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TO: House Judiciary Committee
FROM: Kansas Judicial Council – Christy Molzen
DATE: February 4, 2020
RE: Neutral testimony on 2020 HB 2523 enacting the Kansas Assistance Animals in Housing Act

House Bill 2523 is based on the work product of the Judicial Council's Advisory Committee on Disability Access. The Council is submitting the attached report because it provides some helpful background on the study process that resulted in the drafting of the bill.

In the report, the Advisory Committee cited guidance issued by the Department of Housing and Urban Development (HUD) in 2013 regarding the Fair Housing Act; specifically, HUD's FHEO Notice FHEO-2013-01. HUD issued a new guidance statement just last week on January 28, 2020: FHEO-2020-01. The attached report was approved in December 2019 so it does not take the new 2020 guidance into account.

REPORT OF THE JUDICIAL COUNCIL ADVISORY COMMITTEE ON DISABILITY ACCESS

December 13, 2019

BACKGROUND AND COMMITTEE MEMBERSHIP

In April 2019, Rep. Fred Patton asked the Judicial Council to study the topic of service animals and accessibility. The need for the study arose during the legislature's consideration of 2019 HB 2152 regarding reasonable accommodation of assistance animals in rental housing. In his request, Rep. Patton asked the Council to 1) consider solutions to the issues raised by the proponents of HB 2152, and 2) review and update the Kansas White Cane Law, K.S.A. 39-1101, *et seq.*, to ensure it is in compliance with federal law. Rep. Patton also asked that the Council consider concerns raised by the Kansas League of Municipalities regarding misrepresentation of the right to be accompanied by an assistance animal. Copies of the study request and HB 2152 are attached.

The Council agreed to undertake the study and formed a new ad hoc committee for that purpose. The members of the Advisory Committee on Disability Access are:

Hon. Amy Harth, Chair, Paola; Chief District Judge in the 6th Judicial District

Kristi Brown, Topeka; Kansas Chamber of Commerce

Michael Byington, Topeka; Certified Orientation and Mobility Specialist in private practice, and Corresponding Secretary, Kansas Association for the Blind and Visually Impaired, Inc.

Kip Elliot, Topeka; Attorney, Disability Rights Center of Kansas

Ami Weidler-Hyten, Topeka; Executive Director, Topeka Independent Living Resource Center, Inc.

Ed Jaskinia, Kansas City; President, Associated Landlords of Kansas

Catherine Johnson, Lawrence; Director, ADA Resource Center for Equity & Accessibility at the University of Kansas

Rep. Stephen Owens, Hesston; State Representative from the 74th District

Martha Smith, Topeka; Executive Director, Kansas Manufactured Housing Ass'n

Britain Stites, Junction City; City Attorney for Junction City

Colin Thomasset, Topeka; Associate, Kearney & Associates, Inc.

Patrick Vogelsberg, Topeka; Vice President of Governmental Affairs, Kansas Ass'n of Realtors

METHOD OF STUDY

The Committee met four times during the fall of 2019. The Committee reviewed HB 2152, and legislative minutes and testimony from when the bill was heard in House Judiciary. The Committee reviewed the Kansas White Cane Law, K.S.A. 39-1101, *et seq.*; the Kansas Act Against Discrimination, K.S.A. 44-1001, *et seq.*; as well as federal law, including guidance from the Department of Justice on the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and guidance from the Department of Housing and Urban Development on the Fair Housing Act, 42 U.S.C. § 4601, *et seq.* The Committee considered proposed language from the Kansas League of Municipalities regarding misrepresentation of an assistance animal, as well as other states' laws regarding the reasonable accommodation of assistance animals in housing, use of service animals in public accommodations, and misrepresentation of the right to service or assistance animals.

Two drafting subcommittees also met. One subcommittee worked on an alternative proposal to HB 2152, dealing with assistance animals in housing. The other subcommittee worked on recodifying the White Cane Law to bring it into compliance with federal law.

BACKGROUND ON HB 2152

House Bill 2152 was introduced at the request of the Kansas Manufactured Housing Association, which had worked with the Associated Landlords of Kansas and the Kansas Association of Realtors on proposed legislation. According to proponents, the purpose of the bill was to provide guidance to landlords and tenants on requests for reasonable accommodation of assistance animals under the Fair Housing Act. The proponents explained that landlords are being faced with an increasing number of persons requesting reasonable accommodations for assistance animals, especially emotional support animals. The concern is that sometimes those requests are not legitimate; rather, they are an attempt to evade a landlord's "no pets" policy, a size or breed restriction, or pet deposit requirement. Proponents also pointed out the many online entities offering to provide documents certifying an emotional support animal for a fee, often without any meaningful assessment of a person's disability-related need for such an animal.

Opponents argued that the bill was inconsistent with federal law, including the Fair Housing Act and the Americans with Disabilities Act, and could obviate the protections offered under those acts. For example, the bill could require a disabled person to disclose personal medical information in an attempt to obtain housing. Opponents pointed out that housing presents a particular area of concern for persons with disabilities, because accessible, affordable housing can be difficult to find.

When the Revisor of Statutes drafted HB 2152, based on the proposal submitted by proponents, the Revisor incorporated the new provisions into the existing White Cane Law, K.S.A. 39-1101, *et seq.* Both the proponents and opponents agreed that this presented difficulties because the White Cane Law has a different scope and needs updating.

HISTORY OF THE WHITE CANE LAW

The term “white cane law” has typically been used to refer to traffic laws that protect blind or visually impaired pedestrians using a white cane or guide dog. Most states have this type of white cane law, as does Kansas. See K.S.A. 8-1542 (“The driver of a vehicle shall yield the right-of-way to any blind pedestrian carrying a clearly visible white cane or accompanied by a guide dog”).

The Kansas White Cane Law found at K.S.A. 39-1101, *et seq.*, has a much broader purpose. It protects the right of all disabled persons to use assistance dogs (defined to include guide dogs, hearing assistance dogs, and service dogs) in public places and in the acquisition of housing. K.S.A. 39-1102, 39-1107, 39-1108, and 39-1113(a). It provides similar rights to the professional trainer of an assistance dog, K.S.A. 39-1109; and to the qualified handler of a professional therapy dog, K.S.A. 39-1110.

The current White Cane Law was enacted in 1969, but some of its provisions have been part of Kansas law since the 1930s. At first, the laws only protected the right of the blind and visually impaired to use guide dogs in public places. As guide dogs became an established and accepted tool for independence used by the blind and visually impaired, the law was gradually expanded to apply to other kinds of assistance dogs, eventually including professional therapy dogs.

Recognition of October 15th as White Cane Safety Day was also part of the original 1969 enactment. Committee member Michael Byington provided the Committee with some additional information about White Cane Safety Day and the history of the white cane generally. That information is attached at the end of this report.

FEDERAL LAW

There are several different federal laws that apply to the use of service, assistance, and emotional support animals. For purposes of this study, the Committee focused on two: the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, which applies to the use of service animals in places of public accommodation, and the Fair Housing Act (FHA), 42 U.S.C. § 4601, *et seq.*, which applies to the accommodation of assistance animals in housing.

Note that “service animals” and “assistance animals” are defined differently for purposes of these two federal laws. Under the ADA, a “service animal” means “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” Miniature horses may also be considered service animals in some circumstances, but no other species of animal qualifies. The work or tasks performed by the service animal “must be directly related to the individual’s disability.” Importantly, animals whose sole function is to provide emotional support, well-being, comfort, or companionship are excluded from the definition of service animal under the ADA. See 28 C.F.R. § 35.136(i) and 28 C.F.R. § 36.104.

By contrast, the definition of “assistance animal” under the FHA is much broader. The FHA defines “assistance animal” as “an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability.” See HUD FHEO Notice FHEO-2013-01. Thus, the FHA definition of “assistance animal” is broad enough to encompass both service animals and emotional support animals, while the ADA covers only service animals. Also, an assistance animal could include species of animals other than just dogs or miniature horses. Finally, unlike the ADA, the FHA does not require that an assistance animal have any specific training.

The ADA and FHA also have slightly different requirements as to what inquiries can be made to verify a person’s need for a service or assistance animal. Under the ADA, places of public accommodation may ask only two questions: 1) Is the service animal required because of a disability? and 2) What work or tasks has the animal been trained to perform? The public accommodation may only ask these questions if the answers are not readily apparent, and it may not ask for documentation, such as proof of an animal’s training. See 28 C.F.R. § 36.302(c)(6).

Under the FHA, a housing provider who receives a request for a reasonable accommodation of an assistance animal can ask only two questions: 1) Does the person making

the request have a disability? and 2) Does the person have a disability-related need for an assistance animal? However, if the person's disability or disability-related need for the assistance animal is readily apparent or known to the housing provider, the housing provider cannot ask for supporting documentation. The housing provider also cannot ask for medical records or detailed information about the person's disability. See HUD FHEO Notice FHEO-2013-01.

PROPOSED LEGISLATION

The Committee has drafted two separate legislative proposals in response to Rep. Patton's study request. The first proposal, the Kansas Assistance Animals in Housing Act, addresses the accommodation of assistance animals, including emotional support animals, in housing. It uses the same definition of "assistance animal" as found in federal law and the same standard regarding when a housing provider may request documentation of an individual's disability-related need for an assistance animal.

The second proposal, the Kansas Service and Therapy Animals Act, is intended to replace the current White Cane Law and addresses the right of persons with disabilities to be accompanied by service animals in public accommodations. It uses the same definition of "service animal" as found in federal law and the same standard for when a public accommodation may ask questions to clarify whether an animal is a service animal or pet.

The Committee understands that the terms "assistance animal" and "service animal" can be confusing and hopes to alleviate some of that confusion by adhering as closely as possible to federal terminology, definitions, and substantive provisions. Also, the Committee drafted these proposals keeping in mind that, under the doctrine of federal preemption, state law may provide greater protections for persons with disabilities but cannot limit rights granted under federal law.

The Committee intends that these new acts supplement the Kansas Act Against Discrimination (KAAD), K.S.A. 44-1001 *et seq.* The KAAD prohibits discrimination in employment, public accommodations, and housing; however, it lacks any provisions specifically referencing service or assistance animals.

Kansas Assistance Animals in Housing Act

At the suggestion of Committee members Martha Smith and Ed Jaskinia, who were both original proponents of H.B. 2152, the Committee ultimately chose a different model and drafted an entirely new proposal intended to provide guidance to housing providers on the accommodation of assistance animals, including emotional support animals, in housing. The language of the proposed legislation is modeled largely on an act recently adopted in Illinois. See

Illinois House Bill 3671, effective date January 1, 2020. The Committee chose the Illinois law as a model because it closely mirrors the language of federal requirements, especially as to the definition of “assistance animal” and the provisions governing what kind of documentation a housing provider can ask for in support of a request for reasonable accommodation.

Consistent with federal law, Section 3 of the Committee’s proposal describes when a housing provider may require reliable documentation from a person requesting the reasonable accommodation of an assistance animal. Section 3 sets out what such documentation must include and requires that it be made by someone with whom the person requesting the accommodation has a “supportive relationship.”

“Supportive relationship” is defined in Section 1(f) as “the provision of healthcare or personal care services, in good faith, for and with actual knowledge of, an individual’s disability and that individual’s disability-related need for an assistance animal by: (1) a healthcare provider, or (2) a non-medical service agency or reliable third party who is in a position to know about the individual’s disability.” This definition is intended to exclude online entities that provide documentation for a fee but without conducting a meaningful assessment of the individual.

Section 3 also sets out when a housing provider can deny a request or require additional supporting documentation. Section 4 provides immunity to the housing provider for damages or injuries caused by an assistance animal.

The Committee also added provisions related to misrepresentation of the need for an assistance animal and improper denial of an assistance animal. Under Sections 5 and 6, these offenses are misdemeanors with a graduated penalty scheme depending on whether the conviction is a first, second, third or subsequent offense. Section 5 also allows a housing provider to evict a tenant who misrepresents his or her entitlement to an assistance animal.

Kansas Service and Therapy Animals Act

The second proposal drafted by the Committee is intended to replace the current White Cane Law (with the exception of K.S.A. 39-1104 regarding White Cane Safety Day). The proposal addresses the right of persons with disabilities to be accompanied by service animals in public accommodations, consistent with the ADA. It goes beyond the ADA by extending the same rights to service animals in training and more limited rights to therapy animals, as does the current White Cane Law.

The preamble to the Kansas Service and Therapy Animals Act is intended to recognize its predecessor, the White Cane Law, and the efforts of the blind and visually impaired community in establishing the right to use guide dogs in public places. Their early work in raising awareness

and gaining acceptance for guide dogs eventually led to protections for other types of service dogs.

Sections 4 and 5 of the proposed act describe the disabled person's right to be accompanied by a service animal, and the public accommodation's rights and responsibilities with regard to service animals, including when and what questions the public accommodation may ask, and when service animals may be excluded or removed from the premises.

Section 6 provides that a service animal must be under the control of its handler, and that the handler is liable for any damage cause by the animal. Section 7 provides that service animals are exempt from any ordinance that bans specific breeds of dogs, but not other general license and registration ordinances.

Section 8 extends the same rights found in Sections 4 through 7 to service animals in training. Under Section 9, therapy animals are treated somewhat differently. Section 9 provides that the handler of a therapy animal may take it in or upon a public accommodation to provide animal-assisted therapy or while in transit to provide such therapy. The other rights found in Sections 4 through 7 are not extended to therapy animals.

Finally, Sections 10 and 11 contain provisions relating to the misrepresentation of a service or therapy animal and interference with the right to use a service or therapy animal. As in the Assistance Animals in Housing Act described above, these offenses are classified as misdemeanors with a graduated penalty scheme.

Changes to Current Law

Because the Committee's proposal would repeal all but one section of the White Cane Law, it represents a change from current law in several areas. For example, K.S.A. 39-1111 currently provides a procedure for verifying a person's right to be accompanied by an assistance dog or professional therapy dog. As written, this section allows, but does not require, a person with a disability to produce an identification card or letter setting out the assistance dog's training. The Committee acknowledged that this provision might not technically run afoul of the ADA (which does not allow a business to request this type of information about a service animal), since it is permissive and not mandatory. However, the Committee was concerned that it could lead to confusion.

K.S.A. 39-1111(b) and (c) currently require the handler of a professional therapy dog and the trainer of an assistance dog to produce a similar identification card or letter upon request. Although therapy dogs and assistance dogs in training are not covered by the ADA, so requesting such information is not prohibited, the Committee was concerned that requiring such

information to be provided for certain animals but not others could become confusing to business owners and lead to improper requests for identification cards from all service animals.

Another reason for repealing these provisions is the growing problem of online entities providing meaningless certificates. The Committee does not want to further encourage the production of such documents by having statutes on the books that apparently require or authorize them.

Several of the provisions of the current White Cane Law regarding the right of the disabled to fair employment and housing are now more fully covered by the Kansas Act Against Discrimination, so there is no need to retain them. However, the Committee recommends keeping K.S.A. 39-1104 of the current White Cane Law, which established October 15 as White Cane Safety Day in Kansas. The Committee proposes some amendments for clarification and to make the statute gender neutral.

Finally, the Committee recommends conforming amendments to K.S.A. 21-6416 regarding the infliction of harm or death to a police dog or other type of service dog.

League of Municipalities' Concern

During the final conference call to approve the Committee report, the League of Kansas Municipalities raised a concern about language in the proposed Kansas Service and Therapy Animal Act. John Goodyear, a staff attorney for the League, explained that the League was worried that broad language in the proposed act could blur the lines between service animals and therapy animals and could allow individuals to abuse the law by claiming their pets provide a therapeutic function and qualify as therapy animals under the act.

By a vote of 4-3, the Committee agreed to adopt the League's proposed solution, which was to define the handler of a service animal and the handler of a therapy animal separately, as described in Section 3(b) and 3(c). As suggested by the League, the definition of "handler of a service animal" would read, "'Handler of a service animal' means the individual entitled to the use of the service animal and for whom the service animal is trained to perform tasks." Kip Elliot, who voted against the motion, pointed out that a service animal handler might include someone other than the person with the disability for whom the animal is trained to perform tasks. For example, a parent might be the handler of a service animal trained to perform tasks for a child. The proposed definition does not appear broad enough to encompass this situation. This is an issue that may require further attention during the legislative process.

CONCLUSION

The Committee recommends the attached proposed legislation. The first proposal will provide guidance to housing providers and persons with disabilities regarding the reasonable accommodation of assistance animals in housing consistent with the Fair Housing Act. The second proposal replaces the White Cane Law with updated provisions on the use of service animals in public accommodations consistent with the Americans with Disabilities Act.

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FRED C. PATTON
50TH DISTRICT

April 25, 2019

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a current law, the Kansas "White Cane Act," KSA 39-1101, *et seq.* The need to review and update this act arose in the 2019 Session, during consideration of HB 2152 – Creating the assistance animal integrity act, by the House Committee on Judiciary. The testimony regarding HB 2152 led to discussion of the Kansas "White Cane Act," which addresses rights of persons with disabilities (and part of which would have been amended by HB 2152, as introduced).

HB 2152 was introduced at the request of the Kansas Manufactured Housing Association (KMHA). In the House Committee hearing, representatives of the KMHA and the Associated Landlords of Kansas testified in favor of a version of the bill different than the language that was introduced in HB 2152, stating their version of the language "is narrowly focused to cover reasonable accommodation for assistance animals in housing according to the federal Fair Housing Act." According to the KMHA, their version of the bill would provide definitions and clarifications related to requests for accommodation of assistance animals, would provide immunity to landlords regarding assistance animals, and would create misdemeanor offenses for misrepresenting the entitlement to an assistance animal or misrepresenting an animal as an assistance animal. The KMHA also noted several other states have passed legislation addressing the misclassification of pets as assistance animals. The Kansas Association of Realtors provided written-only proponent testimony.

Representatives of the Disability Rights Center of Kansas (DRC) and the Topeka Independent Living Resource Center testified in opposition to the bill, stating it was inconsistent with federal law, including the Fair Housing Amendments Act and the Americans with Disabilities Act, and would obviate some of the most critical aspects of fair housing protections under federal law. The DRC representative also noted the Kansas "White Cane Act" is in general need of updates to reflect current federal law.

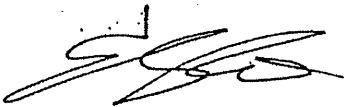
The DRC representative stated they have been in communication with the League of Kansas Municipalities and representatives from both agencies agreed that Judicial Council study of possible updates to the "White Cane Act" generally, while also considering solutions to issues raised by the proponents of HB 2152 and the concerns the League of Municipalities has identified, would be desirable.

The League of Kansas Municipalities believes that the misrepresentation of the right to be accompanied by an assistance animal, as contained in KSA 39-1112, could (1) be updated to better allow officials to interpret and apply the law similar to other states, such as California or Missouri that, like Kansas, focus on the misrepresentation of personal need for or possession of a service animal; (2) be updated similar to New Hampshire or North Carolina to focus on misrepresenting an animal's training; or (3) be updated by some combination of both approaches.

After considering HB 2152, I believe that a more in-depth review of current federal and state law regarding service animals and accessibility would be appropriate and desirable before further considering any such legislation. After further discussion with the conferees, I agree the Kansas Legislature and citizens of Kansas would benefit from the Judicial Council's study of and recommendation regarding updates to the Kansas "White Cane Act." The "White Cane Act" has not been updated since the Americans with Disabilities Amendments Act was passed and Department of Justice guidance was issued on these matters. Specifically, I would ask for a recommendation by the Judicial Council regarding updates to the "White Cane Act" to ensure it is in full compliance with the ADA and Fair Housing Amendments Act on accessibility issues, including but not limited to service animals.

Please let me know if I can provide any further information or answer any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Patton", written in a cursive style.

Representative Fred Patton
Chairman, House Committee on Judiciary

HOUSE BILL No. 2152

By Committee on Judiciary

2-6

1 AN ACT concerning physically disabled persons; relating to assistance
2 animals; procedures for assistance animal accommodations in housing;
3 amending K.S.A. 2018 Supp. 39-1103 and repealing the existing
4 section.
5

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

7 New Section 1. (a) A person with a disability may submit a request
8 for a reasonable accommodation to maintain an assistance animal on the
9 landlord's property pursuant to the fair housing act, as amended, 42 U.S.C.
10 § 3601 et seq., the Americans with disabilities act of 1990, 42 U.S.C. §
11 12101 et seq., and section 504 of the rehabilitation act of 1973, as
12 amended, 29 U.S.C. § 701, or any other federal, state or local law. If the
13 person making the request has a disability or disability-related need for an
14 assistance animal that is not readily apparent or known to the landlord, the
15 landlord may require the person to produce documentation of the disability
16 and disability-related need for the assistance animal.

17 (b) A person making a request for a reasonable accommodation shall
18 produce documentation requested under subsection (b) that meets the
19 following requirements:

20 (1) Verify that the person seeking the accommodation meets the
21 definition of disability;

22 (2) describe the person's disability-related need for the assistance
23 animal; and

24 (3) be provided by a physician or counselor who has met with the
25 patient in person and is sufficiently familiar with the patient's disability.

26 (c) If a request for a reasonable accommodation is granted, the
27 landlord may require the person making the request for a reasonable
28 accommodation to produce documentation, pursuant to subsection (c), of
29 the disability and disability-related need for the assistance animal on an
30 annual basis if the person making the request has a disability or disability-
31 related need for an assistance animal that is not readily apparent or known
32 to the landlord.

33 (d) A landlord shall not be liable for damages or injuries caused by a
34 person's assistance animal that is permitted on the landlord's property as a
35 reasonable accommodation to assist such person with a disability pursuant
36 to this section and applicable federal law.

1 (e) If a person obtains a reasonable accommodation under this section
2 through misrepresentation of a disability or disability-related need for an
3 assistance animal, or misrepresentation of an animal as an assistance
4 animal, the landlord may deem this act a material noncompliance by the
5 tenant with the rental agreement and proceed with actions allowed under
6 K.S.A. 58-2564 and 58-25,120, and amendments thereto.

7 (f) As used in this section:

8 (1) "Assistance animal" means an animal that qualifies as a
9 reasonable accommodation under section 504 of the rehabilitation act of
10 1973, as amended, 29 U.S.C. § 701, or any other federal, state or local law,
11 including an emotional support animal when such animal qualifies as a
12 reasonable accommodation.

13 (2) "Counselor" means a person who is currently licensed to practice
14 in Kansas as a licensed psychologist, licensed masters level psychologist,
15 licensed clinical psychologist, licensed clinical psychotherapist, licensed
16 clinical professional counselor or licensed master social worker.

17 (3) "Disability" means, with respect to a person:

18 (A) A physical or mental impairment that substantially limits one or
19 more of such person's major life activities;

20 (B) a record of having such impairment; or

21 (C) being regarded as having such an impairment. "Disability" does
22 not include current, illegal use of or addiction to a controlled substance, as
23 defined in section 102 of the controlled substance act, 21 U.S.C. § 802.

24 (4) "Physician" means a person who is licensed to practice medicine
25 and surgery in this state.

26 (g) This section shall be a part of and supplemental to article 11 of
27 chapter 39 of the Kansas Statutes Annotated, and amendments thereto.

28 Sec. 2. K.S.A. 2018 Supp. 39-1103 is hereby amended to read as
29 follows: 39-1103. Any person, firm, corporation, or the agent of any
30 person, firm or corporation, who denies or interferes with the exercise of
31 the rights recognized in K.S.A. 39-1101, 39-1102, 39-1107, 39-1108 or 39-
32 1109, *and amendments thereto, or section 2*, and amendments thereto, is
33 guilty of a misdemeanor.

34 Sec. 3. K.S.A. 2018 Supp. 39-1103 is hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its
36 publication in the statute book.

White Cane Safety Day

Kansas adopted the Kansas White Cane Law (K.S.A. 39-1101 et seq), in 1969. Portions of these statutes have been a part of the Kansas Statutes since the 1930s. The law was further amended in 2002 to expand access rights for guide and service dogs and their partners.

According to Philip Strong, an advocate for pedestrian safety at the American Council of the Blind, "The white cane is not just a tool that can be used to achieve independence; it is also a symbol of the blind citizens in our society.... Today, the white cane works both, as a tool for the blind as well as a symbol, but this has not always been the case."

Throughout history, the cane, staff, and stick have existed as traveling aids for the blind and visually impaired. Dating back to biblical times records show that a shepherd's staff was used as a tool for solitary travel. The blind used such tools to alert them to obstacles in their path. For centuries, the "cane" was used merely as a tool for travel and it was not until the twentieth century that the white cane, as we know it today, was promoted for use by the blind as a symbol to alert others to the fact that an individual is blind. This new role for the white cane had its origins in the decades between the two World Wars, beginning in Europe and then spreading to North America.

In the United States, the introduction of the white cane has been attributed to the Lions Clubs International. In 1930, a Lion's Club member watched as a blind man attempted to make his way across a busy street using a black cane. With the realization that the black cane was barely visible to motorists, the Lion's Club decided to paint the cane white to increase its visibility to oncoming motorists. In 1931, the Lions Club International began a national program promoting the use of white canes for persons who are blind.

Throughout the 1920s and 1930s, most blind persons walked with their canes held diagonally in a fixed position. When the blind veterans of World War II returned to America, the form and the use of the white cane were expanded to help return veterans to participatory lifestyles at home. A Veteran's Administration physician, Doctor Richard Hoover, developed the "long cane" or "Hoover" method of cane travel. White canes were subsequently designed to be used as mobility tools providing travel information as well as identification that the user is blind.

During this period, the white cane began to make its way into government policy. The first special White Cane Ordinance was passed in December 1930 in Peoria, Illinois. It granted blind pedestrians protections and the right-of-way while carrying a white cane.

During the early 1960's, several state organizations, including the Kansas Association for the Blind, and other rehabilitation agencies serving blind and visually impaired citizens, urged Congress to proclaim October 15th of each year to be White Cane Safety Day in all fifty states. This event marked a climactic moment in the long campaign of the organized blind movement to gain state as well as national recognition for the white cane. On October 6, 1964, a joint resolution of the Congress, HR 753, was signed into law authorizing the President of The United States of America to proclaim October 15th of each year as "White Cane Safety Day." The resolution read, "Resolved by the Senate and House of Representatives that the President is hereby authorized to issue annually a proclamation designating October 15th as White Cane Safety Day and calling upon the people of the United States of America to observe such a day with appropriate ceremonies and activities." Within hours of passage of the congressional resolution, President Lyndon B. Johnson went down in history as the first to proclaim October 15th as White Cane Safety Day. The Presidential proclamation emphasized the significance of the use of the white cane as both a tool and as a visible symbol. In the first White Cane Proclamation, President Johnson commended blind people for the growing spirit of independence and the increased determination to be self-reliant and dignified. He said in part: "A white cane in our society has become one of the symbols of a blind person's ability to come and go on his own. Its use has promoted courtesy and opportunity for mobility of the blind on our streets and highways." During most years since 1964, the President has proclaimed October 15th as White Cane Safety Day.

On October 15, 2000, President Bill Clinton again reminded us of the history of the white cane as a tool, and its purpose as a symbol of blindness: "With proper training, people using the white cane can enjoy greater mobility and safety by determining the location of curbs, steps, uneven pavement, and other physical obstacles in their path. The white cane has given them the freedom to travel independently to their schools and workplaces and to participate more fully in the life of their communities. It reminds us that the only barriers against people with disabilities are discriminatory attitudes and practices that our society has too often placed in their way."

In 2011, White Cane Safety Day was also named Blind Americans Equality Day by President Barack Obama. As we observe White Cane Safety Day, 2017, let us recall the history of the white cane, its emergence as a tool and a symbol through history; a staff of independence. Let us also recall the events that have permitted us to celebrate October 15th as White Cane Safety Day."

1 **Section 1. Short Title.**

2 This act shall be known as the Kansas assistance animals in housing act.

3

4 **Section 2. Definitions.**

5 As used in this act:

6 (a) "Assistance animal" means an animal that works, provides assistance, or performs tasks for
7 the benefit of a person with a disability, or that provides emotional support that alleviates one
8 or more effects of a person's disability. An assistance animal is not a pet.

9 (b) "Disability" means a physical or mental impairment, which substantially limits one or more
10 major life activities, or a record of such an impairment, or being regarded as having such an
11 impairment.

12 (c) "Healthcare provider" means a physician, licensed physician assistant, licensed advanced
13 practice registered nurse or person licensed, registered, certified or otherwise authorized to
14 practice by the behavioral sciences regulatory board.

15 (d) "Housing provider" means any owner, housing provider, property management company,
16 property manager, government entity, condominium board, condominium association,
17 cooperative, or related entity, and any agent or employee thereof, engaged in the selling,
18 leasing, management, control, or governance of residential housing.

19 (e) "Reasonable accommodation" has the meaning provided under the federal Fair Housing Act
20 or the Kansas act against discrimination.

21 (f) "Supportive relationship" means the provision of healthcare or personal care services, in
22 good faith, for and with actual knowledge of, an individual's disability and that individual's
23 disability-related need for an assistance animal by: (1) a healthcare provider; or (2) a non-
24 medical service agency or reliable third party who is in a position to know about the individual's
25 disability.

26

27 **Section 3. Documentation of disability and disability-related need.**

28 (a) A housing provider who receives a request from a person to make an exception to the
29 housing provider's policy prohibiting or restricting animals on the housing provider's property
30 because the person requires the use of an assistance animal may require the person to produce
31 reliable documentation of the disability and disability-related need for the animal only if the
32 disability or disability-related need is not readily apparent or known to the housing provider. A
33 housing provider may ask a person to make the request on a standardized form, but cannot
34 deny the request because the person did not use the form to submit documentation that meets
35 the requirements of subsection (b). A housing provider receiving a request for more than one

1 assistance animal may request documentation under subsection (b) that establishes the
2 disability-related need for each animal, unless the need for an animal is apparent.

3 (b) Any documentation that a person has a disability and requires the use of an assistance
4 animal as a reasonable accommodation in housing under the federal Fair Housing Act or the
5 Kansas act against discrimination shall:

6 (1) be in writing;
7 (2) be made by a person with whom the individual requesting an accommodation has a
8 supportive relationship; and
9 (3) document the individual's disability and disability-related need for the assistance animal.

10 (c) A housing provider may deny a documented request for an accommodation or rescind a
11 granted request under this act if:

12 (1) the accommodation imposes either: (i) an undue financial and administrative burden; or (ii)
13 a fundamental alteration to the nature of the operations of the housing provider; or
14 (2) after conducting an individualized assessment, there is reliable objective evidence that the
15 specific assistance animal: (i) poses a direct threat to the health or safety of others that cannot
16 be reduced or eliminated by another reasonable accommodation; (ii) causes substantial
17 physical damage to the property of others that cannot be reduced or eliminated by another
18 reasonable accommodation; or (iii) has engaged in a pattern of uncontrolled behavior that its
19 handler has not taken effective action to correct.

20 (d) A housing provider may require additional supporting documentation of a person's disability
21 or need for the assistance animal only if the initial documentation provided does not satisfy
22 subsection (b). If the initial documentation is insufficient to show the existence of the
23 supportive relationship required under subsection (b), a housing provider may request
24 additional information describing the professional relationship between the person and the
25 individual with a disability.

26 (e) A housing provider may consider the documented disability-related needs of other residents
27 on the property when evaluating the reasonableness of the request for the assistance animal.
28 However, a housing provider may not deny an assistance animal solely due to the disability-
29 related needs of another resident; rather, a housing provider must attempt to balance the
30 disability-related needs of all residents.

31 (f) A housing provider may require a resident to cover the costs of repairs for damage the
32 animal causes to the resident's dwelling unit or the common areas, reasonable wear and tear
33 excepted, in the same manner it would for damage caused by any other resident; however, a
34 housing provider may not require a resident to pay a pet-related deposit, pet fee, or related pet
35 assessment, even if the housing provider allows pets and requires pet owners to pay such costs.

1 A housing provider also may not require a resident with an assistance animal to procure special
2 liability insurance or coverage for the assistance animal.

3 (g) Nothing in this act shall be construed as requiring documentation of a specific diagnosis
4 regarding a disability or disability-related need.

5 (h) Nothing in this act prohibits a housing provider from verifying the authenticity of the
6 documentation submitted under subsection (b).

7

8 **Section 4. Immunity.**

9 Notwithstanding any other provision of law to the contrary, a housing provider shall not be
10 liable for injuries or damages caused by a person's assistance animal permitted on the housing
11 provider's property as a reasonable accommodation to assist the person with a disability under
12 the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Kansas act against
13 discrimination, or any other federal, State, or local law.

14

15 **Section 5. Misrepresentation of the entitlement to assistance animal.**

16 (a) A person commits the offense of misrepresentation of entitlement to an assistance animal if
17 the person intentionally:

18 (1) Misrepresents to a housing provider that a person has a disability-related need for an
19 assistance animal in housing; or

20 (2) Makes materially false statements for the purpose of obtaining documentation for the use
21 of an assistance animal in housing.

22 (b) Misrepresentation of the entitlement to an assistance animal is:

23 (1) On a first conviction, a nonperson misdemeanor punishable by a fine of not less than \$25
24 and not more than \$200;

25 (2) on a second conviction, a class C nonperson misdemeanor; and

26 (3) on a third or subsequent conviction, a class A nonperson misdemeanor.

27 (c) For purposes of determining whether a conviction is a first, second, third or subsequent
28 conviction, "conviction" includes (1) entering into a diversion agreement in lieu of further
29 criminal proceedings on a complaint alleging an offense described in subsection (a); and (2)
30 conviction of a violation of a city ordinance, county resolution, or law of another jurisdiction
31 that would constitute an offense comparable to the offense described in subsection (a).

32 (d) If a person misrepresents his or her entitlement to an assistance animal the landlord may
33 commence any action allowed under K.S.A. 58-2564 or K.S.A. 58-25,120.

34

35

36

1 **Section 6. Improper denial of an assistance animal.**

2 (a) A person commits the offense of improper denial of an assistance animal if a person
3 intentionally:

- 4 (1) Requests and obtains documentation pursuant to Section 3; and
5 (2) Improperly denies the reasonable accommodation request.

6 (b) It is not an improper denial of an assistance animal if the denial satisfies the provisions of
7 Section 3 of this act.

8 (c) Improper denial of an assistance animal is:

- 9 (1) On a first conviction, a nonperson misdemeanor punishable by a fine of not less than \$25
10 and not more than \$200;
11 (2) on a second conviction, a class C nonperson misdemeanor; and
12 (3) on a third or subsequent conviction, a class A nonperson misdemeanor.

13 (c) For purposes of determining whether a conviction is a first, second, third or subsequent
14 conviction, "conviction" includes (1) entering into a diversion agreement in lieu of further
15 criminal proceedings on a complaint alleging an offense described in subsection (a); and (2)
16 conviction of a violation of a city ordinance, county resolution, or law of another jurisdiction
17 that would constitute an offense comparable to the offense described in subsection (a).

18

19 **Section 7. Rights under other Acts.**

20 Nothing in this act shall be construed to: (1) limit individuals' rights under the Fair Housing Act,
21 Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Kansas
22 act against discrimination, or any other federal, State, or local civil rights law; or (2) limit the
23 liability of housing providers under such laws.

24

1 **Section 1. Short Title**

2 This act shall be known as the Kansas service and therapy animals act.

3 **Section 2. Preamble**

4 It is declared to be the policy of this state to encourage and enable all persons with disabilities
5 to fully participate in the social and economic life of the State. Such persons shall have the
6 same right as any other person to the full and free use of public accommodations and shall
7 have the right to use service animals in those places.

8 In adopting this new act, the State recognizes the act's predecessor, the White Cane Law, and
9 even earlier statutes that were enacted as a result of many years of effort by the blind and
10 visually-impaired community, beginning as far back as the 1920s. Their work established that
11 white canes and trained guide dogs were important tools for independence used by persons
12 who are blind or visually impaired; encouraged their acceptance and recognition by the public;
13 and obtained important legal protection for guide dogs and the persons who rely upon them.
14 This work by the blind and visually impaired community laid the groundwork for the eventual
15 acceptance of and legal protection for other types of service animals trained to help all persons
16 with disabilities.

17 **Section 3. Definitions**

18 (a) "Disability" means, with respect to an individual:

19 (1) A physical or mental impairment that substantially limits one or more of the major life
20 activities of such individual;

21 (2) a record of such an impairment; or

22 (3) being regarded as having such an impairment.

23 (b) "Handler of a service animal" means the individual entitled to the use of the service animal
24 and for whom the service animal is trained to perform tasks.

25 (c) "Handler of a therapy animal" means the individual transporting the therapy animal to
26 individuals or facilities in need of the therapy animal's therapeutic or treatment function.

27 (d) "Miniature horse" means an equine that generally ranges from 24 inches to 34 inches in
28 height at the shoulder and weighs generally between 70 and 100 pounds.

29 (e) "Public accommodations" means any person or entity who caters or offers goods, services,
30 facilities and accommodations to the public. Public accommodations include, but are not

1 limited to, any lodging establishment or food service establishment, as defined by K.S.A. 36-
2 501, and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating
3 rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake,
4 gymnasium, mortuary or cemetery which is open to the public; or any public mode of
5 transportation or transportation facility. Public accommodations do not include a religious or
6 nonprofit fraternal or social association or corporation.

7 (f) "Service animal" means any dog or miniature horse that is individually trained to do work or
8 perform tasks for the benefit of an individual with a disability, including a physical, sensory,
9 psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or
10 domestic, trained or untrained, are not service animals for the purposes of this definition. The
11 work or tasks performed by a service animal must be directly related to the individual's
12 disability. The crime deterrent effects of an animal's presence and the provision of emotional
13 support, well-being, comfort, or companionship do not constitute work or tasks for the
14 purposes of this definition.

15 (g) "Service animal in training" means any service animal being specifically trained to develop
16 social, environmental, and other skills needed for work with or to perform tasks for an
17 individual with a disability.

18 (h) "Therapy animal" means any animal used in animal-assisted therapy involving a goal-
19 directed intervention in which the animal provides specific therapeutic functions and is an
20 integral part of the treatment process. Animal-assisted therapy may be provided in a variety of
21 settings, and may be group or individual in nature.

22 **Section 4. Right to service animal**

23 An individual with a disability has the right to be accompanied by a service animal in or upon
24 any public accommodation. Such individual shall not be required to pay an extra charge or
25 security deposit for the service animal.

26 **Section 5. Rights and responsibilities of public accommodations**

27 (a) Except as provided in subsection (c), a public accommodation must allow an individual with
28 a disability to be accompanied by a service animal. Documentation that a service animal is
29 trained is not required.

30 (b) To determine the difference between a service animal and a pet, a public accommodation
31 may only ask: (1) if an animal is a service animal required because of a disability, except that the
32 public accommodation may not ask about the nature or extent of an individual's disability; and

1 (2) what work or tasks the animal has been trained to perform. The public accommodation
2 may ask these questions only if the answers are not readily apparent.

3 (c) A public accommodation may exclude or remove any animal from the premises, including
4 a service animal, if the animal is out of control and the animal's handler does not take effective
5 action to control it, the animal is not housebroken, or the animal's behavior poses a direct
6 threat to the health and safety of others. Allergies and fear of animals are not valid reasons for
7 denying access or refusing service to an individual with a service animal. If a service animal is
8 excluded or removed for being a direct threat to others, the public accommodation must
9 provide the individual with a disability the option of continuing access to the public
10 accommodation without having the service animal on the premises.

11 **Section 6. Responsibilities of service animal handler**

12 The service animal must be under the control of its handler and must have a harness, leash, or
13 other tether, unless either the handler is unable because of a disability to use a harness, leash,
14 or other tether, or the use of a harness, leash, or other tether would interfere with
15 the service animal's safe, effective performance of work or tasks, in which case the service
16 animal must be otherwise under the handler's control by means of voice control, signals, or
17 other effective means. The handler shall be liable for any damage done to the premises or
18 facilities or injuries caused by the service animal.

19 **Section 7. Ordinances affecting service animals**

20 Service animals are exempt from any ordinance that bans specific breeds of dogs. Service
21 animals are not exempt from local animal control, public health, or licensing and registration
22 ordinances, so long as those ordinances apply equally to all dogs or other animals and do not
23 impose requirements specific to service animals.

24 **Section 8. Service animals in training**

25 An individual with a disability or an individual who is authorized to train service animals for
26 individuals with a disability may take a service animal in training in or upon any public
27 accommodation for the purpose of training it to the same extent provided in Sections 4, 5, 6,
28 and 7.

29 **Section 9. Therapy animals**

30 Any handler of a therapy animal may take such therapy animal in or upon any public
31 accommodation for the purpose of providing animal-assisted therapy or while in transit to
32 provide such therapy.

1 **Section 10. Misrepresentation of service or therapy animal**

2 (a) A person commits the offense of misrepresentation of a service or therapy animal if:

3 (1) A person who is not an individual with a disability or trained to assist individuals with
4 disabilities intentionally uses a service animal in an attempt to gain treatment or benefits as an
5 individual with a disability; or

6 (2) A person intentionally misrepresents an animal as a service animal, service animal in
7 training, or therapy animal, in an attempt to gain treatment or benefits under this act.

8 (b) Misrepresentation of a service or therapy animal is:

9 (1) On a first conviction, a nonperson misdemeanor punishable by a fine of not less than \$25
10 and not more than \$200;

11 (2) on a second conviction, a class C nonperson misdemeanor; and

12 (3) on a third or subsequent conviction, a class A nonperson misdemeanor.

13 (c) For purposes of determining whether a conviction is a first, second, third or subsequent
14 conviction, "conviction" includes (1) entering into a diversion agreement in lieu of further
15 criminal proceedings on a complaint alleging an offense described in subsection (a); and (2)
16 conviction of a violation of a city ordinance, county resolution, or law of another jurisdiction
17 that would constitute an offense comparable to the offense described in subsection (a).

18 **Section 11. Interference with right to use a service or therapy animal**

19 (a) A person commits the offense of interference with the right to use a service or therapy
20 animal if a person intentionally denies or interferes with the exercise of rights under this act.

21 (b) Interference with the right to use a service or therapy animal is:

22 (1) On a first conviction, a nonperson misdemeanor punishable by a fine of not less than \$25
23 and not more than \$200;

24 (2) on a second conviction, a class C nonperson misdemeanor; and

25 (3) on a third or subsequent conviction, a class A nonperson misdemeanor.

26 (c) For purposes of determining whether a conviction is a first, second, third or subsequent
27 conviction, "conviction" includes (1) entering into a diversion agreement in lieu of further
28 criminal proceedings on a complaint alleging an offense described in subsection (a); and (2)

1 conviction of a violation of a city ordinance, county resolution, or law of another jurisdiction
2 that would constitute an offense comparable to the offense described in subsection (a).

3 **Section 12. Rights under other acts.**

4 Nothing in this act shall be construed to: (1) limit individuals' rights under the Americans with
5 Disabilities Act, the Kansas act against discrimination, or any other federal, State, or local civil
6 rights law; or (2) limit the liability of public accommodations under such laws.

7

8 **Section 13, amending K.S.A. 39-1104.** Each year, the governor shall take suitable public notice
9 of October 15 as white cane safety day. ~~He~~ The governor shall issue a proclamation in which:

10 (a) ~~He comments~~ commenting upon the significance of the white cane, and of service animals
11 trained for guiding the blind and wearing a harness used for that purpose;

12 (b) ~~he calls~~ calling upon the citizens of the state to observe the provisions of the white cane law
13 and to take precautions necessary to the safety of those who are blind and visually impaired
14 making use of the devices referenced in (a), as well as of other people who have disabilities ~~the~~
15 ~~disabled;~~

16 (c) ~~he reminds the citizens of the state of the policies with respect to the disabled herein~~
17 ~~declared, and urges the citizens to cooperate in giving effect to them;~~

18 (d) ~~he emphasizes~~ emphasizing the need of the citizens to be aware of the presence of disabled
19 persons in the community and to keep safe and functional for the disabled the streets,
20 highways, sidewalks, walkways, public buildings, public facilities, other public places, places of
21 public accommodation, amusement and resort and other places to which the public is invited,
22 and to offer assistance to disabled persons upon appropriate occasions.

23 **Section 14, amending K.S.A. 21-6416. Harming or killing certain dogs**

24 (a) ~~Inflicting harm, disability or death to a police dog, arson dog, assistance dog~~ service animal,
25 game warden dog or search and rescue dog is knowingly, and without lawful cause or
26 justification poisoning, inflicting great bodily harm, permanent disability or death, upon a police
27 dog, arson dog, assistance dog, game warden dog or search and rescue dog.

28 (b) ~~Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden~~
29 ~~dog or search and rescue dog is a nonperson felony. Upon conviction of this subsection, a~~
30 ~~person shall be sentenced to not less than 30 days or more than one year's imprisonment and~~
31 ~~be fined not less than \$500 nor more than \$5,000. The person convicted shall not be eligible for~~
32 ~~release on probation, suspension or reduction of sentence or parole until the person has served~~

1 the minimum mandatory sentence as provided herein. During the mandatory 30 days
2 imprisonment, such offender shall have a psychological evaluation prepared for the court to
3 assist the court in determining conditions of probation. Such conditions shall include, but not
4 be limited to, the completion of an anger management program.

5 (c) As used in this section:

6 (1) "Arson dog" means any dog which is owned, or the service of which is employed, by the
7 state fire marshal or a fire department for the principal purpose of aiding in the detection of
8 liquid accelerants in the investigation of fires;

9 ~~(2) "assistance dog" has the meaning provided by K.S.A. 39-1113, and amendments thereto;~~

10 ~~(32) "fire department" means a public fire department under the control of the governing body~~
11 ~~of a city, township, county, fire district or benefit district or a private fire department operated~~
12 ~~by a nonprofit corporation providing fire protection services for a city, township, county, fire~~
13 ~~district or benefit district under contract with the governing body of the city, township, county~~
14 ~~or district;~~

15 ~~(43) "game warden dog" means any dog which is owned, or the service of which is employed,~~
16 ~~by the Kansas department of wildlife, parks and tourism for the purpose of aiding in detection~~
17 ~~of criminal activity, enforcement of laws, apprehension of offenders or location of persons or~~
18 ~~wildlife;~~

19 ~~(54) "police dog" means any dog which is owned, or the service of which is employed, by a law~~
20 ~~enforcement agency for the principal purpose of aiding in the detection of criminal activity,~~
21 ~~enforcement of laws or apprehension of offenders; and~~

22 ~~(65) "search and rescue dog" means any dog which is owned or the service of which is~~
23 ~~employed, by a law enforcement or emergency response agency for the purpose of aiding in~~
24 ~~the location of persons missing in disasters or other times of need; and~~

25 (6) "service animal" has the meaning provided by Section 3, and amendments thereto.

26