Approved 2-11-87
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m./p.m. on February 6, 1987 in room 254-E of the Capitol.

All members were present. ~~except:~~

Committee staff present:

Mary Galligan, Legislative Research
Emalene Correll, Legislative Research
Mary Torrence, Assistant Revisor of Statutes
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Copies of Mr. R. E. "Tuck" Duncan's testimony from yesterday was handed out to Members. (It is an attachment to yesterday's Minutes.)

The Chairman called the Committee's attention to a Memorandum from the Alcoholic Beverage Control, dated February 6, 1987, concerning SB141, and the alcoholic beverage handler training & licensing. (Attachment #1)

Following that the Committee was directed to turn its attention to SB141, concerning liquor by the drink. The Chairman said that staff would go through it at this time, section by section, with the Committee.

Senator Martin made a conceptual motion to take out the requirements for the premises being contiguous, and to show that they be in close proximity. The motion was seconded by Senator Anderson. The motion carried.

Senator Bond distributed handouts showing his intent to amend. Senator Bond moved that beer wholesalers have the option to sell and deliver beer and bulk wine to drinking establishments and that wine and spirits would be sold and delivered to drinking establishments by retail liquor licensees, that retail liquor licensees may also sell and deliver beer to drinking establishments, and to totally abolish minimum markup. The motion was seconded by Senator Hoferer. The motion carried. Senator Daniels, Senator Martin, and Senator Strick voted "no."

Senator Morris moved conceptually to provide that concerning the retailer's license to permit sales and delivery of beverage it allow sale and delivery by retailers to private clubs only where the retail dealers are in adjacent counties. Seconded by Senator Vidricksen. The motion carried.

Senator Anderson made the conceptual motion that the language concerning retailers' sales tax provide it to be optional. The motion failed for lack of a second.

Senator Martin moved to delete the reference to allow a brewer to sell direct to drinking establishment, that it be deleted from the bill. The motion was seconded by Senator Strick. The motion carried.

On page 19, line 684, Senator Anderson moved to strike "having a population of not less than 150,000." Seconded by Senator Martin. The motion carried.

Senator Bond moved to permit the Board of Regents to allow liquor to be served in designated premises, primarily non-classroom buildings, that are under the control of the Board of Regents, and according to policies adopted by the Board of Regents. Motion seconded by Senator Hoferer. The motion carried.

Senator Anderson distributed copies of a proposed legislative draft to the Committee, and a memorandum concerning it from Mr. Brandon L. Myers.

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on February 6, 1987.

Senator's proposed legislation and Mr. Myers' memorandum is part of these Minutes, (Attachment #2), and concerns an amendment of the Kansas Age Discrimination in Employment Act. Senator Anderson moved that the bill be introduced. The motion was seconded by Senator Martin. The motion carried.

The Chairman announced that the Committee will continue its work on SB141 on Monday, February 9, 1987.

The meeting was adjourned.

2/6/87
Attachment #1

MEMORANDUM

TO: Senate Federal & State Affairs Committee
FROM: Alcoholic Beverage Control Division
DATE: February 6, 1987
SUBJECT: Senate Bill 141

ALCOHOLIC BEVERAGE HANDLER TRAINING & LICENSING

Liquor Law Review Commission Recommendation

The Commission recommended that alcoholic beverage handlers obtain a **license** from the ABC after successfully completing a State-certified training program. Senate Bill 141 does not contain a provision for **licensing** of alcoholic beverage handlers.

In addition, the LLRC recommendation included private clubs and cereal malt beverage establishments as well as liquor-by-the-drink establishments. Senate Bill 141 requires the training for servers in class C (liquor-by-the-drink) establishments and caterers only. Handlers of liquor and beer should complete the program, according to the recommendation, and not just handlers of liquor as SB 141 states.

The recommendation also stipulated that anyone in a position to handle alcoholic beverages be required to complete the course, not just servers as SB 141 states.

Why licensing is necessary

Licensing of alcoholic beverage handlers is necessary for the tracking of the entire process. Without licensing, there is wide potential for a licensee to circumvent the education requirement for servers. It would be impossible for the ABC to verify that all servers have completed the course without a licensing process. Licensing would ensure that servers in an establishment are certified year-round rather than right before the licensee renews. It would allow for a checking process to ensure that a server has not been convicted of a felon or a morals violation. If an alcoholic beverage handler has a license, responsibility would be divided between the establishment licensee and the alcoholic beverage handler, rather than the licensee assuming all of the responsibility. If an alcoholic beverage handler has a license, an employer is ensured that he/she has training, making such a person more marketable in terms of employment. Some policy questions that would need to be addressed: How long would alcoholic beverage handler licenses be valid? How often would retraining be necessary? Would retraining be necessary before the renewing of a license?

PENALTIES

Attachment #1
FSA 2/6/87

There is a lack of consistency in the various misdemeanor penalty sections of SB 141. Having one penalty for all such violations would establish consistency and simplicity. A fine up to $1000 and/or imprisonment up to 6 months would seem appropriate for such violations.

MINIMUM FOOD REQUIREMENT

SB 141 maintains reciprocity and the 50 percent food requirement among private clubs. Enforcing the food provisions for class A and B licenses (private clubs) and class C licenses (LBD establishments) would be easier if the requirements were uniform.

CATERERS

There does not seem to be anything in SB 141 that would prohibit a caterer from setting up a liquor-by-the-drink booth without catering an event. In other words, a caterer is not restricted from selling on non-licensed premises without catering to a contracted event.

2/6/87
Attachment #2

MEMO

TO: Senator Gene Anderson

FROM: Brandon L. Myers

RE: Proposed Amendment of the Kansas Age Discrimination in Employment Act

DATE: February 4, 1987

Here is a copy of the proposed bill we discussed. It is intended to bring the KADEA into line with the Federal ADEA which is administered by EEOC. EEOC has refused to enter into a worksharing agreement with KCCR as to age discrimination complaints because of this dissimilarities between the two acts ever since the KADEA was adopted in 1983. (See attached correspondence from EEOC.) Thus, although KCCR investigates age discrimination complaints (which the Complainants file with both KCCR and EEOC), because of the lack of worksharing agreement, EEOC gives KCCR no case credit or payment. If the KADEA is amended EEOC will undoubtedly be willing to give us an age contract. This could amount to perhaps $40,000.00 - $50,000.00 more to KCCR from EEOC per year for investigative activities KCCR is already performing and will continue to perform.

In addition to that the Federal ADEA was amended in 1986 and the age 70 limit was removed. It is sensible that the KADEA be the same.

In short the proposed amendments are intended to make the coverage of the KADEA comparable to the Federal ADEA. Most Kansas employers (basically, any employer employing 20 or more employees) are already covered by the Federal Age Discrimination act (the KADEA covers those employing four (4) or more persons). Thus, the only effect of the KADEA changes would be as to employers in Kansas employing between 4 and 19 employees. Those with less than four are not, and still would not be, covered. Those with 20 or more are already covered in this manner by the Federal Age Discrimination Act.

Please contact me for any further information that you wish to have, and let us know if you want to introduce this as a bill.

BLM/kp
cc: Joanne E. Hurst
Roger W. Lovett

Attachment #2
FSA 2/6/87

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

September 14, 1983

Brandon's
Please review

Mr. Michael L. Bailey, Executive Director
Kansas Commission on Civil Rights
535 Kansas Avenue, Fifth Floor
Topeka, Kansas 66603

Dear Mr. Bailey:

This is in response to your letter of June 13, 1983, requesting review of the Kansas Statute (House Bill No. 2523) conferring Age Discrimination in Employment responsibility upon your agency.

I am appending a copy of the results of the review of this statute by our Office of Legal Counsel.

The Legal Counsel's memorandum finds that Kansas is a referral state within the meaning of Section 14(b) of the ADEA, but recommends that ADEA Charge Processing contracts be denied, pending clarification of a number of differences between your statute and the Federal ADEA.

As we previously discussed, it is possible that the regulations your agency will adopt for administration of your statute, can cure some of the critical differences, since many of Legal Counsel's reservations go to procedural or interpretative matters within most administrative agencies' purview for regulatory interpretation. Others of these reservations might well be cured or ameliorated by Attorney General rulings or interpretations. It is, of course, possible, that certain areas of incompatibility are statutory, and our ability to contract with you as to some charges would not be possible without statutory amendment.

We certainly will be happy to review your regulations, when they issue, and to refer any Attorney General interpretations or rulings which might have a bearing upon your ability to contract with us, to our Legal Counsel.

Sincerely,

John E. Rayburn, Director
State and Local Section

cc: Whit Walker, Region II
Ed Mansfield, Director
St. Louis District Office

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

SEP 12 1983

MEMORANDUM TO: John E. Rayburn, Director
State and Local Section
Office of Program Operations

THRU : Odessa M. Shannon, Director
Office of Program Operations

FROM : Nestor Cruz NC
Associate Legal Counsel
Legal Services

SUBJECT : Review of Age Discrimination Statute of the State of Kansas for the Purpose of Determining Referral Status

This is in response to your inquiry concerning recently enacted age discrimination legislation in the state of Kansas, and the request of the Kansas Commission on Civil Rights (KCCR) that it be considered for an ADEA contract. We have reviewed your request and recommend that consideration of the KCCR as an agency with which the Commission may contract for the processing of age charges be denied at this time.

Section 14(b) of the federal ADEA requires that charging parties obtain recourse to applicable state as well as federal law before commencing a private action under the federal age discrimination law in any state that has an age discrimination law and a state agency authorized to grant or seek relief from age discrimination. The Kansas statute in question contains substantive prohibitions similar to those contained in the federal ADEA and there is a state agency authorized to accept complaints and seek relief on behalf of aggrieved individuals. It therefore appears that Kansas is a referral state within the meaning of section 14(b). Certain sections of the Kansas statute do not comport with the federal statute, however, and would therefore preclude the state agency from processing age charges in a manner which would qualify for payment under current age contracting procedures.

For example, Section 3(a)(1) of the Kansas statute appears to permit actions otherwise age discriminatory where the employer acts under a valid business motive. The Commission recognizes a similar defense under the federal ADEA, but places a higher burden on the employer. See 29 C.F.R. §1625.7(d) (adverse impact on protected group only justified by business necessity).

The distinction may result in the KCCR treating disparate impact claims differently.

Similarly, Section 3(a)(2) provides a defense not available to employers under the federal statute. This section permits an employer to reduce the wage rate of any employee in order to comply with the Kansas statute, provided the reduction is with the employee's express or implied consent. This section presents the clear possibility that a claim involving a wage reduction would not appear to violate the state law but would the federal law.

We would also note that Section 8(b)(1) does not have any counterpart in the federal statute and appears to permit employers to make hiring decisions on the basis of age depending upon the age profile of his workforce. Such a practice would be a clear violation of the federal statute unless the employer could show that the exclusion was a bona fide occupational qualification (BFOQ). In Section 8(b)(1) the Kansas statute provides the defense of workforce imbalance alone, as the following Section 8(b)(2) provides a BFOQ test. We would conclude therefore that there might be a range of hiring charges that would be dismissed under the state law but would be considered potential violations under the federal law.

Further, Section 8(b)(3) provides a defense for "a bona fide seniority system or any bona fide employee benefit plan" which is almost identical to the exception contained in section 4(f)(2) of the federal statute prior to the 1978 Amendments thus leaving open the question of whether involuntary retirement pursuant to the terms of a pension plan is permissible under the Kansas statute where it clearly is not under federal law.

Finally, we note a substantial deviation from the federal ADEA in the defense available to public employers under Section 8(b)(5) of the state law which makes it not unlawful for an employer to "observe the provisions of a retirement, pension or other benefit plan permitted by state or federal law or by ordinance or resolution." This section provides state and local governments a broad exemption to engage in otherwise unlawful practices with respect to their own employees, and is superfluous with respect to federal law which is preemptive in any case. As you may know, the Commission has noted that there exists a number of state and local laws that do not comport with the federal ADEA and that these laws are considered effectively superseded by the federal law. See 29 C.F.R. §1625.6(c). Section 8(b)95) of the Kansas statute appears to be such a law in that it permits local governments to pass laws that permit public employers to observe the terms of benefit plans that may have arbitrary age distinctions.

We have noted those areas where the Kansas statute deviates from the federal ADEA. In general, however, the state statute appears to fit within the 14(b) definition of a referral state. It does not appear that, absent amendments to the Kansas

law or substantive regulations issued thereunder which would effectively eliminate the defects outlined above, that the KCCR will be able to meet the Commission's requirements for the processing of age charges under contract.

_____ Bill No. _____

By _____

AN ACT amending the Kansas Age Discrimination in Employment Act; extending coverage of the Act to persons over the age of 70; amending K.S.A. 44-1112, 44-1113, 44-1118; and repealing the existing sections; adding K.S.A. 44-1120.

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

Section 1. K.S.A. 44-1112 is hereby amended to read as follows:

44-1112: **Definitions.** As used in this act:

(a) "Age" means an age of 40 or more years. ~~but less than 70 years~~.

(b) "Commission" means the commission on civil rights created pursuant to K.S.A. 44-1003 and amendments thereto.

(c) "Employee" does not include any individual employed by the individual's parents, spouse or child.

(d) "Employer" means any person in this state who employs four or more persons and any person acting directly or indirectly for such a person, and includes the stae and all political subdivisions of the state.

(e) "Employment agency" includes any person or governmental agency undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees.