

Approved: 2/19/08

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:15 A.M. on February 13, 2008 in Room 784 of the DSOB.

All members were present except:

Brenda Landwehr- excused

Kasha Kelley- excused

Mario Goico- excused

Jill Quigley- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Dennis Hodgins, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Trinidad Galdean, Kansas Society of Human Resource Management

William V Minner, Kansas Human Rights Commission

Others attending: See attached list.

The Chairman opened the hearing on **HB 2771 - Concerning age discrimination.**

Renae Jefferies provided a memorandum explaining what Kansas statutes were effected by **HB 2771.** (**Attachment 1.**)

Representative Gordon asked if **HB 2771** was consistent with Federal law. Renae explained that the purpose for **HB 2771** was to make Kansas statutes consistent with Federal law.

**Trinidad Galdean of the Kansas Society of Human Resources** appeared as a proponent of **HB 2771**. His testimony supported making Kansas law consistent with Federal law and the laws of the majority of other states by amending the Kansas Age Discrimination in Employment Act to protect individuals 40 years of age and older. Another benefit of the change is to entice businesses to come to Kansas and retain those who are here. Another reason for supporting the bill is to have legislation that does not create litigation (**Attachment 2.**)

Representative Pauls asked if they had actually had complaints filed by those individuals between 18 and 40 years of age. Trinidad deferred to the Kansas Human Rights Commission and said that there were a small number of complaints from that age group.

Representative Brunk asked how the need for this change came up. Trinidad said that Kansas SHRM study in resource management saw the need to assist the legislators to see inconsistencies in Kansas law.

Representative Ruiz wondered if the statute should have language about sexual orientation. Trinidad said that since consistency was needed in all the states that this was being discussed at the Federal level. Kansas SHRM position would be consistent with the other states and the Federal level.

**William Minner, Executive Director of the Kansas Human Rights Commission** appeared as neutral on **HB 2771** and presented written testimony only. (**Attachment 3.**)

Representative Pauls asked several questions. "Is there a paper trail that indicates why the legislature was not interested in changing the age to 18 years of age?" Since the files are almost 20 years old we didn't go back and look at them but there was a lot of feedback from older workers that wanted the age increased from 70 years to no upper limit. There is no upper limit anymore, it is just 40 or more years. "The statute does allow forced retirement at age 65 so is there an upper limit?" There are a few exceptions but in general there is no upper limit. "Was there an action taken before 1983 to protect against age discrimination?" There were

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:15 A.M. on February 13, 2008 in Room 784 of the DSOB.

statutes only at the Federal level and at that time Kansas law was changed to make it consistent with the Federal statutes.

There were no more questions and the Chairman closed the hearing on **HB 2771** and announced that it would be worked on Thursday, February 14, 2008. The meeting was adjourned at 9:34 A.M.

COMMERCE & LABOR COMMITTEE

DATE: 2-13-08

NAME	REPRESENTING
Ruth Glover	KS. Human Rights Com.
William Minner	KS. Human Rights Commission
Brandon Myers	" " " "
Trinidad Galdean	KS Society for Human Resource Mgmt
Natalie Bugler	KS - SHRM
Kwala Wieru	KAS
Dennis Clements	Rep Ruiz
Christy	Rep Ruiz.

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MEMORANDUM

To: House Committee on Commerce and Labor  
From: Renae Jefferies, Assistant Revisor  
Date: February 13, 2008  
Subject: House Bill No. 2771

HB 2771 amends two statutes in the Kansas age discrimination in employment act, K.S.A. 44-1111 et seq.

K.S.A. 44-112, the definitions section, is amended to change the range of years covered under the act from "18 or more years" "age" to "40 or more years."

K.S.A. 44-1118 is amended by adding a new provision stating that nothing in the Kansas age discrimination in employment act "shall be construed to be inconsistent with the nondiscrimination provisions under another provision of the state or federal law."

**Testimony in Support of House Bill No. 2771**

**By Trinidad Galdean  
Kansas Society of Human Resource Management – State Council  
Wichita Society of Human Resource Management**

**Kutak Rock LLP  
8301 E. 21st St. North, Suite 370, Wichita, Kansas 67206  
Phone (316) 609-7900 – Fax (316) 630-8021**

Chairman Brunk along with Committee Members:

Thank you for the opportunity to appear before you in favor of HB 2771, which proposes to amend the Kansas Age Discrimination in Employment Act so that it consistently exists with federal statutes and regulations.

My name is Trinidad Galdean and I am an employment attorney with Kutak Rock LLP. I am appearing on behalf of over 2,000 members within the Kansas State Council of the Society of Human Resource Management (KS-SHRM) and the Wichita Society of Human Resource Management (Wichita SHRM).

In 1983, Kansas enacted the Age Discrimination in Employment Act, which prohibited discrimination against individuals between 40 and 70 years of age. In 1988, the Kansas Age Discrimination in Employment Act was amended to protect individuals 18 years of age or more.

In order to entice employers to set up their operations in Kansas, the state must maintain laws consistent with applicable federal requirements for all states. Kansas' existing law actually employs requirements that are more restrictive than federal requirements by expanding the federal Age Discrimination in Employment Act to individuals who are 18 years of age or older. The Kansas Age Discrimination in Employment Act should address age in the same manner as federal regulations and the majority of other states. The amendment proposes to bring Kansas statutes into alignment with federal standards by amending the Kansas Age Discrimination in Employment Act to protect individuals 40 years of age and older. Additionally, the proposed amendment provides for explicit language that the statute's intent is to be interpreted consistently with federal regulations.

We respectfully request that the Kansas Legislature follow the lead of federal regulations and implement a consistent application of employment law rather than providing more restrictive requirements on employers.

In conclusion, the members of KS-SHRM and Wichita SHRM appreciate the efforts of the Kansas Legislature in addressing the issues presented before all employers in the State of Kansas. We respectfully request that you support HB 2771 in an effort to maintain consistent application of employment law with federal regulations and with the majority of the other states by amending the Kansas Age Discrimination in Employment Act as provided by HB 2771.

TESTIMONY  
ON BEHALF OF THE  
KANSAS HUMAN RIGHTS COMMISSION  
BEFORE THE  
HOUSE COMMERCE AND LABOR COMMITTEE  
REGARDING H.B. 2771

BY  
EXECUTIVE DIRECTOR WILLIAM V. MINNER, CHIEF LEGAL COUNSEL BRANDON  
L. MYERS AND ASSISTANT DIRECTOR RUTH GLOVER  
FEBRUARY 13, 2008

The Commission wishes to provide only this written testimony pertaining to this bill.

H.B. 2771 proposes to amend the Kansas Age Discrimination in Employment Act, which is administered and enforced by the Kansas Human Rights Commission. That law currently prohibits age discrimination in employment against any person on the basis of age, with the definition of “age” at which such protections begin being age 18 or more years, to age 40 or more years. The Federal Age Discrimination in Employment Act protects persons of age 40 or more years from age discrimination in employment, and we understand this bill is intended to make State and Federal age discrimination provisions consistent in this regard.

Because of the timing of the introduction and hearings on this bill KHRC Commissioners have not had an opportunity to review its provisions in their regular meeting. However, staff believes the Commission will be essentially neutral and nonoppositional to the proposals within this bill.

In 1988 when the current provisions regarding over 18 years of age were added to the KADEA, the Commission had sought what this bill currently seeks—that coverage be for those of 40 or more years of age. The Federal Age Discrimination in Employment Act had been amended from covering those of age 40-70 by that time to those over 40 years of age, and a similar change was sought to the KADEA’s provisions of coverage of those 40-70 years of age to 40 years of age. This was deemed appropriate in order to maintain substantial conformity between State and Federal law in this regard and necessary to maintain KHRC’s worksharing agreements with the U.S. EEOC (which administers the FADEA). There was considerable public support for the proposed amendments, including a desire protect qualified older workers from mandatory at age 70, for example. Former members of the House Business, Commerce and Labor Committee inserted the 18 years of age provisions into the proposed bill and it became law despite testimony that there had been no great need for that type of provision within the law (although some other states and jurisdictions had various types of age discrimination coverage/protection for those under 40 within their laws).

The Commission’s experience in administering the 18 or more years of age provisions in the KADEA has been that few complaints alleging discrimination due to being under 40 years of age have been filed. As outlined in the Commission’s input for the Fiscal Note on this bill, little or no impact upon the Commission’s operations and administration of the KADEA would occur if H.B. 2771 were passed. A copy of the agency’s Fiscal Note is attached.

House Commerce & Labor  
Date: 2-13-08  
Attachment # 3

ERROL V. WILLIAMS, Chairman  
TOPEKA  
BETH M. BRADRICK, Ph.D.  
PITTSBURG  
JOHN CARMICHAEL  
WICHITA  
CLYDE HOWARD  
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February 12, 2008

**KATHLEEN SEBELIUS, GOVERNOR**

WILLIAM V. MINNER  
EXECUTIVE DIRECTOR  
RUTH GLOVER  
ASSISTANT DIRECTOR  
BRANDON L. MYERS  
CHIEF LEGAL COUNSEL  
JUDY FOWLER  
SENIOR LEGAL COUNSEL  
CATHERINE WALTER  
SENIOR LEGAL COUNSEL  
BILL WRIGHT  
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ADMINISTRATOR  
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JANE L. NEAVE  
WICHITA INVESTIGATIVE  
ADMINISTRATOR  
RICK FISCHLI  
RACIAL AND OTHER PROFILING  
ADMINISTRATOR  
BETH MONTGOMERY  
OFFICE MANAGER

Amy Penrod  
Division of the Budget  
900 S.W. Jackson, Room 504  
Topeka, KS 66612

Submitted via e-mail

RE: Requested Fiscal Note for HB 2771

Dear Ms. Penrod:

Please find below the Kansas Human Rights Commission's (KHRC) review of HB 2771, which proposes changing the threshold of prohibiting discriminatory employment decisions based on age from 40 or more years to 18 or more years.

**A Brief Analysis of the Proposed Bill**

The Kansas Age Discrimination in Employment Act prohibits employers from making discriminatory employment decisions based on the person's age, with "age" defined as 18 or more years. The bill seeks to change the threshold of protection from 18 or more years to 40 or more years.

In 1983, the Kansas Age Discrimination in Employment Act (KADEA) was enacted with a definition of "age" as 40-70 years of age, which was comparable to the definition within the federal Age Discrimination in Employment Act at that time. The KADEA was expanded in 1988 to include persons aged 18 and over. The amendment in 1988 was not requested in that form by the KHRC, but was initiated by the Legislature during the legislative process. The Commission's request in 1988 was that the law be changed to cover those 40 or more years of age, since at that time the federal Age Discrimination in Employment Act had been so amended. When the law was amended in 1988, it was determined there were several other states or jurisdictions that referenced an age threshold lower than 40 years or referenced age in general terms.

The federal Age Discrimination in Employment Act of 1967, as amended, which is enforced by the Equal Employment Opportunity Commission (EEOC), has a threshold of 40 or more years. The surrounding states of Colorado, Missouri, Nebraska, and Oklahoma also have protection against employment discrimination beginning at the age of 40.

### **How The Bill Will Affect The Agency's Responsibilities/Administrative Impact**

In fiscal year 2007, the agency received 821 complaints in the areas of employment, housing, public accommodations, and profiling in conjunction with traffic stops. Of the 821 complaints received, 768 were employment complaints and included 168 allegations of age discrimination. Of complaints alleging age discrimination, only four complaints alleged discrimination for the age category of 18 – 39 years. Of these four complaints, three included allegations of discrimination in other protected categories (race, sex, national origin, etc.). This means that, if the proposed bill had been in effect in FY 2007, one complainant would not have been able to file with the Kansas Human Rights Commission.

In fiscal year 2006, the agency received 1,076 complaints in the areas of employment, housing, public accommodations, and profiling in conjunction with traffic stops. Of the complaints received, 1,029 were employment complaints and included 343 allegations of age discrimination. Of complaints alleging age discrimination, only ten complaints alleged discrimination for the age category of 18 – 39 years. Of these ten complaints, six included allegations of discrimination in other protected categories (race, sex, national origin, etc.). This means that, if the proposed bill had been in effect in FY 2006, four complainants would not have been able to file with the Kansas Human Rights Commission.

### **Staffing, Revenue and Fiscal Impact**

Because of the potential minimal reduction in complaints received and investigated, the bill will not impact staffing levels.

Revenues would not be impacted either. We currently receive reimbursement from the EEOC for investigating employment cases that are jointly filed under the EEOC's and KHRC's jurisdictions. However, employment cases only alleging age discrimination for the age category of 18 – 39 years are not eligible for reimbursement now. Therefore, if the lower age threshold is increased to 40, it will not impact the number of cases eligible for reimbursement. It is, however, vital that the age threshold begin, at a minimum, at the age of 40 in order for the Kansas Act Against Discrimination to be deemed comparable to the federal Age Discrimination in Employment Act of 1967, as amended, and to make us eligible to investigate such complaints on behalf of the EEOC. We are currently paid \$550 by the EEOC for each case investigated and jointly filed with the KHRC and the EEOC. In federal fiscal year 2007, we investigated 642 cases that were jointly filed with the EEOC for \$353,100 in reimbursement.

We do not anticipate that expenditures will be impacted by the proposed legislation. K.S.A. 44-1114 requires the Act be posted in a conspicuous place or places on the premises. The current poster indicates that it is against the law to discriminate in employment based on age, but does not list a specific age. Therefore, we can use the same poster even if the law changes.

It will also be necessary to update and reprint statute books. Printing costs for the KHRC statute book has been minimal in recent years because it is posted on our website and available for each individual to print at their convenience. We do not anticipate this practice to change.

It will be necessary to update our website, but we anticipate that can be done within existing resources and staff.



Ms. 1  
Division of the Budget  
Fiscal Note for HB 2771  
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**Long-Range Fiscal Effect Of The Bill**

Based on the above, we do not anticipate a long-range fiscal impact on the agency, either through revenues or expenditures.

Sincerely,

Ruth Glover  
Assistant Director