

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on February 3, 2011, in Room 346-S of the Capitol.

All members were present except:
Representative Ryckman
Representative Holmes

Committee staff present:
Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:
Representative Bill Otto, Ninth District, Leroy, Kansas
Sara Arif, Director of Public Affairs, Kansas Department of Aging
Trudy Aron, Executive Director, American Institute of Architects in Kansas
Mark Gleeson, Director of Trial Court Programs, Office of Judicial Administration
Tom Day, Kansas Corporation Commission (KCC)
Whitney Damron, City of Topeka
Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and, Kansas Peace Officers Association
Bill Sneed, Lobbyist

Others Attending:
See attached list.

Chairman Kinzer proposed the Committee adopt the following requests for bill introductions without objection unless a specific request for a motion/vote is made:

Representative Colloton requested a bill to extend the one year fix, that was made to allow the post release supervision to stay with the local jail instead of going back to community corrections after third time DUI's. This bill was offered in the event **SB 7 - Driving under the influence**, does not progress through the system.

Whitney Damron, on behalf of the City of Topeka, introduced a bill request for enhanced penalties for metal theft and regulation of scrap metal dealers.

Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association, requested a bill concerning racial and other profiling.

Bill Sneed, Lobbyist, requested a bill concerning the Kansas code of civil procedure; relating to private rights of action; certain restrictions, enforcement and penalties.

Tom Day, Kansas Corporation Commission (KCC), addressed the committee in response to questions that arose during the hearing on **HB 2027 - Rules and regulations filing act**, covering rules and regulations. He assured the committee the requirements being set forth in this bill would not be an issue for the KCC. He stated all orders issued by the KCC are already available on their website, usually within an hour, and they have been publishing like that since 1997. As information, he also stated it is possible to do a word search of the orders on the published website.

The Hearing on **HB 2036 - Interpretation of federal statutes, regulations and national codes**, was opened.

Matt Sterling, Assistant Staff Revisor, provided an overview of the bill. ([Attachment 1](#))

Representative Bill Otto, spoke before the committee as a proponent of the bill, stating the people

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 3, 2011 in Room 346-S.

minimum must be approved by an elected body, and that state agencies should not make the rules. ([Attachment 2](#))

Opponents:

Sara Arif, Director of Public Affairs for the Kansas Department of Aging appeared before the committee in opposition of the bill, stating it would require state agencies in Kansas to interpret federal laws, federal regulations, and national building codes with reference to their interpretation by other states, and gave examples of problem areas this would create. ([Attachment 3](#))

Trudy Aron, Executive Director, American Institute of Architects in Kansas, also spoke to the committee in opposition of this bill. She explained the widely adopted International Codes (I-Codes), provide a complete set of comprehensive coordinated building safety and fire prevention codes. She further explained how communities, cities, and the State use the IBC 2006 codes, and then once adopted, they can make amendments to the code that is best for their citizens. If this bill were adopted, an architect would have no idea what amendments or interpretation other states have, making it impossible for an architect or engineer to design a project and feel confident with the code they were using. ([Attachment 4](#))

John A. Metzler, Chairman, on behalf of Kansas Water Environment Association (KWEA), provided written testimony in opposition of the bill. ([Attachment 5](#))

The hearing on **HB 2036** was closed.

The Hearing on **HB 2073 - Concerning the assessment of an order of support of a child** was opened.

No proponents appeared to support this bill. Chairman Kinzer explained a perceived lack of clear language caused the constituent to believe the issue wasn't currently covered by law. He stated to the committee, with going forward, to consider if the language could be changed to make it more transparent.

Mark Gleeson, Director of Trial Court Programs, Office of Judicial Administration, appeared before the committee in opposition to this bill. He explained the Kansas Supreme Court's Child Support Guidelines Advisory Committee, is made up of judges, attorneys, legislators, an accountant, and an economist. This committee is responsible for reviewing the Kansas Child Support Guidelines at least every four years. He also stated the committee has reviewed this bill and they voted unanimously to oppose it as the Kansas Child Support Guidelines already incorporate all nine elements referenced in this bill, including the living expenses of both parents. ([Attachment 6](#))

Representative Pauls requested Mr. Gleeson provide one copy of the Child Support Guidelines (a sixty to seventy page document) for staff/committee to have available for their review.

The hearing on **HB 2073** was closed.

HB 2030 - Continuation of certain exceptions to disclosure under the open records act.

Staff Revisor, Jill Wolters, presented an overview of the bill, along with a balloon requested by Chairman Kinzer, that provides clarification and was recommended by the Special Committee on Judiciary. The balloon effects [KSA 12-2819](#), concerning the Metropolitan Transit Authority Act, and [KSA 12-5611](#), [12-5711](#) and [12-5811](#), concerning riverfront authorities. ([Attachment 7](#))

Representative Brookens made the motion to report **HB 2030** favorably for passage. Representative Osterman seconded the motion. Motion carried.

Representative Patton made the substitute motion to amend the bill to accept the balloon as presented. Representative Kuether seconded the motion. Motion carried.

Representative Brookens made the motion to report **HB 2030** favorably for passage as amended. Representative Kelly seconded the motion. Motion carried.

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Minutes of the House Judiciary Committee at 3:30 p.m. on February 3, 2011 in Room 346-S.

HB 2028 - Uniform trust code; insurable interest of trustee

Staff Revisor, Jill Wolters, presented an overview of the bill and stated the bill was requested by the Judicial Council to address whether a trust could have an insurable interest regarding the trustees. She also provided an overview of an amendment requested by the Judicial Council to clarify that it is intended to be a part of and supplemental to the Kansas Uniform Trust Code.

Representative Brookens made the motion to report **HB 2028** favorably for passage. Representative Kuether seconded the motion. Motion carried.

Representative Pauls made a substitute motion to amend the bill to accept the amendment proposed by the Judicial Council as presented. (Attachment 8)

Representative Brookens made the motion to add to the amendment, to change Line 30 of the proposed amendment to expand "stepchildren of the insured" to "stepchildren or the children of the insured's stepchild, either by blood or by law." Representative Kuether seconded the motion. Motion carried.

Representative Brookens made the motion to report **HB 2028** favorably for passage as amended. Representative Kelly seconded the motion. Motion carried.

HB 2027 - Rules and regulations filing act

The committee members were provided copies of a memo dated January 27, 2011, from Judge Steve Leben, on behalf of the Judicial Council Administrative Procedure Advisory Committee, in response to questions that arose during the hearing of this bill, regarding 1) agency orders in adjudications, and, 2) the meaning of "readily available to the public". Also included with the response, was a balloon the Advisory Committee offered to clarify the issues. (Attachment 9)

Staff Revisor, Jill Wolters, provided an overview of the bill.

Representative Colloton made the motion to report **HB 2027** favorably for passage. Representative Brookens seconded the motion.

Representative Patton made a substitute motion to change Line 22, by inserting a period after the word "affected" and strike the rest of the sentence. Representative Brookens seconded the motion.

After much discussion, Chairman Kinzer suggested the committee suspend deliberation of the bill and requested the Research Staff to contact the Judicial Council for clarification of the following issues:

- 1) What is the existing law with respect to the precedential value of orders issued in adjudications that are described in Section 1 (b) (2)(A)?
- 2) Is it the intent of this section to give notice that the order could be used against a third party or to give the order precedential value?
- 3) Is it the Judicial Council's intent that any order published be on the agency's website or just those going to be used as precedent?
- 4) Does "order in an adjudication pursuant to procedures provided by law" refer to agency action under KAPA or orders promulgated in another fashion?

With the permission of the second, Representative Patton withdrew his motion.

The next meeting is scheduled for February 7, 2011.

The meeting was adjourned at 5:08 p.m.

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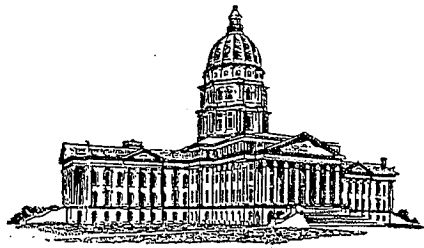
DATE: 2-3-11

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MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

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Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: February 3, 2011
Subject: House Bill 2036

HB 2036 provides guidance for state agencies in interpreting or enforcing a federal regulation, a federal statute or a national building or fire code. If an agency or official of another state had interpreted a regulation, statute or code in a less restrictive manner, such less restrictive interpretation would be applicable in Kansas unless it conflicted with a Kansas statute, regulation or local ordinance or resolution. The bill also amends the Kansas Judicial Review Act to include interpretations of federal regulations or statutes or national building or fire codes in other states as evidence the court may review in interpreting the validity of an agency action.

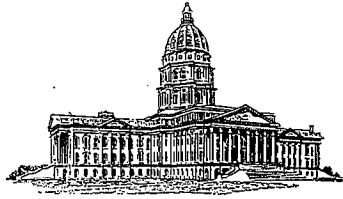
STATE OF KANSAS

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BILL OTTO

HB 2036

When I was first elected I was shocked to find that the elected people of Kansas were not the ones running the state. I ask many times, when did we vote on that? The answer often was we did not, it was state agencies that made rules. The rules they made were often on federal rules and had the full force of law. Then I learned that even the rules committee could not overturn these nameless people not elected by anyone. The elected people were forced to pass a law to over turn their rules and regulations. The sad thing is these agencies have their own court system and, make no mistake you are guilty unless, by some strange twist of luck, you can prove yourself innocent.

HB 2036 has one basic idea, the people of Kansas should live under as little regulation as possible, and that any regulation over and above the minimum must be approved by an elected body. A city council, county commission, or the state legislature should be the ones approving extra regulation.

House Judiciary

Date 2-3-11

Attachment # 2

Kansas Department on Aging

House Committee on Judiciary

February 3, 2011

TESTIMONY ON HOUSE BILL 2036

Introduction

Mr. Chairman and members of the Committee, my name is Sara Arif and I am the Director of Public Affairs for the Kansas Department on Aging. The Department appreciates this opportunity to address House Bill 2036 concerning the interpretation of federal law and national codes by other states.

Overview

House Bill 2036 would require state agencies in Kansas to interpret federal laws, federal regulations, and national building codes with reference to their interpretation by other states. More specifically, Kansas agencies would have to defer to the least restrictive interpretation given them by another state.

Discussion

The Department on Aging is responsible for licensing 665 adult care homes. Of that number, 373 homes are certified to participate in both the Medicare and Medicaid programs while 102 participate in Medicaid only. As such, program administrators and agency surveyors are required to interpret federal laws, federal regulations, and national building codes every day. Those interpretations are based on the laws, the regulations, the building codes, the State Operations Manual, federal interpretative guidelines, and individual letters issued by the Centers for Medicare and Medicaid Services ("CMS").

Anyone familiar with the Medicare Survey and Certification process knows the challenges faced by a survey agency in trying to interpret and apply federal laws and regulations consistent with CMS guidelines. The interpretation of laws and regulations in any subject matter is an imperfect art. Even those who have devoted many years to a given area of federal law often find it difficult to stay current with the latest agency guidelines, pronouncements, and opinions.

In addition to constantly reviewing CMS interpretive guidelines, there are differences of opinion among agency staff, providers, and advocacy groups as to what a federal law or regulation means or how it should be applied in a given factual situation. Attempting to be consistent and timely with interpretations in a single state is hard enough without being required to know how other states interpret laws and regulations. Even if agency

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staff was fully committed to a 50 state model of interpretation, the tools to do so don't exist.

First of all, how would Kansas even become aware of interpretations from Wisconsin or California? States publish their own statutes, regulations, and appellate court decisions. However, they don't publish their interpretations of federal laws, federal regulations, and building codes.

Secondly, how would the phrase "less restrictive interpretation" be defined and who would define it. The vast majority of surveys and agency orders don't result in administrative hearings or judicial review?

Third, to commingle the interpretations of 50 states, even if it could be done, would only make it more difficult to decide issues which are extremely time sensitive. Most states struggle to meet federal mandates in keeping up with survey schedules. Requiring a state to monitor how other states interpret regulations would be costly in terms of staff time and financial resources.

To the extent that federal appellate courts make published rulings on federal laws and regulations, states will conform their interpretations to those rulings which are mandatory in their jurisdiction. States will also review the rulings of appellate courts from other jurisdictions. However, to ask more would be unprecedented in any legal or regulatory system I know of.

Conclusion

The Department on Aging opposes passage of House Bill 2036 for the reasons stated above. Allowing another state's agencies to interpret laws for Kansas is not a good precedent. Moreover, to mandate the most extreme interpretation of federal laws and national codes among the 50 states is inherently dangerous. Finally, there is no easy or known way to discover how 49 other states interpret and apply federal law and national codes other than published appellate court decisions which are already being monitored by the agency.

Kansas Department on Aging
Shawn Sullivan- Secretary
Sara Arif- Director of Public Affairs
Sara.Arif@aging.ks.gov
296-6154

Testimony Prepared by:
William C. Rein, Chief Counsel
Kansas Department on Aging



AIA Kansas

*A Chapter of the American
Institute of Architects*

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Lenexa
Jason VanHecke, AIA
Wichita
J. Michael Vieux, AIA
Leavenworth

Executive Director

Trudy Aron, Hon. AIA, CAE
info@aiaks.org

February 3, 2011

TO: Representative Kinzer and Members of the Judiciary Committee

FROM: Trudy Aron, Executive Director

RE: Opposition to HB 2036

I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas. Thank you for allowing us to testify in opposition to HB 2036.

AIA Kansas is a statewide association of architects and intern architects. Most of our 600 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients. Our members are designing tomorrow's buildings today, aiming to meet the "triple bottom line:" buildings that are affordable, protect the health of the building occupants, and respect our environment.

Background: National and international building and fire codes are developed through a long and rigorous process. This process includes everyone in the design and building industry. These codes establish MINIMUM safeguards for residential and commercial buildings, including homes and schools. Only during the past decade has there been one set of widely adopted codes – the International Codes, or I-Codes, published by the International Code Council. These I-Codes are a complete set of comprehensive, coordinated building safety and fire prevention codes. Until the adoption of the I-codes, there were three major codes plus numerous independently adopted codes.

Code Adoption: Communities, cities and the State adopt a version of a code that is best for their citizens. The State uses the IBC 2006 as does many larger communities and counties. Once adopted, the adopter can make amendments to the code, not adopt sections, adopt more stringent requirements, etc. Before an architect designs a building, they must check with the local jurisdiction to determine the code they use and any amendments they have made. This is the MINIMUM standard to which the architect must design. Occasionally, there are conflicts between jurisdictions – city and county, city and state, county and fire marshal. If that happens, the conflicts need to be resolved before the design is finalized.

What's Wrong with HB 2036? With this legislation, an architect would have no idea what amendments or interpretation other states have. In fact, he or she wouldn't even know what code another state was using unless they regularly did work in that state. HB 2036 would make it nearly impossible for an architect or engineer to design a project and feel confident with the code they were using. This could unfairly add to litigation. In addition, looking for the **lowest** MINIMUM standard for our citizens is risky.

Thank you for allowing us to testify against HB 2036. We urge you to vote no on passing it to the full House. I'll be happy to answer questions.

700 SW Jackson, Suite 209 · Topeka, KS 66603 · 800-444-9853 or 785-357-5308 · www.aiaks.org

House Judiciary

Date 2-3-11

Attachment # 4

Testimony in Opposition to HB 2036
Provided by the Kansas Water Environment Association
House Judiciary Committee, 3:30 pm, February 3, 2011

The Kansas Water Environment Association (KWEA) appreciates this opportunity to provide testimony on HB 2036. The KWEA is a state association of over 500 engineers, scientists, and plant operators working in the water quality field, and is affiliated with the Water Environment Federation (WEF).

We support the bill's intent of reducing burdensome regulations. However, we believe the effect of this bill could result in adverse impacts to the regulated community by adding considerable complexity and uncertainty to the rule-making process. This is particularly pertinent to how the Kansas Department of Health and Environment (KDHE) implements the provisions of the Clean Water Act. Our concerns are summarized below:

1. **Regulatory Uncertainty**-Under this bill, before KDHE could adjust any regulation, either favorably or unfavorably to the regulated community, it would have to survey the interpretations of any pertinent federal regulation in 49 other states. This is an almost impossible task, if for no other reason than many of the other 49 state agency staffs will likely be too busy to respond. This requirement will also introduce great uncertainty as to what KDHE can or cannot regulate. This will make it difficult, if not impossible, for the regulated community to plan for regulatory changes, and this uncertainty translates into extra costs for both local governments and industries.
2. **Loss of State Control**-There also is the risk that some other states' interpretations are unlawful. In those instances, it is possible that EPA has not yet corrected and/or taken over the other non-conforming state programs. Thus approval of this bill introduces the risk of transferring implementation of Clean Water Act requirements from KDHE to EPA. KDHE is able to consider unique conditions faced in the State of Kansas. For example, KDHE has developed realistic interpretations of federal water quality requirements for the largely dry streambeds in the arid western half of our state. EPA interpretations could lead to extreme treatment requirements and excessive costs for these rural communities.
3. **Current Statutory Protections are Adequate**-We believe the current statute, KSA 77-416, is sufficiently protective of the regulated community. This statute requires Kansas agencies to identify proposed regulations that are more stringent than federal regulations and must perform a cost and benefit analysis on those proposed regulations.

We appreciate this opportunity to provide testimony on HB 2036.

Submitted by John A. Metzler, Chairman, KWEA Government Affairs Committee
Contact Information: (913) 715-8542 and metzler@jcw.org
February 3, 2011

House Judiciary
Date 2-3-11
Attachment # 5



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

Testimony in Opposition of House Bill 2073
House Judiciary Committee
February 3, 2011

Mark Gleeson
Director of Trial Court Programs

Office of Judicial Administration

Thank you for the opportunity to testify regarding House Bill 2073. My name is Mark Gleeson and I am the Director of Trial Court Programs for the Office of Judicial Administration. As part of my duties, I staff the Kansas Supreme Court's Child Support Guidelines Advisory Committee, a group of judges, attorneys, legislators, an accountant, and an economist charged with reviewing the Kansas Child Support Guidelines at least every four years. Representative Lana Gordon and Senator Tom Holland currently serve on the Child Support Guidelines Advisory Committee. This committee has reviewed HB 2073 and voted unanimously to oppose it. It is my belief that HB 2073 is not necessary and that passage of HB 2073 could result in confusion and unnecessary litigation for parents.

House Bill 2073 would amend K.S.A. 38-1121 and K.S.A. 60-1610 by adding the term "living expenses" to the factors the court shall consider in determining the amount of child support to be ordered. Considering the living expenses of both parents is certainly an essential element in determining the amount of child support to be ordered. The Kansas Child Support Guidelines incorporates all nine elements referenced in HB 2073, including the living expenses of both parents.

The first Kansas Child Support Guidelines were adopted in January 1987. Since the inception of the guidelines, child support in Kansas has been based on a very detailed survey of how parents spend money on children. This survey, conducted by the United States Department of Agriculture and updated annually, includes spending on housing, food, transportation, clothing, health care, child care, education, and more. This data is analyzed at various income levels, numbers of children in the family, and expenses relating to children of different age groups. Eventually, the data is blended with adjustments that are specific to Kansas. The end result is the Kansas child support schedules, a set of six tables identifying the child support obligation for families with one, two, three, four, five, and six child families.

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Attachment # 6

Most of the expenditure data used in the Kansas child support schedules reflects national averages. Since spending on health care and child care are so family specific, the Kansas Child Support Guidelines Worksheet requires parents to report their actual expenditures on these items. In addition to these allowances, the Kansas Child Support Guidelines provides special adjustments for long-distance parenting, parenting time (the amount of time parents have the children in their home), income tax considerations, special needs of the child, support provided for children over the age of 18, and overall financial conditions of the parties. Although K.S.A. 38-1121 and K.S.A. 60-1610 do not specifically reference the Kansas Child Support Guidelines, the Kansas Supreme Court has ordered the use of the Kansas Child Support Guidelines in every case, pursuant to Supreme Court Administrative Order No. 216.

I would be happy to provide the committee with additional information on the Kansas Child Support Guidelines and about the process we go through during each review of the guidelines to make child support fair and balanced for both parents as they struggle to provide financial support for their children.

HOUSE BILL No. 2030

By Special Committee on Judiciary

1-18

Proposed amendment
Chairman Kinzer
1-31-11

AN ACT concerning open records; relating to exceptions to disclosure; amending K.S.A. 2010 Supp. 9-513c, 40-2,118, 40-4913 and 45-229 and repealing the existing sections.

K.S.A. 12-2819 and

12-5611, 12-5711, 12-5811,

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

Section 1. K.S.A. 2010 Supp. 9-513c is hereby amended to read as follows: 9-513c. (a) Notwithstanding any other provision of law, all information or reports obtained by the commissioner in the course of licensing or examining a person engaged in money transmission business shall be confidential and may not be disclosed by the commissioner except as provided in subsection (b) or (c).

(b) The commissioner shall have the authority to share supervisory information, including examinations, with other state or federal agencies having regulatory authority over the person's money transmission business and shall have the authority to conduct joint examinations with other regulatory agencies.

(c) The commissioner may provide for the release of information to law enforcement agencies or prosecutorial agencies or offices who shall maintain the confidentiality of the information.

(d) Nothing shall prohibit the commissioner from releasing to the public a list of persons licensed or their agents or from releasing aggregated financial data on such persons.

(e) The provisions of subsection (a) shall expire on July 1, 2011+2016, unless the legislature acts to reauthorize such provisions. The provisions of subsection (a) shall be reviewed by the legislature prior to July 1, 2011+2016.

Sec. 2. K.S.A. 2010 Supp. 40-2,118 is hereby amended to read as follows: 40-2,118. (a) For purposes of this act a "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false

See attached Sections amending K.S.A. 12-2819, and
K.S.A. 2010 Supp. 12-5611, 12-5711, 12-5811
Renummer remaining sections accordingly.

House Judiciary
Date 2-3-11
Attachment # 7

0-222, 40-2,156, 40-2c20, 40-2c21, 40-2d20, 40-2d21, 40-409, 40-956, 40-1128, 40-2807, 40-3012, 40-3304, 40-3308, 40-3403b, 40-3421, 40-3613, 40-3805, 40-4205, 40-5301, 44-510j, 44-550b, 44-594, 44-635, 44-714, 44-817, 44-1005, 44-1019, subsections (a)(1) through (43), (a)(45) and (a)(46) of 45-221, 46-256, 46-259, 46-2201, 47-839, 47-844, 47-849, 47-1709, 48-1614, 49-406, 49-427, 55-1,102, 58-4114, 59-2135, 59-2802, 59-2979, 59-29b79, 60-3333, 60-3336, 60-3351, 65-102b, 65-118, 65-119, 65-153f, 65-170g, 65-177, 65-1,106, 65-1,113, 65-1,116, 65-1,157a, 65-1,163, 65-1,165, 65-1,168, 65-1,169, 65-1,171, 65-1,172, 65-436, 65-445, 65-507, 65-525, 65-531, 65-657, 65-1135, 65-1467, 65-1627, 65-1831, 65-2422d, 65-2438, 65-2836, 65-2839a, 65-2898a, 65-3015, 65-3447, 65-34,108, 65-34,126, 65-4019, 65-4922, 65-4925, 65-5602, 65-5603, 65-6002, 65-6003, 65-6004, 65-6010, 65-67a05, 65-6803, 65-6804, 66-101c, 66-117, 66-151, 66-1,190, 66-1,203, 66-1220a, 66-2010, 72-972a, 72-996, 72-4311, 72-4452, 72-5214, 72-53,106, 72-5427, 72-8903, 73-1228, 74-2424, 74-2433f, 74-4905, 74-4909, 74-50,131, 74-5515, 74-7308, 74-7338, 74-8104, 74-8307, 74-8705, 74-8804, 74-9805, 74-99d05, 75-104, 75-712, 75-7b15, 75-1267, 75-2943, 75-4332, 75-4362, 75-5133, 75-5266, 75-53,105, 75-5665, 75-5666, 75-7310, 76-355, 76-359, 76-493, 76-12b11, 76-3305, 79-1119, 79-1437f, 79-3234, 79-3395, 79-3420, 79-3499, 79-34,113, 79-3614, 79-3657, 79-4301 and 79-5206.

(j) Exceptions contained in the following statutes *as continued in existence in section 1 of chapter 87 of the 2006 Session Laws of Kansas and exceptions contained in the following statutes* as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section ~~on June 1, 2005~~ *during 2010*, are hereby continued in existence until July 1, ~~2011~~ *2016*, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, ~~38-1692~~, *12-5358, 12-5611, 22-4906, 22-4909, 38-2310, 38-2311, 38-2326, 39-970, 40-4913, 44-1132, 60-3333, 65-525, 65-5117, 65-6016, 65-6017 and, 65-6154, 71-218, 74-7508, 75-457, 75-712c, 75-723 and 75-7c06.*

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

Sec. 5. ~~K.S.A. 2010 Supp. 9-513c, 40-2,118, 40-4913 and 45-229~~ are hereby repealed.

K.S.A. 12-2819 and

12-5611, 12-5711, 12-5811,

7-2

Sec. 2. K.S.A. 12-2819 is hereby amended to read as follows: 12-2819.

(a) Regular meetings of the board shall be held at least once in each calendar month, the time and place of such meetings to be fixed by the board. Three members of the board shall constitute a quorum for the transaction of business. All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the ~~chairman~~ chairperson of the board, and if ~~he or she shall approve~~ the chairperson approves thereof ~~he or she~~ the chairperson shall sign the same, ~~and such as he or she shall~~. If the chairperson does not approve, the ~~chairman~~ chairperson shall return to the board with ~~his or her~~ the chairperson's objections thereto in writing at the next regular meeting of the board occurring after the passage thereof. But in case the ~~chairman shall fail~~ chairperson fails to return any resolution with the objections thereto by the time aforesaid, the ~~chairman~~ chairperson shall be deemed to have approved the same and it shall take effect accordingly.

(b) Upon the return of any resolution by the ~~chairman with his or her~~ chairperson, with the chairperson's objections, the vote by which the same was passed shall be reconsidered by the board, and if upon such reconsideration ~~said~~ such resolution is passed by the affirmative vote of at least four members, it shall go into effect notwithstanding the veto of the ~~chairman~~ chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in contract negotiations, actions or civil proceedings to which the authority is a party.

Sec. 3. K.S.A. 2010 Supp. 12-5611 is hereby amended to read as follows: 12-5611. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor

members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10-days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each quarter or more often if called by the chairperson. The time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of

at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in contract negotiations, ~~actions or~~ civil proceedings to which the authority is a party.

Sec. 4. K.S.A. 2010 Supp. 12-5711 is hereby amended to read as follows: 12-5711. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Subject to the provisions of K.S.A. 2010 Supp. 12-16,128, and amendments thereto, three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in contract negotiations, ~~actions or~~ civil proceedings to which the authority is a party.

Sec. 5. K.S.A. 2010 Supp. 12-5811 is hereby amended to read as follows: 12-5811. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve

two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by

the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in contract negotiations, ~~actions or~~ civil proceedings to which the authority is a party.

1 **PROPOSED JUDICIAL COUNCIL AMENDMENT-1/25/2011**

2
3 *Session of 2011*

4 **HOUSE BILL No. 2028**

5 By Committee on Judiciary

6 1-18

7 AN ACT concerning trusts; relating to insurable interests of trustees.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) In this section, "settlor" means a person that executes a
11 trust instrument. The term includes a person for which a fiduciary or agent
12 is acting.

13 (b) A trustee of a trust has an insurable interest in the life of an
14 individual insured under a life insurance policy that is owned by the
15 trustee of the trust acting in a fiduciary capacity or that designates the
16 trust itself as the owner if, on the date the policy is issued:

17 (1) The insured is:

18 (A) A settlor of the trust; or

19 (B) an individual in whom a settlor of the trust has, or would have had
20 if living at the time the policy was issued, an insurable interest; and

21 (2) the life insurance proceeds are primarily for the benefit of one or
22 more trust beneficiaries that have:

23 (A) An insurable interest in the life of the insured; or

24 (B) a substantial interest engendered by love and affection in the
25 continuation of the life of the insured and, if not already included under
26 subparagraph (A), who are:

27 (i) Related within a third degree or closer, as measured by the civil law
28 system of determining degrees of relation, either by blood or law, to the
29 insured; or

30 (ii) stepchildren of the insured.

31 (c) This section shall be part of and supplemental to the
32 Kansas Uniform Trust Code.

33 Sec. 2. This act shall take effect and be in force from and after its
34 publication in the statute book.

Comment

Though this act is called the "Uniform Insurable Interests Relating to Trusts Act" it is an amendment to the Uniform Trust Code. The proposed amendment in lines 31 and 32 clarifies this and insures that the section of the UTC (1106) that deals with the applicability of the UTC to trusts existing at the time of enactment applies.

House Judiciary

Date 2-3-11

Attachment # 8



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MEMORANDUM

TO: House Judiciary Committee
FROM: Judge Steve Leben on behalf of the Judicial Council
Administrative Procedure Advisory Committee
DATE: January 27, 2011
RE: Proposed Balloon Amendment to HB 2027

During Tuesday's hearing on HB 2027 amending the Rules and Regulations Filing Act, Chairman Kinzer and other committee members raised a question about Section 1, new K.S.A. 77-415(b)(2)(A), relating to agency orders in adjudications. The bill recognizes an agency's general authority to bind parties, establish policy, and interpret statutes during an adjudicatory proceeding but sought to protect nonparties by providing that "no nonparty to an adjudication may be adversely affected by an order unless the order is readily available to the public." The question was raised, what does "readily available to the public" mean?

After discussing the issue with other members of the Administrative Procedure Advisory Committee via email, the Committee agreed the phrase "readily available to the public" is vague and should be clarified. The Committee recommends deleting the phrase and adding the attached proposed balloon amendments instead.

Our Committee had intended that "readily available to the public" mean something more than simply available upon request. We generally contemplated that agencies would post their orders online but were reluctant to make that the only way for agencies to make orders available since other alternatives might emerge or work better. The proposed balloon amendments will achieve a similar result but also allow for somewhat greater flexibility, such as to use an indexing system if approved by the Secretary of State.

House Judiciary
Date 2-3-11
Attachment # 9

Session of 2011

HOUSE BILL No. 2027

By Committee on Judiciary

1-18

Proposed Balloon Amendment

1 AN ACT concerning the rules and regulations filing act; amending
2 K.S.A. 77-438 and K.S.A. 2010 Supp. 77-415, 77-421 and 77-436 and
3 repealing the existing sections; also repealing K.S.A. 2010 Supp. 77-
4 421a.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 77-415 is hereby amended to read as
8 follows: 77-415. (a) K.S.A. 77-415 through 77-438, and amendments
9 thereto, shall be known and may be cited as the Kansas rules and
10 regulations filing act.

11 (b)(1) Unless otherwise provided by statute or constitutional
12 provision, each rule and regulation issued or adopted by a state agency
13 shall comply with the requirements of the Kansas rules and regulations
14 filing act. Except as provided in this section, any standard, requirement
15 or other policy of general application may be given binding legal effect
16 only if it has complied with the requirements of the Kansas rules and
17 regulations filing act.

18 (2) Notwithstanding the provisions of this section:

19 (A) An agency may bind parties, establish policies, and interpret
20 statutes or regulations by order in an adjudication pursuant to
21 procedures provided by law except that no nonparty to an adjudication
22 may be adversely affected by an order unless the order is readily
23 available to the public.

24 (B) Any statement of agency policy may be treated as binding within
25 the agency if such statement of policy is directed to:

26 (i) Agency personnel relating to the performance of their duties.

27 (ii) The internal management of or organization of the agency.

28 No such statement of agency policy listed in clauses (i) and (ii) of this
29 subparagraph may be relied on to bind the general public.

30 (C) An agency may provide forms, the content or substantive
31 requirements of which are prescribed by rule and regulation or statute,
32 except that no such form may give rise to any legal right or duty or be
33 treated as authority for any standard, requirement or policy reflected
34 therein.

35 (D) An agency may provide guidance or information to the public,
36 describing any agency policy or statutory or regulatory requirement

the agency designates the order as precedent and

published by posting in full on an agency website

or in such other manner prescribed by the secretary of state.