

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on March 8, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Carol Doel, Committee Assistant

Conferees:

Attorney General Paul Morrison  
Representative Raj Goyle  
Representative Jeff Whitham  
Representative Joe Patton  
Richard Strothman - Patriot Guard  
Thomas Witt - Kansas Equality Coalition  
Chris Kobach, University of Missouri, Kansas City  
Brandy Sacco  
Paul Porubsky  
Paul Degener  
Joyce Mucci  
Alan Fernald  
Cyndi Treaster  
Reggie Robinson - President and CEO Board of Regents  
Elias Garcia - Latin and Spanish Affairs  
Sister Therese Bangert - Kansas Catholic Conference  
Kimberly Corum - Immigration Attorney  
Janis McMillan  
David Cunningham  
Arthur Solis  
Sandy Jacquot - Kansas League of Municipalities  
Lauren Reinhold - Immigration Attorney  
Kyle Sterns - Kansas Families United Republic Educations  
Julie Riddel - Family Conservancy  
Alonso Quintero - Sunflower Community Action  
David Krehbiel  
Mira Mdivani - Immigration Attorney  
Kristian Guzman - Sunflower community Action  
Nancy Daniels - Methodist Women

Others attending:

See attached list

Chairman Siegfroid opened the floor for bill introductions. There were none.

The Chair opened the meeting for public hearing on **SB 244** - Funeral picketing; crime charges; libel and slander charges and **HB 2020** - Unlawful picketing or protest march at funeral or memorial service.

Mike Heim, Office of the Revisor, gave an explanation of both bills.

The Chair recognized Representative Goyle and Representative Whitham who addressed the committee in support of **HB 2020**. The Representatives stated that they have spent this session studying funeral picketing laws of other states, examining relevant judicial opinions and consulting with legal experts in order to offer the language that will protect the privacy interests of Kansans and withstand constitutional scrutiny. The further opined that Kansas should joint the rest of the nation and pass a bill that enacts common sense

## CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 8, 2007 in Room 313-S of the Capitol.

restrictions on funeral picketers. They believe this act is constitutionally sound and a necessary tool to honor the privacy interest of families who are burying their loved ones. (Attachment 1) Also prevented for Committee review, was a copy of an article *Court Lets Funeral Protest Ban Stand* (Attachment 2), and a copy of their proposed amendment to **HB 2020**. (Attachment 3)

Representative Patton addressed the committee stating that he introduced **HB 2300** on the topic which offers another solution to the problem of funeral picketing. It uses the civil law. He strongly urged the Committee to have a second hearing and invite a constitutional law professional speak. Rep. Patton stated that **HB 2300** indicates that picketing of funerals in the State of Kansas is to be considered outrageous conduct. (No Written Testimony)

Attorney General Paul Morrison addressed the Committee stating that he was here to testify in support of legislation that has the potential to provide grieving Kansas families the privacy and protection they deserve during funerals without inhibiting the exercise of free speech. The Attorney General gave the opinion that he believes that the amending language to **HB 2020** is a constitutionally respectful bill that conveys our state's substantial interest in protecting the legitimacy of funerals that honor and mourn the deceased. (Attachment 4)

The Patriot Guards were represented by Richard Strothman in support of **HB 2020**. Mr. Strothman stated that there are 2700 members of the Patriot Guard in the State of Kansas and 80,000 in the U.S.A. They started the Patriot Guard because of the protesters at military funerals. They go to shield the families from the protesters signs, chants and hate. They also go to pay their respects to the family and to honor their fallen Brothers and Sisters. (Attachment 5)

Thomas Witt, Chair, Kansas Equality Coalition, stated that the two bills heard today seek to restrict protestors from demonstrating at funerals. Those demonstrations target the gay and lesbian Kansans. The Coalition supports the intent of **SB 244** and **HB 2020**. Mr. Witt further stated that he believes the First Amendment rights should be exercised responsibly and respectfully. He appealed to the Committee to take extraordinary care in crafting legislation that protect grieving family members. (Attachment 6)

Brandy Sacco lost her husband in November 20, 2005 in Iraq. Protesters were present at her husband's funeral. Ms. Sacco opined that this should be punishable by law. She stated that she is not wanting to take away anyone's First Amendment rights, but her husband who fought for this country and paid the ultimate sacrifice should not be disrespected by anyone. She asked that the legislature do something to fix the situation. (Attachment 7)

Written testimony supporting **SB 244** and **HB 2020** was provided by Andrew Schlapp, Director, Government Relations, Sedgwick County (Attachment 8), Ralph Snyder for the American Legions of Kansas (Attachment 9), Representative Lee Tafanelli (Attachment 10), and Dale Goter for the City of Wichita (Attachment 11)

There were no opponents of **SB 244** and **HB 2020**, and the Chair closed the hearing on those bills.

Chairman Siegfried opened the public hearing on **HB 2367** - Public benefits; illegal aliens denied certain state and local benefits - with Mike Heim, Office of the Revisor, giving an explanation of the bill.

Chris Kobach, Professor of Law, University of Missouri (Kansas City), came before the Committee in support of **HB 2367**. Professor Kobach stated that even if the fiscal savings were zero, the bill is necessary to ensure that Kansas complies with federal law prohibiting states from providing public benefits to illegal aliens. It also contributes to the restoration of the rule of law in immigration. (Attachment 12)

Paul Porubsky submitted testimony in favor of **HB 2367** stating that the time is long overdue for elected officials to once again remember who their legitimate constituency is. That constituency is the legal, tax paying citizens of this state and nation. Mr. Porubsky gave the opinion that denying illegal aliens benefits intended solely for legal tax paying citizens of the State of Kansas is a step in the right and necessary direction. (Attachment 13)

## CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on March 8, 2007 in Room 313-S of the Capitol.

Paul Degener, President for Citizens for Immigration Reform, supports **HB 2367**. Mr. Degener gave the opinion that so far illegal immigrants have managed to overload our educational system, caused several hospitals across the country to shut down, are bringing diseases into our country, depressing wages, taking jobs at reduced wages, bringing M13 gangs into our country, creating havoc, death and destruction along the border, and terrorists are taking advantage of our non-existent borders. (Attachment 14) Mr. Degener also included a copy of *Illegal Alien Bill of Rights*. (Attachment 15)

In testimony supporting **HB 2367**, Joyce Mucci, The Federation for American Immigration Reform, stated that the hard working Americans in Kansas should not be expected to shoulder the burden of providing public benefits for people who are here unlawfully. (Attachment 16)

Alan Fernald presented testimony supporting **HB 2367**. Mr. Fernald believes that this law will make an excellent first step, though he believes this bill could go much farther in establishing Kansas as a national leader in protecting its taxpayers from the economic burden of supporting a class of criminals which U.S. law dictates should not be present. (Attachment 17)

There were no other proponents of **HB 2367** and the Chair recognized Cyndi Treaster of the Kansas Department of Health and Environment as neutral to **HB 2367**. Ms. Treaster addressed the Committee to provide information regarding eligibility criteria for federal, state and local public benefits. The KDHE is concerned that the bill will impose additional eligibility verification procedures on all qualified recipients. There second area of concern is for the confusion that could occur regarding state-funded programs with "sliding-fee discounts". (Attachment 18)

Chairman Siegfried opened the floor to the opponents of **HB 2567**, and recognized Reginald Robinson, President & CEO of the Kansas Board of Regents. Mr. Robinson stated that they strongly supported the adoption of **HB 2145** in 2003 and stated their reasons. They oppose **HB 2567** for all the same reasons. (Attachment 19)

Executive Director, Kansas Hispanic & Latino American Affairs Commission, Elias Garcia, addressed the Committee as an opponent to **HB 2367**. Mr. Garcia gave the opinion that one of the fundamental flaws of the bill is the premise that undocumented immigrant families are eligible for a wide range of state and local public benefits in Kansas which is inaccurate and incorrect. He also explained other flaws which they feel that the bill has such as being very costly to implement. (Attachment 20)

The Kansas Catholic Conference was represented by Sister Therese Bangert in opposition to **HB 2367**. Sister Bangert stated that as she read the bill it lead her to believe that many people who are not United States citizens are receiving benefits which is simply not true. (Attachment 21)

Kimberly Corum, Immigration Attorney, presented her opinion in opposition to **HB 2367** stating that the bill would adversely affect countless aliens who are settling legally in Kansas. It will harm spouses of soldiers and other U.S. citizens, as well as workers at our universities and businesses. Mx. Corum further related that the bills broad language denies necessary benefits to many more people than the Legislature may intend, and will pose obstacles to legal immigration. (Attachment 22)

League of Women Voters of Kansas was represented by Janis McMillan in opposition to **HB 2367**. Ms. McMillan's testimony was directed primarily toward the provision of the bill that would repeal the existing law that permits children of currently undocumented immigrants to access in-state tuition at Kansas colleges and universities, providing the student has graduated from a Kansas High School, or earned a GED after attending a Kansas High School for at least three years. (Attachment 23)

David Cunningham, Attorney Kansas Association of School Boards (KASB), testified as an opponent of **HB 2367**. Mr. Cunningham gave the opinion that the bill would harm not only those students currently attending a Kansas post-secondary institution, but also those students that are currently enrolled in the Kansas K-12 system. (Attachment 24)

Next to present testimony in opposition to **HB 2367** was Arthur Solis a Vietnam War Veteran, and an attorney

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in the area of civil rights. Mr. Solis stated that if the bill is enacted it would result in additional costs to the State of Kansas agencies as well as local government. Mr. Solis also submitted public policy and drafting recommendations in his testimony. (Attachment 25)

Sandy Jacquot, Director of Law/General Counsel of the League of Kansas Municipalities stating that **HB 2367** seeks to prohibit state and local public benefits from being provided to those individuals unlawfully in the country. The League's opposition is not to the underlying policy issue, but to the confusing and ambiguous language of the bill that they believe will be difficult for city officials to apply. (Attachment 26)

Lauren Reinhold, Attorney at Law, related in her testimony in opposition to **HB 2367** that this law would burden and harm individuals who are eligible for lawful status or in a state of extending or changing status to a lawful one. (Attachment 27)

Kansas Families United for Public Education was represented by Kyle Stearns opposing **HB 2367**. Mr. Stearns stated that as an organization they do agree that some new reform is needed in current federal immigration law, but **HB 2367** would punish the innocent children of illegal immigrants and dooms them to a perpetual cycle of failure. (Attachment 28)

Julie Riddle manages Asset Building and Family Support programs for The Family Conservancy and gives testimony in opposition to **HB 2367**. Ms. Riddle opined that although the intent of the bill is to prevent undocumented Kansas residents from accessing public funded services, the true effect of the bill will be to keep lawful residents away from those same services because of fear, suspicion and confusion. Second, they will increase barriers for those Kansans who have difficulty accessing birth certificates and other personal documents and third, there will be increases costs associated with the bill. (Attachment 29)

With no other person wishing to speak to the bill, the Chair closed the hearing on **HB 2367**.

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



**FEDERAL AND STATE AFFAIRS**  
**GUEST LIST**  
 Date 03/08/07

Mary Ann Evenson	Roxana Guevara
Diane Brian	Shirley Ferr
Fred Bissett	Marina Guevara
Roger Shoygo	Phil R. Bell
Roger A. Thomas	Conuelo Krehbiel
Alan Fernald	Thiana Krehbiel
RON HEARDON	Kristian Guzman
RICH STATHMAN	Janice Corone, I
maui Stathman	<del>Janice</del>
Brandy Sacco	Julie Riddle
Sean Rogan	Stacy Jacquet CKM
Lauren Reinhold	Cyndi Treaster, KOHE
PAUL DEGENER	THOMAS WITT KEC
<del>Franklin Geo Williams</del> <sup>State</sup>	KATNY COOK - KFUPE
Debra P. Hocky	Kyle Stearns KFUPE
Andi Baly-Adams	Dan Gibb KSAG
Mary E. Hlepinski	HOWARD SMITH PITTSBURG STATE UNIVERSITY
Khonda Lake	Andy Schrage Sedwick County
Katie Duncan, KASB	Mark Desethi KNEA
David Cunningham, KASB	
Javier Silva	
Carmel Silva	
Javier Garcia	
Jose P. Avalos	
Maria Avalos	



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HOUSE OF  
REPRESENTATIVES

## TESTIMONY IN SUPPORT OF HB 2020 (PROPONENT)

Before the House Federal and State Affairs Committee

March 8, 2007

Chairman Siegfried, Vice Chairman Huebert, and Ranking Member Peterson, our names are Rep. Jeff Whitham (123<sup>rd</sup> District) and Rep. Raj Goyle (87<sup>th</sup> District). We are the co-sponsors of HB 2020 and thank you for the opportunity to testify in support of the bill. We appreciate your consideration and attention to this issue.

Background

We believe the time has come for the state of Kansas to join 26 other states<sup>1</sup> (including Missouri, Nebraska, Oklahoma, and Colorado) and the U.S. Congress in enacting *reasonable and constitutional* limitations—all of which passed in 2006—on the right of protestors to picket the funerals of Kansas residents. Last year we understand the Legislature came close to passing a similar bill, but fell short due to concerns over the constitutionality of the legislation and the possible payment of attorney fees to plaintiffs who might successfully bring such a challenge.

In order to address these concerns, we have spent this session studying funeral picketing laws of the other states, examining relevant judicial opinions, and consulting with legal experts, including Prof. Steve McAllister, a leading constitutional scholar at the University of Kansas School of Law. With amendments distributed today, we offer language that will protect the privacy interests of Kansans and withstand constitutional scrutiny.

As you may know, Kansas is home to a proud military history. Fort Leavenworth, established in 1827, stands today as the oldest and continually occupied military post west of the Mississippi River. As we welcome home the Big Red One Infantry Division to Fort Riley, we are reminded of its unique role that military installation played in the 19<sup>th</sup> century as the home to the famous Buffalo Soldiers of the Ninth and Tenth Cavalry. Whether it was the young men from Kansas who fought to save the Union during the Civil War or the men and women of today who fight a War on Terror in the Middle East,

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<sup>1</sup> The 26 states are: Alabama, Colorado, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wisconsin.

Federal and State Affairs

Attachment 1Date 3-8-07

our troops fight and, tragically, many of them die for their country. The families of our fallen soldiers deserve peace and privacy as they bury their sons, daughters, husbands, and wives. This right to privacy is not limited solely to military funerals, but to all families honoring their loved ones. The United States Supreme Court recently underscored the importance of this privacy interest in a decision in 2004:

*“Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek in accord to the deceased person who was once their own.” Nat’l Archives & Records Admin. v. Favish, 541 U.S. 157, 168 (2004).*

That phrase “public exploitation” bears repeating because this bill simply seeks to reduce the possibility of any such “public exploitation” occurring at a funeral in Kansas.

#### What the Bill Does

HB 2020, as amended, has three main provisions: enacting a 150-foot buffer zone around a funeral; requiring the Attorney General sue to determine the constitutionality of the act; and allowing the estate of a deceased person to sue picketers for defamation.

1. *Buffer Zone.* The bill prohibits picketing (defined as “protest activities or a directed protest march”) at any public location within 150 feet of any entrance to any funeral location one hour prior to, and two hours following the completion of, a funeral. A violation of these restrictions would result in a class B person misdemeanor, punishable by a fine of up to \$1,000 and/or imprisonment of up to 6 months.

We are confident that the buffer zone in this bill will withstand constitutional scrutiny when tested in court. In evaluating the relevant language in this bill, Prof. McAlister said it is “as narrow, focused, and probably defensible from a constitutional standpoint as any law or proposal I have seen.” We note however, that both Prof. McAllister and our own research indicate that there is some uncertainty in this area of law and, ultimately, a court must determine the constitutionality of any buffer zone.

In order to increase the likelihood of constitutionality, we agreed with Prof. McAllister on two important points. One, we set our buffer zone at 150 feet. He cautioned us that buffer zones should be as small as possible in order to pass court scrutiny. We believe that the Legislature should pass a buffer zone that is no greater than 150 feet.

Second, we ensured that the bill’s “findings,” which explain to a court the reasons why the Legislature passed the bill, include language from the United States Supreme Court regarding the unique privacy interest in funerals.

With the amendments distributed today, this bill is a reasonable “time, place and manner” restriction on the freedom of speech, is content-neutral, applies to all funeral picketers, and is narrowly tailored to address the unique privacy interests in funerals.

2. *Attorney General Action.* In order for the act to take effect, it must be deemed constitutional in either federal or state court pursuant to a suit initiated by the Attorney General. This provision (borrowed from SB 244) makes the likelihood of paying attorneys fees to plaintiffs who challenge this act very remote. The provision leaves ample flexibility to the Attorney General to determine the manner best suited for his office to proceed with the litigation.

3. *Defamation.* The act permits the estate of a deceased person (or any living relative of the deceased) to bring a civil action for libel or slander committed at the funeral within one year of the funeral. Current law allows only living persons to file civil defamation claims. This provision (also borrowed from SB 244) would allow individuals adversely impacted by funeral protesters to have their day in court.

#### Previous Legislative Action on Funeral Picketing

In 1992 the Kansas legislature passed a bill creating the current Kansas Funeral Picketing Act (KSA 21-4015). It was challenged in 1993 in a lawsuit brought in Kansas federal district court. Judge Sam Crow's opinion dealt primarily with the plaintiffs' standing to bring the action concerning the constitutionality of the bill before any state or local action was taken against them.

The decision briefly addressed the constitutional issues that balance picketers' rights to freely express their religion and freedom of speech with the privacy rights of a deceased person's family at a funeral. While the court outlined the standards for determining the constitutional rights at stake, it made no finding concerning the Kansas Funeral Picketing Bill's constitutionality and suggested further evidence and arguments was needed.

#### Conclusion

Kansas should join the rest of the nation and pass a bill that enacts common sense restrictions on funeral picketers. It is worth noting that just six weeks ago, the State of Missouri's funeral picketing act was upheld by federal court (news story attached).

We believe this act is constitutionally sound and a necessary tool to honor the privacy interests of families who are burying their loved ones.

We respectfully request this committee adopt HB 2020, with the amendments distributed today, favorably for passage.

Mr. Chairman, we will stand for questions.



Rep. Jeff Whitham  
123<sup>rd</sup> District



Rep. Raj Goyle  
87<sup>th</sup> District



KansasCity.com

Posted on Sun, Jan. 28, 2007

## Court lets funeral protest ban stand

A member of a Topeka church had filed suit, saying the Missouri law infringed on her rights.

By MARK WIEBE  
The Kansas City Star

A federal judge has rejected arguments from Westboro Baptist Church that would have forced Missouri to allow protests at military funerals.

A member of the Topeka church had asked the court to declare Missouri's ban on the protests unconstitutional. The ban came in response to the church's protests at military funerals. Church members say that the deaths of American servicemen and servicewomen are God's way of punishing a nation that tolerates homosexuality.

Church member Shirley Phelps-Roper filed the lawsuit last year, claiming that the ban violated her right of free speech. She also sought injunctions that would have prevented Attorney General Jay Nixon and Gov. Matt Blunt from enforcing the law.

In his order Friday, U.S. District Judge Fernando J. Gaitan Jr. said that Phelps-Roper had not met the court's standards for issuing such a decree. Gaitan did not rule on Phelps-Roper's other claims, but he said the state's defense of the ban relied on good arguments that could be pursued in a trial.

Gaitan said Phelps-Roper had not shown that protesters would suffer irreparable harm without the decree.

Missouri's law bans picketing and protests "in front of or about" any location where a funeral is held, from an hour before the funeral begins until an hour after it ends. Several other states and the federal government have adopted similar restrictions in response to the protests by members of Phelps-Roper's church.

Gaitan noted that pickets still are allowed at times and places other than those that the state prohibits and that they could use other means to convey their message.

Nixon issued a statement saying he was "gratified that Judge Gaitan has agreed with us that this law can be enforced."

"There has to be a line drawn and enforced against hate, particularly when that hate victimizes the families of those who sacrificed their lives for their country," Nixon said.

Phelps-Roper, a lawyer, told The Associated Press on Friday that she had not seen Gaitan's order.

"We've been in and out of Missouri since this lawsuit was filed, and the Lord God is smacking Missouri around in so many ways," she said.

*The Associated Press contributed to this report. To reach Mark Wiebe, call (816) 234-5995 or send e-mail to mwiebe@kcstar.com.*

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Federal and State Affairs  
Attachment 2  
Date 3-8-07

# HOUSE BILL No. 2020

By Representatives Goyle and Whitham

1-8

Federal and State Affairs  
Attachment 3  
Date 3-8

9 AN ACT concerning the Kansas funeral picketing act; amending K.S.A.  
10 21-4015 ~~and repealing the existing section.~~

and 60-2102 and repealing the existing sections

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 21-4015 is hereby amended to read as follows: 21-  
14 4015. (a) This section shall be known and may be cited as the Kansas  
15 funeral picketing act.

16 (b) The legislature finds that:

17 ~~(1) It is generally recognized that families have a substantial interest~~  
18 ~~in organizing and attending funerals for deceased relatives; and~~

19 ~~(2) the interests of families in privately and peacefully mourning the~~  
20 ~~loss of deceased relatives are violated when funerals are targeted for pick-~~  
21 ~~eting and other public demonstrations; and~~

22 ~~(3) picketing of funerals causes emotional disturbance and distress to~~  
23 ~~grieving families who participate in funerals; and~~

24 ~~(4) full opportunity exists under the terms and provisions of this sec-~~  
25 ~~tion for the exercise of freedom of speech and other constitutional rights~~  
26 ~~at times other than within one hour prior to, during and two hours fol-~~  
27 ~~lowing the commencement of funerals.~~

(1) Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.  
(2) The state has a substantial interest in protecting the legitimacy of funerals and ensuring freedom from disturbance.  
(3) Due to the nature of funerals, the funeral attendees constitute a captive audience.  
(4) Full

28 (c) The purposes of this section are to:

29 (1) Protect the privacy of grieving families ~~within one hour prior to,~~  
30 ~~during and two hours following the commencement of funerals;~~ and

31 (2) preserve the ~~peaceful character of cemeteries, mortuaries and~~  
32 ~~churches within one hour prior to, during and two hours following the~~  
33 ~~commencement of funerals.~~

substantial privacy interest in

34 (d) As used in this section:

35 (1) "Funeral" means ~~the ceremonies, processions and memorial serv-~~  
36 ~~ices held in connection with the burial or cremation of the dead any~~  
37 ~~ceremony, procession or memorial service in connection with the death~~  
38 ~~of a person.~~

39 (2) "Picketing" means ~~protest activities engaged in by a person or~~  
40 ~~persons stationed before or about a cemetery, mortuary or church within~~  
41 ~~one hour prior to, during and two hours following the commencement of~~  
42 ~~a funeral or a directed protest march.~~

43 (e) It is unlawful for any person to:

3-2

1 (1) Engage in picketing before or about at any public location within  
2 200 feet of any entrance to any cemetery, church or mortuary, mortuary  
3 or other location where a funeral is held or conducted, within one hour  
4 prior to, during and two hours following the commencement of a funeral;  
5 or

150

6 (2) ~~obstruct or prevent the intended uses of a public street, public~~  
7 ~~sidewalk or other public space while engaged in picketing, as described~~  
8 ~~in paragraph (1).~~

the scheduled commencement of a funeral, during a funeral or  
within two hours following the completion of a funeral;  
(2) knowingly obstruct, hinder, impede or block another person's  
entry to or exit from a funeral; or  
(3) knowingly impede vehicles which are part of a funeral  
procession

9 (f) A violation of subsection (e) is a class B person misdemeanor. Each  
10 day on which a violation of subsection (e) occurs shall constitute a separate  
11 offense.

12 (g) Notwithstanding the penalties provided in subsection (f), any dis-  
13 trict court may enjoin conduct proscribed by this section and may in any  
14 such proceeding award damages, including punitive damages, attorney  
15 fees or other appropriate relief against the persons found guilty of actions  
16 made unlawful by subsection (e).

17 (h) If any provision of this section or the application thereof to any  
18 person or circumstances is held invalid, the invalidity does not affect other  
19 provisions or applications of this section which can be given effect without  
20 the invalid provisions or application. To this end the provisions of this  
21 section are severable.

insert attached pages and renumber remaining section

22 ~~Sec. 2. K.S.A. 21-4015 is hereby repealed.~~

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

(i) Amendments by this act to this section shall be applicable on and after whichever of the following dates is applicable:

(1) If the action authorized by section 3, and amendments thereto, is brought in Kansas state court, amendments by this act to this section shall be applicable from and after the date the Kansas supreme court upholds the constitutionality thereof.

(2) If the action authorized by section 3, and amendments thereto, is brought in federal court, amendments by this act to this section shall be applicable from and after the date the judgment of the court upholding the constitutionality thereof becomes final.

New Sec. 2. (a) Notwithstanding the provisions of K.S.A. 60-1802, and amendments thereto, if an act of libel or slander is committed at a funeral and the person defamed is the deceased at such funeral or any living relative of the deceased, an action for libel or slander brought by the estate of such deceased person on behalf of such deceased person or by or on behalf of any living relative of such deceased person may be sustained if brought within one year after such funeral.

New Sec. 3. In accordance with K.S.A. 75-702, and amendments thereto, the attorney general shall seek judicial determination of the constitutionality of K.S.A. 21-4015, as amended by section 1.

Sec. 4. K.S.A. 60-2102 is hereby amended to read as follows: 60-2102. (a) ~~As~~ Appeal to court of appeals as matter of right. Except for any order or final decision of a district magistrate judge, the appellate jurisdiction of the court of appeals may be invoked by appeal as a matter of right from:

(1) An order that discharges, vacates or modifies a provisional remedy.

(2) An order that grants, continues, modifies, refuses or dissolves an injunction, or an order that grants or refuses relief in the form of mandamus, quo warranto or habeas corpus.

(3) An order that appoints a receiver or refuses to wind up a receivership or to take steps to accomplish the purposes thereof, such as directing sales or other disposal of property, or an order involving the tax or revenue laws, the title to real estate, the constitution of this state or the constitution, laws or treaties of the United States.

(4) A final decision in any action, except in an action where a direct appeal to the supreme court is required by law. In any appeal or cross appeal from a final decision, any act or ruling from the beginning of the proceedings shall be reviewable.



(b) Appeal to supreme court as matter of right. The appellate jurisdiction of the supreme court may be invoked by appeal as a matter of right from:

(1) A preliminary or final decision in which a statute of this state has been held unconstitutional as a violation of Article 6 of the Kansas constitution pursuant to K.S.A. 2005 Supp. 72-64b03, and amendments thereto. Any appeal filed pursuant to this ~~subsection~~ paragraph shall be filed within 30 days of the date the preliminary or final decision is filed: ; or

(2) a preliminary or final decision in an action brought pursuant to section 3, and amendments thereto, in which K.S.A. 21-4015, as amended by section 1, has been held unconstitutional as a violation of the Kansas constitution. Any appeal filed pursuant to this paragraph shall be filed within 30 days of the date the preliminary or final decision is filed.

(c) Other appeals. When a district judge, in making in a civil action an order not otherwise appealable under this section, is of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the judge shall so state in writing in such order. The court of appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within 10 days after the entry of the order under such terms and conditions as the supreme court fixes by rule. Application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or an appellate court or a judge thereof so orders.

Sec. 5. K.S.A. 21-4015 is and 60-2102 are hereby repealed.



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

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House Federal & State Affairs Committee

HB 2020

Attorney General Paul Morrison

March 8, 2006

Mr. Chairman and members of the committee, thank you for allowing me to testify today.

I am here to testify in support of legislation that has the potential to provide grieving Kansas families the privacy and protection they deserve during funerals without inhibiting the exercise of free speech. I believe that the amending language to HB 2020, proposed here today by the conferees, is a constitutionally respectful bill that conveys our state's substantial interest in protecting the legitimacy of funerals that honor and mourn the deceased.

The "appellate trigger" in this bill acts as a request that the Attorney General seek judicial determination as to the constitutionality of this bill. Because of my office's potential involvement in this litigation, I must be deliberate in my statements today. I will refrain from commenting on specific provisions of the funeral picketing bill and will instead broadly articulate my view as to the bill's potential to withstand judicial scrutiny.

The amending language to HB 2020 incorporates several provisions of its senate counterpart. Only the courts can determine the constitutionality of a statute, but I believe that this legislation addresses concerns that courts have previously raised regarding funeral picketing statutes. I also believe that the appellate trigger provision in the proposed amending language is our best opportunity to prevent private litigants from recouping attorneys' fees from the state of Kansas.

Please be aware that my intent to seek judicial determination of the constitutionality of this statute will be based on my office's legal analysis of the constitutionality of the final provisions of the bill, specifically, the "buffer zone" specifications.

Unfortunately, the state of Kansas is all too familiar with the horrific disturbances that funeral picketing causes. As Attorney General, I will use every resource constitutionally available to me to protect Kansas families from disrespectful intrusions during a time of grief and mourning.

Thank you for your time and I look forward to answering any questions.

Federal and State Affairs  
Attachment 4  
Date 3-8-07

Testimony of Richard Strothman  
Bill 2020  
House of Rep. Hearing Committee

Members of the House

My name is Richard Strothman, I am a member of the Kansas American Legion Riders and the Patriot Guard. I am also a member of the Patriot Guard Committee, there are 2700 members in Kansas and 80,000 in the U.S.A.

There have been at least 40 missions as of today; the last two were Spec. Marsh (Feb 26<sup>th</sup>) and Sgt. Berry (March 3<sup>rd</sup>), both of Wichita. I spoke to Sgt Berry's wife and since this is so close to her husband's funeral, she did not feel comfortable coming to testify today. Also Spec. Marsh's wife had a wish that they not be contacted while in mourning, so I let this go out of respect for her.

From March 4, 2006 to March 3, 2007, there has been an increase of 24 missions with the protesters at nearly all of them.

We started the Patriot Guard because of the protesters at military funerals. We went to shield the families from the protesters signs, chants, and HATE. We also go to pay our respects to the family and to honor our fallen Brother and Sister.

I and the other Patriot Guard members are greatly disappointed that NO legislation passed or could have passed in 2006. We have a strong and committed desire that there will be legislation this year, soon, we hope and pray.

Rep. Goyle and I have spoken on this subject and he is aware of our commitment to the soldiers and their families. We want the best law we can get that will keep the protesters at bay and will also stand in a court of law.

Again we request something be done, at a past funeral, we had to have a couple of Patriot Guard members escort the father of a fallen soldier who wanted to deal with the protesters himself. This is the greatest fear we have, a family member to let his emotions get the best of them and be arrested.

This is as much a SAFETY issue as a 1<sup>st</sup> Amendment issue---Is this not the same as yelling fire in a packed theater?? Someone is going to get hurt.

We need the law passed to protect everyone.      Questions???

Thank You

Federal and State Affairs

Attachment 5

Date 3-8-07



Testimony in support of HB2020 and SB244  
Thomas Witt, Chair, Kansas Equality Coalition  
Before House Federal and State Affairs  
March 8, 2007

www.KansasEqualityCoalition.org • 6505 E. Central #219 • Wichita, KS 67206 • (316) 260-4863 • fax (316) 858-7196

Good afternoon Chairman Siegfried and members of the committee.

I'm grateful for the opportunity to address you today. My name is Thomas Witt, state chair of the Kansas Equality Coalition. Our organization's seven chapters and more than 600 members work for equal rights and fair treatment for gay and lesbian Kansans.

The two bills before you today seek to restrict protestors from demonstrating at funerals. The target of these bills, the membership of Topeka's Westboro Baptist Church, has been well known to the families of gay and lesbian Kansans since the early 90s.

The Phelps clan has spent the past 15 years traveling to funerals around the state, the nation, and even other countries, spreading their message of hatred and intolerance. Their protests have targeted the grieving families of gay and lesbian Americans who have died of natural causes, of illnesses, of accidents. They have even targeted the funerals of gay Americans who have been murdered in vicious hate crimes, proclaiming to the world that these families and their loved ones somehow deserved such brutal treatment.

The Phelps campaign of bigotry goes well beyond funeral picketing. They have terrorized anyone who has the audacity to publicly disagree with their campaign, characterized by picket signs with the slogan "God hates fags." They have spent the past 15 years picketing private homes, picketing businesses where gay and lesbian Kansans work or shop, picketing churches where our families worship, picketing anyone who takes a public stand for fairness and decency. They have spent 15 years filing frivolous lawsuit after frivolous lawsuit against any they believe stand in their way. They have spent the past 15 years flooding fax machines with revolting flyers and threats against all whom they believe support the "fag agenda." We have spent the past 15 years learning how to endure and ignore them.

The families of gay and lesbian Kansans have endured much at the hands of the Phelps clan, and now the rest of America must endure them as well. Their latest pathetic attempts at hate-mongering are directed at our fallen soldiers for one reason: to draw attention to their campaign of intolerance. The Phelps clan has now decided that those who defend the rights of all Americans deserve condemnation for defending the rights of Americans they despise. The Phelps clan has asserted their First Amendment rights in an unrelenting attack on the rights of those whom the Constitution was written to protect, by heinously attacking the men and women who give their lives defending it. This is the darkest, most bitter kind of irony.

The Kansas Equality Coalition supports the intent of SB244 and HB2020. Coming to this position has been a struggle for some in our organization. We know that the First Amendment rights that allow me to stand here today are the same as those being asserted by the Phelps clan. However, unlike the funeral protesters, we believe that First Amendment rights should be exercised responsibly and respectfully.

We strongly encourage this body to take extraordinary care in crafting legislation that protects grieving family members – military and otherwise - from those who wish to harm them. We encourage you to draft a bill that also protects the Constitutional rights of people whose views are unpopular.

Thank you for your time and attention.

Federal and State Affairs

Attachment 6

Date 3-8-07



TESTIMONY IN SUPPORT OF HB 2020

First off I would like to thank you for allowing me to speak today! My name is Brandy Sacco and on November 20th, 2005, I lost my wonderful husband Sgt. Dominic J. Sacco. On top of becoming a widow at the ripe age of 24, I was now a single mother of two, my our year old daughter and 3 1/2 month old son. As if this wasn't hard enough, I am then notified by the Topeka Capital Journal informing me that the West Boro baptist Church will be protesting at my husbands funeral!!! I didn't understand then and I don't understand now how this is acceptable! This type of behavior should be punishable by law!!! I am not wanting to take away anyone's first amendment rights, but my husband along with any other soldier who has fought for this country and paid the ultimate sacrifice should not be disrespected by any one!!!! I am here today Begging you to please do something, to fix this situation!! There have been other states who have found a way, so I know that the State of Kansas can do the same. Please stand up for our soldiers and protect them as they have done for you!!!!

Thank you again for allowing me to speak!

Federal and State Affairs

Attachment 7

Date 3-8-07



## COUNTY MANAGER'S OFFICE

Sedgwick County Courthouse  
525 N. Main, Suite 343  
Wichita, KS 67203  
Phone (316) 660-9393  
Fax (316) 383-7946  
[aschlapp@sedgwick.gov](mailto:aschlapp@sedgwick.gov)

**Andrew J. Schlapp**  
Director, Government Relations

**TESTIMONY SB 244 and HB 2020**  
**House Federal and State Affairs Committee**  
**March 7, 2007**

Chairman Siegfried and members of the committee, my name is Andy Schlapp, Director of Government Relations for Sedgwick County. Thank you for the opportunity to provide written testimony in support of SB 244 and HB 2020. The Board of County Commissioners of Sedgwick County passed a resolution, that I have included as back up, requesting that you support legislation that would create buffer zones to protect families from unwarranted harassment during funerals or memorial services.

While Sedgwick County respects the rights guaranteed under the First Amendment, we also believe there are other avenues for protestors to express particular points of view without disrupting a family's funeral or memorial service. The emotional distress following the loss of a loved one has the potential for creating disturbances and resulting in a threat to public safety and a breach of peace.

Sedgwick County is the home of the largest city in Kansas, and is the second most populous county in the state. Our citizens have stepped forward to defend our freedoms, and our rights, and some of them have made the ultimate sacrifice. Sgt. Donald T. Hasse was called home, and honored by his family and his friends at a military funeral held on December 10, 2005, here in Wichita. He was dishonored, however, by the actions of a few, but vocal, protestors who know no shame. Richard Strothmen and the Patriot Guard with the American Legion Post 136, were at that funeral, as they have been at other similar funerals. They have brought this issue to the forefront by requesting that a law be enacted to protect families because they can only miss work so often, be away from their families so often, and forgo income so often to protect these families from harassment.

Federal and State Affairs  
Attachment 8  
Date 3-7-07

**A RESOLUTION REQUESTING THAT GOVERNOR KATHLEEN SEBELIUS AND THE KANSAS LEGISLATURE SUPPORT LEGISLATION THAT WOULD CREATE BUFFER ZONES TO PROTECT FAMILIES FROM UNWARRANTED HARASSMENT DURING FUNERALS AND MEMORIAL SERVICES.**

**WHEREAS**, families have a substantial interest in organizing and attending funerals for deceased relatives; and

**WHEREAS**, the interest of families to privately and peacefully mourn the loss of their loved ones are violated when funerals are targeted for picketing and other public demonstrations; and

**WHEREAS**, picketing, public demonstrations and other uninvited outside interference at funerals causes emotional distress and has the potential for creating disturbances resulting in a threat to public safety and the breach of the peace; and

**WHEREAS**, the State Legislature has addressed the issue of picketing at funerals by enacting previous statutes and should once again address this issue to provide for a state-wide policy protecting the rights of families to grieve without unwarranted harassment; and

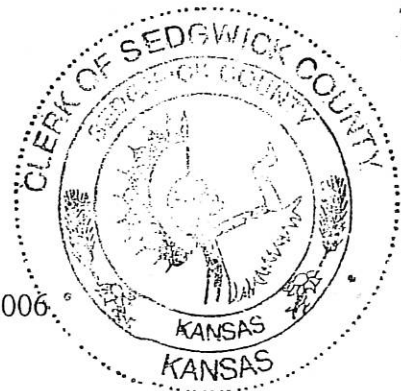
**WHEREAS**, the Board of County Commissioners of Sedgwick County recognizes and appreciates the efforts of Richard Strothman and the Patriot Guard with American Legion Post 136 to bring this issue to the forefront by requesting that laws be enacted protecting the right of families to grieve the loss of their loved ones in peace and without harassment.

**NOW THEREFORE BE IT RESOLVED** by the Board of County Commissioners of Sedgwick County, Kansas that:

The Board of County Commissioners strongly urges the Kansas Legislature and members of the Sedgwick County legislative delegation to support legislation protecting the rights of families to grieve the loss of loved ones in peace by creating buffer zones to protect such families from unwarranted harassment during funerals and memorial services.

Commissioners present and voting

DAVID M. UNRUH	<u>aye</u>
TIM R. NORTON	<u>aye</u>
THOMAS G. WINTERS	<u>aye</u>
LUCY BURTNETT	<u>aye</u>
BEN SCIORTINO	<u>aye</u>



Dated this 1st day of February, 2006.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

ATTEST:

*Don Brace*  
DON BRACE, County Clerk

*Ben Sciortino*  
BEN SCIORTINO, Chairman  
Commissioner, Fifth District

*Lucy Burtnett*  
LUCY BURTNETT, Chair Pro Tem  
Commissioner, Fourth District

APPROVED AS TO FORM:

*Michael D. Pepon*  
for MICHAEL D. PEPOON  
Assistant County Counselor

*David M. Unruh*  
DAVID M. UNRUH  
Commissioner, First District

*Tim R. Norton*  
TIM R. NORTON  
Commissioner, Second District

*Thomas G. Winters*  
THOMAS G. WINTERS  
Commissioner, Third District

I, \_\_\_\_\_, County Clerk of Sedgwick County, do hereby certify this to be a true and correct copy of the original instrument which is on file or of record in my office.  
Done this 2<sup>nd</sup> day of Feb, 2006  
DON BRACE, County Clerk  
By *Suea Davis*, Deputy



Testimony In Favor of

HOUSE BILL 2020

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

By Ralph Snyder, Assistant Adjutant  
The American Legion Department of Kansas

Thank you for this opportunity to appear before you today and to ask for your favorable action on HB 2020. My name is Ralph Snyder and I serve as Assistant Adjutant for the American Legion Department of Kansas.

When someone loses a friend, brother or sister, mother or father, spouse or child, or any relative for that matter, they should be allowed to lay their friend or loved one to rest in peace and with dignity. That applies to everyone, not just those lost while serving their nation in the Armed Forces.

No one should have to endure insults, harassment, jeers, and signs during their time of mourning. For that matter no one should be subjected to "in your face" picketers when they enter their place of worship for any type of religious service. Kindergarten through fourth grade school children should not be exposed to the hatred of those who routinely show up at the same time as their recess.

I wish HB 2020 addressed each of the examples I've cited where the majority of citizens irregardless of their political and religious beliefs feel such pickets are inappropriate. However, it does speak to the most important; when people are perhaps most vulnerable....when laying their loves ones to rest. We can counsel and teach our children right from wrong, good from bad, we can continue to ignore the signs and chants while we enter our places of worship, and when a local cult pickets American Legion State Headquarters most of our staff is thankful others are not being subjected to their messages of hate during the same time period.

Indiana, Illinois, South Dakota, and most recently Oklahoma have passed measures similar to HB 2020. By similar I am referring to the distances incorporated in those states recently approved laws of which at least one requires a distance of 500 feet. In its present form, House Bill 2020 provides those who picket and otherwise protest during funeral services to set up directly in front of entrances to funeral homes and churches to heckle and insult grieving families from a mere 150 feet away.

I salute the Patriot Guard which was founded by Kansas Legionnaires and whose ranks have swelled to more than 1500 in Kansas and number over 60,000

Federal and State Affairs

Attachment 9

Date 3-8-07

nationwide in the past year. Patriot Guard members come from all walks of life and from a number of organizations with one common purpose: to provide a peaceful human shield between the families of those who sacrificed their life for this nation and those who would dishonor their service. I'm proud to be a member of the Patriot Guard whose only dues are your patriotism and time. I hope you will join us by voting in favor of House Bill 2020 and by urging your colleagues to do the same.

# STATE OF KANSAS

## House of Representatives

**TOPEKA ADDRESS:**

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TOPEKA, KANSAS 66612

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THE CAPITOL

**Lee Tafanelli****Representative, Forty Seventh District**

March 8, 2007

**VICE CHAIRMAN**  
APPROPRIATIONS**CHAIRMAN**  
TRANSPORTATION & PUBLIC SAFETY BUDGET**OTHER COMMITTEES**  
GOVERNMENT EFFICIENCY & TECHNOLOGY  
JOINT COMMITTEE ON KANSAS SECURITY**TESTIMONY IN SUPPORT OF HB 2020**

Chairman Siegfried and Members of the Committee

Thank you for the opportunity to testify here today in support of HB 2020. As a veteran of Operation Iraqi Freedom, I very well understand the very freedoms and liberties that we enjoy in this Nation. I along with every other veteran have fought to preserve and defend those freedoms and liberties which includes the right to the freedom of speech as well as the right to protest. What we did not do is give the right to interfere, denigrate or harass families at funerals.

This bill does nothing to deny anyone the right to the freedom of speech, no matter how egregious or distasteful it may be. This bill provides full opportunity for anyone to exercise their freedom of speech and their other constitutional rights. But more importantly, this bill gives a family the right to some privacy during their darkest hour, to grieve, honor and pay their respects to their loved one. A right that they have earned and that they deserve.

As a Commander in Iraq, I lost two soldiers, SGT Derrick Lutters and SGT Dusty Carroll. Two families lost a son, a brother and a friend. Young Soldiers that gave their last full measure of devotion to their Country, and the freedoms it embodies. Those heroes along with every other Veteran who has died defending and preserving our Nation, it's freedom and our liberties have earned a debt a gratitude that our Nation can never repay. Soldiers, their families and friends deserve nothing less than to be able to grieve, honor and pay their last respects to their loved ones free from protest and harassment.

Mr. Chairman, members of the Committee, thank you again for the opportunity to appear before you today and I ask for your support of HB 2020.

Federal and State Affairs

Attachment 10Date 3-8-07



# TESTIMONY

Dale Goter  
Government Relations Manager

City of Wichita  
455 N Main, Wichita, KS. 67202  
Wichita Phone: 316.268.4351  
dgoter@wichita.gov

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## House Federal and State Affairs Committee

### Testimony in Support of HB2020 – Funeral Picketing March 8, 2007

Attached is a Resolution adopted by the City Council of the City of Wichita in support of the the Kansas Legislature's regulation of funeral protests. This Resolution is submitted to the House Committee in support of HB2020.

Thank you for your consideration.

Federal and State Affairs  
Attachment 11  
Date 3-8-07

RESOLUTION NO. 06-052

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA,  
KANSAS, OF SUPPORT OF THE STATE LEGISLATURE REGULATING  
PROTESTS AT FUNERALS.

WHEREAS, a funeral is usually the last opportunity for an entire community to demonstrate their respect and admiration for the deceased and his or her family; and

WHEREAS, this opportunity for respect is also been seen by some to be an opportunity to vocalize their contempt for certain circumstances regarding the way the deceased may have lived or dies, or which may or may not have anything to do with the deceased; and

WHEREAS, this nation, this state and this city have and will continue to have the utmost respect for the freedom of speech, which is guaranteed by the Constitution, embraced by all of our citizens, and admired by the world; and

WHEREAS, it is the opinion of the Wichita City Council that ample opportunity for free speech can be granted in many ways, without involving the immediate area of a funeral or memorial service for the recently departed.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the city of Wichita, Kansas that:

The Wichita City Council strongly urges the Kansas State Legislature and the members of the Sedgwick County Legislative Delegation to support and enact legislation to protect the grieving families of the deceased from unwarranted harassment as well as to preserve the peace of the community by creating buffer zones during funerals and memorial services.



Executed at Wichita, Kansas, this 7<sup>th</sup> day of February, 2006.



Carlos Mayans  
Carlos Mayans, Mayor

ATTEST:  
Karen Sublett, CMC  
Karen Sublett  
City Clerk

Approved as to Form:

Gary E. Rebenstorf  
Gary E. Rebenstorf  
Director of Law and City Attorney

**Statement of  
Kris W. Kobach  
Professor of Law  
University of Missouri (Kansas City)**

**Before the Federal and State Affairs Committee  
Kansas House of Representatives**

**Regarding H.B. 2367**

**March 8, 2007**

Federal and State Affairs

Attachment 12

Date 3-8-07

Mr. Chairman and Members of the Committee, I come before you today in my capacity as a Professor of Constitutional Law, Legislation, and Immigration Law at the University of Missouri—Kansas City School of Law. During 2001-2003, I served as Counsel to U.S. Attorney General John Ashcroft at the Department of Justice. In that position, I was the Attorney General's chief advisor on immigration law and border security. I come before you today to explain the legal environment into which H.B. 2367 fits. My testimony should not be taken to represent the position of my law school, which does not take official positions on pending legislation.

There are many reasons to support the enactment of H.B. 2367. Today I will explain the legal impact of H.B. 2367, then elaborate on why it is good policy for the state of Kansas

## **I. Compliance with 8 U.S.C. § 1621.**

As is plain from the language of H.B. 2367, it restricts the provision of state and local public benefits to illegal aliens. However, it is important to understand that *H.B. 2367 does no more than is already required by federal law*. Under federal law, illegal aliens are *already ineligible* for the state and local public benefits described in H.B. 2367.

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), popularly known as the "Welfare Reform Act of 1996." In that act, Congress included numerous provisions designed to ensure that illegal aliens do not receive public benefits at the federal state or local level. Those provisions are found primarily in 8 U.S.C. § 1621. Specifically, Congress stated that an illegal alien "is not eligible for any State or local public benefit." 8 U.S.C. § 1621(a). Public benefits are defined under federal law as "any grant, contract, loan, professional license, or commercial license ... any retirement, welfare health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C. §1621(c)(1)(A)-(B). Exceptions are made for emergency medical services, emergency disaster relief, and immunizations. 8 U.S.C. § 1621(b).

When it passed the Welfare Reform Act of 1996, Congress expressly spelled out its objectives. 8 U.S.C. § 1601(2) states: "It continues to be the immigration policy of the United States that (a) aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations, and (b) the availability of public benefits not constitute an incentive for immigration to the United States." A few subsections later in the Code, Congress reiterated its purpose: "***It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.***" 8 U.S.C. 1601(6) (emphasis added). Congress was determined to remove the magnetic effect of public benefits in the illegal immigration crisis.

The effect of H.B. 2367 is to ensure that Kansas complies with its obligations under federal law. It simply requires public officials to verify the legal status of those aliens who seek benefits. This can be accomplished easily and in a matter of seconds via internet using the Systematic Alien Verification for Entitlements (SAVE) program operated by the U.S. Department of Homeland Security.

H.B. 2367 also serves to shield state officials from potential violations of federal law. When state officials look the other way, or decline to ascertain whether or not an alien who seeks benefits is lawfully present in the United States, they not only run the risk of violating 8 U.S.C. § 1621, they enable illegal aliens to remain in the country with impunity.

Some activists who disagree with the enforcement of federal immigration laws may wish that they could change the status of illegal aliens; however it is not within the authority of any state to give illegal aliens the "right" to remain in the state or receive benefits prohibited by federal law. As the U.S. Supreme Court stated

... 60 years ago: [S]tates ... can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.” *Takahashi v. Fish & Game Commission* 334 U.S. 410, 419 (1948). This is an area of exclusive federal authority—in which it is impermissible for states to act in ways that defeat federal objectives. Doing so violates the Supremacy Clause of Article VI of the U.S. Constitution.

## **II. The Legal Authority of States to Verify and Report an Alien’s Status**

Because immigration is an area of law in which the federal government maintains preemptive authority, Congress was careful to expressly pave the way for states to verify the status of aliens seeking public benefits. Congress gave the states explicit authorization to do so in 8 U.S.C. § 1625: “A State or political subdivision of a State is authorized to require an applicant for State and local public benefits ... to provide proof of eligibility.” States are also authorized to verify an alien’s status with the federal government under 8 U.S.C. § 1373(c).

Congress also provided that states would have a clear legal avenue for reporting to federal authorities illegal immigrants who seek public benefits. Indeed, Congress prohibited states from concealing this information if they discover it. 8 U.S.C. § 1644 states that no government entity may be “in any way restricted, from sending to or receiving from [federal immigration officials] information regarding the immigration status, lawful or unlawful, of an alien in the United States.”

## **III. Recent Federal Judicial Precedent Confirms the Authority of Kansas to Enact H.B. 2367**

Three federal District Courts have reviewed the authority of states to enact statutes like H.B. 2367. The most recent decision came out of the District of Arizona in the case of *Friendly House v. Napolitano* in 2005. In that case the Court upheld Arizona’s Proposition 200, which contains language very similar to H.B. 2367. The Court concluded that Congress clearly intended that states should verify the status of aliens seeking public benefits and that Proposition 200 was not preempted by federal law. The Court also concluded that the state did not deny aliens due process when it restricted their access to public benefits.

A year earlier, in 2004, the District Court for the Eastern District of Virginia found that a Virginia policy denying postsecondary education benefits to illegal aliens was permissible under federal law. The Virginia policy adopted federal standards for classifying aliens, just as H.B. 2367 does, and therefore it was also on secure constitutional grounds. *Equal Access Education v. Merten*, 305 F. Supp.2d 585, 603 (2004).

Eight years earlier, in the case of *LULAC v. Wilson*, the District Court for the Central District of California articulated the same principle. In reviewing a California law denying benefits to illegal aliens that had been passed prior to PRWORA, the Court found that “benefit denial provisions were not an impermissible regulation of immigration and therefore withstand scrutiny under the first DeCanas test.” *LULAC v. Wilson*, 908 F.Supp. 755 (C.D. Cal. 1995).

The authority of states to enact statutes like H.B. 2367 has been confirmed, and reconfirmed again, by the federal courts. Not surprisingly, several states have already taken action to ensure that they are in compliance with federal law by enacting statutes similar to H.B. 2367. The first was Arizona, which enacted Proposition 200 in 2004. Virginia followed, with a law that is almost identical to H.B. 2367, in 2005. And in 2006, Georgia, Oklahoma, and Nebraska followed suit. Kansas is one of many states considering similar legislation this year.

## **IV. H.B. 2367 Will Save the State a Significant Amount of Money**

According to the fiscal note memo for H.B. 2367, “The direct fiscal impact would be budgetary savings as a result of eliminating benefits payments to illegal aliens in the categories mentioned.” The memo goes on to

correctly state that it is difficult to give a precise estimate of how much money will be saved because the state does not know how many illegal aliens are currently receiving state benefits in Kansas. This is a reflection of the fact, that if the state does not check, the state cannot know how much money it is losing.

However, we can use available number to obtain an approximation of the savings that H.B. 2367 would bring. According to U.S. census data and INS estimates, in 2000 there were 47,000 illegal aliens residing in Kansas. This is 135 percent higher than the previous INS estimate in 1996, and 262 percent higher than the estimate for 1990. Assuming (very conservatively) that the illegal alien population only increases 150 percent during the current decade (instead of 262 percent in the 1990s), the illegal alien population in Kansas in 2007 is probably close to 94,000. U.S. census data also indicates that two-thirds of illegal aliens in the United States have less than a high-school education, making them among the most likely individuals to seek state benefits. Assuming (again, very conservatively) that only 5% of the illegal alien population is currently obtaining state public benefits covered by H.B. 2367, that would mean that 4,700 illegal aliens are currently obtaining state benefits, costing the state millions of dollars each year, depending on the benefits obtained. These are necessarily imprecise numbers. But they illustrate that the fiscal savings resulting from H.B. 2367 is likely to be significant.

## **V. Conclusion**

Even if the fiscal savings were zero, however, H.B. 2367 is necessary to ensure that Kansas complies with federal law prohibiting states from providing public benefits to illegal aliens. It also contributes to the restoration of the rule of law in immigration. It is no secret that the federal government is having difficulty enforcing our nation's immigration laws. Consequently, it is important that states work to assist the federal government, rather than impede the federal government, in this effort. H.B. 2367 accomplishes exactly that, removing incentives for illegal aliens to remain in Kansas in violation of federal law. There are essentially two great magnets that draw illegal aliens into this country—jobs and public benefits. H.B. 2367 ensures that the power of the latter magnet is greatly reduced in Kansas.



Remarks to be submitted by Paul Porubsky regarding HB 2367 3/08/07

I would like to thank the committee for the opportunity to speak regarding this important matter. I can think of no domestic issue that is of greater concern to the safety and security of the citizens of Kansas as well as the entire nation than that of illegal immigration.

I am here in support of HB 2367.

It is **outrageous that we should even be debating** whether individuals in this country **illegally** should be entitled to any form of public benefits designed for, and **paid for, by legal, taxpaying citizens**, of this state and this nation. We are talking about **people who arrogantly flaunt their collective contempt** for all our federal, state, and local laws.

And yet these same people have the **audacity to demand benefits** created by the very laws they refuse to acknowledge and much less abide by.

These are benefits designed as a safety net for **legal, law abiding citizens, of the state of Kansas** for the expressed purpose of benefiting Kansas residents who find themselves in need of assistance.

These benefits were not designed as a safety net for **foreign nationals** who consciously and with much deliberate effort choose to be in our state and nation **illegally**.

How **outrageous** to allow people to come here **illegally**, shove their way to the front of the line, and demand any rights to taxpayer funded services when **they are not even legal citizens of this state** and Nation.

To extend benefits to illegal aliens, **directly and overtly aids and abets all the illegal activities** associated with this **epidemic of illegal immigration**.

I am referring to activities such as all manner of document fraud, identity theft, social security fraud, human smuggling, child endangerment, child exploitation, drug smuggling, income tax evasion, illegal employment practices, depressed wages and workplace conditions, spreading of contagious diseases, gang activity, kidnapping, murder, incredible burdens being placed on institutions such as hospitals, schools, court systems, law enforcement and prison systems as well as our governmental entities and the list goes on.

**It is not our immigration system that is broken.** That system was intelligently designed by this nations forefathers.

It is **our political system that is being hopelessly undermined and corrupted** by those who condone the illegal actions of others.

The time is long overdue for elected official to once again remember who their legitimate constituency is.

That constituency is the legal, tax paying citizens of this State and nation.

We need **elected officials to display the courage necessary** to do their constitutional duty to the citizens they swore to serve and protect.

We must **stop the unending assault being perpetrated upon the citizenry of this state and nation by this illegal alien invasion**.

**Denying illegal aliens benefits intended solely for legal tax paying citizens of the State of Kansas is a step in the right and necessary direction.**

I respectfully **urge the committee approve this bill**.

Thank you for your time and attention.

Respectfully,

Paul Porubsky

Federal and State Affairs

Attachment 13

Date 3-8-07

W. Paul Degener  
518 NW 56th St.  
Topeka, KS 66617  
(785) 246-0215  
w.degener@sbcglobal.net

SUBJECT: HB 2367 Benefits Denied

March 7, 2007

Mr. Chairman and members of the committee, I wish to thank you for allowing me to appear before this body.

My name is Paul Degener, I am the President of Citizens for Immigration Reform (CFIR) and am also a lobbyist for the same organization. We are a fledgling grass roots organization with eighty five (85) members. As a group, we are not opposed to **LEGAL IMMIGRATION** and we are not a racist organization.

I and our group stand in support of this legislation.

I would like to begin with a brief history of our organization.

As you may recall, on April 10th of last year, illegal aliens all across this nation staged rallies stating their demands and attempting to prove that this country could not survive without them. A rally was held in front of our capital. The rally was attended by me, Myron Holter and Thomas Lessmen. Following is a brief report.

There were chants and signs: "Today we march, tomorrow we vote". Immigrant bill of rights were passed about and thrown on the ground. (Enclosure 1)

International flags on flag staffs were paraded around the capitol grounds. Among the flags being displayed were of course Mexican flags, a Chinese Communist flag and the hammer and cycle flag from the old USSR. Out of all of the flags on display only one flag was displayed in a disrespectful manner. It was carried by two individuals holding it by two corners, there was no flag staff, and it was being carried upside down. Would anyone care to venture a guess as to which flag that was? It was The United States Stars and Stripes. As a retired soldier with 17 years active duty and combined service of 36 years, I found this activity disrespectful to our flag, disgusting and deplorable. To come to my country uninvited and desecrate my flag is unforgivable. I am well aware of our freedoms. When I was on active duty I served in three different foreign countries. We were constantly reminded that we were guests in that country and to conduct ourselves accordingly. I expect the same when people visit my country. I would invite the illegal aliens to exercise one of our freedoms. They are free to return to wherever they came from at any time.

As a result of this rally, our group was formed with the help of our local talk show host, Jim Cates.

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As you will recall, another rally was held by the illegal aliens on May Day. This is a day celebrated by the Communists around the world. The Communist Flags were missing from this rally. However, toward the end of the rally the master of ceremonies made the following announcement: "Do not forget to register to vote and do not forget to vote". You might ask, so what is the problem. He was talking to illegal aliens and he was encouraging these people to register to vote and to vote. It is against the law for illegal aliens to vote in Kansas, and this is the way it should be.

I will pursue this subject at a subsequent hearing.

Hopefully what I just told you will provide some indication of what we are dealing with. We are being invaded daily by uninvited guests. They have entered our country illegally and they have no intention of assimilating into our society. They think they are entitled to everything an American citizen is entitled to and they make those demands known. In my view they have been indoctrinated to do all they can to bring us down. And they are doing a superb job of it.

So far they have managed to:

- Overload our educational system
- Caused several hospitals across the country to shut down
- Are bringing diseases into our country
- Depressing wages
- Taking jobs at reduced wages
- Bringing M13 gangs into the country
- Creating havoc, death and destruction along the border
- Terrorists are taking advantage of our non-existent borders

Are these people totally to blame? No. Our federal government has failed miserably by not securing our borders and succumbing to industrial demands for cheap labor. And our state has failed by passing liberal legislation in favor of illegal aliens. .

All of this however does not excuse these people from coming into our country illegally.

I and the Citizens for Immigration Reform fully support this legislation.

I want to thank you for allowing me to appear before this committee.

## ILLEGAL ALIEN BILL OF RIGHTS

### Know Your Rights When Taking Action! These are Some Basic Rights and Security Precautions for April 10th

- Everyone (documented or undocumented) has the right to advocate peacefully for change.
- Everyone (documented or undocumented) has the right to maintain silent and not answer questions that a government agent may ask you.
- If a government agent or the police ask you something, including your name, immigration status, or where you were born, you do not need to answer. If they are questioning you, you should ask "Am I free to go?"
- If you have immigration papers showing legal status, U.S. law requires you to carry them and show them upon the request of a government agent. If you do not have these papers and are asked for them, you should ask. "Am I free to go?"
- Do not say anything to a reporter that you don't want anyone to know, such as your last name or immigration status.
- There is no guarantee that immigration authorities won't come, or that the police won't approach you. but if everyone remains peaceful, nothing should happen.
- If there are counter-protesters, do not get into fights with them so that you will avoid getting arrested.

Federal and State Affairs  
Attachment 15  
Date 3-8-07

**Testimony of**  
**Joyce Mucci**  
**Southern Field Representative**  
**Federation for American Immigration Reform**  
**Presented to the**  
**Kansas House Federal and State Affairs Committee**  
**Wednesday, March 8, 2007**

**This statement is in support of H.B. 2367**

*FAIR is a nonprofit public interest organization working to end illegal immigration  
and to set levels of legal immigration that are consistent with the national interest.*

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Mr. Chairman and members of the committee, thank you for the opportunity to present the views of the Federation for American Immigration Reform (FAIR) on H.B. 2367.

FAIR is a national, not-for-profit organization of concerned citizens nationwide promoting better immigration controls and substantial reductions in overall immigration for the benefit of all Americans. FAIR does not receive any federal grants, contracts or subcontracts.

My name is Joyce Mucci, and I am FAIR's Southern Field Representative.

America has an enormous and growing illegal alien population precisely because violating our immigration laws is tolerated and rewarded.

Public policy is about setting priorities and allocating finite resources. The presence of a significant number of low wage workers that are here unlawfully creates an unnecessary burden on the resources of the state of Kansas.

HB 2367 is a sensible approach to alleviate this problem.

Many illegal immigrants receive welfare benefits through their children born in the United States, who are U.S. citizens. And when they are ineligible for federal welfare programs, state and local welfare agencies become responsible for their support.

The Systematic Alien Verification of Entitlement (SAVE) program will help the State of Kansas not only save money but ensure that benefits are only provided to those individuals who are eligible.

The hard working Americans in Kansas should not be expected to shoulder the burden of providing public benefits for people who are here unlawfully.

Honorable Representatives:

I am here as a proponent to HB 2367, and to give my full support to the passage of this bill. I believe this law will make an excellent first step, though I also believe this bill could go much farther in establishing Kansas as a national leader in protecting its taxpayers from the economic burden of supporting a class of criminals which US law dictates should not be present.

First, I wish to dispel a myth that I believe many of this bill's opponents will use. HB 2367 touches on what has become a sensitive and highly volatile topic throughout the United States. In my experience, those who oppose this and similar bills that negatively impact illegal immigrants, believe that they can intimidate those who support law and order by calling them bigots, racists, or other names not fit to print. However, in 1982, the Supreme Court stated in *Plyler v. Doe*:

*"...undocumented resident aliens cannot be treated as a 'suspect class,'"*<sup>1</sup>

In simple terms, this one phrase by the supreme court means that it is not possible for a law such as HB 2367, which addresses benefits provided to criminal, to be labeled racist, nor is it contrary to either our State or our US Constitution to distinguish between groups of people based upon their 'membership' in a class which holds as it's only membership requirement the violation of the law.

Thus, any of the those who testify before this committee, and who would use the rhetoric of hatred and intolerance in an attempt to sway this committee and thereby the whole of the Kansas legislature, have already had that issue decided by the Supreme Court of the United States.

In regards to HB 2367, I would like to testify as to the following:

As outlined in the US Constitution, Article 1, section 8, the US Congress has the unique power to establish all laws pertaining to immigration and naturalization. I believe we may all agree that we have sufficient laws at the federal level concerning illegal entry into our country, however, the enforcement of those laws has been lax, and has led to individual states such as Kansas being saddled with a significant financial burden borne mostly by the US taxpayer.

HB 2367 is a bill that recognizes a small part of this financial burden. This bill is the first step of many that we must take in order to minimize the increasing financial impact of undocumented resident aliens.

The reason I refer to this bill as the first step can be found in a report by the Center for Immigration Studies, dated August 2004:<sup>2</sup>

*"Many of the costs associated with illegals are due to their American-born children, who are awarded U.S. citizenship at birth. Thus, greater efforts at barring illegals from federal programs will not reduce costs because their citizen children can continue to access them."*

Though this report focused on the federal budget, I believe that the same premises are valid when evaluating the impact of illegal immigration on state budgets.

One of my many experiences with the reality of that statement was when my family and I lived in a subsidized housing complex here in Topeka. One day, a neighbor called me over to confirm what she considered a totally unbelievable story from my wife. When I confirmed that yes, we were indeed paying \$446/month in rent, this neighbor seemed astounded. She then told my wife and I how their family was only paying \$23/month in rent.

As I knew that between her, her husband, and her brother, their household income was around \$5000, I

asked her how she did this. Her reply stunned me. It turned out that since they were in the country illegally, working under assumed names, but the apartment was rented in their real names, they had no income to report, and the apartment complex had no method to verify their lack of income. This resulted in their having a rent payment near \$0.

The 3-bedroom apartment was occupied by the three adults mentioned, and two children. One child was only a toddler, about two years old, which had been born inside the United States, and thus, was assumed to have US Citizenship. In plain speak, four persons in the country illegally, and a baby, stealing \$600/month in subsidized housing costs from our taxpayers. Through further questioning, I found out that this family also received food stamps, WIC, TANF, and some medical benefits. In total, this household was receiving about \$1000/month from the taxpayer. This did not include the education money for the older child who was then attending Kindergarten.

When I later asked one of the apartment complex employees how they could allow illegal immigrants to live in government subsidized housing, the employee stated that though she did not like it, they had no legal right to deny them housing.

This case, and others that I have seen or heard of, are why I believe that HB 2367 is only the first step in finding a solution. I believe that we further need to address the issue of illegal aliens who are permitted to receive full state and federal benefits through the assumed citizenship of their US born children.

On a quick side note: The US citizenship of children born to undocumented alien residents has never been challenged in any court. This citizenship, however, is assumed based upon two legal issues, first, the 14<sup>th</sup> amendment states:

*“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”*

The second is the case of *US v. Wong Kim Ark*, decided in 1898, which states that children of legal resident aliens were in fact US Citizens if born inside the United States, even if they later traveled outside of the US and returned.<sup>3</sup> The phrase in the 14<sup>th</sup> amendment “*and subject to the jurisdiction thereof*” has itself, never been legally defined.

Though challenging the legality of providing US Citizenship to the children of those who have violated our laws and our sovereignty is well beyond the scope of this bill, it is something this committee could and possibly should well consider, for possible action.

Returning to how I believe the scope of this bill could be expanded, to accomplish what I believe is its intent, I believe that this bill should also:

1. Account for the presence of aliens illegally present who share accommodations with the US Citizens/Legal residents who are authorized state benefits;
2. Provide for a method of reducing those benefits in proportion to the number of aliens illegally present who could reasonably be assumed to benefit from the government program;
3. Implement random spot checks of benefit recipients, inside their home, to verify that only those authorized are actually benefit from the government aid; and
4. Pursue Federal reimbursement of all state monies used to benefit illegal immigrants. This policy was insinuated in the Supreme Courts *Plyler v. Doe* ruling, however, to my knowledge, no state has yet attempted this challenge.

In summary, I wish to emphasize that there are many ways in which we can address the impact of

illegal immigrants on our state's budget, and I believe that HB 2367 is a good start, but I also believe that it is only the start, and will not accomplish much other than the establishment of a legal precedent.

The only way to eventually win this war that has been thrust upon us by the lack of appropriate enforcement action by our federal government, is that we, as a state must work in unison with our neighboring states to pressure the federal government to fulfill their duties. Our President, our US Senators, our US Representatives, are all part of the reason why we have such a burgeoning population of undocumented alien residents in Kansas. We must pressure them to do the right thing for our own citizens and for those who have chosen to come to our state the legal way.

On a closing note I would like to talk very briefly about a variation of this topic. In my personal experience, there exist companies in Kansas that discriminate against Americans and legal residents because they prefer hiring those who are in this country illegally.

I would like to issue to each Representative in this room a challenge. The challenge is to travel with me to one of these companies, and to attempt the submission of a simple job application. If you experience the same treatment that I received, than you will understand the fallacy that undocumented resident aliens take only those jobs that Americans don't want. Investing a small amount of time to prove this as a lie would be time well spent.

I would like to thank you for your time and for permitting me to speak. I am now available for any questions you may have.

Footnotes:

1. Supreme Court Decision of Pylar v. Doe (No. 80-1538), Decided June 15, 1982
2. Report titled "*The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget*", by the Center for Immigration Studies, August 2004
3. Supreme Court Decision of U.S. v. Wong Kim Ark (No. 132), Decided: March 28, 1898





Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

www.kdheks.gov

Division of Health

**Testimony on  
House Bill 2367  
House Committee on Federal and State Affairs**

**Presented by: Cyndi Treaster  
Program Manager, Farmworker, Refugee and Immigrant Health**

**March 7, 2007**

Chairman Siegfried, members of the Committee, I am pleased to appear before you today to provide information regarding eligibility criteria for federal, state and local public benefits.

We believe that public health programs administered by the Kansas Department of Health and Environment are exempted by provisions in Section 1 of this bill for programs and services required to be offered by federal statute (Title 8, Section 1621(b) of the United States Code). Most of our federally funded public health programs are offered categorically without regard to U.S. citizenship or immigration status. During this state fiscal year, 86% of the Division of Health budget is comprised of federal funds.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, 110 Stat. 2168, defined the term "federal public benefit" and set new eligibility restrictions to financial aid and assistance meeting this definition. It also required that the U.S. Attorney General establish regulations and guidance for the verification of immigration status of persons applying for "federal public benefits." Kansas already complies with these regulations for the list of federal public benefits. The restricted programs are Medicaid, HealthWave, temporary cash assistance to needy families (TANF), food stamps, grants, loans, professional and commercial licenses.

Since we understand that the public health programs administered by the Kansas Department of Health and Environment are exempted in this bill, we will mention two areas of concern regarding its implementation.

While the bill appears to be directed at preventing ineligible recipients from receiving public benefits, it will also impose additional eligibility verification procedures on all qualified recipients. We are concerned that KDHE sub-grantees and local partners will be unlikely to recognize the qualifying exemptions, that is, the programs that do not meet the definition of federal, local, or state public benefits. Further, they will not be familiar with the qualifying non-citizen classifications that continue to be eligible for services.

A key concern as a state agency is that we avoid the appearance of discrimination based upon race, color, or national origin. All public and private entities covered by Title VI of the Civil Rights Act of 1964 are prohibited from discrimination on the basis of race, color, national origin, gender, religion, age, and disability. As a covered entity, KDHE and our local partners or sub-grantees shall not, on the basis of race, color, or national origin, directly or indirectly differentiate among similarly situated persons in the course of service delivery. For example, we should not single out individuals who look or sound foreign for closer scrutiny or require them to provide additional documentation of citizenship or immigration status.

In practical terms, this means that we should only require verifiable documentation of eligibility when it is required by law and when we require it from all individuals. For example, Kansas Health Policy Authority must do this in the administration of the Medicaid program and the State Children's Health Insurance Program, HealthWave. However, KDHE should not do this for the management of the programs funded through the Maternal and Child Health Block Grant, the WIC nutrition program, CDC disease detection and prevention programs and other public health activities.

The second area of concern is for the confusion that we predict will occur regarding state-funded programs with "sliding-fee discounts." As we understand it, this bill defines a broader restrictive definition of "state and local public benefit." In the federal law, (8USC1621) the definition of "state and local public benefit" parallels the definition of Federal public benefit, except that it substitutes "state or local government" for "the United States."

*..the term "State or local public benefit" means--*

*(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and*

*(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.*

Unlike the federal definition of "state and local public benefit," this bill includes additional restrictions in lines 21 and 22. The federal definitions specify the provision of "payments and assistance." This bill expands the definition to a "benefit under which payments, assistance, credits or reduced rates or fees are provided."

The KDHE administers both federal and state grants to local public health departments, indigent health care clinics, federally qualified health centers, public and private hospitals and numerous other entities that serve clients without regard to immigration or citizenship status. Many of these programs are intended to provide necessary services targeted to low-income, uninsured, or underserved persons. These services are often discounted and/or offered at no charge based upon household income and the ability to pay. Health care facilities that employ health professionals receiving scholarship or loan repayment support from the National Health Service Corps are required to offer sliding-fee discounts for persons unable to pay for the full cost of their care.

If implemented, we foresee that this bill could create unanticipated disruption of programs until we are able to provide the training and consultation our grantees and partners will need to stay in compliance with both federal and state law.

Thank you for the opportunity to appear before this Committee. I will be happy to respond to any questions you may have.



# KANSAS BOARD OF REGENTS

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House Federal and State Affairs Committee  
March 8, 2007

## *Testimony in Opposition to HB 2367*

**Reginald L. Robinson**  
**President & CEO**

Chairman Siegfried and Members of the Committee, I appreciate this opportunity to appear before you to offer views on behalf of the Kansas Board of Regents regarding House Bill 2367 – legislation that would prohibit certain undocumented immigrants from attending the state's public post-secondary institutions at in-state tuition rates. I know you have many Conferees to hear from today, so I will keep my testimony brief.

As Members of this Committee may know, the Kansas Board of Regents strongly endorsed the adoption of HB 2145 (now codified at KSA Section 76-731a) when it was considered during the 2004 Legislative session.

The Board supported the legislation because, in the Board's view, this provision embodied the concept of expanded educational opportunity for people who live in our state, and who seek to enhance their ability to contribute to the well-being of our state and its economy.

The Board supported HB 2145 because it believed that enactment of that provision would work to enhance the likelihood that students who either graduate from Kansas high schools or earn state-issued GED certificates will attend one of the state's institutions of higher education.

The Board supported HB 2145 because it believed further, that given the remarkably competitive and increasingly global economic environment that confronts us, the state truly needs a highly educated workforce if it is to remain competitive and reach its full potential. The Board believed additionally that measures such as HB 2145, which remove barriers to higher education access, are critically helpful and important in that regard.

The Board supported HB 2145 based upon its belief that in the provision's final form, it represented a carefully-crafted piece of legislation that could achieve the goals I outlined above, yet still remain consistent with Federal law in this area. I would note, parenthetically, that there is pending federal legislation that would make it easier for states to achieve the goals I've outlined. That pending legislation is titled the Development, Relief, and Education for Alien Minors (DREAM) Act, and I might note that United States Senator Sam Brownback has long supported this proposal.

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The Board supported HB 2145 because it concluded that the fiscal consequences flowing from the provision would be minimal and likely positive. The students who benefit from this provision are students who, but for the opportunity this law presents, would be unable to pay the out-of-state tuition that would be required of them. Some who are concerned about the impact of this law have considered the in-state tuition being paid by this category of students, and have concluded that as a result of the opportunity those students are seizing to attend our institutions at in-state rates, the institutions are "losing" the marginal dollars represented by the gap between that in-state tuition figure and the out-of-state rates these students would otherwise be required to pay.

As I've said, the reality is that confronted with the prospect of those out-of-state rates, these students would be unable to bear those costs. They would lose their opportunity to advance their education, the institutions would lose the in-state tuition that they are currently collecting from these students, and the state would lose the many benefits from the enhanced contributions these students would make as a result of the education they would obtain. Information regarding the number of students currently benefiting from the law is attached to my testimony.

For all of the reasons that the Board supported the enactment of HB 2145, it must now oppose HB 2367. The Board's embrace of HB 2145 was enthusiastic and unanimous. The Board is pleased that this door to educational opportunity has been partially opened. And, in that regard, I would note that I have offered my perspective regarding what HB 2145 IS. As you consider the piece of legislation before you today, I think it is also critically important for everyone to understand what HB 2145 is NOT.

Contrary to what I have heard from many –

HB 2145 is NOT a law that allows undocumented immigrant students to attend public post-secondary institutions for free. These students who come from our state's high schools must still pay tuition. They must pay the same tuition that their high school classmates pay as they attend our state's colleges and universities.

HB 2145 does NOT relieve any students who seek to benefit from the provision of the obligation to fully and completely satisfy institutional admissions requirements. Like all of the Kansas high school graduates who attend our institutions, these students must demonstrate their capacity to do the work.

Finally, HB 2145 does NOT make any of these undocumented immigrant students eligible to receive ANY state or federal student financial aid. Unlike their high school classmates, these students are not eligible to receive any of that support, no matter how evident or significant their financial need.

The Board of Regents believes that HB 2145 represents an important step in helping our state to produce the kind of workforce it will need to maintain the economy and quality of life we want in our state. The Board supports the continued operation of HB 2145, and opposes any effort to repeal it.

Thank you for giving me the opportunity to appear before your committee today, Mr. Chairman.



**Kansas Board of Regents**  
**Reported Number of Students Enrolled Under Provisions of K.S.A. 76-731a**  
**Fall 2004 through Fall 2006 (20th Day Submission)**

Institution		2004	2005	2006
<b>Public Universities:</b>	Emporia State University	0	4	4
	Fort Hays State University	1	1	6
	Kansas State University	3	4	4
	Pittsburg State University	0	1	2
	University of Kansas	2	4	8
	Washburn University	0	0	0
	Wichita State University	1	21	5
		7	35	29
<b>Community Colleges:</b>	Allen County		0	1
	Barton County		3	2
	Butler County		14	28
	Cloud County		0	0
	Coffeyville		4	0
	Colby		0	0
	Cowley County		2	2
	Dodge City		0	0
	Fort Scott		0	0
	Garden City		5	7
	Highland		0	0
	Hutchinson		2	2
	Independence		0	0
	Johnson County		51	40
	Kansas City KS		4	10
	Labelle		0	0
	Neosho County		1	2
	Pratt		1	1
Seward County		94	35	
	30	181	130	
<b>Technical Colleges:</b>	Flint Hills Technical College	0	3	0
	Manhattan Area Technical College	0	0	0
	North Central KS Technical College	0	0	0
	Northeast KS Technical College	0	0	0
	Northwest KS Technical College	0	0	0
	Wichita Area Technical College	0	1	4
		0	4	4
<b>Technical Schools:</b>	Kaw Area Technical School	0	0	0
	Salina Area Technical School	0	0	0
	Kansas City KS Area Technical School	0	1	6
	Southwest Area Technical School	0	0	0
		0	1	6
<b>TOTALS:</b>		37	221	169

Notes: Data Self-Reported By Institution.  
K.S.A. 76-731a became law July 1, 2004.

Testimony  
House Committee on Federal & State Affairs

**HB 2367**

Elias L. Garcia, Exec Director  
Kansas Hispanic & Latino American Affairs Commission  
(KHLAAC)

Thank you Mr. Chair and members of the Committee for the opportunity to appear before you today. My name is Elias Garcia and I am the Exec. Director of KHLAAC, a small state agency under the Office of the Governor, that consists of a small staff and seven commissioners throughout the state (appointed by the governor). KHLAAC has statewide jurisdiction in working with the Kansas Hispanic community and behalf of members of that community, I am present today to express our concerns regarding HB 2367 and am here today to also urge you not to support this bill.

As you know, HB 2367, is an act concerning public benefits and aliens unlawfully present in the U.S. and imposing certain prohibitions on receipt of public benefits.

One of the fundamental flaws found in HB 2367, i.e. the premise that undocumented immigrant families are eligible for a wide range of state and local public benefits in Kansas...that is inaccurate and incorrect... they are not !

**Other problems with HB 2367:**

- It defines "state and local public benefit" in a manner that is so broad and unreasonable that it would restrict virtually all state activities.
- It is also misleading in another key respect. Although the stated purpose is to restrict eligibility for benefits, the real impact of the bill comes for the creation of a new, costly, and burdensome document verification system to which all persons (citizens and immigrants alike) will be subject when applying for virtually any state license, permit, service, etc.

The federal government and states like Colorado and Arizona have recently passed laws requiring that all persons verify citizenship and immigration status for certain purposes. In every instance, the persons most impacted and harmed have primarily been U.S. citizens.

- The experience in Colorado which passed a bill similar to HB 2367 shows that, ironically, it has been eligible citizens who have been most negatively impacted: a State Senators 15 year old daughter prevented from obtaining her DL; an 84 yr. old citizen prevented from getting a rebate for which she was eligible. It is the poor, the elderly and the disabled who will be hurt most by these strict requirements to prove citizenship based on a narrow set of documents.
- The experience in Arizona which imposed similar verification requirements on person's seeking to vote, is that requirements hit citizens of color particularly hard. A recent study indicated that the requirement decreased Hispanic participation in the voting process by 10 % and African American

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participation by almost 6% (ref. Christopher Drew, "Lower Voter turnout is seen in states that require ID", New York Times (2.21.07): Eagleton Inst. Of Politics, Rutgers State University of NJ, Presentation to U.S. Election Asst. Commission (2.8.07)

- A Federal government requirement that citizens verify their status was implemented last year in the Medicaid program, this requirement was touted as necessary to ensure that un-documented immigrants were not fraudulently receiving Medicaid. However, once again, the main impact of restrictions have been on U.S. citizens.
- Kansas was hit particularly hard. The Kansas Health Policy Authority (KHPA) reported that between 18,000 and 20,000 Medicaid applicants and previous beneficiaries, mostly children, and parents with US citizenship, have been left without insurance (ref. <http://www.cbpp.org/2-207health.htm>).

Further, HB 2367 will be very costly to implement. In Colorado, a report by eighteen departments to the state's Joint Budget Committee, state agencies recently concluded that their similar bill passed in '06 had produced over \$2 million in increased costs, without any savings. Under HB 2367, local and state agencies would have to pay the federal government every single time they request verification using the Systematic Alien Verification of Eligibility (SAVE) system.

Federal fees and the fiscal note necessary to re-train state and local employees on how to use SAVE, will add up to substantial costs that have not been adequately assessed in Kansas. Add to this amount the loss of approx. one-half million dollars in projected immigrant students tuition revenues and cost to implement HB 2367 become very serious and "burdensome".

I will close by encouraging you all to put the best socio-economic interests of Kansas first and again encourage you to not support HB 2367. Thank you.

March 8, 2007

3-8-07



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**House Federal and State Affairs Committee  
Kansas Catholic Conference – Sister Therese Bangert  
Opposition to HB 2367  
March 8, 2007**

The Catholic Bishops of Kansas make it very easy for me to testify against this bill. They have a united voice for justice for immigrants.

As I read this complex bill, it would lead me to believe that we currently have many people who are not United States citizens receiving benefits. This is simply not true. Receiving benefits is an intense experience of many papers and verifications. For example, the General Assistance program requires an application of 18 pages! So the notion that many undocumented people are receiving benefits only adds to the fear and confusion already being fueled by an explosion of anti-immigrant rhetoric.

A Sister who works at Catholic Charities in Salina told me only yesterday when I asked about children and food stamp benefits, *“Contrary to current belief, the immigrant families do not apply even though their children born here could qualify. They don’t want to run any risk later on if an opportunity to qualify for immigration status opens up and having received public benefits might go against their status. I think there probably are some families who apply, but I really don’t know any.”*

The Catholic Church acknowledges that in the words of Bishop Gilmore of Dodge City, *“The system is broken.”* However, Bishop Gilmore adds, *“We think there are more just ways of fixing it, and that’s what we want to bring to the table.”* This quote from Bishop Gilmore appears in a March 16, ‘06 story from the Hutchinson News.

Bishop Gilmore gathered nearly 300 people in Dodge City last April. The “Immigrants Ecumenical Day” was part of the “Justice for Immigrants Campaign” of the United States Conference of Catholic Bishops. Leaders from the Methodist, Episcopal, Lutheran ECLA and Presbyterian Church spoke to the gathering.

MOST REVEREND RONALD M. GILMORE, S.T.L., D.D.  
DIOCESE OF DODGE CITY

MOST REVEREND JOSEPH F. NAUMANN, D.D.  
*Chairman of Board*  
ARCHDIOCESE OF KANSAS CITY IN KANSAS

MOST REVEREND PAUL S. COAKLEY, S.T.L., D.D.  
DIOCESE OF SALINA

MOST REVEREND MICHAEL O. JACKELS, S.T.D.  
DIOCESE OF WICHITA

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FEDERAL AND STATE AFFAIRS

MOST REVEREND EUGENE J. GERBER, S.T.L., D.D.  
BISHOP EMERITUS - DIOCESE OF WICHITA

MOST REVEREND GEORGE K. FITZSIMONS, D.D.  
BISHOP EMERITUS - DIOCESE OF SALINA

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Kansas Senator Brownback also joined the group. He has been a firm supporter of comprehensive immigration reform and the Catholic Church's stance. Brownback asked those gathered to do three things:

1. Pray for a coming together of our nation around this issue. He mentioned how troubled he is by the hatred expressed as people talk about immigrants.
2. Get to know families who are immigrants.
3. Encourage our national faith groups to advocate for comprehensive immigration reform.

Archbishop Joseph Naumann from Kansas City in a '06 address to a forum on immigration said and I quote, "*The Holy Spirit has been present throughout the history of the Church to work against injustice, division and oppression and to bring about respect for individual human rights, unity of races and cultures, and the incorporation of the marginalized into the full life in the Church. In modern times, one of the ways this work of the Spirit has been manifested is through Catholic social teaching, in particular, the teachings on human dignity and the principle of solidarity. So you see how we treat migrants and immigrants is not just an issue that Christians can be concerned about, it is an issue that we must be concerned about.*"

In January of 2003, the Catholic Bishops of Mexico and the United States issued a joint statement titled: **Strangers No Longer: Together on the Journey of Hope.**

The document states the necessity of the Catholic Church being part of "... confronting attitudes of cultural superiority, indifference, and racism; accepting migrants not as foreboding aliens, terrorists, or economic threats, but rather as persons with dignity and rights, revealing the presence of Christ..." (#40)

The Conference also wishes to join the remarks of El Centro in opposition to HB 2945.

So in faithfulness to the mission of our Church, I stand here today, in the name of Catholic Conference, asking you to reject HB 2367.

Thank you for listening and Peace be with You!

HB 2367 will adversely affect countless aliens who are settling legally in Kansas. It will harm spouses of soldiers and other U.S. citizens, as well as workers at our universities and businesses. In short, this bill compounds the consequences of the slow and burdensome Federal Immigration system by punishing those who, through no fault of their own, cannot affirmatively prove that they are lawfully present.

- “Unlawful presence” is a legal term of art. It is defined in § 212(a)(9)(B) of the Immigration and Nationality Act with many caveats and grey areas. HB 2367’s requirements fit poorly with § 212(a)(9) and the practical realities of immigration processing. It will deny benefits to many aliens who are not unlawfully present.
- §212(a)’s provisions tolling (“stopping the clock”) on unlawful presence are especially important. Broadly speaking, if an alien properly makes application for permanent residence, change or extension, he or she is not unlawfully present pending a decision. However, the alien receives no new proof of lawful presence—so the alien’s documents appear expired even though his or her presence is authorized.

The following examples are not rare and cut across wide sectors of Kansas:

- **Soldiers’ families are among those most likely to face extended hardship from HB 2367.** Many soldiers and airmen have noncitizen spouses settling in Kansas, especially as a result of the recent return from Germany of the Big Red One.
  - Soldiers deployed to Iraq may be unavailable to petition and to participate in the process, further lengthening the spouse’s time in-between status or without proof of status.
  - Permanent Residence applications are routinely delayed a year or more by FBI security checks, during which time the alien neither holds a visa, a valid I-94, nor permanent residence.
- Other U.S. citizens who marry foreign-born people—college students are a common example--face parallel problems and delays.
- The bill will also adversely affect employment-based aliens who settle in Kansas. For example, H-1B specialty workers—engineers, chemists, professors, doctors—or H-2A agriculture workers--may have expired papers for 3 or 4 months pending receipt of their new papers. Denial of benefits will interrupt their life and unnecessarily disrupt their families.

In sum, lawful and unlawful presence is governed by complex overlays of Federal statutes and agency memoranda. HB2367’s broad language denies necessary benefits to many more people than the Legislature may intend, and will pose obstacles to legal immigration.

Kimberly Corum, Attorney at Law  
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LEAGUE OF WOMEN VOTERS® OF KANSAS

March 10, 2007

The Honorable Arlen Siegfroid, Chair
Federal and State Affairs Committee
The Kansas House of Representatives

Chairman Siegfroid and members of the Committee:

President
Janis McMillen
Overland Park

I appreciate the opportunity to speak on behalf of the League of Women Voters in opposition to HB 2367.

1st Vice President
Sharon Aillsieger
Wichita

The League of Women Voters acknowledges that US immigration policy needs careful evaluation, study and change, and thus at its 2006 national convention, adopted a 2-year study of immigration policy, with consideration to the needs of businesses for skilled workers, human rights concerns and family preservation issues.

2nd Vice President
Cathy Hoy
Emporia

We see concerning issues with several parts of this legislation as it is now written. My remarks will be directed primarily toward the provision of the bill that would repeal the existing law that permits children of currently undocumented immigrants to access in-state tuition at Kansas colleges and universities, providing the student has graduated from a Kansas high school, or earned a GED after attending a Kansas high school for at least three years.

Secretary
Carol Snyder
Overland Park

Treasurer
Leonore Rowe
Overland Park

Many of these eligible students are still unable to afford a college education, as evidenced by the fact that since the law was enacted 2 years ago, fewer than 200 eligible students have been able to enroll in college. Contrary to what some fear, we are not experiencing a major influx of non-citizens in our institutions of higher learning. And as others have suggested, these students are not displacing US citizens; none of our public universities has a limit on the number of students who may enroll.

Directors

Gwen Elliott
Topeka

Why should we encourage these eligible to attend college:

Ellen Estes
Wichita

A better educated work force. The close tie between education, economic development and economic prosperity would make it seem counter-productive to deliberately deny eligible students the opportunity to further their education.

Linda Johnson
Manhattan

Economic contributions. The parents, as well as most of the would-be students, are working and paying taxes. They pay taxes on their purchases, on their incomes and on their homes or rental property. It is recognized that, on average, a college-educated workforce with better paying jobs returns more to the economy than a lower-income workforce, populated primarily by persons without a college degree.

Bob Kruh
Manhattan

University benefits. More students will be entering public colleges and universities in Kansas, thus paying tuition to those institutions. Most, if not all, of the students taking advantage of this law would be unable to attend college if required to pay out of state tuition.

Janice Norlin
Salina

The state's colleges and universities supported the initial legislation, which is favorable financially for them to have this in-state tuition, as opposed these students not enrolling.

Nona Ponder
Wichita

New citizens. This law facilitates a more timely effort for the students to seek citizenship. Although the parents of many of these students are already in the very long queue to gain US citizenship, the student must file an affidavit stating they have filed an application to legalize their immigration status, or they must file for US citizenship, or their parents must have filed such an application.

Webmaster
Carol Yoho
Topeka

Commitment. If students know that going to college can become a reality for them, this can only further their involvement in their schools and in their communities. Many of them came here as very young children and they have no ties or identity to their native homeland. America is now their home and it is in their best interest, and that of their communities for them to become involved in, and contribute to their communities.

FEDERAL AND STATE AFFAIRS



KANSAS  
ASSOCIATION



OF  
SCHOOL  
BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024  
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Testimony on **HB 2367**  
before the  
**House Federal and State Affairs**  
by  
**David C. Cunningham, Attorney**  
Kansas Association of School Boards

**March 8, 2007**

Mr. Chair and Members of the Committee:

Thank you for the opportunity to appear today on behalf of the Kansas Association of School Boards and the Kansas National Education Association and testify in opposition to **HB 2367**.

KASB staff members have appeared on at least two prior occasions concerning postsecondary education issues pertaining to undocumented immigrants. KASB supported the concept that established criteria for determining students' eligibility for in-state tuition and fees at Kansas postsecondary educational institutions. KASB opposed HB 2615 that attempted to prohibit undocumented immigrants from pursuing their postsecondary education in Kansas by removing eligibility for in-state tuition and fees.

KASB continues to support every opportunity for students to pursue their education regardless of their immigration status. **HB 2367** will remove the possibility of students currently attending K-12 schools from continuing their education at the postsecondary level. Students with dreams of continuing their education beyond K-12 in Kansas should be encouraged, not stymied. KASB believes that Kansas' economic future and the continued growth of our citizens depends on an education system that is not only well rounded but also never-ending.

This bill would harm not only those students currently attending a Kansas postsecondary institution, but also those students that are currently enrolled in the Kansas K-12 system. To summarily deprive them of an opportunity to continue their education seems harsh as best and counter-productive to an improved citizenry and a more economically viable state.

According to reports from the Board of Regents, the provisions passed by the Legislature in the 2004 session (K.S.A. 76-731a) have made it possible for 169 undocumented students to attend a Kansas Regents institution, a community college or a technical college or school at an in-state tuition rate in 2006. During their continued schooling, these persons will continue to strengthen their ties to Kansas and become strong citizens and workers necessary for economic growth.

While **HB 2367** has a provision allowing persons to receive public benefits on a temporary basis, if the specified criteria are not met, those benefits are lost and students would not be able to start school in the Fall. Students enrolled in Summer school would be required to stop attending classes and lose the credit, tuition and fees. KASB contends that students who have attended Kansas K-12 institutions should not be precluded from attending Kansas postsecondary institutions notwithstanding their immigration status.

I thank you for the opportunity to appear before you today and would be happy to answer questions

FEDERAL AND STATE AFFAIRS

Date 3-8-07

Attachment 24

Testimony Presented to the  
House Federal and State Affairs Committee  
In Opposition of House Bill No. 2367  
AN ACT concerning public benefits and aliens unlawfully present in the United States  
Thursday, March 8, 2007

Thank you for granting me this opportunity to present testimony in opposition of HB 2367, an act concerning public benefits and aliens unlawfully present in the United States. My name is Arthur W. Solís, a native born Kansan. I am Pentecostal, a Republican since at least 1965, a Vietnam War veteran, and an attorney in the area of civil rights.

The enactment of HB 2367 is not sound public policy because of the unintended consequences, that is, eligible Kansans who are elderly, poor and young will be most affected by the law, not “aliens unlawfully present in the United States.” In the context of federal public benefits, see the January 18, 2007 testimony of the Kansas Health Policy Authority, *Immigration Issues in Kansas Medicaid and the State Children’s Health Insurance Program*, before the Senate Federal and State Affairs Committee. Available at [http://www.khpa.ks.gov/LegislativeInformation/KHPA%20Testimony/1-18-07CitizenshipIdentityRequirement\(ImpactonMedicaid-eligiblepopulation\)-SenateFedandStateAffairs.pdf](http://www.khpa.ks.gov/LegislativeInformation/KHPA%20Testimony/1-18-07CitizenshipIdentityRequirement(ImpactonMedicaid-eligiblepopulation)-SenateFedandStateAffairs.pdf).

If enacted, the implementation of HB 2367 **will** result in additional costs to state of Kansas agencies as well as local government. In July 2006 the Colorado General Assembly enacted House Bill No. 06S-1023, its equivalent of HB 2367. In a January 25, 2007 article, *Colo. Immigration law falls short of goal*, the Denver Post reported:

To figure out whether the law is working, the Joint Budget Committee asked each department to report how much it was spending to enforce the law and how much the department was saving as a result.

The result: Eighteen departments reported adding \$2.03 million in costs while not saving any money. **None of the departments could say how many, if any, illegal immigrants were being denied state-funded services.**

Available at [http://www.denverpost.com/ci\\_5081255?source=rss](http://www.denverpost.com/ci_5081255?source=rss).

Similarly, in its January 18, 2007 testimony, the Kansas Health Policy Authority indicated it “has made a supplemental request to add **21 additional staff** ... for FY 2007 and FY 2008.”

Title 8 of the United States Code, Section 1101 *et seq.* (commonly known as the Immigration and Nationality Act), is the primary federal statute relating to the immigration, temporary admission, removal, and naturalization of aliens.

In 1996 Congress enacted the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (PRWORA), also known as the “welfare reform law.” In general Title IV of PRWORA provides that, with certain enumerated exceptions, only United States citizens, United States non-citizen nationals and “qualified aliens” (and sometimes only particular categories of qualified aliens) are eligible for federal, state and local public benefits. Subsequent federal legislation

FEDERAL AND STATE AFFAIRS

Date 3-8-07

Attachment 25

amended the definition of a “qualified alien” and changed some of the restrictions on pre-enactment immigrants’ eligibility for benefits.

On February 8, 2006, the Deficit Reduction Act of 2005 was signed into law. This federal law requires Medicaid clients and applicants who declare that they are citizens of the United States to provide documentation to establish their US citizenship and their identity. For any determinations of initial eligibility and redeterminations of eligibility for medical assistance made on or after July 1, 2006, an individual who has declared that he or she is a citizen of the United States must provide evidence of his or her US citizenship and identity.

It is within the discretionary authority of the state of Kansas to enact law that requires an applicant for State or local public benefits to provide proof of eligibility, that is, verification of the applicant’s identity and immigration status. Section 1625 of Title 8 of the United States Code provides:

A State or political subdivision of a State is authorized to require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility.

However, Section 1625 does not authorize the state of Kansas to establish eligibility requirements based on immigration status.

DRAFTING PROBLEM 1: Subsection (a)(2) of Section 1

(2) “Public benefit” means:

Any grant, contract, loan or license provided by an agency of state or local government [8 U.S.C. Section 1621(c)(1)(A)];

or any retirement, welfare, health, disability, housing, postsecondary education, food assistance or unemployment benefit [8 U.S.C. Section 1621(c)(1)(B)];

under which payments, assistance, credits or reduced rates or fees are provided.

A comparison of this subsection of HB 2367 with subsection (c)(1) of Section 1621 of Title 8 of the United States Code shows Subsection 1(a)(2) is a truncated version of the federal statute, an unwise and potentially risky proposition. (Attachment 2) As written, the language is subject to potential legal challenges based on vagueness and preemption.

On the positive side, if you are an opponent of HB 2367, Subsection 1(a)(2) omits the following language, “or by appropriated funds of a State or local government.” This language from 8 U.S.C. Section 1621(c)(1)(A) has been construed to cover programs administered by non-governmental organizations with public funds, that is, a non-governmental third-party intermediary or grantee. *See e.g., Colorado Attorney General July 28, 2006 memorandum concerning Implementation of [Colorado] HB 1023 and related statutes (Part 2)*, available at <http://www.ago.state.co.us/pdf/HB1023Part2.pdf>.



A complication is presented by the fact the definition of public benefits in Subsection 1(a)(2) includes the generalized term “postsecondary education.” However, HB 2367 as written does not include a provision to repeal a specific statute, K.S.A. 2006 Supp. 76-731a, which provides for in-state tuition and fees for certain persons attending post-secondary educational institutions. As a general rule of statutory construction, specific statutes control over more general ones absent legislative intent otherwise. *Jones v. Continental Can Co.*, 260 Kan. 547 (1996). There is a strong presumption against repeals by implication, e. g., *United States v. Borden Co.*, 308 U.S. 188, 198 (1939), especially an implied repeal of a specific statute by a general one, *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974). Another rule of statutory construction is that general and specific statutes should be read together and harmonized whenever possible, but to the extent a conflict between them exists, the specific statute will prevail unless it clearly appears the legislature intended to make the more general statute controlling. *State v. Boyle*, 21 Kan.App.2d 944 (1996). Therefore, if HB 2367 is enacted in law, the more specific statute, K.S.A. 2006 Supp. 76-731a, would control.

Recommendation:

Strike: ~~“Public benefit” means: Any grant, contract, loan or license provided by an agency of state or local government; or any retirement, welfare, health, disability, housing, postsecondary education, food assistance or unemployment benefit; under which payments, assistance, credits or reduced rates or fees are provided.~~

Insert: “State or local public benefits” shall have the same meaning as provided in 8 U.S.C. Section 1621(c).

DRAFTING PROBLEM 2: Subsection(b)(2) of Section 1

(2) An applicant, who cannot provide the proof required under this section at the time of application, may alternatively sign an affidavit under oath, attesting to either United States citizenship or **classification by the United States as an alien lawfully admitted for permanent residence** in order to receive temporary benefits or temporary identification document as provided in this section.

The definition of a “qualified alien” in 8 U.S.C. Section 1641 includes not only the classification of an “alien lawfully admitted for permanent residence” but also refugees, aliens granted asylum, and certain other specified categories of lawfully present aliens. *See also* 8 U.S.C. Sections 1621(a)(2) and (a)(3). Attachments 2 and 3.

As written, the inclusion of only the “classification by the United States as an alien lawfully admitted for permanent residence” may be an impermissible attempt to regulate immigration and thus conflict with federal immigration law. As written, Subsection 1(b)(2) may also implicate the Equal Protection Clause of the U.S. Constitution. *See generally Graham v. Richardson*, 403 U.S. 365, 371 (1971); *Soskin v. Reinertson*, 353 F.3d 1242 (10th Cir. 2004).

The phrase “in order to receive temporary benefits or *temporary identification document*” in Subsection 1(b)(2) includes language which is superfluous – “in order to receive ... temporary identification document” – to the purpose of the affidavit requirement in this section as well as the intent of the HB 2367.

Recommendation:

Strike: ~~classification by the United States as an alien lawfully admitted for permanent residence~~

Insert: “lawful presence in the United States as provided in 8 U.S.C. Section 1621(a)”

Strike: ~~or temporary identification document~~

PUBLIC POLICY & DRAFTING RECOMMENDATIONS: Section 1(c)

Strike: ~~An applicant who is an alien shall not receive any state or local public benefit unless the alien’s lawful presence in the United States is first verified by the federal government, pursuant to Title 8, Section 1373(c) of the United States Code.~~

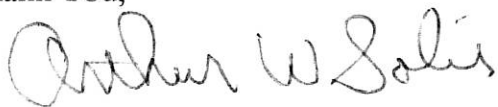
~~State and local agencies administering public benefits in this state shall cooperate with the United States department of homeland security in achieving verification of an alien’s lawful presence in the United States. The system utilized may include the systematic alien verification for entitlements program operated by the United States department of homeland security.~~

Insert: *For an applicant who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for state or local public benefits shall be made through the federal systematic alien verification of entitlement program operated by the United States department of homeland security or a successor program designed by the United States department of homeland security.*

*Subject to subsection (b)(3)(A), until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.*

In conclusion, I respectfully request House Bill No. 2367 bill be killed in committee.

Thank You,



Arthur W. Solis  
215 North Normandy  
Olathe, Kansas 66061  
(913) 782-1613



Session of 2007

## HOUSE BILL No. 2367

By Representative Kinzer

2-2

AN ACT concerning public benefits and aliens unlawfully present in the United States; imposing certain prohibitions on receipt of public benefits.

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

Section 1. (a) (1) No alien unlawfully present in the United States shall receive any state or local public benefit, except for state or local public benefits that are required to be offered by Title 8, Section 1621(b), of the United States Code.

(2) ~~“Public benefit” means: Any grant, contract, loan or license provided by an agency of state or local government; or any retirement, welfare, health, disability, housing, postsecondary education, food assistance or unemployment benefit; under which payments, assistance, credits or reduced rates or fees are provided.~~ { **“State or local public benefits” shall have the same meaning as provided in 8 U.S.C. Section 1621(c).** }

(b) (1) In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is 18 years of age or older shall provide affirmative proof that the applicant is a citizen or a permanent resident of the United States or is lawfully present in the United States. Affirmative proof shall include documentary evidence recognized by the department of revenue when processing an application for a driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

(2) An applicant, who cannot provide the proof required under this section at the time of application, may alternatively sign an affidavit under oath, attesting to either United States citizenship or ~~classification by the United States as an alien lawfully admitted for permanent residence~~ { **lawful presence in the United States as provided in 8 U.S.C. Section 1621(a)** }, in order to receive temporary benefits or ~~temporary identification document~~ as provided in this section. The affidavit shall include the applicant's social security number and an explanation of the penalties under state law for obtaining public assistance benefits fraudulently.

(3) An applicant who has provided the sworn affidavit required under this section is eligible to receive temporary public benefits as follows:

(A) For 90 days or until such time that it is determined that the applicant is not lawfully present in the United States, whichever is earlier;

or

(B) indefinitely if the applicant provides a copy of a completed application for a birth certificate that is pending in Kansas or some other state.

An extension granted under this subsection shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

~~(c) An applicant who is an alien shall not receive any state or local public benefit unless the alien's lawful presence in the United States is first verified by the federal government, pursuant to Title 8, Section 1373(c) of the United States Code.~~

~~State and local agencies administering public benefits in this state shall cooperate with the United States department of homeland security in achieving verification of an alien's lawful presence in the United States. The system utilized may include the systematic alien verification for entitlements program operated by the United States department of homeland security.~~

***{For an applicant who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for state or local public benefits shall be made through the federal systematic alien verification of entitlement program operated by the United States department of homeland security or a successor program designed by the United States department of homeland security. Subject to subsection (b)(3)(A), until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.}***

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

TITLE 8--ALIENS AND NATIONALITY

CHAPTER 14--RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

SUBCHAPTER II--ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS

[Title 8, Section 1621 of the United States Code (8 U.S.C. Section 1621)]

§ 1621. Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—

- (1) a qualified alien (as defined in section 1641 of this title),
- (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or
- (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

(b) Exceptions

Subsection (a) of this section shall not apply with respect to the following State or local public benefits:

- (1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1396b (v)(3) of title 42) of the alien involved and are not related to an organ transplant procedure.
- (2) Short-term, non-cash, in-kind emergency disaster relief.
- (3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.
- (4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which
  - (A) deliver in-kind services at the community level, including through public or private nonprofit agencies;
  - (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
  - (C) are necessary for the protection of life or safety.

[Title 8, Section 1621 of the United States Code (8 U.S.C. Section 1621)]

(c) "State or local public benefit" defined

(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611 (c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

TITLE 8--ALIENS AND NATIONALITY

CHAPTER 14--RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

SUBCHAPTER IV--GENERAL PROVISIONS

[Title 8, Section 1641 of the United States Code (8 U.S.C. Section 1641)]

§ 1641. Definitions

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101 (a)].

(b) Qualified alien

For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231 (b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153 (a)(7)] as in effect prior to April 1, 1980; [1] or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

(c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term “qualified alien” includes—

\* \* \* \*



League of Kansas Municipalities

TO: House Federal and State Affairs Committee  
FROM: Sandy Jacquot, Director of Law/General Counsel  
DATE: March 8, 2007  
RE: Opposition to HB 2367

Thank you for allowing the League of Kansas Municipalities to testify on behalf of its member cities in opposition to HB 2367. This bill seeks to prohibit state and local public benefits from being provided to those individuals unlawfully in the country. The League's opposition is not to the underlying policy issue, but to the confusing and ambiguous language of the bill that we believe will be difficult for city officials to apply.

First, under this bill, cities will have to verify that anyone who is not a citizen of the United States, or cannot prove that he or she is a citizen of the United States, is lawfully in the country. This will involve using the Homeland Security SAVE system, which is a fee service to check residency status. In addition, local governments will need to understand exactly what documents will suffice to show the type of immigration status of the individual. Thus, there will be a cost to local governments in implementing the bill and will likely require a some training for city officials.

In addition, the bill exempts certain benefits that are required by federal law to be offered. It then, however, goes beyond the language of the federal law to define public benefits as any of the enumerated services "**under which payments, assistance, credits or reduced rates or fees are provided.**" It is not clear from the language how broadly this must be interpreted and what those terms mean in the context of the bill. For example, the benefits enumerated are not specifically required to be offered by a state or local government agency. So are community agencies required to verify the legal status of individuals before services are provided? Second, cities do provide social service funding, so even if a benefit is clarified as having to be provided by a public agency, does social service funding turn the service into a public benefit?

The other issues raised by this bill include the chilling effect it would have on services to children born in the United States to those unlawfully in the country. In addition, it would discourage preventative health care, prenatal care and other non-emergency health care provided by local health agencies. The League has only mentioned a few of the difficulties readily apparent on the face of HB 2367. The far-reaching effects of this bill are difficult to predict, but the ambiguities will undoubtedly lead to unintended consequences. Therefore, the League of Kansas Municipalities urges the Committee to report HB 2367 unfavorably for passage.

FEDERAL AND STATE AFFAIRS

Date 3-8-07

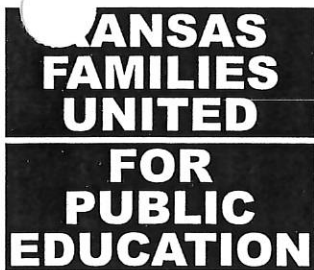
Attachment 26



Testimony on HB 2367  
March 8, 2007

- While clearly aimed at individuals who are present in direct violation of the law, this law would burden and harm individuals who are eligible for lawful status or in a state of extending or changing status to a lawful one.
  - Example: Nonimmigrant visa holders who lawfully can extend or change status by filing any time before their I-94 expiration date (e.g. visitor changing status to a student)
  - Example: Victims of Domestic Violence who are spouses of U.S. Citizens or LPRs and can self-petition for an immigrant visa (Lawful Permanent Residency) under the Violence Against Women Act, while the case is pending, become eligible for many Federal public welfare benefits.
  - Example: Under certain circumstances, Canadians can enter at the border with inspection without a visa and without being issued an I-94. They are perfectly legal for short trips, but are not given tangible documentation to show that. Thus, Canadians seeking to settle here in Kansas or engage in business transactions could be adversely affected.
  - Example: Individuals in various states of litigation, including people seeking political asylum.
  - I contend that excluding such potential new Kansans who can enhance the economy of our state is harmful to the interest of our citizens.
  - Many of the benefits to be denied are the type that new immigrants need to establish and assimilate themselves in our society (e.g. driver's licenses, marriage licenses, vehicle registration, health department immunizations, etc.) and could discourage legal immigration.
- As to the individuals who are here long-term in undocumented status:
  - Many of the benefits to be denied will mostly harm their U.S. Citizen or undocumented children. It is unethical to deny benefits to children, regardless of their parents' status. Protecting children should be our priority.
  - The long-standing argument that such individuals do not pay taxes is not accurate, as they all pay sales tax and most pay property and income taxes. In fact, many pay *excessive* income taxes due to their reluctance to file tax returns and claim refunds and/or Earned Income Credit (or state Food Sales Tax Credit).

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Testimony  
Federal & State Affairs Committee – HB 2367  
March 8, 2007  
Kyle Stearns, Intern  
Kansas Families United for Public Education

I would like to thank you Mr. Chairman and members of the committee to take time to hear Kansas Families United for Public Education's comments on House Bill 2367. I am Kyle Stearns, originally from Derby, Kansas and currently I am interning with Kansas Families United. I'm a recent graduate of the University of Kansas and will be attending George Washington University in D.C. this fall to obtain my Masters in Public Policy with an emphasis on education policy. I look forward to returning to Kansas to continue the tradition of excellent education policy.

As we all know this bill deals with an issue in Kansas that is growing with importance everyday, and as an organization we do agree that some new reform is needed in current federal immigration law. However, the members of our organization completely disapprove of the intent and consequential effects of House Bill 2367. This bill punishes the innocent children of illegal immigrants and dooms them to a perpetual cycle of failure.

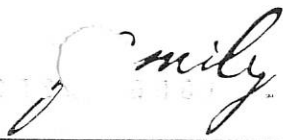
As defined by the Universal Declaration of Human Rights, adopted by the United Nations, education is a basic human right, a human right that a government such as ours should guarantee. House Bill 2367 takes away this basic right by denying any public benefit to illegal immigrants and their families. Specifically, this bill will deny in-state tuition rates for children of illegal immigrants. House Bill 2367 actually revokes a previous law that the Kansas legislature passed just a few years ago that that guarantees in-state tuition for any illegal immigrant that graduates from a Kansas high school, and is actively seeking citizenship. The most important part to remember is that this bill directly affects the children of these illegal immigrants. These children, although defined as illegal immigrants, have no real choice of where their family lives, or how they enter this country, but can only accept the course chosen by their caregivers, legal or not. By passing House Bill 2367 Kansas will be punishing the most innocent victims of illegal immigration, the children of these families. Taking away one of the most basic human rights only forces the children of these families to repeat the mistakes of the past, and guarantees future obstacles for the Kansas government to overcome. House Bill 2367 is dangerous reactive piece of legislation that ignores the real problems facing immigration. It would be advantageous for our legislatures to begin to take a proactive approach to illegal immigration and not a xenophobic impulsive reaction to such a pressing issue.

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Attachment 28

Other issues are important to consider before the committee moves on with this legislation. Many of the proponents of this bill claim that by allowing these illegal immigrant children into our post secondary schools we are driving out our own Kansas children, and costing our universities thousands of dollars a year. In February 2006, only 221 students fit the profile of illegal immigrants. That represents 0.16% of the total student body of all of postsecondary institutions in the state of Kansas. In one year alone these 221 students will spend thousands of dollars for in-state tuition at Kansas universities. If these students were denied in-state tuition it would be taking these potential dollars away from our already under funded education institutions. These illegal immigrants are only able to afford higher education at the in-state cost, and could not attend or spend there money at Kansas universities if charged the out of state tuition rates. In addition, House Bill 2367 creates countless unneeded hours of paper work and burdensome man hours to verify that all students are not illegal immigrants. The potential advantage of denying these children the right to an equal education does not outweigh the simple fiscal disadvantages of the lost tuition money and increased administrative costs, not to mention the out right denial of a basic human right to a child.

The members of Kansas Families United for Public Education understand the importance of reforming current immigration law. As active constituents, we also expect that our elected officials at the federal level will make proactive and progressive change to these current laws, and not for Kansas to make reactive changes based on extreme views. Clearly, House Bill 2367 is narrow minded reactive legislation that offers no clear benefits to Kansans, and only harms those that cannot protect themselves and denies them the basic human right of education.



March 8, 2007

Chairman Siegfried and Honorable members of the House Federal and State Affairs Committee:

My name is Julie Riddle. I manage Asset Building and Family Support programs for The Family Conservancy, a private, non-profit organization, based in Kansas City, KS. Our Mission – helping families prepare children for a lifetime of success - enables us to serve over 70,000 Kansans each year with services ranging from family crisis intervention to economic development.

We sincerely appreciate the opportunity to share our concerns about HB 2367. Despite the positive intentions behind the introduction of this bill – presumably to save the state of Kansas money and conserve scarce resources, we believe this bill will have a negative effect on Kansas overall and urge the members of this committee to oppose it.

First, although the intent of the bill is to prevent undocumented Kansas residents from accessing publicly funded services, the true effect of the bill will be to keep lawful residents away from those same services because of fear, suspicion and confusion. This reduction in services, which was documented when both California and Arizona attempted to pass similar measures, will result in increased social costs – poor immunization rates, decreased participation in Healthwave and diminished access to domestic violence services.

Second, HB2367 will increase barriers for those Kansans who have difficulty accessing birth certificates and other personal documents.

Third, there will be increased costs associated with compliance with the Systematic Alien Verification of Eligibility system (SAVE) to both state and local entities with little to no commensurate cost-savings. As a result of similar legislation in Colorado, state and county agencies have requested an additional \$2 million dollars to fund the administrative burden imposed by such restrictions.

Clearly it is the intent of this committee to make sound decisions for the health, safety and security of Kansans. For this reason, we urge you to oppose HB 2367 .

Thank you for your time and consideration,

Julie Riddle  
Manager, Asset Building and Family Support  
The Family Conservancy

FEDERAL AND STATE AFFAIRS

Date 3-8-07

Attachment 29

*Serving Kansas & Beyond*