

Approved

A. W. Douville 3-30-88
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:06 a.m. on March 23, 1988 in room 526-S of the Capitol.

All members were present except:

Representatives Mead - Excused
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:

Brandon Myers, Kansas Commission on Civil Rights

At the request of the chairman, Representative Holmes gave a brief report on his participation in conference of local government officials held in Washington, D.C. The group was addressed by Howard Baker, Chief of Staff to the President and President Reagan. The thrust of the President's message was the importance of local government in carrying out the wishes of the people.

re: H.B. 2563

Attachment #1, is a recut of amendments to H.B. 2563. The changes on page two, lines 0070-0073 and subsection 2, lines 0074-0081 were proposed by Representative Whiteman. The former amendment is based on case law and the latter amendment is a result of committee discussion February 17, 1988. The changes on pages three and five are conformity (to federal law) changes.

With respect to the effect on municipalities, Mr. Wilson stated except for the number of employees involved, the effect would be the same as the federal law.

The language changes on page three address employee pension and benefit plans. The federal law citation is 29 USCA 623 subsection i. Mr. Wilson explained a defined contribution plan to be one where a certain amount is paid in and the formula benefit is based on years of service and the percentage of contributions. A defined benefit plan is a type of annuity where monies are paid in and the benefits are based on the earnings in the annuity. Representative Patrick's interpretation was that it also applied to profit sharing, savings and deferred compensation plans. A lengthy discussion ensued covering the difference between the federal threshold for employees (20) and the proposed state threshold of four employees, whether or not the proposed law follows the Employee's Retirement Insurance Security Act (ERISA) - a very complex section of the law pertaining to retirement plans, conformity with the federal law, the effect on the judiciary and the lowering of the age minimum to 18 years and the maximum to 75 years.

The meeting adjourned at 9:57 a.m. Next meeting of the committee will be March 24, 1988, 9:00 a.m., Room 526-S.

HOUSE BILL No. 2563

By Committee on Appropriations

3-11

Proposed Recut of Amendments to HB 2563

For Consideration by Committee on Labor and Industry

3-2-88

Atch 1

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 ~~[a 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.~~

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.]~~

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

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

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

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.

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.

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.

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.

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.

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.

(9) 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