

Approved: 3/7/95/lu
Date

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

The meeting was called to order by Chairman Al Lane at 9:12 a.m. on February 8, 1995 in Room 526-S of the Capitol.

All members were present except: Gary Merritt - excused
Dale Swenson - excused

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

Conferees appearing before the committee: Kirk Lowry, self

Others attending: See attached list

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

Chairman Lane asked if there was any opponents of HB 2029 who wished to testify. He then continued through the list of conferees who had called to testify.

Wayne Maichel requested that the written testimony of David O. Alegria of McCullough, Wareheim and LaBunker, be passed out to the committee on behalf of the Kansas AFL/CIO (see Attachment 1).

Kirk Lowry appeared before the committee as an opponent of HB 2029. He opposes the bill because he feels it is not needed. He feels that 95% of people are good and only 5% are bad, and this bill will help the 5% (see Attachment 2). He concluded by answering questions from the committee.

Testimony was passed out from Mary Greene of Manhattan (see Attachment 3).

Chairman Lane asked if there were any others who wanted to speak on HB 2029. Seeing none, he closed the hearing on the bill.

Chairman Lane then asked the committee's preference on HB 2139--open end investment companies. Rep. Pauls made a motion to pass out HB 2139 favorably. It was seconded by Rep. Mason. Rep. Pauls withdrew her motion.

Rep. Pauls made a motion to amend HB 2139, inserting the public law number (15 USC 80a-1) on page 2, line 5, after 1940, and before after. The motion was seconded by Rep. Mason. The amendment passed.

Rep. Pauls made a motion to pass out HB 2139 favorably as amended. Rep. Grant seconded the motion. The motion carried.

The meeting was adjourned by Chairman Lane.

The next meeting will be held on February 9, 1995.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE February 8, 1995

NAME	REPRESENTING
Wayne Marchel	} K.S. AFL-CIO
Jim D. Hoff	
Mary Helser	
Kirk W. Lowry	Self
Larry A. Vande Velde	SRS
Jon Newman	KS Governmental Consulting
Carl L. Sprague	State Treasurer's Office
Karen Coulter	Don Janis See
Dick Dilgaver	The Coleman Co. - Wichita
Bill Crown	Mid-America Lumbermen -
Terry Leatherman	KCCI

TESTIMONY REGARDING HOUSE BILL No. 2029
BY DAVID O. ALEGRIA OF McCULLOUGH, WAREHEIM AND LABUNKER
ON BEHALF OF THE KANSAS AFL-CIO GIVEN ON FEBRUARY 1, 1995

One of the most important public policies of the State of Kansas is contained in the declaration by the Kansas legislature found in K.S.A. 44-702. In relevant part, that statute provides:

Economic insecurity, due to unemployment, is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family.

There can be no question that unemployment creates a severe burden upon all citizens of Kansas in a number of significant ways. In enacting K.S.A. 44-702 the legislature recognized that unemployment can have devastating physical and emotional consequences for the citizens of the State. Massive unemployment would quickly deplete various State funds such as the unemployment security fund, and funds allocated for welfare and medical services. More importantly, unemployment often is at the root of increases in economic crimes.

House Bill No. 2029, if enacted into law will go a long way to undermine the public policy contained in K.S.A. 44-702. The sum and substance of what this proposed law does is to immunize employers from liability as a result of information provided to prospective employers.

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Attachment 1

HB 2029 would allow employers to black list employees with impunity in direct contravention of the provisions of K.S.A. 44-117. That statute provides:

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.

There is no need for HB 2029. Under current law, every employer already has a qualified immunity when it provides information in good faith to a prospective employer. Knudsen v. Kansas Gas & Electric Co. 248 Kan. 469 (1991) Under existing law, in a defamation action, the plaintiff must offer "clear and convincing evidence of an extrinsic character to prove actual malice on the part of the defendant in the publication." Knudsen at p. 483. Failure to offer such proof results in dismissal of the claim at summary judgment stage.

Currently, there is nothing to prevent employers from providing recommendations, and any complementary type of information to prospective employers. This practice is very common.

On the other hand, House Bill No. 2029 would give employers a false sense of security that can be very costly in increased litigation and potential liability. This proposed law may lead employers to believe that they can disclose information regarding handicaps, medical problems, injuries and a number of health related information which the employer may be prohibited from

disclosing under the provisions of the American with Disabilities Act.

The legislature of Kansas should actively promote laws that facilitate reemployment by removing any barriers in an individual's search for employment while at the same time insuring employers access to sufficient information to hire qualified applicants. To this end, if the Legislature deems that a problem exists that limits the flow of information among employers, it is the legislature's function to provide uniform and specific guidance in this area. This can best be accomplished through legislation that spells out the information to be provided to prospective employers.

Specific legislation could enable employers to obtain, among other things, prospective employee's length of service with a previous employer, wage information, job title, job duties or job description, any special skills possessed by the employee, certifications and perhaps results of employment evaluations. In order to ensure compliance and to afford protection to the labor force, the request for information as well as the response should be in writing. This would be consistent with the intent of the black listing statute and K.S.A. 44-702.

In conclusion, the practical effect of enacting HB 2029 can be predicted with a reasonable degree of certainty. HB 2029 would create a degree of chronic unemployment or at the very least a substantial reduction in the employability of individuals who have lost a job. At a minimum, the set back to employees may limit such employees to minimum wage type work. The real question then

becomes the extent to which the employees' earning capacity is reduced and the extent to which a portion of the labor force would be unable to obtain re-employment as a result of HB 2029. Employees rejected over and over as a result of information provided by former employers would have little recourse other than look to the State for assistance in order to meet basic needs. At a time of deficits and budget constraints that dictate a reduction in the size of government, the demands that would be imposed by chronic unemployment and under-employment would necessitate a bigger government. The truth is always an absolute defense. Therefore, if the objective is to allow employers to speak the truth about former employees, they can do so freely under current law. There is no need for HB 2029.

PALMER & LOWRY

ATTORNEYS AT LAW

Columbian Building
112 W. Sixth, Suite 102
TOPEKA, KANSAS 66603-3810
(913) 233-1836
FAX (913) 233-3703

Jerry R. Palmer*
Kirk Lowry
LJ Leatherman

*Certified Civil Trial Advocate
By the
National Board of Trial Advocacy

February 3, 1995

Mr. Chairman and Members of the Committee:

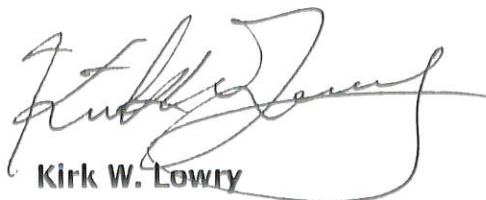
I am an employer and an attorney who represents workers. I do also represent a few employers. I oppose HB 2029.

I oppose HB 2029 because it is not needed. The Supreme Court of Kansas has clearly recognized employers' needs for accurate job reference information. Justice Holmes (now Chief Justice) said in *Turner v. Halliburton*, 240 Kan. 1, 722 P.2d 1106 (1986)

In the present world of trade and commerce, it is imperative that a prospective employer have access to information about an employee's work record from sources other than the prospective employee . . . we hold that such communication is subject to a qualified privilege which requires the plaintiff to prove actual malice by the defendant in making such communication. (*Turner v. Halliburton* at pg. 14)

Immunity from civil liability will not be needed by good employers because they will be telling the truth which is an absolute defense. Immunity will only help bad employers who all good employers would agree should be held responsible.

Respectfully submitted,



Kirk W. Lowry

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Attachment 2*

Testimony by Mary Greene
Re: HB 2029

The law should provide for fair treatment. Fairness can be achieved by requiring employers to provide all references in writing with a copy sent for response to the employee who can respond, either agreeing or disagreeing.

Rationale for this: If a reference is documented in the written format, the employer will be serious in the content put forward.

I am a resident of the 106 District, north of Manhattan, KS.

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Attachment 3