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Opponent for HB 2523
House Judiciary Committee
February 4, 2020

Chairman Patton and members of the Committee:

My name is Kip Elliot. I am an attorney at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy system in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities. I represent people with disabilities in service animal and assistance animals in housing discrimination.

In February 2019, I appeared before this committee as an opponent on HB 2152 which was brought by the same associations who are proposing HB 2523. Chairman Patton requested a Judicial Council study of the K.S.A. 39-1102 *et seq.*, the Kansas “White Cane Act.” The request by Chairman Patton was for “a more in-depth review of current federal and state law regarding service animals and accessibility” to update the “White Cane Act” to ensure it is in compliance with the Americans with Disabilities Act as amended and the Fair Housing Act.

I was a member of the Judicial Committee Advisory Committee on Disability Access which ultimately proposed the “Kansas Assistance Animals in Housing Act” and the “Kansas Service and Therapy Animals Act.” During the meetings of the Advisory Committee Ami Hyten, attorney and Executive Director of the Topeka Independent Living Resource Center, and myself noted that the Department of Housing and Urban Development (HUD) was reviewing its regulatory guidance for assistance animals in housing.

On February 28, 2020, the day before HB 2523 was formally introduced, HUD released their guidance document for landlords to assess reasonable accommodation requests for assistance animals in housing. The guidance “is provided as a tool for housing providers and persons with a disability ... and provides a set of best practices for addressing requests for reasonable accommodations to keep animals in housing...” The HUD guidance can be found here: <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>. This guidance “should be read together” with HUD’s Fair Housing Act (FHA) regulations; HUD/DOJ Joint Statement on Reasonable Accommodations under the FHA; the ADA; and DOJ’s regulations and guidance on service animals.

HB 2523 conflicts with the new HUD guidance in significant ways, including requiring tenants to request a reasonable accommodation for an assistance animal in writing; denying a request for a reasonable accommodation for an undue administrative burden; balancing the disability-related needs of all residents; and definitions as defined by Kansas law instead of the ADA, DOJ, FHA and/or other federal laws. Additionally, HB 2523 may cause housing providers to overstep a

request for documentation of a person's disability. The new HUD guidance should be reviewed for this information to avoid possible fair housing complaints and/or federal lawsuits.

During the advisory committee meetings, much emphasis was placed on criminalizing individuals for misrepresenting the need for an assistance animal. HB 2523 also includes criminal liability to providers of housing. DRC strongly opposes criminalizing individuals who a housing provider perceives as "misrepresenting" a need for an assistance animal. As suggested in the new HUD guidance, "a housing provider, at its discretion, may make the truth and accuracy of information provided during the process part of the representations made by the tenant under a lease or similar housing agreement to the extent that the lease or agreement requires the truth and accuracy of other material information."

HUD guidance also addresses the problems surrounding documentation from the internet – a problem that many people with disabilities also agree that can be a problem. However, we are living in an age where Telehealth and Telemedicine is much more common and frequent, including therapy through the Community Mental Health Centers in Kansas.

DRC provides advocacy and legal services to numerous clients utilizing assistance animals in housing. We understand that there are people who take advantage of these situations but we also experience numerous situations in housing, in private businesses and in cities and towns that deny legitimate services to people with disabilities and their assistance animals.

DRC opposes HB 2523 as submitted and would encourage this Committee to defer action until further action is taken in light of the new HUD guidance.

Thank you for the opportunity to share our opposition to this bill. I would be happy to stand for questions at the appropriate time.