

Approved: May 11, 2012

(Date)

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Kinzer at 3:35 PM Tuesday, February 14, 2012 in 346-S of the Capitol.

All members were present.

Committee staff present:

Katherine McBride, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Nancy Lister, Committee Assistant

Conferees appearing before the Committee:

Larry Goldman, Kansas Self Storage Owners Association
Jeff Colyer, M.D., Lieutenant Governor
Robert Noland, Kansas Family Policy Council
Mike Schuttloffel, Kansas Catholic Conference
Sen. Marci Francisco
Thomas Witt, Kansas Equality Coalition
Holly Weatherford, ACLU of Kansas & Western Mo.
Lori Wagner, Lawrence, KS
Jason Chaika, Topeka, KS

Others in attendance:

See attached.

Chairman Kinzer opened the hearing on **HB 2647–Relating to the self-service storage act.** Katherine McBride provided an overview of the contents of the bill.

Larry Goldman testified in support of **HB 2647** stating the Kansas Self Storage Owners Association (KSSOA) wants to bring K.S.A. 58-817 in line with the current industry practice. As a commercial real estate broker who brokers self-storage facilities in a number of states, Mr. Goldman advised he watches what is going on in the industry, and this bill is trying to bring the statute into the internet age. The statute has not been amended since 1984, and the industry has changed dramatically as a result of the internet. The industry common software is set up for use over the internet. The existing Kansas statute requires the use of restricted mail for all notices

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unless otherwise specified. Kansas is the only state in the country that requires lien sale and other notifications to tenants to be sent by restricted mail delivery. That costs on average \$12 dollars per letter. Today's notice delivery practice in the industry is First Class Mail or e-mail at an address provided by the tenant. Kansas statute also requires notices of lien sales to be placed in print newspapers, which can cost \$200 and upwards, depending on the number of units being auctioned. There are publically accessible websites and databases for the publication of self storage and other lien sales that reach the correct audience and result in suitable attendance at the sales. KOSSA believes using these methods for advertising would be more effective and economical. Mr. Goldman stated KOSSA is asking for language in the bill intended to protect owners from liability issues regarding confidential information, such as medical patient records or attorney's client files discovered, disclosed, or disseminated stemming from lien sales of the contents of storage units. ([Attachment 1](#))

Chairman Kinzer closed the hearing on **HB 2647** and opened the hearing on **HB 2260–Kansas preservation of religious freedom act.** Katherine McBride provided a brief overview of the contents of the bill.

Chairman Kinzer advised **HB 2260** is a bill that was heard by the Committee last year and tabled. In the second year of the bill cycle, a tabled bill is no longer tabled but is treated like any other bill and may be scheduled for a hearing, which is the case today.

Chairman Kinzer directed the Committee to the handouts he provided. The Religious Freedom Restoration Act has a federal counterpart that has been in law since the mid-nineties. The handout is named *42 USC Ch. 21 B: Religious Freedom Restoration*, sections 2000bb-1 through 4. After it was passed into law, there was a legal challenge. As it was initially drafted, the bill applied to both federal laws and to the states as well. There was a challenge on federalism grounds whether it could apply to the states. The portion applying to the states was stricken down, but it remained in effect with respect to federal law. A number of states have passed their own state versions, and this is why it is being considered today. ([Attachment 2](#))

Chairman Kinzer stated in terms of the decision to consider this bill again, a matter that has been in the news lately and has caused some interest is the interaction between Religious Freedom Restoration Act-type language and aspects of health care legislation. Most recently, the HHS contraception mandate has become an issue of interest. Chairman Kinzer handed out an article for the Committee to review written by Ed Whelan, from the Ethics and Public Policy Center, which talks about how the federal Religious Freedom Restoration Act interacts with the recent HHS decision on contraception, providing an overview of the situations and scenarios in which a religious freedom restoration act-type of language would have some merit. ([Attachment 3](#))

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Chairman Kinzer stated one of the things that came up last year was the proponents of the legislation were indicating the intent was to codify existing Kansas law and there was a question as to whether the bill was achieving that end. There was a Kansas Court of Appeals opinion, just within the last few months, *Stinemetz v. Kansas Health Policy Authority*, and he had handouts for Committee members who want a copy. (Attachment 4)

The *Stinemetz* case involved a Jehovah's Witness in need of a liver transplant. Her religious beliefs prohibited her from receiving a blood transfusion. There was a no more expensive procedure available to her out of state, and the issue was whether Medicaid should pay for her treatment outside of the state, under Kansas law, or should she be limited to receiving the treatment in the state of Kansas. The ruling of the court was that Section Seven of the Kansas Bill of Rights provides a greater protection concerning the free exercise of religion than does the First Amendment of the U.S. Constitution. This was important because the legal standard that the Court of Appeals reaffirmed was the old *State v. Smith* decision, which was the decision made by Justice Scalia in the early 1990s that severely curtailed the application of the First Amendment of the United States. It occasioned the need for a freedom of religious restoration act. The Court in the *Stinemetz* opinion, as recently as a few months ago, said they still adopt the older standard, the prior standard, which is the legal standard set forth in **HB 2260**: whether the individual's religious beliefs are sincerely held, whether the state action burdens the individual's free exercise of religious belief, whether the state interest is overriding or compelling, and whether the state uses the least restrictive means of achieving its interest. This is the constitutional standard in Kansas as was recently determined by the Kansas Court of Appeals.

Chairman Kinzer expressed if there is a federal statute that says this standard is law at the federal level and there is a recent Kansas Court of Appeal opinion that says this standard is the law constitutionally in Kansas, some would question whether there is a need for a statute. Chairman Kinzer offered there is, but it is primarily for prophylactic reasons in nature and because it is based on the recognition that courts do change their minds from time to time. There is a powerful set of case law that exists at the federal level interpreting the federal Constitution more narrowly, and so the purpose, at least for someone who is involved with the bill to some extent, is an attempt to codify existing legal standards as they sit right now in Kansas. That is the intent and the reason for taking up the bill again.

Lieutenant Governor Jeff Colyer testified in support of **HB 2260** stating America was founded on the basis of religious liberty and that different beliefs were going to be respected. This has been a long tradition in our country and it is recognized that in the law and the First Amendment of the United States Constitution. Unfortunately, there have been some challenges to this at the federal level. The Obama Administration has produced a number of health care policies that mandate violations of conscience for millions of Americans, people who regard their faith as

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very important to them and who care about how their tax dollars are spent and how they live their lives. To have a mandate that goes against the teachings of the churches and their core fundamental beliefs is certainly one that gives us all pause, as we want to make sure these sorts of issues no longer arise in Kansas. The notion we can have preventive medicine and prescribe medications that cause an abortion is an affront to many Americans. To require religious institutions to accept terms of a compromise plan requiring employers to subsidize practices which are anathemas to their most fundamental values is a very worrisome thing. Lieutenant Governor Colyer asked the Committee to keep the federal government's recent attempts to trample the religious liberties of Americans at the forefront as they consider this bill. ([Attachment 5](#))

Robert Noland testified in support of [HB 2260](#) stating the very first communities in this nation were people who made the harrowing journey across uncharted waters to escape the religious tyranny of their government. In Kansas and America today, government is seeking to interfere in the expression of faith and the exercise of religion whether through legal precedent, education policy, federal law, local ordinance, or intrusive regulation. Currently, over a dozen states have adopted Religious Freedom Restoration Acts and Kansas should follow suit. The Kansas Family Policy Council strongly encourages the favorable passage of this bill, as Kansas lawmakers should to take the lead in enacting protections and safeguards that strengthen and protect religious liberty. ([Attachment 6](#))

Michael Schuttloffel testified in support of [HB 2260](#) advising concern for religious freedom is not a theoretical concern, but the rational response to what is happening in our country today. This past summer, United States Department of Health and Human Services issued an order that would require Catholic institutions to provide their employees with health care coverage including products and services the Catholic faith teaches are deeply immoral and to provide them for free. The revisions to the policy announced this past week are completely insufficient in meeting the concerns. Americans of all walks have understood this is an attack on religious freedom, the most cherished right in our nation. Opponents of a state religious freedom law have been busy making the inaccurate claim that it would legalize discrimination. To the contrary, a state religious freedom law would help prevent discrimination, namely government-sanctioned discrimination against people of faith. ([Attachment 7](#))

Chairman Kinzer directed the Committee's attention to written testimony in support of [HB 2260](#) from Joel Oster, Senior Litigation Counsel for the Alliance Defense Fund ([Attachment 8](#)), and Judy Smith, State Director for Concerned Women for America. ([Attachment 9](#)) Chairman Kinzer also acknowledged written neutral testimony from Secretary Ray Roberts, with the Kansas Department of Corrections, and noted that Corrections and also the Juvenile Justice Authority have some amendments they would like the Committee to consider if and when the bill is worked. ([Attachment 10](#))

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Senator Marci Francisco testified in opposition of **HB 2260**, specifically objecting to Section 1 (b) (2) defining “compelling governmental interest” to exclude prohibition of a practice or policy of discrimination against individuals in employment relations, in access to free and public accommodations or in housing, except as set forth in K.S.A. 44-1001 et seq., and amendments thereto, and the laws and constitution of the United States. Senator Francisco asked that Section 1 (b) (2) be removed from the bill. ([Attachment 11](#))

Thomas Witt testified in opposition of **HB 2260** stating the bill is complex and convoluted, and the intent of the bill is to invalidate all non-discrimination policies in the state of Kansas that do not exactly match Chapter 44, Article 10 of Kansas Statutes, known as the “Kansas Acts Against Discrimination.” Mr. Witt recommended several possible remedies to improve the legislation, including striking Section 1 (b) (2), which creates an exclusion to “compelling government interest.” ([Attachment 12](#))

Holly Weatherford testified in opposition of **HB 2260**, advising the American Civil Liberties Union believes religious freedom is a fundamental human right guaranteed by the First Amendment’s Free Exercise and Establishment clauses (1) and (7) of the Kansas Constitution Bill of Rights. Ms. Weatherford stated if this Committee feels they must take action to protect the religious freedom of Kansans, she suggested lessons can be learned from other states that have previously passed state religious freedom laws, faced legal challenges to that, and succeeded, such as Texas. The Texas Religious Freedom Act is a product of compromise. The success behind the Texas law, which was signed into law by then Governor George W. Bush, was a result of cooperative efforts of a diverse coalition, drawn together by a shared commitment to protecting religious freedom in their state. It drew support from various faith communities and spanned the political spectrum from the conservative Christian Legal Society, to the liberal Texas Freedom Network. The Texas law is comprehensive in nature and ensures protections for the health, safety, and fundamental rights of all citizens. ([Attachment 13](#))

Lori Wagner testified in opposition of **HB 2260**, stating her beliefs are the old fashioned values of honesty, fairness, equality and compassion. Her religious beliefs in no way tolerate discrimination. She opposes the bill because it legalizes discrimination against gay, lesbian, bisexual, and transgendered Kansans under the guise of religion. She offered if the Committee wanted to make a law that would make a difference, they should add sexual orientation and gender identity to Kansas’ non-discrimination law. ([Attachment 14](#))

Jason Chaika testified in opposition of **HB 2260**, stating he wanted to make it clear that bigotry wrapped in prayer is still bigotry. ([Attachment 15](#))

Chairman Kinzer directed the Committee’s attention to written testimony opposing **HB 2260** from Aaron Cromwell, Mayor of Lawrence, and on behalf of the Lawrence City Commission

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(Attachment 16), Vickie Stangl, with the Great Plains Chapter of Americans United for Separation of Church and State (Attachment 17), and Kari Ann Rinker, with Kansas National Organization for Women. (Attachment 18)

Chairman Kinzer closed the hearing on **HB 2260**.

Chairman Kinzer stated he would like the Committee to consider taking final action on **HB 2484–Certified shorthand reporters; deposition in Kansas**. Jason Thompson provided a brief overview of the contents of the bill.

*Representative Rubin moved, Representative Suellentrop seconded, to recommend **HB 2484** favorably for passage.*

The Committee briefly discussed how the bill came about, that the rules of civil procedure used to require a certified court reporter do depositions. This requirement is not found in the federal act, but the federal districts locally require court reporters to be certified in the state. It is omitted in the federal rules and when the recodification was done in Kansas, the language was inadvertently left out. The bill reinserts the language in the Kansas Code.

Chairman Kinzer inquired whether the maker of the motion and the individual who seconded the motion would be amenable to adding to their motion that the bill be placed on the Consent Calendar. Both agreed.

*Representative Rubin moved, Representative Suellentrop seconded, to recommend **HB 2484** favorably for passage and be placed on the Consent Calendar. Motion Carried.*

Chairman Kinzer advised, with respect to **HB 2569**, staff has some additional information on the exemptions to the Open Records Act, which will be provided to everyone. He asked the Committee to review the information prior to considering final action on the bill. (Attachment 19)

The next meeting is scheduled for February 15, 2012.

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