



Testimony in Support of
HB 2335 Amendments to the Kansas Act Against Discrimination
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(Corrected)

Thank you Mr. Chairman and committee members for the opportunity to testify in support of HB 2335, amendments to the Kansas Act Against Discrimination to align it with the Americans with Disabilities Act (ADA) Amendments Act (ADAAA). I am Martha Gabehart, Executive Director of the Kansas Commission on Disability Concerns (KCDC). KCDC is a catalyst for change in government for people with disabilities. 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 ADAAA 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. 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 established by the Supreme Court. This means there are two different laws that Kansas employers must follow and Kansans with disabilities working for employers with fewer than 15 employees do not have the same protection of rights as those employed by larger employers.

The ADAAA was the product of a committee of several national disability organizations which included the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society of Human Resource Management and the Human Resource Policy Association. Based on their input, many changes for clarification were made and these groups all provided their support of the passage of the ADAAA.

Also, the Kansas Human Rights Commission (KHRC) currently has a contract with the Equal Employment Opportunity Commission (EEOC) to investigate allegations of discrimination arising from both the federal and Kansas anti-discrimination statutes. That agreement is based 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, the KHRC has made special arrangements with the EEOC to continue to receive payment for investigating disability cases that fall within the jurisdiction of both the KHRC and the EEOC. However, the special arrangement could be unilaterally revoked at any time and the federal funds that flow to the KHRC for the investigation of those cases would cease.

Recap of Changes in HB 2335

1. The first change is on page 2, starting in line 25 – deleting the reference to the person or entity alleged to have committed the discrimination in the “regarded as” portion of the definition of disability. This wording was removed in the ADA and further explanation was provided about the state of being regarded as having an impairment was added to the ADA. This addition to the Kansas law is on page 3, line 8. It further explains that the individual must establish that he/she has been subjected to a prohibited action because of an actual or perceived impairment whether or not it limits or is perceived to limit a major life activity. It also includes that this section does not apply to impairments that are transitory or minor and that transitory impairments last six months or less.
2. Change #2 is on page 3, starting on line 2. It explains that reasonable accommodations do not have to be provided to people who are regarded as having a disability.
3. Change #3 is on page 3, starting on line 16. It is the definition of major life activities. This was originally in the regulations. Bodily functions were included.
4. Change #4 on page 3, starting on line 31. This statement, which was stricken by the House Federal and State Affairs Committee, made it clear that the Kansas Legislature intends the Kansas Act Against Discrimination be modeled on the Americans with Disabilities Act (ADA) and that it be construed as a state law remedy that is consistent with the federal law except where the state law offers greater protection. We have no problem with this amendment.
5. Change #5 starts on page 4, line 3 contains other changes from the ADA which elaborate that the definition of disability be construed that:
 - a. There is broad coverage of individuals,
 - b. An impairment that substantially limits a major life activity does not have to limit other major life activities,
 - c. An impairment that is episodic or in remission and substantially limits a major life activity when active is considered a disability,
 - d. Determination of whether or not an impairment is a disability is to be done without taking into consideration mitigating measures,
 - e. The use of ordinary eye glasses **will** be considered when determining whether or not a person has a disability.
 - f. Definitions of ordinary eye glasses and low vision devices are included.

It is important to remember the goal of this legislation is to align the Kansas Act Against Discrimination with the Americans with Disabilities Act (ADA) Amendments Act. This is important because:

1. Employers currently have two different standards to follow,
2. Kansans with disabilities working for employers with 4-24 employees do not have the same protection of rights as those working for employer of 25 or more employees, and
3. Passage of H.B. 2335 assures the continued receipt of significant federal funds associated with the investigation of disability complaints and the KHRC’s operations.

KCDC is supportive of these changes and urges your support of HB 2335. Thank you for this opportunity to testify.