

Approved 1-26-88  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at  
Chairperson

10:00 a.m. ~~xxx~~ on January 19, 1988 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Norman Furse, REvisors Office  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Brandon Myers, Kansas Commission on Civil Rights  
Raymond Petty, Executive Director, Topeka Resource Center for Handicapped  
Chip Wheelen, Kansas Medical Society  
Dr. Dick Parker, Director of Epidemiology  
Michael Donnelly, Executive Director, 3 Rivers Independent Living  
Resource Center

Brandon Myers spoke concerning SB-460. The basic issue appears to be whether or not epilepsy was covered under the Kansas act against discrimination in the physical handicapped discrimination division. Under this act you must first prove a person had a disability. The terminology has been interpreted by the Supreme Court and the Court of Appeals rather restrictively. Under their interpretation it was not clearly stated whether any person with epilepsy would be covered and therefore, protected under the act. Several formats were submitted, all of which were primarily aimed at the necessity of employers proving a disability due to physical conditions involved. This definition excludes alcoholism and substance abuse. Previously these abuses were covered and they probably should be included. An independent assessment based on qualifications is the key to applying this act.

Ray Petty stated that due to major revisions recently made in the workman's compensation law, certain areas, other than those mentioned by the previous conferee, need to be addressed. Section 2, b, does not require employers to make any effort toward accommodating handicapped workers. Minimal changes would allow a handicapped person to work. There are funds available to be used to make such accommodations, however, these funds are not being utilized. Mr. Petty further stated he would favor a sub-committee to pursue a better bill, one that would enhance work and reduce welfare. Attachment 1

Chip Wheelen testified, stating that the Kansas Medical Society is not opposed to the concept of SB-460. However, this bill does shift responsibility and possibly liability from employers to physicians. The Kansas Medical Society is opposed to Section 1, k, stating that the definition of physician in its current form is contrary to existing law and would be misleading to employers and the public. One option would be to use the term, "health care provider" rather than physician. Attachment 2

Dr. Grant stated that the KDHE is concerned that SB-460 not be enacted in its present form because it would have the effect of removing "acquired by...or disease which constitutes a substantial disability, but is unrelated to such person's ability to engage in a particular occupation" from the definition of handicap. The more restricted definition required, depending on interpretation, would have an adverse effect on efforts to assist the public. Attachment 3

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,  
room 526-S, Statehouse, at 10:00 a.m. ~~p.m.~~ on January 19, 1988

Mr. Donnelly spoke in favor of SB-460 as this bill would make discrimination unlawful. It was hoped that power for enforcement would be included in this bill. Attachment 4

The meeting adjourned at 10:53 a.m. with the next meeting scheduled on Wednesday, January 20, 1988.

SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE January 19, 1988

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

Michael Donnelly 704<sup>th</sup> W. 15<sup>th</sup> St

CHRISTIAN SCIENCE COMMITTEE

KATH R LANDIS Topeka

ON PUBLICATION FOR KANSAS

Darlene G Stearns Topeka

Religious Coalition for  
Abortion Rights in Kansas

TERRY STEVENS TOPEKA

CITY OF TOPEKA

JOE A. MORRIS TOPEKA

KANSAS LEAGUE OF SAVINGS INST.

Kathy Vonachen "

League of Ks. Municipalities

Debbie Hopkins Newton

Close-Up Kansas

Mark Frey

Close-Up Kansas

Jana Hill Hays

Close-Up Kansas

~~Victoria (HAYSHIGH)~~

CLOSE-UP KANSAS

Berniece Smith 1016 Ash Ct Topeka

Kans. Fed. Lic. Nurses

Ray Petty

Topeka Resource Center for the Hand

Andrew Knight

Close-Up Kansas

Carla Spaulding

Close-Up Kansas

Michael Hilgys Hays

Close-Up Kansas

ANN FRERING TOPEKA

INTERN

DICK HAMMEL TOPEKA

KS HEALTH CARE ASSN

Lewis Allen "

" " " "

Tom Bell "

Ks. Hosp. Assn.

George Rickett WICHITA

KS RESTAURANT ASSN

Margaret L. Spore Belle Plaine

KFLPN

Janet Jacobs Wichita

Ks Fed. of LPN



# TOPEKA RESOURCE CENTER FOR THE HANDICAPPED

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1119 West Tenth, Suite 2  
Topeka, Kansas 66604-1105

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Testimony on Senate Bill 460  
relating to discrimination because of physical handicap  
given to the Senate Public Health and Welfare Committee by  
Ray Petty, Executive Director, Topeka Resource Center for the Handicapped  
January 19, 1988

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify on S.B. 460 which comes to committee out of an interim study on epilepsy conducted by the Special Committee on Public Health and Welfare. I attended a number of hearings on that topic over the past several months and was aware that Brandon Myers and Roger Lovett of the Kansas Commission on Civil Rights had shared with you their thoughts regarding discrimination against disabled people - persons with epilepsy in particular. I was there when the bill draft which Brandon and Roger proposed was considered. And I have been directly involved in seeking this type of change to the Kansas Acts Against Discrimination during 3 of the past 4 years.

Discrimination law does not stand alone as the sole policy of this state with regard to disabled people. Workers compensation and accessibility tax credits for making businesses accessible are two good examples of related pieces of the puzzle. The changes we are seeking here must be understood in the overall context of state policy regarding persons with disabilities.

Last session this legislature made major revisions in our workers compensation law. The encouragement of rehabilitation and return to work were significant aspects of last year's efforts. It is important that these laws regarding disability work together to promote the overall policy objective of enhancing the economic development of the most underutilized labor resource in Kansas: people with disabilities.

S.B.460 contains some but not all of the changes proposed by Mr. Myers and Mr. Lovett. A glaring omission exists in the bill as it now reads. So long as this omission goes unaddressed, the bill is unacceptable to my organization - and I feel sure, to other advocates concerned with improving opportunities for persons with disabilities.

A Project of the Topeka Independent Living

Senate Public Health & Welfare  
January 19, 1988  
Attachment /

Before I discuss this omission let me comment on the change in the definition of "physical handicap" which occurs in lines 83-90. In the past, the Kansas Advisory Committee on Employment of the Handicapped - which I represented here for the past four years - prefers the federal rehabilitation act wording. My reading of the proposed definition is that it is slightly broader - in terms of physical handicap - than the federal wording.

It should be noted here that mental disabilities as well as histories of alcohol or drug abuse are covered by the federal law. It has been a long-standing concern of ours that mental disability continues to be a topic too hot for this legislature to handle. That is precisely why I agreed with Mr. Myers and Mr. Lovett to restrict our attention to amending the law with regard to physical handicap only. We have been repeatedly told: "It's not people like you that we are concerned about." That being the case, we made a practical decision to move forward in a narrower vein rather than to continue to be thwarted as we pressed for more radical revision. I MUST STRESS HERE THAT I AM NOT COMFORTABLE PHILOSOPHICALLY WITH THIS MOVE AND I HAVE SHARED THIS WITH ADVOCATES FOR IMPROVED COMMUNITY MENTAL HEALTH. BUT IT SEEMS THAT THE SITUATION AMOUNTS TO: UNITED WE FALL; DIVIDED WE STAND. With that caveat in mind, I believe that the proposed definition of physical handicap is an acceptable revision of the current definition.

Turning now to lines 108-113, I am concerned that "reasonable medical certainty" may allow things to occur which hopefully nobody here would favor. For example, if it were the case that 60% of persons who had undergone triple-bypass heart surgery were unable to return to work - would that allow the other 40% to be dismissed as unable to work due to disability? I believe this bill would require experts to look to the actual abilities and limitations of the individual in question as well as the essential functions of their job in making such an employment prognosis. But this language needs to be scrutinized very carefully to protect employees and prospective employees. Admittedly the employment of a person whose back will likely fail under the rigors of a certain job should be handled with care. But we must remember that the second injury fund under workers compensation is designed to relieve employers burden in such a case. I am not advocating charging ahead and disabling prospective workers willy-nilly, but neither can we overprotect workers with disabilities when the result is their economic demise. A balance must exist.

This is where the glaring omission occurs. The bill draft presented to the special committee contained the following language AFTER and OFFSETTING the wording in lines 108-113:

"; provided, however, that this act shall be construed to require employers and prospective employers to take whatever actions are necessary to make reasonable accommodation for the physical handicaps of their employees or prospective employees."

I can see the possibility of dropping "whatever actions are necessary to" from the above wording. But without the notion of reasonable accommodation in S.B. 460, it is contrary to equal opportunity for disabled people and we cannot support it.

Let me note here two points:

1. It may be possible and reasonable to expect employers to be "more reasonable" with current employees than with prospective employees, and
2. It will be necessary to strike subsection (b) (lines 102-104) to make it clear that employers will need to make reasonable changes to fixtures and facilities to accommodate disabled employees. Keep in mind that studies have shown that accommodations are usually inexpensive, say under \$500, and many are virtually cost-free. Also keep in mind that we already have a Kansas Accessibility Tax Credit (as well as a federal deduction) to offset the costs of making accommodations for employees. The Kansas credit alone allows 50% of the cost of accommodations up to a total of \$10,000 to be credited against tax liabilities, and this amount can be spread over a four-year period. I have here a letter from the Department of Revenue which indicates that claims under the Kansas credit for the years 1979 through 1986 totalled \$53,916. This source of help for accommodation is obviously underutilized.

One fact which you must also bear in mind is that all recipients of federal financial assistance or of over \$2,500 in federal contracts are already required to make such accommodations and have been required to do so since 1976.

Moving now to page 5 - in lines 173-180, we favor an explicit analysis of a person's capabilities as well as the essential functions of the job in question. Two points come to mind here:

1. Physicians are not necessarily trained to understand the interaction between persons and their jobs. Much advancement in the employment of disabled people has occurred as a result of vocational rehabilitation, rehabilitation engineering, and the like. Professional practitioners in those

and related fields should be included as persons capable of rendering expert opinions. The bottom line here is that employers should not be allowed to secure biased "company physician" opinions and then pass those off as independent medical opinions. We need the best analyses available which will likely require a team approach including vocational rehabilitation practitioners, physical and occupational therapists, nurses, rehabilitation engineers, as well as psychiatrists and other medical specialists. After all, it is a person's work life at stake here.

2. Reasonable accommodation must again be the overriding principle here - for without it, meaningful advances in employment for persons with disabilities will be stymied.

Pete Maravich apparently didn't know how disabled he was. Certainly nobody is happy about his untimely death. Neither would we have wished that he not have the chance to risk playing the game and becoming the greatest ballhandler I ever saw. That's the dilemma!

Mr. Chairman, I will end my comments here, but would look favorably upon the opportunity to work with a subcommittee appointed to pursue a fair bill in an area of law which undoubtedly deserves your attention and assistance. It will take time, study, understanding, and compromise to hammer out a winning formula but I am convinced that such a formula is possible if everyone keeps the TRUE GOAL in mind: enhancing employment and reducing welfare dependency for persons with disabilities. The quality of life of all Kansans is at stake here.

sb460



KANSAS MEDICAL SOCIETY

1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

January 19, 1988

TO: Senate Public Health and Welfare Committee  
FROM: Kansas Medical Society  
SUBJECT: Senate Bill 460, As Introduced

The Kansas Medical Society is not opposed to the concept of SB 460, although it shifts responsibility and perhaps liability from employers to physicians in the context of discriminatory employment practices. We are, however, opposed to the provisions of subsection (k) of Section 1. We respectfully submit that the definition of "physician" in its current form is contrary to existing Kansas law and would be misleading to employers and the public.

If it is the desire of the Legislature to delegate authority to chiropractors, dentists, optometrists, and podiatrists as well as physicians to determine whether an individual is capable of performing the duties of a given occupation, then that policy should be spelled out. An option would be to use an altogether different identifying term or phrase such as "health care provider" rather than physician.

We respectfully request appropriate amendments before you take action on SB 460.

Thank you for considering our concerns.

CW:nb

Senate Public Health & Welfare  
January 19, 1988  
Attachment 2





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

March 5, 1987

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 87- 42

The Honorable Dale M. Sprague  
State Representative, Seventy-Third District  
State Capitol, Room 112-S  
Topeka, Kansas 66612

Re: Public Health -- Healing Arts; Kansas Healing Arts  
Act -- Doctors of Chiropractic; "Chiropractic  
Physicians"

Synopsis: Under the Kansas statutes the term "physician"  
means a person licensed to practice medicine and  
surgery unless it is defined otherwise. See,  
e.g., K.S.A 65-2869. In addition, when  
"physician" is used in conjunction with another  
word, the health care provider is deemed to be one  
licensed to practice medicine and surgery. See  
65-2870; 65-2897a. Chiropractors are specifically  
prohibited by statute from practicing medicine and  
surgery. K.S.A. 65-2871. Thus, the term  
"chiropractic physician" is misleading to the  
public as it implies that a chiropractor is  
licensed to practice beyond the scope of the  
statutory definition of chiropractic. Therefore,  
it is our opinion that doctors of chiropractic  
cannot use the term "chiropractic physician."  
Cited herein: K.S.A. 1986 Supp. 8-1001; 17-2707;  
K.S.A. 40-2101; 40-3103; 44-508; K.S.A. 1986  
Supp. 59-2902; K.S.A. 60-427; 65-1,114; 65-448;  
65-5a01; 65-6b01; 65-2401; 65-2801; 65-2802;  
65-2803; 65-2869; 65-2870; 65-2871; 65-2892;  
65-2892a; 65-2893; 65-28,102; 65-2897a; 65-2901;  
65-3209; K.S.A. 1986 Supp. 65-4003; K.S.A.  
65-4202; 65-4301; K.S.A. 1986 Supp. 65-5501;  
K.S.A. 72-5208; 74-4916; K.A.R. 28-34-1.

Testimony Presented to

Senate Public Health and Welfare Committee

by

The Kansas Department of Health and Environment

Senate Bill 460

Protection from discrimination has been broadly applied in Kansas and the United States. Handicaps have been included in the list of conditions barring discrimination, disease has been included in the definition of handicapped in Kansas (K.S.A. 44-1002) and elsewhere. Recently the courts have ruled that a teacher infected with the organism causing tuberculosis could not be dismissed because of the infection.

There are many diseases, both infectious and non-infectious which are not spread by the type of association with others common in the work-place. Therefore, generally speaking persons with such diseases need not and should not be deprived of a chance to earn a living, seek food or housing or otherwise be discriminated against solely because they are diseased. Specific provisions can and should be made for those special conditions, which, because of their method of spread, could present a hazard to others in the work-place or those of the public being served, i.e., workers with certain gastro-intestinal infections should be prohibited from handling food in public establishments. However, a person recovered from cancer surgery, or even anticipating treatment for cancer, should not be the target of discrimination. They are not known or thought to present a hazard to those around them.

If Senate Bill 460 could be interpreted to change the definition of "physical handicap" K.S.A. 44-1002 in part by the deletion of the word "disease" and by the inclusion of the word "infirmity", a much less precise term and one that refers to limited capacity, as from advanced age, those persons with non-transmissible or perhaps arrested disease might not be included under the protective umbrella of the term "handicap".

The threat of discrimination because of disease (or infection?) would make the seeking of infected persons much more difficult as in the control of sexually transmitted diseases. Fear of discrimination has resulted in a good deal of under reporting and cover-up of cases of AIDS and has delayed adding of infections with the virus that leads to AIDS (HIV) from being reported, thus interfering with defining the magnitude of the problem and even completely understanding its spread.

The Kansas Department of Health and Environment is concerned that Senate Bill 460 not be enacted in its present form because it would have the effect of removing "acquired by ... or disease which constitutes a substantial disability, but is unrelated to such person's ability to engage in a particular job or occupation" from the definition of handicap. It is believed that the more restricted definition might, depending on interpretation, have an adverse effect on efforts to control certain diseases and would not benefit the public. The Legislative intent should be clarified.



# Three Rivers Independent Living Resource Center

**Making Our Community  
More Accessible**

January 19, 1988

Committee on Public Health and Welfare  
State Capitol  
Topeka, Kansas 66612

RE: Senate Bill No. 460

Dear Committee Members,

I would like to speak in favor of Senate Bill 460 that is before you today. As a disabled/handicapped individual I have personally experienced the discrimination that this proposal would make unlawful. I also work with many other persons who are disabled that experience this type of rejection in employment. So, I am speaking from a wide variety of experiences.

I do hope that included in this bill will be the power of enforcement of the act. So often we know we have been discriminated against, but there is no authority behind the legislation, or it takes forever and a day to get a complaint filed with God knows who. WE need this legislation as it stands, we also need a club to come with it.

I would also like to address briefly one other section of the Kansas Act Against Discrimination that concerns me. We are now looking at laws disallowing discrimination in the work place but I have great concern about housing practices. I realize a landlord can not be forced to make his property accessible. That would be wrong. However, should a landlord that has a usable unit available be allowed to reject a possible or current disabled tenant solely on the basis of his "difference". NO! That is not right. I hope that in the future you will consider adding this idea to the "Act".

Again I support this Bill as is and look forward to this protection under the law.

Sincerely,

Michael Donnelly  
Executive Director