LL to inspect unit, identify cleaning deficiencies that may be charged from Security Deposit, present itemized statement to Tenant listing deficiencies and cleaning may be charged to security deposit. Give to T or leave inside premises.*	*T may be present or may choose to have LL conduct inspection w/o Ts presence.*
7/1 – 7/31, After Pre-termination inspection, before lease termination	*Lease to terminate*		*T has opportunity to remedy identified cleaning deficiencies*
July 31	End of lease.		Tenant to have vacated, cleaned unit, returned possession (keys) in as good a condition as when received, except for normal wear and tear.
July 31 – End of August	Tenancy ended – 30 days to determine damages, return security deposit or itemized list	Landlord to inspect unit, determine damages attributable to tenancy; determine amount of security deposit to return to Tenant.	
Before Aug 31	End of 30 days, Security deposit or itemized list forwarded	Landlord returns security deposit, itemized list and remainder of security deposit, or itemized list and bill if damages more than security deposit.	Tenant receives full security deposit, itemized list of damages and, remainder of security deposit or bill; if does not agree, can challenge through communication and/or court action.
Aug 31 or after	No lease, tenancy terminated.	If Tenant owes Landlord for damages, correspondence and/or court action.	If Landlord owes Tenant refund of security deposit, correspondence and/or court action; *T may pursue amount wrongfully withheld plus two times the monthly rent*

KSA 58-2570, Termination of tenancy; lease renewal
Rental description under current law:
(for this example, lease is one-year, beginning Aug. 1 and ending July 31.

Date	Tenancy Activity	Landlord Responsibility	Tenant Responsibility
Before Aug. 1	Application, screening process	Tenant accepted; deliver lease with completed terms, including renewal language if practice.	Read and understand lease, be sure information complete, ask questions if have any; Sign lease.
On or before Aug. 1	Tenant accepted, lease offered.	Deliver lease with completed terms, including renewal language if practice.	Read and understand lease, be sure information complete, ask questions if have any; Sign lease.
Aug 1	1 yr. Lease begins	Deliver unit in compliance with lease terms, KS law, city ordinances.	Accept unit, pay rent in full
July 1 or before	Auto renewal, month to month	Written notice to Tenant on or before July 1 if do not intend to renew; no notice, lease becomes month-to-month	Written notice to Landlord on or before July 1 if do not intend to renew; no notice, lease becomes month-to-month.
# of days stated in lease	Auto renewal for term	Written notice to Tenant on or before # of days stated in lease if do not intend to renew lease; no notice, lease renews for term.	Written notice to Landlord on or before # of days stated in lease if Do Not intend to renew; no notice, lease renews for term.
July 1 or before	Lease begins Aug. 1 ends July 31, no renewal language.	LL establishes "way of doing business," can send renewal applications when chooses. If not signed by Tenant, can begin showing unit after giving proper notice. Written notice delivered on or before July 1 if does not plan to renew lease.	Tenant can choose to renew lease when receives renewal info, can choose to wait. Must allow Landlord access to show unit after receiving proper notice.
July 31	End of lease.	If lease renewed, continue under current or updated lease terms.	If lease renewed, continue under lease terms; if lease not renewed; process of vacating, returning possession.

KSA 58-2570, Termination of tenancy; lease renewal
Rental description *AS AMENDED*:
(for this example, lease is one-yr, beginning Aug. 1, ending July 31)

Date	Tenancy Activity	Landlord Responsibility	Tenant Responsibility
Before Aug. 1	Application, screening process	Provide application; screen applicants; rent to first qualifying applicant; disclose any special agreements, restrictions, provisions. Notify applicant accepted/denied.	Know what need & can afford; Look at unit before applying; Provide complete, accurate information on application.
On or before Aug. 1	Tenant accepted, lease offered.	Deliver lease with completed terms, including renewal language if practice.	Read and understand lease, be sure information complete, ask questions if have any; Sign lease.
Aug 1	1 yr. tenancy begins	Deliver unit in compliance with lease terms, KS law, city ordinances.	Sign lease in agreement to terms; Accept unit; Pay rent in full
30 – 60 days before # of days stated in lease	Auto renewal language in lease; renew for term.	*Deliver written notice to Tenant calling attention to auto renew clause.*	*Receive letter re auto renewal clause.*
Before # of days stated in lease (up to 90 days)			*Written notice to Landlord if do not plan to renew lease.*
Up to 90 days before end of lease term	Auto renewal language in lease. **shall be on separate page of rental agreement *Tenant must sign page w/ renewal statement*	*Call attention to Auto-renew clause in lease.*	*Will read and understand auto renewal clause before signing rental agreement.*

TESTIMONY IN OPPOSITION TO SENATE BILL 461

BY
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March 7, 2006

Thank you Chairman Dahl and Members of the Committee. My name is Jeff K. Cooper, and I practice law here in Topeka, Kansas. I am also an Adjunct Professor of Law at Washburn University School of Law and have taught workers compensation for approximately 14 years. I am also a Pro Tem Appeals Board Judge which means I fill in when one of the Board Members has a conflict or is unavailable. I also represent injured workers, as well as defending claims for self-insured employers, such as the City of Topeka, Shawnee County, the State Self-Insurance Fund, and I also defend claims on behalf of insurance companies.

ECONOMIC REASONS

The current law in workers compensation contains an incentive for employers to return workers to work by providing that an employer only pays functional impairment if accommodated work is provided. Those workers who are returned to work with limitations and disabilities are not on equal footing with other workers in the State of Kansas when it comes to competing for jobs. The injured workers who are returned to accommodated positions have restrictions and disabilities that would preclude them from going out in the open labor market and competing on equal footing with individuals who do not have limitations and disabilities. It is important to keep in mind that those limitations and disabilities are the result of the work-related injury suffered by the injured worker. Senate Bill 461 would remove the incentive to return injured workers to work by allowing employers to evade work disability by claiming the injured worker was not returned to work or accommodated work was eliminated due to "economic reasons."

What constitutes an "economic reason?"

1. Would an employee be denied work disability for a career ending injury if because of mismanagement of the company such as Enron, the company goes out of business. Certainly, there is an economic reason for the worker not being provided accommodated employment.

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2. What about a situation where the head of the corporation loots the company, such as happened with Weststar, and stock prices go down? Certainly, there would be an economic reason to terminate an injured worker.

3. How about if gasoline goes up over a $1.00 a gallon, and due to the increased costs the company is less profitable? Certainly, that would be an economic reason to make changes in the company.

4. Suppose a company wants to make more money, and decides to cut positions and eliminates the accommodated job of an injured worker. Certainly, that would be an economic reason to no longer provide accommodated work for an injured worker.

There are no definitions of an "economic reason" in the Bill, and certainly all of these situations I mentioned do occur in the employment arena. When there is any type of economic reason, generally an injured employee would be the first to go. Certainly, someone who is working in an accommodated position may be less desirable than someone who has no limitations and may be perceived to be a greater risk.

This **vague** language of "economic reason" would encourage employers to manipulate the system and does away with the incentive to return workers to accommodated work.

In summary, the economic reason language is so vague and ambiguous that it could mark the end of work disability benefits.

VOLUNTARY AND FOR CAUSE

The current law disqualifies a worker from receiving work disability if they voluntarily leave their job or choose not to return to an accommodated position. However, the key is whether the termination is truly voluntary or not. Those workers who voluntarily leave their accommodated position for whatever reason, again, are at a disadvantage compared to other workers in competing for jobs in the open labor market. A worker who is terminated for cause, who has not made a "good faith" effort to retain employment is denied benefits under current Kansas law, as well. The law in this area is well-settled and there is no need to add the language with regard to voluntary and for cause separations.

PREEXISTING CONDITIONS

Mr. Ostrowski has testified extensively about preexisting conditions; however, I wanted to bring to the Committee's attention that my office performed a Westlaw Word Search using the words "preexisting impairment" for the year 2005. There were a total of 23 Appeals Board cases that mentioned the words "preexisting impairment." I reviewed each of those Decisions, and of the 23 cases from the Appeals Board, in five cases preexisting impairment was mentioned, but was not really an issue in the case. Of the 18 remaining cases, in 16 cases, the employer was given credit for preexisting impairment. In two cases, the Appeals Board denied credit for preexisting impairment.

Along the same lines, I am attaching a copy of the Honorable Bruce E. Moore's Testimony before this Committee on January 20, 2006. Judge Moore, in his testimony, stated that essentially the employer has no problem receiving appropriate credit for preexisting impairment assuming they come forward with some evidence as to the amount of impairment alleged to be preexisting relying upon objective facts and the *AMA Guides*.

Yesterday, Larry Karns, a proponent of Senate Bill 461, testified that it was difficult for employers to receive credit for preexisting impairment. However, a Westlaw Search of all cases handled by Larry Karns dealing with preexisting impairment revealed just the opposite. In six cases where Mr. Karns raised an issue of preexisting impairment he received credit from the Appeals Board in five of the six cases. In the sixth case he did not receive credit, because there was no evidence from any doctor as to the preexisting impairment.

Mr. Laskowski, who said it was virtually impossible to obtain preexisting credit, has argued the issue in front of the Appeals Board on two occasions, and on both cases received credit from the Appeals Board for preexisting impairment.

15-YEAR TASK LOSS

The 15-year task requirement for substantial and gainful employment adopted in 1993 was based upon the Social Security Administration's look back period of 15 years, and was felt that was a reasonable length of time to determine an injured worker's loss of task performing abilities. The shortened five-year task period would not accurately reflect an injured worker's past work history and would not accurately reflect the loss of task performing abilities sustained as a result of the injury and, therefore, the 15-year period should remain the same. Also shortening the time frame would discriminate against the worker who has "worked his way up" from the mail room, and the first 10 years that he worked for the company involved substantial manual labor, but the last five years was in a supervisory capacity.

Keep in mind we are dealing with cases that only involve the serious career-ending injury, and under the present law the employer can avoid work disability in total by simply returning an injured worker to work.

In summary, we believe Senate Bill 461 sets bad policy in the State of Kansas, and we would request this Committee oppose the same.

Testimony before the
House Commerce and Labor Committee
Hon. Bruce E. Moore, Administrative Law Judge

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January 20, 2006

Chairman Dahl and Members of the Committee:

Thank you for inviting me to appear today and address you regarding workers compensation issues. As you may recall, I am an administrative law judge, one of ten in the State of Kansas, charged with the responsibility of applying workers compensation law to decide pending claims. I am here, as I understand it, to provide you with some background information regarding the decision making processes in Workers Compensation proceedings, and to discuss the issues of pre-existing impairment or disability, with specific reference to the ***Hanson*** decision [**Hanson v. Logan U.S.D. 326, 28 Kan.App.2d 92, 11 P.3d 1184(Kan.App. 2000)**].

Workers Compensation Decision-Making, A Historical Perspective

Workers compensation legislation, both substantive and procedural, differs greatly from state to state. No two states are identical, although similarities often exist, and one state may look to another to see how unique issues have been addressed.

[The following history is drawn, in part, from a discussion of the historical development of Kansas workers compensation legislation found in the Kansas Bar Association's Workers Compensation Practice Manual, Second Edition, 1984.]

The decision-making process in Kansas has changed significantly since the first Workmen's Compensation Act. Originally, the Act envisioned a system of arbitration, through the appointment of outside arbitrators, to decide disputed claims. The arbitration statutes remained on the books until the 1974 revisions, although the practice of using arbitrators had significantly abated over the years leading up to the revisions. The Director of the Division of Workmen's compensation was originally known as the "commissioner," and it was the commissioner who decided disputed claims when those claims were not arbitrated. The commissioner was renamed the "Director" in 1961. I have been unable to determine exactly when, but sometime prior to 1961, workmen's compensation "examiners" were appointed to assist the commissioner in deciding claims. In 1980, the term "examiner" was changed to "administrative law judge (ALJ)."

The commissioner or director of Workmen's Compensation was empowered to review the decision of the examiner and, later, the ALJ, and affirm, modify or reverse an award of compensation previously entered. The commissioner or director was limited to the record compiled before the examiner or ALJ, but was not bound by any findings of fact or

conclusions of law reached by the lower tribunal. If a party was dissatisfied with the results of an appeal to the commissioner or director (on "director's review"), an appeal would then lie to the District Court in the county in which the claim arose. In 1987, the legislature revised this procedure to require the filing of a petition for judicial review, rather than a direct appeal to the District Court. Under the revised procedure, the District Court still conducted a ***de novo*** review of the record compiled before the ALJ, making its own findings of fact and conclusions of law, either affirming, modifying or reversing the award of the lower tribunals.

In 1993, there were significant revisions to the Workers Compensation Act, both substantively and procedurally. In lieu of appealing decisions of the administrative law judges to the director, a new appellate body was created, the Workers Compensation Appeals Board (WCAB), to hear those appeals. The WCAB stood essentially in the shoes of the director and the District Court under the prior system, conducting a "trial ***de novo***" on the record compiled before the ALJ. The WCAB is limited to the record compiled before the ALJ (the transcripts of depositions and court hearings, and documents or other exhibits admitted in those proceedings) but can make its own findings of fact and conclusions of law. If either party is dissatisfied with the review by the WCAB, an appeal may now be made directly to the Court of Appeals. The District Court has thus been excluded from the workers compensation decision-making process since 1993, other than to enforce judgments for compensation previously awarded but not paid.

The WCAB has limited jurisdiction to hear appeals from preliminary hearings, primarily limited to jurisdictional issues or issues dispositive of the claim, e.g., whether there was an accident that arose out of and in the course of employment, whether timely notice was given or written claim was made, or whether the claim is barred by an affirmative defense. The WCAB does not have jurisdiction to review the granting of medical treatment or temporary total disability benefits, or the amount of those benefits, unless tied to one of those jurisdictional issues or affirmative defenses.
The WCAB has unlimited jurisdiction to review cases appealed after an award has been entered. If either party has appealed a final award of an ALJ, virtually any issue may be reconsidered by the WCAB and decided differently from the decision of the lower tribunal.

Pre-existing Impairment and the *Hanson* Decision

Perhaps one of the most sweeping changes of the 1993 amendments to the Act was the abolition of the Workers Compensation Second Injury Fund. Prior to 1993, to encourage employers to hire and retain previously-injured and handicapped workers, the Second Injury Fund was created and maintained, to pay all or a portion of compensation payable to an injured worker who had a pre-existing disability or handicap. Under this system, if a worker had a prior back injury, and his current employer hired or retained him with knowledge of that back injury and potential for future injury or disability, and the worker re-injured his back, the Second Injury Fund would pay the medical, temporary total disability and permanent partial disability benefits due the worker, if the subsequent injury or disability was caused or contributed to by the pre-existing disability or handicap.

The Second Injury Fund was abolished by the 1993 amendments, and instead, **K.S.A. 44-501(c)** was amended to provide that,

> "The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting."

The stated purpose of the amendment was to charge the current employer with the liability for only the medical costs of treating a new injury, temporary total disability benefits during rehabilitation and recovery, and only the enhanced impairment or disability caused by the new injury. A worker is not to recover the full amount of disability or impairment suffered, if the worker has a pre-existing impairment or disability; the worker is only to recover the additional impairment or disability suffered because of a new injury.

For example, consider a worker who has a prior back injury and has a pre-existing 5% functional impairment. If that worker suffers a new injury, and now has a 10% impairment, the worker may only recover the additional 5% functional impairment suffered by reason of the new accident. Prior to the 1993 amendments, the worker would have been able to recover the 5% impairment for the first accident, and 10% from the second accident, even though previously compensated for the first 5% of impairment. If there was a third injury, and the impairment determined to be 15%, under the 1993 amendments, the worker would receive for the third accident only the 5% additional impairment caused by the third accident. Prior to the 1993 amendments, the worker would have recovered 5% for the first accident, 10% from the second accident, and 15% for the third accident (15% vs. 30% total recovery). Prior to the 1993 amendments, the Workers Compensation Second Injury Fund would have borne all or a significant portion of the benefits payable for the second and third injuries.

In **Hanson v. Logan U.S.D. 326, 28 Kan.App.2d 92, 11 P.3d 1184(Kan.App. 2000)**, represented the first occasion for the Court of Appeals to interpret the language of **K.S.A. 44-501(c)**. Kenneth Hanson was a track coach for U.S.D. 326. In 1989, he had undergone arthroscopic surgery on his right knee, and was found to have bone-on-bone contact. He had experienced a number of prior injuries to, and surgeries involving, his right knee. In 1989, he was advised that he would need a knee replacement at some unspecified time in the future. He had no recorded medical care thereafter until 1995, following an incident at work where he "tweaked" his knee alighting from a bus at a track meet. His orthopaedic surgeon opined that the 1995 injury "might have" accelerated the need for knee replacement surgery. Another physician, retained by the employer and insurance carrier, found no aggravation from the work-related event. As the ALJ before whom the case was pending, I referred Hanson for a neutral examination with Dr. Kenneth Hansson, a noted knee specialist. Dr. Hanson opined that the 1995 incident contributed "perhaps 1%" to the need for treatment. While I initially denied the request for knee replacement surgery, relying upon the apparent insignificant contribution of the 1995 event, the WCAB reversed and ordered treatment, including knee replacement surgery, at the employer's and insurance carrier's expense.

When the case came on for trial and an award of permanent partial impairment or disability, I was confronted with application of **K.S.A. 44-501(c).** All of the doctors who testified acknowledged that Hanson had a pre-existing condition in his knee, and a likely pre-existing impairment, but there was an absence of testimony as to the precise amount of pre-existing impairment. As the 1989 injury was not work-related, no doctor had assigned an impairment rating at the time. Prior to 1993, the workers compensation act prescribed no formula or standard for assigning impairment. With the 1993 amendments, impairment ratings were to be based upon the AMA ***Guides to the Evaluation of Permanent Impairment***, 3rd Edition, Revised, which had not been in existence in 1989. There was thus a question of how to determine the amount of pre-existing impairment. I made a finding of pre-existing impairment, using the average of opinions offered by the testifying physicians, and deducted that impairment from the ultimate impairment found to exist after knee replacement surgery. On appeal, the WCAB and, later, the Court of Appeals, differed with my analysis.

In its published decision, the Court of Appeals observed that no impairment rating had been given in 1989. It also noted that Hanson had testified that his activities had not been restricted before 1995:

> There is no evidence of the amount of Hanson's preexisting disability, and there is some evidence that Hanson had no impairment prior to the May 19, 1995, injury. Hanson had not sought treatment for his knee from Dr. Harbin since the 1989 surgery, and Hanson testified his activities were not restricted because of his knee until after the May 1995 injury. There was no amount of impairment for the Board to deduct from the total impairment to ensure that respondent was excused from covering the preexisting portion.

28 Kan.App.2d at 96.

In concluding that there was "no amount of impairment for the Board [WCAB] to deduct," the Court of Appeals overlooked or rejected the consensus of medical opinions that Hanson had a pre-existing degenerative condition in his knee that had already prompted a recommendation for knee replacement surgery, long before the 1995 accident. The difficulty, from the physicians' standpoint, was how to measure a 1989 impairment by a 1993 yardstick. In my view, the Court of Appeals misinterpreted this dilemma for a dispute as to *whether* an impairment pre-existed. The Court of Appeals' decision in ***Hanson*** was immediately hailed as authority for the proposition that unless an impairment rating had previously been *actually* assigned, there could be no deduction for a pre-existing impairment. Under this reasoning, since impairment ratings are not routinely assigned except in workers compensation claims, someone whose legs had been amputated in a non-work-related accident would have no impairment or disability.

The initial readings of ***Hanson*** were far too broad. Subsequent decisions, both by the WCAB and the Court of Appeals, have clarified that a doctor may assign a pre-existing impairment based on objective facts shown to haveexisted before a work-related injury.

Since the ***Guides*** provide an objective "yardstick' with which to measure the residuals of an injury, that same yardstick can be applied to a previous injury, if medical records from the prior injury or condition exist and contain the objective indicia determinative of a rating.

The ***Hanson*** decision is now cited, not for the proposition that no pre-existing impairment can exist without a prior rating, but rather for the proposition that the employer has the duty to come forward with evidence as to the *specific* amount of impairment alleged to be pre-existing. **Keeting v. Baker Concrete Const., ____ Kan.App.2d ___ ,104 P.3d 1024 (Kan.App. 2005)**. Similarly, the WCAB has held:

> The pre-existing impairment must be established by competent medical evidence. The Act does not require that the pre-existing functional impairment was indicated by a doctor or actually rated by a doctor before the subject matter accident. Nor does the Act require that the workers had been given restrictions for the pre-existing condition. Nonetheless, the Act does require that the pre-existing condition must have actually constituted a functional impairment under the Guides (if included therein). And previous settlement agreements and previous functional impairment ratings are not necessarily determinative.

Robles v. Carpet Express, Docket No. 1,002,378 (WCAB, January, 2004)

In summary, the employer has the obligation to come forward with some evidence as to the amount of impairment alleged to be pre-existing, relying upon objective facts and the AMA ***Guides***. If that evidence is presented and otherwise credible, the amount of the pre-existing impairment so established would be deducted from the amount of impairment or disability found to exist after a work related accident, such that the employer would be responsible for the increase in impairment or disability caused by the work-related accident.

Thank you for the opportunity to address this committee.

WESTLAW SEARCH RESULTS

ALL APPEALS BOARD CASES WITH THE WORDS "PREEXISTING IMPAIRMENT" CONTAINED IN THE DECISION.

TOTAL CASES 23 — 2005

5 CASES MENTIONED IN DECISIONS BUT NOT AN ISSUE - SOME WERE AGREED PERCENTAGE OF IMPAIRMENT

18 CASES PREEXISTING IMPAIRMENT WAS AN ISSUE

CREDIT GIVEN

1. Casey v. HIX Corporation, Docket Nos. 262,319 and 1,006,409.
2. Knaak v. Case Corporation, Docket Nos. 251,521 and 251,857.
3. Williams v. Wesley Medical Center, Docket No. 270,044.
4. Swathwood v. Medicalodge of Columbus, Docket No. 270,543.
5. Jacobs v. Chamness Technology, Docket Nos. 1,003,734 and 1,005,459.
6. Prue v. Asplundh Tree Expert Co., Docket No. 270,870.
7. Bale v. Hutchinson Hospital, Docket No. 1,003,853.
8. Aumiller v. American Packaging Corp., Docket No. 1,002,887.
9. Oberzan v. Calibrated Forms Co., Inc., Docket No. 261,781.
10. Bell v. Integrated Health Services, Docket No. 1,005,394.
11. Wilder v. City of Topeka, Docket Nos. 1,001,649 and 1,004,830.
12. Maxine Catron v. Harrah's Casino, Docket No. 1,016,236.
13. Donna K. Sanders v. Bombardier Aerospace/Learjet, Docket No. 1,016,336.
14. Sharon Simpson v. Vermillion, Inc., Docket No. 1,007,090.
15. Paul Kozma v. Edward Kraemer & Sons, Docket No. 1,014,222.
16. Ronald J. Dollar v. Wildwood Outdoor Education Center, Docket No. 1,009,908.

CREDIT DENIED

1. Acuna v. National Beef Packing Company; Docket No. 1,003,788
2. Sewell v. Williams Field Services; Docket No. 251,120

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Testimony of Bradley Dean Denney

Hearing on SB 461
House Commerce & Labor Committee
March 6-7, 2006

My name is Bradley Dean Denney. My wife of 32 years, Peggy, and I have lived in Neodesha, a small town in Southeast Kansas, for nearly 23 years. Our daughters, Amber and April, grew up there.

For my first 9 years in Neodesha, I was the Assistant Fire Chief, then I went back to school for 13 months of paramedic training. After getting my paramedic certification, I was hired at Farmland Industry's oil refinery near Coffeyville, Kansas, where for the next 6 years I worked as a petroleum unit operator and as a member of all four emergency response teams at the refinery.

On July 10, 2001, my life suddenly changed. As another worker and I were preparing to remove a plug from a temporary line on a petroleum unit, a pipe burst, spraying me with pressurized hydrofluoric acid. Despite the protective gear I was wearing, the acid caused severe, deep burns to my right forearm and to the front of both my thighs. In addition to the burns, which covered more than 10% of my body, the fluorine in the hydrofluoric acid penetrated deeper into my body, where it combined with the calcium in my bloodstream and poisoned my internal organs.

Because I had excellent first aid at the refinery (calcium gluconate was applied to my wounds to replace the calcium rapidly being leeched out of my blood), and I was promptly life-flighted to Tulsa, I was in a major medical center when the calcium depletion first caused my heart to stop and the doctors were able to shock me back to life. Again and again over the remainder of the day, so many times that the doctors lost count, my heart continued to stop but each time the doctors brought me back to life. Hospital records say I was "cardioverted" successfully "at least 15 times."

Over the following months, I underwent repeated painful plastic surgeries to treat the burns on my legs and arm. The extensive skin grafts harvested from my hip and back caused an infection, which spread into my spine and required surgery by an orthopedic surgeon to relieve pressure on my spinal cord. The systemic fluorine poisoning also damaged my kidneys and caused traumatic diabetes and hypertension, which specialists in Tulsa diagnosed and treated. Eventually, the Tulsa doctors released me and referred me to Dr. Barrett, a family practice physician in Neodesha, who monitored my condition and the many medications prescribed by the specialists.

Despite my miraculous recovery, I continue to have considerable physical disability due to my injury. Farmland's own doctor estimated that I had lost 42% of the use of my body, without considering the traumatic diabetes or the heart and kidney problems I suffered because of the accident. Nonetheless, just 5½ months after my terrible accident, I returned to work at the Farmland refinery, albeit in a greatly accommodated job.

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Up to this point, my case had been a shining example of how the workers compensation system is supposed to work. Unfortunately, things began to change just a few months later.

On May 31, 2002, Farmland Industries filed a voluntary bankruptcy petition and the United States Bankruptcy Court for the Western District of Missouri issued a stay halting any further proceedings in the workers compensation cases against Farmland filed by hundreds of injured workers, including my case. Farmland was self-insured and had certified to the Kansas Division of Workers Compensation that it had the financial ability to pay workers compensation benefits, as required by law, right up to the day it declared bankruptcy.

Farmland began to delay and later deny authorization for ongoing medical treatment I needed, but for nearly 2 years the bankruptcy stay prevented my lawyer from taking any action to force Farmland to pay my medical bills or approve medical treatment ordered by Dr. Barrett, the authorized treating physician Farmland had selected. Once the bankruptcy stay was lifted, we finally had a preliminary hearing on June 30, 2004. Farmland presented no evidence to justify its denial of medical treatment. Therefore, based upon reports by the authorized treating physician and a nephrologist he called in to consult, the administrative law judge ordered Farmland to pay for my treatment.

In the meantime, Farmland sold the Coffeyville refinery in the spring of 2004, and the new owner refused to keep me in my accommodated position. After I was let go, I looked for another job, but no one would hire me with the health problems I had. They didn't want me on their health insurance because it would lead to increased rates. Therefore, in August 2004, I started nursing school in Parsons, though I have continued to look for work.

In early 2005, I was told that my kidneys were failing, and that I would have to undergo kidney dialysis until a kidney transplant could be arranged. About this same time, Farmland again stopped paying my medical bills and secretly informed my doctors and other health care providers that it would not authorize any further medical treatment, though it did not inform me, or my attorney of its decision. As before, Farmland had no evidence to justify its denial of medical care.

Because Farmland's blatant defiance of the administrative law judge's order was denying much needed medical care, seriously jeopardizing my life and health, the Division of Workers Compensation initiated an investigation into Farmland's apparent violation of the "fraud and abuse" provisions of the Kansas Workers Compensation Act. Since the investigation began, Farmland has resumed providing my medical treatment, but thousands of dollars of medical bills remain unpaid and the investigation is still ongoing.

My end-stage renal disease automatically qualified me for Medicare benefits, as soon as I began dialysis, as being "unable to engage in any substantial and gainful employment." I have been told that it may be 2 or 3 years before I receive a kidney transplant, but I continue to attend nursing school in hopes of being able to work again some day.

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Even after I graduate from nursing school, I may not be able to find an employer who wants to take a chance on me, knowing of my physical limitations. I cannot stand for more than just a few hours due to my feet swelling and my left leg going numb. This is a direct result of the injury sustained at the refinery and can only get worst with time. My plan is to continue with my education and get my Masters' degree and teach nursing. I then can use my experience and knowledge to continue helping people despite my limitations, if I can find an employer that will take a chance on me and put me on their health insurance.

Under current law, I will be entitled to **$115,288.07** in compensation if I am found permanently totally disabled [$125,000.00 - $9,711.93 paid for temporary total disability]. If I am found capable of working, I will be entitled to up to **$90,288.07** in work disability compensation [$100,000.00 - $9,711.93 paid for temporary total disability].

Neither amount will replace the wages I have lost. Including fringe benefits, I was earning ***over*** $1,300.00 per week working at the refinery, so since my termination on March 1, 2004, I have lost ***over*** $136,500.00 in wages and benefits [105 wks x $1,300.00]. By my 65th birthday on September 6, 2019, **I will have lost more than a million dollars in wages and benefits,** without considering the raises I would have received [809.57 wks x $1,300.00 = $1,052,441.00.]

However, if the provisions in Senate Bill 461 had been law when I was injured, the loss of my accommodated job for "economic reasons" (when Farmland sold the refinery) would have denied me the right to compensation for the work disability resulting from my injury, despite the fact that my disability has prevented me from obtaining any substantial, gainful employment for nearly 2 years now and I have been found by the Social Security Administration to be permanently totally disabled.

Even worse, though the 42% functional impairment rating given by Farmland's own doctor (without considering my traumatic diabetes, heart and kidney problems) would entitle me to **$71,231.19** for my permanent disability [415 wks - 8.29 wks (23.29 wks temporary total disability) = 406.71 wks x .42 = 170.82 wks x $417.00/wk], the "Fletcher Bell amendment" would limit me to **$40,288.07** for my permanent disability [$50,000.00 - $9,711.93 paid for temporary total disability.] In other words, the "economic reasons" provision in SB 461, if applied to my case, would reduce the compensation for my permanent disability by at least **$50,000.00**, and more likely by **$75,000.00**.

As my case clearly demonstrates, **a temporary return to work at an accommodated position does not accurately reflect an injured worker's ability to earn wages on the open labor market.** Farmland had an incentive to return me to work after my injury, whether it arose from a sense of loyalty to me or merely from a desire to avoid paying for work disability.

The company that bought the refinery from Farmland, and the other companies from whom I have sought employment since being let go for "economic reasons," have had no such incentive. None of them have been willing to give me a job.

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The current law gives Farmland due credit for providing me an accommodated job paying a comparable wage by denying work disability compensation ***for the period of accommodated employment***. If Farmland had continued to provide me with accommodated employment, it could have avoided paying me work disability compensation.

But why should Farmland be given credit for an accommodated job it no longer provides?

How long would Farmland have been required to provide me with an accommodated job before it could terminate my employment "for economic reasons"? A year? A month? A week? A day?

Could Farmland cite the cost of providing me with accommodated employment as an "economic reason" to terminate me?

In addition to these issues, this bill also affects volunteer firefighters, EMS personnel and first responders, law enforcement, and other volunteers. There are many communities and institutions in this state that can not survive without its volunteers. Small towns can't afford full timed manned fire protection and EMS coverage. What would small hospitals be like without their volunteers? Can you, just for a minute, think how you would feel living in a rural setting with a beautiful home, watching it burn to the ground because of a small grass fire that reached your home because the local volunteer fire department was closed due to the inability to find volunteers willing to fight fires knowing that if they hurt their back the state could claim they had a pre-existing condition that could severely limit their chance to provide for their own families.

This state already has taken away many benefits of the worker's compensation act that would make the original authors of the bill burn with anger. The bill no longer provides adequate protection to the workers that have made this state great. And industry continues to lobby every year, trying to chisel away more and more of the benefits that workers in this state deserve.

Please, think very carefully about the impact this bill will have on today's workers, and the workers of tomorrow, who will be your children and grandchildren.

For these and many other reasons, Senate Bill 461 is unfair to working Kansans.

I URGE YOU TO VOTE AGAINST PASSAGE OF SB 461.

Testimony of Timothy A. Short
House Committee on Commerce and Labor
March 9, 2006, hearing on SB 461

My name is Timothy A. Short. I am an attorney who has practiced workers compensation law in Pittsburg, Kansas, for 29 years. Since August, 2005, I have served as a Special Administrative Law Judge doing settlement hearings for the Kansas Division of Workers Compensation. I wish to respond to testimony by proponents of the SB 461 at the March 6, 2006, hearing.

PRE-EXISTING IMPAIRMENT

The suggestion that employers can never prove pre-existing functional impairment and thus never get credit for any pre-existing impairment is simply untrue. I have represented many injured workers whose settlements or awards of compensation have been reduced because of pre-existing impairment. Also, as a Special Administrative Law Judge, I have presided over settlements in which employers have been given credit for pre-existing impairment.

Likewise, the suggestion that employers cannot prove pre-existing impairment when there has been a settlement for a prior injury to the same part of the body is normally untrue. Most settlements are based upon a specific percentage of functional impairment, reflected on the Form 12 Worksheet for Settlements and in the hearing transcript. I presided over five (5) settlement hearings this morning, and each settlement was based upon a stated percentage of impairment.

Even when a settlement was not based upon functional impairment, there usually are medical records available with opinions about functional impairment, or records containing diagnoses and physical findings from which functional impairment can be determined. Settlements for minor injuries are often compromises with no evidence of permanent functional impairment.

The proponents of SB 461 complain they do not get credit for what they cannot prove. Sometimes employers fail to prove pre-existing impairment because they fail to marshal the necessary evidence, and sometimes they fail because there was no pre-existing impairment.

The problem for employers, as Mr. Laskowski said, is the **evidentiary standard for proving pre-existing impairment** (which is exactly the same evidentiary standard applied to proof of current impairment) **and SB 461 fixes the problem by removing that evidentiary standard** (only for proof of pre-existing impairment.) These different standards will allow absurd results:

Example: Worker injures back, makes full recovery with no symptoms. Treating doctor rates functional impairment at 0% using A.M.A. Guides. No permanent disability compensation is paid. A year later, worker re-injures back causing permanent symptoms. Same treating doctor rates current functional impairment at 10% using the A.M.A. Guides.

Because opinions about pre-existing impairment are not held to any evidentiary standard, the same doctor who gave 0% rating for first injury using A.M.A. Guides, could now say the worker had 5% or 10% or even 20% pre-existing impairment.

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SB 461 does not limit credit for pre-existing conditions to the percentage of functional impairment a doctor says pre-existed, but allows a doctor to give an opinion about how much the pre-existing condition contributed to the current disability. Again, such opinions are not subject to any evidentiary standard.

Example: Worker injures knee and after surgery is given 10% impairment to leg using A.M.A. Guides. Five (5) years later, worker re-injures same knee and after another surgery now has 30% impairment. Doctor testifies first injury was 90% cause of current disability so employer only pays 3% impairment for new injury.

Example: A 10% pre-existing impairment to neck which doctor says is an 80% cause of disability resulting from re-injury could deny compensation for work disability.

ECONOMIC REASONS FOR TERMINATION

The suggestion Monday that employers must pay compensation for work disability when injured workers lose accommodated jobs because they are fired for cause or simply quit is untrue. Under such circumstances, Administrative Law Judges and the Appeals Board routinely "impute a wage" and decide the case as though the injured worker was working the accommodated job.

An employer wishing to avoid paying compensation for work disability has an incentive to provide an injured worker with accommodated employment, but other employers do not. Therefore, wages earned in an accommodated job do not reflect an injured worker's actual ability to earn wages on the open labor market.

The current law gives an employer credit for accommodated employment ***as long as the employer provides the accommodated job***, creating the incentive for the employer to continue to employ the injured worker. SB 461 eliminates this incentive by allowing an employer to claim credit for accommodated work it no longer provides.

Under SB 461, there is **no definition** of "economic reasons" for termination, and **no evidentiary standard** for proving economic reasons for termination. An employer could terminate an injured worker merely because it can hire a new worker for lower wages, or because of the economic cost of providing accommodated employment for the injured worker.

There is no requirement in SB 461 that the employer ever actually provide accommodated work to get credit. An injured worker could be denied work disability if the employer simply claims it ***would have*** provided accommodated employment had the worker not been terminated for some economic reason. This occurs under current law if the worker quits or is fired for cause.

The vast majority of working Kansans are not protected by collective bargaining agreements. They can be terminated from their employment for any reason or no reason at all, as long as they are not terminated for an illegal reason. Proving retaliatory discharge is notoriously difficult and will be even more difficult if termination may be justified by some vague "economic reason."