

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Elwaine F. Pomeroy at
Chairperson

12:00 ~~xxx~~ p.m. on April 4, 1984 in room 529-S of the Capitol.

All members were present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Mulich,
Steineger and Werts.

Committee staff present: Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislativve Research Department
Arden Ensley, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Clarence Love
Representative Norman Justice
Representative Theo Cribbs
Bill Green, Democrat Caucus of Kansas
Theodus A. Lockhart, National Association For The Advancement of Colored People
Onan Burnett, USD 501
Michael Bailey, Kansas Commission on Civil Rights
Charles Scott, National Association For The Advancement of Colored People
Roger Lovett, Kansas Commission on Civil Rights
Brandan L. Myers, Kansas Commission on Civil Rights Attorney

House Bill 2982 - Kansas act against discrimination, awards for additional damages.

Representative Clarence Love, the prime sponsor of the bill, explained the bill is designed to put in statutory law pain and suffering and humiliation and a \$2,000 cap that the Commission on Civil Rights had been using on administrative regulations. A new definition of the handicapped had been added.

Representative Norman Justice, one of the sponsors of the bill, presented an amendment that will award damages for pain, suffering and humiliation under the employment section of the Civil Rights act of the state of Kansas. A copy of the amendments is attached (See Attachment No. 1).

Representative Theo Cribbs, one of the sponsors of the bill, had nothing more to add, but supported the bill.

Bill Green testified his organization supports the bill with the amendment. In answer to a question, Mr. Green replied, the attorney general's opinion addressed statutory authority. A committee member inquired, the language stricken on the House floor, if it is put back in the bill, will it be new language in the law? Mr. Green replied, only that portion in the bill that appears on page 6 of the bill and page 5 of the proposed amendment.

Arden Ensley explained the proposed amendment. This amendment would be reinserted in Section 2 of the bill.

Theodus Lockhart testified in support of the bill as amended. He read his testimony to the committee and stated the testimony applied to the bill without the proposed amendment.

Michael Bailey testified in support of the bill. He stated the adoption of this piece of legislation would dramatically enhance the ability of the Commission to enforce the provisions of the Kansas Act Against Discrimination, and we support its passage. A copy of his remarks is attached (See Attachment No. 2).

Onan Burnett testified in support of the bill. He stated his concern as a private and minority person is about the employment section of the bill. He has been a victim of employment discrimination when he was denied employment at Goodyear because he had too much education. The problem is that it may not seem important,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 529-S, Statehouse, at 12:00 ~~xxx~~ p.m. on April 4, 1984.

House Bill 2982 continued

when it happens to you. It is an excuse in dealing with minority employment.

Charles Scott testified in support of the bill.

Roger Lovett appeared in support of the bill and explained why both acts are needed in the law.

Brandon L. Myers appeared in support of the bill and stated that everything has been said that needs to be said. Committee discussion was held concerning the \$2,000 cap.

Senator Werts moved to amend the bill by adopting the proposed amendments; Senator Mulich seconded the motion, and the motion carried. Senator Werts moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

The meeting adjourned.

4-4-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Charles Hoff	214 W 6th	HCCR
T.A. Lockhart	Leavenworth	NAACP
Roger Lovett	2331 Libre Topeka	KCCR
Michael Bader	214 W. 6th	KCCR
James E. Butler	Manhattan, Kan	KCCR
Joy Brockman	Topeka Kans	Internship
Sue Greed	Topeka, KS.	SOCK
Brandon Myers	Auburn, KS.	KCCR
Rep. Norman E. Dierker		279 W. 7th
Oran C. Burnett	Topeka	4250 7th
D. Juller		HP
Rev. R.E. Hill	931 JEWELL	TOPEKA BRANCH PRES. NAACP
Bvo. LORANT	TOPEKA	KCCI
Sheo Carulis	Wichita KS	Leg
Billy McCray	Wichita	Legis
Kim Walker	Lawrence	Teiney
Joe Koop	Moundville, K	Legis

4-4-84
Rep. G. ...

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Attach. # 1

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Judiciary

Recommends that House Bill No. 2982 (As Amended by House Committee of the Whole)

"AN ACT concerning the commission on civil rights; relating to awards of damages in certain cases; defining physical handicap; amending K.S.A. 44-1002, 44-1005 and 44-1019 and repealing the existing sections."

Be amended:

On page 7, following line 259, by inserting a new section to read as follows:

"Section 1. K.S.A. 44-1005 is hereby amended to read as follows: 44-1005. (a) Any person claiming to be aggrieved by an alleged unlawful employment practice or by an alleged unlawful discriminatory practice may, personally or by an attorney-at-law, make, sign, and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of or the name and address of the person alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission.

(b) The commission upon its own initiative or the attorney general may, in like manner, make, sign and file such complaint. Whenever the attorney general has sufficient reason to believe that any person as herein defined is engaged in a practice of discrimination, segregation or separation in violation of this act, ~~he--or--she~~ the attorney general may make, sign and file a complaint. Any employer whose employees or some of whom, refuse or threaten to refuse to cooperate with the provisions of this act, may file with the commission a verified complaint asking for

Atch. 1

assistance by conciliation or other remedial action.

(c) Whenever any problem of discrimination because of race, religion, color, sex, physical handicap, national origin or ancestry arises, or whenever the commission has, in its own judgment, reason to believe that any person as-herein-defined has engaged in an unlawful employment practice or an unlawful discriminatory practice in violation of this act, or has engaged in a pattern or practice of discrimination, the commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for the investigation of complaints. The person to be investigated shall be advised of the nature and scope of such investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the commission may issue a complaint whenever the investigation has revealed a violation of the Kansas act against discrimination has occurred. The information gathered in the course of the first investigation may be used in processing the complaint.

(d) After the filing of any complaint by an aggrieved individual, by the commission, or by the attorney general, the commission shall, within seven ~~(7)~~ days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this act, and shall designate one of the commissioners to make, with the assistance of the commission's staff, prompt investigation of the alleged act of discrimination. If the commissioner shall determine after such investigation that no probable cause exists for crediting the allegations of the complaint, such commissioner shall, within ~~ten-(10)~~ 10 business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination.

(e) If such commissioner after such investigation, shall determine that probable cause exists for crediting the allegations for the complaint, the said commissioner or such

other commissioner as the commission may designate, shall immediately endeavor to eliminate the unlawful employment practice or the unlawful discriminatory practice complained of by conference and conciliation. The complainant, respondent and commission shall have ~~forty-five--(45)~~ 45 days from the date respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement signed by all parties in interest. The parties may amend a conciliation agreement at any time prior to the date of entering into such agreement. Upon agreement by the parties the time for entering into such agreement may be extended. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

(f) In case of failure ~~so~~ to eliminate such practices by conference and conciliation, or in advance thereof, if in the judgment of the commissioner or the commission circumstances so warrant, the ~~said~~ commissioner or the commission shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the person, employer, labor organization, employment agency, realtor or financial institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before at least four ~~(4)~~ commissioners, hereinafter referred to as hearing commissioners or before a staff hearing examiner, at a time not less than ~~ten--(10)~~ 10 business days after the service of ~~said~~ the notice unless the respondent requests in writing and is granted a continuance. The place of such hearing shall be in the county where respondent is doing business and the acts complained of occurred.

(g) The complainant or respondent may apply to the commission for the issuance of a subpoena for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the commission shall issue such subpoena.

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(h) The case in support of the complaint shall be presented before the hearing commissioners or hearing examiner by one of the commission's attorneys or agents, or by private counsel, if any, of the complainant, and the commissioner who shall have previously made the investigation shall not participate in the hearing except as a witness. Any endeavors at conciliation shall not be received in evidence.

(i) Any complaint filed pursuant to this act must be so filed within six (6) months after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination.

(j) The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall appear at such hearing in person, with or without counsel, and submit testimony. The hearing commissioners, hearing examiner, or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his or her answer. The hearing commissioners and hearing examiners shall be bound by the rules of evidence prevailing in courts of law or equity, and only relevant evidence of reasonable probative value shall be received. Reasonable examination and cross-examination shall be permitted. All parties shall be afforded opportunity to submit briefs prior to adjudication. The testimony taken at the hearing shall be under oath and be transcribed.

(k) If, upon all the evidence in the hearing, the hearing commissioners or hearing examiner shall find a respondent has engaged in or is engaging in any unlawful employment practice or unlawful discriminatory practice as defined in this act, the hearing commissioners or hearing examiner shall state the findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or such unlawful

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discriminatory practice and to take such affirmative action, including but not limited to the hiring, reinstatement, or upgrading of employees, with or without back pay, and the admission or restoration to membership in any respondent labor organizations; the admission to and full and equal enjoyment of the goods, services, facilities, and accommodations offered by any respondent place of public accommodation denied in violation of this act, as, in the judgment of the hearing commissioners or hearing examiner, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. Such order may also include an award of damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of \$2,000.

(l) The findings of fact and order of the hearing examiner or hearing commissioner shall be submitted to the commission for approval, rejection or modification, in whole or in part, before being issued. Such findings of fact and orders as approved or modified in whole or in part, by the commission shall be, when issued, the findings of fact and orders of the commission.

(m) Any state, county or municipal agency may pay a complainant back pay if it has entered into a conciliation agreement for such purposes with the commission, and may pay such back pay if it is ordered to do so by the commission.

(n) If, upon all the evidence, the hearing commissioners or hearing examiner shall find that a respondent has not engaged in any such unlawful employment practice, or any such unlawful discriminatory practice, the hearing commissioners or hearing examiner shall state their findings of fact and shall issue and cause to be served on both the complainant and the respondent an order dismissing the said complaint as to such respondent. Such findings of fact and such order of dismissal of the hearing examiner or hearing commissioner shall be submitted to the commission for approval, rejection or modification, in whole or in part, before being issued. Such findings of fact and orders as

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approved or modified in whole or in part, by the commission shall be, when issued, the findings of fact and orders of the commission.

(o) A copy of the order shall be delivered by certified mail return receipt requested in all cases by the commission to the complainant, to the respondent, to the attorney general, and to such other public officers as the commission may deem proper.

(p) The commission shall, except as otherwise provided, establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Said The rules of practice shall be available, upon written request, within ~~thirty-(30)~~ 30 days after the date of adoption.";

Also on page 7, in line 260, by renumbering section 1 as section 2;

On page 10, by striking all of line 352 and inserting in lieu thereof the following:

"Sec. 3. K.S.A. 44-1005 and 44-1019 are hereby repealed.";

Also on page 10, in line 353, by renumbering section 3 as section 4;

In the title, in line 19, after "K.S.A." by inserting "44-1005 and"; in line 20, by striking "section" and inserting "sections"

And the bill be passed as amended.

_____Chairperson



COMMISSION ON CIVIL RIGHTS
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LIBERTY BUILDING
TOPEKA, KANSAS 66603-3780
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February 29, 1984

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Attach. 7.2
MICHAEL L. BAILEY
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CHIEF LEGAL COUNSEL
BRANDON L. MYERS,
STAFF ATTORNEY
ARTHUR R. BRUCE
SUPERVISOR OF COMPLIANCE
ROBERT G. LAY
FIELD SUPERVISOR
NORMA JEAN HODISON
OFFICE MANAGER

Members of the Kansas Legislature
State Capitol
Topeka, Kansas 66612

Dear Legislative Members:

The Kansas Commission on Civil Rights supports the passage of H.B. #2962 as a result of two (2) recent cases before the Kansas Appellate Courts which construed provisions of the Kansas Act Against Discrimination:

In the case of Woods v. Midwest Conveyor Co. (1982) the Kansas Supreme Court held that there is no statutory authority in the Kansas Act Against Discrimination which would allow the Kansas Commission to award damages for pain, suffering and humiliation suffered by victims of discrimination in housing, employment and public accommodations. This left the KCCR without the ability to make victims of discrimination "whole" and left the Kansas Act Against Discrimination without "teeth" in many cases. Although the law still allows recovery of out-of-pocket losses (such as lost wages in employment cases), no recovery is allowed for embarrassment and humiliation occasioned by discriminatory acts. For example, quite often in housing and public accommodations, there are no out-of-pocket losses. The damages which result are all intangible in the nature of mental pain and suffering, humiliation and embarrassment. Therefore, in many cases there is really no remedy, and in other cases only a totally inadequate remedy, under the Kansas Act Against Discrimination.

The Supreme Court gave every indication in the Woods decision that if a limited award of these types of damages was put into the statute, the Court would uphold it. The proposed statutory change would authorize damages which would "make whole" many complainants before the KCCR and is probably the maximum which the Kansas Supreme Court would uphold. It would put sorely-needed enforcement powers into the Kansas Act Against Discrimination. As the enclosed dissenting opinions indicate, some members of the Supreme Court agree these changes are necessary.

In U.S.D. 259 v. KCCR & Palmer (1982), the Court of Appeals narrowly construed the Kansas Act Against Discrimination's broadly-written definition of "physical handicap." As a result, apparently only people who have "traditional" physical handicaps are protected from discrimination under the Act. Meanwhile, for example, individuals who have less than "disabling" conditions, but who are denied employment based upon those

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Members of the Legislature
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conditions despite the fact that they can do the job applied for, are not covered by the Act.

These latter individuals seemingly were originally intended by the Legislature to be protected by the Kansas Act Against Discrimination since the Legislature broadly-defined physical handicap in the Kansas Act Against Discrimination. The only way to bring the Act back into compliance with the original interpretation at this point, is to amend the Act with the proposed broad language of this bill and clarify the intent underlying the Act. The amendment again gives individuals with physical conditions which are not "disabling" traditional "handicaps", who receive adverse actions due supposedly to their physical condition, the right to challenge what has been done to them, and to show that their condition is unrelated to the job they propose to do or the public accommodation they wish to enjoy. The amendment does not limit the rights presently possessed by those with "disabling" or "traditional physical handicaps" to proceed under the Act. It merely adjusts the coverage of the Act back to what it was before the Palmer decision.

The adoption of this piece of legislation would dramatically enhance the ability of the Commission to enforce the provisions of the Kansas Act Against Discrimination and we support its passage.

Sincerely,

Michael L. Bailey
Michael L. Bailey
Executive Director

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