Approved: March 17, 1999
Date

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on March 11, 1999 in Room 423-S of the Capitol.

All members were present except: Representative Brenda Landwehr, Excused

Committee staff present: Norman Furse, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Representative Jim Garner
Representative Phill Kline
Randall J. Forbes, Kansas Dental Board
Kevin Robertson, Kansas Dental Association

Others attending: See Attached Sheet

The Chairperson stated the minutes of March 8, 9 and 10 were before the committee and final action would be taken later in the meeting.

The Chairperson opened the hearing on **SB 22 - Unlawful employment practices, genetic testing**.

Staff gave a briefing on the bill stating the bill was introduced at the request of the Special Committee on Information Management interim study committee. The bill itself relates to unemployment practices under the civil rights act and relates to genetic testing. It makes it an unlawful employment practice for employers to use genetic testing information to discriminate against an employee.

Representative Jim Garner, testified as a proponent to **SB 22,** stating this bill makes it an "unlawful employment practice" for an employer to subject an employee or prospective employee to genetic testing or to use preexisting genetic screening to discriminate against or make distinctions between an employee or prospective employee. There is a question of privacy. Why does an employer have the right to obtain information on an individual's genetic make-up? Job applicants should submit resumes detailing abilities and work experience, not resumes outlining the odds of contracting certain diseases and afflictions. Kansas needs to be proactive in preventing such invasive action. (See Attachments #1 & 2).

Representative Phill Kline, testified supporting **SB 22**, stating the genetic proclivity towards disease is not the manifestation of disease. There will be much more genetic testing in the future. The potential of infirmity is not the inability to perform a job. The physical forces discovered in a gene are neither definable nor controllable by their bearer. (See Attachment #3)

William V. Minner, Executive Director, The Kansas Human Rights Commission, stated the Commission had 739 open cases and has their house in order and supported **SB 22.** The Commission has received no inquiries or information which leads it to believe that genetic testing/screening is being used by employers within the State of Kansas in the manner proposed for prohibition by **SB 22** (See Attachment #4).

The Chairperson closed the hearing on **SB 22** and asked what the wishes were of the committee.

Representative Swenson moved and Representative Morrison seconded to amend **SB 22** by adding life insurance.

Representative Geringer moved and Representative Haley seconded a substitute motion to move **SB 22** out and put on consent calendar.

Representative Swenson stated he opposed the substitute motion as his amendment was important and now was the time to deal with it.

Representative Haley stated he supported Representative Swenson's motion but these were two different issues. This is a huge umbrella. This bill deals with employment and whether screening could be used as it relates to employment practices and would like to have the insurance issue dealt with at a separate time and would support that.

The Chairperson asked for question on Representative Geringer's substitute motion to pass **SB 22** out favorably and put on the consent calendar. The motion carried.

The Chairperson opened the hearing on **SB 71 - Applicants appearance before Kansas Dental Board; penalty fees for late renewal; practice location address**.

Staff gave a briefing on **SB 71** stating this would change the penalty fee for a late renewal from the current amount of $50 to an amount not to exceed $500 as fixed by Rules and Regulations of the Board. (See Attachment #5).

Randall J. Forbes, representing the Kansas Dental Board, was a proponent in support of **SB 71**, stating this would allow the Board the option to not require a person applying for licensure without examination to appear before the Board as often times these individuals must travel great distances. This bill simply clarifies that licensees are to notify the Board when establishing a new practice location as well as when they change a practice location. The bill also allows a penalty up to $500; it is not anticipated that the Board would use all this authority at this time; however, it would eliminate needing legislation at a later date if an increased fine was deemed advisable. (See Attachment #6).

Kevin Robertson, CAE, Executive Director, Kansas Dental Association, testified as a proponent supporting **SB 71**, stating three administrative changes/clarifications were needed. (See Attachment #7)

Representative Geringer moved and Representative Bethell seconded to move **SB 71** out favorably and put on the consent calendar. The motion carried.

Representative Storm moved and Representative Geringer seconded to approve the minutes of March 8, 9 and 10. The motion carried.

The meeting adjourned at 2:30 p.m. The next meeting will be March 15.

HEALTH AND HUMAN SERVICES

Date: March 11, 1999

RANDY FORBES	Ks. Dental Bvd.
KEVIN ROBERTSON	~~KS. DENTAL ASSN.~~
Bill Minner	KS. HRC
Mike Hollar	KS HRC
Brandon Myers	" "
Greg D. Hill	Federico Consulting
Stacy Seldon	Klein & Wiles
Danielle Noe	Governor's Office
Derek A. Blaylock	Intern for Bill Sneed
Michelle Peterson	Peterson Public Affairs Group
Jolene Cole	Sen. Tyson - Intern
Haviland & Riddle	Riddle & Associates
Douglas Lewis	Via Christi Family Practice Res
[illegible]	[illegible] Wichita KS
Janet Klingele	Via Christi Family Practice, Wichita
Jumper Cook	VC FPR - Wichita
KEITH L LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
SCOTT STRINGFIELD	VC FAMILY PRACTICE - WICHITA KS
Arlo Reimer	VC Family Practice - Wichita
MERRILL G RABER	VC " " "
Robert Stewart	VC. FP Wichita
Doug Neef	" " " "

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

TOPEKA ADDRESS
STATE CAPITOL, ROOM 327-S
TOPEKA, KANSAS 66612-1504
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JIM GARNER
HOUSE DEMOCRATIC LEADER

Mr. Chairman and members of committee:

Thank you for the opportunity to appear and testify in support of S. B. 22. Senate Bill 22 makes it an "unlawful employment practice" for an employer to subject an employee or prospective employee to genetic testing or to use preexisting genetic screening to discriminate against or make distinctions between an employee or prospective employee.

At first glance, debating the issue of genetic screening may seem premature and abstract, but this issue has already had very real consequences and will, without question, become increasingly relevant to our daily lives. A 1997 study by the American Management Association found that over 5 percent of its members currently conducted genetic tests on employees or prospective employees. The number of employers using genetic testing will only increase in the coming years as the federally-funded Human Genome Project continues making advancements in genetic knowledge and health care costs resume their rapid rise.

The problems with allowing employers to genetically screen their employees are not difficult to envision. There are already cases of workers being fired because genetic testing reveals they are higher risks for contracting certain illnesses. Please note I say *higher risks*, these employees were not sick, and might never contract the illnesses in question. As genetic testing becomes more prevalent, imagine the possibilities. Able-bodied, qualified workers unable to obtain jobs, or if they do obtain jobs they could be denied health care benefits.

There is also the question of privacy. Why does an employer have the right to obtain information on an individual's genetic make-up? Job applicants should submit resumes detailing abilities and work experience, not resumes outlining the odds of contracting certain diseases and afflictions. The state of Kansas needs to be proactive in preventing such invasive actions.

Fortunately, we can take steps to stop the growing trend of genetic screening and genetic discrimination. Attached is a list of states that have recently considered this issue.

I urge you to support making the use of genetic screening information an unlawful employment practice. We must begin making policy to address the new advances in genetic testing and their implications in our daily lives.

Thank you for your time and I urge your support for this bill.

medical advice, diagnosis, care or treatment was recommended or received within the six-month period ending on the enrollment date (§9801(a) (1)). Furthermore, genetic information cannot be treated as a preexisting condition unless there has been a diagnosis of the condition to which the genetic information relates (§9801 (b) (1) (A) and (B)).

State Laws

State laws regarding the work place are characterized by three broad types. First are the states that prohibit discrimination based on the trait for a specific disease. These states include Florida, Louisiana and North Carolina. Second, Arizona and Illinois prohibit discrimination based upon genetic status and prohibit testing to determine that status. These states include Iowa, New Hampshire, New Jersey, New York, Oregon, Rhode Island, and Wisconsin.

Many states are in the process of trying to pass legislation relating to genetic discrimination. (see table 8-1). For example, from 1995 to 1996, California, Connecticut, Hawaii, Kansas, Michigan, Nebraska, Oklahoma and Pennsylvania all attempted to pass some form of genetic discrimination legislation. Five of these proposed bills would have fallen prey to the same difficulty as the ADA. They would have prohibited discrimination rather than the gathering of the information.

Because of the uncertainties of federal law, many states have considered legislation to prevent employment discrimination based on genetics. Thirteen states have enacted legislation.

Drafting legislation in this area is difficult because of the highly technical nature of the subject and the lack of uniformity in terms and definitions. Most laws vary widely in their language.

The earliest laws prevent discrimination on the basis of specific genetic conditions, such as sickle cell trait. These laws do not cover discrimination based on other genetic markers or traits. Later statutes broadened coverage to cover "genetic testing." As discussed earlier, testing is one way to obtain genetic information, but other sources are now available and may increase in the future.

A few state statutes outlaw discrimination based on all genetic conditions, no matter how the information is obtained. None of the existing state laws prevent employers from collecting non job-related genetic information about applicants. States that have enacted legislation in this area are listed in the box at right.

State	Citation	Year Enacted
Arizona	§20-448	Amended 1997
Florida	§760.40	Amended 1997
Illinois	§775-5/2-102	1987
Iowa	§729.6	1992
Louisiana	40: §1299.6	1995
New Hampshire	§354A.7	1992
New Jersey	§10:5-12	Amended 1992
New York	Civ. R. §48-a	1990
North Carolina	§95-28.1	1975
Oklahoma	§25-1302	Amended 1992
Oregon	§659.010	Amended 1987
Rhode Island	§28-6.7-1	1992
Texas	Labor §21.402	1992
Wisconsin	§111.372	1991

Table 8-1.
State Genetic Employment Legislation Introduced in 1997

STATE	HOUSE BILL	SENATE BILL	SUMMARY	STATUS
California		SB 654	Relates to the prohibition against discrimination in employment-related matters on the basis of, among other things, medical condition; the bill provides that "medical condition" includes genetic characteristics, as defined.	9/9/97 – Placed in inactive file
Connecticut		SB 45	Prohibits the use of genetic information in employment decisions.	5/1/97 – To Joint Committee on Judiciary
Hawaii	HB 1566		Prohibits genetic testing as a prerequisite for employment or membership; prohibits unlawful discriminatory practices; prohibits insurers to require genetic testing to obtain benefits, coverage, or renewed coverage under a policy.	1/24/97 – To House Committee on Labor and Public Employment
Hawaii		SB 112	Relates to genetic testing; prohibits use of genetic testing by employers; prohibits insurer to require an individual to undergo any genetic testing or to present the results of such tests in order to obtain benefits.	1/17/97 – To Senate Committee on Human Resources
Illinois	HB 8		Creates the Genetic Information Privacy Act. Provides that information derived from genetic testing is confidential. Limits the use of genetic information by insurers and employers. Provides exceptions to the confidentiality of genetic information with respect to certain disclosures by medical personnel. Provides that persons aggrieved by a violation of the act have a right of action. Excludes chemical, blood and urine analyses, drug testing and HIV testing.	6/23/97 – Signed by governor
Illinois		SB 672	Creates the Genetic Information Privacy Act. Provides that information derived from genetic testing is confidential. Limits the use of genetic information by insurers and employers. Excludes chemical, blood and urine analyses, drug testing and HIV testing from the scope of the bill; provides that samples obtained by peace officers may be used for identification purposes; authorizes expungement of court records only; limits remedies against insurers that violate the act.	5/8/97 – Referred to House Committee on Rules
Maine		SB 384	Protects the privacy of genetic information. Prohibits discrimination in any form of insurance regulated by the Bureau of Insurance on the basis of genetic information and requires informed consent for obtaining genetic information. Prohibits discrimination in employment on the basis of genetic information.	10/22/97 – Carried over to 1998 regular session

2-2

Table 8-1.
State Genetic Employment Legislation Introduced in 1997
(continued)

STATE	HOUSE BILL	SENATE BILL	SUMMARY	STATUS
Maryland	HB 776		Makes it unlawful to fail or refuse to hire, to discharge, or to discriminate against an individual due to the individual's genetic information or refusal to submit to a genetic test or to provide genetic test results; prohibits an insurer, nonprofit health service plan or health maintenance organization from requesting or requiring a genetic test in regard to a life insurance policy or contract or annuity contract.	4/5/97 - Referred to interim study by Committee on Environmental Matters
Maryland	HB 920		Makes it an unlawful employment practice for an employer to fail or refuse to hire or to discharge an individual or otherwise discriminate against an individual because of the individual's genetic information or refusal to submit to a genetic test or make available the results of a genetic test; prohibits an insurer from making certain differentials in rating, premium payments or dividends in life insurance, annuity contracts, credit life or disability insurance policies; etc.	4/5/97 - Referred to interim study by Committee on Environmental Matters
New York	AB 4512		Makes technical corrections regarding employment discrimination based on genetic characteristics and information realized from genetic testing.	3/5/97 - To Senate Committee on Investigation and Taxation
New York		SB 3284	Makes technical corrections regarding employment discrimination based on genetic characteristics and information realized from genetic testing.	6/4/97 - Amended in Senate Committee on Investigation and Taxation
North Carolina	HB 350		Prohibits discrimination in health insurance and employment based on genetic information.	8/28/97 – Not carried over
North Carolina		SB 254	Prohibits discrimination in health insurance and employment based on genetic information.	8/4/97 - Signed by governor
Pennsylvania	HB 771		Amends the Pennsylvania Labor Relations Act. Restricts the use of genetic test results	3/12/97 - To House Committee on Labor Relations
Texas	HB 39		Relates to prohibition of discrimination in the determination of eligibility for employment, occupational licenses, and health insurance coverage based on the use of genetic tests.	6/20/97 - Signed by governor
Texas		SB 98	Relates to a prohibition of discrimination in the determination of eligibility for employment and insurance coverage based on the use of certain genetic tests and to limitations on the use of information derived from those tests.	4/4/97 - Withdrawn from calendar

2-2

Table 8-1.
State Genetic Employment Legislation Introduced in 1997
(continued)

STATE	HOUSE BILL	SENATE BILL	SUMMARY	STATUS
Vermont	HB 191		Restricts the use of genetic testing for employment membership in a labor organization, professional licensing or insurability and provides safeguards for confidentiality of genetic testing information.	2/28/97 - To House Committee on Judiciary
Wisconsin	AB 69		Relates to remedies under the fair employment law for a complainant who quits his or her employment, membership or licensure voluntarily.	2/10/97 - To Assembly Committee on Labor and Employment

Source: Compiled by Kelly Fox, NCSL, October 1997.

2-4

PHILL KLINE

REPRESENTATIVE, 18TH DISTRICT

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CHAIRMAN,
HOUSE APPROPRIATIONS COMMITTEE

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

Thursday, March 4, 1999

Dear Mr. Chair and members of the Committee:

Thank you for the opportunity to speak to you today regarding the reasons I believe Senate Bill 22 should become law. When our founding fathers first articulated the resounding truth that all men are created equal they set the world on its head. For in that day, the commonly held belief granted the authority of any declaration of rights to be made by government, not any self-evident truth.

Yet, many of the framers of the Declaration did not know the fullness nor power of the idea they articulated. Many were slaveholders and women were denied participation in their deliberations. Some would be surprised today of the breadth of humanity which falls within reach of their bold declaration. Others, I am certain, would rejoice at the present day. They knew that what they could not then do politically, the progressive march of truth would eventually gain, though at great cost with bloodshed, turmoil and conflict.

The authors of the Declaration of Independence were not making a statement of the physical conformity of human beings. Their intent was not to claim that all of us have the same capabilities, intellectual capacity or physical strength and stamina. Rather, the Declaration is a celebration of the immeasurable qualities and capacity of the human spirit. The founding fathers were declaring to the world that no power of government has the right or privilege to impede the divine grant of authority for any human spirit to find full expression, as long as that expression does not harm the rights of others.

Over two centuries later the fullness and richness of this call for equality is yet to reach its full bloom in this nation. There are still many who are wrongfully denied opportunity for circumstances beyond their capacity to control. Yet we strive forward, and this bill is a step forward.

The genetic proclivity towards disease is not the manifestation of disease. The potential of infirmity is not the inability to perform a job. The physical forces discovered in a gene are neither definable nor controllable by their bearer. Do we really desire to limit human potential to an actuarial table?

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There are many that will say to deny this form of discrimination is to foist the cost of one person's frailty on another. They are correct in that our nation, beyond the bounds of human compassion, does not support the forced payment of one, for another's failing. To do so is unjust confiscation. The proclivity to a disease, however, is not a certainty.

The day is soon coming when I can pluck a hair from your head, plug the results into a table and inform you of the likelihood of illness in 30 years. Yet, this projection ignores the potential of cure, the advance of science, the impact of environment and the possibilities of the human spirit.

There are others who will say that it is unjust for those with full genetic health to pay for the defective health of another through higher premiums, or health care costs. I would ask: what damage to the concept of freedom for certain individuals to potentially be stamped as defective, with lesser opportunity and rights at the moment of birth?

Yet, our founding fathers had an even more radical notion than the belief that society is best served by the protection of freedom. Our founding fathers firmly believed that freedom, and inherent rights, and equality before the law, were concepts of truth, which held their own power. That the march of these truths would destroy any culture, which denied their existence. You see, our founding fathers mutually pledged to each other their very lives in order to allow the full expression of potential by their neighbor.

Did they recognize their pledge had a cost? Yes, they fought a war. But they believed in doing that which is right, regardless of the cost. They were radical in their protection of human freedom.

Do not let the march of science, which has unleashed human potential in so many ways, be an instrument to define that capacity by the vagaries and expressionless numbers contained in an actuarial table.

TESTIMONY OF KANSAS HUMAN RIGHTS COMMISSION
BEFORE THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
REGARDING S.B. 22, MARCH 11, 1999
WILLIAM V. MINNER, EXECUTIVE DIRECTOR
ROBERT M. HOLLAR, ASSISTANT DIRECTOR
BRANDON L. MYERS, CHIEF LEGAL COUNSEL

The Kansas Human Rights Commission requests that it be allowed to provide the following written testimony before the Committee, but does not request to address the committee as a conferee during the hearing on this bill.

S.B. 22 proposes to amend the Kansas Act Against Discrimination (K.S.A. 44-1001, et seq., hereinafter "KAAD") to prohibit the use of genetic testing of the results of genetic screening as an employment technique, thereby making such procedures unlawful discriminatory employment practices under KAAD. KHRC enforces and administers the KAAD and the Kansas Age Discrimination in Employment Act. S.B. 22 would add this as a basis upon which to file an employment discrimination complaint with KHRC. KHRC investigates such complaints, provides opportunities for mediation and conciliation of the complaint controversies, and holds public hearings proceedings as to complaints found to have probable cause that are not resolved by settlement. Final orders of the Commission resulting from the public hearing process are appealable to State District Court and the Kansas appellate court system.

The Commission has received no inquiries or information which leads it to believe that genetic testing/screening is being used by employers within the State of Kansas in the manner proposed for prohibition by S.B. 22. However, when a similar bill was proposed to the Legislature in 1995, our staff was informed by its proponent that the purpose was to establish a statement of public policy within Kansas statutes against such procedures to assure employers did not begin to use them. The purpose was to stop it before it started. We presume that is the intent of the

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current proposal. Although KHRC has not requested this amendment, the agency does not oppose it.

When the previous bill was proposed, the KHRC was still in the midst of trying to deal with a crisis of burgeoning caseload, case processing delays and a backlog of complaints awaiting investigation. The Commission has successfully dealt with those problems. Attached hereto is a graph which charts the progress the Commission has made on these issues. While the Commission wishes never to return to a time when it was as overburdened as it previously was, the possibility of additional responsibilities and cases due to an expansion of KAAD is not as significant an issue as it has been.

In addition, it is possible that complaints about genetic testing/screening could arise under the existing statutory form of the KAAD and the Commission could be construed to already have some such responsibilities. It is therefore difficult to contend that the new provisions would necessarily prompt more work for the Commission. When the previous bill was proposed, we reviewed the position of the United States Equal Employment Opportunity Commission, (which enforces employment discrimination laws at the Federal level which have provisions similar to those of the KAAD) as to whether such practices violated the Americans with Disability Act. The disability discrimination provisions of the KAAD are patterned upon the Federal ADA, Title I of which is enforced by EEOC. As can be seen by the attachment hereto, EEOC took the position that using genetic screening/testing results could violate the provisions of ADA in that an otherwise qualified person could be denied employment or have an adverse employment decision taken toward them because they were "regarded" by an employer as having a disability.

Since KAAD provisions parallel those upon which the EEOC's ADA analysis is based, it is arguable that genetic screening/testing provisions addressed by S.B. 22 are already covered and prohibited by KAAD as a volition of its disability discrimination provisions. Similarly, it could be argued that if an employer screened out individuals for certain conditions that could be proven to impact a particular race more than others (for example, if all with a propensity for sickle-cell anemia were screened out, that arguably might have an adverse discriminatory impact upon African-Americans), or if screening, say, for certain cancers might impact along gender lines, etc., there could be a violation of Federal Title VII or KAAD provisions prohibiting discrimination on the basis of race, ancestry, sex, etc. using a disparate impact theory of discrimination. In short, KAAD may have provisions that could be used to challenge genetic screening/testing employment decisions as discriminatory. However, there is not precedent based upon caselaw resulting from the investigation and litigation of any KAAD cases on this point, so it is open to interpretation. If the Legislature wishes to clarify that this is a prohibited discriminatory practice under the KAAD, S.B. 22 would accomplish that, even if it might be arguably also be prohibited under other interpretations of the existing KAAD. Arguably the prohibitions within S.B. 22 support existing provisions and intent of the KAAD. That is, an employer who wished not to hire someone who is black might claim they were not hiring instead because of the person's genetic propensity to get sickle-cell anemia, and attempt to use that pretext to cover up a racially-discriminatory motive underlying the employment decision. There may well be good reason to add the proposed provisions to KAAD.

Whether or not interpretations of existing law might already prohibit genetic testing/screening, there appears to be a national trend to amend state antidiscrimination law to clarify or add

provisions to assure it is prohibited in a manner similar to that proposed by S.B. 22. Attached is a publication from a legal service KHRC subscribes to which mentions several states having adopted such provisions last year, including Oklahoma and Missouri. When we reviewed the situation in response to the previous bill, we found at that time that Oregon had such a law. Officials in Oregon indicated they had received no inquiries or complaints regarding any employer using genetic testing/screening.

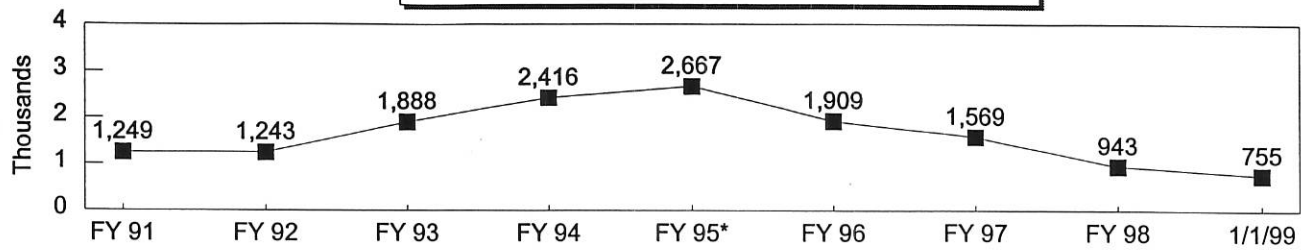
Attached hereto is the Fiscal Note requested of the Commission. Basically, we would see the fiscal expense of adding this to KAAD as being negligible, unless there is a reason to believe that we do not currently know of, that a number of complaints will be forthcoming.

If the Legislature chooses not to add this to the KAAD, but wishes to nevertheless make a statutory prohibition against employment practices based upon genetic testing/screening, it could adopt provisions similar to those which prohibit discrimination based upon military status. That was originally proposed as an amendment to KAAD, but there was concern about adding to KHRC's responsibilities at a time the agency was overburdened with cases. There was also consideration as to whether it was necessary to have an administrative agency proceeding available to address the issues. Instead, it was decided to just give victims of such practices the right to bring a private lawsuit in State District Court and seek damages. That might be an option as to this issue. However, given the argument that such practices might be discriminatory under the KAAD in some regards already, if a direct lawsuit action was established by statute, the Legislature might wish to consider amending KAAD to clarify that the same things are not also prohibited under the KAAD. Otherwise, there might confusingly end up to be two different

means of redress. Perhaps that would be seen as good, but it is an issue to consider. If clarification that KAAD did not cover this and that such matters should proceed under court action authorized by another statute, an amendment to K.S.A. 44-1006 would probably be the way to do that. In that section it is clarified that KAAD does not prohibit or mandate certain matters, and it could be added therein to state that nothing within the KAAD shall be interpreted as prohibiting genetic screening/testing as an unlawful discriminatory practice.

Open Cases

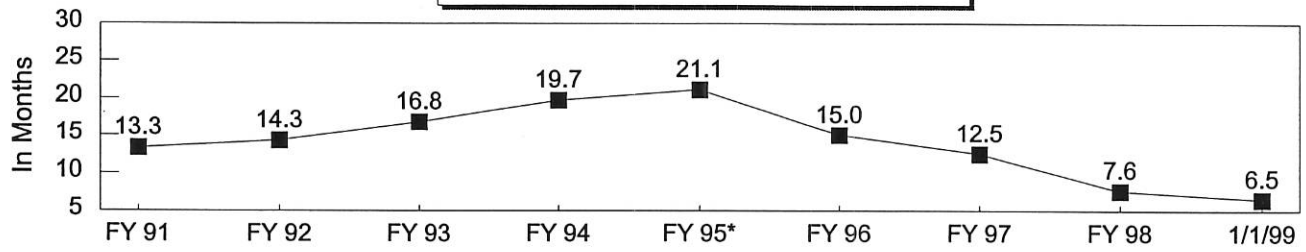
As of June 30



*The total on March 27, 1995 was 2,768 open cases, the highest total ever.

Processing Time

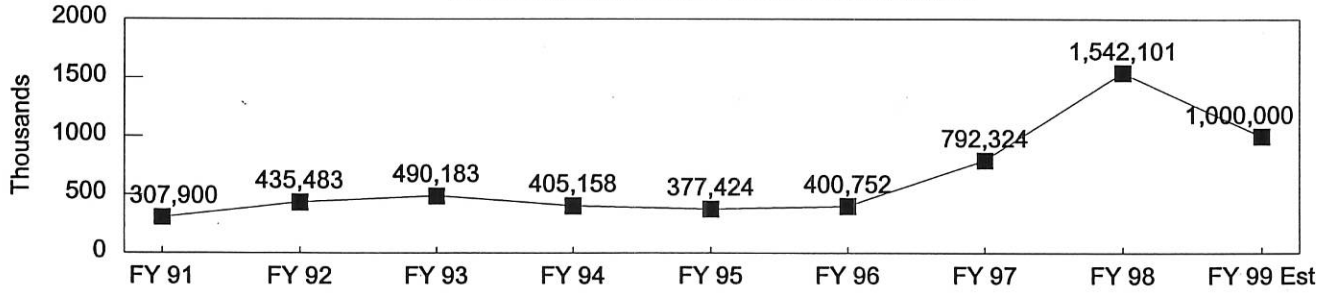
As of June 30



*The longest processing time was approximately 22 months in March, 1995.

Total Annual Recovery

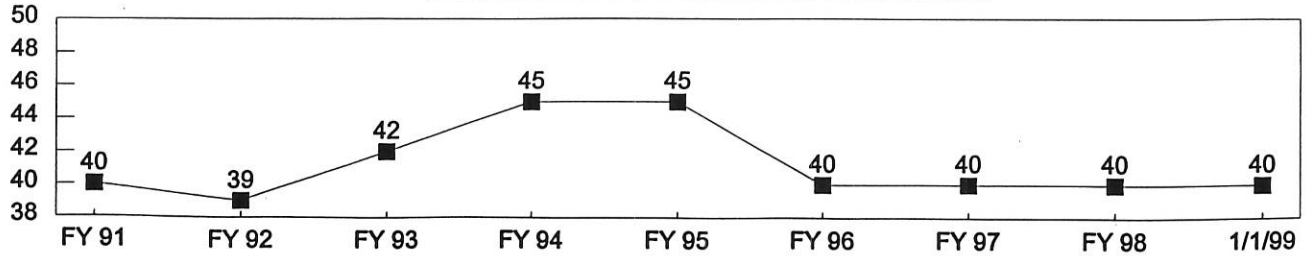
As of June 30



Of the $4.75 million collected from FY 91 to FY 98, nearly half was collected in FY 97 & FY 98.

Authorized Positions

As of June 30



Currently authorized 37 FTE and 3 Unclassified Temporary positions

Memorandum

To: Rep. Garner

From: Brandon L. Myers, Chief Legal Counsel, Ks. Human Rights Commission

Re: H.B. 2250; KAAD amendments to prohibit employment practices based upon genetic testing

Date: Feb. 13, 1995

Per our discussion, you indicated that this bill was based upon and Oregon statute. I contacted the Oregon agency (counterpart to KHRC) and spoke to Sue Jordan one of their agency officers and the agency person who was the agency's legislative liasion on the amendment to the Oregon statute. I attach a copy of the Oregon statute. She told me that there was legislative interest in the issue and it was amended into the Oregon antidiscrimination in employment statutes two years ago. She said that presently, and at the time the amendment was made, there has not been any indication that this practice is occurring in Oregon. She said that since they have had the law on the books, they have had no inquiries from anyone wishing to file a complaint over this, and have had no complaints filed over it. (She says that in this regard the genetic testing prohibition of the statute is similar to another section of the statute which prohibits employment screening based upon brain wave testing: neither have had any inquiries or complaints, but are more preventive than reactive, as you described the 2250 proposal). She also indicated that Oregon prohibits employment discrimination on the basis of disability with ADA-type language similar to that in the KAAD, and that she agrees that genetic testing/screening in employment based upon regarding a person as having a disability if they have certain genetic makeups might be already prohibited under the disability provisions of the statute. She also agreed that screening on certain bases for conditions which impact females more than men and vice versa, or impact certain races more than others, might already be prohibited as disparate impact discrimination under existing race, sex, etc. provisions of the employment discrimination laws.

Please keep us apprised of this bill. While I don't believe KHRC has any major opposition to the proposal, with our backlog, adding new KAAD provisions is difficult. We would probably ask for more resources to enforce these proposed new provisions, although it is hard to calculate the impact; there might be no increase in complaints filed with us if Oregon is an example. Still, we remain concerned about adverse amnedments to the KAAD being tacked onto the bill which we would have to oppose. I hope this information is helpful.

cc: Michael J. Brungardt, Executive Director
Robert Lay, Assistant Director

subsection (2) of this section, any person aggrieved by an unlawful employment practice prohibited by subsection (1)(b) of this section may seek compensatory damages or $250, whichever is greater. [1981 c.470 §5; 1985 c.404 §3; 1989 c.890 §10]

659.036 Employer prohibited from obtaining, seeking to obtain or using genetic screening information; remedies. (1) It shall be an unlawful employment practice for an employer to seek to obtain, to obtain, or to use genetic screening information of an employee or a prospective employee to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an employee or a prospective employee.

(2) If an employee or a prospective employee files a complaint with the Bureau of Labor and Industries alleging violation of subsection (1) of this section, the bureau shall cause any necessary investigation to be made and shall enforce subsection (1) of this section in the manner provided in ORS 659.010 to 659.110 and 659.121. [1993 c.719 §2]

659.037 Notice that discrimination will be made in place of public accommodation prohibited; age exceptions. Except as provided by laws governing the consumption of alcoholic beverages by minors and the frequenting of minors in places of public accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 55 years old and older, no person acting on behalf of any place of public accommodation as defined in ORS 30.675 shall publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation will be refused, withheld from or denied to, or that any discrimination will be made against, any person on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age and older. [1957 c.724 §10; 1973 c.714 §8; 1977 c.770 §2]

659.040 Complaints of unlawful employment practices. (1) Any person claiming to be aggrieved by an alleged unlawful employment practice, may, or the attorney of the person may, make, sign and file with the commissioner a verified complaint in writing which shall state the name and address of the person, employer, labor organ-

ion or employment agency alleged to e committed the unlawful employment tice complained of and which complaint ll set forth the particulars thereof. The plainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year after the alleged unlawful employment practice.

(2) Whenever the Attorney General or commissioner has reason to believe that any person, employer, labor organization or employment agency has committed an unlawful employment practice, the Attorney General or the commissioner may make, sign and file a complaint in the same manner as a complaint is filed under subsection (1) of this section.

(3) Any employer whose employees, or any of them, refuse or threaten to refuse to abide by ORS 659.010 to 659.110, 659.400 to 659.460 and 659.505 to 659.545 or to cooperate in carrying out the purposes of said statutes may file with the commissioner a verified complaint requesting assistance by conciliation or other remedial action.

(4) The commissioner shall notify the person against whom a complaint is made within 30 days of the filing of the charge. The notice shall include the date, place and circumstances of the alleged unlawful employment practice. [Amended by 1957 c.724 §13; 1971 c.723 §1; 1977 c.453 §2; 1977 c.770 §3]

659.045 Complaints of discrimination in housing or in place of public accommodation or in private vocational, professional or trade school. (1) Any person claiming to be aggrieved by an alleged distinction, discrimination or restriction on account of race, religion, sex, marital status, color, national origin or age if the individual is 18 years of age or older made by any place of public accommodation as defined in ORS 30.675 or by any person acting on behalf of such place or in violation of ORS 30.685 or any person claiming to be aggrieved by a violation of ORS 345.240 or any person claiming to be aggrieved by a violation of ORS 659.033 may, or the attorney of the person may, make, sign and file with the Commissioner of the Bureau of Labor and Industries a verified complaint in writing which shall state the name and address of the person, the place of accommodation or the vocational, professional or trade school alleged to have committed the act complained of and which complaint shall set forth the particulars thereof. The complainant may be required to set forth in the complaint such other information as the commissioner may deem pertinent. A complaint filed pursuant to this section shall be filed no later than one year

4-8

6-4

KANSAS HUMAN RIGHTS COMMISSION

Date 4/28/95

To Rep. Garner

From Brandon Myers

____ Ready for finding

____ For your approval

____ Please take necessary action

____ Please prepare reply for my signature

____ For your comment

____ Please note and return

____ For your signature

____ Please confer with me

____ As you requested

____ Per our telephone conversation

_✓_ For your information Re: HB 2250 issues

____ File

Fair Employment Practices
SUMMARY OF LATEST DEVELOPMENTS

April 24, 1995

Route to. . . _____/_____/_____

Retain this issue in the Current Reports binder.

Highlights . . .

Non-harassment v. freedom of speech. See conference report, page 45.

Pay equity initiatives proposed, see special report, page 46.

Military policy on gays no good, page 44.

In the Binders . . .

North Dakota amends Human Rights Act and Equal Pay Act, effective July 1, 1995, at 457:11 and 457:161, respectively.

Genetic Information Bias and ADA

Characterizing discrimination on the basis of genetic information as unlawful under the Americans With Disabilities Act is a "natural extension" of all that EEOC has already said on the subject, says Peggy Mastroianni, assistant legal counsel of EEOC's ADA policy division.

EEOC's recent *Guidance on the Definition of the Term "Disability" Under ADA* is an "interpretation of the law that's already there," Mastroianni says at a Washington, D.C. seminar co-sponsored by the D.C. Bar and George Washington University's National Law Center.

An individual who is "regarded as" having an impairment that substantially limits a major life activity is covered under the third prong of ADA's definition of disability. An employer that discriminates on the basis of genetic information is treating or "regarding" an applicant or employee as if he or she has a disability, Mastroianni explains.

The Guidance gives an example of a job applicant whose genetic profile reveals an increased susceptibility to colon cancer, although the applicant has no symptoms and may never develop the disease. (See *FEP Binder* at 405:7280.) After making a conditional job offer, the employer learns about the applicant's susceptibility. It then withdraws the job offer because of concerns about productivity, insurance costs, and attendance. Because the employer is treating the applicant as having an impairment that substantially limits a major life activity, the applicant is covered under the definition of disability, says the Guidance, which the commissioners unanimously approve.

What's New With FMLA?

The Labor Department's Wage and Hour Division received 2,065 complaints under the Family and Medical Leave Act and completed action on 1,967 of them as of Dec. 31, 1994, the agency says. The Commission on Family and Medical Leave schedules a hearing in Chicago for May 8, while 35 percent of respondents to a Hewitt Associates study provide greater benefits than the FMLA requires.

Of the 61 percent of FMLA complaints found to be valid, 63 percent involve refusal to reinstate an employee following FMLA leave, 20 percent involve a refusal to grant leave, 8 percent involve a refusal to maintain group health benefits, and 8 percent involve discrimination against an employee using leave, according to the latest DOL statistics.

Hearing Scheduled in May

The Labor Department's Commission on Family and Medical Leave will conduct a hearing in Chicago May 8 to examine the costs and benefits of the Family and Medical Leave Act.

The commission will examine existing policies relating to family and temporary medical leave, including employer policies not covered under the Act and policies that have provided temporary wage replacement during periods of family and medical leave. It also will look at alternative and equivalent state enforcement, methods used to reduce administrative costs, and the ability of employers to recover premiums. (Contact Susan King, executive director, Commission on Family and Medical Leave, U.S. Department of Labor, 200 Constitution Ave. N.W., Room S-3002, Washington D.C. 20210, (202) 219-4526, Ext. 102.)

Hewitt Associates Study

Only 876 of the 1,035 respondents to its survey on employer benefits provided information on their family and medical leave policies, according to Hewitt Associates, Lincolnshire, Ill. Sixty-five per-

4-10

Special Report

Changes to State Job Discrimination Laws Made in 1998

The most dramatic change to state fair employment practice laws and regulations made in 1998 was more new laws regulating genetic testing and protecting the privacy of genetic information. Nine states enacted laws protecting the confidentiality of genetic test results; some of these laws also prohibit discrimination in employment based on genetic information. These and other significant changes to state job discrimination laws made in 1998 are outlined below.

■ *Arizona* amended its AIDS Testing and Confidentiality Act to add a definition of "significant exposure risk," effective Aug. 21 (453:1151).

■ *California* amended its Fair Employment and Housing Act to prohibit employers from discriminating against employees who are predisposed to a hereditary disease and to add genetic characteristics to the definition of "medical condition" (453:2711)and amended the Unruh Act, which prohibits discrimination in business transactions, to add a section specifying that actions can be brought in any court of competent jurisdiction, including small claims court if the amount of the damages sought does not exceed $5,000, effective Jan. 1, 1999 (453:3001).

California also amended its Discrimination in Public Employment law to provide that discrimination complaints must be filed within one year of the alleged act (453:3161) and its State Civil Service Affirmative Action law to except bargaining units 5, 6, 16, and 19 from the requirement to maintain the same composition of the workforce after a layoff (453:3175), effective July 3.

■ *Colorado* amended its Discrimination in State Employment law to include the "performance management review process" as another option for review, allow employees who are not under the Colorado Peak Performance to file formal grievances and also prohibit certain issues from being grievable, and allow any person to petition the director to review and investigate matters involving the administration of the State Personnel System, effective July 2 (453:4511).

■ *Connecticut* amended its Human Rights and Opportunities law to provide that a written finding of reasonable cause or no reasonable cause must be made within 190 days of the initial determination, which must be made within 90 days of the filing of the answer, and to provide an additional 50 days for attempted conciliation before the complaint is certified for hearing; to require that the commission report annually to the judiciary committee the number of cases that have not met the law's time requirements; and to allow a complainant to ask the court for an order requiring the issuance of a reasonable cause finding for a complaint pending for more than 2 years, effective July 1.

Another amendment to the Connecticut Human Rights and Opportunities law prohibits discrimination against individuals on the basis of genetic information, effective Oct. 1 (453:4611).

■ *Delaware* amended its Fair Employment Practices Act to add a prohibition against employment discrimination based on "genetic information" (453:7011) and recodified its AIDS Testing Confidentiality law (453:7111), effective July 17.

■ *Florida* amended its AIDS Act to require informed consent before an HIV test may be ordered and to provide for the confidentiality of test results, except under certain circumstances, effective July 1 (454:111).

■ *Hawaii* amended its Fair Employment Practice Law to allow employers to inquire about and consider a prospective employee's conviction records if they bear a rational relationship to the duties and responsibilities of the position sought, effective July 15 (454:1871).

■ *Idaho* amended its Commission Rules to provide that the staff director may close a case for administrative reasons and to add a notice-of-right-to-sue provision requiring that a suit be filed within 90 days of the notice, effective July 1 (454:3901).

■ *Illinois* amended its Hum Rights Commission Procedural Rul to specify that a motion to compel department employee to testify mu be served on the Department of H man Rights chief legal counsel, effe tive Jan. 1 (454:5011).

■ *Indiana* amended its State E ployee's Family Leave Rules to pr vide that sick leave accrues to fu time employees at the rate of 7 hours for every two months of e ployment and an additional 7.5 hou for every four months and to pa time employees at 3.75 hours for e ery two months of employment a an additional 3.75 hours for eve four months, effective Jan. (454:5745).

The state also amended its Equ Pay Act to include "quality of produ tion" as an exception for whi wages can be paid differently to ea sex, effective July 1 (454:5571).

■ *Iowa* amended its Civil Rigl Act to protect the confidentiality mediation communications and doc ments and to prevent their disclosur except in specified circumstances, e fective July 1, and to specify that a ministrative law judges must be en ployed by either the Civil Righ Commission or the Division of A ministrative Hearings to issue a d termination of probable cause or n probable cause for complaints, effe tive July 1, 1999 (454:6311).

■ *Maine* enacted a new Genetic I formation Privacy Act to prohibit en ployers and insurers from discrim nating based on genetic informatio a refusal to submit to a genetic tes or the results of a genetic test, effe tive June 30 (455:2231).

The state's prohibition against dis crimination based on sexual orienta tion, contained in the Human Right Act, was repealed by voters Feb. 1 (455:2011).

■ *Maryland* amended its State Em ployees' Family and Medical Leav Law to allow, not require, regulation providing that eligible employee may use other available accrue leave concurrently with family an medical leave, effective Oct. (455:3851).

 FEP ISSN 0000-0000

The state also amended its Commission on Human Relations Rules of Procedure to provide more flexibility to the general counsel in drafting statements of charges, broaden the standard of review of agency decisions, and provide notice of the commission's procedures for retaining and disclosing investigative case files, effective Oct. 19 (455:4071).

■ *Massachusetts* enacted a law requiring state officials to develop goals for employing women in building trades on state construction projects, effective Aug. 10 (455:4915).

The state also enacted a new Family, Medical and School Leave law that allows eligible employees to take up to 24 hours of unpaid leave, in addition to leave granted under the federal FMLA, to participate in school activities and to attend medical appointments with their children or elderly relatives, effective Aug. 4 (455:4801).

Massachusetts overhauled its Discrimination Commission Regulations to address a state court ruling guaranteeing employers a jury trial in discrimination cases, include a requirement that the commission complete its processing within 18 months, provide that the commission review each complaint before investigating, allow the parties to attempt mediation before filing a complaint, allow the use of pseudonym, authorize the commission to issue subpoenas, streamline procedures for commission-initiated complaints, incorporate a presumption that all materials held by the commission are not subject to public disclosure, and clarify the commission's position that no waiver agreement between parties can prevent the commission's processing of complaints, effective Jan. 1, 1999. (455:5061).

■ *Michigan* enacted a new State Business Contracts for Persons With Disabilities law to provide that persons with disabilities be awarded a percentage of total expenditures from executive branch departments to promote business opportunities for such persons, effective May 5 (455:5771).

Michigan also amended its Bias Against Persons With Disabilities law to change "handicap" and "handicapper" to" disability" and "person with a disability," effective March 17 (455:5581).

■ *Minnesota* enacted a new Breast-Feeding Rights in Employment Law that requires employers to provide reasonable unpaid break time for a nursing mother to express breast milk for her child, effective Aug. 1 (455:6267).

The state also amended its Affirmative Action in Metropolitan Government law to raise the threshold for government contractors required to have affirmative action plans to contractors with contracts in excess of $100,000 and with more than 40 full-time employees, effective April 21 (455:6673).

■ *Mississippi* amended its Discrimination in State Employment law to cover all, not just physical, disabilities, effective July 1 (455:7271).

■ *Missouri* enacted a new Genetic Testing Information Bias law prohibiting employers from discriminating against employees based on genetic testing information, except when related to job responsibilities, and making such information confidential and providing penalties, effective Jan. 1, 1999 (455:7701).

The state also amended its Human Rights Law to change "handicap" to "disability" and to make more specific the references to sections in the law where, when the administrative processing of complaints has not been completed, the commission must issue a right-to-sue letter on request, effective Aug. 28 (455:7511).

■ *New Hampshire* revised its Commission on Human Rights Rules, effective Feb. 5 (456:3713).

■ *New Mexico* enacted a new Genetic Information Privacy Act that prohibits the collection or retention of genetic information without the informed, written consent of the subject or an authorized representative, makes exceptions for the release of information under certain circumstances, and provides penalties, effective May 20 (456:5661).

The New Mexico Human Rights Division/Commission Rules of Procedure also were revamped to implement changes in the Human Rights Act, effective Sept. 1 (456:5991).

■ *North Carolina* amended its Contested Cases and Alternative Dispute Resolution law to provide that a state department or agency has 60 days to take remedial action after receiving a discrimination complaint from a state employee and to authorize state employees to appeal directly to the State Personnel Commission if they think they have been discriminated or retaliated against or harassed, effective Aug. 15 (456:8361).

■ *Ohio* amended its Procedural and Substantive Civil Rights Commission Rules to repeal a section on testing and selection procedures, revise some definitions, and [illegible]ce "handicap" with "disability," [illegible]c-tive Jan. 11 (457:1651).

■ *Oklahoma* enacted a new Genetic Nondiscrimination in Employment law that prohibits discrimination based on genetic information and provides penalties, effective July 1 (457:2301).

■ *Oregon* amended its Civil Rights Rules to give the Civil Rights Division subpoena power in investigations of unlawful discrimination, require that at the end of an investigation the division dismiss the complaint or issue a Substantial Evidence Determination, and allow the informal disposition of contested cases, effective Feb. 11 (457:4811).

The state also amended its Sex Discrimination Rules to delete a provision that allowed an employer to request a medical verification of a pregnant employee's ability to do her job (457:4881) and its Handicapped Employment Rules to define "otherwise qualified disabled person" and "essential functions," among other changes, effective Feb. 3 (457:4981).

■ *Rhode Island* amended its Fair Employment Practices Act to add a section allowing the Rhode Island Commission to investigate, take evidence, consider claims, or issue findings on matters that could have been brought before any other state administrative agency, but were not, and to allow the commission to grant relief on matters decided by another state administrative agency, effective July 9 (457:7461).

The state also amended its Domestic Abuse Bias in Employment law to prohibit discrimination against an employee who refuses to seek or obtain a protective order because of domestic abuse and to provide that courts cannot award punitive damages against the state or its political subdivision, effective July 22 (457:8075).

■ *South Carolina* enacted a new Genetic Information Privacy Act to protect the privacy of genetic information under specified conditions and to provide the means by which genetic information may be used and disclosed, effective Nov. 26 (458:101).

■ *Tennessee* amended its Human Rights Commission Rules and Regulations to authorize a subordinate supervisor, chosen by the commission's executive director, to designate an investigator from a group of contract investigators or from the commission

4-12

to investigate a complaint, effective June 26 (458:2411).

■ *Utah* amended its Antidiscrimination Act to make the commissioner responsible for the membership, appointments, and terms of the members of the Antidiscrimination Advisory Counsel, effective May 4 (458:3561).

The state also amended its State Employees' Rules on Discrimination, Sexual Harassment to redefine "sexual harassment" to include unwelcome and pervasive behavior of a sexual nature and to provide that quid pro quo behavior is sexual harassment, effective Sept. 15 (458:4351).

■ *Vermont* enacted a new Genetic Testing in Employment law that prohibits discrimination based on genetic testing or test results, prohibits requiring genetic information as a condition of employment, provides penalties, and allows civil actions, effective Jan. 1, 1999 (458:4621).

■ *Virginia* amended its Handicapped Discrimination law to insert the word "conservator" in the definition of "consumer," effective Jan. 1 (458:5271).

■ *Washington* amended its Law Against Discrimination in Employment to incorporate the Washington State Civil Rights Act, which prohibits the government from discriminating against or granting preferential treatment to individuals or groups based on race, sex, color, ethnicity, or national origin, effective Dec. 3 (458:6241).

The state also amended its Disability Regulations to define "dog guide" and "service animal" and to prohibit discrimination against an individual who uses a dog guide or service animal, effective April 24 (458:7311).

■ *West Virginia* amended its Human Rights Act by adding a section that establishes a civil action by the attorney general for violence and threats of violence motivated by race, color, religion, sex, ancestry, national origin, political affiliation, or disability, effective June 12 (458:7741).

The state enacted an Equal Pay for State Employees law to protect state workers from gender discrimination in wages paid for comparable work, effective June 11 (458:7947). West Virginia also extended the existence of its Human Rights Commission by amendment to its Human Rights Act, effective June 12 (458:7741), and extended the existence of its Women's Commission by amendment to its Women's Commission law, effective June 2 (458:7991).

■ *Wisconsin* amended its Fair Employment Act to change the terms "handicapped individual" to "individual with a disability" and "handicap" to "disability," effective April 30 (458:8661).

The state also amended its Family Leave Act to empower the State Personnel Commission to handle complaints related to state employees' family or medical leave, effective May 13 (458:9001), and its Discrimination by State Contractors law to add "Prader-Willi syndrome" to the definition of "developmental disability," effective Jan. 3 (458:9251).

Affirmative Action

Court Approves Remedial Relief for Whites in Reverse Bias Suit

A long-running challenge to an affirmative action program at Illinois State University is winding down with a federal district court's approval of remedial relief for 46 white male applicants who were unlawfully denied an opportunity to access janitorial positions.

The public university agreed to settle the reverse discrimination claims for $118,000 soon after the court ruled in 1996 that a short-term apprenticeship program for women and minorities violated Title VII because it excluded white men (72 FEP Cases 382).

The Justice Department's Civil Rights Division and the university spent the last two years identifying claimants and determining how they would be compensated, according to the university's attorney, Carol J. Posegate.

With the court's entry of the final order, "I don't anticipate any further involvement by the court unless there is a problem with implementation," said Posegate, of Giffin, Winning, Cohen & Bodewes in Springfield, Ill.

$110,000 Goes to 31 Claimants

Of the $113,000 settlement fund, $3,000 was initially set aside for the single named plaintiff, leaving $110,000 and accumulated interest to be distributed to 31 claimants who are entitled to monetary relief under the court order. The parties agreed to prorated individual back pay awards ranging from about $500 to about $4,700.

Most of the claimants who are not already employed by the university in building service worker positions can elect to be placed on a priority hiring list for vacancies. Those who accept priority hire offers and the 10 claimants already employed in these positions will be given retroactive seniority for calculation of pay and benefits and determination of job assignments.

Between 1982 and 1991, the university operated a "learner program" for female and minority building service workers. The program was ostensibly created out of concern that most positions were being taken by military veterans, most of whom were white men, whose score on the civil service exam was enhanced by their veteran status. The program allowed participants to bypass the exam.

The court found that none of the 127 participants hired by the university into building service worker jobs between 1982 and 1991 were white males, despite "the fact that nearly half of the local labor pool were white men." The program was discontinued in 1991 after a reverse discrimination charge was filed with the EEOC, but revived again in 1992 without exclusions on participants (*U.S. v. Board of Trustees of Illinois State University*, C.D. Ill., No. 95-3067, 12/22/98).

 FEP ISSN 0000-0000

FISCAL NOTE

Agency: Kansas Human Rights Commission (05800) Date: January 15, 1999

Bill Number : SB 22

Analysis: The Agency can not at this time estimate the number of additional cases, if any, that SB 22 would generate. One time additional printing cost would be required to update manuals and brocures. One time additional training costs would be required to train investigative staff on genetic testing.

Expenditures

		FY 2000	FY 2001	FY 2002
Salaries and Wages	100	0	0	0
Communication	200			
Freight & Express	210			
Printing & Advertising*	220	600	0	0
Rents	230			
Repairing & Servicing	240			
Travel & Subsistance	250			
Fee - Other Services*	260	150	0	0
Fees - Pro. Services	270			
Other Contractual Services	290			
Total Contractual Services		750	0	0
Food For Human Cons.	320			
Professional Supplies	360			
Stationery & Office Supp.	370			
Other Supplies	390			
Total Commodities		0	0	0
Total Capital Outlay	400	0	0	0
TAL		$750	$0	$0

Financing

	FY 2000	FY 2001	FY 2002
State General Fund			
1000-03	750	0	0
Total State General Fund	750	0	0
Fee Funds			
2282-00			
2404-00			
Total Fee Funds	0	0	0
Federal Funds			
3016-00			
Total Federal Funds	0	0	0
TOTAL	$750	$0	$0

* 50 copies of the KHRC Rules and Regulations at $5.00 per copy and 100 copies of the KAAD at $3.50 per copy. Training cost for investigators - 1 class.

BILL GRAVES, GOVERNOR
STATE OF KANSAS

KANSAS HUMAN RIGHTS COMMISSION
LANDON STATE OFFICE BLDG. - 8TH FLOOR
900 S.W. JACKSON ST. - SUITE 851-SOUTH
TOPEKA, KANSAS 66612-1258
(785) 296-3206

January 15, 1999

Mr. Duane A. Goossen
Director of the Budget
Division of the Budget
Capitol Building 1st Floor
Topeka, Kansas 66612

Dear Mr. Goossen:

In accordance with K.S.A. 75-3715(a), please find attached our analysis, projections and long-range effects of Senate Bill 22. If there are any questions regarding this Fiscal Note, please do not hesitate to contact either myself or Mike Hollar, my Assistant Director, at 296-3206.

Sincerely,

William V. Minner

William V. Minner
Executive Director

WVM:ch

4-15

REINSTATEMENT FEES SELECTED HEALTH PROFESSIONALS

Professional Group	Reinstatement Fee (Late Renewal)
Dentist	$50 fixed (65-1431)
Healing Arts Licensee	$500 maximum (65-2809)
Optometrist	$500 maximum (65-1509)
Pharmacist	$200 fixed (K.A.R. 68-11-1)
Podiatrist	$200 maximum (55-2012)
Psychologist (Phd)	$200 fixed (74-5320)

HHS
3-11-99
Atch #5

TESTIMONY OF THE

KANSAS DENTAL BOARD

IN SUPPORT OF SB 71

My name is Randall J. Forbes, I am an attorney and have been asked by Carol Macdonald, Administrative Secretary of the Kansas Dental Board, to present testimony on behalf of the Kansas Dental Board in favor of SB 71. This bill has been introduced at the request of the Kansas Dental Board and makes a few administrative changes to the Kansas Dental Act which the Board feels will be advantageous.

The amendment to K.S.A. 65-1431(e)(2) simply allows the Board to provide for an increased penalty for licensees who do not renew their license in a timely fashion. It is felt that this will encourage timely renewal and eliminate cost to the Board.

Although the proposed amendment allows a penalty up to $500, it is not anticipated that the Board would use all this authority at this time. Notwithstanding, setting the ceiling at $500 would eliminate the need to introduce new legislation in the future if an increased fine was deemed advisable.

The amendment to K.S.A. 65-1432 simply clarifies that licensees are to notify the Board when establishing a new practice location, as well as when they change a practice location. The Board feels that this information is necessary to its enforcement activities. Presently, there appears to be some confusion about the requirement.

The amendment to K.S.A. 65-1434 would give the Board the option to not require a person applying for licensure without examination to appear before the Board. Often times, these individuals must travel great distances because of the present requirement and the Board does not feel that these personal appearances before the Board provide a sufficient benefit in the licensure process to justify the expense and inconvenience.

The Board appreciates your consideration of its thoughts and respectfully requests your support of Senate Bill 71.

Randall J. Forbes

HHS
3-11-99
Atch #2

KANSAS DENTAL ASSOCIATION

Date: March 11, 1999

To: House Committee on Health and Human Services

From: Kevin J. Robertson, CAE
Executive Director

RE: Testimony in support of SB 71

Chairman Boston and members of the House Committee on Health and Human Services, I am Kevin Robertson Executive Director of the Kansas Dental Association. The Kansas Dental Association consists of approximately 1,000 members, representing 80% of Kansas' practicing dentists.

Today I am here in support of SB 71, which has been brought to you by the Kansas Dental Board to make three administrative changes/clarifications. The three changes would: 1) require a dentist who establishes a new secondary practice location to notify the Board within 30 days; 2) give the Board discretion to determine who must appear before them if licensing by credential from another state, and; 3) raise the maximum late fee for licensure from $50 to an amount not to exceed $500 as established by the Board.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions you may have at this time.

5200 Huntoon
Topeka, Kansas 66604-2398
785-272-7360

HHS
3-11-99
Atch #7