



KANSAS BAR  
ASSOCIATION

**TO: The Honorable Lance Kinzer**  
And Members of the House Judiciary Committee

**FROM: Martin W. Bauer**  
On Behalf of the Kansas Bar Association

**RE: HB 2205 – Adoption, hearing and notice of waiver**

**DATE: February 13, 2013**

Good afternoon Chairman Kinzer and Members of the House Judiciary Committee. My name is Martin W. Bauer and I provide this written testimony in support of HB 2205 on behalf of the Kansas Bar Association. I have practiced in the area of adoption for over 30 years and wrote the chapter on adoption for the Kansas Bar Association's Family Law Handbook.

Imagine you are a foster family who has had a foster child in your home for more than a year, often 3 or 4 years, parental rights are terminated and all appeals are finished. Then you wait longer for the adoption subsidy agreement and the Kansas Department for Children and Families to send the attorney packet. Then, when apparently ready, you and the child are now being told you cannot finalize the adoption for at least 30 days.

Imagine further that the child has special needs and the adoption tax credit is about to expire unless you can finalize the adoption by December 31, 2012.

The proposed bill gives a Kansas court the ability to grant an adoption immediately. Kansas courts have construed K.S.A. 59-2133 as establishing a 30-day waiting period as jurisdictional. The situations described above have happened in my practice. The goals of the adoption statute are to satisfy and balance the due process rights of the parents with the interests of the State of Kansas in permanency and safety of children in this state.

The proposed amendment is a simple solution to quicker permanency for children. In addition, the amendment would have no fiscal cost to the State of Kansas and, in fact, would usually save the state money because the payment to the foster parents would end unless the child is deemed to have special needs and qualifies for the federal subsidy.

In the first situation, parental rights are terminated and all the requirements for an adoption are complete. The 30-day waiting period serves no purpose.

In the second situation, losing the adoption credit was a reality in 2012. For any person trying to adopt in Kansas in 2012, to qualify for the adoption tax credit, the adoption had to be

filed by November 28, 2012. The adoption tax credit was then reinstated by the federal legislation passed to avoid or defer the “fiscal cliff.” Even under the new adoption tax credit, the credit is deferred unless you can file and finalize the adoption in the same year. For families adopting children with special needs, or middle income families, the adoption tax credit may tip the balance of whether they can afford to adopt the child. Again, the adoption tax credit creates no fiscal drain on the State of Kansas and may increase available spending and the fiscal stability of the adoptive parents’ home. Fostering these outcomes are in the best interests of the children being adopted.

K.S.A. 59-2133 makes clear that, unless waived, due process notice to the parents is still required. By eliminating the 30-day period, it would be prudent to add language to the statute that required a minimum of 10 days’ advance notice such as “In independent and stepparent adoptions, 10-day advance notice ....” The waiver language is consistent with the provision of the Kansas Guardian Statute, K.S.A. 59-3063(b) that allows for a guardianship to be granted immediately if one of the birth parents signs the Petition for the Guardianship. An immediate hearing would be appropriate in Child In Need of Care-generated adoptions as Kansas Department for Children and Families can include a waiver of notice in its attorney packets. It could also be appropriate if both parents have consented and waived notice and all other requirements of the Adoption and Relinquishment Act have been satisfied.

The amendment will place a greater onus on attorneys and judges to be sure that

(1) due process notice has been given to the birth parents;

(2) the Interstate Compact for the Placement of Children has been satisfied if applicable and documentation filed with the Court. K.S.A. ' 59-2128(a)(11);

(3) the Indian Child Welfare Act has been declared satisfied or not applicable. K.S.A. 59-2128(a)(11);

(4) that post-placement visitations have been completed to satisfy the Interstate Compact if applicable or the licensing requirements of the Kansas Department of Health and Environment.

However, given the interests of children, this onus is not unreasonable.

On behalf of the Kansas Bar Association, I thank you for the opportunity to provide this written testimony to the committee in support of HB 2205.

*About the Kansas Bar Association:*

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. [www.ksbar.org](http://www.ksbar.org)