

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KS 66612
(785) 296-7677
timothy.johnson@house.ks.gov

14135 MITCHELL COURT, #A
BASEHOR, KANSAS 66007
(913) 728-2024



TIMOTHY H. JOHNSON
38TH DISTRICT

TO: Senate Committee on Public Health & Welfare

FROM: Rep. Timothy H. Johnson

DATE: March 1, 2024

RE: Proponent Testimony HB 2777

Dear Chairwoman Gossage and Committee members:

Thank you for allowing me to speak as a proponent regarding House Bill 2777, which has already passed the lower chamber by a vote of 108-11. This legislation is intended to protect the privacy rights of those in any licensed care facility from the use of illegal audio or photographing by the Kansas State Fire Marshal's Office during simple and routine building inspections. This practice by the Fire Marshal's Office is clearly violating the legal rights of our most vulnerable citizens.

Overwhelmingly there has been support by health care centers, hospitals, developmental disability facilities, nursing care facilities, and child care centers to force the Kansas Fire Marshal to discontinue this illegal practice. The Fire Marshal has maintained they will continue this practice during discussions about its' legality and appropriateness. An issue that could have been reasonably reviewed and handled without fanfare now becomes a quest by those who seek to prevent violations of constitutional rights.

There are several legal arguments to refute the claims by the Fire Marshall that there exists a "right" to film and record during routine building inspections.

1. The Fire Marshal claims full status as a law enforcement agency and therefore a need to record by his staff. However, law enforcement status requires any such officer serving as a law officer to complete an 18 week certification course, pass specific hiring background checks, and maintain 40 hours of in-service training. According to information from the Kansas Commission on Peace Officers' Standards and Training (KS-CPOST) to my staff, only Arson Investigators are certified officers. Other staff known as "Fire Marshalls" receive a two week law course.

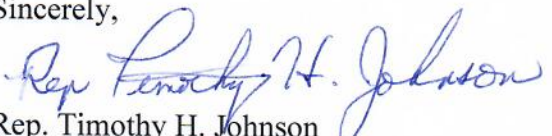
2. Inspections of licensed care facilities is completed under legal guidelines to determine safety of the building and compliance with regulations. There exists no exigent circumstances that constitute an emergency or need for safety procedures to protect the inspector. Inspections are normally scheduled in advance and accomplished in a rather informal manner. In citing a need for high levels of personal protection, the department ignores the reality that such facilities are in fact in need of low key inspections.

3. Just like inspectors for any agency such as fire departments, the health department, building code inspectors, etc, the Fire Marshals have authority to issue citations or issue notices of correction. They do not have the power of arrest and in most instances violations noted by inspectors are resolved informally.

4. Both Federal and Kansas law protect the individual rights to privacy from unwarranted intrusions on their privacy. These rights apply in any setting such as a hospital room, treatment center, church, nursing home, child care facility, or school where an individual has a reasonable expectation of privacy. Federal HIPPA law clearly protects any licensed care center intrusions and a myriad of regulations prohibit the recording of individuals without their consent in centers.

I would ask the Committee to support House Bill 2777 to protect individual rights of those in licensed care facilities from having their rights violated during standard and routine building inspections conducted by the Kansas State Fire Marshals' Office. I will stand for questions at the appropriate time.

Sincerely,


Rep. Timothy H. Johnson
38th District