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S.B. 378 Testimony

Presented by: Ruth Glover, Executive Director

Other Staff Attending: Bill Wright, Assistant Director, and Deanne Watts Hay, Counsel, Parker & Hay, LLP.

February 10, 2016

RE: S.B. 378—Providing that victims of domestic violence or sexual assault may file complaints of discrimination with the Kansas Human Rights Commission for specified reasons

Current law provides that employers may not discharge, discriminate or retaliate against victims of domestic violence or sexual assault for taking time off to seek relief, such as obtaining a restraining order, medical attention, or services from a domestic violence shelter, etc., associated with the domestic violence or sexual assault. The Secretary of Labor is currently charged with enforcing the aforementioned statute. S.B. 378 proposes to remove the Department of Labor and provides for the filing of complaints with the Kansas Human Rights Commission.

The Kansas Human Rights Commission (KHRC) is responsible for administering and enforcing the provisions of the Kansas Act Against Discrimination (KAAD). The KHRC primarily accomplishes its mission through the receipt, investigation, and resolution of complaints alleging discrimination under the KAAD.

As an unbiased, fact-finding, investigative body, the KHRC takes a neutral stance on the proposed legislation. It is vital that “Probable Cause” or “No Probable Cause” determinations made in regard to complaints filed with this agency be accepted with credibility. Therefore, we have not taken a stance on this bill in order to avoid presumptions that we may favor one side or the other if this legislation is adopted.

Fiscal Note:

It has been our experience there is an increase in workload when there has been an expansion in the ability to file complaints with the KHRC. Based on these experiences, we estimate 500 contacts inquiring about filing complaints under the proposed bill with an additional 50 complaints filed.

If S.B. 378 advances, we ask that the associated Fiscal Note of \$80,715 State General Fund be approved to accomplish an increased workload. Projected expenditures include filling a vacant Special Investigator II position at the cost of \$54,360 in salary and fringe benefits. Other expenses include \$5,945 to reprogram our internal data base, \$10,000 to address legal challenges, \$1,414 for reprinting posters, and \$3,100 capital outlay to outfit a new employee with needed computer, software, and furniture items. The remainder of \$5,896 represents daily operating expenses, such as network and telephone connections, office supplies, etc.

Agency resources have decreased over the past several years. The agency had 32.00 positions filled at the beginning of FY 2009, versus 16.5 positions filled at the beginning of the current fiscal year. Likewise, we had 12 Special Investigator II positions filled at the beginning of FY 2009. We currently have seven Special Investigator II positions filled, plus a part-time staffing agency employee performing Special Investigator work.

Proposed Amendments:

All of the proposed amendments are friendly in nature, meant to help clarify the process and achieve the desired result of an enforceable law. The amendments would provide uniformity with the existing KHRC statutes and processes for other types of employment discrimination

We make the following recommendations:

- 1) It would be helpful to say that the proposed bill is supplemental to and part of the Kansas Act Against Discrimination (KAAD). This language would help to define coverage, such as incorporating the KAAD's definition of "employer," 6 month filing deadline for employment complaints, etc. The current bill differs from the KAAD in its coverage because the KAAD covers employers with four or more employees, whereas the current bill covers all employers. The current bill provides no specific remedy for retaliation, whereas the KAAD specifies remedies.
- 2) Alternatively, if the proposed bill is not brought under the KAAD, we recommend:
 - a) The legislation should explicitly state that the definitions, procedures, time limits and remedies set forth in the KAAD and regulations promulgated under the KAAD apply.
 - b) The proposed bill should explicitly state that a violation of the statute constitutes an "unlawful employment practice" under the KAAD. K.S.A. 44-1002 (g) defines "unlawful employment practice" as only those unlawful practices and acts specified in K.S.A. 44-1009. Therefore, violations of the proposed law should be included in K.S.A. 44-1009's listing of "unlawful employment practices" to enable KHRC's enforcement powers to apply.
- 3) Regardless of which of the above alternatives is used, we also recommend language to permit the KHRC to promulgate regulations, either by 1) making the bill supplemental to and part of the KAAD, or 2) having the bill state that the KHRC may adopt rules and regulations.
- 4) We would recommend a clarification of K.S.A. 44-1132 to make the current language consistent with language already used by the KHRC. Specifically, we would propose:
 - i) K.S.A. 44-1132 be amended as follows: (a) An employer may not discharge or ~~in any manner discriminate or retaliate~~ *take other adverse employment action* against an employee who is a victim of domestic violence or victim of sexual assault for taking off work *pursuant to this statute to....*"
 - ii) K.S.A. 44-1132 (b) (2) be amended as follows: When an unscheduled absence occurs, the employer shall not take any *adverse employment* action against the employee *if the absence is permitted by this statute and the employee*, within 48 hours after the beginning of the unscheduled absence, provides a certification to the employer in the form of any of the following:....

- 5) We also ask that “no probable cause” determinations under the proposed statute be exempted from judicial review and civil enforcement agency actions, either by referencing the proposed statutes at K.S.A. 44-1044 or adding such a statement to proposed bill.

We would be happy to coordinate with the Revisor of Statutes on the above recommendations.

We thank you for your consideration of our testimony. We are available for any questions.