

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman John Edmonds at 1:30 P.M. on March 14, 2006 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Carol Doel, Committee Secretary

Conferees:

Ron Thornburgh, Secretary of State  
Representative Ann Mah  
Ron Gaches, Kansas Occupational Therapy  
David Gonzales  
Ron Hein, Mental Health Credentialing Coalition  
Jeanette Stauffer, Attorney General's Office  
Sandy Barnett, Kansas coalition Against Sexual & Domestic Violence  
Michael Byington, Kansas Association for the Blind and Visually Impaired

Others attending:

See attached list

Chairman Edmonds opened the floor for bill introduction. Hearing none, he opened the floor for public hearing on **HB 2532** - professional corporations; occupational therapists and physical therapists.

David Gonzales, an occupational therapist from Barton County, supports **HB 2532** explaining that it would amend current law K.S.A. 17-2710, and would allow licensed occupational and physical therapists to form a professional corporation, along with other licensed professionals as set forth by the statute. (Attachment 1)

Ron Gaches submitted comments from the Kansas Occupational Therapy Association (KOTA) regarding **HB 2532**. They see no reason to maintain a prohibition that would prevent occupation therapists and physical therapists from incorporating together in the same corporation. (Attachment 2)

Ron Hein represents the Mental Health Credentialing Coalition. The MHCC is neutral to **HB 2532**, however they did offer an amendment to correct an oversight of a similar nature for different professions. Mr. Hein submitted copies of the changes they would like make to **HB 2532** (Attachment 3)

With no other persons wishing to address **HB 2532**, Chairman Edmonds closed the hearing and opened the meeting for public hearing on **HB 2994** - confidentiality in home address for victims of domestic violence, sexual assault, trafficking and stalking.

Secretary of State, Ron Thornburgh, spoke to the committee to show support for **HB 2994**. In his testimony, Secretary Thornburgh stated that this bill will save lives. Victims of domestic violence, sexual assault, trafficking and stalking who have relocated or are about to relocate in an effort to keep their perpetrators from finding them will benefit from this legislation. (Attachment 4)

Representative Ann Mah addressed the committee in support of **HB 2994**. Representative Mah related that this bill introduces "Safe At Home", a confidential address program for victims of domestic or sexual violence, trafficking or stalking. (Attachment 5)

Jeanette Stauffer delivered testimony on behalf of Attorney General Phill Kline in support of **HB 2994**. Ms. Stauffer stated that General Kline is interested in the passage of the **address confidentiality bill** that will provide public safety for victims of domestic violence, sexual assault, stalking, and trafficking. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 14, 2006 in Room 313-S of the Capitol.

Sandy Barnett of the Kansas Coalition Against Sexual and Domestic Violence presented testimony supporting **HB 2994**. Ms. Barnett requested a language change on Page 4, Section 7, Subsection 1, Lines 16 through 18, and in Subsection 3. A copy of that language change was distributed for committee review. The KCSDV requests that the Committee consider their requested amendments and then report it swiftly and favorably for passage. ([Attachment 7](#))

Written testimony supporting **HB 2994** was submitted by Erin Gray ([Attachment 8](#)) and with a request from the Secretary of State's Office, a letter from the State of Maine supporting the legislative proposal to establish an Address Confidentiality Program. ([Attachment 9](#))

With no opponents, Chairman Edmonds closed the public hearing on **HB 2994** and opened the floor for public hearing on **HB 2776** - elections; voter identification technical changes.

Secretary of State, Ron Thornburgh, addressed the committee to show support for **HB 2776**. They have proposed this bill to clarify and define some provisions of the current laws regarding voter identification that were passed in 2004 as part of the legislation to comply with the Help America Vote Act of 2002. He further related that this bill would accomplish three things.

- 1) clarify the definition of what constitutes valid identification
- 2) clarify that once a first-time voter has provided valid identification, that voter is not required to provide identification again unless the voter's status changes, and
- 3) codify procedures for verification and maintenance of the statewide voter registration list as required by Section 303 (2) of HAVA. (Help America Vote Act) ([Attachment 10](#))

Written testimony supporting **HB 2776** was submitted by Michael Donnelly, Director of Policy & Outreach, Disability Rights Center of Kansas ([Attachment 11](#)), and by Kevin Siek, Topeka Independent Living Resource Center ([Attachment 12](#)).

There were no other proponents wishing to address the bill and the Chairman recognized Michael Byington, President of KABVI (Kansas Association for the Blind and Visually Impaired, Inc.) as an opponent to **HB 2776**. It is the opinion of the KABVI that this bill expands the use of, and to a large extent creates, the contrivance of the advance provisional voting ballot which means that an election official can say to a voter including a blind or visually impaired voter, we are not sure who you are, so we are going to send you a ballot which may or may not be any good and may or may not count it. They have further concerns regarding page 10, lines 14 through 16. ([Attachment 13](#))

With the committee running out of time, Chairman Edmonds recessed the committee until 5:00 p.m.

**Federal and State Affairs Committee  
5:00 P.M. Room 519-S**

Chairman Edmonds called the meeting back to order in Room 519-S of the Capitol and opened the floor for continuation of the public hearing on **HB 2776**. No other person wished to address the bill and the public hearing on **HB 2776** was closed.

Chairman Edmonds opened the floor for hearing on **HB 2929** - concerning election precincts; equal in population and introduced Representative Deena Horst who spoke in support of the bill. The Representative explained that this bill was drafted in an attempt to find a solution to a situation in which a member of the Salina business community was denied access to his personal property which was located in a business which had been the subject of eminent domain. ([Attachment 14](#))

For committee review Representative Horst presented an e-mail from Ben Frick ([Attachment 15](#)) as well as a copy article also submitted by Mr. Frick. ([Attachment 16](#))

With no other person wishing to address the bill, Chairman Edmonds closed the hearing on **HB 2929**.

The Chairman opened the public hearing on **HB 2931** - concerning eminent domain.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 14, 2006 in Room 313-S of the Capitol.

There were no proponents or opponents to **HB 2931** and the Chairman closed the public hearing. No other action was taken on the bill.

Attention was directed to **HB 2750** - relating to land surveys, and Chairman Edmonds opened the public hearing.

Representative Jim Yonnally addressed the committee with a Substitute for **HB 2750** which is a technical cleanup for the bill as well as a few word changes. These changes were submitted for committee review. (Attachment 17)

Dina Fisk submitted written testimony for Kansas Society of Land Surveyors supporting the passage of **HB 2750**. (Attachment 18)

With no other person wishing to address **HB 2750**, Chairman Edmonds closed the public hearing.

Attention was directed to **HB 2532** - dealing with occupational therapy and physical therapy.

Representative Brown made a motion to pass **HB 2532** favorable for passage and place on the consent calendar. Representative Miller seconded the motion.

Representative Mah made a substitute motion to **HB 2532** to include the HEIN amendment as recommended by the by the Mental Health Credentialing Coalition (See Attachment 3). The motion was seconded by Representative Dillmore. Motion passed.

Representative Mah made a motion pass the amended **HB 2532** favorable for passage. Representative Oharah seconded the motion. Motion passed.

Chairman Edmonds revisited **HCRS 5040** - concerning eminent domain.

Representative Oharah made a motion to amend **HCR 5040** by reinserting the language from line 23 through line 27 at the end of the paragraph. Representative Myers seconded the motion.

Representative Oharah withdrew his motion to amend.

Representative Oharah made a motion to move **HCR 5040** as amended favorable for passage. Representative Brown seconded the motion.

Representative Brunk made a substitute motion to amend **HCR 5040** by striking the language in line 21 of the Kin er balloon. Representative Siegfroid seconded the motion. Motion passed.

Representative Brunk made a second substitute motion to amend **HCR 5040** by inserting the language be transferred to the owner with the owner s acceptance . Motion failed.

Representative Dillmore made a motion to remove the word condemnation and instead of using the word appropriated, substitute the words taking by eminent domain consistently. Representative Kin er seconded the motion. Motion passed.

Representative Dillmore made a motion to move amended **HCR 5040** favorable for passage. Representative Brunk seconded the motion. Motion failed.

Representative Dillmore made a motion to table the amended **HCR 5040** . Representative Mah seconded the motion. Motion passed.

With no further business before the committee, Chairman Edmonds adjourned the meeting.



March 13, 2006

My name is David Gonzales. I am an Occupational Therapist and have lived and practiced Occupational Therapy in Barton County since 1988. I would like to testify as a proponent of HB 2532. This bill would amend current law (17-2710) and would allow licensed Occupational and Physical Therapists to form a professional corporation, along with other licensed professionals as set forth by the statute. Current law allows occupational therapists to organize together and render professional services with a physician or surgeon, a registered nurse, and a physician assistant, but not with a physical therapist. Physical and occupational therapists are the core rehabilitative services that are thought of after an illness or injury such as a muscle disorder, stroke, or many other conditions. We work as a Team to rehabilitate people's functional skills for independence in activities of daily living. Currently, these professions are working together all across the state in clinics that are owned and operated as other corporation structures. These include larger chains such as HealthSouth, NovaCare, Neuterra, and the list is too numerous to mention here. This bill will just add occupational therapists to the current group set forth in 17-2710, of which currently includes chiropractors, dentists, optometrists, physicians, surgeons, podiatrist, pharmacist, psychologist, clinical social worker, physical therapists, and registered nurses. Thank you.

David Gonzales, OT



# GACHES, BRADEN, BARBEE & ASSOCIATES

PUBLIC AFFAIRS & ASSOCIATION MANAGEMENT

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**House Federal and State Affairs Committee  
HB 2532 – Professional Corporations of  
Occupational Therapists and Physical Therapists  
Comments of Kansas Occupational Therapy Association  
Submitted by Ron Gaches  
Tuesday, March 14, 2006**

Thank you Chairman Edmonds for this opportunity to submit the comments of the Kansas Occupational Therapy Association (KOTA). KOTA sees no reason to maintain a prohibition that would prevent Occupational Therapists and Physical Therapists from incorporating together in the same corporation. Occupational Therapists and Physical Therapists frequently work together in interventions to help restore capabilities of persons. We believe there is no good reason why OTs and PTs should incorporate together to provide those services.

The Kansas Occupational Therapy Association is the statewide professional society of licensed Occupational Therapists. With more than 600 members statewide, KOTA serves the needs of Occupational Therapists and their clients in promoting professional of Occupational Therapists and advancing the occupational care of the public.

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 2

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**Testimony re: HB 2532**  
**House Federal and State Affairs Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**Mental Health Credentialing Coalition**  
**March 14, 2006**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Mental Health Credentialing Coalition. The Coalition is comprised of the members of the Kansas Association for Marriage and Family Therapy, the Kansas Association of Masters in Psychology, and the Kansas Counseling Association/Kansas Mental Health Counselors Association.

The MHCC is neutral HB 2532, but we would like to offer an amendment to correct an oversight of a similar nature for different professions..

Previously, three mental health professions were licensed to practice in independent practice, and are listed in the professional corporation code at K.S.A. 17-2707(b)(20) (clinical professional counselor), (22) (clinical psychotherapist), and (23) clinical marriage and family therapist).

However, at that time, K.S.A. 17-2710 was not amended. That section permits certain professionals to practice in the same corporation. We would propose an amendment to correct that failure to add these groups to that statute when they were first included within the professional corporation code.

In HB 2532, at line 21, we would like to delete "or" before "(18)", and insert a comma, and insert ", (20), (22), or (23)" after "(18)". This would have the effect of allowing these three mental health professions to be involved in a corporation with other mental health professionals, such as licensed psychologists and specialist clinical social work[ers].

This change should have been made years ago when these groups were added to the professional corporation code , as I assume was the case with those groups currently promoting HB 2532.

I have attached a copy of a balloon amendment to this testimony.

Thank you very much for permitting me to testify, and I will yield f FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 5

## HOUSE BILL No. 2532

By Committee on Federal and State Affairs

3-30

9 AN ACT concerning professional corporations; amending K.S.A. 2004  
10 Supp. 17-2710 and repealing the existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 2004 Supp. 17-2710 is hereby amended to read as  
14 follows: 17-2710. A professional corporation may be organized only for  
15 the purpose of rendering one type of professional service and service  
16 ancillary thereto and shall not engage in any other business, except that  
17 a single professional corporation may be organized to and render profes-  
18 sional services under any two or more of the types set forth in items (2),  
19 (6), (13) and (17) of subsection (b) of K.S.A. 17-2707, and amendments  
20 thereto; under any two or more of the types set forth in items (4), (5),  
21 (7), (8), (9), (11), (12), (14), (15), (16) ~~or (18)~~ of subsection (b) of K.S.A.  
22 17-2707, and amendments thereto; ~~or~~ under any two or more of the types  
23 set forth in items (8), (9), (18), (24) and (25) of subsection (b) of K.S.A.  
24 17-2707, and amendments thereto; *or under the types set forth in items*  
25 *(16) and (25) of subsection (b) of K.S.A. 17-2707, and amendments*  
26 *thereto*, but shall be deemed to have the following purposes, whether or  
27 not authorized by its article of incorporation:

28 (a) To purchase, receive, lease, or otherwise acquire, own, hold, im-  
29 prove, use and otherwise deal in and with, real or personal property, or  
30 any interest therein, wherever situated;

31 (b) to purchase, receive, or otherwise acquire, own, hold, vote, use,  
32 employ, sell, mortgage, lend, pledge, or otherwise dispose of, and oth-  
33 erwise use and deal in and with, shares of other interests in, or obligations  
34 of, other domestic or foreign corporations, associations, partnerships or  
35 individuals, insurance or annuities in any form, or direct or indirect ob-  
36 ligations of the United States or of any other government, state, territory,  
37 governmental district or municipality or of any instrumentality thereof;

38 (c) to pay pensions and establish pension plans, profit-sharing plans,  
39 stock bonus plans, stock option plans and other incentive plans for any or  
40 all of its directors, officers and employees;

41 (d) to do all things necessary or incidental to the practice of the pro-  
42 fession which the professional corporation is authorized to practice.

43 Sec. 2. K.S.A. 2004 Supp. 17-2710 is hereby repealed.

,

, (20), (22), or (23)



1     Sec. 3. This act shall take effect and be in force from and after its  
2     publication in the statute book.

**RON THORNBURGH**  
Secretary of State



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## STATE OF KANSAS

### TESTIMONY OF THE SECRETARY OF STATE TO THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE ON HB 2994

MARCH 14, 2006

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear today to brief the committee and answer questions relating to HB 2994, a bill I support.

HB 2994 will save lives. Victims of domestic violence, sexual assault, trafficking and stalking, who have relocated or are about to relocate in an effort to keep their perpetrators from finding them will benefit from this legislation.

This bill offers two service components: a substitute address service and a protected records service. These services limit a perpetrator's ability to access public information which could identify the new location of a victim who is in the program. This is not a witness protection program rather it is simply a mail forwarding service.

There are currently 19 other states that have legislation that offer various levels of address protection for these victims. HB 2994 adapts widely used language from legislation passed in Washington in 1991. The main provisions are:

1. The Secretary of State's office would have the authority to issue an alternative address to all qualified program participants to be used as their legal address. The Secretary of State would also maintain a confidential address database to forward all service of process, first class and certified mail to the participants. This legislation allows state and local government to comply with open records requests without jeopardizing the location of these victims.
2. The Secretary of State will create a partnership with state and local agencies, law enforcement and nonprofit agencies throughout the state to help victims apply to the program. These partners will help ensure the applicants are qualified and in need of the program and are prepared to take all the measures necessary to ensure their safety.

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 4

3. The Secretary of State will develop a secure voter registration program to allow the participants to vote for the candidates in their districts without entering the actual address into the state voter registration system. This system will ensure the voter's identity and ballot authenticity without infringing on their right to a secret ballot and without compromising the integrity of the processes of the local county election officials.
4. By court order the Secretary of State shall make available the address of the participants to the court. HB 2994 also allows for a request directly to the Secretary for any law enforcement agency who may need to contact a program participant.

HB 2994 allows victims the same freedoms we enjoy everyday without constant fear of their attackers finding them. Victims of these types of abuse too often have to forfeit privileges we take for granted such as obtaining a driver's license or registering to vote, both examples of public record which could allow their attackers access to their locations.

Every hour in Kansas, two or more domestic violence incidents occurred in 2004. I am confident this legislation will help lower that statistic in the years to come. With this simple system we can protect victims and give them their lives back.

I appreciate the opportunity to appear today, and I am happy to answer questions.

RON THORNBURGH  
Secretary of State

STATE OF KANSAS

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TOPEKA  
HOUSE OF  
REPRESENTATIVES

Testimony in Support of HB 2994  
Federal and State Affairs Committee  
March 14, 2006

Earlier this year I asked Sandy Barnett, with the Kansas Coalition Against Sexual and Domestic Violence, and Jeanette Stauffer, of the Attorney General's office Victims Rights Division, what more could be done to help victims of abuse. I was surprised to learn that victims could be tracked by their abusers through change of address forms, voter registration, and other public records. In some states a confidential address program is used to help victims make these kinds of records changes and receive their mail without fear of being tracked. We found a friend in Secretary of State Ron Thornburgh who had some ideas about how that might work in Kansas and we are here today to enlist your support for this important legislation.

This bill introduces "Safe At Home", a confidential address program for victims of domestic or sexual violence, trafficking, or stalking. Simply put, victims are allowed to use an address set up by the Secretary as their substitute mail address, ensuring confidentiality. Victims apply for the program by local agencies already working with the victims and are certified by the Secretary of State. Adult guardians may also register victims who are minors. Registration in the program is good for up to four years.

I will let the Secretary explain the mechanics of the program and let the victims' rights advocates share how important this program is to their clients. This program will save lives and will provide security for victims of abuse and their families. I appreciate your consideration and urge your quick positive recommendation of this bill so that it may have time to get through the Senate and become law this year.

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 5

**Address Confidentiality  
H.B. 2994  
Testimony**

March 14, 2006

*Jeanette Stauffer  
Statewide Victims' Rights Coordinator  
Office of the Attorney General Phill Kline*

Chairman and Members of the Federal and State Affairs Committee:

I appear before you to express the support of Attorney General Phill Kline on H.B. 2994. General Kline is interested in the passage of the **address confidentiality bill** that will provide public safety for victims of domestic violence, sexual assault, stalking, and trafficking.

As a victims' rights advocate, I feel compelled to testify in favor of the Address Confidentiality bill. There are victims who have the right to hide their address; therefore, there is a need for the state of Kansas to have an address confidentiality program.

There are 17 states that already have the program, and another state, Oregon, will begin its program in January 2007. Kansas will join the growing number of states emerging to confront the epidemic of domestic violence in a unique way that affords address confidentiality to its victims. The program will add an extra layer of security as part of an over all safety plan.

One of the biggest dangers to victims who move to escape an abuser is that they will be tracked down through the public records system. Unfortunately, public records provide useful information for predators who choose to stalk and torment their victims. Predators are resourceful, and once they are committed to violence, they are not easily deterred.

I have listened to many victims who have reason to believe they are not safe. How can they feel safe when they cannot hide or get away from their predator? They are victimized over and over again.

Victims are threatened and beaten, left with black eyes, bruises, lacerations, and broken bones. Many victims are told they will be killed if they leave the abuser or report the crime to law enforcement. Most of the time, victims know if the predator is capable of carrying out the threat.

Usually with few financial resources, the victim has to relocate and that location must be kept secret. In many situations, the victim has to move without telling family or friends because of safety concerns.

The victim has to come up with a security deposit and pay for basic essentials they had to leave behind when they relocate. If the victim has a car and the car is easily recognizable, the victim may have to leave the car behind or sell the vehicle. Then, the victim has no way to get to work if, and when, they can secure employment.

After the victim goes to great lengths to avoid being found again, the victim has to worry that the predator will locate her through public records.

The violence is repeated over and over again. The victim has to leave another residence in fear for her life and the lives of her children. She moves into another shelter until she can afford to

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 6

find another place to live. When she has to be on the move, she can't hold a job. It becomes a vicious circle with no way out. (Referenced a female, applies to males also.)

The lack of victim safety not only costs the victims and their families, but also costs the state. Some of the costs include law enforcement involvement, emergency room care, public assistance for court costs, attorney representation, counseling, clothing, shelter, food, money to relocate, and school funds.

There are other costs the victims and state incurs. When the victim has to relocate, the children are affected; it disrupts their education and causes emotional damage, making it hard for them to adjust when they become adults. Then, the cycle repeats itself.

A story about a victim of domestic violence: I have continued to help this victim for almost a year. She had to leave the state she resided in and move to Kansas. But then, she had to move again after the abuser's attorney listed her address in a letter that was sent to the abuser and copied to her. She constantly lives in fear that he will find out where she lives. To cause the victim more emotional and mental abuse, her ex-husband, the abuser, continues to tell her son that mommies are to die, and guns kill mommies. And now, her ex-husband is teaching her son—age six—how to shoot a gun.

A story about a victim of sexual assault: This victim has called many times to plea for protection. Since the rapist was released from prison, the victim fears for her life all over again. The rapist told her and also told her parents that he will kill her for testifying against him. She is afraid to leave her home or work without being accompanied by someone. The rapist has a criminal record that reveals other convictions for sexual assault and other felonies. She believes, and may have reason to believe, that he is capable of killing her.

These are only two examples of victims who are in fear for their safety. There are many more stories of victims who fear for their lives. The address confidentiality bill can make a difference for these victims. They can live a normal life again. It will mean a saving of lives and a financial savings to the state.

It is the first duty of government to protect its citizens. We owe our citizens no less. By supporting the **address confidentiality bill**, you are providing public safety for victims of domestic violence, sexual assault, stalking, and trafficking. Many victims have nowhere else to turn; they are powerless without our help.

As a victims' rights advocate, I ask for your support of H.B. 2994.

634 SW Harrison Topeka, Kansas 66603  
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House Federal and State Affairs Committee  
HB 2994  
PROPONENT

Dear Chairman Edmonds and Members of the Committee:

I appreciate the opportunity to speak with you today about the merits of an Address Confidentiality Program.

KCSDV, as many of you know, represents the 31 programs in Kansas serving victims of sexual assault, stalking, and domestic violence. Last year those programs responded to 30,635 crisis calls, sheltered 3,358 women, children, and men for 65,253 bed nights, and provided advocacy services for 21,795 victims and their families.

Many of these victims have reached out for help because the violence has escalated or changed, or they are trying to find help to leave the violent partner. Domestic violence dynamics are complex and sometimes lethally dangerous. The U.S. Department of Justice studies indicate that termination of an abusive relationship and the following six-month period is the most dangerous or lethal time. Domestic abusers are intensely focused on controlling their partners and will sometimes escalate violence to regain control when they feel as though it is slipping. Although there is no perfect dangerousness or lethality assessment there are clear indicators of higher risk for serious injury or murder. The introduction or increase of sexual violence and stalking are perhaps the most pronounced indicators. Attached is a fact sheet about stalking provided by the National Stalking Resource Center. Consider the following:

- One in 12 women and one in 45 men will be stalked in their lifetime
- 31% of women stalked by a current or former partner are also sexually assaulted by that partner
- 76% of women murdered by an intimate partner had been stalked by that partner
- Intimate partner stalkers frequently approach their targets and their behavior escalates rapidly

Although domestic violence, sexual assault, and stalking are separate crimes, they frequently co-occur in some of the most dangerous cases. It is these victims we seek to help protect with an address confidentiality program.

Also attached to this testimony is a position statement about the benefits of an address confidentiality program.

Please note there are several examples of victims in Kansas who had sought safety by fleeing an abuser who was able to easily and quickly find his victim through public information sources.

The domestic violence and rape crisis programs in Kansas are private non-profit organizations that are networked within and between states through state and national coalitions. For the past twenty-five or so years, those networks have helped victims relocate from state to state to flee abusive and dangerous partners – only in the past five or ten years have we come to understand this phenomenon as stalking. The increase in available and affordable technology such as spy-ware, the easily affordable internet spy services, and the ever increasing access to public and private information via computerized data systems makes the stalking of victims much easier. Conversely, it is much harder for victims to keep their location confidential.

Please keep in mind that for victims who are relentlessly stalked confidentiality of location is paramount to staying alive – *three out of four women who were murdered by an intimate partner had been previously stalked by that partner.*

Without a doubt, victims who find it the most difficult to both seek services and to keep their location confidential are those whose partners hold official positions within their community or state. When reporting the introduction of HB 2994 to our member program directors, one immediately emailed me to remind me that we must include protective provisions for those who were abused, sexually assaulted, and stalked by law enforcement officers or prosecutors because they have easier access to this information.

HB 2994 was modeled from a substantially similar law in Washington State where they have had more than a decade of experience in administering a confidential address program. Washington is currently amending their statute to deal with this exact problem.



Specifically, Sec. 7(1) allows release of the confidential address “if requested by a law enforcement agency, to the law enforcement agency in accordance with procedures prescribed by rules and regulations.” KCSDV respectfully requests that this section be omitted. In Washington, the same waiver was included in the original statute. However, in 2003, there was a very high-profile case where Crystal Brame was killed by her estranged husband who was the chief of police in Tacoma. The event apparently spurred much discussion in the state about how to respond to domestic violence issues when law enforcement officers are involved. One of these discussions resulted in an amendment to the state’s Address Confidentiality Program. This amendment will eliminate this particular waiver. Thus, when these latest Washington state amendments become effective, the confidential address may only be released by court order. We believe Kansas should include this level of protection from the start.

During the drafting of HB2994, in an email to the Kansas Secretary of State’s office, a Washington state ACP staffer indicated the following:

“We recognize that ‘bad guys’ come in all shapes and sizes, colors, professions, education- and socio-economic levels. That particular event, however, stimulated discussion around the state and many, many jurisdictions have since implemented rules about how to handle domestic violence issues when a law enforcement officer is involved. We’ve had to explain on several occasions that our program could not have helped Ms. Brame because her husband had the authority to request her address from us.

“Since our program began in 1991, we have had MANY applicants attach notes to their applications asking us to flag their files and contact them if we got a request for information from law enforcement because their abuser was in the field or had a connection. When we explain that we would have to comply and release information if the request was made in accordance with law, most of the time the applicant declines participation.

“We field calls on a regular basis from women who are concerned because their abuser ‘is best friends with the chief of police of (some small town).’ That coupled with the fact that we’ve only ever received a small handful of requests for participant file information – and nearly all of those court orders – made us realize it was time for the change. Victims’ groups around our state are quite pleased. That change to our law has not

received any criticism from any lawmaker or law enforcement agency or individual.”

KCSDV was not able to reach agreement with the Kansas Bureau of Investigation during the drafting of this bill but did indicate we consider this change critical to the safety of those participating in the program.

Additionally, Sec 7(3) allows verification of the participation of a specific program participant. However, this is not limited to state and/or local agencies and, we believe it could be construed to allow a perpetrator from another state to contact Kansas to find out if she is in the state's ACP program. This will then give the perpetrator a smaller geographical location to begin or continue his search. We have included a suggested balloon amendment to subsection (3).

In summary, we request that on page 4 in Section 7, subsection 1 (lines 16 through 18) be omitted and that in subsection 3 “state and local agencies” be added.

KCSDV applauds the initiative of Representative Mah, the Secretary of State Ron Thornburg and his staff, and Kyle Smith from the KBI. Without their recognition of the danger posed by abusers and rapists who also stalk their victims and without their enthusiasm for crafting a strategy to enhance the safety of victims HB 2994 would never have been taken from a concept to a bill. KCSDV also thanks Chairman Edmonds for taking this issue up in Committee so quickly. Your responsiveness to an emerging problem in Kansas will indeed help make Kansas homes and streets a little safer for those who are mercilessly stalked, harassed, and sometimes murdered.

KCSDV supports HB 2994 and requests that the House Federal and State Affairs Committee consider our requested amendments and then report it swiftly and favorably for passage by the whole House.

Respectfully submitted,

Sandy Barnett  
Executive Director

1 tive purposes.

2 (2) A program participant may use the address designated by the  
3 secretary of state as the participant's work address.

4 (3) The office of the secretary of state shall forward all first class mail,  
5 and other items designated by rule and regulation, to the appropriate  
6 program participants.

7 Sec. 6. (a) The secretary of state is authorized to adopt rules and  
8 regulations for the proper implementation of this act.

9 (b) The secretary of state shall prescribe by rule and regulation voting  
10 procedures to maintain confidentiality of the addresses of program  
11 participants.

12 Sec. 7. The secretary of state shall not make any records in a program  
13 participant's file available for inspection or copying, other than the ad-  
14 dress designated by the secretary of state, except under the following  
15 circumstances:

16 ~~(1) If requested by a law enforcement agency, to the law enforcement~~  
17 ~~agency in accordance with procedures prescribed by rules and~~  
18 ~~regulations;~~

19 (2) if directed by a court order, to a person identified in the order;  
20 or

21 (3) to verify the participation of a specific program participant, in  
22 which case the secretary may only confirm participation in the program.

23 Sec. 8. The secretary of state shall designate enrolling agents to assist  
24 persons applying to be program participants. The secretary of state may  
25 collaborate with enrolling agents to develop a training curriculum. Any  
26 assistance rendered to applicants by the office of the secretary of state or  
27 its designees shall not be construed as legal advice.

28 Sec. 9. This act shall take effect and be in force on and after January  
29 1, 2007, and its publication in the statute book.

If requested by a state  
or local agency,

## WHAT IS STALKING?

While legal definitions of stalking vary from one jurisdiction to another, a good working definition of stalking is *a course of conduct directed at a specific person that would cause a reasonable person to feel fear.*

### STALKING IN AMERICA

- 1,006,970 women and 370,990 men are stalked annually in the U.S.
- 1 in 12 women and 1 in 45 men will be stalked in their lifetime.
- 77% of female victims and 64% of male victims know their stalker.
- 87% of stalkers are men.
- 59% of female victims and 30% of male victims are stalked by an intimate partner.
- 81% of women stalked by a current or former intimate partner are also physically assaulted by that partner.
- 31% of women stalked by a current or former intimate partner are also sexually assaulted by that partner.
- 73% of intimate partner stalkers verbally threatened victims with physical violence, and almost 46% of victims experienced one or more violent incidents by the stalker.
- The average duration of stalking is 1.8 years.
- If stalking involves intimate partners, the average duration of stalking increases to 2.2 years.
- 28% of female victims and 10% of male victims obtained a protective order. 69% of female victims and 81% of male victims had the protection order violated.

[Tjaden & Thoennes. (1998). "Stalking in America," NIJ.]

### IMPACT OF STALKING ON VICTIMS

- 56% of women stalked took some type of self-protective measure, often as drastic as relocating (11%). [Tjaden & Thoennes. (1998). "Stalking in America," NIJ]
- 26% of stalking victims lost time from work as a result of their victimization, and 7% never returned to work. [Tjaden & Thoennes.]
- 30% of female victims and 20% of male victims sought psychological counseling. [Tjaden & Thoennes.]
- The prevalence of anxiety, insomnia, social dysfunction, and severe depression is much higher among stalking victims than the general population, especially if the stalking involves being followed or having one's property destroyed. [Blauuw et. al. (2002). "The Toll of Stalking," *Journal of Interpersonal Violence*]

### THE STALKING RESOURCE CENTER

The Stalking Resource Center is a program of the National Center for Victims of Crime. Our dual mission is to raise national awareness of stalking and to encourage the development and implementation of multidisciplinary responses to stalking in local communities across the country.

We can provide you with:

- Training and Technical Assistance
- Protocol Development
- Resources
- Help in collaborating with other agencies and systems in your community

Contact us at: 202-467-8700 or src@ncvc.org.

### RECON STUDY OF STALKERS

- 2/3 of stalkers pursue their victims at least once per week, many daily, using more than one method.
- 78% of stalkers use more than one means of approach.
- Weapons are used to harm or threaten victims in 1 out of 5 cases.
- Almost 1/3 of stalkers have stalked before.
- Intimate partner stalkers frequently approach their targets, and their behaviors escalate quickly.

[Mohandie et al. "The RECON Typology of Stalking: Reliability and Validity Based upon a Large Sample of North American Stalkers." (In Press, *Journal of Forensic Sciences* 2006).]

### STALKING AND INTIMATE PARTNER FEMICIDE\*

- 76% of intimate partner femicide (murder) victims had been stalked by their intimate partner.
- 67% had been physically abused by their intimate partner.
- 89% of femicide victims who had been physically abused had also been stalked in the 12 months before the murder.
- 79% of abused femicide victims reported stalking during the same period that they reported abuse.
- 54% of femicide victims reported stalking to police before they were killed by their stalkers.

\*The murder of a woman.

[McFarlane et al. (1999). "Stalking and Intimate Partner Femicide," *Homicide Studies*].

### STALKING ON CAMPUS

- 13% of college women were stalked during one six- to nine-month period.
- 80% of campus stalking victims knew their stalkers.
- 3 in 10 college women reported being injured emotionally or psychologically from being stalked.

[Fisher, Cullen, and Turner. (2000). "The Sexual Victimization of College Women," NIJ/BJS.]

### STATE LAWS<sup>1</sup>

- Stalking is a crime under the laws of all 50 states, the District of Columbia, and the Federal Government.
- 15 states classify stalking as a felony upon the first offense.
- 34 states classify stalking as a felony upon the second offense and/or when the crime involves aggravating factors.<sup>2</sup>
- Aggravating factors may include: possession of a deadly weapon; violation of a court order or condition of probation/parole; victim under 16; same victim as prior occasions.

<sup>1</sup> Last updated October 2005.

<sup>2</sup> In Maryland, stalking is always a misdemeanor.

For a compilation of state, tribal and Federal laws visit: www.ncvc.org/src

# STALKING

## MYTHS & REALITIES

**Only celebrities are stalked.**

1.4 million people are stalked every year in the United States. We may hear more about celebrity stalking cases in the media, but the vast majority of stalking victims are ordinary citizens.

**If you ignore stalking, it will go away.**

Stalkers seldom “just stop.” In fact, behaviors can turn more and more violent as time goes on. Victims should seek help from advocates, law enforcement, and the courts to intervene to stop the stalking.

**Stalking is creepy but not dangerous.**

Stalking is creepy *and* dangerous. Three out of four women who were murdered by an intimate partner had been previously stalked by the killer.

**Stalking is annoying but not illegal.**

Stalking is a crime under the laws of all 50 states, the District of Columbia, and the federal government.

**You can't be stalked by someone you are still dating.**

If your current girlfriend or boyfriend tracks your every move or follows you around in a way that causes you fear, that is stalking.

**Modern surveillance technology is too expensive and confusing for most stalkers to use.**

Stalkers can buy surveillance software and hardware for as little as \$30 and can easily track victims' every move on a computer.

**If you confront the stalker, he'll go away.**

Stalkers can be unreasonable and unpredictable. Confronting or trying to reason with a stalker can be dangerous.

**Stalking**  
resource center

[www.ncvc.org/src](http://www.ncvc.org/src)  
1-800-FYI-CALL

THE NATIONAL CENTER FOR  
**Victims of Crime**

## **Address Confidentiality Program for Victims Fleeing Violence**

### **House Bill 2994**

#### *Background*

Domestic and sexual violence, stalking and trafficking are insidious crimes with complex dynamics that make each situation different; however, one commonality exists - perpetrators use physical force to control victims. When perpetrators believe that they are about to lose control of victims, the violence often escalates. Thus, it should be no surprise that victims' attempts to leave a violent relationship appear to be one of the greatest risk factors indicating that an offender will seriously injure or kill a victim.<sup>1</sup>

Clearly, escaping an abusive relationship is not as easy as the words suggest; leaving is a perilous process. Perpetrators and stalkers can be relentless and use innovative methods to track down their victims. Relocation is not fail-safe. Often the fewer people who know where a victim of domestic and sexual violence or stalking is, the safer that victim will be. The proposed legislation to establish an Address Confidentiality Program seeks to assist victims with this process.

The Address Confidentiality Program is designed to provide victims of domestic violence, sexual assault, trafficking and stalking with a means to prevent assailants from using public records to locate them. The program offers victims a legal substitute address provided by the Office of the Secretary of State. This address may be used to fulfill the address requirements of court and government records, such as drivers' licenses, library cards, public utility billings, traffic tickets, motor vehicle registrations, employment security, workers' compensation, school records, and court petitions. The Secretary of State is charged with safeguarding the actual addresses of program participants with few waived exceptions.

Although the proposed legislation does not purport to protect victims' actual addresses from disclosure in every situation, the Address Confidentiality Program provides a significant step toward freedom and safety for victims who are forced to flee from violence. A confidential address can be a critical component of safety planning for victims who fear further violence or even lethal retaliation from perpetrators. The Address Confidentiality Program will help victims protect this confidentiality.

#### **Where can your address be found?**

- Drivers License records
- Court records
- Voting records
- Utility records
- Post office
- On the Kansas Standard Offense Report, if you report a crime
- Register of Deeds
- County Appraiser's Office

<sup>1</sup> Farr, Kathryn Ann. (2002). "Battered Women Who Were 'Being Killed and Survived It': Straight Talk from Survivors," 17 Violence & Victims 267-268.

“We had a situation last night in which an abuser found the victim by asking the post office for a return of service address on mail that he sent to her at her old address.”

*Domestic violence/rape advocate in Kansas.*

**A Confidential Address Program would prevent the victim’s location from being disclosed.**

**The Address Confidentiality Program provides necessary protection to victims, who are fleeing from extreme violence, stalking, and/or trafficking.**

Escaping a violent relationship is a dangerous process. Victims are often forced to flee their homes, assume new names, change Social Security numbers, and take myriad other precautions to keep their locations secret. A confidential address can be a critical component of safety planning for victims who fear further abuse or even lethal retaliation.

**Participation in the Address Confidentiality Program is limited to specific classes of victims and their minor children.**

The Address Confidentiality Program is available to victims of sexual and domestic violence, stalking and trafficking. Minor children of a qualified program participant or children who independently qualify for the program (and have a legal custodian acting on their behalf) may also receive the protections of the Address Confidentiality Program. Victims of domestic violence, sexual assault, trafficking and/or stalking are particularly vulnerable to continued violence and harassment. The Address Confidentiality Program recognizes the dangerous nature of these crimes and offers protection accordingly.

**The Address Confidentiality Program enables state and local agencies to respond to requests for public records without disclosing the location of victims.**

The program provides victims with a legal substitute address, which may be documented in public records, such as drivers’ licenses, library cards, public utility billings, traffic tickets, motor vehicle registrations, employment security, workers’ compensation school records, court actions and many other court and governmental records. This allows victims to protect the confidentiality of their actual location, while complying with demands of courts and government officials.

**The Address Confidentiality Program provides a legal mechanism for victims of sexual and domestic violence, trafficking and stalking to protect and maintain the confidentiality of their addresses.**

The Office of the Secretary of State will forward all first class mail and other items designated by rules and regulations at no additional cost to a program participant.

**The Address Confidentiality Program contains provisions to guard against misuse of the program to evade law enforcement.**

Any program participant who knowingly provides false information in regard to a material fact in an application shall be subject to termination from the program and may be criminally charged.

**The Address Confidentiality Program has become a useful tool across the country.**

The proposed Address Confidentiality Program is modeled after a successful program in Washington State. Washington’s program, established in 1991, has encountered no legal challenges. Since 1991, at least 19 states have established and maintained successful Address Confidentiality Programs.

Adapted from the Pennsylvania Coalition Against Domestic Violence Position Paper

Provided by:

Kansas Coalition Against Sexual and Domestic Violence  
634 SW Harrison Topeka, Kansas 66603  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

## Life is Beautiful

The address confidentiality program saved my life. Literally.

I was an upper middle class lady, with a good career. I've never abused alcohol and I've never tried recreational drugs. I was, and am, an athletic, proactive, ethical lady who spent many hours volunteering while employed by the chamber of commerce and later at a global firm working with its leadership.

I lived on my own from age 18 until age 23, when I met my former husband, who had a professional business career in management. Two years later we married. Even in hindsight, his family's friend and priest, our mutual friends, and my colleagues were hard-pressed to see the signs of abuse and stalking. My former husband is, and was, charismatic, charming, highly intelligent and a prominent member of the communities in which we lived, and in which he currently lives. He also taught religion at a 3,000+-member church, active in its prison ministry. And, he is a sociopath. If you've seen *Sleeping With the Enemy*, you have a good picture of what he's like.

During our marriage, I discovered he was participating, and even orchestrating unethical, even illegal, business activities similar to what occurred at Enron, in addition to a hidden personal life, which stunned me, once I discovered it. Whether I had been his neighbor or colleague, he would have stalked and attacked me in the same manner. Because I was his wife, it was termed as domestic violence. The measures I took to legally resolve the situation resulted in my disillusionment with our legal system. Grave disillusionment.

I had three protection orders in three different states – he violated each of them. Yes, the police are to enforce them but put a suave, well-dressed guy in front of them with a woman who is shaking and crying from being attacked, and the police let him off saying it was “he said she said.” Yes, I called the local domestic violence agencies...the state coalitions...legal aid...attorneys...the national coalition. I was told the same thing by nearly every resource: “Sorry, we don't have the resources to deal with a case like yours.” Or, “If you needed rehab, were of a minority, or had kids, we could help.”

I relocated and he hunted me down and found me. He paid people in his prison ministry, desperate people whom he could always accuse of being less than credible if he were caught, to find me and damage my home and car. He hired private detectives to stalk me by proxy. He harassed, stalked and terrorized me from state to state for years. I did take the matter to court and fought for 4 ½ years, driving across states to appear. He knew the judge and to offer an example of injustice, in the state in which the case took place the law allowed for one change of venue for any reason. The judge denied it, saying he had the authority to deny a court reporter as well. I hired a private detective to learn what was really going on and he told me, “You have no idea who you're dealing with.”

After moving to 7 cities in 5 states, I decided enough was enough. I'd been attacked and he'd crushed 5 of the 7 vertebrae in my neck, putting me on disability with permanent injuries. Had there been an address confidentiality program in place, I would not have had to move repeatedly. I never went back to him, I never enabled him, I even left him our marital home, all savings, retirement funds, furniture and even my car, so that he'd have no reason to use dividing property and money to have contact with me.



I sought a legal identity change. Still, local, state and national women's and victim's resources told me they were sorry but it appeared that I knew more than they did about how to deal with such a sophisticated predator. I fought for my life, on my own, and with a lot of prayer. I left my home, the second I'd bought after leaving him and starting from scratch again. I left my excellent career. I left my friends. I left my family. What good was I going to be to anyone if he succeeded in killing me? I changed my identity, without support, legal assistance, or financial assistance.

Luckily, I had always planned well and had a good return on the sale of my last home. This, together with the money that I earned from disability as a result of his attack when he tried to break my neck, was how I survived while I coordinated the identity change. I slept on the floor in small studios and apartments, I often woke up hungry, for a few months I didn't have a car and had to walk in subzero temperatures for food.

My former husband used to make fun of me saying one day my integrity would get me killed. That I'd never survive if I didn't learn how to play the game. Yes, my integrity did nearly cost me my life. But I won't play. Many advocates have told me they don't know how I've survived as long as I have. Well, perseverance and being stubborn has its merits! I believed my life was worth living and with God's help I was going to live it.

Along the way I've helped other women who have faced similar difficulties. Two of them, who could not find help and also were told there weren't enough resources to assist, are now dead because their predators found them. I've been asked by agencies to share what I've learned though they could not help me.

I fought for my life within the law. Even now, I'm often accused of having stolen an identity and most employers will not even give me an interview though I am highly qualified. I'm forced to work for a salary far below my skills and qualifications. I have nothing now, at the age of 40. I lost my credit rating of over 800. I have no safety net. No cushion; only the barest necessities. I still sleep on the floor. I wear the same few outfits to the office. I spent my life savings, saving my life. I had to rebuild every facet of my life. From square one. Yet, I fought to live though I lost everything.

If I'd had a confidential address earlier, I'd still have my beautiful home, my excellent career, be near friends and family. This bill is so important for saving lives. I gave up my life up, in order to save it. Please consider this important bill. Life is Beautiful.



MATTHEW DUNLAP  
SECRETARY OF STATE

STATE OF MAINE  
OFFICE  
OF THE  
SECRETARY OF STATE

March 13, 2006

Jeanette C. Stauffer, J.D.  
Statewide Victims Rights Coordinator  
Victims Rights Division  
Office of the Kansas Attorney General  
120 SW 10th Ave., 2nd Floor  
Topeka, KS 66612-1597

Dear Ms. Stauffer,

I write in support of your legislative proposal to establish an Address Confidentiality Program in the state of Kansas and urge members of your Legislature to support this legislation on behalf of the citizens of the state of Kansas.

In Maine, over half of all homicides are the result of domestic violence. Our ACP program provides a measure of protection that can make a meaningful difference for victims of domestic abuse, sexual assault and stalking and severely limits a batterer's ability to access information which could identify the new location of a victim. Additionally, it's an important tool for advocates to use as they help individuals plan a safe and secure future for themselves and their children.

Currently there are 42 adults and 29 children enrolled in our ACP program and we forward approximately 20 pieces of mail daily. All program costs have been absorbed with existing resources.

Again, I encourage your legislature to support this important proposal which will help to protect the citizens of your state who find themselves in harms way and live in fear of their lives.

Please do not hesitate to contact my office if you have any questions about our Address Confidentiality Program.

Sincerely,

  
Matthew Dunlap  
Secretary of State

RON THORNBURGH  
Secretary of State



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STATE OF KANSAS  
House Committee on Federal and State Affairs

Testimony on House Bill 2776

Ron Thornburgh, Secretary of State

March 14, 2006

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill 2776. We have proposed this bill to clarify and define some provisions of the current laws regarding voter identification that were passed in 2004 as part of the legislation to comply with the Help America Vote Act of 2002 (HAVA). House Bill 2776 would accomplish three things:

- clarify the definition of what constitutes valid identification,
- clarify that once a first-time voter has provided valid identification, that voter is not required to provide identification again unless the voter's status changes, and
- codify procedures for verification and maintenance of the statewide voter registration list as required by Section 303(a) of HAVA.

Following is a summary of the sections of the bill:

Sections 1, 2 and 3 deal with advance voters.

Section 1

This section combines two subsections of current law into one. Previously, Subsection (b) of K.S.A. 25-1122 provided for voters to apply for advance ballots *in person*, and Subsection (c) provided for applications *by mail*. House Bill 2776 combines the two subsections into one subsection and treats in-person and by-mail advance voters the same with regard to voter identification.

Under this bill, an advance voter would satisfy the voter identification requirements by supplying one of the following: (1) his/her driver's license number, (2) the last four digits of his/her Social Security number, or (3) a copy of one of the forms of identification allowed by HAVA.

The numbers provided on the ballot application are checked by the Secretary of State or county election officer against the voter registration list verified by the Division of Motor Vehicles as required by HAVA [see Section 3(c) of HB 2776].

Subsection (f) of Section 1 of HB 2776 provides an exception for permanent advance voters. These are voters with long-term illnesses or disabilities who have ballots automatically sent to them each election. It allows such voters to provide valid identification only once as long as they do not change name, residential address or registration status.

## Section 2

Consistent with Section 1 of HB 2776, Section 2 also combines two subsections dealing with by-mail and in-person advance voters into one subsection. This subsection defines the requirements of the ballot application form submitted by advance voters.

In lines 32-34 of page 5—subsection (a) of Section 2 of the bill, the definition of valid identification for advance voters is worded differently than the definition for other voters. The definition for advance voters requires the identification document to contain the voter's name and residential address and does not allow the identification to contain *only* the name and photo. A photo identification does not make sense for voters who vote by mail.

Consistent with Section 1 of the bill, this section carries through the exception for permanent advance voters, not requiring identification after the first time unless they change name, address or registration status.

This section also specifies that voters who vote as former precinct residents, which is allowed by the Kansas Constitution, are required to meet the same requirements as advance voters with regard to signing an affirmation and providing identification.

## Section 3

Subsection (c) of Section 3 directs the Secretary of State or the county election officer to check Social Security or driver's license numbers provided by advance voters against the voter registration file verified by the Division of Motor Vehicles and the Social Security Administration. If the information matches, no further identification is required unless a voter changes registration status. If the information does not match, a provisional ballot is issued and the voter has an opportunity to provide valid identification prior to the county canvass of the election in order to ensure that the provisional ballot will count.

## Section 4

Section 4 of HB 2776 codifies three voter registration list maintenance activities that are required by Section 303(a) of HAVA. These activities include: (1) verifying voter registration records against the driver's license records that are verified by the Social Security Administration, (2) using state felony conviction records to cancel the registrations of ineligible voters, and (3) using state records on death to cancel ineligible voters.

## Section 5

Section 5 amends the statute governing the voting process when a voter goes to the polling place to vote. The bill rearranges the steps in the voting procedure to more accurately reflect the sequence that voters and poll workers go through.

This section clarifies that a first-time voter at the polling place is not required to provide identification if the voter has either: (1) previously provided valid identification, or (2) been verified through the Division of Motor Vehicles and the Social Security Administration as required by HAVA.

This section also defines valid identification as containing the voter's current name and either the voter's photograph or current residential address.

We urge the committee to report HB 2776 favorably for passage because it contains needed clarifications and definitions of current law. Thank you for your consideration.



**Disability Rights Center of Kansas**  
**Michael Donnelly, Director of Policy & Outreach**  
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**Testimony to the House Committee on Federal and State Affairs**

**Testimony Regarding HB 2776**

**March 14, 2006**

Chairman Edmonds and the honorable members of the committee, my name is Michael Donnelly. I am the Director of Policy and Outreach for the Disability Rights Center of Kansas. The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As the state designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws, including representing persons with disabilities to protect their voting rights under the Help America Vote Act of 2002.

Advance voting has become increasingly popular as the number of polling places has decreased, the lines at polling places have increased and as lives are busier than ever. More than 260,000 Kansans requested a regular Advance Ballot by mail in the 2004 general election. Nearly 24,000 Kansans with disabilities or permanent illnesses requested to vote by permanent advance ballot in 2004. Additionally, another 125,200 actually cast an in person advance ballot. HB 2776 will affect as many as 410,000 Kansas voters. (see attached 2004 General Post Election Report)

Much of HB 2776 appears to restate first time voter identification requirements enacted in 2004. HB 2776 also implements the state's responsibility to compare voter registration records with the database records for convicted felons and persons who have died. DRC does not oppose those provisions.

However, HB 2776 does include a provision that is quite concerning to DRC and our constituents – provisional ballots. Page 8, line 6 – 16 amends current law in a way that is both positive and negative. Without question, a first time voter who

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 11

attempts to vote in advance in person, and who's information is not consistent with the voter registration list must be given a provisional ballot in accordance with both federal and state law. Because they are voting in person the voter is then given information on how to submit the necessary documentation to the county election official to ensure their vote is counted during the canvassing process (K.S.A. 25-409). How will that process work with mail-in advance ballots for first time voters?

DRC has advocated that all voters, including voters with disabilities who vote by advance ballot, or permanent advance ballot be given the opportunity to correct any deficiencies that cause their ballot to be challenged in accordance with K.S.A. 25-409. K.S.A. 25-409 addresses the procedure by which ballots are challenged and the procedures to be used by election workers in processing a provisional ballot. K.S.A. 25-409 assumes in person voting. It does not address provisional ballots submitted by mail.

The concern of DRC and others in the disability community regarding provisional ballots being issued in the advance balloting is how and when the voter will 1) be informed that their ballot is being challenged, 2) why the voters ballot is being challenged, 3) what the voter can do to ensure that their vote is counted, and 4) by when they must provide the required documentation. If the county election official is communicating with the voter by mail regarding a provisional ballot, the chance of the voter's ballot being counted is limited. The vast majority of advance mail-in ballots arrive at the county election office on the Friday and Monday before the election. Canvassing occurs the following Friday or Monday. By the time a voter can receive a mailed letter declaring their ballot provisional, they will not likely have time to correct the error. That can be especially true for voters with disabilities, e.g., blindness, who use assistance opening and reading their mail, often only once weekly. What procedures need to be implemented that can assure that voters ballots are not left uncounted because of inadequate or missed communications?

Both federal law and state law provide for the provisional ballot. HB 2776 does a good thing in that it requires the county election official to give the voter a provisional ballot. Unfortunately, it leaves out the requirement for clear communication that empowers the voter to correct any missing or insufficient information. Lawmakers need to consider how to maintain the improved opportunities for casting our ballots, and how we improve the opportunities to correct any missing or incorrect data that might cause a vote to be left uncounted.

## 2004 General Post Election Report

	Permanent Advance	Permanent Returned	Regular by mail requested	Regular by mail returned	Regular In Person requested	Regular In Person returned	Total Advance Requested	Total Advance Returned	In-person Advance begin	Federal Service requested	Federal Service Returned	Provisional Ballots Cast	Provisional Ballots Counted	Total Ballots Cast	Polling Places	# of board workers	Date of Canvass
Allen	120	98	304	271	14	14	438	383	10/13/2004	41	29	155	99	5,976	12	45	Friday
Anderson	52	48	328	309	213	213	593	570	10/13/2004	16	7	28	16	3,940	7	53	Friday
Atchison	176	165	348	337	661	661	1,185	1,163	10/13/2004	47	43	207	162	7,279	18	68	Friday
Barber	66	59	182	175	155	155	403	389	10/13/2004	5	4	42	31	2,053	4	20	Friday
Barton	252	230	1,078	960	1,451	1,451	2,781	2,641	10/18/2004	59	42	192	160	11,857	26	115	Friday
Bourbon	204	190	330	294	302	302	836	786	10/13/2004	40	27	258	157	6,840	17	62	Monday
Brown	24	24	445	429	227	227	696	680	10/13/2004	35	32	147	101	4,636	10	59	Friday
Butler	308	264	3,031	2,860	792	792	4,131	3,916	10/13/2004	132	112	827	477	28,864	45	165	Monday
Chase	168	168	206	192	108	108	482	468	10/13/2004	8	7	30	13	1,514	1	21	Friday
Chautauqua	61	58	143	130	96	96	300	284	10/18/2004	8	5	44	39	1,980	9	65	Friday
Cherokee	241	222	636	587	168	168	1,045	977	10/13/2004	64	49	84	71	10,024	39	163	Friday
Cheyenne	21	21	187	175	304	304	512	500	10/19/2004	6	6	12	10	1,239	4	46	Friday
Clark	38	38	130	113	138	138	306	289	10/18/2004	3	2	32	20	1,347	4	19	Monday
Clay	142	124	163	153	572	572	877	849	10/13/2004	35	28	60	46	4,150	10	49	Monday
Cloud	85	78	359	344	200	200	644	622	10/13/2004	38	33	116	89	4,582	12	68	Friday
Coffey	81	77	216	206	377	377	674	660	10/14/2004	29	24	98	65	4,472	6	52	Monday
Comanche	5	5	61	51	60	60	126	116	10/18/2004	4	3	12	7	1,009	4	26	Friday
Cowley	373	310	702	654	493	493	1,568	1,457	10/13/2004	68	38	393	220	14,791	52	156	Monday
Crawford	652	542	1,233	1,073	247	247	2,132	1,862	10/13/2004	101	86	591	280	17,021	50	173	Friday
Decatur	40	40	97	90	65	63	202	193	10/14/2004	8	6	6	0	1,799	7	59	Friday
Dickinson	171	151	502	477	629	629	1,302	1,257	10/13/2004	58	38	219	137	8,922	17	70	Friday
Doniphan	40	37	190	171	129	129	359	337	10/13/2004	33	27	78	47	3,709	8	39	Friday
Douglas	336	300	6,170	4,772	4,661	4,655	11,167	9,727	10/13/2004	236	187	2,897	1,997	51,267	67	350	Monday
Edwards	23	22	97	94	77	77	197	193	10/13/2004	7	7	23	16	1,521	4	26	Monday
Elk	11	8	135	130	81	81	227	219	10/20/2004	2	1	18	7	1,545	7	36	Friday
Ellis	165	111	638	554	884	884	1,687	1,549	10/18/2004	59	40	333	246	14,116	31	103	Friday
Ellsworth	44	42	227	213	257	257	528	512	10/13/2004	12	12	28	22	3,152	9	45	Friday
Finney	97	87	334	307	619	619	1,050	1,013	10/14/2004	62	50	203	24	10,022	15	104	Monday
Ford	116	103	853	789	1,338	1,338	2,307	2,230	10/18/2004	38	32	421	263	9,264	5	55	Monday
Franklin	171	161	650	610	874	874	1,695	1,645	10/13/2004	33	22	272	159	11,646	22	94	Friday
Geary	185	160	264	245	425	425	874	830	10/13/2004	171	121	422	200	7,406	25	75	Friday
Gove	13	12	152	143	25	25	190	180	10/13/2004	3	3	22	19	1,506	6	50	Friday
Graham	15	15	99	90	128	128	242	233	10/13/2004	3	1	28	19	1,469	4	36	Monday
Grant	36	36	135	125	541	541	712	702	10/13/2004	7	7	113	94	2,815	1	14	Friday
Gray	81	73	182	165	208	208	471	446	10/13/2004	12	9	138	108	2,454	2	31	Friday
Greeley	7	7	26	23	96	96	129	126	10/13/2004	1	1	11	8	746	1	3	Friday
Greenwood	44	35	232	203	252	252	528	490	10/13/2004	14	13	84	47	3,307	7	54	Friday

11-3

## 2004 General Post Election Report

	Permanent	Permanent	Regular	Regular	Regular	Regular	Total	Total	In-person	Federal	Federal	Provisional	Provisional	Total		# of	Date
	Advance	Returned	by mail	by mail	In Person	In Person	Advance	Advance	Advance	Service	Service	Ballots	Ballots	Ballots	Polling	board	of
County	on list		requested	returned	requested	returned	Requested	Returned	begin	requested	Returned	Cast	Counted	Cast	Places	workers	Canvass
Hamilton	0	0	164	157	380	380	544	537	10/14/2004	8	5	28	22	1,133	1	23	Friday
Harper	42	41	126	107	201	196	369	344	10/26/2004	10	7	44	32	2,982	3	33	Friday
Harvey	375	332	963	901	366	366	1,704	1,599	10/13/2004	83	67	355	266	15,035	32	123	Friday
Haskell	25	23	87	77	211	211	323	311	10/15/2004	8	7	22	4	1,599	2	18	Friday
Hodgeman	0	0	102	94	56	56	158	150	10/13/2004	1	0	13	3	1,211	2	12	Monday
Jackson	60	54	447	412	486	485	993	951	10/18/2004	20	15	111	87	5,972	10	44	Monday
Jefferson	31	26	542	512	273	273	846	811	10/13/2004	41	30	173	90	8,965	13	53	Friday
Jewell	27	17	31	29	24	24	82	70	10/14/2004	3	1	27	17	1,936	7	39	Friday
Johnson	5,239	4,415	36,372	34,011	62,325	62,325	103,936	100,751	10/13/2004	1,135	854	10,945	7,375	263,166	286	1,792	Monday
Kearny	16	15	85	73	148	148	249	236	10/14/2004	11	5	33	16	1,492	3	21	Friday
Kingman	6	3	75	75	316	314	397	392	10/18/2004	12	6	27	3	3,486	16	85	Friday
Kiowa	3	3	84	73	60	60	147	136	10/13/2004	3	3	38	29	1,594	5	31	Friday
Labette	193	168	514	463	174	174	881	805	10/13/2004	51	49	211	40	9,400	36	101	Friday
Lane	10	10	87	85	62	62	159	157	10/19/2004	0	0	11	11	1,019	2	18	Friday
Leavenworth	183	173	1,776	1,658	2,157	2,157	4,116	3,988	10/13/2004	371	303	847	601	27,738	36	164	Monday
Lincoln	53	50	156	139	114	114	323	303	10/19/2004	8	5	42	21	1,898	6	36	Friday
Linn	50	41	301	260	248	248	599	549	10/21/2004	15	12	193	141	4,830	14	43	Monday
Logan	71	66	225	209	73	74	369	349	10/13/2004	11	9	8	3	1,548	5	16	Friday
Lyon	77	68	597	555	2,116	2,116	2,790	2,739	10/13/2004	99	80	495	412	13,618	27	108	Friday
Marion	97	83	295	281	154	154	546	518	10/14/2004	28	24	169	123	6,222	16	66	Friday
Marshall	79	71	398	371	888	888	1,365	1,330	10/13/2004	29	23	144	80	5,245	6	48	Monday
McPherson	315	284	730	669	1,742	1,742	2,787	2,695	10/13/2004	79	56	447	327	13,645	18	65	Friday
Meade	39	37	103	96	262	262	404	395	10/13/2004	7	5	51	34	2,156	3	21	Friday
Miami	203	168	1,290	1,228	767	764	2,260	2,160	10/13/2004	40	34	407	206	14,008	19	102	Monday
Mitchell	113	96	252	234	251	251	616	581	10/13/2004	12	8	54	38	2,869	7	68	Friday
Montgomery	312	269	727	587	369	369	1,408	1,225	10/13/2004	88	66	514	256	14,478	47	141	Monday
Morris	99	91	226	215	311	311	636	617	10/13/2004	20	18	58	27	3,024	10	70	Friday
Morton	67	67	162	156	236	236	465	459	10/15/2004	2	2	31	17	1,617	4	16	Friday
Nemaha	40	37	452	409	218	218	710	664	10/14/2004	24	20	100	83	5,536	12	105	Friday
Neosho	104	90	357	302	122	122	583	514	10/13/2004	35	24	367	291	7,340	16	97	Friday
Ness	43	40	197	190	93	93	333	323	10/26/2004	5	2	28	26	1,873	11	68	Friday
Norton	78	70	183	177	107	107	368	354	10/13/2004	10	8	46	31	2,633	11	57	Monday
Osage	65	51	367	342	287	287	719	680	10/13/2004	21	19	238	153	7,624	12	82	Friday
Osborne	30	16	198	170	86	86	314	272	10/25/2004	7	5	44	32	2,452	10	26	Friday
Ottawa	38	33	290	274	128	128	456	435	10/13/2004	9	6	43	2	3,115	7	33	Friday
Pawnee	82	67	140	121	584	584	806	772	10/13/2004	21	15	61	44	3,153	4	87	Friday
Phillips	26	26	194	177	98	92	318	295	10/13/2004	8	7	61	52	3,156	11	39	Friday

11-4



**2004 General Post Election Report**

	Permanent	Permanent	Regular	Regular	Regular	Regular	Total	Total	In-person	Federal	Federal	Provisional	Provisional	Total		# of	Date
	Advance	Returned	by mail	by mail	In Person	In Person	Advance	Advance	Advance	Service	Service	Ballots	Ballots	Ballots	Polling	board	of
County	on list		requested	returned	requested	returned	Requested	Returned	begin	requested	Returned	Cast	Counted	Cast	Places	workers	Canvass
Pottawatomie	58	51	615	579	232	232	905	862	10/15/2004	49	34	217	111	9,002	9	85	Monday
Pratt	27	24	294	251	289	289	610	564	10/15/2004	22	18	97	66	4,547	12	50	Friday
Rawlins	50	47	161	146	183	183	394	376	10/21/2004	4	1	11	7	1,772	5	56	Friday
Reno	519	465	1,613	1,476	3,983	3,983	6,115	5,924	10/13/2004	133	126	553	355	27,042	36	187	Friday
Republic	20	20	222	205	130	130	372	355	10/13/2004	24	19	73	43	3,051	9	73	Friday
Rice	100	79	236	212	489	489	825	780	10/13/2004	29	20	83	56	4,354	8	42	Friday
Riley	175	154	1,138	1,035	2,732	2,679	4,045	3,868	10/14/2004	359	271	793	382	21,465	26	140	Monday
Rooks	49	49	152	149	93	93	294	291	10/15/2004	12	8	24	10	2,715	7	36	Friday
Rush	3	3	149	139	115	115	267	257	10/19/2004	8	5	12	3	1,836	9	72	Monday
Russell	163	157	384	367	178	178	725	702	10/13/2004	562	545	106	56	3,615	12	36	Friday
Saline	321	279	1,367	1,277	1,994	1,994	3,682	3,550	10/13/2004	121	94	626	409	23,833	46	173	Friday
Scott	88	81	272	230	244	244	604	555	10/13/2004	18	16	26	19	2,324	1	24	Friday
Sedgwick	4,611	4,268	15,568	13,622	8,013	8,013	28,192	25,903	10/20/2004	964	746	11,201	8,797	181,626	209	1,005	Monday
Seward	146	125	209	161	1,449	1,449	1,804	1,735	10/13/2004	29	19	231	141	5,964	2	45	Friday
Shawnee	1,632	1,439	6,904	5,771	5,693	5,693	14,229	12,903	10/13/2004	413	321	1,912	1,595	82,784	187	596	Monday
Sheridan	31	27	117	114	109	109	257	250	10/13/2004	10	9	10	0	1,431	6	29	Monday
Sherman	90	82	176	169	538	538	804	789	10/19/2004	8	5	43	28	2,839	1	24	Friday
Smith	34	32	193	193	117	117	344	342	10/14/2004	7	6	32	5	2,436	5	30	Friday
Stafford	28	23	184	168	133	133	345	324	10/13/2004	2	2	23	12	2,212	5	36	Friday
Stanton	15	15	62	55	69	69	146	139	10/13/2004	4	2	20	17	980	3	11	Friday
Stevens	7	7	113	108	206	206	326	321	10/18/2004	9	9	28	26	2,269	2	38	Monday
Sumner	122	97	641	544	427	427	1,190	1,068	10/13/2004	51	36	266	154	10,679	14	133	Friday
Thomas	50	50	228	192	447	447	725	689	10/18/2004	20	13	74	66	3,916	10	36	Friday
Trego	42	38	177	166	253	253	472	457	10/19/2004	5	4	10	6	1,722	1	22	Monday
Wabaunsee	62	56	252	218	36	36	350	310	10/14/2004	20	16	35	10	3,646	12	38	Friday
Wallace	21	18	110	93	114	114	245	225	10/13/2004	3	3	8	1	893	1	23	Friday
Washington	51	45	280	264	159	159	490	468	10/13/2004	11	10	95	79	3,265	10	74	Friday
Wichita	12	12	81	75	46	46	139	133	10/19/2004	0	0	11	8	1,075	1	19	Friday
Wilson	171	143	349	320	330	330	850	793	10/13/2004	23	12	135	86	4,498	11	41	Friday
Woodson	28	27	240	233	127	127	395	387	10/15/2004	9	7	14	6	1,795	4	44	Friday
Wyandotte	2,065	1,910	8,425	6,438	2,051	2,051	12,541	10,399	10/13/2004	197	149	3,664	2,780	54,514	69	656	Monday
<b>Totals:</b>	<b>23,746</b>	<b>21,045</b>	<b>111,272</b>	<b>99,373</b>	<b>125,339</b>	<b>125,262</b>	<b>260,357</b>	<b>245,680</b>		<b>6,959</b>	<b>5,480</b>	<b>45,563</b>	<b>31,805</b>	<b>1,213,108</b>	<b>2,031</b>	<b>10,494</b>	

11-5



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# Topeka Independent Living Resource Center

785-233-4572 V/TTY • FAX 785-233-1561 • TOLL FREE 1-800-443-2207  
501 SW Jackson Street • Suite 100 • Topeka, KS 66603-3300

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## Testimony on HB 2776 to the House Committee on Federal and State Affairs By Kevin Siek March 14, 2006

Chairman Edmonds and members of the committee, thank you for the opportunity to provide testimony in support of HB 2776. My name is Kevin Siek and I am a disability rights advocate for the Topeka Independent Living Resource Center. Our agency is a civil and human rights organization with a mission to advocate for justice, equality and essential services for all people with disabilities.

The Topeka Independent Living Resource Center supports HB 2776 because it improves the process for first-time advanced voters to provide valid identification. Under current law if no identification or incorrect identification is provided with a first-time advance voter's application they would not receive a ballot. HB 2776 corrects this flaw, which could potentially disenfranchise legitimate advanced voters, by requiring that a provisional ballot be sent to the voter in question and offering them an opportunity to provide valid identification.

We would further recommend that language be added which requires that the voter be notified that they will need to provide valid identification in order for their vote to be counted, that explains how to provide that information and explains what documentation is acceptable as valid identification. I have provided an example of our suggested changes with this testimony.

We also support the new language regarding the verification of a voter's identity. HB 2776 would require the comparison of exact information, such as, the voter's driver's license number or non-driver's license number or the last four digits of their social security number rather than something as arbitrary and changeable as a person's signature. This new language comports with the voter identification provisions of the Help Americans Vote Act and eliminates any ambiguity in the voter identification verification process. This is particularly important for voters with disabilities whose signature may vary from day to day depending on their condition or whose signature can vary greatly over time as their disability progresses.

Thank you for the opportunity to testify in support of HB 2776.

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 12

***Advocacy and services provided by and for people with disabilities.***

1 *required of such first-time voter unless such voter moves to another county*  
 2 *or state or is removed from the voter registration list and subsequently*  
 3 *re-registers. If no identification information was provided by the first-*  
 4 *time voter, or if such information does not match the information on the*  
 5 *verified voter registration list, the county election officer shall not transmit*  
 6 *an advance voting ballot issue a provisional ballot to such voter in ac-*  
 7 *cordance with K.S.A. 25-409 and amendments thereto. The voter shall*  
 8 *provide a valid form of identification as defined in subsection (b) of K.S.A.*  
 9 *25-1122, and amendments thereto, to the county election officer in person*  
 10 *or provide a copy by mail or electronic means before the meeting of the*  
 11 *county board of canvassers. At the meeting of the county board of can-*  
 12 *vassers the county election officer shall present copies of identification*  
 13 *received from provisional voters and the corresponding provisional bal-*  
 14 *lots. If the county board of canvassers determines that a voter's identifi-*  
 15 *cation is valid and the provisional ballot was properly cast, the ballot shall*  
 16 *be counted.*

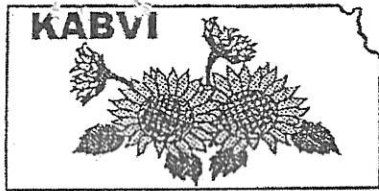
**in order for their ballot  
to be counted**

**be given written notice that  
they must**

17 Sec. 4. K.S.A. 25-2354 is hereby amended to read as follows: 25-  
 18 2354. (a) Once each calendar year a check of the registration records of  
 19 voters in the state of Kansas shall be commenced by the chief state elec-  
 20 tion official or the county election officer by comparing such records to  
 21 the National Change of Address files. A county election officer may com-  
 22 plete one or more checks each calendar year. If the chief state election  
 23 official performs the check, any discrepancies discovered in the check  
 24 shall be reported to the appropriate county election officer, who shall  
 25 initiate the confirmation process prescribed by K.S.A. 25-2316c, and  
 26 amendments thereto, within 45 days. As an alternative to participation in  
 27 the national change of address program, the county election officer may  
 28 conduct mass or targeted mailings to registered voters to obtain infor-  
 29 mation upon which to base the confirmation mailings.

30 (b) *The chief state election official shall compare information derived*  
 31 *from the voter registration records of voters in the state of Kansas to*  
 32 *driver's license records for the purpose of verifying the accuracy of the*  
 33 *information provided on applications for voter registration in compliance*  
 34 *with section 303 of the help America vote act of 2002. Such comparison*  
 35 *shall include each voter's driver's license number or nondriver's identifi-*  
 36 *cation number or the last four digits of the voter's social security number*  
 37 *as provided by the voter on the voter's application for registration. If the*  
 38 *information for any voter matches, no further identification shall be re-*  
 39 *quired of such voter unless such voter moves to another county or state*  
 40 *or is removed from the voter registration list and subsequently re-regis-*  
 41 *ters.*

42 (c) *The chief state election official shall compare information derived*  
 43 *from the voter registration records of voters in the state of Kansas to state*



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

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March 14, 2006

TO: House Federal and State Affairs Committee

FROM: Michael Byington, KABVI President *MB*

SUBJECT: opposition to HB 2776 as proposed

You are all aware that the adoption at the federal level of the Help America Vote Act (HAVA) has been the cause of considerable Legislative calisthenics in Kansas and many other States. I am going to tell you about the work that the Kansas Association for the Blind and Visually Impaired, Inc. (KABVI), the organization of which I serve as President, did with regard to the adoption of HAVA in Washington, D.C., and yes, this will relate back quite directly to the problems we have with House Bill 2776.

As disability advocacy organizations in Kansas go, KABVI is a pretty humble and modest operation. Almost all of what we do is done through the labors of blind and visually impaired Kansans who serve as volunteers working on the causes we feel are important. KABVI has a little one-room office in one of the less glitzy office buildings in downtown Topeka, and it is peopled by volunteers who do not have much money, and who do not get much money from any source, but we are dedicated citizens who care about the creation of an open and accessible society for all people, including the blind in visually impaired, in Kansas and throughout the Nation. To that end, we, along with our national affiliated organization, the American Council of the Blind (ACB), got very involved very quickly in work on the Help America Vote Act (HAVA). We can not afford to send our officers or representatives to Washington to advocate on a national level very often, but on an issue as important as HAVA, we raised the funds to do so. We were fortunate in that we were able to be in Washington, at the right places and at the right times, to have significant input and impact on the language which went into HAVA. Our message

FEDERAL AND STATE AFFAIRS™

Date 3-14-06  
Attachment 13

was that the voting process needs to be private, independent, and verifiable for All-American voters including those who have visual disabilities. I personally consider it to be one of the crowning achievements of my life thus far to have been sent to Washington by KABVI to work on the HAVA language and markup. From this perspective, I will divide the disability-related provisions of HAVA into two major thrusts.

One major thrust has been to see that the voting process at the polling place is accessible to people who are blind and visually impaired as well as all others who have disabilities. This means that such individuals can get into the polling place, and once there, they have the right to vote without having to tell any other human being how they want to vote or who they want to vote for. It means that once they have cast their vote in a private, independent and confidential manner, they are able to privately verify that they have indeed cast a vote for the candidates of their choice. With excellent cooperation from the office of Secretary of State Thornburgh, we have made tremendous progress toward achieving this goal.

In reality, however, the achievements just described do not begin to make voting accessible to many blind and visually impaired Kansans. Many blind and visually impaired Kansans do not have transportation to get to the polling places. They must still vote through the use of an advance-voting ballot mailed to their home, or to other places they may designate. It is not currently possible to make this voting process as private, independent, and verifiable as the voting process at the polling place will soon become. Blind and visually impaired voters using the advance voting ballot through the mail must still get someone who is sighted to help them fill out the paperwork, so their privacy is compromised, but it is important NOT TO place additional barriers in the voting process for Kansans who want to use the advance voting process, and who may be less capable than most in getting the identification required.

This brings us to problems we have with this Bill. This bill expands the use of, and to a large extent creates, the contrivance of the advance PROVISIONAL voting ballot. In layman's terms, this concept means that an election official can say to a voter, including a blind or visually impaired voter, "Well we are not sure who you are, so we are going to send you a ballot which may or may not be any good; we may or may not count it. If you want it counted, however, you must take some specific positive actions to prove who you are, or whatever we want you to prove, prior to a very short time after the election. Otherwise, we are not going to count your ballot and we are not going to tell you if it was counted." This goes against the very spirit of making the elections process more accessible to all citizens, to all qualified voters.

Some of the language where there are problems causing the situation I have described here starts with ©, line 38 on page seven, and runs through line 16 on page eight. We would advocate that problems with identification should be worked out when the advance-voting ballot is requested, and that way, a real, countable ballot can be issued. Otherwise the process becomes too cumbersome to be practical.

We also have concerns with page ten of the bill, lines 14 through 16. If the voter's current address is on the registration books, then the voter is likely not a new or first time voter, and there is no reason under other provisions within the bill to put them through the calisthenics of additional identification requirements. The real addition to the identification requirements provided through these lines, however, is that the Legislation is proposing to rank the photographic identification at a level higher than the other non-photographic forms of identification listed. The first point I would make is that, if a person acquires a new and profound disability, their photo may alter just as much as their signature may. Neither the photo or signature should be used as a final identification arbiter. Additionally, if a person lacks transportation into the community because of visual or other disabilities, and thus needs to vote by advance ballot because of transportation or travel related difficulties, they also may not choose to travel out of their living environment to get a form of photographic identification. To get a valid form of photographic identification, one usually has to get their face out and take it to the governmental entity to get it photographed. Many individuals with severe disabilities who are well known in their communities, and who have established relationships with local bankers and merchants, may not choose to get the Kansas non-driver's identification card. After all, to get it, they have to travel out to a public office; they have to pay money for it, and after they get it they still can not drive a car. Neither the signature comparison nor the photographic comparison of a disabled voter is going to improve the security of the voting process. KABVI would thus appreciate it if the photographic identification does not become the preferred identification over other forms of identification allowed.

Those of us who worked on HAVA are aware of the minimal identification requirements within the federal statutes. We agreed that they needed to be there because we do not want the efficacy of the vote compromised anymore than anyone else does. We do not, however, believe that the State of Kansas will improve the efficacy of the vote by going above the minimal HAVA identification requirements. All through the HAVA process, at both State and federal levels, elected officials and their representatives have asked me just how we are wanting to impact elections. There seems to be a view that we are attempting to pull some kind of a fast one on

the electorate. I resent and strongly deny such allegations. The members of KABVI are mostly blind and visually impaired Kansans. I can assure you, however, that they range across all political spectrums. We have members to the right of Rush Limbaugh, to the left of Michael Moore, and everywhere in between. I suspect that overall, the cross section of blind and visually impaired voters in Kansas and the views they represent looks pretty much like the rest of Kansas. On behalf of blind and visually impaired Kansans, KABVI does not want to change the outcome of elections. We do most certainly, however, want all of our members and associates to be able to participate in elections, and we want them to be able to do so without unreasonable or undue inconvenience or access barriers.

STATE OF KANSAS

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TOPEKA

HOUSE OF  
REPRESENTATIVES

TESTIMONY ON

HB ~~2931~~  
2929

COMMITTEE ASSIGNMENTS  
CHAIRPERSON: ARTS & CULTURAL RESOURCES  
JOINT COMMITTEE  
VICE-CHAIRPERSON: EDUCATION (K-12)  
MEMBER: HIGHER EDUCATION  
ECONOMIC DEVELOPMENT  
LEGISLATIVE EDUCATION  
PLANNING

Chairman Edmonds, Vice-Chairman Siegfried, Ranking Minority Member Burroughs and members of the Federal and State Affairs Committee, thank you for allowing me to appear before you this evening in support of HB ~~2931~~ 2929.

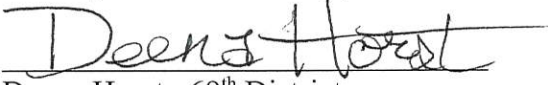
This bill was drafted in an attempt to find a solution to a situation in which a member of the Salina business community was denied access to his personal property which was located in a business which had been the subject of eminent domain. Mr. Frick was going to attend today, but he is ill so will be unable to attend so I have included e-mails which outline his angst with the process. Along with his complaints he has included suggestions for changes.

It is my understanding that the day the payment was made to the court, the City of Salina padlocked the building, claiming all of the personal property of the owner and of those business persons leasing space from him belonged to the city. No notice was given that the payment was to be made, and the individuals had no indication that they needed to remove their property by that day. [See attachment #1]

It is also my understanding that this situation continues to be a problem, because of several issues surrounding this eminent domain action. [These are outlined in an e-mail from Mr. Frick, the former owner of the land and building in question. He has made several suggestions for changes in other areas of the eminent domain law which you may want to take under advisement. (See attachment #2)] The specific suggestions he has made regarding this narrow component of eminent domain issues are found on page 2 of his e-mail...I have starred the portions of the email which seem to refer to the issue in the bill. In addition, his accountant has also e-mailed me with a number of documents outlining what is considered by the federal government to be personal property and what is considered real property. The accountant has suggested that these federal codes be used as the guide for distinguishing between real and personal property. [Those codes are: Real Property - 1250 & Personal Property - 1245.]

I would suggest that Mr. Frick's idea for the granting of a longer period of time than 3 days be favorably considered. I apologize to the leadership and to the membership of the committee. This bill was drafted when the revisors were under a lot of stress from moving and from our many requests so I didn't ask for a change although I believed the three days mentioned in the law to be too short of a time period.

Thank you in advance for your consideration of this narrow, but necessary change to the eminent domain law(s).

  
Deena Horst 69<sup>th</sup> District

FEDERAL AND STATE AFFAIRS  
Date 3-14-06  
Attachment 14



Attachment 1

**From:** "Horst, Gordon" <gordon@worldlinc.net>  
**To:** <"Undisclosed Recipients"@server2.saraney.com>  
**Date:** 3/12/2006 9:44:27 PM  
**Subject:** Hope this condensed version helps you. (fwd)

==== Forwarded message from "Ben Frick" <b8j8frick@hotmail.com> =====

\From: "Ben Frick" <b8j8frick@hotmail.com>  
To: "Horst,  
Gordon" <gordon@worldlinc.net>  
Subject: Hope this condensed version helps you.  
Date: Sun, 12 Mar 2006 14:07:45 -0600

In our case, the city paid the court the condemnation purchase price for our real estate on this Friday afternoon.

Later that same Friday, the city sent the police to our corner to close down the Lounge and Clubs. They came in the dress shop the next day and informed the owner who was leasing the dress shop from us that all of his clothes and merchandise now belonged to the city. They ran off the customers he had in his shop and told them they could not take the clothes they purchased with them because they now belonged to the city. The police ran off all the vendors who had rented space in the flea market in the parking lot telling them that they could no longer be there because it now belonged to the city. They even claimed that the food in the restaurant now belonged to the city and tried to prevent food prepared for a catered wedding reception being held at a downtown hotel from being removed from the restaurant to be delivered to the wedding reception. The police tried to prevent a baby's high chair needed for the wedding reception from being taken out of the restaurant too.

This all happened on a Friday afternoon, Friday evening and Saturday morning. We couldn't get back into court to get something done about the personal property, trade fixtures, etc until Monday. There was a meeting held after that Monday identifying and agreeing to what was personal property, trade fixtures, etc., and what did not belong to the city. It was made up by the city, signed by the city manager and a month later, the city reneged on the whole agreement.

The city, through their police force, succeeded in running off all the business that the businesses had left.

==== End forwarded message =====

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 15

Attachment #2



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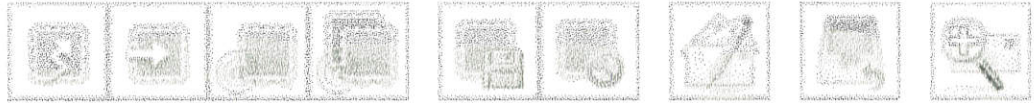
Virtual Server Administration Suite

**Folder List**

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[Junk Mail](#)

[Other...](#)

{INBOX} : Please give to Deena -- "Ben Frick" <b8j8frick@hotmail.com>



Current Mail Folder: {INBOX}

Message #: 203/203

Message Size: 30.6 kb

**Address Book**

[View Contacts](#)  
[Add New Contacts](#)  
[Import Contacts](#)

**To:** "Horst, Gordon" <gordon@worldinc.net>  
**Date:** Sun, 12 Mar 2006 12:32:44 -0600  
**From:** "Ben Frick" <b8j8frick@hotmail.com>  
**Subject:** Please give to Deena

**Spam Filters**

Spam Filters are Active

[View/Edit Spam Filters](#)

[ Attachment #1 ]  
[ Type: text/plain; Encoding: quoted-printable; Size: 11.1 kb ]

Some suggestions to improve eminent domain process, move, relocation, search, and reestablishment.

**Autoresponder**

Autoresponder is Off

[Edit Settings](#)

1.. After the original appraised value of the property is found not acceptable by the landowner, a judge appoints 3 supposedly neutral people to serve as appraisers to collectively agree on another value for the property.  
Neither the purchasing agency or the landowner are supposed to have any input or comment in the selection of the 3 appraisers.

In our case one of those appointed to serve as one of the three appraisers was a real estate man who had tried to sell an RTC property to someone and was involved in aiding the theft of personal property contained in the property he was trying to sell. We were successful bidder and bought the property and were instrumental in his getting caught in the theft investigation. He was appointed to be one of our three appraisers and we weren't even allowed to tell anyone about our adversarial relationship, so he really got even with us for turning him in. Another one of the three appraisers was a former Saline County Appraiser and was employed by the appraisal firm that provided the original appraised value that we rejected. He was given the opportunity to make his employer's appraisal look more accurate by keeping the value the three appraisers arrived at lower than a non-biased person would have, and we were not allowed any input or comment in this persons appointment either.

The landowner and the purchasing agency should have equal opportunity to object, comment, or agree on the three persons proposed to be appointed.

My thoughts on this are, if they are taking someone's home, be sure that at least one and maybe more of the three people appointed to arrive at a fair purchase price be an actual homeowner. If they are taking a service station, make one of those appointed owning a service station or formerly owning a service station. The same goes for a clothing store, stockyard, restaurant, bar, tavern, etc. Some of those appoint should have some working knowledge of the business or residential area being taken.

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 16

A while back, when the State was supposed to be fixing the open records laws, they excluded real estate appraisals that the county appraisers have from the open records rules except for licensed real estate brokers. In this case, the three people appointed to serve as appraisers for the eminent domain process, since to be fair should not be exclusively real estate professionals, can not obtain this very useful information to aid in the appraisal values they have to come up with. If this information was allowed to be obtained under the open records requests by even the original property owner, it may help them be more agreeable and satisfied with the price offered for their property if they could have some information to go on.

I really believe that if there is some consideration given to real experience, familiarity, or knowledge of the particular property and it's use and operation, a lot of the fear and distrust people have of the eminent domain process would be lessened.

\* 2.. The judge's instructions to the three people appointed to arrive at an appraised value of the property to be taken should be carefully instructed as to what is personal property, tools of the trade, trade fixtures, and business accessories, not to be confused with permanent real estate structure that an agency is taking. The personal property lists that the county appraiser has which include stoves, refrigerators, walk-in coolers, freezers, hoods, prop walls, mirrors, murals, etc., are useful in determining personal property. The IRS on personal property, tools of the trade, trade fixtures, etc for depreciation schedules and other tax records is a good guide to define what a particular business must retain to continue that business. Things like the feature walls that Guitierrez Restaurant had moved from their location on South Ohio Street to their new location at I-35 are a good example of what is considered personal property, tools of his trade, and accessories for his restaurant. This information is also very helpful in showing what personal property, accessories, tools of the trade, and trade fixtures that would be involved in moving and relocation and reestablishment of the particular business that is to be taken.

3.. The moving, relocation, and reestablishment process is as important and more complicated than the original condemnation process for the real property. The original relocation specialist hired to handle our relocation had a real physical presence in Salina and familiarized himself with our property, the businesses located there, and the operation of the 14 business entities located on our corner. He was physically available to explain the process to us and to allow us to ask questions and him make suggestions to help with the details of the businesses moving and setting up business in another location. He researched the county records, personal property lists, number of entities located at our property and told the purchasing agency that moving, relocation, reestablishment, etc for the 20,000 square foot building, 3 acres of paved parking, and 14 business entities involved could cost as much as 3 ½ times as much as the original purchase price of the real estate that was taken. The taking agency, in this case, the City of Salina, promptly fired him. The city replaced the qualified relocation specialist with an attorney in an office 180 miles away from Salina. He visited the site only once, and did not ever check the individual businesses for their wants and needs.

16-2

The federal regulations regarding relocation, if followed like they are supposed to be are reasonably fair and make pretty good sense. We might suggest the following:

- 1.. The relocation rules specify that the relocation agent be a qualified specialist in the relocation process.
- 2.. The relocation specialist is supposed to be readily available and have a physical presence in order to be able to extend a helping hand to help this process along. A sympathetic, understanding, readily available relocation agent can go a long way toward helping the displaced homeowner and displaced business person make the transition to a new location during this extremely stressful time.
- \* 3.. A repair that is needed in this process is if it were possible that the minute the property is taken by the court or through the three appraisers, a true qualified relocation specialist should be hired and made available to the property owners and business owners soon to be displaced. They should not have to wait for the 30 days the purchasing entity is allowed to pay the purchase price into the court to start getting advice on what they are supposed to do looking for a new place to move.
- \* 4.. The qualified relocation specialist that is hired by the entity must be absolutely unbiased in order that the displaced businesspersons and displaced residents feel they can trust them. If the specialist supplies information to the purchasing agency, the same information must be supplied to the displaced business or resident. In order for this process to run smoothly, both sides must feel they can trust the qualified relocation specialist or everyone is wasting their time.
- \* 5.. After the two required moving bids are furnished to the relocation specialist and the purchasing entity, the displaced business should be allowed more than 3 days to move. They should be allowed at least 10 days to move to a new location, or if no new location is available at this time, move to secure storage until a new location is made available.
- 6.. If an agency like a city takes a property and forces a business out, there should be something in the law that the purchasing agency has to come up with a like type site to move the business to that would allow them to stay in business on about the same level as they were before they were forced out. Like the Topeka bike shop and bar, some people questioned the purchase amounts that the businesses wanted for the purchase of the property. If they had gone into the eminent domain process, not only would the people who were pushing the project have to pay for the purchase of the property, but the moving, relocation, reestablishment, costs that could exceed the property purchase price by as much as 3 ½ times under the federal standards. Maybe that is why they tried to go another way and relocate the bar for the owner themselves. Maybe it was a better deal to pay the bike shop owner more for the part of his property they took and let him stay right where he was than to fight over the price the owner wanted and still have to pay to relocate him. This sounds like a win, win action.

4.. We had to appeal our relocation process. The purchasing agency which in this case is the City of Salina, appointed the hearing officer who would hear out appeal. They appointed a former city manager who was also employed by the City of Salina as a deputy-city manager at the time he was hired to serve as the hearing officer for our appeal. According to the city, they were allowed to do that under the regulations and even though we questioned how an employee of the city could be unbiased in deciding how much his employer, the city, was going to have to pay us for our relocation. A part of any change should be that should a relocation process be appealed, that the hearing officer appointed to hear the appeal should be unbiased. He should not be a former city manager, present deputy city manager, employed by the city or in any way connected to the city or any other agency. It would be helpful if the hearing officer had a working knowledge of the type

of business for which he was judging the process of relocation so he would know what he is dealing with.

5.. We couldn't find anyone to answer our questions or listen to us when we tried to get someone's attention to do something about what the city was doing to us that was not following the rules, was unfair and we knew was wrong. We hesitate to advocate expanded government, but there should be some kind of agency whether it is connected with the governors office, the department of transportation, the highway department, or some place that can hear complaints from displaced property owners that the purchasing entity is not following the regulations. The displaced businesspersons need a sounding board to truly investigate what some government entities or agencies are doing to them. If some source of relief is not provided to hear the complaints, the words "eminent domain" will continue to be two of the most hated and feared words anyone who owns any property or a business dreads hearing.

Deena, If this information is not enough, and you need me to testify, please let me know the time and place and I will be there. I need to get in and out right away because of some pressing needs in Salina.  
Best, Ben

[ Attachment #2 ]  
{ Type: text/html; Encoding: quoted-printable; Size: 17.6 kb }

>> [View text/html attachment separately](#) <<  
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#### Printer Friendly Format

<b>Current Mail Folder:</b> {INBOX}	<b>Actions:</b> <a href="#">Redirect Message</a>
<b>Message #:</b> 203/203	<a href="#">Forward Message</a>
<b>Message Size:</b> 30.6 kb	<a href="#">Reply to Message</a>
	<a href="#">Group Reply</a>
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PROPOSED  
Substitute for HOUSE BILL NO. 2750

By Committee on Federal and State Affairs

AN ACT concerning land surveys; relating to performance by licensed land surveyors; amending K.S.A. 12-1306, 19-1414, 24-438, 24-467, 25-26a04, 26-201, 49-406 and 72-8212a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-1306 is hereby amended to read as follows: 12-1306. Whenever it shall become necessary in any city to condemn or appropriate land within or without the limits of ~~said the~~ city for public parks for the use and benefit of the people of ~~said-city, and shall be so declared--necessary--by--the council--or--by--any-board-of-city-commissioners-of-said-city~~ the city and the governing body of the city declares it necessary to condemn or appropriate any private property, ~~where~~ for which the purchase price cannot be agreed upon with the owner of ~~said~~ such property, ~~said--council--or--city--commissioners--shall--then~~ the governing body of the city shall cause a survey to be made by ~~some--competent--engineer--and--said~~ a licensed land surveyor and such survey and description of ~~said the~~ land so required shall be filed with the city clerk, ~~and.~~ Thereupon ~~said-council--or--board of--city--commissioners~~ governing body of the city shall make an order declaring the necessity of such appropriation and the purposes for which the ~~same~~ land is to be condemned or appropriated and a description of the ~~same~~ land as shown by ~~said~~ the survey, and all other and further proceedings necessary for the condemnation and appropriation of ~~said the~~ land shall be had and conducted as provided by law.

Sec. 2. K.S.A. 19-1414 is hereby amended to read as follows: 19-1414. Any survey made by ~~any-county-surveyor-or-his-deputy, or by-any-city-engineer,~~ <sup>any</sup> licensed land surveyor shall be evidence in any court in this state, but shall not be conclusive.

Sec. 3. K.S.A. 24-438 is hereby amended to read as follows: 24-438. Whenever it shall be deemed necessary to construct any levee across the right of way of any railroad company, and such railroad company shall be entitled to compensation therefor, the board of directors shall have the power to make such crossing or

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 17

to condemn and appropriate so much of such right of way or land as may be necessary for that purpose in the manner hereinafter provided; and whenever it shall be deemed necessary to appropriate any private property for use by the district in widening, deepening or otherwise improving any natural watercourse to prevent the overflow thereof, or for the construction of any levee, canal, drain, or other work, the board of directors shall cause a survey and description of the land so required out of the right of way or lands of such railroad company or out of the lands of any private owner to be made by ~~some--competent--engineer~~ a licensed land surveyor and filed with its secretary, and thereupon shall make an order declaring that the appropriation of such land is necessary and setting forth for what purpose the same is to be used. The board of directors, as soon as practicable thereafter, shall proceed to exercise the power of eminent domain in accordance with ~~K.S.A.--26-501-to 26-5167--inclusive~~ the eminent domain procedure act.

Sec. 4. K.S.A. 24-467 is hereby amended to read as follows:  
 24-467. Whenever it shall be deemed necessary to construct any ditch, levee, dike, jetty, riprap or other protective structure across or upon the land of any individual or corporation whether within or outside the territorial limits of the drainage district and such individual or corporation shall be entitled to compensation therefor, the board of directors shall have the power to construct such ditch, levee, dike, jetty, riprap or other protective structure or to condemn and appropriate so much of such land as may be necessary for that purpose in the manner hereinafter provided; and whenever it shall be deemed necessary to appropriate any private property for use by the district in widening, deepening or otherwise improving any natural watercourse to prevent the overflow thereof or for the construction of any ditch, dike, levee, jetty, riprap, canal, drain or other work, the board of directors shall cause a survey and description of the land so required out of the lands of any private owner (individual or corporation) to be made by ~~some~~

~~competent--engineer~~ a licensed land surveyor and filed with its secretary, and thereupon shall make an order declaring that the appropriation of such land is necessary and setting forth for what purpose the same is to be used; and shall then proceed to exercise the power of eminent domain in accordance with ~~K.S.A. 26-501 to 26-516~~, inclusive the eminent domain procedure act.

Sec. 5. K.S.A. 25-26a04 is hereby amended to read as follows: 25-26a04. (a) Each county election officer shall provide and maintain a suitable map or maps drawn to a scale no smaller than 1/2 mile to the inch in incorporated places and urban areas and no smaller than two miles to the inch in rural areas and clearly delineating all major observable features such as roads, streams, and railway lines and other visible ground features which meet the requirements of the federal bureau of the census for use as census block boundaries and showing the current geographical boundaries of each election precinct, representative district and senatorial district in the county. A street or other roadway which has been platted but not graded is not a visible or observable feature for the purposes of this section. The names of the features, including municipal boundaries, which constitute the boundaries of the precincts shall be shown clearly on the map or maps. The names or designations of the precincts shall be marked on the map or maps. A word description of the geographical boundaries shall be attached to each map. Such map, with attached description, shall be a public record.

(b) Each county election officer shall send a copy of each map or maps with attached description to the secretary of state. Such copies shall be public records.

(c) The county election officer shall notify the secretary of state in writing at least 30 days before any change in a political subdivision boundary or any changes in the boundaries or the reorganization of election precincts become effective and shall furnish a copy of the map or maps showing the current geographical boundaries, designation and word description of each new election precinct. The visible ground features of changed or



new precinct boundaries shown on the map or maps, if not coinciding with an existing census block as established by the federal bureau of the census, shall be documented for actual physical existence using either topographical quadrangles of the United States Geological Survey or aerial photography or a plat of the precinct boundaries certified by a ~~licensed--engineer--or~~ licensed land surveyor and clearly stating and certifying that such ~~engineer--or~~ licensed land surveyor has personally viewed the precinct boundaries and observed the actual physical existence of the visible ground features delineating such boundaries.

Sec. 6. K.S.A. 26-201 is hereby amended to read as follows:  
26-201. A city shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto; ~~--Provided,~~ but cities shall not have the right to acquire a fee simple title to property condemned solely for street purposes. Whenever it shall be deemed necessary by the governing body of any city to appropriate private property for the use of the city for any purpose whatsoever, the governing body shall by resolution declare such necessity and authorize a survey and description of the land or interest to be condemned to be made by ~~some-competent-engineer~~ a licensed land surveyor and filed with the city clerk. Such resolution shall be published once in the official city newspaper. Upon the filing of the survey and description of the land or interest to be condemned the governing body shall by ordinance authorize and provide for the acquisition of such land or interest, setting forth such condemnation, the interest to be taken and for what purpose the same is to be used. If in the opinion of the governing body any property is specially benefited by the proposed improvement such property shall be designated as the benefit district and the same shall be fixed by the ordinance authorizing and providing for the acquisition of the land or interest. The governing body, as soon as practicable after passage of the ordinance authorizing and providing for the appropriation of such land or interest and the fixing of the benefit district, if any is fixed, shall proceed to

exercise the power of eminent domain in accordance with ~~K.S.A. 26-501 to 26-516 inclusive and amendments thereto~~ the eminent domain procedure act.

Sec. 7. K.S.A. 49-406 is hereby amended to read as follows:  
49-406. (a) No operator shall engage in surface mining unless such operator possesses a valid permit issued by the secretary designating the area of land affected by the operation. The permit shall authorize the operator to engage in surface mining upon the area of land described in such permit and shall be valid for a period not to exceed five years from the date of its issuance unless sooner revoked or suspended as herein provided. All surface mining conducted under such permit shall comply with the requirements of the surface mining control and reclamation act of 1977 (public law 95-87) and the regulations issued thereunder. It shall be the duty of each producer holding a permit within the state of Kansas to file an annual statement setting forth the full amount of coal mined or taken from each source or deposit and to identify the specific source or deposit from which taken. Such statement shall be filed with the secretary upon forms provided by the department not later than 30 days after the end of each calendar year. All operators shall apply for new permits within two months following approval of the state reclamation program by the secretary of the interior, pursuant to the final program provisions of the national surface mining control and reclamation act of 1977 (public law 95-87), who expect to operate a mine or mines after the expiration of eight months following such approval of this act.

(b) The application for the permit shall include:

(1) Five copies of a United States geological survey topographic map on which the operator has indicated the location of the area of land affected, the course which would be taken by drainage from the area of land affected to the nearest stream or streams to which such drainage would normally flow, the name of the applicant and the date.

(2) The owner or owners of the surface of the area of land

to be affected by the permit and the owner or owners of all surface area within 500 feet of any part of the affected area.

(3) All persons with any interest in the coal to be mined.

(4) The source of the applicant's legal right to mine the coal or other minerals affected by the permit.

(5) The permanent and temporary post-office address of the applicant.

(6) Whether the applicant or any person, firm, partnership or corporation associated with the applicant holds or has held any other permits under this act; and, if so, an identification of such permits.

(7) The written consent of the applicant and such other persons, if any, necessary to grant such access to the secretary and the secretary's designee to the area of land affected under application from the date of application until the expiration of any permit granted under such application and thereafter for such time as is necessary to assure compliance with all provisions of this act or any rule or regulation promulgated hereunder.

(8) A determination of probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the department of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability. This determination shall not be required until hydrologic information on the general area prior to mining is made available from appropriate governmental agencies, but a permit shall not be approved until such information is available and is incorporated into the application. If the secretary finds that the probable total annual production at all locations of any operator will not exceed 100,000 tons, the determination of probable hydrologic

consequences, and any statement required by the secretary concerning results of test borings or core samplings, shall, upon written operator request, be performed by a qualified public or private laboratory designated by the secretary, at departmental expense.

(9) Such other information as may be required by the secretary in order to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

(c) At the time of submission of the application for a permit, or amendment to a permit, the operator shall submit to the secretary proof of publication which shall contain such data and be in such form as the secretary shall require by regulations consistent with the national surface mining control and reclamation act of 1977 (public law 95-87), which notice shall be published at least once a week for four consecutive weeks. The secretary, in accordance with regulations consistent with such national act, shall notify appropriate public agencies of the operator's intention to mine, and shall receive and make available for public inspection the written comments or objections of such agencies and any person having an interest possibly affected adversely by proposed operations. The secretary also shall prescribe by regulations consistent with such national act, a system for holding informal conferences in the area of proposed operations with public notice thereof.

(d) The application for a permit shall be accompanied by an enlarged United States geological survey topographic map prepared and certified by a ~~professional-engineer~~ licensed land surveyor or geologist containing the following:

(1) An identification of the area to correspond with the application.

(2) The boundaries of surface properties and names of owners

on the area of land affected, adjacent deep mines, and the name of the owner or owners of the surface area within 1,000 feet of any part of the area of land affected, and, if known to the operator, the existence of adjacent deep mines.

(3) Be of a scale of not less than 400 feet to the inch and not to exceed 660 feet to the inch.

(4) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells and utility lines on the area to be mined and within 1,000 feet of such area.

(5) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit to be mined, and the total number of acres involved in the area of land affected.

(6) Show the date on which the map was prepared, the north point and the quadrangle name.

(7) Show the drainage plan on and away from the area of land affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the nearest streams or tributaries receiving the discharge.

(8) A verified statement by the operator containing the proposed method of operation, grading, reclamation and conservation plan for the affected area including dates and approximate time of completion, and that the operation will meet the requirements of this act, or any rule or regulation promulgated hereunder.

(9) The certification of the maps by the ~~professional engineer~~ licensed land surveyor or geologist shall read as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the surface mining laws of this state." The certification shall be signed and, in the case of an ~~engineer,--the-engineer's~~ a licensed land surveyor, the licensed land surveyor's seal affixed.

(10) Such other information as may be required by the

secretary in order to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

Nothing in this subsection shall be construed to permit the practice of engineering, as defined by K.S.A. 74-7001, and amendments thereto, by a geologist.

(e) The application for a permit shall be accompanied by a plan of reclamation that meets the requirements of this act, and the rules and regulations promulgated hereunder and the requirements necessary for the secretary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

(f) The secretary shall not approve the application for a permit to mine where such mining would constitute a hazard to a residence, public building, school, church, cemetery, commercial or residential building, public road, stream, lake or other property. No surface coal mining operations shall be permitted within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the secretary may permit such roads to be relocated or the area affected to lie within 100 feet of such road, if after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected thereby will be protected; or within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

(g) (1) A basic fee of \$50 plus a fee in an amount to be

fixed by the secretary for every acre and fraction of an acre of land to be affected shall be paid at the time of application.

(2) Each permittee shall be assessed a per ton fee on every ton of coal extracted.

(3) Pursuant to paragraph (2) of this subsection (g), the per ton fee shall be an amount not less than \$.03 and not more than \$.10 per ton of coal extracted each calendar year. This per ton fee shall be paid to the department on a quarterly basis and it shall be due within 30 calendar days after the beginning of each calendar quarter.

(4) Fees established under this subsection shall be fixed by the secretary, subject to restrictions and limitations imposed by this subsection, in amounts deemed necessary to administer and enforce the provisions of the mined-land conservation and reclamation act.

(h) (1) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the secretary, on a form prescribed and furnished by the department, a bond for performance payable to the state treasurer, and conditional upon faithful performance of all the requirements of this act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the department an additional bond or bonds to cover such increments as required by the secretary. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the secretary. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if

the work had to be performed by the department in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements. Surety bonds shall be executed by the operator and a corporate surety licensed to do business in Kansas.

(3) The amount of the bond required and the terms of each acceptance of the applicant's bond shall be adjusted by the secretary from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(4) Subject to provision (5), an applicant may elect to satisfy the bonding requirements of this subsection by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas, negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas or irrevocable letters of credit of any such bank. The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(5) An applicant may elect to satisfy the bonding requirements of this subsection by depositing with the state treasurer cash or any of the securities specified in provision (4) or any combination thereof and a first mortgage on real estate which in the aggregate shall be equal to or greater than the amount of the bond required for the bonded area. The mortgage shall be equal in value to not more than 50% of the amount of the bond and shall be secured by real estate which has an appraised value equal to or greater than twice the amount of the mortgage.

(i) Each permit applicant shall submit to the department as part of the application, a certificate issued by an insurance company licensed to do business in Kansas, certifying that the



applicant has a public liability policy in force for all operations under the permit applied for, providing personal injury and property damage insurance in an amount adequate to compensate persons damaged as a result of mining and reclamation operations, including use of explosives, and entitled to compensation under the laws of Kansas. The secretary may establish, by regulations, the amount of such insurance to be carried. Such policy shall be maintained during the term of the permit and any renewal, and be continued until completion of all operations.

(j) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the secretary may release the first operator from all liability under this act, as to that particular operation. If two or more operators have been issued a permit for the same operation and have otherwise complied with the requirements of the act and regulations promulgated pursuant thereto, the successor operator shall assume as part of such operator's obligation under the act, all liability for the reclamation of the area of land affected by the former operator.

(k) A valid permit issued by the secretary may be renewed with respect to areas within boundaries of the existing permit, upon application by the permit holder. The burden shall be upon the applicant, subsequent to fulfillment of public notice requirements of the national surface mining control and reclamation act of 1977 (public law 95-87), to establish, subject to confirmation by written findings of the secretary, that:

(1) Terms and conditions of the existing permit are satisfactorily met; and

(2) present mining and reclamation operations are in compliance with environmental protection standards imposed by this act and the national surface mining control and reclamation act of 1977 (public law 95-87); and

(3) renewal will not substantially jeopardize the operator's continuing responsibility on existing permit areas; and

(4) the operator has provided evidence that the performance bond in effect for the operation together with any additional bond required by the secretary, will continue in full force and effect for any renewal requested; and

(5) any additional revised or updated information required by the secretary has been provided.

Prior to approval of any permit renewal, the secretary shall provide notice to any appropriate public authorities.

(1) If a renewal application includes a proposal to extend operations beyond existing permit boundaries, that portion of the application applicable to areas beyond existing permit boundaries shall be subject to all standards applicable to new permits. Permit renewals shall not be issued for terms greater than provided for original permits, and applications for renewal permits shall be made at least 120 days prior to expiration of the existing permit.

(m) Each permit applicant shall file a copy of the application for public inspection at the field office of the department, which copy need not contain information relating to the coal seam itself. Any person with an interest which may be adversely affected shall be furnished with information pertaining to coal seams, test borings, core samplings, or soil samples, if such information is required by the secretary, together with data respecting location of subsurface water and analysis of chemical properties including acid forming properties of the mineral and overburden. Information pertaining only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

Sec. 8. K.S.A. 72-8212a is hereby amended to read as follows: 72-8212a. (a) A unified school district may acquire by condemnation, for school purposes, any interest in real property, including fee simple title. If, within 10 years after entry of final judgment under K.S.A. 26-511, and amendments thereto, the

school district fails to construct substantial buildings or improvements that are used for school purposes on any real property acquired under this subsection, the school district shall notify the original owners or their heirs or assigns that they have an option to purchase the property from the school district for an amount equal to the compensation awarded for the property under the eminent domain procedures act. Such option shall expire if not exercised within a period of six months after the date of the expiration of the ~~ten-year~~ 10-year period.

(b) A unified school district may acquire by condemnation, for any purpose whatsoever, any reversionary interest held by others in real property which the school district has previously acquired by condemnation, deed or contract if:

(1) The district, or its predecessor districts, has constructed substantial improvements on the property; and

(2) the school district, or its predecessor districts, has held an interest in the property for at least 20 years.

(c) When the board of education of a unified school district considers it necessary to condemn a property interest pursuant to this section, the board shall declare the necessity by resolution and shall authorize a ~~competent-engineer~~ licensed land surveyor to make a survey and description of the property and the interest to be condemned and to file them with the clerk of the board. The resolution shall be published once in a newspaper having general circulation in the school district. Upon the filing of the survey and description, the board of education shall provide by resolution for the acquisition of the property interest by condemnation. The resolution shall set forth a description of the property, the interest to be condemned and the purpose for which the property is and will be used. The board of education, as soon as practicable after the passage of the resolution, shall proceed to exercise the power of eminent domain in the manner provided by ~~article--5--of--chapter--26--of--the--Kansas--Statutes--Annotated~~ the eminent domain procedure act.

Sec. 9. K.S.A. 12-1306, 19-1414, 24-438, 24-467, 25-26a04,

26-201, 49-406 and 72-8212a are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

# KANSAS SOCIETY OF LAND SURVEYORS

Re: HB 2750  
Federal and State Affairs Committee

March 14, 2006

The Honorable John Edmonds, Chairman  
Members of the Federal and State Affairs Committee

The Kansas Society of Land Surveyors wishes to thank you and the members of the Federal and State Affairs committee for considering HB 2750.

HB 2750 serves as a vehicle to alter older, existing statutes (K.S.A. 12-1306, 19-1414, 24-438, 24-467, 25-26a04, 26-201, 49-406 and 72-8212a) that should have been amended years ago. While the title of the bill indicates it is "an act concerning eminent domain; relating to land surveys..." the primary purpose for the bill is to make the subject statutes conform to those that currently regulate the profession of land surveying.

The subject statutes were written at a time when a licensed professional engineer was allowed to practice the profession of land surveying. K.S.A. 74-7003 sets forth definitions concerning the "practice of land surveying" which includes: "...*(j) "Land surveyor" means any person who is engaged in the practice of land surveying as provided in this act and who is licensed by the board; ...  
...  
(k) "Practice of land surveying" includes: (1) The performance of any professional service, the adequate performance of which involves the application of special knowledge and experience in the principles of mathematics, the related physical and applied sciences, the relevant requirements of law and the methods of surveying measurements in measuring and locating of lines, angles, elevation of natural and man-made features in the air, on the surface of the earth, within underground workings and on the bed of bodies of water for the purpose of determining areas, volumes and monumentation of property boundaries; (2) the preparation of plats of land and subdivisions thereof, including the topography, rights-of-way, easements and any other boundaries that affect rights to or interests in land, but excluding features requiring engineering or architectural design; (3) the preparation of the original descriptions of real property for the conveyance of or recording thereof (emphasis added) and the preparation of maps, plats and field note records that represent these surveys;...*".

Passing HB 2750 will simply make the subject statutes comply with current law by stating that land surveyors should be performing those tasks they are required to perform rather than allowing somebody else who isn't qualified to do so.

Thank you again for your consideration.

Dina Fisk

KSLS Governmental Affairs Representative  
(913) 269-6915

FEDERAL AND STATE AFFAIRS

Date 3-14-06

Attachment 18