

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Melvin Neufeld at 1:30 p.m. on February 9, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Rob Olson- excused
Representative Mike Peterson- excused
Representative Dale Swenson- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Nikki Feuerborn, Committee Assistant

Conferees appearing before the Committee:

Martha Gabehart, Kansas Commission on Disability Concerns ([Attachment 1](#))
Michelle Sweeney, Policy Analyst, Association of CMHCs of Kansas, Inc. ([Attachment 2](#)) (written only)
Joseph P. Mastrosimone, Chief Legal Counsel, Kansas Human Rights Commission ([Attachment 3](#))
Michael Byington, CEO, Kansas Association for the Blind and Visually Impaired ([Attachment 4](#))
Nick Wood, Systems Change Advocacy Coordinator, Disability Rights Center of Kansas ([Attachment 5](#))
Matt Fletcher, Associate Director, InterHab ([Attachment 6](#)) (written only)
Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities ([Attachment 7](#)) (written only)
Anne-Marie Hughey, Legislative Policy Advocate for SKIL Resource Center, Kansas Association of Centers for Independent Living ([Attachment 8](#)) (written only)

Others attending:

See attached list.

Representative Knox moved for the introduction of legislation regarding municipalities franchising solid waste. Motion was seconded by Representative Fund. Motion carried.

Representative Brown moved for the introduction of legislation regarding rural loan bank guarantees and a second introduction on loan deposits. Motion was seconded by Representative Fund. Motion carried.

Hearing on HB 2533 - Kansas act against discrimination; disability amendments.

Mike Heim, Office of the Revisor of Statutes, explained the bill which would ease the restrictions on protection of rights for people with disabilities and put the Kansas statutes in compliance with the federal Americans with Disabilities Act As Amended (ADAAA).

Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns, offered testimony in support of the bill ([Attachment 1](#)). The current Kansas Act Against Discrimination (KAAD) sets a different, narrower protection of the rights of Kansans with disability than the American with Disabilities Act (ADA) Amendments Act that President Bush signed into law in 2008. She reviewed the changes made in the bill and offered an amendment after line 17 on page 5:

K.S.A. 44-1006 (d) covered employers are not required to reasonably accommodate or reasonably modify policies, practices and procedures for any person who solely meets the definition of disability under K.S.A. 44-1002 (j)(3)

Michelle Sweeney, Policy Analyst for the Association of Community Mental Health Centers of Kansas, Inc., provided written testimony in support of the bill ([Attachment 2](#)).

Joseph P. Mastrosimone, Chief Legal Counsel of the Kansas Human Rights Commission (KHRC), appeared in support of the bill which would amend the disability discrimination provisions of KAAD ([Attachment 3](#)). The passage of the bill would ensure the continued flow of vital federal money to support the KHRC's

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 9, 2010, in Room 346-S of the Capitol.

operations, eliminate confusion and reduce compliance costs for Kansas businesses, and provide for consistent protection for Kansas employees from unlawful discrimination based on disability. The KHRC is in support of the Gabehart amendment. The agency is seeing a backlog in cases due to budget cuts and it appears more cases are being filed. They are handling the 950 backlog of cases on a first in first out basis without designating the most serious violations. The state allows the individual to sue if the case is not closed in 300 days.

Michael Byington, CEO (volunteer) of the Kansas Association for the Blind and Visually Impaired, shared with the Committee a significant Supreme Court decision that made it necessary for the U.S. Congress to revise the ADA (Attachment 4). Due to state civil rights enforcement and investigatory agencies being asked to assist with federal investigations, it is very important to bring state anti-discrimination laws into line with federal laws. If the state is not in compliance with federal law, Kansas may lose \$130,000 in funding.

Nick Wood, Systems Change Advocacy Coordinator for the Disability Rights Center of Kansas, spoke in support of the bill and offered the following amendment on Page 3 (Attachment 5):

- (1) "Regarded as having such an impairment" means ~~(1) The absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists.~~
(2) (1) An individual meets the required of "being regarded as having such an impairment" if the individual establishes that the individual has been subjected to an action prohibited under this act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
(3) (2) Paragraph (1) shall not apply to impairment that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

Written testimony in support of the bill was received from:

Matt Fletcher, Associate Director, InterHab, (Attachment 6).

Jane Rhys, Executive Director, Kansas Council on Developmental Disabilities (Attachment 7).

Anne-Marie Hughey, Legislative Policy Advocate for SKIL Resource Center, Kansas Association of Centers for Independent Living (KACIL) (Attachment 8).

Shannon Jones, Executive Director, Statewide Independent Living Council of Kansas (Attachment 9).

Chairman Neufeld closed the hearing on **HB 2533**.

Action on **HB 2533 - Kansas act against discrimination; disability amendments**

Representative Loganbill moved for the adoption of both the proposed amendments to HB 2533. Motion was seconded by Representative Tietze. Motion carried.

Representative Ruiz moved to report **HB 2533** as amended as favorable for passage. Motion was seconded by Representative Kiegrrel. Motion carried.

Briefing on **HB 2669 - Disabilities, Kansas employment first initiative act**

Mike Heim, Office of the Revisor of Statutes, explained this bill would create a new act, state policy, and establish a new commission.

Shelly May, Grants Manager for the Kansas Council on Developmental Disabilities, reported they have been involved with the Kansas Employment First SRS Taskforce from its beginning (Attachment 10). With passage of the Kansas Employment First Initiative, they could coordinate their efforts with state agencies to encourage employment, establish goals and report their progress to the oversight commission as proposed in the bill.

Nick Wood, Systems Change Advocacy Coordinator, Disability Rights Center of Kansas, testified Employment First is the right public policy for the state (Attachment 11). He explained that the bill has three main points:

- Sets as the official Kansas policy that integrated, competitive employment shall be the first option.

CONTINUATION SHEET

Minutes of the House Federal and State Affairs Committee at 1:30 p.m. on February 9, 2010, in Room 346-S of the Capitol.

- Ensures collaboration among agencies
- Sets up an oversight commission to set goals, outcomes, and objectives and make an annual report to the Legislature.

Tom Laing, Executive Director of InterHab, explained the wide-range of employment and training services currently available through the Developmentally Disabled network (Attachment 12). The passage of this bill would encourage competitive employment of DD's as a priority of the state and encourage a higher aspiration for our society. Suggested changes to HB 2669 would include:

- Section 3: Direct the state departments to effectuate the recommendations of the committee or to report to the Commission why such recommendations were not workable.
-
- Section 4: Two position on the Commission be reserved for an employer who has hired DD's and one position for an employment professional who has been involved with the placement of DD's.
-
- Section 5: Earlier reporting date so Legislature can budget recommendations from the Commission.
- Section 6: Include in Commissions report assigned parties for the implementation of recommendations, fiscal note, time lines for recommendations.

Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns, explained that her agency works toward preparing people with disabilities to work and play and have an active role in society (Attachment 13). This proposed legislation would require that all public programs provide services based on the assumption that persons with disabilities will go to work and receive the support they need in the process. Working persons have fewer health issues, receive fewer government services, and pay taxes.

Michael Donnelly, Director of Kansas Rehabilitation Services, explained that SRS has four program that focus on employment services, three of which serve only persons with disabilities (Attachment 14). Vocational Rehabilitation (VR) is the primary SRS program designed to assist persons with disabilities to obtain, maintain or regain employment. The Employment First Initiative is being developed in many states. He explained the purpose and activities of the SRS Task Force. When asked if the SRS Task Force is currently doing what the proposed Commission would do, he replied that SRS was not taking a position at this time.

The next meeting is scheduled for February 16, 2010.

The meeting was adjourned at 3:00 p.m.

FEDERAL AND STATE AFFAIRS COMMITTEE GUEST LIST

DATE: Feb 9

NAME	REPRESENTING
Tom Laing	InterHab
Maitha Gallehart	KCDC
Ruth Glover	Ks Human Rights Com.
Ann Byington	KABVI
Michael Byington.	KABVI
Joa Flew	Ks. Optometric Assoc.
Lynna Mead	JCRS
Michael Deery	SR
Aene Sabin	OCCK
Pat Torick	CPRP
Margaret Gillman	SA
Judy Fowler	KHRC
Joe McStrasimone	KHRC
NICK WOOD	DRC
John Beebe	KID
Levi Henry	Sandstone Group
Natalie Byft	Coalition for Opport.

Testimony in House Federal and State Affairs Committee
In Support of HB 2533

By Martha K. Gabehart, Executive Director
Kansas Commission on Disability Concerns (KCDC)
February 9, 2010

Thank you Mr. Chairman and committee members for the opportunity to testify in support of HB 2533, amendments to the Kansas Act Against Discrimination. I am Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC).

KCDC is catalyst for change in government. We work with the governor, legislature and agencies on issues that adversely affect people with disabilities. Our issue today is that the current Kansas Act Against Discrimination (KAAD) sets a different, narrower protection of the rights of Kansans with disabilities than the Americans with Disabilities Act (ADA) Amendments Act that President Bush signed into law in 2008. The ADAAA overturned several Supreme Court cases that narrowed the definition of disability and the protection of rights the original ADA covered. Because the KAAD has not been amended to adopt these changes, Kansas is using the more restricted standard of protection of rights for people with disabilities.

The ADAAA was the product of a committee of national disability organizations and the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society of Human Resource Management and the Human Resource Policy Association. Many changes for clarification were made for these groups so they would provide their support.

Recap of Changes in HB 2533

Pages 1-3 – the word “disability” is struck and “on the basis of disability” is inserted at the end of the listing of protected classes. The ADAAA made this change because the Supreme Court and most lower courts put too much emphasis on determining whether a person’s disability rose to that required by the ADA and almost no attention to whether or not discrimination actually occurred. While a person still needs to show that they have a disability that meets this definition, the court is instructed to focus on whether discrimination based on disability occurred.

Page 3 – line 21-23 removes the wording about who is doing the regarding. The ADAAA expands the “regarded as” part of the definition and does not include this part of the Kansas definition of disability.

House Fed & State Affairs

Date: *2-9-2010*

Attachment *1*

1000 S.W. Jackson St., Suite 100; Topeka, KS 66612-1334

Testimony on HB 2533
Martha K. Gabehart
Page 2

Page 3 – line 43 adds that an individual meets the requirement of being regarded as having such an impairment if he or she establishes that he or she has been subjected to an action prohibited under the act because of an actual or perceived disability, whether or not it limits or is perceived to limit a major life activity.

Page 4 – line 7- 14 lists major life activities. including bodily functions

Page 4 – line 32 gives more information on how the definition of disability should be construed including:

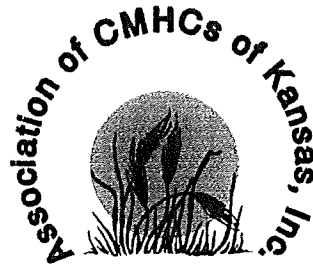
- broad coverage of individuals;
- substantially limiting one major life activity does not require limiting of others to be considered a disability;
- indicates that an episodic or impairment in remission would be a disability if while active, it substantially limited a major life activity;
- the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. It then goes on to describe mitigating measures as medicine, assistive technology, medical supplies, equipment, appliances, and low-vision devices (except ordinary glasses, prosthetics, etc.)

Also defined are ordinary glasses or contact lenses and low-vision devices.

One amendment was inadvertently left out. The ADA AAA includes a statement that employers do not need to accommodate people who are regarded as having a disability. This was another piece that employers wanted in the ADA AAA. In order to more closely align with the ADA AAA we are asking for an addition of the following language after line 17 on page 5:

K.S.A. 44-1006 (d) Covered employers are not required to reasonably accommodate or reasonably modify policies, practices and procedures for any person who solely meets the definition of disability under K.S.A. 44-1002 (j)(3).

KCDC encourages you to amend HB 2533 with the above amendment and pass it favorably out of committee. Thank you for this opportunity.



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House Federal and State Affairs Committee

**Testimony on
House Bill 2533**

February 9, 2010

Presented by:

Michelle Sweeney, Policy Analyst
Association of CMHCs of Kansas, Inc.

House Fed & State Affairs

Date: 2-9-2010

Attachment

2

Mister Chairman and members of the Committee, my name is Michelle Sweeney, I am the Policy Analyst for the Association Community Mental Health Centers of Kansas, Inc. The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 125,000 Kansans with mental illness. I stand before you today to discuss HB 2533, which, if passed, would align the Kansas Act Against Discrimination with the Americans With Disabilities Act (ADA) reauthorization passed by Congress and signed by the President in 2008.

It is important to note that one in four adults—approximately 57.7 million Americans—experience a mental health disorder in a given year.¹ Five of the top ten leading causes of disability world wide are mental disorders--such as depression, schizophrenia, bipolar disorders, alcohol use and obsessive compulsive disorders.² Of the non-communicable diseases, neuropsychiatric disorders (which include mental illness and substance use disorders) contribute the most to disease burden worldwide - more than heart disease and cancer.³

The reauthorization of the of the ADA sent a message to all Americans who have a psychiatric or other disability, that discrimination in employment based solely on a disability or perceived disability is not acceptable.

Please consider adoption of the language in HB 2533, which will make Kansas statute consistent with federal law. This legislation will ensure that Kansas employers only have to be familiar with one set of standards around employment discrimination practices and prohibitions for those with disabilities.

The adoption of HB 2533 appears to have no cost impact to employers. House Bill 2533 would ensure that those Kansans living with a disability are afforded the same protections under the Kansas Act Against Discrimination as under the Americans with Disability Act. The Association supports adoption of the language in the bill, to bring Kansas in line with federal statute.

Thank you for your support of mental health care and treatment for all Kansas, and the adoption of HB 2533. Thank you for allowing me to appear before you today.

¹ U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, 1999, pp. 408, 409, 411.

² *Regional Strategy for Mental Health*, World Health Organization Western Pacific Region, 7 August 2001; Read at <http://www.wpro.who.int/NR/rdonlyres/02421D66-3336-4C76-8D59-6ADA8B53D208/0/RC5214.pdf> on 2-2-09.

³ Prince, M., Patel, V., Saxena, S., Maj, M., Maselko, J., Phillips, M., et al. (2007). No health without mental health. *Lancet*, 370, 859–877.

TESTIMONY ON BEHALF OF THE KANSAS HUMAN RIGHTS COMMISSION
IN SUPPORT OF H.B. 2533

PROVIDED BY CHIEF LEGAL COUNSEL JOSEPH P. MASTROSIMONE ,
EXECUTIVE DIRECTOR WILLIAM V. MINNER AND ASSISTANT DIRECTOR
RUTH GLOVER

BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

FEBRUARY 9, 2010

The Kansas Human Rights Commission ("KHRC") urges the Committee to recommend passage of H.B. 2533 amending the disability discrimination provisions of the Kansas Act Against Discrimination ("KAAD") as enforced and administered by the KHRC. As discussed in more detail below, H.B. 2533 would conform the KAAD to the recently amended Americans with Disabilities Act ("ADA"). However, this is not merely a case of "follow the leader." Instead, H.B. 2533's passage would (1) ensure the continued flow of vital federal money to support the KHRC's operations, (2) eliminate confusion and reduce compliance costs for Kansas businesses, and (3) provide for consistent protection for Kansas employees from unlawful discrimination based on a disability.

I. Background

A. The KAAD was Modeled After the ADA.

Originally, the KAAD protected individuals from discrimination based on a "physical handicap." However, in 1990 then-President George H.W. Bush signed into law the Americans with Disabilities Act. In relevant part, the ADA prohibited employer's with 15 or more employees from discriminating against qualified individuals with disabilities. The ADA broadly defined an individual with a disability as a person who "has a physical or mental impairment that substantially limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such an impairment." 42 U.S.C. § 12102(2).

Those same broad definitions were brought into the KAAD in 1991 when the Kansas legislature amended it to conform to the then-newly adopted ADA. Those 1991 amendments changed the KAAD from prohibiting discrimination due to "physical handicap" to the more expansive prohibitions against disability-based discrimination found in the ADA. Those amendments were made with strong support and were integral in protecting Kansans with disabilities from discrimination.

House Fed & State Affairs

Date: 2-9-2010

Attachment 3

B. The U.S. Supreme Court Significantly Narrowed the ADA's Coverage by Limiting the Definition of Disability.

Despite the original ADA's broad statutory language, the United States Supreme Court has issued several decisions restrictively interpreting and narrowing the definition of "disability." The result has been confusion, a narrowing of the ADA's coverage, and the perception that the ADA's original intent had been undercut.

First, in a "trilogy" of cases, the U.S. Supreme Court severely restricted the original broad sweep of the ADA. Those cases were:

- Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999): In this case, the Court held that whether an individual has a disability must be determined with reference to any mitigating or corrective measures the individual uses to offset the effects of a physical or mental impairment. The Sutton plaintiffs, who were legally blind, were found to be not "disabled" under the ADA because they had corrected vision through the use of eyeglasses.
- Albertson's Inc. v. Kirkingburg, 527 U.S. 555 (1999): In this case, the Court held that the mitigating measures rule articulated in Sutton applied not only to artificial measures, but to "measures undertaken, whether consciously or not, with the body's own systems[,] " so that a person's natural ability to compensate for the effects of an impairment must be considered when deciding whether the individual had a disability.
- Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999): In this case, the Court held the Plaintiff was not disabled under the ADA because his hypertension/high blood pressure was controlled by medication which was considered to be a mitigating measure.

Second, the Court further restricted the ADA's scope in Toyota Motor Mfg. of Kentucky, Inc. v. Williams, 534 U.S. 184 (2002). In that case, the Court held that the ADA's definition of disability "needs to be interpreted strictly to create a demanding standard of qualifying as disabled." The Court further found that in order for an individual to meet the definition of disability by being substantially limited in the major life activity of working, an individual must be precluded from a class of jobs or a broad range of jobs.

These four cases severely hampered the ADA's reach and in a sense set the ADA apart from the nation's other civil rights laws by imposing a presumption of narrow, rather than broad, coverage.

C. The U.S. Supreme Court's Cramped View of the ADA's Coverage was Imported Into the Kansas Court's Interpretation of the KAAD.

In Seaman U.S.D No. 345 v. KCCR and Reed, 26 Kan. App. 2d 521 (1999)(review denied by the Kansas Supreme Court), the Kansas Court of Appeals adopted the U.S. Supreme Court's approach in interpreting the KAAD's disability provisions. In that case, the Complainant was an insulin-dependent diabetic and had other conditions related to his diabetes. The Court of Appeals found that corrective or mitigating measures should be considered in determining whether the individual was disabled. The court first noted that "the KAAD is modeled after the ADA and, therefore, federal court decisions are persuasive authority" in interpreting the Kansas law. In finding that the plaintiff was not disabled because his diabetes was presently controlled by insulin, the court adopted the restrictive ADA rulings of the U.S. Supreme Court as the basic standards for interpreting the KAAD.

As a result of the U.S. Supreme Court's decisions and the importation of those decisions into the interpretation of the KAAD, individuals claiming that they have been discriminated against based on their impairments have been unable to proceed with their claims because they could not meet the unintended demanding standards related to whether they had a covered disability. Accordingly, parties and courts spent much of their time and resources analyzing whether a person was technically disabled enough to warrant coverage under the ADA instead of analyzing whether the person was subjected to unlawful discrimination. This became a cause of frustration and prevented the legal and administrative systems from fully assessing whether the person was discriminated against despite being otherwise qualified, which is the real issue the federal and state laws were intended to address.

D. Congress Amended the ADA to Restore it Original Broad Protections.

The frustration surrounding the narrow view of the ADA's coverage led directly to Congress' passage of bipartisan legislation to amend the ADA to restore its original broad coverage. The Americans with Disabilities Act Amendments Act ("ADAAA") became effective January 1, 2009. The ADAAA effectively overruled, by statute, the federal court cases narrowly interpreting the ADA and replaced the focus of the analysis on whether unlawful discrimination had taken place. However, Congress could not, and can not, overrule by statute the interpretation of the KAAD. Accordingly, while the federal statute has been restored to its original intent, the Kansas Act Against Discrimination remains constricted by the Kansas Court of Appeals decision in Seamon. Like the ADAAA, the only way to effectively restore the KAAD to its original broad promise of protection from discrimination based on an otherwise qualified individual's disabilities is by statutory amendment.

II. H.B. 2533 Seeks to Restore the KAAD's Original Broad Protection Assisting the KHRC Achieve its Mission of Eradicating Discrimination, Assisting Kansas Employers to Comply, and Protecting Nearly All Kansans From Unlawful Discrimination on Account of a Disability.

Like the ADA, H.B. 2533 seeks to amend the KAAD to clarify key definitions. Consistent with the ADA, the bill prohibits discrimination on the basis of disability, eliminates consideration of mitigating measures (except for ordinary eyeglasses or contact lenses), favors broad interpretation of "disability," recognizes that an impairment that is episodic or in remission remains a disability if it would substantially limit a major life activity when active, provides a non-exhaustive list of what can be considered major life activities, provides clarification regarding the terminology about major bodily functions, provides clarification as to the "regarded as" disabled provisions, and is otherwise intended make the KAAD and the ADA provisions similar. Bringing the two statutes into conformity will assist each of the KAAD's three constituents – the KHRC, Kansas employers, and Kansas employees.

a. H.B. 2533 is Vital to the KHRC Continuing its Mission to Eradicate Discrimination in the State of Kansas.

As explained in the KHRC's fiscal note, failure to pass H.B. 2533 endangers the receipt of significant federal funds associated with the investigation of disability complaints and endangers the KHRC's operations. The KHRC is party to a work sharing agreement with the U.S. Equal Employment Opportunity Commission to investigate allegations of discrimination arising under both the federal and Kansas anti-discrimination statutes. That agreement is premised on a finding that the state law is in substantial conformance with the federal law. Because the two statutes now have widely different definitions and coverage, there is a real and significant danger that the two statutes could be found to be not in substantial conformance. If that were to happen, the EEOC would be unable to continue its work sharing agreement with the KHRC for disability cases and the federal funds that flow to the KHRC for the investigation of those cases would cease.

The potential loss of federal funds is significant. In State Fiscal Year 2009, the KHRC received 1,071 discrimination complaints in the areas of employment, housing, public accommodations, and profiling in conjunction with traffic stops. For all complaints received, 306 complaints cited alleged disability discrimination, making disability the fourth highest basis. Of the 1,016 employment complaints received, 297 alleged discrimination on the basis of disability.

Of the 297 alleged employment discrimination complaints filed on the basis of disability, an estimated 236 employment complaints were filed on disability alone or in combination with other alleged bases, were jointly filed with the EEOC, and investigated by the KHRC. At a rate of \$550 per case, the EEOC pays the KHRC an estimated \$129,800 for the investigation of these cases. If this level of payment continued into FY

2011, it would represent a significant 7.37 percent of the Governor's Recommended Budget for the KHRC.

The remaining disability discrimination complaints were either first-filed with the EEOC or filed only with the KHRC, for which we would not have received a payment from the EEOC. Accordingly, nearly \$130,000 of annual federal funding remains in jeopardy while the KAAD remains out of compliance with the amended ADA.

b. H.B. 2533 Will Assist Kansas Employers By Clarifying the Law and Reducing Compliance Costs.

Presently, most Kansas employers are subject to either the broad definitions under the ADAA or the more narrowly construed definitions of the KAAD depending on the number of employees they retain. Trying to comply with two different laws with two different sets of requirements and definitions adds unnecessary and costly confusion for employers seeking to comply with their responsibilities. Bringing the KAAD into conformity with the ADAAA will eliminate that confusion and apply the same rules to all covered Kansas employers. That consistency and ease of application will assist in securing compliance with the laws and lower the associated compliance costs.

Further, H.B. 2533 is not controversial legislation as it contains precisely the same compromises that won the ADAAA wide-spread and bipartisan support. The ADAAA was supported by the entire Kansas Congressional delegation, was signed into law by then-President Bush, and was supported by many employer and industry advocacy groups such as the U.S. Chamber of Commerce and the National Association of Manufactures.

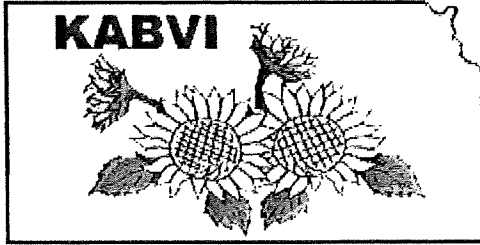
Finally, H.B. 2533 will allow the KHRC to continue to investigate disability claims arising from Kansas workplaces. Having Kansans, appointed by the Kansas Governor, approved by the Kansas Legislature, investigate and remedy Kansas problems provides a more convenient forum for the parties and a better public policy for the State.

c. H.B. 2533 Will Assist Kansas Employees By Offering Broad Protections from Unlawful Discrimination.

Last, but certainly not least, H.B. 2533 will continue Kansas' longstanding tradition of ensuring equality to all of its citizens. Whether a Kansan is protected from unlawful discrimination and can have that claim resolved by the Kansas Commission on Human Rights should not depend on the continued reliance on a line of discredited and discontinued federal court cases. Whether the employer is covered by only the KAAD or by both the KAAD and the ADA, employees should be provided with the same basic freedom from unlawful discrimination.

III. Conclusion

The bottom line is that the KHRC believes that H.B. 2533 would help effectuate the original intent behind the 1991 amendments to the KAAD, help the KHRC continue its mission during times of significantly reduced state resources and funding levels, assist employers in complying with the law's requirements, and assist employees by extending broad protection from disability-based discrimination. Accordingly, we urge the Committee's favorable action on the bill.



Kansas Association for the Blind And Visually Impaired

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February 9, 2010

TO: House Committee on Federal and State Affairs

FROM: Michael Byington, C.E.O. (Volunteer)

SUBJECT: Support for House Bill 2533

This Bill would amend the Kansas Act Against Discrimination, bringing it into line with the Americans With Disabilities Act Restoration Act adopted at the federal level. In this testimony, I will.

- **Summarize one of several significant Supreme Court Decisions that made it necessary for the United States Congress to revise the federal Americans with Disabilities Act (ADA)**
- **Explain how the federal restoration corrected a problem Created by the Supreme Court**
- **Explain the concept of a mitigating measure, and**
- **Explain why the State Act against Discrimination needs to parallel relevant federal laws.**

House Fed & State Affairs

Date: 2-9-2010

Attachment 4

The court case I will summarize is generally referred to as the Suddon case, and started out as Sutton v. one of the major United States airlines. The Suttons were two twins who were both qualified airline pilots. They both had a number of years of experience flying for a small, regional carrier, They both applied to instead fly for a major airline. Both of the Suttons achieved 20/20 vision through wearing glasses. The major airline refused to hire them, even though they were otherwise qualified for the job of airline pilot, because the major carrier said that it was their policy that pilots, when hiring on, had to have **UNCORRECTED** vision of 20/20. In other words, pilots who wear glasses simply were not going to be hired to fly for their airline because it was company policy that they were not going to do so. The Suttons alleged that the use of glasses to correct their vision meant that they were disabled individuals who used a mitigating measure to completely correct or negate the nature of their disabilities. They alleged that the airline was thus violating the ADA by refusing to hire them. Had the Supreme Court sided with the Suttons, the ADA could have been opened up to include coverage of approximately 70% of the working aged population that wears glasses. This would have, of course, deluged the civil rights complaint processes instead of leaving such avenues open to those who truly had disabilities making it more difficult for them to get most jobs. The Supreme Court dealt with the case by ruling that the glasses, as a mitigating measure, caused the Sutton twins not to be disabled at all. They therefore had no rights to protection under the ADA, and the company had the right to have the policy about glasses as a characteristic for its pilots. On its face, this may seem to have been a logical and appropriate decision which protected the efficacy of the ADA. Subsequent to this precedent setting decision, however, several courts at several levels have used it as a precedent to suggest that, for example, a wheelchair is a mitigating measure that allows a person in a wheelchair to get from one place to another; Braille is a mitigating measure that allows a reader thereof to read just as sighted people read print, and that therefore a wheelchair, or vision so impaired that a worker must use Braille, count as mitigating measures that cause the person not to be

considered disabled, and to therefore remove them from coverage under the ADA.

Congress corrected this situation by stating in the ADA Restoration Act that the use of a mitigating measure does not negate the fact of the person's disability. Congress also made clear, however, that standard eye glasses are an example of an accommodation that does not qualify as use of a mitigating measure. Thus, under the ADA Restoration Act, the Suttons would still not have had a case, the person who uses a wheelchair, the person who uses Braille, or more intensive low vision aids, would still have coverage under federal anti-discrimination laws.

A mitigating measure therefore clearly is documented as something which a person may use on the job in order to achieve qualification for the job, or ability to do it. It does not, however, make the user "non-disabled."

As State civil rights enforcement and investigatory agencies are sometimes asked to assist with federal investigations, it is very important to bring State anti-discrimination laws into line with federal laws.

Please report House Bill 2533 out positively. Thankyou.



Disability Rights Center of Kansas

635 SW Harrison St. ♦ Topeka, KS 66603

785.273.9661 ♦ 785.273.9414 FAX

877.335.3725 (toll free TDD) ♦ 877.776.1541 (toll free voice)

www.drckansas.org ♦ info@drckansas.org

TESTIMONY TO THE FEDERAL AND STATE AFFAIRS COMMITTEE HOUSE BILL NO. 2533 February 9, 2010

My name is Nick Wood, I am the systems change advocacy coordinator for The Disability Rights Center of Kansas. We would like to offer an amendment to State ADA Coordinator Anthony Fadale's Amendment in support of House Bill 2533, the Kansas Act Against Discrimination (KAAD). Our amendment only requires two small changes and would help the bill toward its goal of consistency with the now amended Americans with Disabilities Act (ADA). Our amendment would remove needless duplication from the statute so that our definition does not conflict with the ADA. We believe this will help to ensure consistency and reduce confusion when the language is used to delineate the responsibilities of employers in Kansas.

Mr. Fadale's amendment:

K.S.A. 44-1006(d) Covered employers are not required to reasonably accommodate or reasonably modify policies, practices and procedures for any person who solely meets the definition of disability under K.S.A. 44-1002(j)(3).

The DRC's amendment:

(l) "Regarded as having such an impairment" means: ~~(1) The absence of a physical or mental impairment but regarding or treating an individual as though such an impairment exists.~~ *page 3*

(2) (1) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that the individual has been subjected to an action prohibited under this act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(3) (2) Paragraph (1) shall not apply to impairments that are transitory or minor. A transitory impairment is an impairment with an actual or expected duration of six months or less.

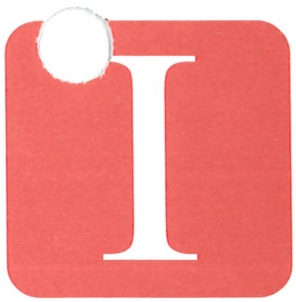
42 USC § 12102(3) et. seq.

Thank you for the opportunity to bring this before you. I will stand for

House Fed & State Affairs

Date: *2-9-2010*

Attachment *5*



INDEPENDENCE
INCLUSION
INNOVATION

INTERHAB

February 9, 2010

TO: Representative Melvin Neufeld, Chair, and
Members of the House Federal and State Affairs Committee

FR: Matt Fletcher, Associate Director, InterHab

RE: HB 2533 – Kansas Act Against Discrimination; Disability Amendments

Chairman Neufeld, and members of the Committee, thank you for the opportunity to provide a letter of support for House Bill 2533, which seeks to amend the KS Act Against Discrimination in order to bring it into alignment with recent amendments to the Americans with Disabilities Act (ADA).

In 2008, as a response to Supreme Court rulings that had narrowed the effectiveness of the ADA, Congress passed – and President Bush signed into law – the Americans with Disabilities Act Amendments Act (ADAAA). These changes to the ADA had widespread support among disability advocates across the country.

However, the Kansas Act Against Discrimination (KAAD) still reflects the language of original language of the ADA and, as such, unnecessarily narrows the scope of protections afforded to Kansans with disabilities.

The members of InterHab strongly support amendments to the KAAD that will bring it into alignment with recent changes to the ADA. Those necessary amendments are embodied within HB 2533. Among the changes that the bill proposes:

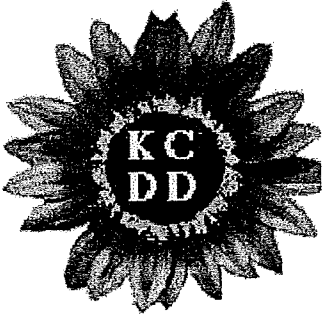
1. *makes nondiscrimination of people with disabilities state policy for employers of 4 or more employees, local governments and public accommodations (private businesses),*
2. *Eliminates the consideration of mitigating measures when determining if the complainant is protected by the law,*
3. *Expands protection of rights to people with limitations of bodily functions such as the immune system, normal cell growth, etc.,*
4. *Better defines how to determine substantial limitations, what regarded as having a disability means, and*
5. *Would prohibit discrimination on the basis of disability rather than on a person with a disability.*

Ensuring that the rights of persons with disabilities are properly protected should be a primary concern of any legislative body. We urge the Committee's support of

House Fed & State Affairs

Date: 2-9-2010

Attachment 6



Kansas Council on Developmental Disabilities

MARK PARKINSON, Governor
KRISTIN FAIRBANK, Chairperson
JANE RHYS, Ph. D., Executive Director
jrhys@kcdd.org

Docking State Off. Bldg., Rm 141,
915 SW Harrison Topeka, KS 66612
785/296-2608, FAX 785/296-2861
http://kcdd.org

"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

HOUSE STATE AND FEDERAL AFFAIRS COMMITTEE

February 9, 2010

Testimony in Regard to H.B. 2533 AN ACT concerning the Kansas act against discrimination; relating to disability.

Mr. Chairman, Members of the Committee, I am appearing today on behalf of the Kansas Council on Developmental Disabilities in support of H.B. 2533.

The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, we receive no state funds. It is composed of individuals who are appointed by the Governor, including representatives of the major agencies who provide services for individuals with developmental disabilities. At least 60 percent of the membership is composed of individuals who are persons with developmental disabilities or their immediate relatives. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work, and learn.

The changes to this Act were carefully reviewed and considered by persons knowledgeable about the federal Americans with Disabilities Act (ADA). The proposed revisions to the Kansas Act Against Discrimination would result in:

- No increase in costs
- Alignment of the Kansas Act with the federal Americans with Disabilities Act
- Improved definition of how to determine substantial limitations
- Prohibition of discrimination on the basis of disability rather than a person with a disability
- Eliminates consideration of mitigating measures when determining if the complainant is protected by law
- Expands protection of rights to people with limitations in their immune system, cell growth, and similar bodily functions

House Fed & State Affairs
Date: 2-9-2010

Attachment

7

We believe the above to be reasonable and in the best interests of Kansans who have disabilities.
We ask that you pass H.B.2533.

Thank you and I would be happy to answer any questions.

Jane Rhys, Ph.D., Executive Director
Kansas Council on Developmental Disabilities
Docking State Office Building, Room 141
915 SW Harrison
Topeka, KS 66612-1570
785 296-2608
jrhys@kcdd.org



**Testimony To
House Committee on Federal & State Affairs
In Support of HB 2533
February 9, 2010**

Mr. Chair and members of the committee, my name is Anne-Marie Hughey, Legislative Policy Advocate for SKIL Resource Center providing written testimony on behalf of the Kansas Association of Centers for Independent Living (KACIL.)

The Kansas Centers for Independent Living (CILs) philosophy and mission is to work to insure that all people whatever their disability or age have the right to live, work, play and fully participate in society without any physical or attitudinal barriers that limit their civil rights. The Americans with Disabilities of 1990 gave individuals with disabilities these rights.

The state of Kansas has also had long history of supporting the civil rights of people with disabilities. When the Americans with Disabilities Act first passed in 1990, the Kansas legislature was quick to act and amended the Kansas Act Against Discrimination to align it with the federal act.

KACIL once again calls upon the legislature to insure that the state of Kansas is in line with the recently passed federal legislation; the Americans with Disabilities Amendment Act (ADAA).

KACIL urges this committee to favorably pass HB 2533, in order that Kansans with disabilities will have the civil rights protections that are consistent with federal policy.

Thank you.

Anne-Marie Hughey
913-787-1862
annemarieh@skilonline.com

House Fed & State Affairs

Date: 2-9-2010

Attachment

8

Testimony To
House Federal and State Affairs Committee

In Support of HB 2533

February 9, 2010

On behalf of the Statewide Independent Living Council of Kansas (SILCK), I am Shannon Jones, executive director of the SILCK. I offer the SILCK's written testimony in strong support for HB 2533.

The SILCK has long been an advocate for civil rights protections for people with disabilities. The state of Kansas has also had long history of supporting the civil rights of people with disabilities. When the Americans with Disabilities Act first passed in 1990, the Kansas legislature was quick to act and amended the Kansas Act Against Discrimination as to align it with the federal act.

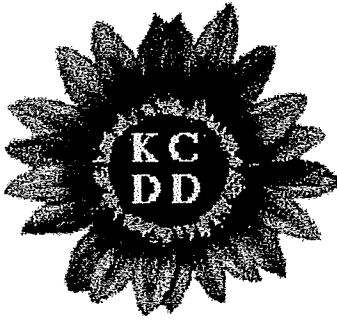
Now once again, the legislature is called upon to ensure that the state of Kansas is in line with the recently passed federal legislation; the Americans with Disabilities Amendment Act (ADAA).

The SILCK urges this committee to favorably pass HB 2533, in order that Kansans with disabilities will have the civil rights protections that are consistent with federal policy

House Fed & State Affairs

Date: 2-9-2010

Attachment 9



Kansas Council on Developmental Disabilities

MARK PARKINSON, Governor
KRISTIN FAIRBANK, Chairperson
JANE RHYS, Ph. D., Executive Director
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"To ensure the opportunity to make choices regarding participation in society and quality of life for individuals with developmental disabilities"

HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS February 9, 2010

Regarding *HB 2669: Kansas Employment First Initiative*

Mr. Chairman, Members of the Committee, I work for the Kansas Council on Developmental Disabilities. The Kansas Council is federally mandated and federally funded under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. Members are appointed by the Governor and include primary consumers, immediate family, and representatives of the major agencies who provide services for individuals with developmental disabilities. Our mission is to advocate for individuals with developmental disabilities to receive adequate supports to make choices about where they live, work and learn.

The Council has been involved with the Kansas Employment First SRS Taskforce from its inception, and we are in support of HB 2669. It is vital to the success of the Kansas Employment First Initiative that state agencies coordinate their efforts to encourage employment, establish goals and report their progress to the oversight commission as defined in this bill.

Recently, our director, Dr. Jane Rhys, provided testimony to the House Committee on Long Term Care and Aging, that Kansas ranks 46th in the nation for **Supporting Meaningful Work** for persons with developmental disabilities. Only 10% of the people with developmental disabilities in our state have a competitive job in the community. We can do better. We cannot afford not to do better.

- Kansans who are competitively employed in the community become taxpayers. Kansas data shows that as people increase their income, they pay taxes, buy goods and services, and support their community.
- Employment improves health. Data also shows that people's wages increase over time while their medical costs continue to decrease.
- It's important for everyone to contribute to their self-sufficiency up to the level of their capabilities. A lifetime of financial dependency on disability benefit programs is costly.
- Virtually every national workforce study warns us that we have an emerging labor shortage in the United States. Employment First can be part of this solution.

House Fed & State Affairs

Date: *2-9-2010*

Attachment *10*

- According to a Gallup Poll sponsored by America's Strength Foundation, 92% of those surveyed reported they favored companies who employed people with disabilities. 87% went as far to say that they preferred to give their business to companies who employed people with disabilities.
- Finally, employment is a human rights issue. All Kansans of working age regardless of the level of their disability should enjoy their lives. Employment is fundamental to adulthood, quality of life, individual productivity, self-worth, and earns the means to exercise freedoms and choices available to all citizens.

We thank you for your leadership in introducing this bill and for your continued support in this effort. As always we appreciate your time and would be happy to answer any questions.

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Disability Rights Center of Kansas

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Testimony in support of 2669 (the Employment 1st Bill)

February 9, 2010

Chairman Neufeld and members of the Federal and State Affairs Committee:

My name is ^{Nick Wood} Rocky Nichols, Executive Director of the Disability Rights Center of Kansas (DRC). DRC is the federally mandated, officially designated protection and advocacy organization for Kansans with disabilities. One critical role of DRC, as empowered by federal law, is to advocate for the legal and civil rights of people with disabilities, including the rights involving employment.

The Employment First bill is the right public policy for the state of Kansas. The bill is straightforward. It does three main things:

- 1) Sets as the official policy of the state of Kansas shall be that integrated, competitive employment shall be the first option.
- 2) Ensures coordinated efforts among agencies to increase collaboration among agencies to ensure that state programs, policies, and procedures and funding support competitive and integrated employment.
- 3) Sets up an oversight commission to set the measurable goals, outcomes and objectives toward meeting this policy, and makes an annual report to the legislature in this regard.

The beauty of this bill is that it sets the official policy of the state of Kansas (the employment first initiative) and has the work of the State all flow from that policy. This is the right policy for the state to have, and the efforts of are state should be directed toward this policy.

Thank you for your time and attention to this bill.



INDEPENDENCE
INCLUSION
INNOVATION

February 9th, 2010

TO: Representative Melvin Neufeld, Chair and
Members, House Committee on Federal and State Affairs

FR: Tom Laing, Executive Director, InterHab

RE: House Bill 2669, "The Employment First Initiative"

We appreciate the Chair's early hearing on this legislation, and the work of the authors of this bill. We applaud efforts to highlight employment for persons with disabilities. This is a policy matter in which Legislative support and guidance will be beneficial. It is our intention to offer suggestions for the committee's consideration, and to support this bill through the process.

We urge the Committee's recognition that the community DD network currently offers a wide range of employment and training services to persons with developmental disabilities. The range includes serving and supporting those with limited skills or experience –valuable opportunities to discover individual interests and to develop their work-skills – and the range also includes job placement, from the actual location of jobs, to the training to meet the job's requirements, the placement into jobs, and the supports when needed to help each person succeed in those jobs.

We appreciate that this bill does not negate the necessity for such options, but instead envisions a mission which we share, in which each person makes it in his or her own way, and own time, each directed to their own employment goals. By calling out competitive employment as the priority of the State, we encourage a higher aspiration for our society as well as for each person. By also recognizing the individualized pace and goals and interests of each person, we can also recognize and respect their choices as well.

House Fed & State Affairs

Date: 2-9-2010

Attachment 12

Suggested Changes to HB 2669:

In Section 3, in which State agencies are “granted the authority” to promulgate rules and regulations, we believe that authority already exists, and would encourage the committee and the authors of this bill to consider language of a more directive nature, i.e. to direct the departments to effectuate the recommendations of the committee, or to report to the commission why such recommendations were not workable.

In Section 4, within which is the composition and appointing authority for the commission, we would recommend that two positions on the committee be further qualified: one position should be reserved for an employer with a history of hiring persons with disabilities, and not less than one position should be reserved for an employment professional with a history of the varieties of activities that enter into the placement of persons with disabilities into employment.

In Section 5, we recommend an earlier report date, in order that any budget impact that might occur as a result of recommendations of the commission, could be timely considered for incorporation in the budget for the state agency(ies) effected by such recommendation.

In Section 6, we would ask for more specificity in the commission’s report, including language which clearly recommends assigned responsible party(ies) for the implementation of recommendations, the estimated fiscal notes (if costs are expected to be incurred) for any recommendation, and timelines by which time such recommendations (or the various steps leading to implementation) are to be accomplished.

We are grateful for the work of the Employment First task Force, and for this committee’s thoughtful consideration of our suggestions.

Testimony in House Federal and State Affairs Committee

In Support of HB 2669

By Martha K. Gabehart, Executive Director
Kansas Commission on Disability Concerns (KCDC)

February 9, 2010

Thank you Mr. Chairman and committee members for the opportunity to testify in support of HB 2669 which establishes the employment first policy and the Employment First Oversight Commission. I am Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC).

KCDC is a catalyst for change in government. We work with the governor, legislature and agencies on issues that adversely affect people with disabilities. Our issue today is employment for people with disabilities. KCDC believes people with disabilities should work and play an active role in society. When people with disabilities work and are self-sufficient, they receive fewer government services and pay taxes, which increase state revenues.

HB 2669 establishes 1) a state policy that integrated, competitive employment is the first option for people with disabilities and 2) the Employment First Oversight Commission. The policy will require all state programs that provide services to people with disabilities to refocus their programs to support integrated, competitive employment. KCDC believes this policy will move more people with disabilities off government services and into their communities as active, taxpaying citizens.

As parents, our goal for our children is for them to be educated, prepared for living on their own and that they move out and live on their own. We as parents take for granted that preparing for living on your own includes having a job that will pay enough for rent, food, utilities, clothes, transportation and anything else our child needs. Our goal for people with disabilities should be no less. Children with disabilities need to know they are expected to graduate and work. Our education system and the government services that support families with children with disabilities need to realistically work toward that end. We understand that not everyone has the capacity to work, but the system should not assume people with disabilities cannot work. With this requirement that all public programs provide services based on the assumption that work is the goal, more people with disabilities will go to work and get the support they need in the process.

KCDC encourages you to pass favorably HB 2669.



DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

House Federal and State Affairs Committee
February 9, 2010

Workforce Supports and Opportunities for Persons
with Disabilities

Integrated Service Delivery
Michael Donnelly
Director of Kansas Rehabilitation Services

For Additional Information Contact:
Katy Belot, Director of Public Policy
Docking State Office Building, 6th Floor North
(785) 296-3271

House Fed & State Affairs
Date: 2-9-2010

Attachment 14



Workforce Supports and Opportunities for the Disabled

House Federal and State Affairs Committee

February 9, 2010

Thank you for the opportunity to share information with the Committee on SRS' efforts to ensure that individuals with disabilities have opportunities to pursue, obtain and maintain employment. SRS has provided employment supports and related services to individuals with disabilities for many years through multiple programs. SRS currently has four programs that focus on employment services, three of which serve only persons with disabilities.

Economic and Employment Supports (EES) operates the Temporary Assistance to Needy Families (TANF) program that includes employment-related services. Of the 10,637 persons served last year, 23% (2,446) report earnings as a result of work. Disability is one of the barriers to employment documented for the TANF population. Job clubs, placement services and other support services are provided to assist eligible individuals to gain employment and reduce their reliance on cash, food and medical assistance. Wages achieved by customers of EES are competitive to the job or position the person achieves.

Community Supports and Services (CSS) manages the Home and Community Based Services programs that include services to support persons with disabilities to live and work in the community. The Developmental Disabilities (DD) Waiver most directly affects work opportunities for individuals with developmental disabilities. DD Providers often provide a work-related day service or supports that empower an individual in a job in their community. Wages vary as providers sometimes utilize their sub-minimum wage certificates to set wages as allowed under Section 14(c) of the Fair Labor Standards Act. Others are competitive, integrated jobs in the community that are paid at minimum wage or higher depending on the position. DD providers reported 1,034 persons served were working in a competitive employment at the end of January 2010. Another 3,466 individuals were working in an environment designed for persons with developmental disabilities.

Mental Health Services also has an emphasis on assisting persons with severe and persistent mental illnesses to achieve successful employment outcomes. Research demonstrates that employment is a significant contributor to the recovery of persons with mental illness. This is recognized in Kansas mental health reform statute which defines community based mental health services to include access to securing employment services. In addition, SRS' contract with community mental health centers (CMHCs) includes competitive employment of persons with a severe and persistent mental illness (SPMI) as one of the contract's outcomes. SRS pays enhanced Medicaid rates for CMHCs who demonstrate fidelity to the evidence-based practice of supported employment. Twenty-three percent of persons with an SPMI were reported to have been



DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

competitively employed at any point in the last year. SRS, in collaboration with the CMHCs, is working to improve this low employment rate.

Vocational Rehabilitation (VR) is the primary SRS program designed to assist persons with disabilities to obtain, maintain or regain employment. VR serves persons with disabilities whose disability results in a substantial impediment to employment and who need VR services to get or keep a competitive, integrated job. VR services are not limited to the type of disability a person has, nor are services limited by the type of job they choose to pursue. VR services can include services to prepare an individual to obtain a job, to assist the person in finding the job and to help them be successful once they get the job. Services can include post-secondary education or training, assistive technology, medical services, transportation, job finding services, on-the-job supports and many other types of services. In Federal Fiscal Year 2009 VR assisted 11,856 individuals to pursue employment under an individualized plan for employment. As a result of services received, 1,426 obtained and maintained their job. Wages earned as a result of VR services vary widely but averaged \$9.67 statewide.

Last fall SRS began developing two key initiatives that will be funded through American Recovery and Reinvestment Act stimulus funds. First, we plan to establish several demonstration projects focused on assisting individuals with developmental disabilities to engage in competitive integrated employment of at least 20 hours per week. This \$1.5 million dollar project will focus on individuals currently working in a sheltered setting or those on the waiting list for DD services. A special emphasis will be placed on youth transitioning from school to adulthood.

The second Recovery Act initiative is our effort to build capacity among community service providers to address the employment and independent living needs of Kansans who are blind or visually impaired. SRS has committed \$500,000 in Recovery Act funding to partner with community organizations and service providers to hire credentialed staff, improve outreach to persons who are blind or visually impaired, and to provide the variety of direct services necessary to assist individuals to be successful in their employment and independent living goals.

Stakeholder and consumer input led SRS to form and facilitate an Employment First Workgroup in July 2008. Membership includes DD providers, consumer representatives, the Kansas Health Policy Authority, SRS, the Department of Commerce and the Department of Education. The group has developed core Employment First principles and a mission statement: *The State of Kansas will establish integrated, competitive employment at a commensurate wage as the first priority for working age people with developmental disabilities. This initiative will be called Employment First.* The workgroup makes recommendations for SRS and other state agencies to consider as we work to ensure state policies and programs emphasize employment.

Governor Parkinson has asked several Cabinet Secretaries, the Commissioner of Education and others to participate in a stakeholder forum to better understand the barriers to employment that Kansans face (see



attachment). He also asked that they determine next steps and actions to improve access to employment opportunities for citizens with disabilities. The forum will take place on April 16, 2010 at the Capitol Plaza hotel following a statewide Employment Summit organized as part of the state's Employment First initiative.

SRS is committed to improving opportunities for gainful employment of individuals with disabilities. We continue to work together with our many partners to ensure not only the opportunity to work, but that success is achieved.



KANSAS
OFFICE OF THE GOVERNOR

February 2, 2010

Secretary Don Jordan
Department of SRS

Secretary Jim Garner
Department of Labor

Secretary Bill Thornton
Department of Commerce

Secretary Debra Miller
Department of Transportation

Secretary Roderick Bremby
Department of Health and Environment

Director Andrew Allison
Kansas Health Policy Authority

Director Martha Gabehart
Kansas Commission on Disability Concerns

President Steve Weatherford
Kansas Housing Resource Corp.

Commissioner Diane DeBacker
Department of Education

President Reginald Robinson
Kansas Board of Regents

Re: Employment Opportunities for Kansans with Disabilities

Over this past year we have kept a very close watch on the unemployment rate for all Kansas citizens. Through economic development and recovery initiatives, we're working toward improving employment opportunities – and the prosperity that comes through work – for our State. I know that you, as I do, recognize the complexity and importance of these issues.

The unemployment rate for Kansans with disabilities presents an even more complex challenge. Generally accepted national estimates place the unemployment rate for people with disabilities of working age at 60 to 70%, the highest unemployment rate of all minority populations. This high unemployment rate is systemic and is too often accepted as an inevitable outcome of living with a physical, mental or emotional disability.

Both today and in the future as the economy begins to recover, people with disabilities represent a significant labor pool of potential workers who can contribute their talents and skills to the workforce needs and economic development of the State.

Therefore, I believe the time is right for the State of Kansas to begin studying our existing systems of service delivery for persons with disabilities. Among the topics for further exploration are: supporting a culture that emphasizes the value of employment as the critical path out of poverty for people with disabilities; creating an expectation of employment for people with disabilities, just as employment is an expectation for all working-age adults; and

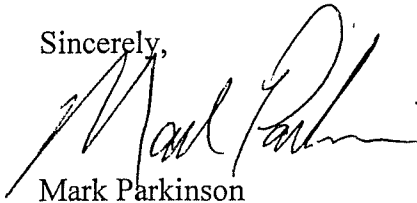
reviewing whether the goals and policies of various programs support a consistent focus on competitive, integrated employment as the optimal outcome of the services we provide.

We have an opportunity to begin this dialogue in conjunction with an Employment First Conference that is being planned for April 15 and 16 at the Capitol Plaza in Topeka. The conference will include people with disabilities and their families, education professionals, state agencies and community service providers.

This will be an opportune time to begin a dialogue with stakeholders on these issues. I have asked SRS Secretary Don Jordan and his staff to coordinate a Stakeholder Meeting at this conference to listen to the views and experiences of the participants. Secretary Jordan will be providing additional information as the plans are finalized. If you are not able to attend the Stakeholder Meeting, please appoint a high-level designee to represent your agency. Following the Stakeholder Meeting, there will also be an opportunity for you as Cabinet Secretaries, Directors and Education Commissioner to meet and begin planning a coordinated strategy for Kansas to increase integrated employment with competitive wages and benefits for Kansans with disabilities.

I appreciate your support to begin this dialogue and your commitment to improving employment opportunities for Kansans with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Parkinson', written in a cursive style.

Mark Parkinson
Governor of the State of Kansas