

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Vice Chairman Terry Bruce at 9:35 A.M. on March 19, 2008, in Room 123-S of the Capitol.

All members were present except:

John Vratil- excused
David Haley arrived, 9:44 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:

Representative Terri Huntington
Representative Jason Watkins
Richard Routman
Kenn Frederick
Jim Parker, Prairie Trace Community Association

Others attending:

See attached list.

The Vice Chairman opened the hearing on **Sub. HB 2826—Enacting the homeowners' association act.**

Representative Terri Huntington testified in support, stating with an aging population, more and more Kansas residents are choosing to live in maintenance free developments resulting in large maintenance funds governed by a board of directors (Attachment 1). The bill attempts to solve a series of problems incurred by residents of these associations whose boards circumvent the bylaws by directing home associations to abide by their bylaws, hold open meetings and elections, and provides a method for the Attorney General's office to mediate disputes. Representative Huntington distributed a balloon amendment providing clarifying language that Homeowners Association cannot change declarations, covenants, or bylaws of the association without the approval of voting homeowners (Attachment 2).

Richard Routman appeared in support, suggesting several clarifying amendments to the bill (Attachment 3).

Kenn Frederick spoke in favor, stating the need for protection of property owners, (Attachment 4).

Jim Parker testified in opposition, providing several concerns with the bill especially regarding renters or lessees, mediation costs to associations, and notification to homeowner associations regarding enactment of the bill (Attachment 5).

Written testimony in support of **Sub. HB 2826** was submitted by:

Representative Jason Watkins (Attachment 6)

There being no further conferees, the hearing on **Sub. HB 2826** was closed.

The Vice Chairman provided a summary of the Subcommittee Report on **HB 2617—Mandatory implied consent testing for serious injury and fatality accidents.** The committee discussed the report.

The Vice Chairman called for final action on **HB 2188—Professional screening panels.** Senator Bruce reviewed the bill and noted a technical correction that was required.

Senator Journey moved, Senator Donovan seconded, to amend HB 2188 by inserting a period, "." on page 5, line 8. Motion carried.

Senator Haley moved, Senator Lynn seconded, to recommend HB 2188 as amended, favorably for passage. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:35 A.M. on March 19, 2008, in Room 123-S of the Capitol.

The Vice Chairman called for final action on **Sub. HB 2545–Controlled substances, ecstasy**. Senator Bruce reviewed the bill.

Senator Journey moved, Senator Donovan seconded, to recommend **HB 2545** favorably for passage. Motion carried.

Vice Chairman Bruce polled the committee regarding attendance to Thursdays's scheduled committee meeting. Since a quorum will not be present, he announced the meeting for Thursday, March 20, 2008 will be canceled.

The meeting adjourned at 10:30 A.M. The next scheduled meeting will be March 24, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/19/08

NAME	REPRESENTING
Callie Hattle	Ks Assn for Justice
Scott Heidner	Ks Assn of Defense Counsel
LANE WATK	Judicial Branch
RICHARD ROUSMAN	Self
Jane Rhye	KCDD
Chip Wheelen	HCSF Board
Sky Westerland	KS chapter: NASW
Helen Pedigo	KSC
Brenda Nauman	KS C
JEAN MILLEC	CAPITOL STRATEGIES
Ed Klump	KACP + KPOA
Randy Newzell	Kansas Judicial Council
Jim Parker	2 H.O. assns.
BOB HJETLAND	H.O. ASS'N
Kathryn Kist	self
Whitney Janna	Ks Bar Assn.
Margaret Frank	KBOR
Sennifer Henneman	KBOR

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TOPEKA
—
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: ECONOMIC DEVELOPMENT
MEMBER: COMMERCE & LABOR
TRANSPORTATION
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

March 19, 2008

**Senate Judiciary
Testimony for House Substitute for HB 2826
Homes Association Duties and Dispute Resolution Process**

Chairman Vratil, Vice Chairman Bruce, and Ranking Minority Goodwin:

Thank you for your consideration of House Sub for HB 2826 pertaining to Homes Associations. As you are no doubt aware, with an aging population, more and more Kansas residents are choosing to live in maintenance free developments, whether they be gated communities, patio homes, or apartments. Many of these residences are governed by Homes Associations, for which residences pay into a maintenance fund large sums of money in order to receive snow removal services, lawn and landscaping services, and street maintenance. These associations are governed by a board of directors elected by members of the Homes Association, usually with annual or bi-annual elections.

This bill attempts to solve a series of problems incurred by residents of Homes Associations whose Board of Directors circumvent the bylaws, which often times prevents resolution to grievances brought before the Board. It's a property rights bill, and it is the first step in codifying what many states have legislated in several pages of statutes.

It directs homes association governing boards to abide by their bylaws, to hold open meetings and elections, and if not, provides a method through the Consumer Protection Division of the Attorney General's office to mediate disputes so that residences may resolve issues without hiring an attorney and resorting to a civil suit.

I've attached a balloon that addresses technical clean up and provides clarification of how bylaws maybe amended.

Thank you.

Terrie W. Huntington
25th District

Substitute for HOUSE BILL No. 2826

By Committee on Commerce and Labor

2-26

9 AN ACT concerning homeowners' associations and associations of apart-
10 ment owners; relating to certain duties, required procedures, attorney
11 fees, dispute resolution and duties of the attorney general.
12

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

14 Section 1. (a) For the purposes of this act:

15 (1) "Act" means the homeowners' association act.

16 (2) "Dispute" means a disagreement regarding the rights or obliga-
17 tions of the homeowners' association or the home owners, apartment
18 owners or residents.

19 (3) "Homeowner's association" means a for-profit homeowners' as-
20 sociation, a non-profit homeowners' association as defined in K.S.A. 60-
21 3611, and amendments thereto, and an association of apartment owners
22 as defined in K.S.A. 58-3102, and amendments thereto.

23 (4) "Mediation" shall have the meaning ascribed to it in K.S.A. 5-
24 502(f), and amendments thereto.

25 (5) "Resident" means a real property owner or lessee whose property
26 is subject to the jurisdiction of a non-profit homeowners' association as
27 defined in K.S.A. 60-3611, and amendments thereto. The term shall not
28 include persons renting or leasing a home, apartment or condominium
29 unit subject to the authority of a for-profit homeowners' association or an
30 association of apartment owners.

31 (b) Sections 1 through 6, and amendments thereto, shall be known
32 and may be cited as the homeowners' association act.

33 Sec. 2. The governing board of a homeowners' association, herein-
34 after referred to as the board of directors, is subject to the following:

35 ~~(a) The board of directors may amend the by laws of the association~~
36 ~~only upon approval of a majority of homeowners, apartment owners or~~
37 ~~residents voting in person or by proxy at a duly noticed and duly consti-~~
38 ~~tuted homeowners, apartment owners or residents meeting.~~

39 (b) The board of directors may not vary any obligations imposed by
40 state law on the homeowners' association or its board of directors by
41 creating or amending by-laws or by any other authorization.

42 (c) All elections for the membership on the board of directors shall
43 be by secret ballot and conducted in a manner to assure the integrity of

(a) The governing board of homeowners' association shall not amend or abridge the declarations, covenants or bylaws of the association without approval of property owners voting at a duly noted meeting as prescribed by the association bylaws.

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Attachment 2

KANSAS SENATE
Judiciary Committee
Hearing on Substitute for House Bill No. 2826
Regarding Homeowners' Associations and Associations of Apartment Owners
March 19, 2008
Topeka, Kansas

Statement of Richard Routman of Prairie Village, Kansas

Thank you, Mr. Chairman, and to your committee for this opportunity.

The House Committee on Commerce and Labor has produced a thoughtful and measured approach to the governance issues of homeowners' associations (and by that term I intend to include associations of apartment owners). I would like to take a minute to tell you why you should think so as well. I also would like to suggest some clarifying refinements to the bill.

The Bill sets up a natural two-step progression which starts by first educating residents and directors of their corporate rights and obligations and second by providing a practical incremental method for enforcing those rights.

Taking education first, the bill sets out a statement of certain principles in Section 2 and calls upon the attorney general in Section 6 to fill in any gaps on those and other issues with a website which provides best governance practices. Associations are required to address certain issues by establishing procedures as well. That is in Section 3.

As far as implementing those principles and best practices, residents who are disaffected with their associations' actions have a right to a non-binding, two-hour mediation and the association is obligated to participate. While this procedure will not resolve every dispute, it will help clarify the parties' positions and either set the stage for settlement or help narrow the scope of the dispute. The Kansas Dispute Resolution Act will apply to that mediation. If disputes cannot be resolved in mediation, residents will be able to consider litigation based on the merits of their claims rather than the cost of a lawsuit, thanks to the fee-shifting provision for the successful residents contained in Section 4.

I have the following suggestions for adjustments in the bill:

1) Section 2 should require the association to provide a resident access to and, if requested, copies of association records, including budget and financial records, within a reasonable period but not later than 10 business days following receipt of a written request by a person designated by the board. (This could be largely accomplished by moving the language in Section 3 (b) and (c) to Section 2.) Language should be added indicating that a) any cost to the resident for copies should not exceed the reasonable and prevailing commercial duplication costs for copying and b) access to records should be free to the resident.

2) Section 2(a), add "absentee ballots" following "voting in person."

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- 3) Section 2(b), add “or rights granted to residents by state law” before “creating or amending by-laws...).
- 4) Section 2(d) and (e), combine both subsections, making the first subsection the general rule and the second subsection the exception.
- 5) Section 2(f), substitute 30 days for 15 days.
- 6) Section 3, delete “Except as provided in this section.”
- 7) Section 3, substitute “by-laws” for “rules” or clarify what rules are.
- 8) Section 3(a), add language giving the election monitors general oversight responsibility for the election procedures in addition to their ballot receiving, tallying and reporting duties.
- 9) Section 3(b) and (c), move both sections to Section 2, as noted earlier in this testimony.
- 10) Section 3(d), add “voluntary binding and nonbinding dispute resolution procedures” in lieu of the language there and add an exception for the mandatory mediation provided for in Section 5, which should be in full force upon the effective date of the Act.
- 11) Section 3(e), move this language to a new section and require associations to implement it within 60 days of the effective date of the Act.
- 12) Section 4, add “substantially” before “prevail.”
- 13) Section 5, add language making it clear that the Kansas Dispute Resolution Act (K.S.A §5-501) applies to the mediation undertaken pursuant to this Act.
- 14) Section 6, add “Within 30 days of the effective date of this Act,” at the beginning of the first sentence.
- 15) Section 6(a)(5), add a reference to copying.
- 16) Section 6(a)(10), at the end of the sentence, add “including all of the items referenced in Sections 2 and 3 of this Act.”

Submitted by:
Richard Routman
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My name is Kenn Frederick. I reside near the Wanamaker corridor (Topeka's retail business district). I have resided in "maintenance-free" communities for most of my adult life. In every case I was also a board member for the HOA.

I have been able to observe these de facto, quasi-governments as they regulate residents first hand at the neighborhood level. I have dealt with issues from the perspective of the executive board as we went about the business of levying fines to non-compliant property owners and dealing with issues like crime and drug traffic.

I also understand the issues from the perspective of frustrated homeowners when dealing with an apathetic or sometimes uncooperative executive board. Additionally, I have observed Owner Association boards that would autocratically promulgate rules that might fundamentally infringe upon the Constitutional property rights of its resident property owners. One example of this might be the unilateral decision of a board to restrict, ban or otherwise prohibit one from renting or leasing their property. It is for this reason that I am here to testify in support of Bill 2826.

You do not have to look far for evidence of changes in real estate patterns. Even around the city of Topeka much of the new residential development is taking the form of "planned community" subdivisions and maintenance-free neighborhoods. This is indicative of the fact that neighborhood and Homeowner Associations are becoming increasingly prevalent. In many states you will find that the majority of all new homes built are under some type of Home Owner Association restriction or membership.

Kansas statutes do make detailed provision for the establishment of HOA's, however, unlike other states we have not taken the additional steps of regulating their activities as a means to protect the property rights of their owner members. We are one of the few states that have not established guidelines for the conduct of these governing associations. However, with a projected rise in planned development communities for the retiring baby boom generation and today's two income working families, we surely need to begin this process of HOA accountability.

Bill 2826 attempts to establish these accountability measures. It creates a framework by which future amendments can easily be made. It affords home owners in an Association environment the bare necessities that they will need to ensure that their voting rights and stockholder rights in these legally described, "Not-for-profit Corporations" will be protected.

In subsequent years, Kansas may need to adopt many of the same uniform laws regulating commonly shared communities that other states have. To do this we will need to consolidate the Kansas Apartment Ownership Act, the Kansas Town Home Ownership Act and any other laws pertaining to Common Interest Real Estate. Such an Act would need to incorporate the following: A clearer definition of the rights and responsibilities of developers in common interest developments, the rights and responsibilities of Owner Association executive boards, and the rights and responsibilities of the homeowner membership.

By consolidating all these congruent statutes, we would be in effect "cleaning up the books". Many states have already done this and should we decide to follow suit then the new consolidated law would read as the Kansas Common Interest Ownership Act. Bill 2826 which we are considering today could be the framework by which we can expand or consolidate the laws pertaining to this issue of commonly owned properties.

So what is the intent of this bill and what will it do for Kansas homeowners? It

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Attachment 4

simply establishes a baseline that ensures that the democratic process and property rights of the member owners will be preserved and observed by developers and the Association leadership. Additionally, this bill seeks to provide easy resolution to grievances of Homeowners in Association by establishing rules for mediation. Most other states that have comprehensive HOA laws have already adopted rules for mediation as a means to keep the court system from getting burdened by excessive neighborhood, property right disputes. This bill seeks to provide a better means of Association self governance for those choosing to live in association with one another while also striving to protect the basic rights of each individual home owner.

Perhaps the most important provision of this bill is the section which would prevent an Association board from unilaterally or autocratically manipulating the "Constituents Documents" without the majority consent of the voting association membership.

Note: The "Constituent Documents" are the (i) Declarations; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Association; and (iii) the governing bylaws of the Home Owners Association.

Note: Some states include covenants to this list of Constituent Documents and prohibit Board of Directors from unilaterally making adjustments to a properties covenants. However, in Kansas I do not think this would be necessary to add to that list since any change or amendment to homeowners covenants must also be validated in the Declarations.

Should the legislature pass this bill this session it would be a big win for supporters of property rights. As Senators, you will have the opportunity to send a message to your district that you support the protection of homeowners property rights, even those Homeowners residing in Association.

TESTIMONY - SENATE JUDICIARY COMMITTEE (March 19, 2008)
SUBSTITUTE FOR HOUSE BILL NO. 2826

TO: Honorable Members of the Senate Judiciary Committee and Committee Staff

Good morning. My name is Jim Parker. I'm appearing before you today on behalf of Prairie Trace Community Association (of which I am an unpaid Board member) and Quail Creek Homeowners Association, Inc. (for which I serve as a paid Bookkeeper). Both Associations are non-profit, as defined in K.S.A. 60-3611, and are managed by unpaid homeowner volunteers who are themselves members of their respective Associations.

I'm testifying in opposition to three provisions of this Bill but not necessarily to the Bill itself. These concerns were discussed with the Board of Directors of each Association at their March monthly Board meetings.

Our first concern is the first sentence in Section 1, paragraph (5). Linking "real property owner" and "lessee" as "residents" and then frequently referring throughout the Bill to "or residents" is a problem. There seems to be an attempt to confer equal standing to "someone renting from a homeowner" and "the homeowner". This contradicts legal relationship specifications in the Covenants and Bylaws of most, if not all, homeowners' associations, particularly those that are "non-profit corporations". Generally speaking, Covenants and Bylaws of homeowners' associations assume "non-owner residents" (renters, lessees, etc.) have no participatory rights regarding operations of the Association, nor does the Association have any obligation to provide them with minutes or other Association documents, whether requested or not (although they often do so voluntarily). The Association is only required to communicate with the homeowners, and the homeowners have the responsibility for communicating with their "non-owner residents", as required. Likewise, "non-owner residents" have the right to communicate with their homeowner landlords, not the homeowners' association directly. **We feel that all of Section 1, paragraph 5 should be deleted, along with the many references throughout the Bill to "or residents".**

Our second concern is the second sentence in Section 5, paragraph (e). This states that the homeowners' association shall always bear two-thirds of the mediation costs, regardless of which party initiates the request for mediation. That might sound reasonable where a "for-profit" homeowners' association, which might have the financial resources with which to absorb such a cost, is involved; however, we feel it is unreasonable that a "non-profit" homeowners' association, in which the collective homeowners (including the complainant) would have to indirectly share in the costs, would automatically be required to assume two-thirds of the mediation cost. **We feel this sentence should be amended to either show that the mediation cost would be determined by the mediator at the end of the mediation process (not to exceed two-thirds of the cost for either party), or that the mediation cost would be borne on a two-thirds basis by whichever party initiates the request for mediation.**

TESTIMONY - SENATE JUDICIARY COMMITTEE (March 19, 2008)
SUBSTITUTE FOR HOUSE BILL NO. 2826

TO: Honorable Members of the Senate Judiciary Committee and Committee Staff

This Section 5 is of concern to Quail Creek Homeowners Association, whose 2008 budget is \$128,000. It does not apply to Prairie Trace Community Association, whose 2008 budget is \$87,000, per specifications in paragraph 5 (i).

Our third concern is Section 6, paragraph (b). According to their meeting minutes, when the House Commerce and Labor Committee was working this Bill on February 25, 2008, Representative Brunk asked Renae Jefferies from the Revisor's Office "how the homeowners' association would know to implement these changes required by the act. Renae said that it was usually (*my emphasis*) in the newspaper. They would learn of it the same way that they do any change in the law." Most, if not all, homeowners' associations are required to hold annual meetings, but these may take place at any time of the year, depending upon the associations' Covenants and Bylaws. It seems conceivable that a homeowners' association could have an annual meeting after publication in the Kansas register but before publication in the local newspaper, thus being in violation of the law through no fault of theirs. **We think a better solution would be to require the Secretary of State's Office to notify all homeowners' associations throughout the state within 30 days after publication in the Kansas register.** After all, homeowners' associations are required to be registered with, and to have paid the appropriate annual fee to, the Secretary of State's Office, which has a complete record of such associations and does, from time to time, send out mailings to the various associations.

Thank you for the opportunity to discuss this Bill with your Committee. I would be glad to answer any questions or concerns you may have.

Respectfully Submitted,



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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
AGRICULTURE AND NATURAL RESOURCES
APPROPRIATIONS
JUDICIARY

March 19, 2008

Mr. Chairman and Members of the Committee,

Thank you for allowing me to testify in support of Sub. HB 2826. I have had the opportunity to experience both the benefits and disadvantages of Home Owners Associations. I have also had the opportunity to serve as an officer and president of a Home Owner's Association. These experiences have allowed me to realize that HOAs serve a purpose and are necessary in many neighborhoods and developments. However, I have also come to the realization that in too many instances a select few people can make life unnecessarily difficult.

Home Owners Associations are similar to small governments. In fact, their decisions probably impact the daily lives of those they govern more than most governmental units. They certainly have the ability to incite anger and emotion as a result of their decisions and approach to governance. They set dues similar to taxes. They pass and enforce rules and regulations and set and approve building standards. Despite this, they have very few laws regarding their operation.

Last session we required HOAs to hold open meetings and supply their members with financial information upon request. Along these same lines HB 2771 attempts to inject a little more fairness into HOA and member interactions and provide for equal footing.

Thank you for your consideration.

Regards,


Jason Watkins

Senate Judiciary

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Attachment 6