

Approved: 2/22/95 ka
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 2, 1995 in Room 526-S of the Capitol.

All members were present except: Gary Merritt - excused
Candy Ruff - excused

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

Conferees appearing before the committee:

Rep. Jim Lowther
Rep. John Edmonds
Rep. Greg Packer
Brandon Meyers, Chief Legal Counsel, Kansas Human Rights Commission
John Gage, Kansas Chapter of the National Employment Lawyers Assn.
Hal Holmes, self
Terry Letterman, Kansas Chamber of Commerce and Industry (KCCI)

Others attending: See attached list

Chairman Lane opened the meeting by asking for introduction of bills.

Rep. Jim Lowther asked the committee to introduce a bill concerning employment security; relating to benefit disqualification during labor disputes; amending K.S.A. 44-706 and repealing the existing section. Rep. Gemmer moved that the bill be introduced by the committee. The motion was seconded by Rep. Beggs and the motion was passed.

Rep. John Edmonds requested that the committee introduce a bill concerning employment security; exempting in-home nursing care from the definition of employment; amending K.S.A. 1994 Supp. 44-703 and repealing the existing section. A motion was made by Rep. Pauls to introduce the bill as a committee bill, it was seconded by Rep. Grant. The motion passed.

Committee member Greg Packer requested the committee to introduce a bill concerning employment security; imposing a temporary moratorium on contributions by positive balance employers; amending K.S.A. 44-710a and repealing the existing section. Rep. Pauls moved that the committee introduce the bill, the motion was seconded by Rep. Flora and was passed.

Chairman Lane reintroduced Brandon Meyers, Chief Legal Counsel, KS Human Rights Commission, who had returned to answer committee questions about the Kansas Act Against Discrimination.

Continued Hearing on: HB 2029--employment immunity for job references.

John Gage, Kansas Chapter of the National Employment Lawyers Association, appeared as an opponent to HB 2029. He provided written testimony (see Attachment 1). He urged the committee not to enact the bill, as it was unnecessary, and according to his knowledge of existing Kansas law, it contravenes Kansas public policy (see Attachment 1). He introduced Hal Holmes, who is one of his clients.

Hal Holmes, spoke to the committee on his own behalf as an opponent of the bill. He lost his position as an area manager in the computer industry for reporting internal theft. He believes that his old firm blacklisted him and thus made it impossible to obtain another job in the computer field (see Attachment 2).

After the testimony of Hal Holmes, John Gage continued his testimony to the committee. It is his feeling that the fines and penalties for blacklisting, which were set many, many years ago, are too low.

Terry Leatherman, Executive Director of the Kansas Industrial Council, Kansas Chamber of Commerce and Industry (KCCI), testified as a proponent of HB 2029. KCCI believes that the bill shields employers from litigation, as long as the information that employers give about a former employee is given in good faith (see Attachment 3).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:05 a.m. on February 2, 1995.

Written testimony of Jenny Unruh, Government Relations Manager for the Overland Park Chamber of Commerce, was passed out in lieu of testifying (see Attachment 4). It supports HB 2029.

Also passed out was written testimony of Connie Reynolds, Human Resources Department, Blue Cross Blue Shield of Kansas (see Attachment 5). She is also the President of the Topeka Society of Human Resource Management Organization, and she wanted to give her personal, as well as the members of the society, support of HB 2029.

Dana Kyle, Riley County Police Department in Manhattan, also submitted written testimony in support of HB 2029 (see Attachment 6).

The hearing on HB 2029 will be continued tomorrow, February 3.

The meeting adjourned at 9:55 a.m.

The next meeting is scheduled for February 3, 1995.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE February 2, 1995

NAME	REPRESENTING
Jim Mettuff	KS AFL-CIO
DAVID ALEGRIA	KS AFL-CIO
Harry D. Wilson	" "
Wayne Marshall	" "
TERRY LEATHERMAN	KCCI
BILL HENRY	KS Assn of Defense Counsel
Brad Smart	KCCC
DANNY JONES	CITIZEN
Jason Neal	"
Jim Keaton	Winning ways, INC.
Rudy Leon	Am Inst of Architects
ART BROWN	mid-Am-Lumbermen Assn.
Juli Summers	Manpower
Frank Summers	Pro Security
Ron Smith	KBA
John Gage	NELA
Val Holmes	Self -

TRANSCRIPT OF TESTIMONY BEFORE
THE HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE

Good morning, members of the committee, my name is John B. Gage II. I am president of the Kansas Chapter of the National Employment Lawyers Association, a nationwide group of attorneys who specialize in employment law. I appear before you today to urge you not to enact House Bill 2029 based upon my experience in handling cases against employers, which convinces me that it is unnecessary, and my knowledge of existing Kansas law, which convinces me that it contravenes Kansas public policy. Relying first upon my experience, I can tell you that in 15 years of practice, ten of which involved almost exclusively cases between employer and employee either from the plaintiff or defendant's perspective, I have been involved in only one case which involved allegations of "blacklisting," the term used historically to describe an ex-employer's attempts to prevent re-employment of a former employee by defaming him to prospective employers. The only reason I was able to make allegations of blacklisting in that case was that the plaintiff was a gentleman who was extraordinarily well-connected in the textile industry, a relatively close fraternity, and several of his friends in other textile companies were willing to come forward and repeat statements made to them by my client's ex-employer. My client was well enough connected, in fact, that before his case was ever settled he became Vice President of a major competitor of his ex-employer.

The fact that I have handled only one case which alleged blacklisting does not mean, by any means, that it does not go on. Hundreds of ex-employees who have approached me over the years have been convinced that their ex-employer, either motivated by the

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illegal reason for their termination or in retaliation for the fact that they are filing a wrongful discharge or discrimination claim against the ex-employer, is preventing them from obtaining alternative employment. Unfortunately, blacklisting claims are virtually impossible to prove. Employers traditionally stick together, and virtually without exception prospective employers who have rejected an employee will not discuss the reasons for that rejection because they do not want to be involved.

In addition, Kansas public policy expressed in existing statutes directly contradicts that already expressed in Kansas statutes. Back in 1897, at the time of the Pullman strikes in Chicago and other parts of the nation which ultimately led to federal enactment of labor and anti-trust laws based upon the atrocities committed by monopolistic railroad companies against employees suspected of being union organizers, William Jennings Bryan addressed the Kansas legislature about those atrocities, focusing in particular upon the practice of such employers in blacklisting employees suspected of union activity, leading to those employee's ultimate financial ruin. The day after William Jennings Bryan spoke to the Kansas legislature, it passed what is today K.S.A. 44-117, 118 and 119, which not only makes blacklisting a civil wrong subjecting the employer to liability for treble damages (the same formula used in the anti-trust statutes), but a crime. The Kansas legislature incorporated the same kind of guarantees against unfair labor practices later in Chapter 44. Despite having condemned blacklisting, the legislature throughout preserves the right of the employer to reply to any request for

reference "by furnishing in writing on request, the cause of [the employees] discharge."

Today, even if an employer defames an employee to preclude him from obtaining future employment, thereby violating the blacklisting statute, the law in most instances will not protect him. The blacklisting statute has been rendered virtually ineffectual by a ruling of the federal district court to the effect that a criminal conviction is pre-requisite to civil litigation based thereon. What is more, Kansas appellate courts have provided employers with a qualified privilege which protects them when making job references by requiring an employee to show that any false statement made in such reference was made with actual malice, i.e., knowledge of falsity or reckless disregard as to whether the statement was true. In the case which adopted the qualified privilege for such statements by an employer, the employer argued, much as the proponents of the statute before the committee, that absolute immunity should be provided to the employer. In rejecting that proposition, both the Kansas Court of Appeals and the Kansas Supreme Court held that, "by virtue of the qualified privilege, the employer . . . is protected from the threat of defamation suits by the enhanced burden of proof which the plaintiff would have to bear. We see no reason for greater freedom from liability for defamation to be accorded the corporate employer than that already available to all employers through the qualified privilege."

Luttrell v. United Telecommunications, Inc., 9 Kan.App.2d 620, 622-623, 683 P.2d 1292 (1984) aff'd, 236 Kan. 710, 695 P.2d 1279 (1985).

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In summary, even though the law expresses a public policy of protecting employees from blacklisting, 99% of the time it is totally ineffective to achieve that result in its current form. Both the Court of Appeals and the Supreme Court have expressly held that the current state of the law is sufficient to protect employees from defamation suits. Rather than make it easier for employers to punish their former employees by preventing them from obtaining subsequent employment, this legislature should reaffirm the public policy stated in the anti-blacklisting statute back in 1897 and amend it to provide for an effective remedy against the type of anti-competitive actions upon the part of employers it seeks to prohibit.

5. "Monument works" held to be a "manufacturing establishment." *Pack v. Grimes*, 107 K. 704, 193 P. 330.
 6. Bucksaw on farm operated by mechanical power not within factory act. *Whipple v. McLean*, 124 K. 206, 207, 287 P. 735.
 7. Kitchen of hospital is not a manufacturing establishment. *Newberry v. Santa Fe Hospital Ass'n*, 141 K. 273, 274, 40 P.2d 471.

44-108.

History: L. 1903, ch. 356, § 8; R.S. 1923, 44-108; Repealed, L. 1978, ch. 191, § 3; July 1.

INSPECTION OF STRUCTURES AND APPLIANCES

44-109.

History: L. 1905, ch. 527, § 1; R.S. 1923, 44-109; L. 1976, ch. 370, § 2; Repealed, L. 1978, ch. 191, § 3; July 1.

CASE ANNOTATIONS

1. Failure to demur or answer no waiver, when. *Howell v. Cement Co.*, 86 K. 450, 452, 121 P. 348.

44-110.

History: L. 1905, ch. 527, § 2; R.S. 1923, 44-110; L. 1976, ch. 370, § 3; Repealed, L. 1978, ch. 191, § 3; July 1.

SEATS FOR FEMALE EMPLOYEES

44-111, 44-112.

History: L. 1901, ch. 187, §§ 1, 2; R.S. 1923, 44-111, 44-112; Repealed, L. 1975, ch. 256, § 7; July 1.

ACCIDENTS AND REPORTS

Cross References to Related Sections:
 Workers compensation act, see 44-537.

44-113 to 44-116.

History: L. 1909, ch. 119, §§ 1 to 4; R.S. 1923, 44-113 to 44-116; Repealed, L. 1927, ch. 232, § 63; June 30.

PREVENTION OF BLACKLISTING

44-117. Employer not to prevent discharged employee from obtaining employment. Any employer of labor in this state, after having discharged any person from his service, shall not prevent or attempt to prevent by word, sign or writing of any kind whatsoever any such discharged employee from obtaining employment from any other person, company or corporation, except by furnishing in writing, on request, the cause of such discharge.

History: L. 1897, ch. 144, § 1; May 8; R.S. 1923, 44-117.

Research and Practice Aids:
 Labor Relations § 24.
 C.J.S. Master and Servant § 45.

Law Review and Bar Journal References:

Quoted in discussion of third party legislators, *Karl A. Svenson*, 17 J.B.A.K. 293, 315 (1949).
 "Rights of Kansas Non-Union Employees Against Unjust Termination—Where Are We Now?" *William C. Nulton*, 54 J.K.B.A. 237, 252 (1988).

CASE ANNOTATIONS

1. Statute requiring employer to give reason for discharging employee invalid. *Railway Co. v. Brown*, 80 K. 312, 316, 317, 102 P. 489.
 2. Membership in a labor union sufficient reason for discharging employee. *Adair v. United States*, 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436 (reversing 152 F. 737); *Coppage v. Kansas*, 238 U.S. 1, 28, 35 S.Ct. 240, 59 L.Ed. 441.
 3. Criminal blacklisting conviction of employer is element of civil blacklisting claim. *Anderson v. United Telephone Co. of Kansas*, 933 F.2d 1500 (1991).

44-118. Same; penalty. Any employer of labor, his agent or employee, who shall violate the provisions of this act shall be guilty of a misdemeanor, and shall upon conviction be fined for each offense the sum of one hundred dollars and thirty days' imprisonment in the county jail.

History: L. 1897, ch. 144, § 3; May 8; R.S. 1923, 44-118.

44-119. Same; liability; attorney's fee. Any person, firm or corporation found guilty of the violation of this act, shall be liable to the party injured to an amount equal to three times the sum he may be injured, and such employers of labor shall also be liable for a reasonable attorney fee, which shall be taxed as part of the costs in the case.

History: L. 1897, ch. 144, § 4; May 8; R.S. 1923, 44-119.

Research and Practice Aids:

Petition for blacklisting discharged employee, *Vernon's Kansas Forms* § 3283.

Law Review and Bar Journal References:

"Recovery of Attorney Fees in Kansas," *Mark A. Furney*, 18 W.L.J. 535, 559 (1979).
 "Recovery of Attorney Fees—An Historical Perspective," *Ron Leslie*, 53 J.K.B.A. 154 (1984).
 "Rights of Kansas Non-Union Employees Against Unjust Termination—Where Are We Now?" *William C. Nulton*, 54 J.K.B.A. 237, 252 (1988).

CASE ANNOTATIONS

1. Criminal blacklisting conviction of employer is element of civil blacklisting claim. *Anderson v. United Telephone Co. of Kansas*, 933 F.2d 1500 (1991).

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

44-120 to 44-123.

History: L. 1972, ch. 330, §§ 1 to 4; Repealed, L. 1976, ch. 370, § 104; July 1.

TRANSCRIPT OF TESTIMONY BEFORE
THE HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE

Good morning, my name is Hal Holmes. I am here to speak against House Bill 2029. I was wrongfully terminated from my position as an area manager in the computer industry for reporting internal theft. I hired a law firm, filed a suit for wrongful termination and settled with the company out of court. A major portion of that settlement was that they refrain from making any negative comments about me to prospective employers. They were only to provide a written letter of recommendation. In these boxes are over 1,000 resumes and rejection letters. After awhile, and the loss of many prospective positions, it occurred to me that I might be being blacklisted. I hired an investigator (Clarence Kelly) who confirmed and documented that this was indeed happening. With my documentation and original agreement in hand I returned to the lawyer who originally handled my case. This law firm said I had been done a grave injustice but there was no relief under the law. The law is and was specific. It protects the employer and does so very well. In order for me to bring them to task, I had to find a prospective employer who (1) had rejected me because of a bad reference from my former employer and (2) be willing to enter into a litigated situation. Because hundreds of prospective employers had no vested interest, were not inclined to breach the "old boy" and don't rat on me and I won't rat on you system to see justice done on my behalf, I had no legal recourse. Thus the enormous chasm between the law and justice. The law as it is written favors the employer. It protects him from the frivolous lawsuit and the just lawsuit alike. I sought out a specialist in the legal field (John Gage) and met with sympathetic understanding

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Attachment 2

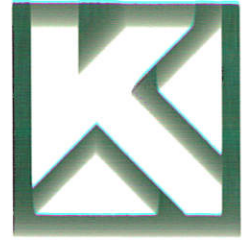
and a healthy dose of "I'm sorry Hal, it's the law. There is no justice for a person in your circumstances!" My career has been ruined by a situation which cannot be corrected given unjust laws which apply to it. I now earn a living for my family as a self-employed construction worker.

I have sacrificed my family, as well as myself in the pursuit of honesty, fair play and just treatment and have met the cold stone wall of the law. A bulwark, a fortress, a pedestal that puts employers above justice but within the law.

We do not need to strengthen a set of laws that are already too strong. Remember power corrupts and absolute power corrupts absolutely. The employer already has the power. Please don't make it absolute.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2029

February 1, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to express KCCI's support for HB 2029.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

It has become a common business practice to not release any information about a current or former employee to a prospective employer, except for date of hire, date of departure (if applicable), and perhaps their salary history. Kansas businesses have adopted this procedure for defensive

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ions. The concern has been releasing more information exposes a business to the possibility of litigation.

HB 2029 addresses this problem by shielding employers from litigation, as long as the information they are passing on to a prospective employer is given in good faith. While the benefit to an employer in HB 2029 is evident, the bill should also benefit employees who would receive positive comments from current or former employers.

KCCI applauds the authors of HB 2029 and would urge this Committee to approve the legislation. I would be happy to answer any questions.

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TESTIMONY FROM OVERLAND PARK CHAMBER OF COMMERCE
TO
HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR
ON
HB 2029

RE: SUPPORT FOR HB 2029 WHICH SHIELDS EMPLOYERS FROM
CIVIL LIABILITY FOR PROVIDING JOB REFERENCES UPON
REQUEST.

Good morning Mr. Chairman and committee members. My name is Jenny Unruh, Government Relations Manager for the Overland Park Chamber of Commerce. I am here on behalf of our 960 business members to testify in support of HB 2029.

The Chambers' State/Federal Affairs Task Force, made up of over 65 business people, authorizes the legislative positions of the Overland Park Chamber of Commerce. Our task force has decided that the Overland Park Chamber of Commerce will support HB 2029. This decision was made after discussion and review of the merits of this legislation by some of our member's legal and human resource departments.

Johnson County has an extremely mobile business community. 70% of our growth in the last decade has been new company start-ups. Economic research indicates that this type of growth will continue. As our state's economy grows, and employers begin to hire increasing numbers of new workers, it is essential that employers hire from the most qualified pool of job applicants. If employers will not give employment references out of fear of liability, then prospective employers are extremely limited in their ability to select the most qualified person for a job. We believe that this bill, if passed, would encourage future economic development because it would provide employers with the ability to hire well qualified people from the start and assist in the success of the company more immediately.

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Most importantly, this bill has strong implications for small business owners who do not possess the resources to perform extensive background research on potential employees.

The way the law is now, many companies refuse to give out any information, good or bad, regarding a former employee's work performance. These policies prevent most people, who are good workers, from receiving the benefit of a favorable work history when a prospective employer gives their former boss a call. While protecting people with unfavorable work histories, the law now works against the most qualified job applicants with the best past work histories. This bill favors employees and employers because it ensures that good employees will benefit from a favorable job recommendation and employers will be able to select the best employees.

Thank you for considering the Overland Park Chamber's position in support of HB 2029.

TESTIMONY FOR HR 2029--ROOM 526 SOUTH, CAPITOL BLDG
9AM

TODAY I AM HERE TO SPEAK IN SUPPORT OF THE BILL HR 2029. MY NAME IS CONNIE REYNOLDS...I AM EMPLOYED BY BLUE CROSS BLUE SHIELD OF KANSAS IN THE HUMAN RESOURCES DEPARTMENT AS A COMPENSATION SPECIALIST. PRIOR TO MY BLUE CROSS EMPLOYMENT, I WAS DIRECTOR OF HUMAN RESOURCES FOR HIGHLAND PARK BANKS, NOW UNITED MISSOURI BANKS. IN ADDITION, I AM CURRENTLY THE PRESIDENT OF THE TOPEKA SOCIETY OF HUMAN RESOURCE MANAGEMENT ORGANIZATION WHICH REPRESENTS APPROXIMATELY 90 HUMAN RESOURCE MANAGERS WORKING IN A VARIETY OF COMPANIES, LARGE AND SMALL, THROUGHOUT TOPEKA. THESE HUMAN RESOURCE MANAGERS SPECIALIZE IN VARIOUS AREAS OF HUMAN RESOURCES FOR THEIR RESPECTIVE COMPANIES DEALING WITH HIRING, COMPENSATION, PERFORMANCE, TRAINING, AND BENEFITS ISSUES. AS A COLLECTIVE GROUP RESPONSIBLE FOR CHOOSING AND RETAINING EMPLOYEES FOR THEIR RESPECTIVE COMPANIES, THEY ARE AWARE, AS AM I OF THE IMPORTANCE OF HIRING THE RIGHT PERSON FOR THE JOB AND THE IMPORTANCE THAT REFERENCE AND PREVIOUS EMPLOYER CHECKING PLAYS IN THAT PROCESS.

CURRENTLY, MOST HUMAN RESOURCE MANAGERS IN KANSAS AND PROBABLY THROUGHOUT THE COUNTRY, ARE NOT ABLE TO COLLECT ACCURATE JOB RELATED INFORMATION FROM PREVIOUS EMPLOYERS BECAUSE OF THE FEAR MOST COMPANIES HAVE REGARDING LITIGATION. INFORMATION CURRENTLY GIVEN BY MOST EMPLOYERS WHEN CALLED IS CURRENTLY LIMITED, FOR THE MOST PART, TO NAME, TITLE, AND EMPLOYMENT DATES. BECAUSE OF POTENTIAL OF, IN GENERAL, FRIVOLOUS LITIGATION COSTS AND INCONVENIENCES, COMPANIES WILL NOT RESPOND TO QUESTIONS REGARDING TERMINATION, ATTENDANCE, ILLEGAL ACTIVITY AND OTHER PERFORMANCE JOB RELATED PROBLEMS THAT SHOULD BE GIVEN TO ANOTHER PROSPECTIVE EMPLOYER TO BE USED, POSSIBLY, IN DETERMINING THE APPROPRIATENESS OF A CERTAIN APPLICANT FOR A SPECIFIC POSITION. INFORMATION ON BANK EMPLOYEES TERMINATED FOR BALANCING PROBLEMS OR BREACH OF FAITH SITUATIONS (THEFT), CHILD CARE WORKERS DOCUMENTED AS NOT APPROPRIATELY HANDLING CHILDREN, IN GENERAL DOCUMENTED POOR WORK HABITS HAVING TO DO WITH SUCH ISSUES AS WORK QUALITY AND ATTENDANCE ARE EXAMPLES OF THE TYPE OF INFORMATION THAT WHEN BASED ON FACTUAL DATA AND GIVEN IN GOOD FAITH SHOULD BE AVAILABLE TO PROSPECTIVE EMPLOYERS AND GIVEN BY PAST OR CURRENT EMPLOYERS FREE FROM LIABILITY DUE TO THE FACTUAL AND GOOD FAITH INTENT OF THEIR ACT OF GIVING WORK RELATED INFORMATION.

BECAUSE HR 2029 DOES SUPPORT THE GIVING OF FACTUAL INFORMATION BY APPROPRIATE HR EMPLOYEES IN GOOD FAITH, I WOULD LIKE TO REGISTER MY PERSONAL SUPPORT OF THIS BILL...AS WELL AS THE SUPPORT OF THE MEMBERS OF THE SOCIETY OF HUMAN RESOURCE MANAGEMENT OF THE TOPEKA CHAPTER. FINALLY, THIS BILL IS ALSO SUPPORTED BY THE KANSAS STATE COUNCIL OF SOCIETY OF HUMAN RESOURCE MANAGERS...THANK YOU!

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Attachment 5



TESTIMONY BEFORE THE
HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR
WEDNESDAY, FEBRUARY 1, 1995
H.B. NO. 2029

Testimony By:
Dana B. Kyle
309 Fordham Road
Manhattan, Kansas 66502
(913)537-6100

Mr. Chairman and Members of the Committee, my name is Dana Kyle. Thank you for allowing me the opportunity to appear before you. I am here to testify in support of 1995 H.B. 2029

I have been employed by the Riley County Police Department in Manhattan for 22 years and am currently the Commander of Administrative Services. During this period of time I have conducted several dozen background investigations of prospective employees. Further, during the past 2 years, I have supervised the investigation of approximately 20 applicants.

While Police Departments have a number of resources available that many employers do not have, records checks of criminal and traffic violations for example, we share one liability with the private sector. As we contact past employers, co-workers, and references we are often met with reluctance on their part to fully advise whether our applicant would be wholeheartedly recommended for employment. Often we are directed to the Personnel or Human Resource Department and receive a patterned "The Subject worked for us from this date to that date and is subject to re-hire". This obviously does not tell the investigator whether the applicant was a "good" employee and whether the applicant would be recommended for employment.

I recall that a few years ago, I contacted an applicant's supervisor in a Law Enforcement Agency from another State. I advised the supervisor the purpose of my call. He responded "He put me down as a reference; he knows better than that after what he did". Naturally I asked what the applicant had "done". The supervisor said "I had better contact Personnel before I say anything else". The only information I was able to obtain from that agency was the applicants dates of employment and that he was subject to re-hire (?). It was only through careful screening during a polygraph examination that we determined that the applicant had committed a relatively minor indiscretion and had learned from his mistake. We hired the applicant and he has proven to be an excellent employee.

This applicant nearly was not hired because of an overly cautious paranoia of liability which is pervasive in Personnel Departments throughout the public and private sectors. House Bill 2029 will help alleviate this problem by allowing employers and co-workers to talk more freely about an applicant's strengths and weaknesses when they apply for employment elsewhere.

While the committee may view this legislation as a means of identifying unsatisfactory employees (in Law Enforcement they are known as "Rogue" or "gypsy" cops), the above illustrates how the legislation will also help good employees find other employment.

Thank you; I stand for questions from the Committee.

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Attachment 6*