

Approved: 2/22/95/la  
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on February 1, 1995 in Room 526-S of the Capitol.

All members were present except: Rep. David Heinemann - excused

Committee staff present: Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Rep. Gary Haulmark  
Captain David Burger, Lenexa Police Department  
Jim Hix, President, Bossler-Hix Personnel  
Steve Sayler, Human Resources, Winning Ways, Inc.  
David W. Hauber, lawyer

Others attending: See attached list

**HB 2029: concerning employer immunity for job references**

Rep. Gary Haulmark, one of the sponsors of **HB 2029**, appeared as a proponent of the bill. The bill's purpose is to give employers immunity from civil liability when giving a job reference for previous employees concerning workplace behaviors. It was introduced to ensure that the employers in Kansas have access to vital information about prospective employees. He related how good employees are denied the right to have their performance considered in the hiring process and how bad employees are protected from any history of substandard job performance and inappropriate on-the-job conduct (see Attachment 1). He is also concerned with workplace safety and workplace violence. Rep. Haulmark concluded by answering questions from the committee.

Captain David Burger of the Lenexa Police Department Investigation Division, appeared as a proponent for **HB 2029** and read his testimony. He feels the bill is needed in Kansas to clarify a current or former employer's ability to release relevant, factual information without liability (see Attachment 2). He explained to the committee that his department now gives this information to other employers but is unable to get the same information. He ended his appearance before the committee by answering questions.

Jim Hix, President of Bossler-Hix Personnel, was also a proponent of the bill. He urged the committee to support **HB 2029** so that the thousands of good employees in our state can have their good performance record verified by a potential new employer. Several years ago, his company quit giving out this information because of the fear of being sued. He feels the bill is necessary because it would allow employers to share truthful information without fear of civil litigation (see Attachment 3). He finished by answering questions.

The next conferee, Steve Sayler, a human resource professional employed by Winning Ways, Inc. and a state council director for the Kansas Council of the Society for Human Resource Management, appeared as a proponent to **HB 2029**. His purpose for appearing before the committee was the need for legislation that provides employers with immunity from lawsuits when they provide job reference information in good faith (see Attachment 4). He feels the ability of businesses to identify and hire skilled and qualified workers has been severely hampered because of the increase in the number of lawsuits being filed against employers giving job references. He concluded by answering questions.

David W. Hauber, a lawyer in Kansas City, Kansas, appeared as an individual opposed to **HB 2029**. He believes that under the proposed bill, any employee working for an employer would have immunity for all communications between employers and prospective employers about the job performance of current or former employees (see Attachment 5). He believes the requirements of the proposed law are unnecessary and unfair to the employees. He urged the committee not to pass the bill, as it is not justified and for the further reason that it may be unconstitutional. Mr. Hauber concluded by answering questions.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S  
Statehouse, at 9:05 a.m. on February 1, 1995.

The written testimony of Sharon Huffman, Legislative Liaison, Commission on Disability Concerns, KDHR, was passed out to the committee. She proposes an amendment to HB 2029 (see Attachment 6).

Michael Gillespie, Legislative Chairperson, Kansas Peace Officers' Association, a proponent of HB 2029 also provided written testimony to the committee (see Attachment 7).

Chairman Lane announced that the committee will continue hearings on HB 2029 Thursday, February 2 and Friday, February 3, 1995.

The committee adjourned at 9:58 a.m.

The next meeting is scheduled for February 2, 1995.

# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE February 1, 1995

NAME	REPRESENTING
MIKE VAUGHN	BLUE CROSS BLUE SHIELD OF KS.
Conne Reynolds	B&BS / Society Human Resources
David Hauber	myself
DAVID ALSTETTER	KS-AFL-CIO
Wayne Mauldin	K. AFL-CIO
Jerry Q. VanderKilde	SRS
Jack Robinson	SRS
Jim McHoff	KS AFL-CIO
MARK RAN	Manpower Temporary Services
Marc Farrar	City of Overland Park
Laura Meyer	Sprint / United Tel.
Jessie Chesser	Overland Park Chamber of Commerce
Milton W. Mohr	SELF
Jim Hix	BOLLER-HIX PERSONNEL
David DeBurger	Lenexa Police Dept.
J. M. Lee	ICC Business Report
NICK HAURES	KS Public Radio
Dick Dilsaver	The Coleman Co.
STEVE GAYLER	Winning Ways

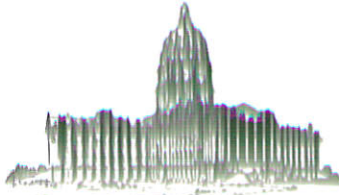
KANSAS - SOCIETY FOR HR AGENT.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE  
GUEST LIST

DATE February 1, 1995 - cont.

NAME	REPRESENTING
Janet Palmer	Ks Dept Human Resources
David Stofer	Fringe Benefits Design
Zachary Starbird	
Donna Helms	
Sharon Huffman	KCDC
Art Brown	mid-Am Laborers ASN
Freddie Gron	Am. Inst of Architects
Christ Young	Sh. Topeka Chamber of Commerce
Deane Gray	KDHR
Mike Leyka	KACHA
Jon Newman	Ks Governmental Consulting
Dana Kay	Riley County Police
Bill Curtis	Ks Assoc of School Bds
Bill Henry	Ks Assn. of Defense Counsel
John Blage II	Plaintiff's Employment Attorneys of Kansas
Hal Holmes	Self - AGAINST 2029
Jon Smith	Ks Bar
Peggy Lane	Visitor
Kirk W. Lowry	Self
Terry Leatherman	KCCI

**GARY HAULMARK**  
 REPRESENTATIVE, 30TH DISTRICT  
 JOHNSON COUNTY  
 8709 GALLERY  
 LENEXA, KANSAS 66215  
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 ROOM 181-W, CAPITOL BLDG.  
 TOPEKA, KANSAS 66612-1804  
 (913) 295-7840



TOPEKA

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Mr. Chairman and committee members,

A quality workforce is critical to the success of the Kansas economy. Employers recognize this fact and therefore seek to hire the most skilled and qualified employees. Employers recognize the vital impact employees have on such critical business concerns as quality, safety and customer satisfaction.

In recent years, the proliferation of lawsuits stemming from the hiring process has undermined an employer's ability to recruit and hire the most qualified workforce. To alleviate this burden Joe Humerickhouse and I have introduced HB 2029 the Quality in Hiring Act, to ensure that the employers in Kansas have access to vital information about prospective employees.

Employers have responded to the proliferation of lawsuits arising from the job reference process by adopting policies of non-disclosure. This means that employers across the state, and even the nation, are unable to obtain reliable and accurate job performance information on prospective employees. It is not just employers that suffer. Good employees are denied the right to have their performance considered in the hiring process. Bad employees are protected from any history of substandard job performance and inappropriate on the job conduct.

The Quality in Hiring Act would provide employers with immunity from civil liability when providing job reference information in good faith, restoring an employer's ability to recruit and hire performance considered in the hiring process.

Help ensure that our states economy is strengthened by a qualified workforce. Support the Quality in Hiring Act.

Thank you for your consideration.

Gary Haulmark  
 District 30

*Business, Commerce & Labor  
 Attachment 1  
 2/1/95*

Testimony of Captain David Burger  
Lenexa Police Department  
Investigation Division

In Re: Support of HB 2029  
February 1, 1995

M. Chairman and members of the Committee; I want to thank you for the opportunity to testify before you today regarding a matter of importance to the employers of Kansas, both public and private. My name is Captain David Burger, and among my duties as Commander of the Investigations Division of the Lenexa, Kansas Police Department is the supervision of the pre-employment background investigation of each police officer and allied police applicant for employment with the City of Lenexa.

Pre-employment background investigations for police positions are fairly comprehensive, owing to the duty to insure that the people living in Lenexa, and every other political subdivision in the State, are protected and served by the best and most qualified people available. You and I want this, and the people demand this.

It is very easy with our local, State and National computer links to determine if a person has a driver license. No problem. But the possession of a driver license is not proof that the person in question is a good driver. For that, you have to go to the driving *record* to see if this person has been involved in

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*2/1/95*  
*Attachment 2*

accidents, or has amassed excessive violations, or fails to maintain liability insurance.

The same for police officer applicants, or anyone else, for that matter. Because someone holds a certificate from a law enforcement academy, does not automatically prove them to be the highly qualified individual you want to hire. We have to be able to look at the individual's track record to make that determination, and House Bill 2029 will help make that information more accessible.

It is my experience that the release of a work record is a mushy area for Personnel and Human Resource Managers, and indeed others who believe that *all* information relating to a current or former employee's *performance* is top secret. The best that can be expected in most cases in response to an inquiry are the dates of hire, rate of compensation, and eligibility for rehire. This roadblock is encountered even with a signed release from the applicant in hand. The net gain for having made the inquiry is zero, in those cases. We learn nothing about the employee's record or performance.

To clarify a current or former employer's ability to release relevant, factual information without liability, HB 2029 is needed in Kansas, and I would like to ask your support in seeing it through to passage.

**H. B. 2029**  
**A BILL TO HELP GOOD EMPLOYEES FIND EMPLOYMENT**

Testimony by:     Jim Hix  
                  President, Bossler-Hix Personnel  
                  Overland Park, Kansas

For the past 25 years I have owned a temporary help service in Overland Park. During my first 20 years of business, I was happy to have helped hundreds, perhaps thousands, of my former temporary employees find permanent jobs by giving potential new employers good reference reports on them. Because of fear of being sued, about five years ago we stopped giving any reference information about former employees except to verify their job titles and dates of employment.

We keep statistics on the performance of our employees. More than 95% of them would receive a completely favorable reference, if we could safely give the reference. Last year we employed about 2000 people for temporary assignments. That means that from last year alone about 1,900 of our good employees are unable to have a future potential employer know they were a good employee for us.

Our litigious society has resulted in penalizing the wrong people! We read about employers who have given truthful reference information about a former employee only to be sued by the former employee. Even if the employer "wins" the suit, the cost in time and money of defending the suit makes the employer a loser. So, to protect themselves from a handful of former employees with poor performance records, employers have stopped helping the overwhelming majority who are good employees

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I urge you to support HB 2029 so that the thousands of good employees in our state can have their good performance record verified by a potential new employer.

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*Attachment 3*



Another issue pertaining to this bill is work place violence. Today, employers are in a "Catch 22." If they inform a potential new employer that a former employee participated in work place violence, they may get sued by the former employee. If they don't share the information, they may get sued by the new employer and any victims of violence that occurs at the new employer's location.

Again, it's the overwhelming majority of good people that suffer because we need to protect ourselves from a small minority. For the benefit of my current employees, I need to be able to know if a potential employee has a history of work place violence. For the benefit of other employers and their employees, I want to be able to tell them if one of my former employees has a history of work place violence. This bill would allow employers to share truthful information without fear of civil litigation.

Finally, I believe we can send a great message to the people of Kansas, and to potential new employers in Kansas, if we tell them that in Kansas we believe there is nothing wrong with a person being held accountable for their work history...good or bad.

**The key to this legislation is that it only protects employers who give TRUTHFUL references.** It doesn't open the floodgates for slander or libel. No responsible employer would want protection for giving dishonest references.

For the benefit of all the good employees in Kansas, I urge your favorable vote on H.B.2029.

Mr. Chairman, committee members, thank you for allowing me to address this committee. My name is Steve Saylor, I am a human resource professional employed by Winning Ways, Inc., a manufacturing firm of 600 employees located in Lenexa. I also serve in volunteer capacity as the state council director for the Kansas Council of the Society for Human Resource Management. The society has over 650 members in Kansas. These HR professionals work for companies that employ over 70% of the non-agriculture workers in Kansas. As HR professionals we are responsible for many functions critical to a company's success which include, but are not limited to, areas of compensation, benefits, health and safety, equal employment opportunity, employee and labor relations, and training and development. Perhaps the most critical function is management of the employment process -- recruiting and selecting the most skilled and qualified workforce available. Hiring decisions have a direct impact on such critical business concerns as quality, safety and customer satisfaction.

Human resource practices and obligations under existing local, state and federal law which require that employment decisions be based on job performance support the need for access to and exchange of information on an applicant's previous job performance. In addition to legal requirements, employers have a responsibility to their current employees, shareholders and

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*2/1/93*  
*Attachment 4*

customers to ensure a qualified workforce. However, the legitimate and critical role reference checking plays in the selection of a qualified workforce has, in recent years, been undermined by the proliferation of costly lawsuits. I am here today to talk to you about the need for legislation that provides employers with immunity from lawsuits when they provide job reference information in good faith.

Over the past several years, the ability of businesses to identify and hire skilled and qualified workers has been severely hampered because of the increase in the number of lawsuits stemming from the job reference process. Lawsuits over job references run the gamut from claims of invasion of privacy to defamation, negligent hiring, discrimination and blacklisting. This proliferation of lawsuits has led many companies to adopt strict policies of nondisclosure of job performance information. As a result, employers respond to inquiries into job performance history with limited information such as the dates of employment and job titles.

Policies of nondisclosure affect business on a day to day basis. Many jobs require an individual to possess previous experience in ~~their field in order to produce and perform at the necessary~~ level. The increasing inability to obtain accurate and reliable job reference information from previous employers makes the goal

to hire the most qualified workers very difficult to achieve.

It is not just businesses that suffer. A nondisclosure policy penalizes the good employee and protects the bad. Good employees are denied the right to have their previous job performance considered in the hiring process. Bad employees are protected from any history of substandard performance and inappropriate -- even illegal -- conduct. For employers this can result in serious consequences such as botched jobs, safety violations and in the most serious of cases, costly claims of negligent hiring. A policy of nondisclosure creates a Catch-22 situation by preventing the good employee from getting a good reference because of a former employers fear of litigation.

Legislation that would provide employers with immunity from liability when providing job reference information in good faith is a much needed safeguard to ensure that hiring decisions can be made in a more informed manner. Informed hiring decisions cannot occur when employers -- responding solely out of fear of lawsuits -- refuse to provide relevant information on an employee's job performance. Employers must have access to information that will enhance the likely hood of hiring a qualified employee and ~~further the prospect of a mutually satisfactory job relationship~~ between the employer and employee.

Legislatures in Florida, Georgia and Colorado have recognized the dilemma facing employers today by creating measures to correct the problem and to thaw the chill that surrounds reference checking. Their statutes allow for the free exchange of information between employers, enabling them to make more responsible hiring decisions and ultimately enhancing employee satisfaction with their new jobs.

The Kansas SHRM Council believes that employers and employees of Kansas would be well served by the adoption of a statute similar to those in other states. This bill is offered for the Kansas Legislature's consideration as a solution to this troublesome problem. Enactment of the bill would permit employees to obtain references that may enhance employment opportunities while providing protection to employers providing those references. Under the statute, the employer is presumed to be acting in good faith when responding to request for information about a current or former employee. Enactment of the bill would also allow that if the employer is acting in good faith, the employer is then protected from civil liability.

I would like to take a moment to discuss 4 points opponents to this legislation will bring to your attention.

POINT 1. The proposed legislation is really as employer's bill, not an employee's bill. It diminishes the protection employees

now have to counter claims of discrimination, defamation and blacklisting in reference checking. COUNTERPOINT HR 2029 is both an employee and an employer bill. Because of excessive litigation over reference checking in the recent past, employers have adopted a position of non-disclosure. HR 2029 would enable employers to re-evaluate such a policy and provide references in good faith. This can only benefit the good employee who, in the past, may not have been hired because "no comment" is often interpreted as "no good". Further the ability of the prospective employer to obtain accurate reference checking information may ensure the safety of the workplace, by allowing the employer to learn more about a prospective employee.

POINT 2. This bill makes it easier for employers to blacklist employees and get away with it. COUNTERPOINT Allowing an employee to rebut an employers claim of good faith by showing the employer disclosed deliberately misleading information or rendered information with a malicious purpose clearly states that defamation and blacklisting are not tolerable. Rather, HR 2029 provides those former employers who are acting in good faith the ability to provide references pertinent to employment to a prospective employer without fear of legal claim. HR 2029 can only benefit good employees and the workforce as a whole.


~~POINT 3. This bill blatantly takes away the rights of an individual to seek reparation for defamation. COUNTERPOINT~~  
HR 2029 does not take away any rights of an employee. It does

protect the employer from excessive litigation for good faith references.

POINT 4. What do you mean by "good faith"? It is not clearly defined and thus, not easily rebuttable. COUNTERPOINT "Good faith" can be rebuttable upon demonstrating that the information disclosed by the former employer to the prospective employer was knowingly false or deliberately misleading or was rendered with a malicious purpose.

The Kansas SHRM Council urges the Kansas Legislature to recognize the unstable climate that has been created regarding employment references. Such a climate where the free flow of information is chilled is harmful to Kansas employers and employees. It is increasingly difficult for employers to obtain information to make responsible hiring decisions and for employees to enjoy the benefits flowing from a positive reference. To inhibit the growth of counter-productive nondisclosure policies and to address the inequitable results when employers need to request information but fear responding to reference requests, the Kansas SHRM Council urges the passage of this bill.

Respectfully Submitted,

  
Stephen L. Saylor, SPHR  
February 1, 1995

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Testimony of David W. Hauber

Re: HB 2029

To the House Business, Commerce and Labor Committee:

I am appearing before this committee as an individual. I am a lawyer with the law firm of Boddington & Brown, Chtd., in Kansas City, Kan. I have practiced law for almost 12 years. I currently am actively involved in litigating employment claims on behalf of employees and employers.

I have concerns about the proposed bill to the extent it attempts to convey an an overbroad and unequal immunity to a discrete section of our society--employers. Under the proposed bill, any employee working for an employer would have immunity for all communications between employers and prospective employers about the job performance of current or former employees. The bill proposes to create a good faith presumption that can be overcome only by a showing of clear and convincing evidence that the information disclosed was (1) false, (2) the employer providing the information knew it was false and (3) the employer providing the information acted with malice.

These requirements of the proposed law are unnecessary and unfair to the employee. Loss of livelihood is a serious matter. Presently, the common law provides a qualified privilege against defamation to employers and others who communicate in good faith about a common matter of interest. An example of this is Turner v. Halliburton Co., 240 Kan. 1, 722 P.2d 1106 (1986), where the court discusses this privilege. Actual malice is required to overcome this privilege, but by the normal burden of proof that exists in all civil litigation, a preponderance of the evidence. This privilege currently exists intra-company and inter-company. However, the privilege exists, as it should, only with those groups that have a need to engage in the communication.

H.B. 2029 is overbroad because it fails to limit the scope of the immunity to only those communicants who have a right to engage in such communication. In essence, a low-level employee could destroy the future livelihood of another employee with a knowingly false statement about the employee's job performance but with no "actual malice." This term is defined in the law as requiring a showing of "evil-mindedness or specific intent to injure." Id. at 8.

With such a difficult burden already existing in the common law, there is no need to create a higher shield or immunity. Clear and convincing evidence should be the exception, not the rule, for establishing burdens and immunities in the courts. Conversely, creating such a special status in the law only points up the fact that employees and other sectors of our society will be subject to different standards of protection, depending on the nature of the speech. I would urge the committee not to pass H.B. 2029, as it is not justified and for the further reason that it may be unconstitutional.

*Business, Commerce & Labor*

*2/1/95*

*Attachment 5*





# Kansas Department of Human Resources

Bill Graves, Governor  
Wayne L. Franklin, Secretary

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TTY  
(913) 296-5044  
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COMMISSION ON DISABILITY CONCERNS  
1430 S.W. Topeka Boulevard  
Topeka, Kansas 66612-1877

TOLL FREE  
OUTSIDE TOPEKA  
1-800-295-5232 (KCDC)  
ADA INFORMATION  
CENTER (888)  
(913) 296-6529

Testimony Presented to  
House Business, Commerce and Labor Committee  
February 1, 1995  
HB 2029

By Sharon Huffman  
Legislative Liaison

Mr. Chair, members of the Committee, thank you for this opportunity to speak before you today regarding House Bill 2029.

The Kansas Commission on Disability Concerns (KCDC) believes that all people with disabilities are entitled to be equal citizens and equal partners in Kansas society.

With this in mind, we would like to propose the addition of the following statement at the beginning of Section 1.(a) on line 11: "*Unless otherwise provided by law*". The reasons for this request are as follows:

Prior to the passage of the Americans With Disabilities Act (ADA) there was no law that prohibited employers from discriminating in employment decisions based on a person's disability. This lack of legal protection in many cases kept people with disabilities from enjoying the one part of equal citizenship that many of us take for granted - employment.

HB 2029, as it now stands, would appear to release employers of all liability when discussing a current or former employee with a prospective employer. The ADA requires employers to keep all medical information regarding an individual confidential. The ADA's confidentiality obligation applies regardless of whether the individual becomes or remains an employee. (See attached EEOC Notice dated May 19, 1994.)

Medical information would include any record of on-the-job injuries. Some employers, who by now have ascertained that it is illegal to ask an applicant about prior workers compensation claims, and who don't want a record of their inquiry recorded in the individual's workers compensation file, may be asking current and prior employers if the person was ever injured on the job. This inquiry, as well as the subsequent disclosure by the current or former employer, would clearly violate the ADA.

Thank you for your consideration of this matter.

*Business, Commerce & Labor*  
*2/1/95*  
*Attachment 6*

**EEOC**

# NOTICE

Number
915.002
Date
5-19-94

1. SUBJECT: Enforcement Guidance: Preemployment Disability-Related Inquiries and Medical Examinations Under the Americans with Disabilities Act of 1990.
2. PURPOSE: This enforcement guidance sets forth the Commission's position under the Americans with Disabilities Act of 1990, on preemployment disability-related inquiries and medical examinations.
3. EFFECTIVE DATE: Upon receipt.
4. EXPIRATION DATE: As an exception to EEOC Order 205.001, Appendix B, Attachment 4, § a(5), this Notice will remain in effect until rescinded or superseded.
5. ORIGINATOR: ADA Division, Office of Legal Counsel.
6. INSTRUCTIONS: File after [ ] of Volume II of the Compliance Manual.
7. SUBJECT MATTER:

**DISTRIBUTION: CM Holders**

REVISED EEOC FORM 106 (6/91)

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE AND MUST NOT BE USED

Employer B is covered by the ADA at the time it obtains the medical records, Employer B must keep the records segregated/ confidential in accordance with the ADA.

If an individual reveals medical information in response to a non-medical inquiry, the information obtained still must be kept confidential.<sup>76</sup> An employer must ensure that medical information is not included in any personnel documents that are to be distributed to individuals beyond those permitted under the ADA to receive an individual's medical information.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Tony Gallegos  
Chairman

<sup>76</sup> Cf. 42 U.S.C. § 12112(d)(3)(B) ("information obtained regarding the medical condition or history of the applicant" must be kept confidential). Therefore, medical information voluntarily disclosed by an individual would be confidential information because the information was lawfully obtained under the ADA.

The fact that an applicant was not hired or that an employee no longer works for the employer does not terminate the employer's obligation to maintain the confidentiality of medical information regarding the individual.<sup>75</sup>

Example 2: R gives an applicant an offer of employment, conditioned on a post-offer medical examination. After the medical examination, R withdraws the conditional offer for reasons that are job-related and consistent with business necessity. R must continue to maintain the confidentiality of the applicant's medical information even though the applicant was not hired.

Information obtained by a covered entity before the effective date of the ADA is not restricted by the ADA's confidentiality provisions. However, information obtained by a covered entity after the effective date is restricted by the ADA.

Example 3: Employer A obtained medical information from employees before it became covered by the ADA. Employer A is not required to segregate this medical information pursuant to the ADA, and is not required by the ADA to keep this information confidential.

Example 4: Same facts as the previous example. A former employee of Employer A now applies for a job with Employer B, an employer covered by the ADA. At the post-offer stage, Employer B lawfully obtains from Employer A CP's medical records (which Employer A obtained before it was covered by the ADA). Employer A has not violated the ADA by disclosing CP's medical records because Employer A was not restricted by the ADA concerning these records (i.e., because they were obtained pre-ADA). However, because

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accordance with § 501(c) of the ADA.

<sup>75</sup> The ADA's confidentiality obligation applies regardless of whether the individual becomes or remains an employee. Section 102(c)(3) of the ADA expressly protects "information obtained" concerning an applicant's medical condition or history. 42 U.S.C. § 12112(d)(3)(B). ~~See also House Judiciary Report at 43~~ ("information obtained" during preemployment, post-offer examination must be kept confidential). Nothing in the statute or the legislative history limits an employer's confidentiality obligation with regard to such information to the duration of an actual or potential employment relationship.

JIM DAILY, President  
Barton County Sheriff  
Great Bend, Kansas 67330

DAVID MAYFIELD, President-Elect  
Kansas Highway Patrol  
Yaree Center, Kansas 66782

DOUGLAS PICK, Vice-President  
Kansas Highway Patrol  
Emporia, Kansas 66801

ALVIN THIMMIBCH,  
Secretary-Treasurer  
Kansas Peace Officers' Association  
Wichita, Kansas 67201

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Kansas Highway Patrol  
Wichita, Kansas 67212
- LARRY K. COMBSMAN  
Kansas Bureau of Investigation  
Wichita, Kansas 67202
- HESS L. COCHRAN  
Kansas Highway Patrol  
Wichita, Kansas 67226
- NATT SPARKS  
Kansas Highway Patrol  
Junction City, Kansas 66441

DISTRICT 1

- FRANK R. DINNING  
Johnson County Sheriff's Office  
Olathe, Kansas 66202
- D. J. MCCART  
Pala Police Department  
Pala, Kansas 66071
- JAMES "BLUD" HUMA  
AT&T  
Kansas City, Kansas 66101

DISTRICT 2

- DANA KYL  
Riley County Police Department  
Manhattan, Kansas 66502
- RANDALL THOMAS  
Lyon County Sheriff's Office  
Emporia, Kansas 66801
- KYLE SMITH  
Kansas Attorney General Office  
Topeka, Kansas 66612

DISTRICT 3

- DAVE SMITH  
Elworth Police Department  
Elworth, Kansas 67419
- JOHN W. KERR  
Washington County Sheriff's Office  
Washington, Kansas 66868
- ALLEN BACHLOR  
Kansas Highway Patrol  
Salina, Kansas 67401

DISTRICT 4

- LAWRENCE YOUNGER  
Chief of Police  
May, Kansas 67801
- JOHN FROM  
Fl. May State University Police  
May, Kansas 67801
- FRANK REED  
Ellis County Sheriff  
May, Kansas 67801

DISTRICT 5

- KENT NIWRIGHT  
Holcomb Police Department  
Holcomb, Kansas 67851
- CHENIS SHAW  
KS Dept of Wildlife and Parks  
Holcomb, Kansas 67831
- RAY MORSEAN  
Keosauqua County Sheriff's Office  
Lata, Kansas 67860

DISTRICT 6

- JAMEY DAILY  
Harrison Police Department  
Harrison, Kansas 67594
- WARREN S. PETERSON  
Barton County Sheriff's Office  
Great Bend, Kansas 67330
- BURKE MOSES  
Kansas Law Enforcement Training Center  
Hutchinson, Kansas 67504

DISTRICT 7

- THOMAS H. PRUNIER  
Derby Police Department  
Derby, Kansas 67037
- CRAG KING  
Coville County Sheriff's Office  
Wentfield, Kansas 67156
- RICHARD L. DUNBAR  
Kansas Lottery Security  
Wichita, Kansas 67201

DISTRICT 8

- ALLEN FLOWERS  
Chief of Police  
Coffeeville, Kansas 67337
- LOWELL PARKER  
Greenwood County Sheriff  
Lurela, Kansas 67048
- CHARLES D. WARD  
KS Dept of Wildlife and Parks  
Chanute, Kansas 66720
- SERGEANT-AT-ARMS  
DICK BURCH  
Kansas Law Enforcement Training Center  
Hutchinson, Kansas 67504

# Kansas Peace Officers' Association

INCORPORATED

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## Testimony of Michael C. Gillespie

Staff Attorney  
Kansas Law Enforcement Training Center  
and  
Legislative Chairperson  
Kansas Peace Officers' Association

### Concerning H.B. 2029 House Committee on Business, Commerce and Labor February 1, 1995

Frank, candid, and complete disclosure concerning past job performance of prospective employees is perhaps most critical in the law enforcement profession. In no other business is the identification of unsuitable job candidates so important; each and every day, law enforcement officers make split-second decisions of profound impact—law enforcement executives must closely scrutinize each candidate for employment.

Unfortunately, the fear of litigation haunts Kansas law enforcement executives. As Staff Attorney for the Kansas Law Enforcement Training Center—the hub of police training in Kansas—I spend much of my time teaching police managers, and even more time discussing with them the problems they face in hiring persons fit for the overwhelming demands of modern police work. Almost without exception, these executives are increasingly concerned that liability may flow from even the most honest discussions concerning employee performance.

For example, chiefs and sheriffs alike tell me of their reluctance to disclose negative information about past employees. Liability concerns underlie this reluctance; too often, executives fear that former employees will sue them if they provide negative information to prospective employers that impacts a colleague's decision not to hire.

*Business Commerce & Labor*

*2/1/95*

*Attachment 7*

*In Unity There Is Strength*

This is not an isolated problem. The reluctance I speak of today perpetuates, sadly, the continued employment of persons in public service positions who have been fired, or forced to resign, from agencies that found them unsuitable for our profession; employers simply do not receive the information they need, as it is withheld out of fear of litigation.

House Bill 2029 will not prevent lawsuits from being filed. Nothing ever will. But it will provide a measure of comfort and confidence—the Bill's immunity provisions should, and will, enable chiefs and sheriffs to more comfortably and confidently disclose critical job performance information to their colleagues. And their clients—the members of the public they serve and protect—will find themselves better served, and better protected, by quality law enforcement officers.

I, and the Kansas Peace Officers' Association, urge passage of this legislation, and thank you, as always, for the opportunity to express our views to the Legislature.