



The Voice of Small Business®

Testimony in Opposition to SB295 by Mr. Daniel Murray
Kansas State Director, National Federation of Independent Business
Senate Commerce Committee
Wednesday, February 8, 2012

Good morning Chairwoman Wagle and members of the Committee. I am pleased to be here on behalf of the National Federation of Independent Business (NFIB). The NFIB is the state's leading small business advocacy organization representing over 4,100 small business owners across Kansas.

NFIB opposes SB295, which would prohibit any employer, employment agency or labor organization from inquiring into or using a job applicant's unemployment status or gap in employment history as a basis in rendering employment decisions.

If I understand the bill's intent and goal, I appreciate the effort to get the long-term unemployed back to work. That said, our members have grave concerns that this bill elevates one's unemployment history to the status of other types of employment discrimination recognized by the U.S. Equal Employment Opportunity Commission, such as age, disability, race, religion and sex.

First and foremost, we are not convinced that there is a verified, systematic effort to discriminate against those with a particular unemployment status. Thus, we think this bill is unnecessary.

Further, unemployment status is very different than the EEOC recognized discrimination types: One can't control their sex, age, race, etc. However, a job applicant very easily have been responsible for their unemployment status or gap(s) in employment.

If that's the case, we believe that unemployment status or gap(s) in employment may be an indication that an applicant does not have the necessary commitment or is not suitable for a particular job. For example, what if a job applicant is a "grass is greener" employee and has a history of jumping from job to job? Small businesses have to be wary of these types of employees. Smaller staffs and limited training resources means that small businesses must hire the candidate that they believe will be committed to the business. Employment history is one determination of commitment.

Further, what if a job classification requires certain up-to-date skills? Could a hospital not place a requirement that applicants for a physician opening demonstrate that they have practiced consecutively for the past 5 years. I don't think I want brain surgery from a doctor who has spent the last 10 years on hiatus. This is an extreme example, but one that could rear its head given the ambiguity of SB295.

Further, we are concerned about the reporting and enforcement of this proposal. An aggrieved job applicant could easily file an unsubstantiated claim based on such an ambiguous type of discrimination. This could embroil a small business in unnecessary and expensive litigation.

Finally, the Division of Budget does report that this will have a fiscal impact on the Department of Labor. We have concerns that the additional burden on the Department will divert resources from existing programs that are essential to employers, such as employment security and worker's compensation.

Again, NFIB opposes SB295. Small businesses already have enough regulatory and tax compliance concerns. This bill would add another log to the fire. Thank you for the opportunity to comment.

Senate Commerce Committee
Date: February 8, 2012

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