

Approved: March 22, 1995  
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 17, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Upon motion by Senator Feleciano, seconded by Senator Steffes, the Minutes of the March 15, 1995 meeting were unanimously adopted.

**HB 2139 Open-end investment companies, amending articles of incorporation**

Senator Ranson advised the Committee this bill refers only to mutual funds organized as a corporation. These corporations are already registered with the Securities and Exchange Commission and are authorized to issue an indefinite number of shares of the corporation. Due to these managed funds being organized as a corporation, it is necessary the corporations comply with Kansas corporation laws which were not devised for mutual funds. The exception contained in HB 2139 pertains only to mutual funds corporations.

**Senator Ranson moved, seconded by Senator Steffes, HB 2139 be recommended for passage. The recorded vote was in favor of the motion. 9 ayes, 1 nay, 1 pass.**

**HB 2029 - Employer immunity for job references**

The Chair noted the status of HB 2029 upon adjournment of the Committee March 16. Senator Feleciano had withdrawn his motion to Report HB 2029 favorable for passage as amended.

**Senator Feleciano moved to reconsider his substitute motion to amend HB 2029 on Page 2, Line 6, following the word "employer;" and insert the following: "a copy of which shall be provided to the employer upon request". Senator Ranson seconded the substitute motion. The voice vote was unanimous in favor of the substitute motion.**

The Committee considered additional amendments. The Chair stated it was her understanding from the conferees, that employers, as a matter of conscience, allow employees access to their files and also said they would have no objection to giving the employee a written copy. The question is whether to make it a matter of law. Senator Feleciano stated he feels the employee has the right to obtain certain information. Senator Kerr added it is a trade-off; if the employer receives immunity, it is only right the employee knows what the records reflects regarding employment.

The Chair drew the Committee's attention to a letter from Douglas L. Stanley, enumerating his concerns regarding HB 2029, particularly the effect the legislation would have on current case law. See attachment 1.

**On a previous motion by Senator Burke that HB 2029 be recommended favorable for passage, Senator Feleciano made a substitute motion, seconded by Senator Kerr to amend HB 2029 and recommend favorable for passage. The amendments are as follows:**

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m.  
on March 17, 1995.

Page 1, Line 30, strike the words "factual, truthful"; Line 35 strike the words "factual, truthful",

Page 2, Line 4, strike the words "factual, truthful" and following the word "information" insert the following: "to which an employee may have access", and on Line 6, following the word "employer" by inserting the following: "and to which an employee shall be given a copy upon request."

The recorded vote was unanimous in favor of the substitution motion.

The Committee adjourned at 8:30 a.m.

The next meeting is on call of the Chair.

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March 16, 1995

VIA FAX

Senator Alicia Salisbury  
 Chairperson  
 Senate Commerce Committee  
 Topeka, KS

Re: House Bill 2029

Dear Senator Salisbury:

I am writing concerning HB 2029 which I understood was to be considered by your Committee on Friday, March 17, 1995. As an attorney whose practice has emphasized employment law matters for more than ten years, I believe Representatives Haulmark and Humerickhouse had the worthwhile goal of proposing legislation which would better encourage employers to respond to reference inquiries concerning current and former employees. Unfortunately, HB 2029 as it has been amended by the House will not further this goal. In fact, it will greatly discourage employers from responding to reference inquiries.

An employer who provides inaccurate information concerning a current or former employee to a prospective employer may be sued by the employee for defamation. The Kansas Supreme Court has ruled, however, that an employer providing such information enjoys a qualified privilege. An employer is not liable for defamation even if the information provided to the prospective employer was false unless the employee demonstrates that the employer acted in bad faith. See Turner v. Halliburton Co., 240 Kan. 1, 722 P.2d 1106 (1986); High v. A.J. Harwi Hardware Co., 115 Kan. 400, 223 P. 264 (1924).

House Bill 2029, as it was originally introduced in the Kansas Legislature this session, strengthened this good faith privilege by requiring the employee to present clear and convincing evidence that the employer acted in bad faith to rebut the privilege. As initially introduced, HB 2029 provided that an employer is immune from any liability for any statements concerning a current or former employee's job performance made to a prospective employer unless the employee presents compelling evidence that the employer acted maliciously.

*March 17, 1995  
Commerce*

*Attachment # 1*

Senator Alicia Salisbury

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The House Commerce Committee, however, significantly amended HB 2029. An employer will be immune from liability with respect to certain information provided to a prospective employer so long as the information is factual and truthful. Currently, case law recognizes that truth is an absolute defense to any defamation claim. Thus, employers currently are immune from liability relating to any truthful information supplied to a prospective employer, not just those types of information specified in HB 2029.

Moreover, Kansas law provides that an employer is not liable for false information provided to a prospective employer so long as the employer acts without malice and without knowledge that the information is false. Under HB 2029, however, an employer's good faith belief that the information provided to a prospective employer was accurate may no longer be a defense in a defamation law suit. Thus, an employer could be held liable for defamation even if it made every effort to ensure that the information provided was truthful.

Finally, the proposed legislation identifies specific types of information that an employer may provide to a prospective employer without risk of liability, such as date of employment and pay level, assuming the information provided is accurate. Although the bill provides that an employer may provide other accurate information about a current or former employee, employers probably will be reluctant to provide any type of information other than those types specifically identified in the bill.

As a result, employers would find it even more difficult to conduct pre-employment investigations because employers would be reluctant to provide any information beyond that specifically identified in the proposed legislation. Thus, prospective employers would be forced to make employment decisions based on limited information, and therefore would be more likely to make poor hiring decisions. It is in the public interest to encourage former employers to candidly speak to prospective employers. Situations in which public safety is threatened because an employer, unaware of previous problems, hired on an unsuitable applicant are easy to imagine.

The current case law providing an employer supplying information to a prospective employer with a qualified privilege balances the interests of employers, prospective employers, and employees. Employers who act in good faith need not fear liability for providing useful information to a prospective employer. Prospective employers can obtain reliable information to assist them in making employment decisions. Finally, employees are protected from employees making knowingly false statements concerning them to prospective employers. HB

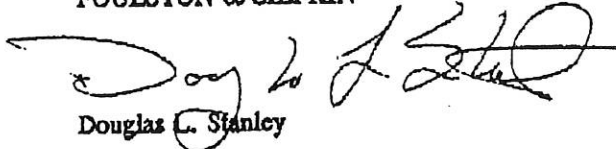
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2029 as initially proposed would have encouraged a freer flow of information between former and prospective employers about applicants. As amended, it is more likely to dry up the little information that is currently exchanged. I urge that this bill either be defeated or returned to the language as initially proposed by Representatives Hauimark and Humerickhouse.

I apologize for not being present this morning. I was informed two days ago that the hearing had been rescheduled from Thursday to Friday. Thank you for your consideration in this matter. If you have any questions, please do not hesitate to call me.

Very truly yours,

FOULSTON & SIEFKIN

  
Douglas L. Stanley

DLS/jw

**M E M O R A N D U M**

**TO: Senator  
Room**

**FROM: Betty Bomar, Secretary  
Senate Commerce Committee**

**RE: Committee Minutes, March 16 &17, and Committee  
Folder**

**DATE: March 20, 1995**

Enclosed find the Committee Minutes of March 16th and 17th. If no corrections are received by Wednesday, March 22, they will be adopted. Your Committee Folder is being returned to you in order that you can retain any materials you desire. Please return the folder to me in Room 120-S.

Thank you for your attention to this matter