

Approved: MARCH 16, 1994  
Date

## MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on February 17, 1994 in Room 254-E of the Capitol.

All members were present

Committee staff present: Mary Galligan, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:  
See attached agenda

Others attending: See attached list

Sen. Oleen welcomed committee members and guests and announced the committee will be hearing two bills today with a number of conferees. She stated each bill will be given approximately 25 minutes and asked each conferee to limit remarks and told committee members written testimony has been distributed.

Sen. Oleen announced the hearing for SB 723 and introduced Mary Galligan, who gave a briefing on the bill. The following appeared and gave testimony as proponents:

Gary Pettijohn, (Attachment 1);  
Dan Boyd, (Attachment 2);  
Charles Stephenson, (Attachment 3);  
Dale Williams, (Attachment 4);  
John Zemites, (Attachment 5).

The following appeared and gave testimony as opponents:

Jeff Gitlin, (Attachment 6);  
Ira Rakley, (Attachment 7);  
Jerry Basson, (Attachment 8).

Mr. Pettijohn's testimony contained several amendments recommended by the KBI, and members questioned proponents if they also supported the amendments. Some of the proponents stated they could agree to the KBI amendments. Sen. Oleen closed the hearing on SB 723.

Sen. Oleen opened the hearing for SB 721, and requested those wanting to appear from out of town to let her know and they would be given priority. She asked Mary Galligan to brief the committee on the bill. Ms. Galligan distributed copies of the current statute (Attachment 9) to the committee. She stated this bill would repeal the smoking statute and fold of exemptions set out in the bill. She also stated Section 9 of the bill establishes policy, and the bill would move enforcement from the Department of Health and Environment to the Department of Revenue.

Sen. Oleen introduced George Puckett, who appeared to support the bill (Attachment 10). He stated there are errors in the bill and offered two amendments (Attachment 11). Sen. Oleen introduced Dr. Phillip Allen who offered testimony (Attachment 12) opposing the bill. Sen. Oleen announced the hearing for SB 721 will be continued tomorrow and asked both proponents and opponents to let Jeanne know if they will appear tomorrow.

Sen. Praeger introduced pages from her district who have been assisting the committee today.

Meeting adjourned at 12:00.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 17, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
ALAN COBB	Wichita	Wichita Hospital
DAN BOYD	Wichita	GKI
CAROLYN HALL	WICHITA	BOWMAN NAT'L SECURITY
Dale Williams	Garden City	Williams Investigations & Security
Gray Pettijohn	KBI Topeka	KBI
JOHN KITE	TOPEKA	KBI
LINDA BURAND	TOPEKA	KBI
PJ Schwermann	Topeka	KBI
H.S. STOKES	NC	RJRT
Ron Horn	Topeka	RJR
Jim Clark	Topeka	KCDAA
Anne Smith	Topeka	Ks. Assoc. of Counties
Terry Leatherman	Topeka	KCCI
Cathy Holdeman	Wichita	City of Wichita
Joe Herold	Topeka	self
Hillary M. Allen, MD	Wichita	Tobacco-Free Wichita
JUNE ALLEN	1526 Farmsted 67204	Enviro-Health Concerns
Ronald Snodgrass	Topeka	KFDA
Frances Kastner	" "	Ks Food Dealers Assn
Robert E Swafford	" "	OCDAP/KDHE Tobacco Control
Donnie Surjanic	Topeka	Am. Cancer Soc.
Betty Davies	Topeka	Am. Cancer Soc.
Brian Milsin	Topeka	Tobacco Free Kansas
IRA H. KAKLEY	OVERLAND PARK	IRA H. KAKLEY KCO
Ferry Dason	Platte	Ferry Dason

# GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 17, 1994

[illegible]





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
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Testimony on Behalf of Attorney General Robert R. Stephan  
Presented by Special Agent Gary Pettijohn

Senate Committee on Federal and State Affairs  
Re: Senate Bill 723  
February 17, 1994

On behalf of the Attorney General, I am here to present  
testimony in support of S.B. 723.

One of the more unusual statutory functions granted the Attorney General is licensing private detectives, authorizing firearm permits and certifying firearm trainers. A comprehensive review of the private investigative act was undertaken by the Attorney General's office in consultation with the licensing program administrators from the Kansas Bureau of Investigation (who administer the act on behalf of the Attorney General) and representatives from the private detective community. The proposed amendments which appear in S.B. 723 resulted from that review. I would like to address the major changes.

Licensing is changed from the present scheme of licensing private detective agencies as well as individuals to a scheme of licensing individual private detectives only. Not only would the new approach be consistent with other professional licensing acts, implementation and record keeping would be greatly simplified. The present arrangement of licensing some private detectives as "agencies," others as "individuals" employed at an agency and still others as "independents" is cumbersome, confusing and time consuming. As long as a person meets the licensing requirements established for protection of the public, the licensing entity (in this case the Attorney General) is not concerned with whether the persons has an ownership interest in a private detective business, is employed by such a business or is self-employed. Numerous amendments throughout S.B. 723 reflect this philosophy.

The present requirement of a \$10,000 bond, insurance policy or deposit for all private detectives is eliminated. In its stead is a \$100,000 liability insurance requirement for those private detectives who also have been issued a permit to carry a

*Senate Fed. State*  
*Feb. 17, 1994*  
*Attachment #1*



concealed gun and for those who are certified as a firearms trainer. It is the position of the Attorney General that those private detectives who are authorized to carry a concealed firearm pose a measure to risk of physical injury to the public. Financial protection to a person injured the negligent discharge of a gun is afforded by this liability insurance requirement.

Since 1972 the Attorney General's budget (through the KBI) has absorbed the cost of implementing the licensing of private detectives because license fees have been paid into the general fund. To move towards a fee funded program, S.B. 723 raises license fee ceilings and establishes a private detective fee fund. The higher license fee for private detectives will cover a two year license term in place of the present one year term; the license term for firearm permit holders and firearm trainers will continue to be one year.

Other amendments within S.B. 723 would accomplish the following:

- \*Clarify, strengthen and simplify initial and renewal license requirements.
- \*Authorize 120 day temporary private detective permits.
- \*Eliminate the requirement for licensed private detectives to register their car in Kansas.
- \*Add authority to censure, limit or condition a private detective license.
- \*Eliminate the requirement of a hearing prior to denying a license. (However, pursuant to the Kansas administrative procedure act, an applicant who is denied a license retains the right to request a hearing.)
- \*Add authority to define unprofessional conduct by rules and regulations.
- \*Language and intent is clarified.
- \*Responsibilities of licensees are modified.

Following the introduction of S.B. 723, representatives from the KBI, the private detective community and the attorney general's office met to discuss some points of dispute. Agreement was reached on three of the four issues which are reflected in the attached proposed amendments to the bill.

The remaining point of dispute concerns the prohibition against private detectives using a badge in connection with the

activities of his or her business. (S.B. 723, p. 9, lines 7-8). Despite the rationale expected to be presented by the Kansas Association of Private Investigators, the Attorney General strongly believes that the potential for the public to mistake a private detective with a law enforcement officer and the potential for misuse or abuse of the apparent authority indicated by a badge is too great to authorize the use of a badge by private detectives.

We urge your support of S.B. 723 which will result in placing the licensing of private detectives on a more sound financial basis, simplifying the licensing process, elimination of burdensome requirements and clarification of language, intent and responsibilities. Ultimately, these changes are consistent with the policy of protecting the public who is served by this profession.

1 business in this state unless such person is licensed as a private  
2 detective under this act.

3 ~~(b) It shall be unlawful for any person to engage in business~~  
4 ~~in this state as a private detective agency unless such person~~  
5 ~~is licensed therefor.~~

6 ~~(e) (b)~~ No law enforcement officer or any person who holds a  
7 special commission ~~or any form of law enforcement commission~~ from  
8 any law enforcement agency of the federal government or of the  
9 state or any political subdivision thereof may be licensed as a private  
10 detective ~~or private detective agency.~~

11 Sec. 3. K.S.A. 75-7b03 is hereby amended to read as follows:  
12 75-7b03. The following persons shall not be deemed to be engaging  
13 in detective business:

14 (a) A person employed exclusively and regularly by one employer  
15 in connection only with the *internal affairs or investigations* of such  
16 employer and where there exists an employer-employee relationship;

17 (b) any officer or employee of the United States, or of this state  
18 or a political subdivision thereof while engaged in the performance  
19 of the officer's or employee's official duties;

20 (c) a person engaged exclusively in the business of obtaining and  
21 *in* furnishing information as to the financial rating of persons;

22 (d) a charitable philanthropic society or association duly incor-  
23 porated under the laws of this state which is organized and main-  
24 tained for the public good and not for private profit;

25 (e) an attorney performing duties as an attorney *or an agent of* employee  
26 *an attorney performing duties on behalf of the attorney;* or law firm  
exclusively or law firm

27 (f) a licensed collection agency or an employee thereof while  
28 acting within the scope of employment, while making an investigation  
29 incidental to the business of the agency, including an investigation  
30 of the location of a debtor or a debtor's property where the contract  
31 with an assignor creditor is for the collection of claims owed or due  
32 or asserted to be owed or due or the equivalent thereof;

33 (g) admitted insurers, agents and insurance brokers licensed by  
34 the state, performing duties in connection with insurance transacted  
35 by them;

36 (h) the legal owner of personal property which has been sold  
37 under a conditional sales agreement or a mortgagee under the terms  
38 of a chattel mortgage in connection with the recovery of such personal  
39 property;

40 (i) any bank subject to the jurisdiction of the state bank com-  
41 missioner of the state of Kansas or the comptroller of currency of  
42 the United States;

43 (j) a person engaged solely in the business of securing information

(i.e. "or an employee of an attorney or  
law firm performing duties  
exclusively on behalf of the  
attorney or law firm."



or conduct business from any location other than that shown on the records of the attorney general as ~~his or her~~ *such licensee's* principal place of business unless ~~he or she~~ *the licensee* has received a branch office certificate for such location after compliance with the provisions of this act and such additional requirements necessary for the protection of the public as the attorney general may prescribe by regulation. A licensee shall notify the attorney general in writing within ~~ten (10)~~ 10 days after closing or changing the location of a branch office.

Sec. 11. K.S.A. 75-7b11 is hereby amended to read as follows: 75-7b11. (a) ~~Except as provided in subsection (b), no license shall be issued under this act unless the applicant (1) files with the attorney general a corporate surety bond executed by a company authorized to do business in this state in the sum of \$10,000, or (2) files with the attorney general a certificate of insurance showing that the applicant has general liability insurance providing coverage for bodily injury or property damage caused by negligence, errors or omissions, or intentional acts (including assault and battery) and for personal injury caused by libel, slander, false arrest, false imprisonment, invasion of privacy, wrongful entry, wrongful eviction or malicious prosecution, or (3) deposits \$10,000 in cash with the state treasurer. The bond or return of the deposit shall be conditioned on the faithful and honest conduct of business by such applicant.~~

(b) No applicant who is or will be employed by a licensee to engage in the business of the licensee shall be required to obtain such bond or certificate of insurance or make such deposit. (a) No firearm permit nor any firearm trainer certificate shall be issued under this act unless the applicant files with the attorney general a certificate of insurance showing that the applicant has general liability insurance providing coverage at the limits of \$500,000 for bodily injury or property damage caused by negligence, errors or omissions.

(c) The attorney general shall approve each bond filed under this section as to form, execution and sufficiency of the sureties. Such bond shall be taken in the name of the people of this state and may be continuing in nature. (b) The attorney general shall approve any certificate of insurance filed under this section as to form, execution and sufficiency of coverage evidenced thereby.

(d) Any person injured by any unlawful act of an applicant or an applicant's employees or agents, whether licensed or not,

or licensee demonstrates

\$100,000

Proof of such coverage may be demonstrated by (1) a certificate of insurance issued in the applicant's or licensee's name, or (2) a certificate of insurance issued in the name of the employer of the applicant or licensee which provides such coverage on behalf of applicant or licensee.

1 information obtained in the course of employment, or knowingly  
2 publishing a *libel or pronouncing a slander or a libel* in the course  
3 of business;

4 (2) *using committing an illegal means act* in the collection or  
5 attempted collection of a debt or obligation;

6 (3) manufacturing evidence; and

7 (4) acceptance of employment adverse to a client or former client  
8 relating to a matter with respect to which the licensee has obtained  
9 confidential information by reason of or in the course of the licensee's  
10 employment by such client or former client.

11 Sec. 15. K.S.A. 75-7b15 is hereby amended to read as follows:

12 75-7b15. (a) Each ~~private detective or detective agency licensee~~  
13 operating as provided in this act, shall be required to keep a complete  
14 record of the business transactions of such ~~detective or detective~~  
15 ~~agency, and licensee~~. *Any licensed private detective who is the*  
16 *owner or custodian of records of business transactions shall retain*  
17 *such records for at least three years. Each licensee,* upon the order  
18 of the attorney general, shall give free and full opportunity to inspect  
19 the same and to inspect reports made; but any information obtained  
20 by the attorney general shall be kept confidential, except as may be  
21 necessary to commence and prosecute any legal proceedings. When  
22 any ~~detective or detective agency licensee~~ requires any report of  
23 an agent or employee to be made verbally, a digest shall be made  
24 of such verbal report and this digest, together with the written  
25 reports, shall be kept on file in the office of the ~~private detective~~  
26 ~~or detective agency licensee~~.

upon complaint made or information received *and*

27 (b) For the purpose of enforcing the provisions of this act, and  
28 in making investigations relating to any violation thereof or to the  
29 character, competency and integrity of the applicants or licensees  
30 ~~hereunder~~, and for the purpose of investigating the business, busi-  
31 ness practices and business methods of any applicant or licensee, ~~or~~  
32 ~~of the officers, directors, partners or associates thereof~~, the at-  
33 torney general shall have the power to subpoena and bring before  
34 ~~him or her~~ *the attorney general* any person in this state and require  
35 the production of any books, records or papers which ~~he or she~~ *the*  
36 *attorney general* deems relevant to the inquiry, *including, but not*  
37 *limited to, the records described in subsection (a).* The attorney  
38 general also may administer an oath to and take the testimony of  
39 any person, or cause ~~his or her~~ *such person's* deposition to be taken,  
40 except that any applicant or licensee ~~or officer, director, partner~~  
41 ~~or associate thereof~~ shall not be entitled to any fees or mileage.  
42 A subpoena issued under this section shall be governed by the code  
43 of civil procedure. Any person duly subpoenaed, who fails to obey

Article 7b Name of act changed from "Private Investigative or Security Operations" to more accurate "Private Detective Licensing and Firearm Permit Act"

75-7b01, Definitions

(a)(1) - clarify definition of "detective business" so that it does not include law enforcement activities

(a)(4) - add investigating fraud to definition of "detective business"

(a)(6) - add conducting polygraph and electronic truth verification testing to definition of "detective business"

(c) - delete definition of "private detective agency"

(d) - include specific definition of "law enforcement officer" as opposed to referencing K.S.A. 21-3110

(g) - clarify permit authority to carry concealed firearm

(h) - redefine "firearm" consistent with Kansas case law

(j) - add definition of "good moral character"

(l) - add definition of "special commission"

75-7b02, License required

(b) delete reference to private detective agency

(b) clarify prohibition against law enforcement officers from being licensed as private detectives

75-7b03, Exemptions from licensure

(a) clarify exemption which pertains to person employed by one employer

(e) clarify attorney exemption to extend to employees of attorneys and law firms (i.e. paralegals, law clerks)

75-7b04, Licensure; application; references; qualifications; hearing; grounds for denial of license

(a) delete reference to private detective agency

(a)(1) - add requirement of residence address and post office box number if any



- (a)(3) - amend regarding required statement from "general nature of detective business" to "type of private detective business"
- (a)(4) - delete reference to classifications
- (a)(4) - clarify requirement for information about applicant
- (a)(5) - amend requirement of "two recent photographs" to "two photographs taken within 60 days prior to application"
- (a)(6) - add application requirement of employment history in place of experience qualifications
- (b) - eliminate distinction between references for in-state and out-of-state applicants; eliminate specified geographic area for references; replace with requirement of "five or more reputable citizens who have known the applicant for a period of at least 5 years"
- (c) - delete reference to private detective agency
- (c)(4) - add license requirement of high school graduation or graduate equivalency examination (GED)
- (c)(5) - add license requirement: not imcompetent, incapacitated or impaired by reason of mental condition, deficiency or disease
- (c)(6) - add license requirement: not dishonorably discharged from military
- (d) - delete requirement of hearing prior to denying license
- (d)(4) - include conviction of crime of violence as basis to deny license
- (d)(5) - include wider range of prior disciplinary action as basis to deny license
- (d)(6) - include wider range of prior disciplinary action as basis to deny license
- (d)(9) - include addiction, dependence or abuse of alcohol or drugs as basis to deny license
- (e) - add authority to issue 120 day temporary licenses
- (f) - add authority to charge \$15 fee for application forms and materials

75-7b05, License fees -

- (a) - amend amount for private detective license fee to \$350  
(for two year license)
- (a) - delete private detective agency license fee
- (b) - delete \$18 application fee for applicant who will work  
for private detective agency
- (b) - add renewal fee of \$300

75-7b06, License; form; display; pocket card; license

- (b) - delete reference to private detective agency; delete  
requirement to "turn in" pocket card on change of employment;
- (c) - delete requirement that officers/partners of private  
detective agency be licensed

75-7b07, License renewal; responsibility; license not  
assignable -

- (a) - establishes two year license period; authorize the  
attorney general to establish manner, form and conditions of  
renewal of private detective license; add requirement of two  
new photographs with renewal; delete specific statutory  
renewal language
- (b) add license not transferable
- (c) add grandfather provision to allow private detective  
agency operators to renew as individual licensed private  
detectives

75-7b08, Information confidential -

- (a) - clarify language; delete reference to private detective  
agency
- (b) - delete reference to private detective agency
- (b)(3) - delete prohibition against contingency fees
- (b)(5) - allow use of alias for undercover investigative  
activities

75-7b09, Record of employees - technical change

75-7b10, Soliciting or advertising

Change requirement of advertising only as name and address appear in AG's records to prohibition against using any false, misleading or deceptive information in advertising

75-7b11, Surety bond, liability insurance or deposit with treasurer

- (a) eliminate requirement for private detectives
- (b) add \$100,000 liability insurance as requirement for firearms trainers and firearms permit holders
- (c) delete reference to bond requirement
- (d) delete as refers to bond or deposit requirement

75-7b12, Same; failure to maintain on file

- (a) eliminate requirement for private detectives to maintain bond/insurance/deposit; add continuing liability insurance requirement for firearms trainers and firearms permit holders
- (b) delete reference to bond requirement

75-7b13, Suspension or revocation of license; grounds; hearing

- (a) add authority to censure, limit or condition license, as well as suspend or revoke
- (a)(4) - add conviction of crime of violence as basis for disciplinary action
- (a)(10) - delete reference to "runner or capper"; add specific conduct as basis for disciplinary action
- (a)(11) - add prohibition against committing act of unprofessional conducts as defined by rules and regulations

75-7b14, Same; grounds; hearing

- (a) and (b) - add authority to censure, limit or condition license, as well as suspend or revoke



(a)(2) - change advertising requirement of using name under which licensed to prohibition against using false, misleading or deceptive information in advertising

(b)(1) - clarify language

(b)(2) - clarify language

75-7b15, Records and reports; inspection

(a) - specify three year record retention requirement; delete reference to private detective agency; tie attorney general business records inspection authority to incidents of complaints or reception of information

(b) - delete reference to private detective agency; technical change

75-7b16, Motor vehicles required to be registered in this state - Eliminate

75-7b17, Firearms permit, etc.

(a) - clarify permit authority to carry concealed firearm

(b) - amend amount of application fee from \$10 to \$50

(b)(3) - add requirement of two sets of classifiable fingerprints

(b)(4) - add requirement of two photographs taken within 60 days of application

(c) - clarify permit authority to carry concealed firearm

(d) - technical change; clarify no requirement to report firearm discharge during firearm training

(e) - add authority to revoke or suspend firearm permit upon violation of act or regulations, or when permit holder can not longer demonstrate need to carry firearm

(g)(2) - add authority to deny firearm permit to mentally impaired or incompetent person

(g)(2) - add authority to deny firearm permit to person with drug/alcohol abuse, dependence or addiction problem

(h) - add authority of attorney general to renew firearm permits annually in form, manner and on conditions of attorney general, including demonstrated continuing need to carry concealed firearm; renewal fee of \$50

75-7b18, Attorney general exclusive jurisdiction -

- (a) - eliminate reference to private detective agencies

75-7b19, Penalties - technical change

75-7b20, Licensure; examination; interview; investigation

- (a) - delete reference to private detective agencies
- (a)(1) - add licensing exam to cover law of private detectives as well as knowledge of the business
- (b) - delete reference to private detective agencies
- (a)(2) - delete requirement or pre-licensure oral interview
- (b) - delete reference to private detective agencies

75-7b21, Trainers

- (b) - delete reference to agencies
- (b)(4) - add requirement that firearm trainer be licensed private detective
- (c) - amend amount of application fee from \$25 to \$100; add requirement that trainer include written examination as part of training
- (d) - delete reference to agencies
- (d)(3) - add requirement that trainer be knowledgeable in firearms training and lawful use of force
- (e) - amend renewal fee from \$25 to \$250; add authority of attorney general to establish renewal requirements

NEW 75-7b22, Disposition of moneys

provide that private detective license fees, firearm permit fee and firearm certification fees flow to licensing entity, i.e. the AG



# CENTRAL KANSAS INVESTIGATIONS

P.O. BOX 75004  
WICHITA, KANSAS 67275-0004  
(316) 722-1609

#1-14 ch. 2  
SB 723

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*Dan Boyd*

Ladies and gentlemen I'm here to represent the people in our industry in Wichita, Salina, Pratt, Coffeyville, Emporia and other cities in our region of the state. I can say this because in the last few days I have talked to more than 22 independent private investigators and 15 agency owners and have received their comments on this Senate Bill. I have here a list of all of the PI's and agencies in Kansas and have checked the names of all of the people I have talked to.

Except one agency that does not want to see agency licenses discontinued and secondly wants to be able to carry a badge, I have full support for this Senate Bill as it appears before this committee. Further everyone else supports the existing statute that prohibits the use of a badge in our industry. There are those who will make eloquent arguments that seems to justify their use of a badge, but their arguments do not hold water.

After talking to over 37 people in the last few days I have come up with an alternative plan that will provide the same instant identification that some people want that a badge provides. My plan does not involve the legislative process. It can be implemented by the Attorney General and the KBI with little delay if approved. I have explained it to Mr. Pettijohn of the KBI, and I am more than willing to explain the details of my proposal now or after this meeting.

I want to thank you for the opportunity to address this committee and to relay the views of over 20 % of the professionals in our industry.

*alternative plan  
to badge*

*Senate Fed + State  
Feb. 17, 1994  
Attachment # 2*





# CENTRAL KANSAS INVESTIGATIONS

P.O. BOX 75004  
WICHITA, KANSAS 67275-0004  
(316) 722-1609

SB-73(4)

C  
K  
I

## ALTERNATIVE TO BADGES

- #1 Revision of the existing ID cards issued by the KBI.
  - a To possibly have a red border around the edges.
  - b Have the state seal larger than it is.
  - c In large dark type have the letters PI or Detective.
  - d Be laminated before being issued by the KBI.
- #2 The KBI will send a list of all licensed PI's to every law enforcement agency in the state. And will send an updated list as is necessary.
- #3 Send a sample PI ID card to every law enforcement agency.  
This will make every officer familiar with our licenses at a glance. This ID card should be posted at every station.
- #4 A sample ID card will be shown at the Law enforcement academy in Hutchinson to every new class. And a sample ID card should be shown to every class at their annual training.

Attach. 3  
SB 727

# KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS

Post Office Box 70032  
Overland Park, Kansas 66207

COMMENTS AND REMARKS  
SENATE BILL #723

FEBRUARY 17, 1994-TOPEKA, KS

CONFeree: CHARLES P. STEPHENSON  
PRESIDENT-THE KANSAS ASSOCIATION OF PRIVATE INVESTIGATORS

The Kansas Association of Private Investigators was incorporated in the State of Kansas in 1992. Our organizations goals are:

- 1) To provide a state wide organization to promote the Private Investigator profession and provide a vehicle through which members may exchange ideas to educate and professionalize their individual services.
- 2) To formulate and support a professional code of ethics among our membership.
- 3) To provide a forum for communication between the Private Investigation Industry and Governmental Regulatory bodies within the State of Kansas.

Our individual members bring to the profession an extensive and diverse array of investigative skills.

The majority of our members are either former law enforcement officers and/or hold advance degrees and graduate degrees in various investigative disciplines.

That diversity and experience allow our members to provide to the citizens of Kansas, professional investigative services that may not be available through public law enforcement agencies due to budgetary and/or jurisdictional restraints.

At any given time our individual members may be involved in investigative matters that encompass both the criminal and civil state codes. As such, our members frequently interact with and share information with public law enforcement agencies.

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Charles P. Stephenson

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Thus, the Private Investigative Industry augments a strained criminal justice system by providing investigative services to individual citizens in need.

During 1993 and 1994 The Kansas Association of Private Investigators acting in consort with other segments of the Private Investigative Industry, the Kansas Attorney General's office and the Kansas Bureau of Investigation entered into constructive dialogue to modify and update the Private Detective Licensing Act.

Senate Bill #723 is representative of a cumulative effort by both Governmental Regulatory bodies and the Private Investigative Industry.

With singular exception, as President of The Kansas Association of Private Investigators, I would convey to you that our organization supports Senate Bill #723 and I would encourage the members of this committee to do the same.

The following comments and opinions are based on my personal law enforcement experience and interviews with other members of our organization.

I initiated my law enforcement career in Tulsa, Oklahoma in 1965 shortly after returning from Viet Nam. While completing my undergraduate studies at the University of Tulsa I was employed as a Police Officer and Vice Squad Detective with the Tulsa Police Department. In 1971 I was commissioned as a Special Agent with the Federal Bureau of Investigation and during my tenure served with the organized crime squad, fugitive and bank robbery squad. I was a certified firearms instructor for the FBI, a certified police instructor and a special weapons and tactics instructor. I am currently a firearms instructor for the State of Kansas for Private Investigators.

In my career in both public and private law enforcement, I have been involved in numerous fugitive apprehensions and other arrest situations involving the use of deadly force. I have been involved in four "one on one" shooting incidents during my career. I have reviewed the circumstances surrounding literally hundreds of shooting incidents involving law enforcement personnel and private citizens. I have taught basic firearms training and special weapons and tactics at the FBI Academy in Quantico, Virginia and numerous state law enforcement training academies. I have instructed hundreds of individuals in both public and private law enforcement on various issues involving the use of deadly force and firearms handling.

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February 17, 1994 Meeting  
Charles P. Stephenson

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I annually certify between 50-60 Private Detectives in the State of Kansas to carry concealed weapons permits. It is from this vantage point that I individually and acting as President of The Kansas Association of Private Investigators make the following comments.

Our singular exception to blanket approval of the bill is as follows:

At the current time there are approximately 350 commissioned Private Detectives within the State of Kansas. Of that 350, approximately 60 currently hold permits to carry concealed weapons while in the performance of their investigative duties. Those individuals are required to be trained and certified on an annual basis by approved firearms instructors, who themselves have been certified by the Kansas Bureau of Investigation. These individuals represent a cadre of well trained detectives. Unlike others in our profession these individuals are usually involved in complex criminal investigative matters which may place their lives or the lives of their clients in extreme jeopardy.

After eleven years of practice as a Private Detective in the State of Kansas, I am unaware of any situation where a licensed Private Investigator discharged his weapon or brandished his weapon in an illegal or morally reprehensible manner.

Notwithstanding the aforementioned comments, it is critical to remember that this select group of individuals carry their weapons for strictly defensive purposes; unlike the public law enforcement officer who must at times be offensive in the use of deadly force such as when making an arrest.

It is in the deadly force situations that a readily identifiable manner must be available to the individuals involved, to quickly identify those individuals who are legally carrying a firearm vs those individuals who are not.

The mere presence of an ID card inside a shirt or jacket pocket in a fast moving, tense, life threatening situation, does not accomplish this basic personal safety need for both the public and private sector of law enforcement.

Senate Bill #723  
February 17, 1994 Meeting  
Charles P. Stephenson

Page 4

In association with the aforementioned remarks, The Kansas Association of Private Investigators suggest that Section 8-KSA 75-7b08 (4) should read as follows:

Any licensed Private Detective who is issued a concealed weapons permit, while engaged in their private detective duties, may wear a badge to be displayed for identification purposes under the following restraints:

- 1) Said badge must be clearly marked to indicate that the individual is a Private Detective not affiliated with any public Law Enforcement Agency.
- 2) That said badge must be photographed and registered with the KBI to correspond with the particular Private Detective License of the individual utilizing a concealed weapons permit.

In closing, I would commend the efforts of Camille Nohe of the Kansas Attorney General's office, Gary Pettijohn and John Kite of the Kansas Bureau of Investigation and the legislative members of The Kansas Association of Private Investigators who gave their time and effort to bring to you for consideration Senate Bill #723.



SB723④

Attach. 4

# *Williams*

**INVESTIGATIONS & SECURITY  
INC.**

OFFICE

**117 East Laurel  
Garden City, Kansas 67846**

MAILING

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*Senate Fed + State  
Feb. 17, 1994*

*Attachment # 4*



# *Williams*

## INVESTIGATIONS & SECURITY INC.

Williams Investigations & Security, was founded in 1983 by Dale Williams. Williams, a former law enforcement officer, recognized the need for professional loss prevention and detection services, formerly found only in metropolitan areas, to be brought to our rural region.

As the name would suggest, the company's focus has been on private investigations, physical and electronic security. While the safety and security of persons and property remains the company's prime objective, customer relations has dictated the addition of time saving services.

The company continues to upgrade its staff, and the services provided to its valued clients. Through affiliation with professional associations such as the National Fire and Burglary Association and Security Associates International, management and staff are able to bring new equipment, techniques and procedures to the rural regions of Kansas, Oklahoma, Colorado and Texas.

At inception, Williams Investigations & Security operated with a single employee from one division. Currently the company provides professional services through its Alarm Division, Investigative Division, Protective Services Division and Communications Division, all detailed herein.

## ALARM DIVISION

Williams Security, was organized in 1985, approximately one and one half years after the inception of the parent company.

Protection of persons and property has become a major concern to the business community, homeowners and apartment dwellers. Local and national news agencies report daily of burglaries, fires, thefts and related acts of violence.

In response to this urgent problem, Williams Security offers professional analysis, design, installation, service and monitoring of residential, commercial and industrial security systems, detailed herein.

## Fire Detection Systems

Fire related deaths and injuries are on the rise, even in our rural region. Fire has robbed our region of millions of dollars in property damage, lost business revenues and employee lay-offs. Taking into consideration the phenomenal life and property loss our communities have sustained, fire should be looked upon and dealt with like the thief and killer that it is.

Fire detection services offered by Williams Security include, but are not necessarily limited to the following:

- RESIDENTIAL SMOKE DETECTORS
- RESIDENTIAL HEAT DETECTORS
- COMMERCIAL FIRE SYSTEMS
- COMMERCIAL HEAT SYSTEMS
- BEAM SMOKE DETECTORS
- BEAM FLAME DETECTORS
- WATER-FLOW DETECTORS
- SPRINKLER SUPERVISORY FUNCTIONS
- GAS DETECTORS
- 24 HOUR MONITORING

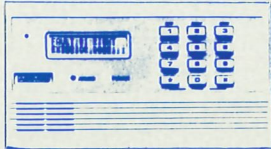




## Intrusion Detection Systems

Burglary, also known as breaking and entering, continues to be one of the fastest growing property crimes in our rural communities and the nation. Often, this so called property crime, results in an act of violence when the perpetrator(s) is(are) startled by you, a family member, a friend, or a co-worker. When this occurs the criminal becomes a cornered animal. Statistics show, this animal not only possesses basic fight and flight instincts, but there is a 40% chance, he/she is under the influence of mind altering drugs. Insurance policies, no matter how high the premium, can not replace life or personal mementoes.

Intrusion Detection Services offered by Williams Security include, but are not necessarily limited to the following:



- GLASSBREAK DETECTION SYSTEMS
- DOOR DETECTION SYSTEMS
- HARDWIRE DETECTION SYSTEMS
- PROFESSIONAL INSTALLATION
- PROFESSIONAL DESIGN & SALES
- FREE ESTIMATES
- MOTION DETECTION SYSTEMS
- OUTDOOR DETECTION SYSTEMS
- WIRELESS DETECTION SYSTEMS
- DO IT YOURSELF SYSTEMS
- COMMERCIAL & RESIDENTIAL LEASE
- 24 HOUR MONITORING

## Additional Security Related Systems

The term security means many things to many people. Therefore, Williams Security has expanded its Alarm Division to include many modern-day security systems.

Additional security related systems offered by Williams Security include, but are not necessarily limited to the following:

- ACCESS CONTROL
- PATIENT MONITORING SYSTEMS
- INDOOR CAMERA SYSTEMS
- HOME AUTOMATION SYSTEMS
- HOLDUP/PANIC SYSTEMS
- SHOPLIFTING SYSTEMS
- OUTDOOR CAMERA SYSTEMS
- DRIVEWAY ALERT SYSTEMS

## INVESTIGATION DIVISION

Williams Investigations, was organized in 1983, to provide professional investigative services across the state of Kansas and the nation.

The oldest division of its parent company, Williams Investigations proudly serves the business community, legal profession, lending institutions, insurance industry and many facets of local, state and federal government.

It is our sincere desire that should you or your organization require the assistance of a professional investigative company, you will contact our office to discuss your specific needs and take advantage of our many services detailed herein.

## Civil Investigations

A Civil Investigation is an attempt to locate, observe or determine activity or wrong doing of persons or property, which at least at the outset does not appear to include any violation of federal, state or local criminal statutes.

Civil Investigative services offered by Williams Investigations include, but are not necessarily limited to the following:

- WORKMAN COMPENSATION
- DOMESTIC
- REPOSSESSIONS
- SKIP TRACE
- CORPORATE FRAUD
- CORPORATE DRUGS
- PRODUCT LIABILITY
- PATENT INFRINGEMENT
- BACKGROUNDS
- WRONGFUL DEATH
- INSURANCE FRAUD
- MISSING PERSONS



## Criminal Investigations

A Criminal Investigation is an attempt to determine whether a crime(s) has or has not been committed, what individual(s) might have been involved, and to what extent their involvement contributed to the loss or suffering of the victim(s).

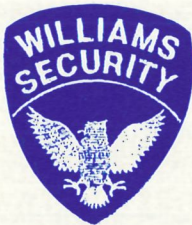
Criminal Investigative Services, both retained and appointed, offered by Williams Investigations include, but are not necessarily limited to the following:

- SUSPICIOUS DEATHS
- THEFT
- CHILD ABUSE/NEGLECT
- ELDERLY ABUSE/NEGLECT
- HOMICIDE
- FRAUD
- MISSING & EXPLOITED CHILDREN
- SEX CRIMES

## PROTECTIVE SERVICES DIVISION

Williams Protective Services Division, is people with protection expertise assisting individuals or organizations with specific security needs or fears.

Protective Services offered by Williams Investigations include, but are not necessarily limited to the following:



- BODY GUARD SERVICE
- PERSONAL SECURITY CONSULTING
- ARMED COURIER SERVICE
- CORPORATE SECURITY CONSULTING
- UNIFORMED ARMED PERSONNEL
- PLAIN CLOTHES ARMED PERSONNEL
- ELECTRONIC SURVEILLANCE
- FIREARMS INSTRUCTION

**NOTE:** Most of Williams Security Personnel are military or law enforcement trained.

## COMMUNICATION DIVISION

Williams Communications was established in 1987, with the association of ST Paging. ST Paging, a division of ST Enterprises, owns and operates a network of commercial paging towers throughout southwest Kansas. Williams Communications was established as their Garden City outlet.

Since inception, the Communication Division has continued to expand and currently offers numerous communication related equipment and services.

Communication Services offered by Williams Communications include, but are not necessarily limited to the following:

- TELEPHONE & PAGER SALES
- CELLULAR PHONE SALES
- SUPERVISORY MONITORING
- TELEPHONE & PAGER RENTALS
- SECURITY SYSTEM MONITORING
- DIGITAL COMMUNICATION SYSTEMS

**NOTE:** Ask for our brochure detailing Digital Communication Systems.



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Dale Williams  
President  
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February 17, 1994  
Senate Bill 723

- \* ) Introduction
- \* ) Overview of SB 723
  - \* ) Purpose
    - \* ) Professionalize Industry
    - \* ) Regulate Industry
    - \* ) Licensing & Regulation of Industry
    - More self-supportive
  - \* ) Impact
    - \* ) Licensing will Increase
    - \* ) Industry more difficult to get into
      - \* ) Individuals in business are more professional & dedicated to the clients they serve.
    - \* ) Fees to Public will go up
      - \* ) Public will get what they pay for
    - \* ) Regulatory Cost will Decrease
      - \* ) Fees increase for Investigators and clients.
      - \* ) User Based Fees not  
Taxpayer Based Fees



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INVESTIGATIVE  
DIVISION  
CRIMINAL INVESTIGATIONS  
CIVIL INVESTIGATIONS  
SKIP TRACE  
REPOSSESSIONS  
CIVIL PROCESS  
ARMED ESCORT SERVICE

COMMUNICATIONS  
DIVISION  
ALARM MONITORING  
PAGER RENTAL AND SALES

ALARM  
DIVISION  
BURGLARY DETECTION EQUIPMENT  
FIRE DETECTION EQUIPMENT  
CLOSED CIRCUIT TV EQUIPMENT  
HOLDUP ALARMS  
MEDICAL ALARMS  
INTERCOM SYSTEMS



\*) Disagreement within Industry

\*) Point of Contention

\*) Carrying of Badge

\*) Abuse

\*) False sense of Security

\*) Closing Remarks

\*) Respond to questions

February 17, 1994

Statement of John V. Zemites in response to proposed revisions of statutes commonly known as the Kansas Private Detective Licensing Act.

To the members of the committee:

My name is John Zemites and I am a native Kansan residing in Shawnee, Kansas. I am a current member of the City Council of the City of Shawnee. I have been licensed as an independant private detective in the State of Kansas for over 3½ years. Prior to that I served 26½ years with the Johnson County Sheriff's Office. Several of those years were spent in criminal investigation including the position of chief of detectives. I am a graduate of the FBI National Academy.

I am here in general support of the proposed revisions of the Private Detective Licensing Act. I believe most of the proposed revisions represent a very positive movement toward the complete professionalization of the field of private investigation.

To be specific, I am in favor of the elimination of "umbrella" licensing of private detective agencies. I know of no other profession that has such a provision. I believe each practioner should fulfill all licensing requirements and act on his/her own merits as an independant, member of of an agency, firm, group, etc.

In the same subject matter, I cannot completely agree with the provisions of exemptions of licensure. Specifically if a person is acting within the scope of the profession then he/she should be properly licensed in order to conduct such business of the profession. As an example, an attorney exclusively employed by XYZ corporation is still required to be licensed as an attorney. In my opinion the only exemptions to licensure should be applied to persons who are subject to previously established Federal/State statutes and/or regulations.

I am in favor of the restrictions of the private detective firearms permit. I am aware of past abuses wherin "bounty hunters" becamelicensed private detectives with fireams permits in order to enforce their authority. Is that a part of the private investigation profession? I think not. I further do not believe the firearms permit should license a person to carry a concealed firearm at any time for any purpose. Self-defense in the face of aggression is a completely separate issue.

A private detective, or private investigator is, by definition, supposed to be a seeker of information, making analyses of such information, drawing conclusions and reporting back to a client. Where is there real need for defensive weapons or other tactics unless the private detective is going beyond the scope of investigation?

*Senate Fed. State*  
*Feb. 17, 1994*  
*Attachment # 5*

Statement of John V. Zemites  
February 17, 1994  
Page 2 of 2 pages

The final issue I wish to touch on is a movement by certain interests in the proposed ability by private detectives to carry and display badges in connection with their business. As stated above, I was a professional peace officer for  $26\frac{1}{2}$  years. I know the significance of a display of a badge as perceived by the general populace. Is there a member of the committee or anyone here present who would carefully stop and inspect a badge?? Or would there be an inclination to perceive being confronted by a public law enforcement officer?? And doesn't every law-abiding citizen cooperate with an "officer"?

I believe the original statutory prohibition of a private detective badge is absolutely correct. Any relaxation of that prohibition will only call for subterfuge and abuse by those who would degrade the profession.

In conclusion I wish to acknowledge that there are "so-called" members of this profession who look upon themselves as Mike Hammer, Rockford or Pepper Anderson. Naturally, these people make a lot of noise, and consequentially members of the legislature might look down on such types. However, I can assure you that there are many of us dedicated to providing a needed service to individuals, attorneys, businesses and corporate entities.

Attach. 6

# ALCOPS, INC.

## ALLIED CORPORATE PROTECTIVE SERVICE

6701 West 64th Street, Suite 221

Overland Park, KS 66202 • (913) 362-0104

### COMMENTS - SENATE BILL No. 723

February 17, 1994

First, I would like to thank the committee members for the opportunity to be heard on this matter. My name is Jeff Gitlin. I am a licensed private detective in the State of Kansas, as well as in other jurisdictions. The company for which I work employs private detectives that have not only been licensed as such in the State of Kansas since the inception of the law in 1975, but were also instrumental in the creation of that law.

Both my company and I oppose Senate Bill number 723 in its present form. While we agree that some reform is necessary, this bill is not the answer. Nineteen years of reform cannot be accomplished in six months. The State agencies involved here seem to be in a frenzied rush to complete and submit this information to the legislature. When it comes to our very livelihood, we are in no hurry to make mistakes.

We certainly appreciate the new found cooperation in the Attorney General's office and the K.B.I. For it was only last year that a lawsuit had to be filed to stop those officials formerly charged with the responsibility of regulating private detectives from violating the very law that they regulated. As a result, you will find many private detectives a bit skeptical of these new changes. We as an industry have always "policed" ourselves. Complaints to the State of misconduct and illegal activity in the past brought responses of "no money...no manpower". It seems that the proposed resolution for the lack of funding is to **raise our fees by one thousand percent**. Fees of this nature would have a tremendous negative impact on our industry.

We have been told by State officials that the purpose of these changes is quite simply to "protect the health, safety, and welfare of the public". Yet there is virtually no regulation of those who would be most likely to threaten the "health, safety, and welfare of the public". In fact, private patrol operators (guards) are **exempt** from this act. Just so you know all of the facts, there are only three hundred or so private detectives licensed in the State. Of those, only sixty have firearms permits. Believe me when I tell you that we are far less likely than the hundreds of armed private guards to threaten the "health, safety, and welfare on the public".

We would ask for the continued cooperation of the K.B.I. and the Attorney General's office to bring about necessary and reasonable changes in our private detective law. Further research and discussions are necessary to ensure the success of this endeavor. As private detectives, we will be happy to continue our input and assistance. Indeed we are on the road to success. We simply have not yet reached our destination.

*Senate Fed + State*  
*Feb. 17, 1994*  
*Attachment*  
*# 6*

Security Consultation • Undercover/Legal Investigations • Pre-employment Screening • Skip Tracing

Wire Sweeps • Polygraph • Shopping Service • Theater Investigations • Tenant Screening • Subpoena Service



**Comments – Senate Bill No. 723**

75-7b01 (2) This definition is so broad in nature that it would include countless people who are not engaged in any sort of private detective business. We would like to see a more specific definition of "Detective Business".

75-7b02. Under what circumstances (other than already specified in law) would a person have the need to be "expressly exempted from the provisions of this act"? Why is this necessary? We would like to see some wording that would not only prohibit law enforcement officials from obtaining a private detective license, but also some language that would prohibit them from engaging in "detective business".

75-7b03. (e) – This would allow "an agent of an attorney performing duties on behalf of the attorney" exemption from licensing. If this "agent" is engaging in the detective business, why is he/she not being held to the same standards that private detectives are? The purpose of the revision in the law is to "protect the public" from the "propensity for misconduct" of detectives. Why doesn't the public have the right to be protected from an employee of an attorney that is engaged in detective business. This is discriminatory.

75-7b03 (1) "a private patrol operator" is exempt from licensing. Again, I would question why, if this person is performing the duties defined as detective business, they would not be held to the same standard as private detectives? The purpose of the law (as stated by Camille Nohe) was to "protect the public". Why would a person who would otherwise be disqualified from licensure be allowed to engage in detective business (if they were a private patrol operator). (Thus, creating a greater danger for "the public" to be wronged or harmed).

75-7b04 (8 7) "such other information, evidence, statements or documents as may be required by the attorney general". This language is extremely vague. I would object to giving any person in the attorney general's office carte blanche to request any piece of information that they desire. I would support a specific, reasonable definition of what the attorney general would be able to request/require.

75-7b04 (c)(4) A new qualification for applicants to have a high school diploma or graduate equivalency degree was added. If the applicant is able to pass the test and is able to meet all other qualifications, why would he/she be denied a license solely based on his/her failing to meet this requirement? In other words, what does education have to do with competence?

75-7b04 (c)(7) This section states that each applicant must "comply with such other qualifications as the attorney general adopts by rules and regulations". Once again, this is extremely vague. I would only support a specific, reasonable definition of these

"other qualifications". In effect, this language would allow the attorney general to institute any qualification he/she desired. For example, he/she could rule that all applicant's must have a college degree, police experience, ballet proficiency, etc. Additionally, I would ask that the attorney general adhere to the administrative procedures for promulgating rules and regulations. They have failed to adhere to these procedures in the past. (i.e. Kyle Smith changing the rules and regulations for firearm permit holders without any proper notification or hearing, Melanie Jack also making changes as noted above)

75-7b04 (d)(9) This section address addiction/dependence on alcohol and/or controlled substances. I am not sure that this would comply with the Americans with Disabilities Act and/or Kansans With Disabilities Act. Further, if a person that has "recovered" from an addiction applies with my company to be a private investigator and is denied a license, I would still be required to hire that person in accordance with KDA and ADA. This section would effectively force me to hire a person that may be of no use to me (without the ability to obtain a license).

75-7b05 - 75-7b05 (b) The license fees of \$350 (initial application) and \$300 (renewal) are outrageous. Presently, we have paid an agency fee of \$120.00 and a fee of \$18.00 per year, per investigator. This fee structure would put "the little guy" out of business. Further, this fee structure would limit the number of investigators that a company would be able to hire, thus causing loss of jobs in our field. The economic impact of these fees would be immense. Those investigators that we would normally hire (and license) on a part time basis, as is crucial in our field, would have to be eliminated unless they paid their own fees. Further, there is no provision for pro rating fees. What would stop a prospective private detective from convincing an employer to pay the licensing fee, then moving along to another "employer". This revision provides no protection for the "employer".

75-7b07 (b) This section is confusing, given the proposed elimination of the Agency license. If each person will be issued a detective license as an individual, how can the attorney general hold a "employer" responsible for acts committed by an individual investigator. This whole concept seems unfair. If a police officer commits an illegal act, then the Chief of his/her department is not "legally responsible" for those acts. This language would suggest that an "employers" individual license would be revoked if one of his/her "employees" violated the act. I would suggest this section be modified or eliminated.

75-7b08 ( 3) As private detective, during investigations we occasionally find ourselves in the company of criminals. Accordingly, we occasionally find those criminals being pursued and/or arrested by the police. In a situation where guns are drawn (by police and criminals), our safety, even our lives, may depend on our ability to properly identify ourselves. A badge could prove to be a life saving tool in our profession. The

act already covers the "...use of a title, wear(ing) of a uniform, use (of) an insignia or an identification card or making of any statement with the intent to give the impression that he or she is connected in any way with the federal government, a state government or any political subdivision of a state government...". We all understand that we cannot, and will not, impersonate public officers of the law. We need the right to use a badge.

75-7b11 - 75-7b11 (b) Liability Insurance - Much has been made by the attorney general's office and the K.B.I. of the "need" for firearm trainers and firearm permit holders to have large liability insurance policies. Yet, there is no requirement for private patrol operators or security guards to have such insurance. Any competent person would agree that the likelihood of a security guard using his firearm far exceeds that of the private detective. There is no law addressing the requirements/qualifications for private guard services. The "public need" and "the protection of the public" is the prime reason for the private detective law. Why does this "protection" not apply to those who are most likely to use their weapons? Since the inception of the private detective act, there have been zero instances of a firearm permit holder improperly using his/her weapon. In fact, no one in the attorney general's office or K.B.I. has been able to recall an instance of a firearm permit holder even discharging his/her weapon. In summary, there is no demonstrated "public need" for the \$100,000 liability insurance requirement.

75-7b13. The attorney general may "condition" a license. What exact "conditions" may be placed on a license? I would like to see a specific outline of the circumstances that would warrant conditioning of a license.

75-7b13 (4) "... a crime involving an act of violence, or any crime involving moral turpitude..." I would like the attorney general to specifically define what crimes involving acts of violence would apply. Further, what exactly is "moral turpitude". In our meetings with Camille Nohe and Gary Pettijohn neither could offer a working definition. Yet, they are willing to suspend a license for engaging in such behavior. Websters Dictionary defines "moral" as: 1. the distinction between right and wrong, and the rules of right conduct, 2. conforming to these rules, 3. based on ethical, rather than legal rights, 4. ethically or virtually, but not literally, true, as a moral victory (1, the moral lesson in a fable, experience, etc. 2. moral conduct or character) Turpitude is simply defined as "wickedness; depravity". I would like some examples of "crimes involving moral turpitude" that would not already be addressed in other sections. By the vague definition of this item, it would seem that our own attorney general might not qualify for a private detective license.

75-7b13 (8) I would like a definition of "proper justification". What possible "proper justification" could exist for kidnapping? (as is referred to in this passage)

75-7b13 (10) Since no one seemed to know what a "capper" or a "runner" was, this section was changed to read "...acted as a decoy or lure for any fraudulent or illegal purpose...". I would like to know what this means. Is there an instance that would apply that is not already covered under the provision for suspension by conviction of felony crimes?

75-7b13 (11) This section is too vague. The previous pages of the legislation have addressed situations that would result in suspension or revocation. Why is this general category being created without any limitation or definition? Again, I would like the attorney general's office to comply with the administrative requirements for rules changes.

75-7b15 Records and Reports - In many cases this provision would violate the attorney/client privileged information protection. Further, if the state were to use that information, it could cause their case to be dismissed. This section should be totally rewritten with regard to the justifiable reasons for record examination. The repeated referral to records being maintained by the "licensee" is confusing. What about cases when the licensee is employed by two or more "employers" (formerly agencies). Would the licensee be required to maintain these records? Would the "employer" (formerly agency) be required to maintain these records? I'm certain that many licensees may not have the space and resources to compile and maintain copies of every case that they handle for various different "employers" (formerly agencies) he/she they may work for.

75-7b17 (2) Formerly, the private detective act (and subsequent rules and regulations) required the K.B.I. to provide the firearms training. For an unknown reason, the K.B.I. refused to provide such training. Now it seems that they are willing to accept the training administered by some firearms trainers (who also must pay a fee and insure themselves to become qualified). If the K.B.I. is concerned that the applicant's for firearm permits receive proper training, then why don't they just train them (in accordance with the law)? They could charge reasonable fees for such training. The problem firearms trainers charging exorbitant fees has been encountered. Further, the problem of firearms trainers refusing to train any person that does not work for him has also arisen.

75-7b17 (2)(b) The "new" fee structure increases the fees for firearm permit holders by **ONE THOUSAND PERCENT**. What is the purpose of this fee increase? The proposed changes place the financial responsibility of acquiring firearms training and insurance on the prospective firearm permit holder. What costs exist that would necessitate such a shocking and dramatic increase?

75-7b17 (c) - I would like to see some guidelines for what is considered to be "while the licensee is engaged in the performance of private detective business". Who



would decide whether or not a detective was "engaged in the performance of private detective business"?

75-7b17 (g)(3). Who defines what "abuse" is? This section states that "Such evidence may include but is not limited to conviction of any crime involving the possession, use, consumption or self-administration of alcohol or any controlled substance". This language would allow suspension of a firearm permit for an alcohol related conviction that may have occurred while the licensee was not working and not carrying the firearm. This is unfair and unnecessary. These violations should be limited to acts that occur while the licensee is either carrying their firearm or while engaged in detective business. Once again, felony convictions are already covered by prior language.

75-7b17 (3)(h)(pg 16 of Bill) Firearm permit renewal fees are also **\$100.00, the same as initial application**. What is the purpose for this fee? I am certain that there are not \$100 in costs to renew a single firearms permit. Is the higher fee designed to discriminate against those firearm permit holders (and prospective) holders that are not as financially advantaged as others? Need to carry a firearm should not be affected by economic status. Why is it necessary to submit an additional set of fingerprints?

75-7b18 (b) I would like to see language added that requires the attorney general to adhere to the administrative requirements when adopting rules and regulations. (As their office has **failed** to do so in the past).

75-7b20 (a)(1) Again, the "health, safety, and welfare of the public" is referenced. How would higher fees assist in that regard? Further, I would reiterate that the people **most likely** to discharge their firearms are **not covered** by this act (or held to the same scrutiny and punishment as this act proposes)

75-7b21 (4)(c) Why does a firearm trainer have to pay \$100 to be so recognized? Again, what does **economic status** have to do with **competence**?

75-7b21 (5)(e) The renewal fees for firearms trainers are also \$100.00. Why are they charged such a fee to renew. In actuality, they are doing the job that was refused by the K.B.I., even though it was required by statute/rules and regulations. Why are they being punished economically for bailing out the K.B.I.?

ATTACH. 7  
SB 23  
①

TESTIMONY MY IRA H. RAKLEY  
BEFORE THE FEDERAL AND STATE AFFAIRS COMMITTEE  
OF THE KANSAS SENATE

REGARDING BILL SB723  
PRIVATE DETECTIVE AND FIREARMS LICENSING ACT

The witness testifies as being unalterably opposed to the passage of this Bill.

The reasons for this opposition are as follows:

KSA 75-7b01. (As proposed) Section (a) (1) concerning the definition of crimes or wrong doing as threatened against the political sub-divisions of the United States of State of Kansas and political sub-divisions thereof. It appears that private investigators cannot investigate or report any wrong doing by a law enforcement officers.

75-7b01 section (d) This section defines a law enforcement officer. This section basically states that any person who has any kind of a law enforcement credentials is not eligible for licensing as a private investigator. It should be pointed out that many of the investigators from Northeast Johnson County are license as private investigators by the Kansas City Missouri Board of Police Commissioners as they are sometimes required to work both sides of the stateline on a single case. The KCMO PD Board of Police Commissioners license is a limited law enforcement license. This would preclude private investigators from either having a KCMO license or a Kansas license.

75 -7b01 Section (g) This concerns the definition of a firearms permit and changes not only the previous definition but also KSA 21-4201 (1)(d) by changing the phrase "carrying any pistol, revolver or other firearm concealed on one's person -----" to "carrying a firearm on or "about"-----" a person.

In 1992 the Kansas legislature addressed the problem of adding "about" the person and this additional language was defeated.

Note that this now would include all firearms. ( See (h) below.)

75-7b01 (h) defines weapons not only as a concealed handgun but enlarges the definition to include all firearms. This would include rifles and shotguns.

75-7b03 (e) describes those persons who would be exempt from requiring a license. In that exclusion are persons who are engaged by attorneys. These, among all the catagories of investigators, are the ones who should be among the foremost to be licensed.

75-7b04 (d)(6) states that a license applicant shall be held accountable for that acts of previous associates whether he

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*Attachment #7*

was culpable or not. The witness will let this amendment to the act speak for the it's own ridiculousness.

75-7b07 (a) requires that one set of classifiable fingerprints be submitted each year for license renewal. It is rather doubtful that a persons fingerprints will change from one year to the next. That inclusion of this requirement appears to be a harrassment of the part of the Attorney General and/or the KBI and is another burden upon the licensee that will serve no useful purpose. This will impose a burden on those Police Department that will be requested to take these prints. Also, Police Departments are under no mandate to provide this service.

75-7b08 requires private investigators to report to any law enforcement officer any crime that they may become aware of. It should be noted that a private citizen is not required to act thusly. The private investigator is nevertheless burdened with this responsibility.

The private investigator's client may not wish the discovery of a crime affecting the client disclosed. This happens all the time and for various reasons on the part of the client.

75-7b11 (a) promulgates the insurance requirements for persons wishing issuance of a firearms permit. (Note that this is a firearms permit and not a concealed weapons permit. That would require that every weapon that the private investigator possesses would have to be disclosed to the Attorney General. This would include rifles and shotguns.) This requires licensee would have to obtain his or her own insurance coverage in the amount of \$500,000 in order to be licensed. (The witness has been advised by his insurance agent that companies that write this coverage will only write policies in the amount od \$1,000,000. The premium for this coverage would be in the order of \$1,000.)

This same section requires coverage for errors and omissions. What errors and omissions has to do with casualty coverage in beyond the understanding of the witness. (It appears that the Attorney General's staff is not familiar with what constitutes errors and omissions.)

75-7b13 (a)(11) permits the Attorney General to describe unprofessional conduct concerning private investigators. The witness questions whether anybody on the Attorney General's or KBI's staff is familiar enough with the private investigator industry to make these judgements.

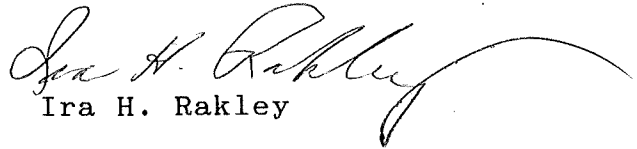
75-7b17 This section attempts to redefine KSA 21-4201 (1)(d) concerning concealed weapons. Again it enlarges the phrase "on a person" to "on or about a person." This has the effect of denying the private investigator the protection of the law as afforded to another citizen.

Above are some more of the more <sup>REGULATIONS</sup> ~~aggressive~~ sections that the Attorney General is proposing.

Broadly the \$350 for a license as a private investigator will have a chilling effect on people who wish to make a career of the profession. This represents an exhorbinant amount to a person who will be making at best \$7.50 an hour. Another chilling effect will be on minorities and women wishing to enter the profession.

The whole outline concerning firearms is nothing more that a back door attempt at gun control and the furtherance of a law enforcement agenda on gun control regardless of consequence to those person in need of a firearm to protect themselves. The witness feels that the Attorney General is overstepping the mandates of office by this activity.

The witness once again urges the Senate committee to reject this bill in it's entirety.

  
Ira H. Rakley

February 17, 1994

RE: Senate Bill #723

SB 723  
C  
Attach. 8

TESTIMONY of Jerry Geraldine Basson license Private Investigator, #D3630, Olathe, KS.

Like most of my colleages, I am a small business person, engaged in the business of Investigations for a fee. I do not have a large clientele. I do not have the support of a multi-million dollar company, however, I have many of the same everyday problems that a large company would have: overhead, expenses, personal needs etc. I am a member of the two duly organized associations of private investigators. Also, I am the interim Secretary of the Mid America Association of Professional Investigators.

I am against Senate Bill #723, for the following reasons:

A fee of \$350.00 every two years is very high. The requirement of a \$500,000 dollar Errors and Omissions Policy is almost prohibitive. The annual rate for a policy of this type begins a \$1,200.00/year.

That equates to a minimum of \$1,500.00 or more than 60 hours of billed time before I even begin to do business. This does not even taken into consideration that I have an office overhead, telephone, business cards, office equipment and all things required to do business.

Now add the cost of my license to carry a weapon at a \$100.00 dollars a year. That now place me at over 65 hours of billed time before I begin to do business.

When I first became a licensed private investigator, I did not believe that I would need a weapon. However, that quickly changed. It only took several incidences, but I did change my mind about carrying a weapon.

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One night while on surveillance in the Stock Yards area of Kansas City, Kansas watching midnight deliveries of inventory, a black man, approximately 225 lbs., 6'2" tall, one gold front tooth, wearing more gold than Krigels sells in a day, walked up to my car and began urinating on the front tire. He knew that I was there. He wagged a weapon at me that would have made John Wayne Bobbit envious. Since I was not certified to carry a weapon and had not applied for a permit, I did not have a weapon on me. I was definitely frightened.

Another incidence, while on a job in Concordia, Kansas, several crew members of a particular company were doing drugs. When I tried to withdraw from the situation the crew chief, a not so big man lunged at me. I did not have a weapon then either, so I decked him.

However, without a doubt the most frightened situation occurred in the course of investigating a company legally licensed to manufacture a product that is more dangerous than either a gun or a knife: Aluminum Phosphate. While in a meeting with the company's president, he pulled out a gas mask and a large silver canister that resembled an oversize aerosol can of raid. He then proceeded to tell us that this small canister could kill all present in less time than thirty minutes. Having done my homework, I knew he was correct. This product is more easily accessible than a gun. The product is available at most feed and grain stores under many different labels. It is used to kill rodents in grain silos. It dissipates without residue within 3 hours. Death would be from undetermined causes.

After this case I became sufficiently alarmed as to the dangers inherently associated with the field of private investigations. When the next scheduled class for weapons training became available, I applied, became certified by Noah L. Goddard, and submitted by application to carry a fire arm, which was granted.




In conclusion, private investigators are subjected to many dangers. The Private Investigators I have met are prudent people, who care about their job, their profession and their professional status. They are members of the same associations that I belong to, they subscribe to rigid moral and ethical standards. The Licensed Professional Investigators, I have met are willing to comply to all of the laws of Kansas and have attested to this by the fact that they have applied for and have been granted a license. They carry the prescribed bond and/or insurance, they are not reluctant to having continuing education and/or qualifying for their firearms permits. They are in fact a well documented and known entity. I am not aware of any problems with a licensed investigator who is licensed to carry a weapon. Plus, the KBI has the ability to monitor those licensed investigators who have legal permits to carry weapons.

I personally believe:

- A. The suggested fees are too high for most licensed Investigators.
- B. The fee to carry a weapon is too high. Regulations that attempt to more closely regulate those who carry will place us at risk from the very element we are investigating.
- C. As a small business person, that these new rules will and are an attempt to over-regulate an enterprise that is already well regulated.

Thank you for allowing me the opportunity of testifying to my prospective of the Private Investigators field and Senate Bill #723 from the vantage point of a not so easily frightened, but wary, 5'3 1/2" female investigator of normal proportions who wishes to be able to remain in business and have the availability of a firearm for personal safety.

Sincerely,

  
Jerry Basson

Attach. 9

CODE; VIOLATIONS OF PERSONAL RIGHTS

21-4013

convicted of crime. Obtaining money or other thing of value by this means is a species of theft and is prohibited by section 21-3701.

This section restates part of former K.S.A. 21-2451.

**21-4007. Hypnotic exhibition.** (1) Hypnotic exhibition is:

(a) Giving for entertainment any instruction, exhibition, demonstration or performance in which hypnosis is used or attempted; or

(b) Permitting oneself to be exhibited for entertainment while in a state of hypnosis.

(2) "Hypnosis," as used herein, means a condition of altered attention, frequently involving a condition of increased selective suggestibility brought about by an individual through the use of certain physical or psychological manipulations of one person by another.

(3) Hypnotic exhibition is a misdemeanor punishable by a fine of not to exceed fifty dollars (\$50).

**History:** L. 1969, ch. 180, § 21-4007; L. 1978, ch. 125, § 1; July 1.

**Source or prior law:**

21-2471, 21-2472, 21-2473, 38-703.

**21-4008.**

**History:** L. 1975, ch. 310, § 1; Repealed, L. 1987, ch. 110, § 7; July 1.

**21-4009. Smoking in a public place; definitions.** As used in this act: (a) "Public place" means enclosed indoor areas open to the public or used by the general public including but not limited to: Restaurants, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, educational facilities, libraries, courtrooms, state, county or municipal buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities.

(b) "Public meeting" includes all meetings open to the public.

(c) "Smoking" means possession of a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

**History:** L. 1987, ch. 110, § 1; July 1.

**21-4010. Same; smoking in public place prohibited, exceptions; designated smoking areas.** (a) No person shall smoke in a public place or at a public meeting except in designated smoking areas.

(b) Smoking areas may be designated by proprietors or other persons in charge of public places, except in passenger elevators, school

buses, public means of mass transportation and any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation.

(c) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

**History:** L. 1987, ch. 110, § 2; July 1.

**Attorney General's Opinions:**

Statutes are penal, subject to strict construction; designated smoking area is not limited, subject to existing local regulation. 87-89.

**21-4011. Same; posting smoking prohibited signs and designated smoking area signs; proprietor or person in charge of public place authorized to establish designated smoking area.** The proprietor or other person in charge of the premises of a public place shall post or cause to be posted in a conspicuous place signs clearly stating that smoking is prohibited by state law. The person in charge of the premises shall also post or cause to be posted in any designated smoking area, signs stating that smoking is permitted in such room or area. The proprietor or person in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area.

**History:** L. 1987, ch. 110, § 3; July 1.

**21-4012. Same; unlawful acts; penalties; action to enjoin repeated violations.** Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than \$20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than \$50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.

**History:** L. 1987, ch. 110, § 4; July 1.

**21-4013. Same; local regulation of smoking.** Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and this act.

**History:** L. 1987, ch. 110, § 5; July 1.

*Senate Feb. 17, 1994*  
*Attachment #9*

**21-4014.** Same; severability. If any provision of this act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions of application of this act that can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

**History:** L. 1987, ch. 110, § 6; July 1.

#### Article 41.—CRIMES AGAINST THE PUBLIC PEACE

**21-4101.** Disorderly conduct. Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (a) Engaging in brawling or fighting; or
- (b) Disturbing an assembly, meeting, or procession, not unlawful in its character; or
- (c) Using offensive, obscene, or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

Disorderly conduct is a class C misdemeanor.

**History:** L. 1969, ch. 180, § 21-4101; July 1, 1970.

**Source or prior law:**

21-949, 21-950.

**Judicial Council, 1968:** This section covers conduct formerly called disturbing the peace. The phrase "disorderly conduct" is thought to be a more accurately descriptive one. Also the section seeks specifically to identify the conduct prohibited.

The section is based upon Minnesota Criminal Code, 609.72, with additions.

#### Law Review and Bar Journal References:

Possible misuse of broad conspiracy statute, "Kansas New Conspiracy Law," Larry R. O'Neal, 19 K.L.R. 799, 800, 806, 808 (1971).

#### CASE ANNOTATIONS

1. Conviction hereunder affirmed; no prejudicial error in trial court's exercise of discretion on extent of cross-examination. *State v. Parker*, 213 K. 229, 516 P.2d 153.

2. Elements of crime hereunder may be proven even if one person other than defendant present during alleged conduct. *State v. Polson*, 225 K. 821, 822, 823, 825, 826, 594 P.2d 235.

3. Statute withstands constitutional challenge for overbreadth when construed to prohibit speech within limited category of "fighting words." *State v. Huffman*, 228 K. 186, 187, 188, 189, 191, 192, 193, 612 P.2d 630.

4. Mentioned in discussing meaning of "reasonable"; not unconstitutionally vague as used in 21-3608(1)(b). *State v. Fisher*, 230 K. 192, 193, 631 P.2d 239 (1981).

5. Disorderly conduct not lesser included offense in prosecution for obstructing legal process, 21-3808. *State*

*v. Carpenter*, 231 K. 235, 236, 241, 242, 642 P.2d 998 (1982).

6. Conduct based solely on speech; instruction erroneous which does not require jury to find speech constituted "fighting words." *State v. Heiskell*, 8 K.A.2d 667, 668, 670, 666 P.2d 207 (1983).

7. "Fighting words," regardless where uttered, constitute disorderly conduct. *State v. Beck*, 9 K.A.2d 459, 461, 682 P.2d 137 (1984).

8. Mentioned in considering grounds for "stop and frisk" seizure. *State v. Mayfield*, 10 K.A.2d 175, 178, 694 P.2d 915 (1985).

9. Cited; statute (21-4113) proscribing harassment by telephone not constitutionally overbroad. *State v. Thompson*, 237 K. 562, 564, 701 P.2d 694 (1985).

10. Cited; "name calling" as not included in category of non-constitutionally protected speech such as "fighting words" examined. *City of Wichita v. Hughes*, 12 K.A.2d 621, 625, 752 P.2d 1086 (1988).

**21-4102.** Unlawful assembly. Unlawful assembly is the meeting or coming together of not less than five (5) persons for the purpose of engaging in conduct constituting either disorderly conduct, as defined by section 21-4101, or a riot, as defined by section 21-4104, or when in a lawful assembly of not less than five (5) persons, agreeing to engage in such conduct.

Unlawful assembly is a class B misdemeanor.

**History:** L. 1969, ch. 180, § 21-4102; L. 1971, ch. 107, § 3; July 1.

**Revisor's Note:**

For Source or Prior Law and Judicial Council comment, see 21-4105.

**21-4103.** Remaining at an unlawful assembly. Remaining at an unlawful assembly is willfully failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

Remaining at an unlawful assembly is a class A misdemeanor.

**History:** L. 1969, ch. 180, § 21-4103; July 1, 1970.

**Revisor's Note:**

For Source or Prior Law and Judicial Council comment, see 21-4105.

**21-4104.** Riot. Riot is any use of force or violence which produces a breach of the public peace, or any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, by five (5) or more persons acting together and without authority of law.

Riot is a class A misdemeanor.

**History:** L. 1969, ch. 180, § 21-4104; L. 1971, ch. 107, § 4; July 1.

**Revisor's Note:**  
For Source  
see 21-4105.

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# KANSAS RESTAURANT AND HOSPITALITY ASSOCIATION

WICHITA - HEADQUARTERS OFFICE  
359 SOUTH HYDRAULIC  
WICHITA, KANSAS 67211  
(316) 267-8383  
FAX (316) 267-8400

TOPEKA - LEGISLATIVE OFFICE  
500 S. KANSAS AVE., SUITE "K"  
TOPEKA, KANSAS 66603  
(913) 235-6300  
FAX (913) 235-5454

My name is George Puckett and I represent the Kansas Restaurant and Hospitality Association. The KRHA supports SB 721 in an effort to establish a uniform state smoking law as it pertains to smoking in public places. Serious problems have developed for many of our restaurant members from recent proposed local ordinances in Overland Park and in Wichita. We believe, as a result of these experiences there is a need to seek assistance from the state regarding the matter of smoking in public places. KRHA opposes smoking bans at local levels because of its negative impact on business, the potential loss of business to adjacent cities without such ordinances, the negative impact on the tourism and convention industry, and the loss of a city's consideration as a potential site location for new restaurants.

KRHA's position is not one of support for an individual's right to smoke, nor is it opposed to the rights of non-smokers. The matter is one of economic consequences and we believe those consequences should not be imposed differently on private business from community to community. SB 721 would allow all retail businesses to comply equally with smoking regulations in the state of Kansas. The need for businesses to have the least burdensome administrative costs and obligations justifies allowing restaurants and other businesses in Kansas to have a uniform application of the law.

The restaurant and hospitality industry is a very competitive business. At the present time, customers who smoke make up an estimated 25% to 30% of many restaurants' customer base. They have provided this group of customers with designated smoking areas leaving adequate space for their non-smoking patrons since this issue was resolved several years ago. This system -- a system of choice in patron seating -- has met our customers' needs. To mandate a total non-smoking ban, as local government in Wichita and Overland Park have proposed, would be unnecessary and it would be unfair.

The competitive nature of the marketplace already forces restaurants throughout the state to accommodate the needs of non-smokers. Indeed, some establishments have banned smoking entirely in response to customer demand, while other restaurants would fail without their clientele who choose to smoke. This would have serious economic ramifications and could result in the loss of jobs in those communities.

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*Feb. 17, 1994*

SB 721 would let the business owner regulate his or her own business by determining the smoking policy that best suits its type of business and its clientele. The public is free to patronize or not patronize that business. The citizenry, not city governments, should be the judge of the prudence of that choice.

We urge your support of SB 721 and request a uniform and equal state law that would insure the free enterprise system of allowing all retail businesses in Kansas to be free to meet the needs of their clientele.

## SENATE BILL No. 721

By Committee on Federal and State Affairs

2-8

8 AN ACT regulating the smoking of tobacco products in public places;  
9 repealing K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and  
10 21-4014.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in this act:

14 (a) "Public meeting" includes all meetings open to the public.

15 (b) "Public place" means enclosed indoor areas open to the public  
16 or used by the general public including but not limited to: Restau-  
17 rants, retail stores, public means of mass transportation, elevators,  
18 hallways, escalators, restrooms, health care institutions or any other  
19 place where health care services are provided to the public, edu-  
20 cational facilities, libraries, courtrooms, state, county or municipal  
21 buildings, grocery stores, school buses, museums, theaters, audi-  
22 toriums, arenas and recreational facilities.

23 (c) "Restaurant" means any licensed food service establishment,  
24 as defined in K.S.A. 36-501 and amendments thereto, in which food  
25 is served on the premises, except drinking establishments and clubs,  
26 as defined in K.S.A. 41-2601 and amendments thereto.

27 (d) "Smoking" means possession of a lighted cigarette, cigar, pipe  
28 or burning tobacco in any form or device designed for the use of  
29 tobacco.

30 Sec. 2. (a) No person shall smoke in a public place or at a public  
31 meeting except in designated smoking areas.

32 (b) Smoking areas may be designated by proprietors or other  
33 persons in charge of public places, except in passenger elevators,  
34 school buses, public means of mass transportation and any other  
35 place where smoking is prohibited by the fire marshal or by state  
36 law.

37 (c) Where smoking areas are designated, existing physical barriers  
38 and ventilation systems shall be used.

39 Sec. 3. The proprietor or other person in charge of the premises  
40 of a public place shall post or cause to be posted in a conspicuous  
41 place signs clearly stating that smoking is prohibited by state law.  
42 The person in charge of the premises shall also post or cause to be  
43 posted in any designated smoking area, signs stating that smoking

The term "public place" shall not include the following:

(1) Private homes, residences and automobiles;

(2) any indoor area where private social functions being held;

(3) any indoor area open to the public exclusively reserved for conventions and trade shows if the sponsor or organizer gives notice in any promotional material or advertisements that smoking will not be restricted and prominently posts notice at the entrance to the convention or trade show advising the public that smoking will not be restricted;

(4) tobacco businesses;

(5) limousines under private hire by an individual or corporation;

(6) licensed drinking establishments and clubs, as defined in K.S.A. 41-2601 and amendments thereto, and on-premises cereal malt beverage retailers with licenses issued pursuant to K.S.A. 41-2701 et seq., and amendments thereto; and

(7) taxis for hire, except that personnel may designate their workplaces as smoking or nonsmoking. Smoking shall be prohibited when the taxi is engaged unless all patrons agree to allow smoking.

, and on-premises cereal malt beverage retailers with licenses issued pursuant to K.S.A. 41-2701 et seq., and amendments thereto

Geo. Puckett

Senate Feby. State  
Feb. 12, 1994  
ATTACHMENT # 11



1 is permitted in such room or area. Except as otherwise provided by  
2 law, the proprietor or person in charge of the public place shall have  
3 the authority to establish the percentage of area in the public place  
4 which shall be posted and designated as the smoking area.

5 Sec. 4. Smoking in violation of this act is a misdemeanor pun-  
6 ishable by a fine of not more than \$20 for each violation. Failure  
7 to post signs as required by this act is a misdemeanor punishable  
8 by a fine of not more \$50. In addition, the department of revenue  
9 may institute an action in any court of competent jurisdiction to  
10 enjoin repeated violations of this act.

11 Sec. 5. The proprietor or other person in charge of a restaurant  
12 with a seating capacity of 50 or more shall designate a nonsmoking  
13 area within such restaurant. The provisions of this section shall not  
14 apply to an entire restaurant or separate designated rooms being  
15 used for a private function, or to a restaurant which prominently  
16 displays a sign on the outside of the premises which advises the  
17 public that smoking will not be restricted.

18 Sec. 6. Except as otherwise provided by law, any public or pri-  
19 vate employer operating a workplace with 100 or more employees  
20 shall adopt, implement and maintain a written smoking policy and  
21 shall conspicuously post the employer's smoking policy in the work-  
22 place. Each person in the workplace shall be subject to the posted  
23 smoking policy of the employer. The designation of smoking and  
24 nonsmoking areas in the workplace shall be a mandatory subject of  
25 collective bargaining where applicable.

26 ~~Sec. 7. The provisions of this act shall not apply to:~~

- 27 ~~(a) Private homes, residences and automobiles;~~  
28 ~~(b) any indoor area where private social functions are being held;~~  
29 ~~(c) any indoor area open to the public exclusively reserved for~~  
30 ~~conventions and trade shows if the sponsor or organizer gives notice~~  
31 ~~in any promotional material or advertisements that smoking will not~~  
32 ~~be restricted and prominently posts notice at the entrance to the~~  
33 ~~convention or trade show advising the public that smoking will not~~  
34 ~~be restricted;~~  
35 ~~(d) tobacco businesses;~~  
36 ~~(e) limousines under private hire by an individual or corporation;~~  
37 ~~(f) licensed drinking establishments and clubs, as defined in~~  
38 ~~K.S.A. 41-2601 and amendments thereto; and~~  
39 ~~(g) taxis for hire, except that personnel may designate their work-~~  
40 ~~places as smoking or nonsmoking. Smoking shall be prohibited when~~  
41 ~~the taxi is engaged unless all patrons agree to allow smoking.~~

42 Sec. [8] An employer, administrator, manager, proprietor or op-  
43 erator of any indoor arena, restaurant or place of employment subject

1 to the provision of this act who designates smoking and nonsmoking  
2 areas and establishes written smoking guidelines pursuant to this act  
3 shall not be subject to liability for harm to any person relating  
4 thereto, except as provided by this act.

8.

5 Sec. [9.] This act expressly preempts the regulation of smoking to  
6 the state and supersedes any city or county ordinance or resolution  
7 regulating smoking in public places adopted before, on or after the  
8 effective date of this act. A city or county may adopt an ordinance  
9 or resolution prohibiting or penalizing conduct under the provision  
10 of this act, but such ordinance or resolution shall be the same as  
11 provided in this act and the enforcement provisions under such  
12 ordinance or resolution shall not be more stringent than those in  
13 this act.

9.

14 Sec. [10.] If any provision of this act or the application thereof to  
15 any person, thing or circumstance is held invalid, the invalidity shall  
16 not affect the provisions or applications of this act that can be given  
17 effect without the invalid provision or application. To this end the  
18 provisions of this act are severable.

10.

19 Sec. [11.] K.S.A. 21-4009, 21-4010, 21-4011, 21-4012, 21-4013 and  
20 21-4014 are hereby repealed.

11.

21 Sec. [12.] This act shall take effect and be in force from and after  
22 its publication in the statute book.

# Wichita Interagency Council on Smoking and Health

1900 East Ninth, Wichita, KS 67214



## Senate Federal and State Affairs Committee

Testimony concerning Senate Bill #721, purporting to regulate the smoking of tobacco products in public places.

Having read the proposed Bill independently, and subsequently having access to the conclusions of the Kansas Department of Health and Environment, I can say that my impressions of the Bill parallel those of KDHE in nearly every respect. The articles in the medical and social science literature which I have read support their, and my conclusions, particularly in regard to the Section 9 of the Bill--the pre-emption, which bears the unmistakable imprint of the Tobacco Institute.

Both as representative of Tobacco Free Wichita committee and as a private individual recently retired from the practice of Pathology, I can say that the proposed Senate Bill #721 is indeed a very permissive Bill with respect to the control of smoking in public places, and it represents a seriously regressive step, compared with KSA 21-4010, the existing law, which in itself poses very mild restrictions on smoking in public places.

I cannot emphasize strongly enough the desirability of permitting local community ordinances which are more restrictive than the existing or proposed State laws. The cumulative evidence concerning the hazards of smoking not only to the smoker as an individual, but also to those exposed to environmental tobacco smoke indicates the great need for minimizing, if not completely eliminating, smoking as a health risk. The Robert Wood Johnson Foundation estimates that smoking and the associated diseases attributable to it--carcinoma of the lung, coronary vascular heart disease, emphysema, chronic bronchitis, etc.--account for approximately 100 billion dollars annually, at present rates, of the total health care costs.

Of comparable urgency is the need to protect young people from adopting the habit of smoking, given that 85 to 90 percent of adult chronic smokers began smoking before the age of majority. Tobacco, particularly the nicotine component, is well recognized as an addictive substance, the strength of which can be attested by any smoker unable to give up smoking. Hence, as a preventative medical measure, the removal of tobacco products from locations easily accessible to young people, and the strict enforcement of regulations prohibiting sale of tobacco products to young people, should be a central part of any program of health promotion, as specified in nearly all of the health care reform proposals currently before the nation.

*Senate Fed + State*  
*Feb. 17, 1994*  
*Attachment # 12*

In 1991, Dr. Louis W. Sullivan, the Secretary of Health and Human Services, published an editorial in the Journal of the American Medical Association entitled "To Thwart the Tobacco Companies Is Every Physician's Responsibility." In it he notes the fact that the "Tobacco industry has aggressively pushed its products and has fought hard against efforts to limit its cultural domination," and emphasizes "the serious personal health risk confronting smokers and those who passively inhale the deadly fumes of smokers, the hidden personal tax that each American has to pay for the consequences of smoking, and the cumulative and devastating impact on our economy."

The influence of tobacco interests in Senate Bill #721, particularly in Sections 6 and 9 is very apparent. On behalf of the Tobacco Free Wichita coalition, representing two dozen groups advancing a smoking control ordinance in Wichita, I urge you to eliminate Section 9 from this Bill. Better yet, vote NO on the entire Bill now so that it goes no further than this room. Failure to do this could effectively reverse the commendable efforts which the communities of Kansas, and elsewhere, have made to advance the cause of health promotion in this and other states.

Respectively submitted,

A handwritten signature in black ink, appearing to read "Phillip M. Allen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Phillip M. Allen, MD, PhD