

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 7, 2011, in Room 346-S of the Capitol.

All members were present except:  
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:  
Pat Scalia, Executive Director, State Board of Indigent's Defense Services  
Martha Gabehart, Executive Director, Kansas Commission on Disability Concerns (KCDC)  
Joseph P. Mastrosimone, Chief Legal Counsel, Kansas Human Rights Commission (KHRC)  
Bob Mikesic, Independence, Inc., Lawrence, Kansas  
Nick Wood, Disability Rights Center of Kansas  
Jane Rhys, Kansas Council on Developmental Disabilities  
Phillip B. Journey, Haysville, Kansas  
Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association

Others attending:  
See attached list.

The Hearing on: **SB 34 - Driver's licenses; habitual violators; motorized bicycles** was opened.

Tamera Lawrence, Assistant Revisor of Statutes, provided an over view for the committee. ([Attachment 1](#))

Phillip B. Journey, Haysville, Kansas, addressed the committee in support of the bill that would allow those declared to be habitual violators by the Kansas Department of Revenue to obtain, Class C moped-only, licenses. He stated with little or no public transportation in the vast majority of the State of Kansas, those declared to be habitual violators who must go to work, attend school, substance abuse treatment, and complete the tasks of their lives and probation are faced with deciding whether they should violate the law and risk a year in jail or lose their jobs. They must get there somehow and too many citizens faced with this choice make the wrong decision and this bill gives them a real choice. ([Attachment 2](#))

Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, spoke before the committee as an opponent. He provided an explanation of a habitual violator and stated he did not think the citizens of Kansas would want them using the roadways of our state to legally be operating even a motorized bike, when they already have three offenses of vehicular homicide, DUI, driving while suspended, or using a motor vehicle in a felony. He also stated motorized bicycles are capable of speeds up to 30 miles per hour, a speed which could cause serious injury or damage to others, especially pedestrians and children. ([Attachment 3](#))

The hearing on **SB 34** was closed.

The Hearing on **HB 2305 - Board of Indigents; Defense Terms and Qualifications** was opened.

Tamera Lawrence, Assistant Revisor of Statutes, provided an overview for the committee. ([Attachment 4](#))

Pat Scalia, Executive Director, State Board of Indigent's Defense Services, addressed the committee as a proponent of the bill. She explained the current statute requires that there be nine members of the Board; that two members be from the first congressional district and that one be a lawyer; that there be at least one member from each of the other judicial districts; and that there be a member from

## CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 7, 2011 in Room 346-S.

each county having a population in excess of 100,000, who shall be a lawyer, but no more than five such members; and no more than five members shall be lawyers. Historically, the statute has been interpreted as requiring that the subsections are exclusive on one another, but it has been difficult to maintain a full complement of members. Rather than expand the number of Board members as more counties reach the population mark of 100,000, the number could be compressed to seven by allowing for the appointment of one member from each county with a population of over 100,000, who may also represent their Congressional District. The number of attorneys would be four and non-attorneys would be three. She stated this would be a very workable situation as it allows for representation of the most populous counties, which have the highest indigent caseload, while maintaining representation for the First Congressional District. Additionally, it alleviates some of the difficulty in maintaining board members. ([Attachment 5](#))

There were no opponents.

The Hearing on **HB 2305** was closed.

The Hearing on **HB 2335 - Kansas act against discrimination; disability amendments** was opened.

Matt Sterling, Assistant Revisor of Statutes, provided an over view for the committee. ([Attachment 6](#))

Martha Gabehart, Executive Director, Kansas Commission on Disability Concerns (KCDC), addressed the committee in support of the bill. She explained the goal of this legislation is to align the Kansas Act Against Discrimination with the Americans with Disabilities Act (ADA) Amendments Act. This is important because: (1) Employers currently have two different standards to follow, (2) Kansans with disabilities working for employers with 4-24 employees do not have the same protection rights as those working for employer of 25 or more employees, and (3) The contract with the Equal Employment Opportunity Commission (EEOC) is in jeopardy.

She also stated there is a technical correction that needs to be made; on page 3, line 4, there is a reference to K.S.A. 44-1002(j)(3)(a) when in fact there is no "(a)" and it should be stricken from the bill. ([Attachment 7](#))

Joseph P. Mastrosimone, Chief Legal Counsel, Kansas Human Rights Commission (KHRC), spoke before the committee in support of the bill stating the passage of this bill would (1) ensure the continued flow of vital federal money to support the KHRC's operations, (2) eliminate confusion and reduce compliance costs for Kansas businesses, and (3) provide for consistent protection for Kansas employees from unlawful discrimination based on a disability. ([Attachment 8](#))

Bob Mikesic, Independence, Inc., Lawrence, Kansas, appeared in support of the bill stating it gives Kansas a clear, strong state mandate for the elimination of discrimination based on disability, and allows education to prevent discrimination to be even more effective. ([Attachment 9](#))

Nick Wood, Disability Rights Center of Kansas, spoke in support of the bill, stating it will serve to clear up misunderstandings between employers and employees, as well as unnecessary confusion in the courts about how people are covered under the act. ([Attachment 10](#))

Jane Rhys, Kansas Council on Developmental Disabilities (KCDD), addressed the committee in support of the bill. She stated the KCDD is a federally mandated and funded entity under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000. They accept no state funds, and their role is to study and examine the Kansas system for people who have Developmental Disabilities and to advocate with policymakers for improvements. ([Attachment 11](#))

The following provided written only testimony in support of the bill:

Shannon Jones, Executive Director, SILCK ([Attachment 12](#))

Ann Marie Hughey, Legislative Policy Advocate for SKIL Resource Center, on behalf of the Kansas Association of Centers for Independent Living (KACIL) ([Attachment 13](#))

Kathy Lobb, Self Advocate Coalition of Kansas ([Attachment 14](#))

There were no opponents.

The next meeting is scheduled for March 8, 2011.

## CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 7, 2011 in Room 346-S.

The meeting was adjourned at 4:48 p.m.

# JUDICIARY COMMITTEE GUEST LIST

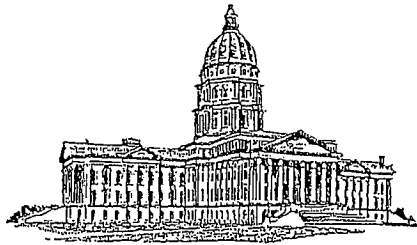
DATE: 3-7-11

NAME	REPRESENTING
PATRICIA SCALIA	BIDS
Joseph Mustrosimone	KHRC
Maria Sabchak	KDC
Phil Journey	
Jan Rhye	KCDP
Bob Tricker	Independence, Inc.
Anthony A. Farkas	State Awt Coord.
Nickerson	DRE KANSAS
Tim Slaughter	Capital Strategies
Patrick Vegeberg	KCDPA
Derek Van	NEW LAW FIRM
Ed KEMP	KLCP/KPDA/KSA
Whitney James	KS Bar Assoc
Natalie Haag	Security Benefit Corp

MARY ANN TORRENCE, ATTORNEY  
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To: Committee on Judiciary

From: Tamera Lawrence, Assistant Revisor of Statutes

Date: March 7, 2011

Subject: SB 34, Driver's licenses; habitual violators; motorized bicycles

SB 34 provides that a person who has had their driving privileges revoked for being a habitual violator may receive a class C license to operate a motorized bicycle, also known as a moped. A habitual violator is defined in K.S.A. 8-285 as having three or more certain motor vehicle convictions in the preceding five years. A habitual violator's driving privileges are revoked for three years.

House Judiciary  
Date 3-07-11  
Attachment # 1

**Phillip B. Journey**  
**7079 So. Meridian**  
**Haysville, Kansas 67060**  
**316-660-5601**

Testimony for the Kansas House of Representatives Judiciary Committee

Presented March 7, 2011, in Support of Senate Bill 34

I would like to thank the committee for allowing me to testify in support of Senate Bill 34. Senate Bill 34 amends K.S.A. 8-235, 8-286, 8-287 and 8-288. The effect of this legislation would be to allow those declared to be habitual violators by the Kansas Department of Revenue to obtain, Class C moped-only, licenses. In 2005 this act was filed as SB 76, it passed the Senate but was used as a vehicle for a gut and go at the end of the 2006 session. Filed in 2007 as Senate Bill 6, it passed the Senate floor vote again.

Senate Bill 34 was passed by the Senate on February 15, 2011 by a vote of 34 to 4.

The Kansas Department of Revenue may declare an individual to be a habitual violator upon the conviction of three serious traffic misdemeanors in any five-year period. The revocation of a habitual violator's driver's license upon three convictions is for a minimum of three years. Conviction of operating a motor vehicle after being declared a habitual violator is a Class A misdemeanor subject to a penalty of up to one year in custody and a \$2,500 fine. Under current Kansas law individuals whose drivers' licenses have been suspended for other reasons,

such as failing to pay a traffic ticket or failing a breath alcohol test, may receive a moped only license from the Kansas Department of Revenue, however habitual violators may not. In 2007, approximately 5500 drivers were declared to be habitual violators in Kansas. Offenses that can trigger the declaration of someone being a habitual violator include: no proof of insurance, driving while suspended, vehicular homicide, hit and run, commission of a felony with a motor vehicle, fraud in application of title or driver's license and driving under the influence.

The only opponent to the bill decried the option of lawful transportation to probation and substance abuse treatment for certain offenders such as those convicted of the fraud provisions. While the opponents point is well taken, the number of convictions for such perjury violations are probably able to be counted annually at less than 10 statewide. In 25 years of law practice and 2 years as Sedgwick County Judge working on over 110,000 cases, I am unaware of any such convictions. I believe an inquiry of the Department of Revenue would provide accurate information. There is no doubt that the vast majority of individuals declared to be habitual violators are for convictions of DUI, DWS and insurance violations. Should the committee be uncomfortable with the broader effect of the current draft, limiting language can be amended into the bill.

Mopeds are vehicles defined in Kansas statutes as having less than three and half brake horsepower and a maximum speed of 30 miles per hour. Kansas citizens who have run afoul of the law must still continue with their lives. I am sure no one on this committee nor I wish to ease the legal penalty imposed upon drunk drivers and other violators. I am also sure that none of us want to impede their recovery and reformation. The reality of the situation individuals are confronted with is difficult to say the least. With little or no public transportation in the vast majority of the State of Kansas, those declared to be habitual violators who must go to work, attend school, substance abuse treatment and complete the tasks of their lives and

probation are faced with an impossible choice. They must decide whether they should violate the law and risk a year in jail or lose their jobs. They must decide whether to take the children to the doctor in a medical emergency and risk a \$2,500 fine or wait until the taxi arrives. While there are electric alternatives, they are not workable in many situations.

Individuals who have been placed on probation for convictions for crimes such as driving under the influence are required as a condition of their probation to attend probation meetings, outpatient substance abuse counseling and Alcoholics Anonymous meetings. They must get there somehow. Too many Kansas citizens faced with this choice make the wrong decision. This bill gives them a real choice.

Mopeds are of such low mass and velocity they present no threat to public safety and allows those declared to be habitual violators the opportunity to support their families and get the help they need to deal with their issues. I ask that once again the Committee recommends Senate Bill 34 favorably for passage.

Respectfully submitted,

*Phillip B. Journey*

Phillip B. Journey





**Kansas Association of  
Chiefs of Police**

PO Box 780603  
Wichita, KS 67278  
(316)733-7301



**Kansas Sheriffs  
Association**

PO Box 1853  
Salina, KS 67402  
(785)827-2222



**Kansas Peace Officers  
Association**

PO Box 2592  
Wichita, KS 67201  
(316)722-8433

**Testimony to the House Judiciary Committee  
In Opposition to SB34  
March 1, 2011**

Chairman Kinzer and Committee Members,

This bill is about accommodating persons who have had their driver's license revoked as a result of being declared an habitual violator by allowing them to operate a motorized bicycle. It is important to understand how a person becomes a habitual violator. A habitual violator is a person who has three or more convictions in five years for listed offenses. Some of those offenses are very serious traffic offenses. These offenses are 1) vehicular homicide; 2) DUI; 3) driving while suspended; 4) Perjury relating to licensing; 5) Using a false or fictitious name or address to acquire a vehicle title or registration; 6) a felony using a motor vehicle; or 7) liability insurance violation.

While some of these seem innocuous as it pertains to allowing them to operate a motorized bicycle, others are problematic. If these were only the insurance violations, the perjury, or using a false name or address we might feel differently. But do the citizens using the roadways of our state really want offenders legally operating a vehicle, even a motorized bicycle, when they have three offenses of vehicular homicide, DUI, driving while suspended or using a motor vehicle in a felony? Motorized bicycles are capable of speeds up to 30 mph. A speed which even a motorized bicycle could cause serious injury or damage to others especially pedestrian and particularly children. Should we allow a person who has previously refused to provide liability insurance along with a couple of DUIs or vehicular homicide be on the road where they can cause damage again? We do not think this is a good idea.

Subsection (d)(3) was passed in 2000. In 2007 there was a conscious decision by legislators to not allow a person suspended for DUI to have a motorized bicycle only license under that provision. (L. 2007, ch181§1) The legislature wisely passed that amendment and we believe the legislature got that decision right. Surely if it were wise in 2007 to not allow a person whose license is suspended for one DUI to be licensed to operate a motorized bicycle, it is clearly unwise to allow a person revoked as a habitual violator with potentially three DUI and/or vehicular homicide convictions to legally operate a motorized bicycle.

Additionally, the proposed law does not seem very clear on whether the suspension or revocation remains enforceable if the person is operating any class of motor vehicle other than a motorized bicycle. There is also an issue with how the suspension or revocation can be enforced by officers. The driver's license will only indicate they have a valid class C motorized bicycle only license. Only if the officer runs a computer check can they know the person is suspended or revoked for the purposes of operating any other type of vehicle.

This bill is a bad idea and we strongly encourage you to not recommend it favorably.

Ed Klumpp

Kansas Association of Chiefs of Police, Legislative Committee Chair

Kansas Sheriffs Association, Legislative Liaison

Kansas Peace Officers Association, Legislative Liaison

E-mail: eklumpp@cox.net

House Judiciary

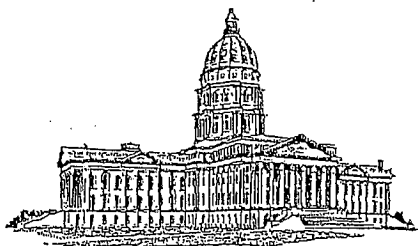
Date 3-07-11

Attachment # 3

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



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To: Committee on Judiciary

From: Tamera Lawrence, Assistant Revisor of Statutes

Date: March 7, 2011

Subject: HB 2305, Board of indigents' defense; terms and qualifications

Currently, K.S.A. 22-4519 limits the number of members of the board of indigents' defense to nine. It also requires at least one board member be from each county with a population over 100,000 and at least one board member be from each congressional district.

HB 2305 reduces the number of board members from nine to seven and allows a board member to represent both a county with a population over 100,000 and a congressional district. It also reduces the number of board members that must be lawyers from five to four and the number required to be non-lawyers from four to three.

House Judiciary  
Date 3-07-11  
Attachment # 4



Patricia A. Scalia, Director

Administration Office

Sam Brownback, Governor

### Testimony Regarding HB 2305

Good afternoon, Mr. Chairman, Representatives and staff:

Thank you for the opportunity to speak to you today as a proponent of HB 2305. My name is Patricia Scalia and I serve as executive director of BIDS. This bill would reconfigure the composition of the State Board of Indigents' Defense Services as listed in Kansas Statute 22- 4519.

The current statute requires that there be nine members of the Board; that two members be from the first congressional district and that one be a lawyer; that there be at least one member from each of the other judicial districts; and that there be a member from each county having a population in excess of 100,000 who shall be a lawyer, but no more than five such members; and no more than five members shall be lawyers.

Historically, the statute has been interpreted as requiring that the subsections are exclusive of one another, and it has been difficult to maintain a full complement of members.

Rather than expand the number of Board members as more counties reach the population mark of 100,000, the number could be compressed to seven by allowing for the appointment of one member from each county with a population of over 100,000, who may also represent their Congressional District. The number of attorneys would be four and non-attorneys would be three.

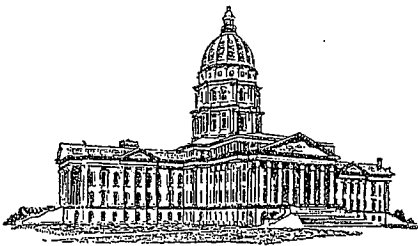
This would be a very workable solution. It allows for representation of the most populous counties which have the highest indigent caseload while maintaining representation for the First Congressional District. Additionally, it alleviates some of the difficulty in maintaining board members.

House Judiciary  
Date 3-07-11  
Attachment # 5

MARY ANN TORRENCE, ATTORNEY  
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY  
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY  
FIRST ASSISTANT REVISOR



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MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee  
From: Matt Sterling, Assistant Revisor of Statutes  
Date: March 7, 2011  
Subject: House Bill 2335

HB 2335 would amend the Kansas act against discrimination. Section 1 of the bill amends the definition of disability in K.S.A. 44-1002(j). Under current law, disability means, with respect to an individual: (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice complained of. The bill would remove the requirement that the person alleged to have committed the discriminatory practice viewed the individual as having an impairment.

Section 2 of the bill amends K.S.A. 44-1006 to state that it is the legislature's intent to model this act after the Americans with Disabilities Act. It further states that the definition of disability is to be construed to offer broad coverage and that a disability can be sporadic or only impact one aspect of life. Furthermore, any benefit that medication, equipment or other devices, except for ordinary eyeglasses, could provide for an individual would not be considered in determining if they had a disability.

House Judiciary  
Date 3-07-11  
Attachment # 6



Martha Gabehart, Executive Director

Sam Brownback, Governor

Testimony in Support of  
HB 2335 Amendments to the Kansas Act Against Discrimination  
By Martha K. Gabehart, Executive Director  
Kansas Commission on Disability Concerns (KCDC)  
March 7, 2011

Thank you Mr. Chairman and committee members for the opportunity to testify in support of HB 2335, amendments to the Kansas Act Against Discrimination to align it with the Americans with Disabilities Act (ADA) Amendments Act (ADAAA). I am Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC).

KCDC is catalyst for change in government for people with disabilities. We work with the governor, legislature and agencies on issues that adversely affect people with disabilities.

Our issue today is that the current Kansas Act Against Discrimination (KAAD) sets a different, narrower protection of the rights of Kansans with disabilities than the ADAAA that President Bush signed into law in 2008. The ADAAA overturned several Supreme Court cases that narrowed the definition of disability and the protection of rights. Because the KAAD has not been amended to adopt these changes, Kansas is using the more restricted standard of protection of rights for people with disabilities established by the Supreme Court.

This means there are two different laws that Kansas employers must follow and Kansans with disabilities working for employers with fewer than 25 employees do not have the same protection of rights as those employed by larger employers.

In addition, the Kansas Human Rights Commission has a contract with the Equal Employment Opportunity Commission (EEOC) to hear ADA complaints on the EEOC's behalf. If the KAAD is not amended to align with the ADAAA, that contract is in jeopardy.

The ADAAA was the product of a committee of several national disability organizations along with the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society of Human Resource Management and the Human Resource Policy Association. Based on their input, many changes for clarification were made and these groups all provided their support of the passage of the ADAAA.

#### Recap of Changes in HB 2335

1. The first change is on page 2, starting in line 25 – deleting the reference to the person or entity alleged to have committed the discrimination in the "regarded as" portion of the definition of disability. This wording was removed in the ADAAA and further explanation was provided about the state of being regarded as having an impairment was added to the ADAAA. This addition to the Kansas law is on page 3, line 8. It further explains that the individual must establish that he/she has been subjected to a prohibited action because of an actual or perceived impairment whether or not it limits or is perceived to limit a major life activity.

It also includes that this section does not apply to impairments that are transitory or minor and that transitory impairments last six months or less

2. Change #2 is on page 3, starting on line 2. It explains that reasonable accommodations do not have to be provided to people who are regarded as having a disability.
3. Change #3 is on page 3, starting on line 16. It is the definition of major life activities. This was originally in the regulations. Bodily functions were included.
4. Change #4 on page 3, line 34. This statement makes it clear that the Kansas Legislature intends the Kansas Act Against Discrimination be modeled on the Americans with Disabilities Act (ADA) and that it be construed as a state law remedy that is consistent with the federal law except where the state law offers greater protection.
5. Change #5 starts on page 4, line 3 contains other changes from the ADAAA which elaborate that the definition of disability be construed:
  - a. Broad coverage of individuals,
  - b. An impairment that substantially limits a major life activity does not have to limit other major life activities,
  - c. An impairment that is episodic or in remission and substantially limits a major life activity when active is considered a disability,
  - d. Determination of whether or not an impairment is a disability is to be done without taking into consideration mitigating measures,
  - e. The use of ordinary eye glasses will be considered when determining whether or not a person has a disability.
  - f. Definitions of ordinary eye glasses and low vision devices are included.

It is important to remember the goal of this legislation is to align the Kansas Act Against Discrimination with the Americans with Disabilities Act (ADA) Amendments Act. This is important because:

1. Employers currently have two different standards to follow,
2. Kansans with disabilities working for employers with 4-24 employees do not have the same protection of rights as those working for employer of 25 or more employees, and
3. The contract with the EEOC is in jeopardy.

There is technical correction that needs to be made. On page 3, line 4, there is a reference to K.S.A. 44-1002 (j)(3)(a). There is no "(a)" so that needs to be stricken from the bill.

KCDC is supportive of these changes and urges your support of HB 2335. Thank you for this opportunity to testify.

**TESTIMONY ON BEHALF OF THE KANSAS HUMAN RIGHTS COMMISSION  
IN SUPPORT OF H.B. 2335**

PROVIDED BY CHIEF LEGAL COUNSEL JOSEPH P. MASTROSIMONE,  
EXECUTIVE DIRECTOR WILLIAM V. MINNER, AND ASSISTANT DIRECTOR  
RUTH GLOVER

**BEFORE THE HOUSE JUDICIARY COMMITTEE**

March 7, 2011

The Kansas Human Rights Commission ("KHRC") urges the Committee to recommend passage of H.B. 2335 amending the disability discrimination provisions of the Kansas Act Against Discrimination ("KAAD") as enforced and administered by the KHRC. As discussed in more detail below, H.B. 2335 would conform the KAAD to the Americans with Disabilities Act, as amended ("ADA"). However, this is not merely a case of "follow the leader." Instead, H.B. 2335's passage would (1) ensure the continued flow of vital federal money to support the KHRC's operations, (2) eliminate confusion and reduce compliance costs for Kansas businesses, and (3) provide for consistent protection for Kansas employees from unlawful discrimination based on a disability.

**I. Background**

**A. The KAAD was Modeled After the ADA.**

Originally, the KAAD protected individuals from discrimination based on a "physical handicap." However, in 1990 then-President George H.W. Bush signed into law the Americans with Disabilities Act. In relevant part, the ADA prohibited employer's with 15 or more employees from discriminating against qualified individuals with disabilities. The ADA broadly defined an individual with a disability as a person who "has a physical or mental impairment that substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment." 42 U.S.C. § 12102(2).

Those same broad definitions were brought into the KAAD in 1991 when the Kansas legislature amended it to conform to the then-newly adopted ADA. Those 1991 amendments changed the KAAD from prohibiting discrimination due to "physical handicap" to the more expansive prohibitions against disability-based discrimination found in the ADA. Those amendments were made with strong support and were integral in protecting Kansans with disabilities from discrimination.

**B. The U.S. Supreme Court Significantly Narrowed the ADA's Coverage by Limiting the Definition of Disability.**

Despite the original ADA's broad statutory language, the United States Supreme Court had issued several decisions restrictively interpreting and narrowing the definition of "disability." The result was confusion, a narrowing of the ADA's coverage, and the perception that the ADA's original intent had been undercut.

First, in a "trilogy" of cases, the U.S. Supreme Court severely restricted the original broad sweep of the ADA. Those cases were:

- Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999): In this case, the Court held that whether an individual has a disability must be determined with reference to any mitigating or corrective measures the individual uses to offset the effects of a physical or mental impairment. The Sutton plaintiffs, who were legally blind, were found to be not "disabled" under the ADA because they had corrected vision through the use of eyeglasses.
- Albertson's Inc. v. Kirkingburg, 527 U.S. 555 (1999): In this case, the Court held that the mitigating measures rule articulated in Sutton applied not only to artificial measures, but to "measures undertaken, whether consciously or not, with the body's own systems[.]" so that a person's natural ability to compensate for the effects of an impairment must be considered when deciding whether the individual had a disability.
- Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999): In this case, the Court held the Plaintiff was not disabled under the ADA because his hypertension/high blood pressure was controlled by medication which was considered to be a mitigating measure.

Second, the Court further restricted the ADA's scope in Toyota Motor Mfg. of Kentucky, Inc. v. Williams, 534 U.S. 184 (2002). In that case, the Court held that the ADA's definition of disability "needs to be interpreted strictly to create a demanding standard of qualifying as disabled." The Court further found that in order for an individual to meet the definition of disability by being substantially limited in the major life activity of working, an individual must be precluded from a class of jobs or a broad range of jobs.

These four cases severely hampered the ADA's reach and in a sense set the ADA apart from the nation's other civil rights laws by imposing a presumption of narrow, rather than broad, coverage.



**C. The U.S. Supreme Court's Cramped View of the ADA's Coverage was Imported Into the Kansas Court's Interpretation of the KAAD.**

In Seaman U.S.D No. 345 v. KCCR and Reed, 26 Kan. App. 2d 521 (1999)(review denied by the Kansas Supreme Court), the Kansas Court of Appeals adopted the U.S. Supreme Court's approach in interpreting the KAAD's disability provisions. In that case, the Complainant was an insulin-dependent diabetic and had other conditions related to his diabetes. The Court of Appeals found that corrective or mitigating measures should be considered in determining whether the individual was disabled. The court first noted that "the KAAD is modeled after the ADA and, therefore, federal court decisions are persuasive authority" in interpreting the Kansas law. In finding that the plaintiff was not disabled because his diabetes was presently controlled by insulin, the court adopted the restrictive ADA rulings of the U.S. Supreme Court as the basic standards for interpreting the KAAD.

As a result of the U.S. Supreme Court's decisions and the importation of those decisions into the interpretation of the KAAD, individuals claiming that they have been discriminated against based on their impairments have been unable to proceed with their claims because they could not meet the unintended and court-imposed demanding standards related to whether they had a covered disability. Accordingly, parties and courts spent much of their time and resources analyzing whether a person was technically disabled enough to warrant coverage under the ADA or the KAAD instead of analyzing whether the person was subjected to unlawful discrimination. This became a cause of frustration and prevented the legal and administrative systems from fully assessing whether the person was discriminated against despite being otherwise qualified, which is the real issue the federal and state laws were intended to address.

**D. Congress Amended the ADA to Restore its Original Broad Protections.**

The frustration surrounding the narrow view of the ADA's coverage led directly to Congress' passage of bipartisan legislation to amend the ADA to restore its original broad coverage. The Americans with Disabilities Act Amendments Act ("ADAAA") became effective January 1, 2009. The ADAAA effectively overruled, by statute, the federal court cases narrowly interpreting the ADA and replaced the focus of the analysis on whether unlawful discrimination had taken place. However, Congress could not, and can not, overrule by statute the interpretation of the KAAD. Accordingly, while the federal statute has been restored to its original intent, the Kansas Act Against Discrimination remains constricted by the Kansas Court of Appeals decision in Seaman. Like the ADAAA, the only way to effectively restore the KAAD to its original broad promise of protection from discrimination based on an otherwise qualified individual's disabilities is by statutory amendment.

**II. H.B. 2335 Seeks to Restore the KAAD's Original Broad Protection Assisting the KHRC Achieve its Mission of Eradicating Discrimination, Assisting Kansas Employers to Comply, and Protecting Nearly All Kansans From Unlawful Discrimination on Account of a Disability.**

Like the ADAAA, H.B. 2335 seeks to amend the KAAD to clarify key definitions. Consistent with the ADAAA, the bill eliminates consideration of mitigating measures (except for ordinary eyeglasses or contact lenses), favors broad interpretation of "disability," recognizes that an impairment that is episodic or in remission remains a disability if it would substantially limit a major life activity when active, provides a non-exhaustive list of what can be considered major life activities, provides clarification regarding the terminology about major bodily functions, provides clarification as to the "regarded as" disabled provisions, and is otherwise intended make the KAAD and the ADAAA provisions similar. Bringing the two statutes into conformity will assist each of the KAAD's three constituents – the KHRC, Kansas employers, and Kansas employees.

**a. H.B. 2335 is Vital to the KHRC Continuing its Mission to Eradicate Discrimination in the State of Kansas.**

As explained in the KHRC's fiscal note, failure to pass H.B. 2335 endangers the receipt of significant federal funds associated with the investigation of disability complaints and endangers the KHRC's operations. The KHRC is party to a work sharing agreement with the U.S. Equal Employment Opportunity Commission to investigate allegations of discrimination arising under both the federal and Kansas anti-discrimination statutes. That agreement is premised on a finding that the state law is in substantial conformance with the federal law. Because the two statutes now have widely different definitions and coverage, there is a real and significant danger that the two statutes could be found to be not in substantial conformance. If that were to happen, the EEOC would be unable to continue its work sharing agreement with the KHRC for disability cases and the federal funds that flow to the KHRC for the investigation of those cases would cease.

The potential loss of federal funds is significant. In State Fiscal Years 2009 and 2010, the KHRC received 2,115 discrimination complaints in the areas of employment, housing, public accommodations, and profiling in conjunction with traffic stops. For all complaints received, 580 complaints cited alleged disability discrimination, making disability the fourth highest basis. Of the 2,115 employment complaints received, 557 alleged discrimination on the basis of disability.

Of the 557 alleged employment discrimination complaints filed on the basis of disability, an estimated 429 employment complaints were filed on disability alone or in combination with other alleged bases, were jointly filed with the EEOC, and investigated by the KHRC. At a rate of \$550 per case, the EEOC pays the KHRC an estimated \$235,950 for the investigation of these cases.

The remaining disability discrimination complaints were either first-filed with the EEOC or filed only with the KHRC, for which we would not have received a payment from the EEOC. Accordingly, nearly \$120,000 of average annual federal funding remains in jeopardy while the KAAD remains out of compliance with the amended ADA.

**b. H.B. 2335 Will Assist Kansas Employers By Clarifying the Law and Reducing Compliance Costs.**

Presently, most Kansas employers are subject to either the broad definitions under the ADAA or the more narrowly construed definitions of the KAAD depending on the number of employees they retain. Trying to comply with two different laws with two different sets of requirements and definitions adds unnecessary and costly confusion for employers seeking to comply with their responsibilities. Bringing the KAAD into conformity with the ADAAA will eliminate that confusion and apply the same rules to all covered Kansas employers. That consistency and ease of application will assist in securing compliance with the laws and lower the associated compliance costs.

Further, H.B. 2335 is not controversial legislation as it contains precisely the same compromises that won the ADAAA wide-spread and bipartisan support. The ADAAA was supported by the entire Kansas Congressional delegation, was signed into law by then-President Bush, and was supported by many employer and industry advocacy groups such as the U.S. Chamber of Commerce and the National Association of Manufacturers.

Finally, H.B. 2335 will allow the KHRC to continue to investigate disability claims arising from Kansas workplaces. Having Kansans, appointed by the Kansas Governor, approved by the Kansas Legislature, investigate and remedy Kansas problems provides a more convenient forum for the parties and a better public policy for the State.

**c. H.B. 2335 Will Assist Kansas Employees By Offering Broad Protections from Unlawful Discrimination.**

Last, but certainly not least, H.B. 2335 will continue Kansas' longstanding tradition of ensuring equality to all of its citizens. Whether a Kansan is protected from unlawful discrimination and can have that claim resolved by the Kansas Commission on Human Rights should not depend on the continued reliance on a line of discredited and discontinued federal court cases. Whether the employer is covered by only the KAAD or by both the KAAD and the ADA, employees should be provided with the same basic freedom from unlawful discrimination.

### **III. Conclusion**

The bottom line is that the KHRC believes that H.B. 2335 would help effectuate the original intent behind the 1991 amendments to the KAAD, help the KHRC continue its mission during times of significantly reduced state resources and funding levels, assist employers in complying with the law's requirements, and assist employees by extending broad protection from disability-based discrimination. Accordingly, we urge the Committee's favorable action on the bill.

# Independence, Inc.



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2001 Haskell Avenue  
Lawrence, KS 66046

Office: (785) 841-0333  
Toll Free: (888) 824-7277  
TDD: (785) 841-1094

[www.independenceinc.org](http://www.independenceinc.org)

## **House Committee on Judiciary Representative Lance Kinzer, Chair**

### **Testimony for House Bill 2335 Bob Mikesic, Deputy Director/Advocacy Coordinator March 7, 2011**

Thank you, Chairperson Kinzer and members of the Committee for the opportunity to express support for House Bill 2335. I'm Bob Mikesic, Deputy Director/Advocacy Coordinator at Independence, Inc., a Center for Independent Living in Lawrence, Kansas serving people with disabilities in Jefferson, Douglas and Franklin counties. Our mission is to maximize independence for people with disabilities through advocacy, peer support, training, transportation and community education.

Having a physical or mental disability does not diminish a person's ability and right to fully participate in all aspects of society, but people with disabilities are sometimes prevented from doing so because of prejudice and failure to remove societal barriers. Access to education and training also play into one's ability to obtain employment. Toward that end, during the last two years the Youth Employment Program of Independence, Inc. has provided vocational and independent living skills training to 79 youth with disabilities, ages 15 to 21. Of that group, 18 have obtained employment and 3 are in currently in vocational technical training. Kansas has many programs contributing to people with disabilities obtaining employment. We share the vision that all people in Kansas capable of working are able to obtain productive employment.

We strongly agree with the legislative intent expressed in HB 2335 that the Kansas Act Against Discrimination continue to be modeled after and be consistent with the Americans with Disabilities Act (ADA), except where the state law offers greater protection, covering employers with 4 or more employees. As did the ADA Amendments Act of 2008, HB 2335 makes clear the definition of disability is intended to include broad coverage of individuals and generally not require extensive analysis.

As Congress expressed in the ADA Amendments Act of 2008, "the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations" to not discriminate based on disability. Both laws retain the requirement that in order to be protected from job discrimination, an individual with a disability must be qualified to perform the essential functions or duties of a job, with or without reasonable accommodation.

I encourage your vote in favor of HB 2335. It gives Kansas a clear, strong state mandate for the elimination of discrimination based on disability and allows education to prevent discrimination to be even more effective.

House Judiciary  
Date 3-07-11  
Attachment # 9



EQUALITY ♦ LAW ♦ JUSTICE

## Disability Rights Center of Kansas

635 SW Harrison, Ste 100 ♦ Topeka, KS 66603

785.273.9661 ♦ 877.776.1541 (Voice)

877.335.3725 (TDD) ♦ 785.273.9414 FAX

www.drckansas.org ♦ info@drckansas.org

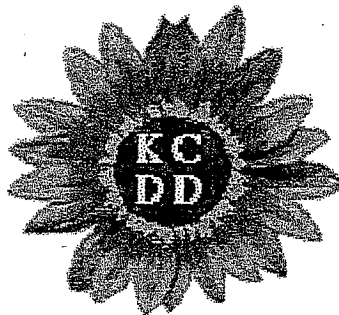
### HOUSE JUDICIARY COMMITTEE

March 7, 2011

Thank you for the opportunity to speak before you, my name is Nick Wood, I am a disability rights advocate at the Disability Rights Center of Kansas (DRC). The DRC is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As such, DRC is the officially designated protection and advocacy organization for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

Bill number 2335 is the next logical step for Kansas. It will serve to clear up misunderstandings between employers and employed as well as unnecessary confusion in the courts about how people are covered under the act. We applauded the bipartisan support these amendments received at the federal level and we are pleased to see the same kind of understanding between Kansas legislators on this important disability rights issue.

House Judiciary  
Date 3-07-11  
Attachment # 10



## ***Kansas Council on Developmental Disabilities***

SAM BROWNBACK, Governor  
KRISTIN FAIRBANK, Chairperson  
JANE RHYS, Ph. D., Executive Director  
jrhys@kcdd.org

Docking State Off. Bldg., Rm 141,  
915 SW Harrison Topeka, KS 66612  
785/296-2608, FAX 785/296-2861  
<http://kcdd.org>

*"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"*

### **HOUSE COMMITTEE ON JUDICIARY**

**March 7, 2011**

Mr. Chairman, members of the Committee, thank you all for the opportunity of appearing as a proponent of House bill 2335, an Act concerning the Kansas act against discrimination. The Kansas Council on Developmental Disabilities is a federally mandated and funded entity under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000. We accept no state funds. Our role is to study and examine the Kansas system for people who have Developmental Disabilities and to advocate with policymakers for improvements.

The purpose of the revisions for this law is simple: to bring it into confirmation with the Americans With Disabilities Act (ADA), a federal law enacted in 1990, that prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services for persons who have a hearing impairment.

The amendments to the Kansas Act contain the definitions from the ADA regarding the definition of disability, major life activities, and reasonable accommodations or modification among others. It also includes the following statement: "the intent of the Legislature that the Kansas act against discrimination is modeled after the Americans with disabilities act and shall be construed as a state law remedy consistent with the provisions of such federal law" (page 3, lines 34 – 37 of the Bill).

House Judiciary  
Date 3-07-11  
Attachment # 11

The Council supports such revisions and urges you to approve House Bill 2335 and pass it to the Committee of the Whole for passage.

We do appreciate appearing before you today and would be happy to answer any questions

Jane Rhys, Ph.D., Executive Director  
Kansas Council on Developmental Disabilities  
Docking State Office Building, Room 141  
915 SW Harrison  
Topeka, KS 66612-1570  
785 296-2608  
jrhys@kcdd.org



Testimony To

House Judiciary Committee

In Support of HB 2335

March 7, 2011

On behalf of the Statewide Independent Living Council of Kansas (SILCK), I am Shannon Jones, executive director of the SILCK. I offer the SILCK's written testimony in strong support for HB 2335.

The SILCK has long been an advocate for civil rights protections for people with disabilities. The state of Kansas has also had long history of supporting the civil rights of people with disabilities. When the Americans with Disabilities Act first passed in 1990, the Kansas legislature was quick to act and amended the Kansas Act Against Discrimination as to align it with the federal act.

Now once again, the legislature is called upon to ensure that the state of Kansas is in line with the recently passed federal legislation; the Americans with Disabilities Amendment Act (ADAA).

The SILCK urges this committee to favorably pass HB 2335, in order that Kansans with disabilities will have the civil rights protections that are consistent with federal policy.



**Testimony To  
House Judiciary Committee  
In Support of HB 2335  
March 7, 2011  
Written Only**

Mr. Chair and members of the committee, my name is Anne-Marie Hughey, Legislative Policy Advocate for SKIL Resource Center providing written testimony on behalf of the Kansas Association of Centers for Independent Living (KACIL.)

The Kansas Centers for Independent Living (CILs) philosophy and mission is to work to insure that all people whatever their disability or age have the right to live, work, play and fully participate in society without any physical or attitudinal barriers that limit their civil rights. The Americans with Disabilities of 1990 gave individuals with disabilities these rights.

The state of Kansas has also had long history of supporting the civil rights of people with disabilities. When the Americans with Disabilities Act first passed in 1990, the Kansas legislature was quick to act and amended the Kansas Act Against Discrimination to align it with the federal act.

KACIL once again calls upon the legislature to insure that the state of Kansas is in line with the recently passed federal legislation; the Americans with Disabilities Amendment Act (ADAA).

KACIL urges this committee to favorably pass HB 2335, in order that Kansans with disabilities will have the civil rights protections that are consistent with federal policy.

Thank you.

Anne-Marie Hughey  
913-787-1862  
annemarieh@skilonline.com

House Judiciary  
Date 3-07-11  
Attachment # 13

March 4, 2011

Re: HB 2335

I would like to thank the Judiciary Committee for the opportunity to provide written testimony on HB 2335. My name is Kathy Lobb, and I work for the Self Advocate Coalition of Kansas. I am a person with a disability.

I would like to encourage, not only the Judiciary Committee, but all of the Kansas legislature to accept and adopt HB 2335, the Kansas Act Against Discrimination. The Kansas Act Against Discrimination would bring Kansas in line with Federal requirements outlined and modeled by the Americans with Disabilities Act. It is the right thing to do.

As a person with a disability, initiatives such as the Americans with Disabilities Act have helped make communities more accessible to people like myself. By making communities more accessible, *I* become more involved in the community: I work in the community and I am a homeowner that pays taxes. By making our communities more accessible, we turn people with disabilities into productive tax payers rather than tax consumers. Adopting this bill is the right thing to do for people with disabilities, and it is the right thing to do for Kansas.

Thank you,

Kathy Lobb

Legislative Liaison

Self Advocate Coalition of Kansas

House Judiciary  
Date 3-07-11  
Attachment # 14