

Approved: 2/17/98  
Date

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

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on January 30, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused  
Rep. William Mason - excused

Committee staff present: Bev Adams, Committee Secretary

Conferees appearing before the committee: Brad Smoot, American Insurance Association  
Phil Harness, KDHR  
Martha Gabehart, Commission of Disability Concerns

Others attending: See attached list

Approval of minutes:

Rep. Pauls asked for two corrections: removing her name from excused absences on January 21 and removing her name from the list of conferees on January 22. A motion was made by Rep Geringer to approve the minutes of January 21 and 22, as corrected and January 23 as written. It was seconded by Rep. Boston. The motion passed and the minutes were approved with the above corrections.

Introduction of bills:

Brad Smoot, Legislative Counsel for the American Insurance Association, appeared before the committee to request a bill be introduced concerning large deductible workers compensation policies. (See Attachment 1) Rep. Geringer made a motion to introduce the bill as a committee bill. It was seconded by Rep. Crow. The motion carried.

Phil Harness, Director of Workers Compensation, Kansas Department of Human Resources (KDHR), brought before the committee a proposed bill containing amendments to the boiler inspection laws. His department also manages the Chief Boiler Inspector and his deputies across the state. Rep. Geringer made a motion to introduce the bill. It was seconded by Rep. Grant. The motion passed.

Presentation by:

Martha Gabehart, Executive Director, Commission on Disability Concerns (KCDC), Kansas Department of Human Resources, appeared before the committee to give the committee a brief overview of the work of the KCDC and the Americans with Disabilities Act (ADA). Her department is the counterpart of the federal ADA. The Kansas Act Against Discrimination (KAAD) prohibits discrimination based on disability by employers of four or more employees. She offered the committee the definitions of disability, physical or mental impairment, major life activities, substantially limits, plus what disability does not include. She also shared some of the trends that are taking place in court cases and how the courts are interpreting these definitions. She was not aware of any legislation that needs to be passed with respect to the ADA and the Business, Commerce and Labor Committee. (See Attachment 2) Also distributed to the committee was a booklet, *Americans with Disabilities Act, ADA Guide for Small Businesses*, and a pamphlet, *The Kansas Commission on Disability Concerns*. Copies are available at the KCDC office, 1430 SW Topeka Blvd. in Topeka.

Chairman Lane adjourned the meeting at 9:30 a.m.

The next meeting is scheduled for February 3, 1998.



**BRAD SMOOT**  
ATTORNEY AT LAW

EIGHTH & JACKSON STREET  
MERCANTILE BANK BUILDING  
SUITE 808  
TOPEKA, KANSAS 66612  
(785) 233-0016  
(785) 234-3687 FAX

10200 STATE LINE ROAD  
SUITE 230  
LEAWOOD, KANSAS 66206  
(913) 649-6836

January 29, 1998

House Business, Commerce & Labor Committee  
Captitol  
Topeka, Kansas 66612

Mr. Chairman and Members:

I am Brad Smoot, Legislative Counsel for the American Insurance Association, a trade group of more than 270 property and casualty insurers whose members provide various lines of insurance including workers compensation, auto, home and general liability in Kansas and across the nation. On behalf of our member companies and the employers they insure, we respectfully request introduction of a bill concerning large deductible workers compensation policies.

In 1991, we enacted K.S.A. 44-559a, permitting insurers to offer and employers to purchase deductible workers compensation coverage. AIA is concerned about the current interpretation of this statute by the State and we would appreciate legislative clarification.

A draft of the clarifying amendment is attached to assist the Revisor of Statutes.

*House Business, Commerce  
& Labor Committee  
1/30/98  
Att. 1*

... workers compensation insurance; deductible option; payment of deductible by insured; reimbursement by employer; premium ...; deductible not applicable in experience modification calculation; deductible amounts subject to reimbursement; benefits subject to assessments; state plan not required to offer deductible policies; provisions not applicable to self-insurers and group-funded pools. (a) Each insurer issuing a policy to assure the payment of compensation under the workers compensation act may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under the workers compensation act.

[ , including allocated loss adjustment expenses,

(b) The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers compensation in the same manner as payment or nonpayment of premiums. The insurer may require adequate security to provide for reimbursement of the paid deductible from the insured. An employer's failure to reimburse deductible amounts to the insurer shall not cause the deductible amount to be paid from the workers compensation fund under K.S.A. 44-532a, and amendments thereto, or any other statute. The insurer shall have the right to offset unpaid deductible amounts against unearned premium, if any, in the event of cancellation.

(c) Such deductible shall provide premium credits as approved by the commissioner of insurance, and losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification.

(d) The commissioner of insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or be passed on to the worker.

(e) The deductible amounts paid by an employer shall be subject to reimbursement as provided for under K.S.A. 44-567, and amendments thereto, when applicable. All compensation benefits paid by the insurer including the deductible amounts shall be subject to assessments under K.S.A. 40-566a[\*] and 74-713, and amendments thereto. The Kansas workers compensation plan under K.S.A. 40-2109, and

amendments thereto, shall not require deductibles under policies issued by the plan.

(f) This section shall not apply to employers who self-insure against liability for workers compensation, group-funded workers compensation pools established pursuant to K.S.A. 44-581 et seq., and amendments thereto, or municipal group-funded pools established pursuant to K.S.A. 12-2616 et seq., and amendments thereto.

(g) The provisions of this section shall be effective on or after July 1, 1991.

## DEPARTMENT OF HUMAN RESOURCES



Bill Graves, Governor

Wayne L. Franklin, Secretary

## COMMISSION ON DISABILITY CONCERNS

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877

Voice: (785) 296-1722 • TTY: (785) 296-5044 • Fax: (785) 296-0466

Toll Free: (Outside Topeka) 1-800-295-5232

TESTIMONY ON THE  
THE AMERICANS WITH DISABILITIES ACT  
House Business, Commerce and Labor  
January 30, 1998  
by Martha K. Gabehart, Executive Director  
Kansas Commission on Disability Concerns

Thank you Representative Lane and members of the committee. I appreciate the opportunity to talk to you about the Kansas Commission on Disability Concerns (KCDC) and Americans with Disabilities Act (ADA).

KCDC is a unit within the Kansas Department of Human Resources (KDHR). My staff and I distributed packets of information about the Commission on Tuesday to all members of the legislature. If you didn't receive one, please let me know.

The brochure I have distributed briefly explains some of our activities. We 1) report to the legislature and governor on concerns of people with disabilities and make recommendations for solutions, 2) provide training on disability civil rights and responsibilities, legislative procedures and architectural access, 3) coordinate with other public and private agencies and community-based organizations to promote independent living and employment, and 4) provide ADA information to Kansas citizens through a subcontract with the Great Plains Disability and Business Technical Assistance Center (DBTAC) with University of Missouri-Columbia. Through the subcontract we print and distribute written materials, make presentations, provide consultation and maintain a home page.

*House Business, Commerce  
& Labor Committee  
1/30/98  
Att. 2*

## Brief Overview of the ADA

The ADA prohibits discrimination based on disability in

- employment by private employers of 15 or more employees;
- state and local governments in employment and the provision of services, programs and activities;
- public accommodations (private businesses open to the public);
- public and private transportation; and in
- telecommunication.

People with disabilities are protected if they are "qualified".

The Kansas Act Against Discrimination (KAAD) prohibits discrimination based on disability by employers of 4 or more employees.

Disability means, with respect to an individual --

- (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

Physical or mental impairment means:

- (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The term "Substantially Limits" means:

- (i) Unable to perform a major life activity that the average person in the general population can perform; or
- (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

The impairment must be permanent or long-term. Short-term limitations are not covered.

Disability does not include:

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current illegal use of drugs.
- (4) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this part.
- (5) Current illegal drug users.

### Trends in Court Cases

According to the Disability Compliance Bulletin, of the 261 cases that have gone through the appellate court system, 209 (80%) were ruled in favor of the defendants. The defendants being a combination of employers, state and local governments and private businesses.

The main reason for this is because the courts have been interpreting disability very narrowly. This has been true in the lower courts as well. Many cases are ended in summary judgement that the plaintiff does not meet the definition of disability and is therefore not covered by the law.

Testimony by Martha Gabehart  
January 16, 1998  
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In some of the cases, the courts have not interpreted the definition as the Equal Employment Opportunity Commission (EEOC) has set out in the regulations. Some have taken into consideration medication and assistive devices in determining whether or not there is a substantial limitation. An example is one court decided an insulin dependent diabetic wasn't disabled under the law because the insulin prevented any substantial limitations to a major life activity. This is contrary to the EEOC's regulation of looking only at the individual without assistive devices or medication.

Others courts have looked only at the major life activity of work in deciding whether or not a person was disabled. According to the EEOC regulations, work should be looked only if there is no other major life activity which is substantially limited.

Still other courts have interpreted the major life activity of work so broadly that the plaintiff would have to be severely, multiply disabled in order to be significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes. For example, one court decided the plaintiff's carpal tunnel did not significantly restrict her ability to perform a class of jobs or a broad range of jobs in various classes even though she could not perform the computer work without an accommodation.

#### Legislation

At this time I am not aware of any legislation that needs to be passed with respect to the ADA and business, commerce or labor.

If you have any questions or would like to more information on the ADA, other disability issues or KCDC, please feel free to contact my office at any time.

Thank you for this opportunity.