



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

Supplemental Testimony in Support of House Bill 2502

**Presented to the House Judiciary Committee
By Lee J. Davidson, Assistant Attorney General**

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Chairman Barker and Members of the Committee, I would like to clear up an inaccuracy in the testimony of Jean Giles Phillips in opposition to HB 2502.

Ms. Phillips claimed that the law does not allow motions or petitions brought under K.S.A. 60-1507 to be amended. That is not the case.

In *Pabst v. State*, 287 Kan. 1, 23, 192 P.3d 630 (2008), our Supreme Court held that K.S.A. 60-1507 motions are treated as “pleadings” under K.S.A. 60-215, the statute governing amended and supplemental pleadings. While the Court found that automatic amendment as a matter of right provided in K.S.A. 60-215(a)(1) did not apply to K.S.A. 60-1507 proceedings, K.S.A. 60-215(a)(2) did apply. Under that subsection, pleadings may be amended with either the opposing party's written consent, or the court's leave, which should be freely given when justice so requires.

More recently, the Court affirmed *Pabst* and clarified that K.S.A. 60-1507 motions may be amended by leave of the court under K.S.A. 60-215(a)(2). *Thompson v. State*, 293 Kan. 704, 710-14, 270 P.3d 1089 (2011).

Thank you again for your consideration.

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