

Approved A W Douville 3-7-88
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:11 a.m./~~p.m.~~ on February 17, 1988 in room 526-S of the Capitol.

All members were present except:

Representative R.D. Miller - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Department of Legislative Research
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Martha Sheek, Lake Quivira, Kansas - Older Women's League
Nadine Burch, Senior Advocate, Kansas Coalition on Aging
Lyndon Drew, Department on Aging
Helen Miller, National Council on Aging
Brandon Myers, Kansas Commission on Civil Rights
Ralph Turner, Lawrence, Kansas

Testifying in favor of H.B. 2563 were:

Martha Sheek, attachment #1.
Nadine Burch, attachment #2.
Lyndon Drew, attachment #3.
Helen Miller, attachment #4.
Brandon Myers, attachment #5.

Brandon Myers referred to proposed changes to K.S.A. 44-1112, 44-1113 and 44-1118 he presented before the committee March 31, 1987 (refer to minutes of that meeting).

Chairman Douville questioned the term "facially neutral employment" as used in the last paragraph on page two. Mr. Myers responded that under Kansas law, age can be used as factor in an employment decision if there is a valid business motive. The Kansas Supreme Court, in interpreting the Kansas act against discrimination, stated it would generally follow federal civil rights law in general cases involving matters similar under the Kansas act. Mr. Myers stated the paragraph was a reassertment or clarification of business motive but even if it were removed the premise was still contained in the bill and voiced no objection to the deletion of the paragraph if it were the wish of the committee.

Ralph Turner, Lawrence, Kansas, spoke in support of the bill. His stated experience with age discrimination was through compulsory retirement. It was his observation through positions in public and private industry personnel administration that age discrimination could be conducted in such a manner as to go unnoticed. He stated that proving disqualification is not discrimination.

Representative Whiteman, referring to the third balloon on page two, asked Mr. Myers when an employer would reduce wages in order to comply with that act. The response was, in an instance to circumvent rather than comply, e.g. telling an employee he could keep his job but it would now be part-time.

Representative Bideau questioned to whom this would apply on a state versus federal level. Employers of 20 or less are subject to the state provisions. The Kansas Act Against Discrimination (KAAD) and Kansas Age Employment Discrimination Act (KAEDA) apply to employers of four or more as well as employers of 20 or more although the latter are already under the federal statute.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:11 a.m./~~p.m.~~ on February 17, 19 87

The representative's next question was if the upper age limit was to be removed, why not the lower age limit which seems discriminating against youth. Mr. Myers agreed but believed the original basis of the legislation was age 40 seemed to be the time people were encountering age discrimination. This bill was patterned after federal legislation.

It was verified by Mr. Myers that this bill applies only to employment not to public accommodations or services. K.S.A. 44-1009c would have to be amended to address this issue and if it were extended to housing, then the housing portion would have to be amended.

Representative Bideau asked if the language on page 3 ("facially neutral employment") and the language on page 4, line 0146 was drafted by the department or taken from the federal provisions. Mr. Myers responded that it was intended to track with federal legislation and referred to his testimony of March 30, 1987.

The representative referred to the retirement provisions and asked how they would affect a retirement system designed to vest benefits after stated years of service (e.g. 20 years or 30 years), but the retirement plan also provides the benefits may not be drawn until a certain age has been attained. Mr. Myers did not foresee any adverse effects on that situation stating most plans are drawn in accordance with federal provisions and covered by them. He felt the language on page 10 covered the situation.

The next question was in reference to judges' retirement. There are provisions under federal statute and there is an exception continued under this law which would be somewhat comparable to it and this law would address that situation. The State of Kansas, as an employer, is covered by the federal statute.

Representative Bideau requested that at some time staff address how judges "are handled" in Kansas.

Representative Green asked how an employer with a multiple contract covering several states would be affected. Mr. Myers responded that such an employer should be covered by federal statute. He stated it is not the intention to create any inconsistency between the federal and state age staff.

The chairman stated the subject would be continued at a later date.

The meeting was adjourned at 9:58 a.m.

The next meeting of the committee will be February 18, 1988, 9:00 a.m. in Room 526-S.

Attachment #6 is a balloon version of H.B. 2563, dated 2/17/88, for the consideration of the committee.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date February 17, 1988

Name	City	Representing
JOE MEDITZ	1943 TROUP KCKS	N. A. R. F. E
Margaret Gebhardt	410 So. Blue Grass Dr. Lawrence, Mo	J. N. R.
Del DAMROW	PO Box 143 Scott Co, Mo	K F N H
Louise Ostlund	1203 1/2 10th Ave., Leavenworth 66048	K I N H
Wileen Miller	3035 Lydia Tapoka 66614	Natl Co. on Aging
Ralph June	15401 KASOLD DR LAWRENCE	SILVERSTAR
Evelyn Ewing	7714 West 55th Terr, Overland Park, Mo	So Co Area Agency on Aging
Nancy McKay	1015 Wabash Terr, Olathe, Mo, 66061	So. Co. Area Agency on Aging
Martha Sheeh	266 Lakeshore W. Lake Ossineke, Mo, 66066	Older Women's League
Nadine Burch	K.C.O.F. - 1195 Buchanan Tapoka	
Albert E. Waig	849 Beaver Trail	Derby
Janeet Molen	3101 Anemore Ln. Rose Hill, Mo	
Jane Wallace	722 Ave. A West, Kingman	"Politics & Aging"
Alain Parker	Manhattan	NC/FH - Area Agency on Aging
Shirley Smith	Manhattan	NC/FH/ Area Agency on Aging
Sam Gordon	Manhattan	NC/FH - AAoA
Lynda Dren	Tapoka	K D O A
Wayne Maier	Tap	K. APL - CIO
Chas. J. Farnum		KACHA
Jim de Hoff	Tapoka	KS AFL - CIO
Charles		K C C R
Beane, Gust Lawrence		K C C R
Robert B. Caldwell	Salina, Mo	N A A O F
Ann Bennett	Tapoka	Self
E. D. Sims Margaret Sims		Opark

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date February 17, 1988

Name	City	Representing
Guanita Lock	Olathe, Ks	Johnson County Aging Commission
Richard S Funk	Topeka	KASB
Mike Haberkorn	Topeka	KSNT-TV
Ruth McClain	Cape Coral Fla-	
Kathryn M. Sullivan	Olathe, Ks.	Johnson County Aging
Margaret Bideau	Charute	JC Commission on Aging
Donna Malone	Marian	
Trish More	Overland Park	JoCo. Human Resources Agency Dept.
Annie D. White	Olathe	JoCo Area Agency
Tom Hynes	Olathe	JoCo Commission on Aging
Nettie Butcher	"	JoCo Commission on Aging
John D. Butcher	"	" " "
Sally Streff	Topeka	AP

Testimony: Martha R. Sheek, Ph.D.
266 Lakeshore W.
Lake Quivira, Ks. 66106

Pro: House Bill 2563
Chairman: Art Douville
Labor and Industry Committee

I have encountered numerous examples of age discrimination in the past 5 to 7 years, the most recent is probably the most blatant and as a result of it, I have become more aware of the need for amending existing laws in regard to age. I was employed to perform research on a "Cadre" basis - the time period of employment for the research project was limited - then I was to teach one of their associates the procedure. In other words, the project was to continue after I finished. After working on the project for 4 months, I was highly commended for my work and was given a raise on Jan. 1, 1988, but with no benefits. This is the day that the Federal amended ADEA law went into effect. A young man, Ph.D. with much less background, was also hired as a temporary basis, actually for the same project, but than was moved to another one, was given a full time position on Jan 1, 1988 with full benefits.

On March 17, 1987, I had completed a difficult project, but I had not been supported as I should have been and our disagreement led to a constructive discharge.

I was called in by their Personnel Department about a month later and said at that time, and I repeated it, that I would work with the firm on a full-time basis with all the benefits, and that I knew that there were openings in my field of expertise. I was told that I would be contacted. When no contact was madewith me, I called personnel several times to talk with the interviewer, but the calls were never returned.

I filed a complaint with the EEOC on June 15, 1987, but learned that they are rarely effective on an individual basis but mainly are effective in class-action suits.

A member of the National Organization of Women referred me to the Human Relations Department of Kansas City, Mo. and after my insistence was interviewed. The interview lasted two hours, then I was told that they could not handle my case, although I had just cause, because I was 72 and their guidelines specify procedures for ages 40-70, even though the Federal Law went into effect Jan. 1, 1988.

I contacted Kansas Representative Jan Meyers and received a copy of the amended ADEA law. I also contact Mo. Rep. Alan Wheat and was informed that the 70 year limitation had been removed from their age discrimination procedures. I then contacted my Representative for the 18th district, Eugene P. Amos concerning Kansas law. He responded promptly, that the 70 year age limitation was still part of Kansas law, but that a bill would be presented in the January 1988 Legislature session amending the Law and that I would be invited to testify.

I have since my meeting with the K.C., Mo. Human Relations Dept. contacted Mayor Richard Berkley and two of their Councilmen and have received a memo from Alvin L. Brooks, Director of the Human Relations Dept. that a proposal has been made to amend the Civil Right Ordinance 53521 to bring the ordinance in line with applicable state and federal laws.

Employment should be based soley on qualification and commitment not on age. I urge that House Bill 2563 presented by Chairman Art Douville be supported and passed in order to bring Kansas Law in line with the Federal Law.

February 17, 1988

HOUSE LABOR & INDUSTRY
Attachment #1
02/17/88

TESTIMONY IN SUPPORT OF HB 2563
NADINE BURCH
HOUSE LABOR & INDUSTRY COMMITTEE
FEBRUARY 17, 1987

I am Nadine Burch, Senior Advocate for the Kansas Coalition on Aging. I am here today to testify in support of HB 2563. I testify on behalf of myself and my peers who are past the age of 70. This bill would amend current Kansas statute, which provides no protection against age discrimination for persons who are over the age of 70.

Personally, I have been discriminated against twice since my 70th birthday. Chronological age has little to do with employability. If it were a criteria for employment, Ronald Reagan, Claude Pepper and George Burns would be out of a job. Age discrimination does occur. During my two years as a Community Conciliator for age discrimination in six Midwest states, I heard cases of age discrimination in employment, housing, state agencies and universities.

At the time this statute was adopted, it coincided with the federal law on age discrimination. Now federal law has been changed to provide protection for persons age 70 and older. Recently, I learned that the Topeka city ordinance on discrimination had no protection against age discrimination. Through the efforts of several groups and individuals, this is now being corrected. It is time for the state to take similar action to assure that persons over the age of 70 are not discriminated against on the basis of age. We need protection against discrimination at local, state and federal levels to assure fair and equitable treatment of persons at all ages.

Thank you for holding this hearing on this subject which is of great importance to older workers. I urge your support of this bill.

TESTIMONY ON H.B. 2563
TO
HOUSE LABOR AND INDUSTRY COMMITTEE
BY
KANSAS DEPARTMENT ON AGING
FEBRUARY 17, 1988

Bill Summary:

Act would prohibit discrimination in employment for persons over age 40.

Bill Brief:

1. Act amends Kansas statutes to incorporate recent federal law that removes upper age limit of 70 years thereby prohibiting discrimination in employment for persons over age 40.
2. Act excludes firefighters and law enforcement officers from protection until January 1, 1994.
3. Act excludes tenured faculty between the ages of 65 and 70 from protection until January 1, 1994.
4. Act excludes employees 65 and over who have been employed as a bona fide executive or in a high policymaking position, from protection, if the employee's retirement benefit is at least \$44,000.
5. Act excludes employees covered by collective bargaining agreements in effect on June 30, 1987, from protection, until January 1, 1990 or the termination of the agreement, whichever occurs first.

Bill Testimony:

This bill would amend Kansas law to conform to recent federal legislation lifting the upper age limit of 70 years from the statute protecting older workers from age discrimination.

The Kansas Department on Aging endorses this bill and applauds its recognition of the skills, talents and dedication of older workers.

We would remind the Committee however, that the bill's effectiveness depends on strong enforcement by the Kansas Commission on Civil Rights. Despite the attention given statutorily in the last decade to the existence of age discrimination, a recent survey done at the University of Kansas found that 66% of Kansas leaders still think that older workers are discriminated against in the work place. The effect of age discrimination on the individual can be devastating financially. In addition, it results in the loss of dignity, responsibility and purpose. For this reason, KDOA urges the Committee to continue to push for strict enforcement of this statute.

Recommended Action:

KDOA supports the enactment of H.B. 2563

KU study concerned with elderly in job market

Older Kansans with jobs can expect equitable opportunities for training, promotions and raises, according to a recent survey of Kansas business leaders.

Older workers needing jobs will not fare as well because Kansas businesses make little effort to recruit them or provide special accommodations for them.

Brenda Crawley, University of Kansas assistant professor of social welfare, conducted the study in September and October 1986 of attitudes toward older workers in the state.

She surveyed 505 Kansas business leaders on their attitudes toward employment, training, retention and recruitment of older workers. Her research was supported by a KU Faculty Research Grant.

Crawley found that more than 66 percent of Kansas business leaders surveyed think that older workers are discriminated against in the workplace.

"If we continue losing young workers to other states," she noted, "businesses bent on boosting the state's economy will need to rethink their human resources/personnel practices involving older workers."

Kansas ranks among the top 10 states in percentage of population 60 and older, Crawley said. By 1990 there will be a surge in Kansas and the rest of the nation in the 45-to-54 age group as the post-World War II baby boom population matures.

For the survey, Crawley randomly selected 402 firms from the Kansas Chamber of Commerce and Industry Council directory and 103 from the Kansas Minority Businesses directory. Sixty-three percent, 317 companies, returned completed questionnaires.

"The questions were designed to compare Kansas business leaders' attitudes about older workers with their counterparts nationally," Crawley said. "In 1981, Mercer Inc., an employee benefit and compensation consulting firm based in New York, conducted a national study to determine attitudes toward the older work force."

In providing equitable training, promotion and raises for younger and older workers, Kansas businesses rated higher than their national counterparts, 83 percent to about 70 percent.

But Kansas businesses ranked lower than their national counterparts in hiring those over 50 and in anticipating job redesign to fit older workers.

Yet Kansas business leaders aren't as likely as national survey respondents to

encourage early retirement. Seventy percent of Kansans surveyed, compared with 51 percent in the national study, would like to see mandatory retirement abolished by 1990.

A little more than half of the state respondents, 51.4 percent, said age is not important in productivity.

Conversely, 38.5 percent in the state and 37 percent in the national and state respondents was the possibility of high pension and benefit costs for older workers cost more, Crawley counters that older, more experienced workers cause fewer product liability and workers compensation claims than do younger workers.

"Certainly, employers will want to examine if pregnancy claims (a high cost item) and overall compensation claims are not the largest draws on benefits costs," she said, "and not simply insurance costs of older workers. In fact, older workers could point out to employers that they have less need for high-benefit life insurance and usually have fewer dependents to

include in their health insurance plans. Also adjustments can be made in pension plans for newly hired older workers."

Forty percent of Kansas respondents think it will be more than five years before their companies will plan for the nationally projected smaller, younger labor pool and consider programs for older workers. But Crawley is encouraged that 34.7 percent are already dealing with the issue, and 20.5 percent believe their companies will make plans within five years.

Crawley said, "One of the interesting things about the Kansans surveyed is that they are less knowledgeable about older worker issues. Yet older persons, not unlike racial/ethnic minorities, women and the disabled are increasingly willing to take legal action avoid being discriminated against in the labor force."

Fewer Kansans than national respondents agree that one effect of inflation rates would be postponement of retirement—82.3 percent to 91 percent respectively. But Crawley emphasizes that

economic conditions might cause older workers to hold onto their jobs.

Crawley would like to see Kansas business leaders plan more and do more to accommodate their older workers.

"Kansas businesses in general appear sensitive to older workers but might benefit from more knowledge of the particular needs," Crawley said. "While I would like to continue to do research on older workers, I also would like to hold workshops and seminars for business leaders.

"There are many low-cost programs for older workers which businesses can institute, such as job-sharing for two or more older persons in the same position, allowing older workers to make lateral moves within an organization that can be cost-effective and yet keep a knowledgeable person within the firm, and training supervisors to work with and train older workers."

Features & Opinion

Raise the minimum wage to fight poverty

In 1983, Congress established a national minimum wage under the Fair Labor Standards Act to ensure "a minimum standard of living necessary for health, efficiency and general well-being of workers."

The federal wage-hour law, which also prohibited child labor, was popularized as "a floor under wages, a ceiling on hours, and a break for kids." It was the last great social legislation of the New Deal, following Franklin D. Roosevelt's overwhelming reelection in 1936.

FDR's first term was historic in itself. Following the economic collapse in the late 1920s, and faced with mass unemployment and economic chaos, FDR attempted to restore the confidence of the people in American democracy with dramatic new federal programs. The New Deal programs were targeted to put people back to work, save farms and homes, and help revitalize agriculture and industry. TVA, the Wagner Act, Social Security and other landmark legislation changed the nation dramatically.

The wage-hour law was part of that philosophy, intended to end exploitation of

the working poor and take vulnerable workers out of market competition. Today, when deregulation and free market ideas are in fashion, it's helpful to remember the purpose of the minimum wage. For awhile, the Reagan Administration had been pushing a "youth opportunity wage" of \$2.50 an hour. Discussion on Capitol Hill has now shifted behind the prospect of raising the minimum wage, supporters say.

Because the minimum wage is not indexed to inflation or to a percentage of average wages, as organized labor has proposed, "it has been raised in fits and starts over the years. Congress last dealt with the issue in 1977, when it enacted a series of four increases, the last of which took effect Jan. 1, 1981, when it went to \$3.35 an hour.

The purchasing power of the minimum wage is now at its lowest level since 1955, noted Sar Levitan and Isaac Shapiro of George Washington University's Center for Social Policy Studies. In a recent analysis titled, "The Fall of the Minimum Wage," they said the wage floor generally rose in real terms until 1968, remained stable in the 1970s, and fell sharply in the

Levitan-Shapiro study found that only 3 percent of minimum wage workers are teens. "According to the latest available statistics, nearly 3 of every 10 minimum wage workers are heads of households," it said.

In 1985, the study said, 7.4 million hourly and salaried workers earned the minimum wage. Two million of these workers labored full-time year-round.

"There has been justified concern over a decline in the standard of living of many middle-income workers," Levitan commented. "But the dramatic drop in the standard of minimum wage workers has been overlooked. If the government hopes that the poor will work their way out of poverty rather than depend on welfare, the minimum wage should be restored to its traditional level of support," he said.

Opponents of raising the minimum wage argue that it would produce increased unemployment among young and low-skilled workers. While some studies have showed a small job loss from an increase in the floor wage, other studies have shown no effect. Certainly, the decline in the real minimum wage since 1981 has been of no

I am Helen R. Miller, registered lobbyist for National Council on Aging. I would like to speak to House Bill No 2563.

Several years ago, I addressed this body in favor of extending age limits from 65 to 70 years of age. As our older population escalates and we are living longer more productive lives, those of us in this profession recognize that our older population is most capable of working beyond the age limit of 70. Our Federal laws reflect this as well.

Kansas is not in compliance with this law and I feel it is pertinent that we bring our state law into compliance as quickly as possible.

Several years ago I shared with you some of the discrimination I experienced as an older worker, as I get closer to retirement age, I now find that to be common in the work place, I am often asked when are you retiring????? Or , when you retire, we can hire some one in your place for much less. Yes , age discrimination is unfortunately alive and well. We must continue to dispel these myths, recognize the realities, and enact this house bill # 2563 that will serve to enhance and move this issue along effectively and quickly.

Thank you for your interest.

A handwritten signature in cursive script that reads "Helen R. Miller". The signature is written in dark ink and is positioned centrally below the typed text.

MEMORANDUM

TO: Members of the House Labor and Industry Committee

FROM: Brandon L. Myers, Senior Legal Counsel *BLM*
Kansas Commission on Civil Rights

RE: House Bill 2563: Proposed amendments to the
Kansas Age Discrimination in Employment Act
(KADEA)

DATE: February 17, 1988

The amendments proposed by the revised version of House Bill 2563 (held over from last session) are designed and intended to protect more older Kansans' (those over 70 years of age) rights to work. The KADEA makes it illegal for an employer to discriminate on the basis of "age." The primary change to the statute would be to define "age" as "an age of 40 or more years", rather than the current statutory definition of "an age of 40 or more years but less than 70 years." It is particularly appropriate for this Committee to be considering this bill of importance to older Kansas workers on this Older Kansans Day.

When the Legislature was considering adopting the KADEA a few years ago, the KCCR suggested that "age" be defined as merely "over 40." The members of the Legislature at that time indicated, however, that their intent was to design a law patterned after the existing Federal Age Discrimination in Employment Act (ADEA), which at that time had the 40-70 definition. Thus, that definition was adopted (as were other similar portions of the Federal ADEA) into the KADEA.

The Federal law has since changed. The most significant change was in 1986, when it adopted the "over 40" definition of "age."

Consistent with the original Legislative intent of patterning the KADEA after the Federal ADEA, the KCCR has supported this bill as updating our law to reflect the changes in that Federal law.

To some extent, then, House Bill 2563 could be seen as "conformity legislation."

However, it is more than simply that. First and foremost, the bill is a good idea on its own. Due to many factors people are living longer and maintaining their health longer these days. Due to personal reasons, as well as the insufficiency of Social Security retirement benefits, and other factors not all people wish to automatically cease working when they reach age 70. By continuing to work past age 70, these competent and capable workers continue to contribute to the economy, pay taxes, and may avoid additionally burdening already overburdened governmental assistance programs. At a time when the Presidency of the United States is held by a citizen over 70, it seems quite inappropriate for the laws not to recognize that many older citizens are quite capable of working. KCCR believes that citizens over 70 should be protected from being automatically stereotyped out of the job market, whether by refusal to hire, mandatory retirement or otherwise. House Bill 2563 proposes a way to accomplish that to the same extent that that is done by the current Federal law upon which the KADEA was originally patterned. House Bill 2563 maintains the same exceptions as are currently in that Federal law, and therefore is fairly limited in the scope of what it proposes to do.

The Federal ADEA generally applies to all employers in Kansas with 20 or more employees. The KADEA applies generally to employers with 4 or more employees. So, the State of Kansas as an employer, as well as all larger employers in Kansas are covered already by the Federal ADEA provisions. Because of the different definitions in the KADEA versus ADEA, however, House Bill 2563 will affect employers of 4-19 employees. The affect of House Bill 2563 will be to simply cover all employers already covered by the age discrimination laws in the same manner. As it is now, a 70 year old worker can be fired or retired early simply because he/she works for a Kansas employer who has 19 workers as opposed to 20. This is a totally unfair, unreasonable and artificial breakpoint, which surely was never intended by this Legislature. The KADEA already covers employers of 4-19 employees. House Bill 2563 only proposes to cover them in the same way virtually all other Kansas employers are covered.

This bill would not force anyone to work after 70 if they did not choose to do so. It would not require the employment of unqualified or incompetent employees. It would allow an employer to consider a person's age if that was justified by some valid business motive.

I am unaware of any specific opposition to this bill from employers of 20 or less employees. Most employers want to obtain qualified employees of whatever age. House Bill 2563 would provide protection only in the few instances where older workers are simply stereotyped out of the job market.

The KCCR would require no additional staff or funding in order to administer the statutory changes proposed by House Bill 2563. We do not anticipate a large increase in complaint filings because of this bill, but it is important for the state to provide such a process to people over 70 when they are discriminated against by an employer not amenable to the Federal law administered by the Federal Equal Employment Opportunity Commission (EEOC).

A side effect of passing House Bill 2563 would be that the Federal government will in all likelihood provide the State with more Federal funds. The KCCR currently has a worksharing agreement with Federal EEOC. (Virtually all states' employment discrimination agencies have these with EEOC.) These agreements set out the procedures for these agencies to investigate the same employment discrimination complaints filed under the State and Federal laws they administer. When KCCR investigates a complaint (as required under State law), the EEOC utilizes our investigation to make a determination about the complaint filed with them under Federal law. The Federal government pays the State for this (about \$300,000.00 per year). Because the KADEA is not in substantial conformity with Federal law, EEOC will not enter into a worksharing agreement with KCCR as to complaints of age discrimination. They will do so if House Bill 2563 passes. The result will be as much as a \$50,000.00 per year increase in Federal funds. Since KCCR already investigates complaints of age discrimination against those of 40-70 years, we will not really have to do much more than now. We will just be able to be paid by the Federal government for doing our duty to investigate complaints as required by State law. This would avoid some confusion amongst the agencies, employers, employees, etc., which now exists. Additionally, when an age discrimination complaint is currently filed with EEOC and KCCR by a person between age 40-70 against a Kansas employer, that employer now faces the possibility of two, full-blown independent agency investigations, rather than the normal worksharing agreement of actually just one investigation with the other agency utilizing the materials of the other. Large employers in Kansas could be less burdened if House Bill 2563 passes and a KCCR/EEOC worksharing agreement subsequently results.

In summary, this bill is important to protect older Kansans' rights to work. It would put Kansas law in line with a national public policy recognizing the value of older workers. It would not significantly burden Kansas employers, and would have positive administrative side-effects. The KCCR supports passage of this bill and would solicit your support.

BLM/kp

HOUSE BILL No. 2563

For Consideration by Committee on Labor and Industry

By Committee on Appropriations

2-17-88

3-11

0017 AN ACT concerning the Kansas age discrimination in employ-
0018 ment act; extending coverage thereof; amending K.S.A. 44-
0019 1112, 44-1113 and 44-1118 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 44-1112 is hereby amended to read as fol-
0022 lows: 44-1112. As used in this act:

0023 (a) "Age" means an age of 40 or more years ~~but less than 70~~
0024 ~~years.~~

0025 (b) "Commission" means the commission on civil rights
0026 created pursuant to K.S.A. 44-1003 and amendments thereto.

0027 (c) "Employee" does not include any individual employed
0028 by the individual's parents, spouse or child.

0029 (d) "Employer" means any person in this state who employs
0030 four or more persons and any person acting directly or indirectly
0031 for such a person, and includes the state and all political sub-
0032 divisions of the state.

0033 (e) "Employment agency" includes any person or govern-
0034 mental agency undertaking with or without compensation to
0035 procure opportunities to work, or to procure, recruit, refer or
0036 place employees.

0037 (f) "Firefighter" means an employee, the duties of whose
0038 position are primarily to perform work directly connected with
0039 the control and extinguishment of fires or the maintenance and
0040 use of firefighting apparatus and equipment, including an em-
0041 ployee engaged in this activity who is transferred to a supervi-
0042 sory or administrative position.

0043 (g) "Labor organization" includes any organization which
0044 exists for the purpose, in whole or in part, of collective bargain-
0045 ing or of dealing with employers concerning grievances, terms or

0046 conditions of employment, or of other mutual aid or protection in
0047 relation to employment.

0048 (h) "Law enforcement officer" means an employee, the
0049 duties of whose position are primarily the investigation, ap-
0050 prehension or detention of individuals suspected or convicted of
0051 offenses against the criminal laws of ~~the state~~, including an
0052 employee engaged in this activity who is transferred to a super-
0053 visory or administrative position. For the purposes of this sub-
0054 section, "detention" includes the duties of employees assigned
0055 to guard individuals incarcerated in any penal institution.

0056 (g) (i) "Person" means individual, partnership, association,
0057 organization, corporation, legal representative, trustee, trustee in
0058 bankruptcy or receiver.

0059 Sec. 2. K.S.A. 44-1113 is hereby amended to read as follows:
0060 44-1113. (a) It is an unlawful employment practice based on age
0061 to engage in any of the following acts in any manner which
0062 would limit, deprive or tend to deprive any person of employ-
0063 ment opportunities or otherwise adversely affect the person's
0064 status as an employee or applicant for employment:

0065 (1) For an employer, because of the age of a person, to refuse
0066 to hire or employ the person, to bar or discharge the person from
0067 employment or to otherwise discriminate against the person in
0068 compensation or in terms, conditions or privileges of employ-
0069 ment; to limit, segregate, separate, classify or make any distinc-
0070 tion in ~~regards~~ regard to employees because of age; or to follow
0071 any employment procedure or practice which, in fact, results in
0072 discrimination, segregation or separation because of age without
0073 a valid business motive.

Kansas or of offenses against any ordinance or resolution which imposes criminal sanctions and is adopted by a city, county or other political subdivision of Kansas

without a valid business motive

(3) 0074 ~~(2)~~ For an employer to reduce the wage rate of any employee
0075 or otherwise alter the terms or conditions of any employee's
0076 employment in order to comply with this act, unless the reduc-
0077 tion is with the employee's express or implied consent For an
0078 employer to follow any facially neutral employment procedure
0079 or practice which, in fact, results in discrimination, segregation
0080 or separation because of age unless the procedure or practice in
0081 question is validly justifiable by reason of business necessity.

(2) For an employer to reduce the wage rate of any employee in order to comply with the Kansas age discrimination in employment act.

(4) 0082 ~~(3)~~ For a labor organization, because of the age of a person, to

0083 exclude or to expel the person from its membership or to dis-
 0084 criminate in any way against any of its members or against any
 0085 employer or any person employed by an employer because of
 0086 age.

(5) 0087 ~~(4)~~ For any employer, employment agency or labor organiza-
 0088 tion to print or circulate or cause to be printed or circulated any
 0089 statement, advertisement or publication, or to use any form of
 0090 application for employment or membership or to make any
 0091 inquiry in connection with prospective employment or mem-
 0092 bership, which expresses, directly or indirectly, any limitation,
 0093 specification or discrimination as to age, or any intent to make
 0094 any such limitation, specification or discrimination.

(6) 0095 ~~(5)~~ For any employer, employment agency or labor organiza-
 0096 tion to discharge, expel or otherwise discriminate against any
 0097 person because the person has opposed any practices or acts
 0098 forbidden under this act or has filed a complaint, testified or
 0099 assisted in any proceeding under this act.

(7) 0100 ~~(6)~~ For an employment agency to refuse to list and properly
 0101 classify for employment or to refuse to refer any person for
 0102 employment or otherwise discriminate against any person be-
 0103 cause of age to comply with a request from an employer for a
 0104 referral of applicants for employment if the request expresses,
 0105 either directly or indirectly, any limitation, specification or dis-
 0106 crimination as to age.

(8) 0107 ~~(7)~~ For an employer, labor organization, employment agency
 0108 or school which provides, coordinates or controls apprentice-
 0109 ship, on-the-job or other training or retraining program, to main-
 0110 tain a practice of discrimination, segregation or separation be-
 0111 cause of age, in admission, hiring, assignments, upgrading,
 0112 transfers, promotion, layoff, dismissal, apprenticeship or other
 0113 training or retraining program, or in any other terms, conditions
 0114 or privileges of employment, membership, apprenticeship or
 0115 training; or to follow any policy or procedure which, in fact,
 0116 results in such practices without a valid business motive.

(9) 0117 ~~(8)~~ For any person, whether an employer or an employee or
 0118 not, to aid, abet, incite, compel or coerce the doing of any of the
 0119 acts forbidden under this act, or attempt to do so.

(10) For an employer, employment agency, labor organization or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits:

(A) In the case of a benefit plan, the cessation of an employee's benefit accrual or the reduction of the rate of an employee's benefit accrual, because of age; or

(B) in the case of a contribution plan, the cessation of allocations to an employee's account or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

Nothing in this subsection (a)(10) shall be construed to prohibit an employer, employment agency or labor organization or any combination thereof from observing any provision of an employee pension benefit plan to the extent that such provision imposes, without regard to age, a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

0120 (b) It shall not be an unlawful employment practice to:

0121 ~~(1) Fill vacancies in such way as to eliminate or reduce~~
0122 ~~imbalance with respect to age;~~

(1) Take

0123 ~~(2) take~~ any action on the basis of age, which is otherwise
0124 prohibited under subsection (a), if age is a bona fide occupational
0125 qualification necessary to the normal operation of the particular
0126 business or if the differentiation is based on necessary factors
0127 other than age;

(2)

0128 ~~(3)~~ observe the terms of a bona fide seniority system or any
0129 bona fide employee benefit plan, such as a retirement, pension
0130 or insurance plan, which is not a subterfuge to evade the pur-
0131 poses of article 10 of chapter 44 of Kansas Statutes Annotated,
0132 except that no such employee benefit plan shall excuse the
0133 failure to hire any individual *and no such seniority system or*
0134 *employee benefit plan shall require or permit the involuntary*
0135 *retirement of any individual;*

0136 (4) observe a mandatory retirement age of 70 years or above
0137 or minimum age of employment; or

0138 (5) observe the provisions of a retirement, pension or other
0139 benefit plan permitted by state or federal law or by ordinance or
0140 resolution

(3)

0141 ~~(4)~~ *Before January 1, 1994, for this state or any political*
0142 *subdivision of this state, or any agency or instrumentality*
0143 *thereof, or any interstate agency, to fail or refuse to hire or to*
0144 *discharge any individual because of such individual's age if*
0145 *such action is taken:*

0146 (A) *With respect to the employment of an individual as a*
0147 *firefighter or as a law enforcement officer and the individual*
0148 *has attained the age of hiring or retirement in effect under*
0149 *applicable state or local law on March 3, 1983, and*

0150 (B) *pursuant to a bona fide hiring or retirement plan that is*
0151 *not a subterfuge to evade the purpose of this act.*

0152 Sec. 3. K.S.A. 44-1118 is hereby amended to read as follows:
0153 44-1118. (a) The provisions of this act shall be construed liberally
0154 for the accomplishment of its purposes.

0155 (b) Nothing in this act shall be construed to mean that an
0156 employer shall be forced to hire unqualified or incompetent

0157 personnel, or discharge qualified or competent personnel.

0158 (c) Nothing in this act shall be construed to prohibit com-
0159 pulsory retirement of any employee who has attained 65 years of
0160 age and who, for the two-year period immediately before re-
0161 tirement, is employed in a bona fide executive or a high poli-
0162 cymaking position, if such employee is entitled to an immediate
0163 nonforfeitable annual retirement benefit from a pension,
0164 profit-sharing, savings or deferred compensation plan, or any
0165 combination of such plans, of the employer of such employee,
0166 which equals, in the aggregate, at least \$44,000.

0167 (d) Nothing in this act shall be construed to prohibit, before
0168 January 1, 1994, compulsory retirement of any employee who
0169 has attained ~~65 years of age but not~~ 70 years of age and who is
0170 serving under a contract of unlimited tenure (or similar ar-
0171 rangement providing for unlimited tenure) at an institution of
0172 higher education.

0173 New Sec. 4. (a) This act and the amendments made by this
0174 act shall take effect on ~~July 1, 1987~~, except that, with respect to
0175 any employee who is subject to a collective bargaining agree-
0176 ment, such amendments shall not apply until the termination of
0177 such collective bargaining agreement or January 1, 1990, which-
0178 ever occurs first, if such collective bargaining agreement:

0179 (1) Is in effect ~~on June 30, 1987~~;

0180 (2) terminates ~~after July 1, 1987~~;

0181 (3) has any provision which was entered into by a labor
0182 organization (as defined by section 6(d)(4) of the Fair Labor
0183 Standards Act of 1938 (29 U.S.C. 206(d)(4)); and

0184 (4) contains any provision that would be superseded by such
0185 amendments, but for the operation of this section.

0186 (b) This section shall be a part of and supplemental to the
0187 Kansas age discrimination in employment act.

0188 Sec. 5. K.S.A. 44-1112, 44-1113 and 44-1118 are hereby re-
0189 pealed.

0190 Sec. 6. This act shall take effect and be in force from and
0191 after its publication in the ~~statute book~~

the effective date of this act

prior to the effective date of this act

on or after the effective date of this act

Kansas register