

Approved: 2/22/95 ha  
Date

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

The meeting was called to order by Chairperson Al Lane at 9:02 a.m. on February 3, 1995 in Room 526-S of the Capitol.

All members were present except: Rep. Jill Grant - excused  
Rep. Broderick Henderson - excused

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

Conferees appearing before the committee:

John Foster, Undersheriff, Johnson County  
Mike Valdivia, Personnel Manager, Kansas Blue Cross/Blue Shield  
Jeannine A. Wyatt, Director of Human Resources, Brewster Place

others attending: See attached list

The minutes of January 20 and January 24 were passed out to the committee. They will be approved at our next meeting, February 7, 1995.

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

The first conferee, John Foster, Undersheriff at the Johnson County Sheriff's Office in Olathe, Kansas, appeared as a proponent of the bill. He related to the committee the expense of answering subpoenas to appear in court. They now give out only very basic information on former employees (see Attachment 1). Mr. Foster concluded by answering questions from the committee.

Mike Valdivia, Personnel Manager for Blue Cross Blue Shield of Kansas, appeared as a proponent. He feels that if employers are allowed to give careful, honest information on references without the fear of litigation, that companies, state agencies, and other state employers will be better protected (see Attachment 2). He also believes that good employees are hurt when their former employer gives only the basic information on job references. Mr. Valdivia finished his testimony by answering questions from the committee.

Jeannine Wyatt, Director of Human Resources at Brewster Place in Topeka, is a proponent of HB 2029. Her agency has a human resources department to check on people they hire, but they still are not able to get all the information they would like on a prospective employee. There is a critical shortage for help in care homes and nursing homes and they are not always able to wait the two to four weeks it takes to get the information they need. She sees a real need to get truthful, factual and documented information on employee references. It is also an added expense to do background checks and not all problems show up in the checks (see Attachment 3). Ms. Wyatt concluded by answering questions from the committee.

The written testimony of William M. Henry, Executive Secretary for the Kansas Association of Defense Counsel, a proponent of HB 2029, was passed out. It is their belief that this legislation would stem litigation and also reduce the cost of doing business for Kansas employers (see Attachment 4).

Chairman Lane asked the committee how many could attend if the hearing on HB 2029 was continued today upon adjournment of the House. There was not enough response to make a quorum, so it was decided to continue the hearing on HB 2029 on Wednesday, February 8.

The meeting adjourned at 9:45 a.m.

The next meeting is scheduled for February 7, 1995.



Testimony of:

John L. Foster

House Bill 2029

Mr. Chairman, Members of the Committee:

My name is John L. Foster. I'm the Undersheriff at the Johnson County Sheriff's Office in Olathe, Kansas.

The common practice among public employees today concerning references requested by a prospective employer about a former employee is to confirm the position the applicant held, salary, and dates of employment. Any other information, although that information may be very accurate, is simply to invite litigation by a prospective applicant.

Public safety agencies have a vital interest on behalf of the general public to hire the best qualified personnel possible. When one agency is unable to communicate with another agency about a prospective employee's behavior, the general public is not being served. The end result is that a less than desirable employee winds up being passed from one agency to the other until a serious incident involving the undesirable employee becomes a public issue. Every employer should have the ability to give an honest and accurate evaluation of an employee. Such evaluations must be able to be documented. I urge this Committee to support House Bill 2029.

*Business, Commerce & Labor*  
*2/3/95*  
*Attachment 1*

Thank you for the opportunity to address HB 2020.

As Personnel Manager of Blue Cross Blue Shield of Kansas (BCBSKS) one of my responsibilities is to oversee the interview and selection process(es) for the various 2,000 positions within the organization. Among this responsibility is assisting and advising our managers and supervisors as to whom may ultimately be chosen for a given position. I have worked within the personnel field for over thirteen years now, and applaud the author of this bill.

As you may be aware, one of the many responsibilities a BCBSKS employee has is in safeguarding the confidentiality of the insured's medical history. This is true of a civil service employee of (i.e.) the Department of Revenue that must protect the confidentiality of tax information, or an SRS employee that must keep a family's financial status or other matters confidential.

I point this out as simply one type of responsibility that employees at all levels are required to maintain within an organization; yet one that can create great damage to individuals, to families, and/or to any Kansas organization (large or small).

By allowing employers to carefully and honestly explore and divulge an applicant's previous job related background without fear of litigation, not only will companies, state agencies, and other state employers be better protected; but they will also better protect the citizens of the state and possibly other employees within the organization.

Any hard working honest individual that has ever worked side by side with a dishonest or disloyal employee (before they are ultimately terminated) should also be seen as benefactors of this bill. Such employees would be less likely to move from one job to another, leaving their potentially dangerous "mark" behind with this type of law in effect within the state.

We may tend to think of below standard employees that will be challenged by this bill, with the employer as the only one to gain. In contrast, however, those hard working and loyal employees that are interested in advancing to other companies or organizations will also benefit by being able to carry their good records and reputation(s) with them as their potential new employer will be able to also get accurate information about this individual's good work record...rather than being "lumped in" with everyone else as it is in today's environment where everyone simply gets a confirmation of employment dates, job title, and (at times) salary verification.

Finally, as a lifelong citizen of the state I am comforted to know that future employees of all businesses might be better screened and selected, thus potentially improving the overall services we receive from these businesses.

I appear here today to offer my personal support of this bill, and would offer my personal time as a resource in addressing any concerns one may have with the bill.

~~I appreciate your time and attention.~~



Mike Valdivia  
Personnel Manager  
Blue Cross Blue Shield of Kansas

*Business, Commerce & Labor*  
*2/3/95*  
*Attachment 2*

## TESTIMONY

PRESENTED TO: KANSAS HOUSE COMMITTEE ON BUSINESS, COMMERCE, AND LABOR

PRESENTED BY: JEANNINE A. WYATT  
DIRECTOR OF HUMAN RESOURCES  
BREWSTER PLACE  
TOPEKA, KANSAS

DATE: FEBRUARY 3, 1995

REFERENCE BILL: HB 2029 "QUALITY IN HIRING ACT"

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I have worked as a Director of Human Resources for more than ten years and am an active member of the Society for Human Resource Management at the local, state, and national levels. Since 1988 I have worked in the healthcare industry in a hospital and in a longterm healthcare facility.

Since entering senior level Human Resources Management, I have been extremely concerned and frustrated that I could not provide a reference on a former employee and had a great deal of difficulty in receiving information on a potential job candidate for the businesses I have represented. The only information I have provided over the years has been dates of employment and position(s) held. In return I have received the same type of information and in many instances employers would not even provide that information. For years I have been advised by my own company and corporate attorneys as well as countless attorneys providing educational seminars on legal aspects of HR Management and employment law, to release no more information than dates of employment and position(s) held. Attorneys have even cautioned me not to answer the question as to whether or not an individual was re-hireable. I was told there was too much risk of a lawsuit to my company. I have always made it a practice to run background checks through a local company and the Kansas Bureau of Investigation due to my concern for the risk of negligent hiring. I feel I take every measure possible to assure myself I am hiring qualified, appropriate, and safe individuals into the organization.

I have always been concerned that due to the fact I cannot give a reference on a problematic, poor, or marginal employee, I also cannot provide a favorable reference for staff who have performed well and would make a good employee for another employer. This fear promotes individuals who have poor and even dangerous work habits to be shuffled from one employer to the next while excellent employees are punished and at times unable to attain a position because employers would not say anything about them to promote their good qualities. I have even been told by other employers that they would not consider hiring one of my good employees if I did not give them more information. I was devastated and between a rock and a hard spot. I did not give the information. This is certainly an economic impact to Kansas employers who must invest a great deal of time and dollars in employees they later learn they wish they had never hired. How much more cost effective to have been able to hire the good employee with good attendance and an exceptional work ethic. If that had been the case there would have been higher productivity and a great return on investment. Additionally there would have been more funds available for better wages and benefits for all staff.

*Business, Commerce & Labor  
2/3/95  
Attachment 3*

Since entering the healthcare industry in 1988 I have had major concern with the inability to secure adequate references on individuals working as caregivers and in other ancillary departments. I have a real concern that the healthcare industry is routinely passing around employees who are often times an endangerment to patients and elderly residents of hospitals and longterm healthcare facilities. This indeed is the feeling of many professionals in healthcare Human Resource Management. We are lucky indeed to have many wonderful and quality-trained professionals; but, the fact remains we are passing people from facility to facility who are a threat to patients and residents.

As Director of Human Resources in a longterm healthcare setting I am deeply troubled when hiring many staff; but, especially direct patient caregivers. The healthcare industry is passing around caregivers and other staff who have histories of physical and mental abuse of the elderly, dangerous medication errors that could endanger the life of a patient, chemical dependencies which impair the caregiver's judgement in making decisions in caring for a patient. We commonly pass around employees who have had theft problems in other facilities. We hire them and experience theft from our patients and residents. Had employers only been told up front that someone they were considering for hire had problems with abuse, med errors, chemical dependencies, theft, etc. we would never have subjected our patients and residents to such exposure.

I have personally had to deal with employees in a healthcare setting who had alcohol problems and drank secretly on the job. They impaired themselves to a point they were unable to care for the patient. I have had to confront a caregiver who was "high" on drugs. That probably was the most frightening experience of my career. Had I only known that this had been a problem with another employer I would never have hired the person. I have experienced staff stealing drugs to support their dependency. Not only was that individual endangering the patients and residents they were costing the company money in lost drugs. I have had employees try to steal large quantities of supplies. Had I only known they had the same problem at the last employer, I would never have hired them.

On January 20, 1995 ABC's 20/20 featured a segment on abuse of the elderly in long-term facilities. That one program has set the phones in many nursing homes around Topeka ringing off the hook! They are calling to question the well being of their mothers, fathers, and other loved ones! They are calling to inquire about the hiring practices of the nursing home. Why? Because 20/20 focused on healthcare passing around dangerous staff and caregivers. Why? Because they did not do adequate checking of references and when they tried no would tell them anything!

I am Director of Human Resources in a facility that has a census of 360 elderly citizens. Many of those elderly are frail and vulnerable. They trust those who have been hired by the facility to take good care of them...to treat them with respect and dignity. My greatest fear is hiring someone who interviewed well...who fooled us...who knew all the right things to say...who I couldn't get quality, truthful information about...and then hurt one of our patients or residents. I once hired a "really slick" individual. I did all the right things but I could not get anymore information than dates of employment and position held...nothing showed up on the background check...okay we made the decision to hire. Later I learned the person had a previous problem with child abuse/sexual molestation. Believe me that bit of information had been hidden well! And I had the person working around frail elderly people whose minds were like the minds of children. I had set up my company with a risk factor and a suit of negligent hiring had anything ever happened! Had I known, I would never had hired that person!

The point is, if you or I have an elderly family member in a longterm healthcare setting, don't we want to feel they are safe and protected? Yes! We don't want to worry that they are being physically, mentally, or sexually abused. We don't want to worry that their money and personal belongings are being stolen. Before my Grandmother's death, she lived in a nursing home. Grandma told us we should not bring her things when she was in the nursing home. She said the staff stole her possessions when they thought she was sleeping. She was afraid. Grandma had bruises up and down her arms. We were told her skin was delicate and bruised easily. I wonder if that was true or if she was the victim of a negligent hire... someone the facility could not get references on...and Grandma was afraid to tell us the truth.

I am proud to work in a quality longterm healthcare facility which provides an exceptional, loving, and caring environment where patients and residents receive the highest quality of care. My ultimate fear is my luck will run out and even though I show due diligence and take every precaution in hiring, I fear I will unknowingly hire someone who will endanger our patients and residents.

I would ask each member of the Kansas Legislature to wholeheartedly support the Quality in Hiring Act. To date three states have been proactive in passing legislation to support quality hiring...Georgia, Alabama, and California. Iowa, Pennsylvania, and Oklahoma have introduced legislation. With this type of legislation Kansas can move forward to promote the growth of our economy, promote safety and security for patients and residents in hospitals, clinics, and nursing homes, and promote a less violent workplace. I would also recommend this committee contact the local ABC affiliate station and secure a copy of the 20/20 segment. I am sure after viewing that program you will agree with me.



**TESTIMONY  
HB 2029  
HOUSE BUSINESS COMMERCE & LABOR COMMITTEE  
February 1, 1995**

Mr. Chairman:

I am Bill Henry, Executive Secretary for the Kansas Association of Defense Counsel. I appear before you today in support of HB 2029 on behalf of the 280 members of the Kansas Association of Defense Counsel.

Members of the organization I represent, act as defense counsel in civil litigation for companies and individuals that are sued for unlawful discharge or for information discharged to other employers in job reference issues.

In working with business clients members of the Association of Defense Counsel advise their business client to do job evaluations based upon job descriptions. This also brings the employer into compliance with the American Disabilities Act. The members of the Association of Defense Counsel believe that this is a bill that will particularly aid good employees with good job performances and could reduce litigation in some instances. The rebuttable presumption of good faith is particularly fair to both parties wherein it requires that the information must be shown to be false and secondly that the employer providing the false information had knowledge of its falsity.

We believe this legislation would stem litigation and also reduce the cost of doing business for Kansas employers.

Respectfully submitted,

A handwritten signature in black ink, reading 'William M. Henry', is written over a horizontal line.

William M. Henry, Executive Secretary  
Kansas Association of Defense Counsel

*Business, Commerce & Labor  
2/3/95  
Attachment 4*