

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 A.M. on February 18, 2008, in Room 123-S of the Capitol.

All members were present except:

Barbara Allen arrived, 9:39 A.M.
David Haley arrived, 10:15 A.M.
Julia Lynn arrived, 9:40 A.M.
Phil Journey arrived, 9:40 A.M.

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:

Senator Pat Apple
Mark Gleeson, Office of Judicial Administration
Leslea Rockers, private citizen
Judge Allen Slater, 10th Judicial District

Others attending:

See attached list.

The hearing opened on **SB 545—Health insurance coverage information for children in divorce action.**

Senator Pat Apple testified in support, stating **SB 545** provides language that would allow a judge to order a non-custodial parent that holds the health insurance policy on minor children, sign a HIPPA release so the custodial parent may have access to insurance policy information (Attachment 1).

Mark Gleeson appeared in support, proposing two amendments (Attachment 2). The first amendment concerns technical amendments to K.S.A. 60-1610 to reflect changes in the Kansas Child Support Guidelines. The second amendment suggests striking language in K.S.A. 60-1610(a) pertaining to child support agreements prior to July 1, 1988. If the bill is enacted, this language would be unnecessary.

Leslea Rucker spoke as a proponent, relating her personal experience with an uncooperative ex-spouse regarding health insurance information (Attachment 3). Lack of cooperation by one parent ties the hands of the other parent and may deny children the health care to which they are entitled. Enactment of this bill will eliminate this problem in the future.

There being no further conferees, the hearing on **SB 545** was closed.

The Chairman opened the hearing on **SB 546—Family dispute resolution fund, grants, docket fees.**

Judge Allen Slater spoke in support, stating the goal of the bill is to reduce families' dependency on the courts in resolving family related conflicts (Attachment 4). Enactment of the bill will establish a Family Dispute Resolution Fund which would provide grants to local courts to offer programs and services.

There being no further conferees, the hearing on **SB 546** was closed.

The Chairman called for final action on **SB 493— State-wide prohibition on smoking in indoor public areas.** Senator Vratil reviewed the bill and distributed a balloon amendment drafted to address several issues brought forth during the hearing on February 13 (Attachment 5).

Senator Schmidt moved, Senator Bruce seconded, to adopt the balloon amendment. Motion carried.

Senator Journey distributed a proposed balloon amendment and reviewed the changes (Attachment 6).

Senator Journey moved, Senator Donovan seconded, to adopt the balloon amendment. Motion failed.

The meeting adjourned at 10:30 A.M. The next scheduled meeting is February 19, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-18-08

NAME	REPRESENTING
ART THOMPSON	Office of Judicial Adm.
Larry Pitt	ADC
Dodie Wellshear	Ks Academy of Family Physicians
Mark Gleeson	Judicial Branch
Pat Hubbell	Ligan Ass of America
JoAnn Meyer	Phogor Smith
Jason Baulard	Phogor Smith
Reagan Cussimano	KHPA
Jack Rickabough	Cornett KS
Jordan Rickabough	" "
Leslee Rockers	providing testimony Sen Bill 545
Bill Brady	Capital Strategier
Tim Madden	KVOC
Tommy Reelfs	KHI
Whitney Zamra	KS Bar Assn.
David Kersiger	Penn National
Christine Campbell	Little Govt Relations
Oppe Grover	KCSOV
Wylissa Ness	St. Francis Comm Services

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-18-08

NAME	REPRESENTING
Barb Cozant	KDOA
Shamika Stamp	KAAAC
Kaelyn Seymour	RAAAC
Ginger Park	KDHE
Linda McWhorter	American Heart Assn.
LISA BENLON	Amer Cancer Soc
MaryJayne Hellebusch	Tobacco Free Kansas Coalition
DAVE HEINEMANN	Am. Cancer Soc
Terri Roberts	Ks. State Nurses Assn.
Larry R Base	LKM
Jeff BeHobsey	Penn National
Velvet Pouncil	Washburn University
DeMay Gauden	Washburn University
Michelle Hernandez	Washburn University
Katie Firebaugh	Karnay and Associates
Howard Rosenzweig	SEU
Janice Rose	KCSL
Austin Hayden	Hein Law Firm

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2-18-08

NAME	REPRESENTING
JAY KRAMER	THE CARTER GROUP
Clarissa Shields	Johnson County 4-H
Ranold A. Hein	K R H A
Brianna Landon	Sen Jousney



TOPEKA

SENATE CHAMBER

PAT APPLE

SENATOR, TWELFTH DISTRICT

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Testimony in support of Senate Bill 545

Chairman Vratil and members of the Senate Judiciary Committee,

Thank you for allowing me to appear before your committee in Support of Senate Bill 545. Senate Bill 545 is a simple bill that basically provides language to the court for divorce proceedings. SB 545 specifically deals with child health insurance coverage. The proposed change is found on page six of the bill is as follows:

" The court may order that each parent execute any and all documents, including any releases, necessary so that both parents may obtain information from and to communicate with any health insurance provider regarding the health insurance coverage provided by such health insurance provider to the child. The provisions of this paragraph shall apply irrespective of which parent owns, subscribes or pays for such health insurance coverage."

Making health related decisions for our children is a primary responsibility of a parent. Having access to insurance information is critical to the decision making process. Unfortunately, many divorces are bitter and some parents use tactics of control and frustration through the divorce proceedings and after the divorce is final. One such tactic is to not sign a HIPAA release. This can cause the custodial parent to not have access to critical health insurance information where the health insurance is provided by the non custodial parent. The relief is to hire an attorney and go back to court causing unnecessary expense of time and money.

In working through this issue it became apparent that this should not be a mandate. An abusive parent should probably not be allowed to review the medical records of an abused child. The language is permissive in that the judge "may order".

Thank you for your consideration,

Pat Apple
Kansas Senate, District 12

Senate Judiciary

2-18-08

Attachment 1



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
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Topeka, Kansas 66612-1507

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Senate Judiciary Committee
Monday, February 18, 2008

Testimony in Support of
SB 545
And Requesting Technical Amendments

Mark Gleeson
Office of Judicial Administration

I appreciate the opportunity to testify in support of SB 545. There are, however, two technical amendments that should be made to K.S.A. 60-1610. Effective January 1, 2008, amendments to the Kansas Child Support Guidelines changed the age categories in the child support schedules. Prior to January 1, 2008, the age categories were 16 – 18 years of age for what was considered the adult child, the middle age group consisted of children 7-15 years of age, and the youngest group was children 0 – 6 years of age. New economic data from the U.S. Department of Agriculture shows that spending on younger children has increased since the child support guidelines were established over 20 years ago. As a result, the new age categories are 0-5, 6-11, and 12-18. This matches the typical age groups for preschool, elementary school, and junior/senior high school children. I am requesting an amendment to K.S.A. 60-1610 on page 2, line 5 of the bill to reflect this change in the age categories.

The second amendment I would suggest is striking language in K.S.A. 60-1610 (a) pertaining to child support agreements approved by the court prior to July 1, 1988, and the termination of child support once a child turns 18 years of age or completes high school. The youngest child to which this would apply will be 20 years old on the effective date of this bill should it become law, eliminating the need for this provision. This language can be found on page 2, lines 9 through 14 of the bill.

A balloon amendment showing the requested changes is attached.

Senate Judiciary

2-18-08

Attachment 2

SENATE BILL No. 545

By Committee on Judiciary

2-5

9 AN ACT relating to civil procedure; concerning health insurance cov-
10 erage information for children in divorce action; amending K.S.A. 2007
11 Supp. 60-1610 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2007 Supp. 60-1610 is hereby amended to read as
15 follows: 60-1610. A decree in an action under this article may include
16 orders on the following matters:

17 (a) *Minor children.* (1) *Child support and education.* The court shall
18 make provisions for the support and education of the minor children. The
19 court may modify or change any prior order, including any order issued
20 in a title IV-D case, within three years of the date of the original order
21 or a modification order, when a material change in circumstances is
22 shown, irrespective of the present domicile of the child or the parents. If
23 more than three years has passed since the date of the original order or
24 modification order, a material change in circumstance need not be shown.
25 The court may make a modification of child support retroactive to a date
26 at least one month after the date that the motion to modify was filed with
27 the court. Any increase in support ordered effective prior to the date the
28 court's judgment is filed shall not become a lien on real property pursuant
29 to K.S.A. 60-2202 and amendments thereto. Regardless of the type of
30 custodial arrangement ordered by the court, the court may order the child
31 support and education expenses to be paid by either or both parents for
32 any child less than 18 years of age, at which age the support shall ter-
33minate unless: (A) The parent or parents agree, by written agreement
34 approved by the court, to pay support beyond the time the child reaches
35 18 years of age; (B) the child reaches 18 years of age before completing
36 the child's high school education in which case the support shall not ter-
37minate automatically, unless otherwise ordered by the court, until June
38 30 of the school year during which the child became 18 years of age if
39 the child is still attending high school; or (C) the child is still a bona fide
40 high school student after June 30 of the school year during which the
41 child became 18 years of age, in which case the court, on motion, may
42 order support to continue through the school year during which the child
43 becomes 19 years of age so long as the child is a bona fide high school

1 student and the parents jointly participated or knowingly acquiesced in
2 the decision which delayed the child's completion of high school. The
3 court, in extending support pursuant to subsection (a)(1)(C), may impose 12
4 such conditions as are appropriate and shall set the child support utilizing
5 the guideline table category for 16-year through 18-year old children.
6 Provision for payment of support and educational expenses of a child after
7 reaching 18 years of age if still attending high school shall apply to any
8 child subject to the jurisdiction of the court, including those whose sup-
9 port was ordered prior to July 1, 1992. If an agreement approved by the
10 court prior to July 1, 1988, provides for termination of support before the
11 date provided by subsection (a)(1)(B), the court may review and modify
12 such agreement, and any order based on such agreement, to extend the
13 date for termination of support to the date provided by subsection
14 (a)(1)(B). If an agreement approved by the court prior to July 1, 1992,
15 provides for termination of support before the date provided by subsec-
16 tion (a)(1)(C), the court may review and modify such agreement, and any
17 order based on such agreement, to extend the date for termination of
18 support to the date provided by subsection (a)(1)(C). For purposes of this
19 section, "bona fide high school student" means a student who is enrolled
20 in full accordance with the policy of the accredited high school in which
21 the student is pursuing a high school diploma or a graduate equivalency
22 diploma (GED). In determining the amount to be paid for child support,
23 the court shall consider all relevant factors, without regard to marital
24 misconduct, including the financial resources and needs of both parents,
25 the financial resources and needs of the child and the physical and emo-
26 tional condition of the child. Until a child reaches 18 years of age, the
27 court may set apart any portion of property of either the husband or wife,
28 or both, that seems necessary and proper for the support of the child.
29 Except for good cause shown, every order requiring payment of child
30 support under this section shall require that the support be paid through
31 the central unit for collection and disbursement of support payments
32 designated pursuant to K.S.A. 23-4,118, and amendments thereto. A writ-
33 ten agreement between the parties to make direct child support payments
34 to the obligee and not pay through the central unit shall constitute good
35 cause, unless the court finds the agreement is not in the best interest of
36 the child or children. The obligor shall file such written agreement with
37 the court. The obligor shall maintain written evidence of the payment of
38 the support obligation and, at least annually, shall provide such evidence
39 to the court and the obligee. If the divorce decree of the parties provides
40 for an abatement of child support during any period provided in such
41 decree, the child support such nonresidential parent owes for such period
42 shall abate during such period of time, except that if the residential parent
43 shows that the criteria for the abatement has not been satisfied there shall

1 not be an abatement of such child support.

2 (2) *Child custody and residency.* (A) *Changes in custody.* Subject to
3 the provisions of the uniform child custody jurisdiction and enforcement
4 act (K.S.A. 38-1336 through 38-1377, and amendments thereto), the
5 court may change or modify any prior order of custody, residency, visi-
6 tation and parenting time, when a material change of circumstances is
7 shown, but no ex parte order shall have the effect of changing residency
8 of a minor child from the parent who has had the sole de facto residency
9 of the child to the other parent unless there is sworn testimony to support
10 a showing of extraordinary circumstances. If an interlocutory order is
11 issued ex parte, the court shall hear a motion to vacate or modify the
12 order within 15 days of the date that a party requests a hearing whether
13 to vacate or modify the order.

14 (B) *Examination of parties.* The court may order physical or mental
15 examinations of the parties if requested pursuant to K.S.A. 60-235 and
16 amendments thereto.

17 (3) *Child custody or residency criteria.* The court shall determine
18 custody or residency of a child in accordance with the best interests of
19 the child.

20 (A) If the parties have entered into a parenting plan, it shall be pre-
21 sumed that the agreement is in the best interests of the child. This pre-
22 sumption may be overcome and the court may make a different order if
23 the court makes specific findings of fact stating why the agreed parenting
24 plan is not in the best interests of the child.

25 (B) In determining the issue of child custody, residency and parent-
26 ing time, the court shall consider all relevant factors, including but not
27 limited to:

28 (i) The length of time that the child has been under the actual care
29 and control of any person other than a parent and the circumstances
30 relating thereto;

31 (ii) the desires of the child's parents as to custody or residency;

32 (iii) the desires of the child as to the child's custody or residency;

33 (iv) the interaction and interrelationship of the child with parents,
34 siblings and any other person who may significantly affect the child's best
35 interests;

36 (v) the child's adjustment to the child's home, school and community;

37 (vi) the willingness and ability of each parent to respect and appre-
38 ciate the bond between the child and the other parent and to allow for a
39 continuing relationship between the child and the other parent;

40 (vii) evidence of spousal abuse;

41 (viii) whether a parent is subject to the registration requirements of
42 the Kansas offender registration act, K.S.A. 22-4901, et seq., and amend-
43 ments thereto, or any similar act in any other state, or under military or

1 federal law;

2 (ix) whether a parent has been convicted of abuse of a child, K.S.A.
3 21-3609, and amendments thereto;

4 (x) whether a parent is residing with an individual who is subject to
5 registration requirements of the Kansas offender registration act, K.S.A.
6 22-4901, et seq., and amendments thereto, or any similar act in any other
7 state, or under military or federal law; and

8 (xi) whether a parent is residing with an individual who has been
9 convicted of abuse of a child, K.S.A. 21-3609, and amendments thereto.

10 (C) Neither parent shall be considered to have a vested interest in
11 the custody or residency of any child as against the other parent, regard-
12 less of the age of the child, and there shall be no presumption that it is
13 in the best interests of any infant or young child to give custody or resi-
14 dency to the mother.

15 (D) There shall be a rebuttable presumption that it is not in the best
16 interest of the child to have custody or residency granted to a parent who:

17 (i) Is residing with an individual who is subject to registration require-
18 ments of the Kansas offender registration act, K.S.A. 22-4901, et seq.,
19 and amendments thereto, or any similar act in any other state, or under
20 military or federal law; or

21 (ii) is residing with an individual who has been convicted of abuse of
22 a child, K.S.A. 21-3609, and amendments thereto.

23 (4) *Types of legal custodial arrangements.* Subject to the provisions
24 of this article, the court may make any order relating to custodial arrange-
25 ments which is in the best interests of the child. The order shall provide
26 one of the following legal custody arrangements, in the order of prefer-
27 ence: (A) *Joint legal custody.* The court may order the joint legal custody
28 of a child with both parties. In that event, the parties shall have equal
29 rights to make decisions in the best interests of the child.

30 (B) *Sole legal custody.* The court may order the sole legal custody of
31 a child with one of the parties when the court finds that it is not in the
32 best interests of the child that both of the parties have equal rights to
33 make decisions pertaining to the child. If the court does not order joint
34 legal custody, the court shall include on the record specific findings of
35 fact upon which the order for sole legal custody is based. The award of
36 sole legal custody to one parent shall not deprive the other parent of
37 access to information regarding the child unless the court shall so order,
38 stating the reasons for that determination.

39 (5) *Types of residential arrangements.* After making a determination
40 of the legal custodial arrangements, the court shall determine the resi-
41 dency of the child from the following options, which arrangement the
42 court must find to be in the best interest of the child. The parties shall
43 submit to the court either an agreed parenting plan or, in the case of

1 dispute, proposed parenting plans for the court's consideration. Such op-
2 tions are:

3 (A) *Residency*. The court may order a residential arrangement in
4 which the child resides with one or both parents on a basis consistent
5 with the best interests of the child.

6 (B) *Divided residency*. In an exceptional case, the court may order a
7 residential arrangement in which one or more children reside with each
8 parent and have parenting time with the other.

9 (C) *Nonparental residency*. If during the proceedings the court de-
10 termines that there is probable cause to believe that the child is a child
11 in need of care as defined by subsections (d)(1), (d)(2), (d)(3) or (d)(11)
12 of K.S.A. 2007 Supp. 38-2202, and amendments thereto, or that neither
13 parent is fit to have residency, the court may award temporary residency
14 of the child to a grandparent, aunt, uncle or adult sibling, or, another
15 person or agency if the court finds by written order that: (i) (a) The child
16 is likely to sustain harm if not immediately removed from the home;

17 (b) allowing the child to remain in home is contrary to the welfare of
18 the child; or

19 (c) immediate placement of the child is in the best interest of the
20 child; and

21 (ii) reasonable efforts have been made to maintain the family unit
22 and prevent the unnecessary removal of the child from the child's home
23 or that an emergency exists which threatens the safety to the child. In
24 making such a residency order, the court shall give preference, to the
25 extent that the court finds it is in the best interests of the child, first to
26 awarding such residency to a relative of the child by blood, marriage or
27 adoption and second to awarding such residency to another person with
28 whom the child has close emotional ties. The court may make temporary
29 orders for care, support, education and visitation that it considers appro-
30 priate. Temporary residency orders are to be entered in lieu of temporary
31 orders provided for in K.S.A. 2007 Supp. 38-2243 and 38-2244, and
32 amendments thereto, and shall remain in effect until there is a final de-
33 termination under the revised Kansas code for care of children. An award
34 of temporary residency under this paragraph shall not terminate parental
35 rights nor give the court the authority to consent to the adoption of the
36 child. When the court enters orders awarding temporary residency of the
37 child to an agency or a person other than the parent, the court shall refer
38 a transcript of the proceedings to the county or district attorney. The
39 county or district attorney shall file a petition as provided in K.S.A. 2007
40 Supp. 38-2234, and amendments thereto, and may request termination
41 of parental rights pursuant to K.S.A. 2007 Supp. 38-2266, and amend-
42 ments thereto. The costs of the proceedings shall be paid from the general
43 fund of the county. When a final determination is made that the child is

1 not a child in need of care, the county or district attorney shall notify the
2 court in writing and the court, after a hearing, shall enter appropriate
3 custody orders pursuant to this section. If the same judge presides over
4 both proceedings, the notice is not required. Any disposition pursuant to
5 the revised Kansas code for care of children shall be binding and shall
6 supersede any order under this section.

7 (6) *Child health insurance coverage.* The court may order that each
8 parent execute any and all documents, including any releases, necessary
9 so that both parents may obtain information from and to communicate
10 with any health insurance provider regarding the health insurance cov-
11 erage provided by such health insurance provider to the child. The pro-
12 visions of this paragraph shall apply irrespective of which parent owns,
13 subscribes or pays for such health insurance coverage.

14 (b) *Financial matters.* (1) *Division of property.* The decree shall di-
15 vide the real and personal property of the parties, including any retire-
16 ment and pension plans, whether owned by either spouse prior to mar-
17 riage, acquired by either spouse in the spouse's own right after marriage
18 or acquired by the spouses' joint efforts, by: (A) A division of the property
19 in kind; (B) awarding the property or part of the property to one of the
20 spouses and requiring the other to pay a just and proper sum; or (C)
21 ordering a sale of the property, under conditions prescribed by the court,
22 and dividing the proceeds of the sale. Upon request, the trial court shall
23 set a valuation date to be used for all assets at trial, which may be the
24 date of separation, filing or trial as the facts and circumstances of the case
25 may dictate. The trial court may consider evidence regarding changes in
26 value of various assets before and after the valuation date in making the
27 division of property. In dividing defined-contribution types of retirement
28 and pension plans, the court shall allocate profits and losses on the non-
29 participant's portion until date of distribution to that nonparticipant. In
30 making the division of property the court shall consider the age of the
31 parties; the duration of the marriage; the property owned by the parties;
32 their present and future earning capacities; the time, source and manner
33 of acquisition of property; family ties and obligations; the allowance of
34 maintenance or lack thereof; dissipation of assets; the tax consequences
35 of the property division upon the respective economic circumstances of
36 the parties; and such other factors as the court considers necessary to
37 make a just and reasonable division of property. The decree shall provide
38 for any changes in beneficiary designation on: (A) Any insurance or an-
39 nuity policy that is owned by the parties, or in the case of group life
40 insurance policies, under which either of the parties is a covered person;
41 (B) any trust instrument under which one party is the grantor or holds a
42 power of appointment over part or all of the trust assets, that may be
43 exercised in favor of either party; or (C) any transfer on death or payable

1 on death account under which one or both of the parties are owners or
2 beneficiaries. Nothing in this section shall relieve the parties of the ob-
3 ligation to effectuate any change in beneficiary designation by the filing
4 of such change with the insurer or issuer in accordance with the terms
5 of such policy.

6 (2) *Maintenance.* The decree may award to either party an allowance
7 for future support denominated as maintenance, in an amount the court
8 finds to be fair, just and equitable under all of the circumstances. The
9 decree may make the future payments modifiable or terminable under
10 circumstances prescribed in the decree. The court may make a modifi-
11 cation of maintenance retroactive to a date at least one month after the
12 date that the motion to modify was filed with the court. In any event, the
13 court may not award maintenance for a period of time in excess of 121
14 months. If the original court decree reserves the power of the court to
15 hear subsequent motions for reinstatement of maintenance and such a
16 motion is filed prior to the expiration of the stated period of time for
17 maintenance payments, the court shall have jurisdiction to hear a motion
18 by the recipient of the maintenance to reinstate the maintenance pay-
19 ments. Upon motion and hearing, the court may reinstate the payments
20 in whole or in part for a period of time, conditioned upon any modifying
21 or terminating circumstances prescribed by the court, but the reinstate-
22 ment shall be limited to a period of time not exceeding 121 months. The
23 recipient may file subsequent motions for reinstatement of maintenance
24 prior to the expiration of subsequent periods of time for maintenance
25 payments to be made, but no single period of reinstatement ordered by
26 the court may exceed 121 months. Maintenance may be in a lump sum,
27 in periodic payments, on a percentage of earnings or on any other basis.
28 At any time, on a hearing with reasonable notice to the party affected,
29 the court may modify the amounts or other conditions for the payment
30 of any portion of the maintenance originally awarded that has not already
31 become due, but no modification shall be made without the consent of
32 the party liable for the maintenance, if it has the effect of increasing or
33 accelerating the liability for the unpaid maintenance beyond what was
34 prescribed in the original decree. Except for good cause shown, every
35 order requiring payment of maintenance under this section shall require
36 that the maintenance be paid through the central unit for collection and
37 disbursement of support payments designated pursuant to K.S.A. 23-
38 4,118, and amendments thereto. A written agreement between the parties
39 to make direct maintenance payments to the obligee and not pay through
40 the central unit shall constitute good cause. If child support and main-
41 tenance payments are both made to an obligee by the same obligor, and
42 if the court has made a determination concerning the manner of payment
43 of child support, then maintenance payments shall be paid in the same

1 manner.

2 (3) *Separation agreement.* If the parties have entered into a separa-
3 tion agreement which the court finds to be valid, just and equitable, the
4 agreement shall be incorporated in the decree. A separation agreement
5 may include provisions relating to a parenting plan. The provisions of the
6 agreement on all matters settled by it shall be confirmed in the decree
7 except that any provisions relating to the legal custody, residency, visita-
8 tion parenting time, support or education of the minor children shall be
9 subject to the control of the court in accordance with all other provisions
10 of this article. Matters settled by an agreement incorporated in the de-
11 cree, other than matters pertaining to the legal custody, residency, visi-
12 tation, parenting time, support or education of the minor children, shall
13 not be subject to subsequent modification by the court except: (A) As
14 prescribed by the agreement or (B) as subsequently consented to by the
15 parties.

16 (4) *Costs and fees.* Costs and attorney fees may be awarded to either
17 party as justice and equity require. The court may order that the amount
18 be paid directly to the attorney, who may enforce the order in the attor-
19 ney's name in the same case.

20 (c) *Miscellaneous matters.* (1) *Restoration of name.* Upon the request
21 of a spouse, the court shall order the restoration of that spouse's maiden
22 or former name. The court shall have jurisdiction to restore the spouse's
23 maiden or former name at or after the time the decree of divorce becomes
24 final. The judicial council shall develop a form which is simple, concise
25 and direct for use with this paragraph.

26 (2) *Effective date as to remarriage.* Any marriage contracted by a
27 party, within or outside this state, with any other person before a judg-
28 ment of divorce becomes final shall be voidable until the decree of divorce
29 becomes final. An agreement which waives the right of appeal from the
30 granting of the divorce and which is incorporated into the decree or
31 signed by the parties and filed in the case shall be effective to shorten
32 the period of time during which the remarriage is voidable.

33 Sec. 2. K.S.A. 2007 Supp. 60-1610 is hereby repealed.

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

TESTIMONY

Committee on Judiciary

RE: SB 545

February 18, 2008

Chairman Vratil and members of the committee, thank you for the opportunity to share my input on SB 545. My name is Leslea Rockers and I am a single parent with residential custody of my two kids ages 13 and 17.

My testimony today is regarding child health insurance coverage and documents that would allow for release of information so that both parents may communicate with the health insurance company of the children. My testimony applies to section 6 only.

In new section 6, the bill states that the court may order that each parent execute any and all documents, including releases, necessary so that both parents may obtain information and communicate with any insurance company regarding health insurance coverage provided for the children. This paragraph applies to both parents, not just the parent that owns or pays for the health insurance coverage.

I found as residential parent, but not the owner of the health insurance coverage for my children, that I could not communicate with or obtain information from the health insurance company. Last March I called the insurance company that provided coverage for my kids to request current identification cards and to inquire about specific coverage benefits. I was told by the customer service representative that I could not receive any information or even inquire about benefits provided thru the plan as I was not the owner of the coverage and that this was due to HIPAA regulations. I am the HIPAA Officer for my social services agency and have an understanding of the purpose it serves. I explained my residential parent status and explained that I was not requesting any medical information regarding my ex-husband but was asking for plan benefits for the children. I was given a fax number to send my divorce decree and was told that they would read the decree and return my call. I received a call in return stating that the divorce decree did not allow them to speak to me regarding the insurance benefits because my ex-husband had not signed a release of information. I then called the Kansas Insurance Department and asked a series of questions regarding this issue and was told that any health insurance agency can stipulate what they will and will not allow according to how they choose to establish HIPAA guidelines within their company.

On four different occasions beginning March 13, 2007 I asked my ex-husband to sign a release of information so that I could have access to current identification cards, benefit information, Explanation of Benefits and prescription formularies. Because he did not respond to the requests on each occasion, I went to my attorney during the last week of April 2007 to draft a letter to the legal department of the insurance provider explaining the situation and to ask that the issue of residential custody be considered. The insurance company sent two forms for the kids to sign and date allowing me access to their policy. We questioned this as both kids are minors. But, we provided the information they requested and attached both birth certificates as requested. A

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representative from their legal department called to inform us that because the kids were minors the forms were invalid. At this time their legal department informed us that what we needed to have was a Medical Support Order filed through the court. This document follows the minor children and allows access to health insurance information to both parents regardless of which parent owns the policy.

This order was filed the third week of May. In June I decided to proceed with a vaccination for our daughter that is conducted in a series of three (3) separate vaccine shots. The vaccination was encouraged by our family doctor for her age and the success rate if given at this time in her life. I had no idea if insurance would cover the vaccination and decided as a parent to provide medical care for my child and deal with the cost as it became necessary. A hearing was set for August 21st regarding the Medical Support Order. On August 14th I was told by my ex-husband that he had decided not to include the kids in his group coverage. Due to costs, he felt it would be financially beneficial to him to purchase independent policies on each child. He purchased the plans on his own and I was told they would be in effect September 1st. I called the new insurance company to inquire about the policies and explained my situation. They stated that a release of information had not been signed but a temporary verbal "OK" had been given for them to speak to me. At this point in time he has not removed the verbal OK and I have had access to insurance information as I have requested it. The hearing for the Medical Support Order was continued until November 14th and it was not granted on that day.

I spoke to Senator Apple in March regarding changes to how health insurance is covered as a result of my struggle to access information on the children I have responsibility for. I was taking them to the doctor and the bills were sent to me as a result, but I was not allowed benefit information or the Explanation of Benefits to ensure proper billing had taken place. I had no idea that the struggle we discussed in March would still be an issue at this point.

My request to you is to eliminate this struggle for others who find themselves in situations of medical responsibility without adequate access to the information to handle medical issues appropriately and with current and accurate information. Parents will not use insurance if they don't have access to what it will and will not cover and physicians may deny service if health insurance information isn't available at the time the child goes to the office. Children will not be provided the health care they deserve and will suffer as a result. Parents will have no way of knowing if a referral is required, if the physician or hospital is accepted under the plan and they will have no way to ensure that improper billing isn't taking place if they do not have access to the Explanation of Benefits (EoBs). EoBs are also necessary documents for tax returns and claim disputes. The lack of cooperation by one parent ties the hands of the other in these instances. I decided to fight to gain information I needed in order to take care of my kids and my struggle continues; some parents won't choose to fight and others can't because of the financial costs associated with the court process.

Senate Judiciary Committee
Monday, February 18, 2008

Testimony in Support of SB 546
Judge Allen Slater
10th Judicial District
Johnson County Courthouse
100 N. Kansas Avenue
Olathe, KS 66061-3273
913-715-3830
Allen.Slater@jocogov.org

The Supreme Court's Domestic High Conflict Committee requests an amendment to K.S.A. 60-1621 to increase the domestic post decree motion docket fee by \$25, from \$33 to \$58. The funding generated would be used to establish the Family Dispute Resolution Fund, which would provide grants to local courts to offer programs and services for parties involved in domestic high conflict cases.

This was the primary recommendation of the Court's Domestic High Conflict Committee. The Committee report states: "[a] number of domestic high conflict best practices show a potential to benefit both courts and families in a more appropriate method of resolving these types of disputes. These processes include the use of case assessment; the Higher Ground program; and the use of case managers, limited case managers, high conflict mediators, parenting coordinators, and others. Most parties in high conflict disputes can be required to participate and pay for these services. However, affording these services still remains a hurdle for those people living on limited incomes."

The goal of this project is to reduce families' dependency on the courts in resolving family-related conflicts. Programs and services that give families the skills to make their own decisions will receive the highest priority in the grant award process. Courts will always have a role in family-related cases, but a major goal of this project is to reduce the number of these cases and the extent of the court's involvement by removing cost as a barrier to dispute resolution services. That reduction will greatly benefit those families who will attain the knowledge and skills needed to resolve their own conflicts, as well as the taxpayers who support the court system.

The Domestic High Conflict Committee's intent is that its recommendations will:

- Reduce conflict between parents and other caretakers;
- Assist families in peacefully and cooperatively resolving their differences;
- Create stability for children who are experiencing restructuring of their families; and
- Help every child establish and maintain a healthy relationship with both of his or her parents, regardless of how the family is structured.

The goal of this program is to enable parents to settle their own disputes without the intervention of a court. By so doing, everyone benefits - the children, the parties, and the taxpayers.

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Domestic cases are one of the fastest growing categories of state court cases. In Kansas courts, domestic filings increased from 23,138 in 1983 to 39,374 in 2007, a 70% increase. Families involved in high conflict domestic cases have difficulty in reaching a settlement because of constant arguing, filing motions with the court, changes in attorneys, a child's refusal to visit a parent, child welfare agency involvement, a large amount of affidavit material, domestic violence, a history of denying access to the children, and other reasons. The committee found that these high-conflict domestic cases can often cause serious harm to the children involved. Children caught in the middle of high conflict cases may face long-lasting emotional turmoil and are at greater risk for substance abuse and educational failure. High conflict custody cases drain court, family, and mental health resources, take additional time, and create anxiety for all involved, from the legal and mental health professionals to the litigants and their families.

The general adversarial court process often does not provide high conflict families with the right resources to stop their ongoing conflict. A court may simply resolve a particular dispute with a decision that leads to a new dispute being filed. The adversarial approach does not provide a long term solution for these high conflict cases.

We estimate that, each year, another 3,900 Kansas families will become high conflict families and will join the cases from previous years that continue to file domestic motions over and over again.

The committee developed a list of best practice programs by looking at successful court programs from across the country. High conflict parent education is a component of the most highly rated programs. The Kansas Judicial Branch has experimented with this type of program through the "Higher Ground" program, which was piloted by the 10th Judicial District. Research has shown that "Higher Ground" and similar programs in other states can reduce the number of high conflict cases which return to court by over 70%. Parents who have attended this course have rated it very highly.

Ultimately, our courts are finding that many parties in domestic high conflict cases do not have the funds to pay for services that would help the parties make their own decisions. By the time many families are identified as high conflict, they have often spent all their available funds on litigation. The committee recommends establishing the Family Dispute Resolution Fund to help pay for a portion of the costs of providing these programs. However, the committee recommends that all parties pay at least a portion of their own program costs.

The Judicial Branch recommends that the funds be appropriated back to local judicial districts for the programs which will work best in their area based upon the proportion of domestic cases in their area and the need for assistance.

Examples of Domestic High Conflict Best Practice Programs

High Conflict Parenting Plans	High Conflict Parent Education
Case Managers as Educators	Limited Case Management
Dependency Mediation	Child Custody Evaluations
Settlement Conferences	High Conflict Mediation/Conciliation
Special Masters	Neutral Evaluation
Neutral Exchange Sites	

How much would be generated by the fee increase?

It is anticipated that the fee increase would generate approximately \$325,000.

Who would provide the best practice programs?

The committee believes that local private providers would best provide most of the services. These could include mental health agencies, mediators, social workers, and attorneys.

How would the Kansas post-decree filing fee compare to fees charged in neighboring states?

This filing fee increase would result in a fee that would be close to the fee charged in many of the states around Kansas. The cost to modify a divorce in Missouri is \$41. In Iowa, Kentucky, and Wisconsin, the cost is \$50. Minnesota charges a \$55 fee, Louisiana a \$65 fee, and Tennessee a \$75 fee. In Colorado the fee is \$95, in Illinois the fee is \$116, and Arkansas charges the full filing fee of \$159.

Thank you for the opportunity to appear in support of SB 546. I would be happy to stand for any questions.

Domestic High Conflict Committee:

Kenneth Eland, Attorney, Mediator/Case Manager – Hoxie

Judge George Groneman - Kansas City

Gary Kretchmer, Court Service Officer – Olathe

Judge Anthony Powell – Wichita

Donna Hoener-Queal, Chief Court Service Officer – Pratt

Mary Read, Court Service Officer - Arkansas City

Larry Rute, Attorney, Mediator – Topeka

Judge Jean Schmidt – Topeka

N. Trip Shawver, Attorney, Mediator – Wichita

Judge Allen R. Slater – Olathe

Barbara Schmidt, Mediator/Case Manager - North Newton

SENATE BILL No. 493

By Committee on Judiciary

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9 AN ACT concerning crimes and punishments; relating to smoking; cre-
10 ating the Kansas ~~uniform smoking prohibition~~ act; amending K.S.A.
11 21-4012 and 65-530 and repealing the existing sections.
12

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

14 New Section 1. The provisions of sections 1 through 8, and amend-
15 ments thereto, shall be known and may be cited as the Kansas ~~uniform~~
16 ~~smoking prohibition~~ act.

17 New Sec. 2. As used in sections 1 through 8, and amendments
18 thereto, the following words and phrases shall have the following mean-
19 ings unless a different meaning clearly appears from the context:

20 (a) "Bar" means any indoor area that is operated and licensed ~~pri-~~
21 ~~marily~~ for the sale and service of alcoholic beverages ~~for on-premises~~
22 ~~consumption~~.

23 (b) "Commercial motor vehicle" means a motor vehicle used on a
24 highway in interstate or intrastate commerce to transport property when
25 the vehicle:

26 (1) Has a gross weight rating, or gross vehicle weight or gross com-
27 bination weight of 10,001 pounds or more; and

28 (2) is not used in transporting material found by the United States
29 secretary of transportation to be hazardous under 49 U.S.C. 5103 and
30 transported in a quantity requiring placarding under regulations pre-
31 scribed by the United States secretary of transportation under 49 C.F.R.,
32 subtitle B, chapter I, subchapter C, and is subject to the provisions of 49
33 C.F.R. 397.13 as enacted on December 12, 1994.

34 (c) "Employee" means any person who is employed by an employer
35 in consideration for direct or indirect monetary wages or profit, and any
36 person who volunteers their services for a nonprofit entity.

37 (d) "Employer" means any person, partnership, corporation, associ-
38 ation or organization, including municipal or nonprofit entities, which
39 employs one or more individual persons.

40 (e) "Enclosed area" means all space between a floor and ceiling which
41 is enclosed on all sides by solid walls, windows or doorways which extend
42 from the floor to the ceiling, including all space therein screened by par-
43 titions which do not extend to the ceiling or are not solid or similar struc-

non-smoker protection

(a) "Adult care home" means adult care homes, as defined in K.S.A. 39-923, and amendments thereto, the Kansas veterans' home established by K.S.A. 76-1951, and amendments thereto, and the Kansas soldiers' home established by K.S.A. 76-1901, and amendments thereto.

and reletter the remaining subsections accordingly

, including alcoholic liquor, as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages, as defined in K.S.A. 41-2701, and amendments thereto,

(b) "Cigar bar" means any indoor area which is operated primarily for the on-site sale of tobacco products and the rental of on-site humidors and which derives not less than 80% of its gross receipts from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and which, if not a stand-alone establishment, is fully enclosed, directly exhausted to the outside more than 25 feet from any entrance, exit or air intake, and does not allow air to be recirculated to nonsmoking areas of the building. For purposes of this subsection, "stand-alone" means an establishment that is not located within and does not share any common entryway or common indoor area with any other enclosed indoor area, including a restaurant.

(c) "Cigar charity fund-raising event" means any event in which cigars are distributed or smoked that is held for the purpose of obtaining charitable donations and which is organized and conducted by a not-for-profit organization that is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, and amendments thereto.

and reletter the remaining subsections accordingly

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1 tures. For purposes of this section, the following shall not be considered
2 an “enclosed area”: (1) Rooms or areas, enclosed by walls, windows or
3 doorways, having neither a ceiling nor a roof and which are completely
4 open to the elements and weather at all times; and (2) rooms or areas,
5 enclosed by walls, windows or doorways and a roof or ceiling, having an
6 opening that is completely and permanently open to the elements and
7 weather and which comprises an area that is at least 20% of the total
8 perimeter wall area of such room or area.

9 (f) “Entryway” means the area within a 10 foot radius outside of any
10 doorway leading into a building or facility that is not exempted pursuant
11 to subsection (b) of K.S.A. 21-4010, and amendments thereto.

12 (g) “Food service establishment” means any place in which food is
13 served or is prepared for sale or service on the premises. Such term shall
14 include, but not be limited to, fixed or mobile restaurants, coffee shops,
15 cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich
16 shops, soda fountains, taverns, private clubs, roadside kitchens, commis-
17 saries and any other private, public or nonprofit organization or institution
18 routinely serving food and any other eating or drinking establishment or
19 operation where food is served or provided for the public with or without
20 charge.

21 (h) “Medical care facility” means a doctor’s office, general hospital,
22 special hospital, ambulatory surgery center or recuperation center, as de-
23 fined by K.S.A. 65-425, and amendments thereto, and any psychiatric
24 hospital licensed under K.S.A. 75-3307b, and amendments thereto.

25 (i) “Place of employment” means any enclosed area under the control
26 of a public or private employer, including, but not limited to, work areas,
27 auditoriums, elevators, private offices, employee lounges and restrooms,
28 conference and meeting rooms, classrooms, employee cafeterias, stair-
29 wells and hallways, that is used by employees during the course of em-
30 ployment. For purposes of this section, a private residence shall not be
31 considered a “place of employment” unless:

32 (1) Such residence is used as a day care home, as defined in K.S.A.
33 65-530, and amendments thereto; or

34 (2) such residence is also used for the operation of an in-home busi-
35 ness, and such business consists of an enclosed area that is a designated
36 work area which is accessible to the general public or which is occupied
37 by at least one employee on a full-time basis, and such employee is not
38 related to the owner of the business and has no ownership interest in the
39 residence.

40 (j) “Public building” means any building owned or operated by:

41 (1) The state, including any branch, department, agency, bureau,
42 commission, authority or other instrumentality thereof;

43 (2) any county, city, township, other political subdivision, including

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1 any commission, authority, agency or instrumentality thereof; or
2 (3) any other separate corporate instrumentality or unit of the state
3 or any municipality.

4 (k) "Public meeting" means any meeting open to the public pursuant
5 to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of
6 this state.

7 (l) "Public place" means any enclosed areas open to the public or
8 used by the general public including, but not limited to: Banks, bars, food
9 service establishments, retail service establishments, retail stores, public
10 means of mass transportation, passenger elevators, health care institutions
11 or any other place where health care services are provided to the public,
12 medical care facilities, educational facilities, libraries, courtrooms, public
13 buildings, restrooms, grocery stores, school buses, museums, theaters,
14 auditoriums, arenas and recreational facilities. For purposes of this sec-
15 tion, a private residence shall not be considered a "public place" unless
16 such residence is used as a day care home, as defined in K.S.A. 65-530,
17 and amendments thereto.

18 (m) "Smoking" means possession of a lighted cigarette, cigar, pipe or
19 burning tobacco in any other form or device designed for the use of
20 tobacco.

21 New Sec. 3. (a) No person shall smoke in an enclosed area or at a
22 public meeting, including, but not limited to:

- 23 (1) Public places;
- 24 (2) taxicabs and limousines;
- 25 (3) restrooms, lobbies, hallways and other common areas in public
26 and private buildings, condominiums and other multiple-residential
27 facilities;

28 (4) restrooms, lobbies and other common areas in hotels and motels
29 and in at least 80% of the sleeping quarters within a hotel or motel that
30 may be rented to guests;

31 (5) entryways of all buildings and facilities not exempted pursuant to
32 subsection ~~(b) of this section~~; and

33 (6) any place of employment.

34 (b) Each employer having a place of employment that is an enclosed
35 area shall provide a smoke-free workplace for all employees. Such em-
36 ployer shall also adopt and maintain a written smoking policy which shall
37 prohibit smoking without exception in all areas of the place of employ-
38 ment. Such policy shall be communicated to all current employees within
39 one week of its adoption and shall be communicated to all new employees
40 upon hiring. Each employer shall provide a written copy of the smoking
41 policy upon request to any current or prospective employee.

42 (c) The provisions of this section shall not apply to:

- 43 (1) The outdoor areas of any building or facility beyond 10 feet of

(n) "Tobacco shop" means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories.

(c)

(c) Notwithstanding any other provision of this section or sections 4 through 8, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in section 2, and amendments thereto, may designate a portion of such adult care home as a smoking area, and smoking shall be permitted within such designated smoking area.

and reletter the remaining subsection.

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- 1 any entrance or exit to such building or facility;
- 2 (2) private homes, private residences, except when such home or res-
- 3 idence is used as a day care home, as defined in K.S.A. 65-530, and
- 4 amendments thereto;
- 5 (3) that portion of a place of employment as described in paragraph
- 6 (i)(2) of section 2, and amendments thereto, which is not used as a des-
- 7 ignated work area;
- 8 (4) a hotel or motel room designated for smoking guests if the total
- 9 percentage of such hotel or motel rooms in such hotel or motel does not
- 10 exceed 20%;
- 11 (5) private automobiles used primarily for personal use;
- 12 (6) freight trains; and
- 13 (7) commercial motor vehicles.

14 New Sec. 4. The proprietor or other person in charge of the premises
 15 of a public place, or other area where smoking is prohibited, shall post
 16 or cause to be posted in a conspicuous place signs displaying the inter-
 17 national no smoking symbol and clearly stating that smoking is prohibited
 18 by state law.

19 New Sec. 5. (a) It shall be unlawful for any person who owns, man-
 20 ages, operates or otherwise controls the use of any public place, or other
 21 area where smoking is prohibited, to fail to comply with all or any of the
 22 provisions of sections 1 through 8, and amendments thereto.

23 (b) It shall be unlawful for any person who owns, manages, operates
 24 or otherwise controls the use of any public place, or other area where
 25 smoking is prohibited, to allow smoking to occur where prohibited by law.
 26 Any such person shall be deemed to allow smoking to occur under this
 27 subsection if such person:

- 28 (1) Has knowledge that smoking is occurring; or
- 29 (2) acquiesces to the smoking under the totality of the circumstances.

30 (c) It shall be unlawful for any person to smoke in any area where
 31 smoking is prohibited by the provisions of section 3, and amendments
 32 thereto.

33 New Sec. 6. Nothing in sections 1 through 8, and amendments
 34 thereto, shall prevent any city or county from regulating smoking within
 35 its boundaries, so long as such regulation is at least as stringent as that
 36 imposed by sections 1 through 8, and amendments thereto. In such cases
 37 the more stringent local regulation shall control to the extent of any in-
 38 consistency between such regulation and sections 1 through 8, and
 39 amendments thereto.

40 New Sec. 7. The provisions of K.S.A. 21-4009 through 21-4014, 21-
 41 4016 and 21-4017, and amendments thereto, shall not apply in any county
 42 which is subject to the Kansas uniform smoking prohibition act pursuant
 43 to section 9, and amendments thereto.

(5) cigar bars, tobacco shops and cigar charity fund-raising events;
 (6) that portion of an adult care home that is expressly designated as a smoking area
 by the proprietor or other person in charge of such adult care home pursuant to
 subsection (c);

and renumber the remaining paragraphs accordingly

(a)

restrictive

(b) All city ordinances adopted before January 1, 2008, that ban smoking, but are more
 permissive than the provisions in sections 1 through 8, and amendments thereto, remain
 in full force and effect unless later repealed by the governing body of the city. No such
 ordinance may be amended to be more permissive than the original ordinance, but may
 be amended to be more restrictive.

non-smoker protection

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1 New Sec. 8. If any provision of sections 1 through 8, and amend-
2 ments thereto, or the application thereof to any person, thing or circum-
3 stance is held invalid, such invalidity shall not affect the provision of ap-
4 plication of sections 1 through 8, and amendments thereto, that can be
5 given effect without the invalid provision or application, and to this end
6 the provisions of sections 1 through 8, and amendments thereto, are de-
7 clared to be severable.

8 New Sec. 9. (a) The board of county commissioners of each county
9 in the state by resolution shall submit to the qualified voters of the county
10 a proposition to make the county subject to the provisions of sections 1
11 through 8, and amendments thereto. The proposition shall be submitted
12 to the voters at a general election of the county held not more than 180
13 days after the effective date of this act.

14 (b) Upon the adoption of a resolution calling for an election pursuant
15 to subsection (a) or (f), the county election officer shall cause the follow-
16 ing proposition to be placed on the ballot at the general election: "Shall
17 _____ county be subject to the provisions of the Kansas ~~uni-~~
18 ~~form smoking prohibition~~ act?"

non-smoker protection

19 (c) The election provided for by subsection (a) or (f) shall be con-
20 ducted, and the votes counted and canvassed, in the manner provided by
21 law for question submitted elections of the county.

22 (d) If a majority of the votes cast and counted at an election under
23 subsection (a) is in favor of making the county subject to the provisions
24 of the Kansas ~~uniform smoking prohibition~~ act, then on and after January
25 1, 2009, the county shall be subject to the provisions of sections 1 through
26 8, and amendments thereto.

non-smoker protection

27 (e) If a majority of the votes cast and counted at an election under
28 subsection (a) is against making the county subject to the provisions of
29 the Kansas ~~uniform smoking prohibition~~ act, the county shall not be sub-
30 ject to the provisions of sections 1 through 8, and amendments thereto,
31 except that such county shall still be subject to the provisions of subsection
32 (f) of this section and the provisions of K.S.A. 21-4009 through 21-4014,
33 21-4016 and 21-4017, and amendments thereto.

non-smoker protection

34 (f) In the event a majority of the votes cast and counted at an election
35 held pursuant to subsection (a) or this subsection is against making the
36 county subject to the provisions of the Kansas ~~uniform smoking prohi-~~
37 ~~bition~~ act, the board of county commissioners may at any time after such
38 election by resolution submit to the qualified voters of the county a prop-
39 osition to make the county subject to the provisions of sections 1 through
40 8, and amendments thereto. The proposition shall be submitted to the
41 voters of the county at the next general election of the county which
42 follows adoption of the resolution by more than 90 days. If a majority of
43 the votes cast and counted at an election under this subsection is in favor

non-smoker protection

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1 of making the county subject to the provisions of the Kansas ~~uniform~~
 2 ~~smoking prohibition~~ act, then on and after January 1 of the year imme-
 3 diately following such election, the county shall be subject to the provi-
 4 sions of sections 1 through 8, and amendments thereto. If a majority of
 5 the votes cast and counted at an election under this subsection is against
 6 making the county subject to the provisions of the Kansas ~~uniform smok-~~
 7 ~~ing prohibition~~ act, the county shall not be subject to the provisions of
 8 sections 1 through 8, and amendments thereto, except that such county
 9 shall still be subject to the provisions of this subsection and the provisions
 10 of K.S.A. 21-4009 through 21-4014, 21-4016 and 21-4017, and amend-
 11 ments thereto.

non-smoker protection

non-smoker protection

12 (g) No county shall be subject to the provisions of sections 1 through
 13 8, and amendments thereto, until such county has elected to be subject
 14 to the provisions of sections 1 through 8, and amendments thereto, pur-
 15 suant to this section. At such time the county shall become subject to the
 16 provisions of sections 1 through 8, and amendments thereto, on such date
 17 as provided in subsection (d) or (f), whichever is applicable.

(h) Notwithstanding any other provisions of law, no state agency, as defined in K.S.A. 75-3701, and amendments thereto, shall make any expenditure, and no moneys appropriated from the state general fund, or any other fund in the state treasury shall be used for any advertising, campaigning or any other advocacy measures either in favor of or against making any county subject to the provisions of the Kansas non-smoker protection act.

18 Sec. 10. K.S.A. 21-4012 is hereby amended to read as follows: 21-
 19 4012. (a) Any person found guilty of ~~smoking~~ ~~in violation~~ of ~~this act~~ K.S.A.
 20 ~~21-4010, 21-4011, section 3 or section 4, and amendments thereto~~, is guilty
 21 of a misdemeanor punishable by a fine of not more than \$20 for each
 22 violation. Any person found guilty of failing to post signs as required by
 23 this act, is guilty of a misdemeanor punishable by a fine of not more than
 24 \$50.:

violating

- 25 (1) Not exceeding \$100 for the first violation ~~[within a one year period]~~
- 26 (2) not exceeding \$200 for a second violation ~~[within a one year pe-~~
- 27 ~~riod]~~ or
- 28 (3) not exceeding \$500 for a third or subsequent violation ~~[within a~~
- 29 ~~one year period]~~

30 ~~[For purposes of this subsection, the number of violations within a one-~~

31 ~~year period shall be measured by the date the violations occur.]~~
 32 (b) Each individual allowed to smoke by a person who owns, man-
 33 ages, operates or otherwise controls the use of any public place, or other
 34 area where smoking is prohibited, in violation of subsection (b) of section
 35 5, and amendments thereto, shall be considered a separate violation for
 36 the purposes of determining the number of violations under subsection
 37 (a).

38 (c) In addition, the department of health and environment, or local
 39 department of health, may institute an action in any court of competent
 40 jurisdiction to enjoin repeated violations of this act.

41 Sec. 11. K.S.A. 65-530 is hereby amended to read as follows: 65-530.

- 42 (a) As used in this section:
- 43 (1) "Day care home" means a day care home as defined under Kansas

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1 administrative regulation 28-4-113, a group day care home as defined
2 under Kansas administrative regulation 28-4-113 and a family day care
3 home as defined under K.S.A. 65-517 and amendments thereto.

4 (2) "Smoking" means possession of a lighted cigarette, cigar, pipe or
5 burning tobacco in any other form or device designed for the use of
6 tobacco.

7 (b) Smoking within any room, enclosed area or other enclosed space
8 of a facility or facilities of a day care home during a time when children
9 who are not related by blood, marriage or legal adoption to the person
10 who maintains the home are being cared for, as part of the operation of
11 the day care home, within the facility or facilities is hereby prohibited.
12 Nothing in this subsection shall be construed to prohibit smoking on the
13 premises of the day care home outside the facility or facilities of a day
14 care home, including but not limited to porches, yards or garages.

15 (c) Each day care home registration certificate or license shall contain
16 a statement in bold print that smoking is prohibited within a room, en-
17 closed area or other enclosed space of the facility or facilities of the day
18 care home under the conditions specified in subsection (b). The state-
19 ment shall be phrased in substantially the same language as subsection
20 (b). The registration certificate or license shall be posted in a conspicuous
21 place in the facility or facilities.

22 (d) The secretary of health and environment may levy a civil fine
23 under K.S.A. 65-526 and amendments thereto against any day care home
24 for a first or second violation of this section. A third or subsequent vio-
25 lation shall be subject to the provisions of K.S.A. 65-523 and amendments
26 thereto.

27 (e) *In addition to any civil fine which may be levied pursuant to*
28 *subsection (d), any day care home that violates any provision of this sec-*
29 *tion may also be subject to criminal punishment pursuant to K.S.A. 21-*
30 *4012, and amendments thereto.*

31 Sec. 12. K.S.A. 21-4012 and 65-530 are hereby repealed.

32 Sec. 13. This act shall take effect and be in force from and after its
33 publication in the statute book.

SENATE BILL No. 493

By Committee on Judiciary

1-29

Proposed Amendment
Senator Journey

Prepared by Office of Revisor of Statutes
February 18, 2008

Senate Judiciary

2-18-06
Attachment 6

9 AN ACT concerning crimes and punishments; relating to smoking; cre-
10 ating the Kansas uniform smoking prohibition act; amending K.S.A.
11 21-4012 and 65-530 and repealing the existing sections.

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

14 New Section 1. The provisions of sections 1 through 8, and amend-
15 ments thereto, shall be known and may be cited as the Kansas uniform
16 smoking prohibition act.

17 New Sec. 2. As used in sections 1 through 8, and amendments
18 thereto, the following words and phrases shall have the following mean-
19 ings unless a different meaning clearly appears from the context:

20 (a) "Bar" means any indoor area that is operated and licensed pri-
21 marily for the sale and service of alcoholic beverages for on-premises
22 consumption.

23 (b) "Commercial motor vehicle" means a motor vehicle used on a
24 highway in interstate or intrastate commerce to transport property when
25 the vehicle:

26 (1) Has a gross weight rating, or gross vehicle weight or gross com-
27 bination weight of 10,001 pounds or more; and

28 (2) is not used in transporting material found by the United States
29 secretary of transportation to be hazardous under 49 U.S.C. 5103 and
30 transported in a quantity requiring placarding under regulations pre-
31 scribed by the United States secretary of transportation under 49 C.F.R.,
32 subtitle B, chapter I, subchapter C, and is subject to the provisions of 49
33 C.F.R. 397.13 as enacted on December 12, 1994.

34 (c) "Employee" means any person who is employed by an employer
35 in consideration for direct or indirect monetary wages or profit, and any
36 person who volunteers their services for a nonprofit entity.

37 (d) "Employer" means any person, partnership, corporation, associ-
38 ation or organization, including municipal or nonprofit entities, which
39 employs one or more individual persons.

40 (e) "Enclosed area" means all space between a floor and ceiling which
41 is enclosed on all sides by solid walls, windows or doorways which extend
42 from the floor to the ceiling, including all space therein screened by par-
43 titions which do not extend to the ceiling or are not solid or similar struc-

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1 New Sec. 8. If any provision of sections 1 through 8, and amend-
2 ments thereto, or the application thereof to any person, thing or circum-
3 stance is held invalid, such invalidity shall not affect the provision of ap-
4 plication of sections 1 through 8, and amendments thereto, that can be
5 given effect without the invalid provision or application, and to this end
6 the provisions of sections 1 through 8, and amendments thereto, are de-
7 clared to be severable.

8 New Sec. 9. (a) The board of county commissioners of each county
9 in the state by resolution shall submit to the qualified voters of the county
10 a proposition to make the county subject to the provisions of sections 1
11 through 8, and amendments thereto. The proposition shall be submitted
12 to the voters at a general election of the county held not more than 180
13 days after the effective date of this act.

14 (b) Upon the adoption of a resolution calling for an election pursuant
15 to subsection (a) ~~or (f)~~, the county election officer shall cause the follow-
16 ing proposition to be placed on the ballot at the general election: "Shall
17 _____ county be subject to the provisions of the Kansas uni-
18 form smoking prohibition act?"

19 (c) The election provided for by subsection (a) ~~or (f)~~ shall be con-
20 ducted, and the votes counted and canvassed, in the manner provided by
21 law for question submitted elections of the county.

22 (d) If a majority of the votes cast and counted at an election under
23 subsection (a) is in favor of making the county subject to the provisions
24 of the Kansas uniform smoking prohibition act, then on and after January
25 1, 2009, the county shall be subject to the provisions of sections 1 through
26 8, and amendments thereto.

27 (e) If a majority of the votes cast and counted at an election under
28 subsection (a) is against making the county subject to the provisions of
29 the Kansas uniform smoking prohibition act, the county shall not be sub-
30 ject to the provisions of sections 1 through 8, and amendments thereto,
31 except that such county shall still be subject to the provisions of subsection
32 (f) of this section and the provisions of K.S.A. 21-4009 through 21-4014,
33 21-4016 and 21-4017, and amendments thereto.

34 ~~(f) In the event a majority of the votes cast and counted at an election
35 held pursuant to subsection (a) or this subsection is against making the
36 county subject to the provisions of the Kansas uniform smoking prohibi-
37 tion act, the board of county commissioners may at any time after such
38 election by resolution submit to the qualified voters of the county a prop-
39 osition to make the county subject to the provisions of sections 1 through
40 8, and amendments thereto. The proposition shall be submitted to the
41 voters of the county at the next general election of the county which
42 follows adoption of the resolution by more than 90 days. If a majority of
43 the votes cast and counted at an election under this subsection is in favor~~

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1 of making the county subject to the provisions of the Kansas uniform
2 smoking prohibition act, then on and after January 1 of the year imme-
3 diately following such election, the county shall be subject to the provi-
4 sions of sections 1 through 8, and amendments thereto. If a majority of
5 the votes cast and counted at an election under this subsection is against
6 making the county subject to the provisions of the Kansas uniform smok-
7 ing prohibition act, the county shall not be subject to the provisions of
8 sections 1 through 8, and amendments thereto, except that such county
9 shall still be subject to the provisions of this subsection and the provisions
10 of K.S.A. 21-4000 through 21-4014, 21-4016 and 21-4017, and amend-
11 ments thereto.

12 ~~(g)~~ No county shall be subject to the provisions of sections 1 through
13 8, and amendments thereto, until such county has elected to be subject
14 to the provisions of sections 1 through 8, and amendments thereto, pur-
15 suant to this section. At such time the county shall become subject to the
16 provisions of sections 1 through 8, and amendments thereto, on such date
17 as provided in subsection (d) ~~or (f)~~, whichever is applicable.

(f)

18 Sec. 10. K.S.A. 21-4012 is hereby amended to read as follows: 21-
19 4012. (a) Any person found guilty of smoking in violation of this act K.S.A.
20 21-4010, 21-4011, section 3 or section 4, and amendments thereto, is guilty
21 of a misdemeanor punishable by a fine of not more than \$20 for each
22 violation. Any person found guilty of failing to post signs as required by
23 this act, is guilty of a misdemeanor punishable by a fine of not more than
24 \$50.:

- 25 (1) Not exceeding \$100 for the first violation within a one-year period;
- 26 (2) not exceeding \$200 for a second violation within a one-year pe-
27 riod; or
- 28 (3) not exceeding \$500 for a third or subsequent violation within a
29 one-year period.

30 For purposes of this subsection, the number of violations within a one-
31 year period shall be measured by the date the violations occur.

32 (b) Each individual allowed to smoke by a person who owns, man-
33 ages, operates or otherwise controls the use of any public place, or other
34 area where smoking is prohibited, in violation of subsection (b) of section
35 5, and amendments thereto, shall be considered a separate violation for
36 the purposes of determining the number of violations under subsection
37 (a).

38 (c) In addition, the department of health and environment, or local
39 department of health, may institute an action in any court of competent
40 jurisdiction to enjoin repeated violations of this act.

41 Sec. 11. K.S.A. 65-530 is hereby amended to read as follows: 65-530.

42 (a) As used in this section:
43 (1) "Day care home" means a day care home as defined under Kansas