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H.B. 2299 Neutral Testimony

Staffing: Ruth Glover, Executive Director, Kansas Human Rights Commission

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RE: AN ACT concerning discrimination; relating to the attorney general; prohibiting discriminatory practices at public educational institutions; authorizing the attorney general to investigate and assess penalties; authorizing the human rights commission to refer complaints to the attorney general for investigation and initiation of legal proceedings; amending K.S.A. 44-1001, 44-1004, 44-1005 and 44-1009 and repealing the existing sections.

The Kansas Human Rights Commission (KHRC or Commission) is responsible for administering and enforcing the Kansas Act Against Discrimination (KAAD), which is proposed to be amended by H.B. 2299. The KHRC primarily accomplishes its mission through the receipt, investigation, and resolution of complaints alleging discrimination in employment, housing, and public accommodations under the KAAD. Through these actions, the KHRC provides an administrative remedy for the parties to a discrimination complaint filed with the Commission. The Commission also conducts a public education program as a proactive measure to prevent discrimination by explaining the requirements of Kansas law.

As an unbiased, fact-finding, investigative body, the KHRC takes a neutral stance on the proposed legislation but notes the legislation presents questions.

New Section 1: The agency makes no comment regarding the proposed New Section 1 as it does not amend the Kansas Act Against Discrimination.

Section 2, page 3, lines 27-34: The proposed language declares that it is the policy of this state that public institutions that receive and expend tax dollars are prohibited from engaging in antisemitic policies or practices. It is further proposed that no person shall be required to participate in programming or training that promotes or degrades any one religion and that governmental entities are prohibited from enacting policies that promote or degrade any one religion.

The KAAD already protects individuals from discrimination based on religion in each of the three areas covered by the KAAD. See K.S.A. 44-1004(4). The proposed language presented in this section is unclear in that not all activities by public institutions receiving and expending tax dollars fall within the KAAD's jurisdictional boundaries of employment, housing and public accommodations. We note a potential conflict or omission in using the term "public institutions" in this section, versus the "public educational institutions" used in section 1. The proposed language does not provide for a complainant filing or investigation of antisemitic discrimination in a public institution that does not fall within the KAAD's current jurisdiction. In addition, the proposed language is not uniform with the remainder of the KAAD in that the KAAD consistently lists all protected classes associated with a particular jurisdiction, whether it be employment,

housing, or public accommodations. As such, the KHRC suggests that this passage might be better suited to New Section 1.

Section 3, page 6, lines 8-9 and Section 4, page 6, lines 32-page 7, line 5: This passage proposes that the Commission shall have the power to refer complaints to the Attorney General for review, investigation, and initiation of legal proceedings. The passage also authorizes the Attorney General to take various actions during an investigation.

This proposal is unnecessary as it duplicates both the powers provided to the Attorney General in New Section 1 and the duties and powers that the Commission already has. The Commission may make sign and file a complaint. K.S.A. 44-1005(b). The Commission, at K.S.A. 44-1004 (5), has the power to subpoena witnesses, compel their appearance, require the production of records, documents and other evidence, to take and record the testimony or statements of persons, issue interrogatories, administer oaths and take depositions. Beyond the listing provided for the Attorney General, the Commission shall have access at reasonable times to premises. Furthermore, the KAAD, per K.S.A. 44-1005(k), already provides for an award for pain, suffering and humiliation¹ without the necessity of proceeding to district court. The proposed language is unclear regarding the Attorney General's duties and how they integrate with the rest of the KAAD. Are the complaints investigated by the Attorney General returned to the KHRC for a Commissioner determination of No Probable Cause or Probable Cause? What actions taken by the Attorney General would satisfy the requirement for exhaustion of administrative remedies in order for a Complainant to commence a civil action under state or federal law? Would the review, initiation, and investigation of complaints by the Attorney General represent a conflict of interest in that attorneys from the Office of the Attorney General have represented State of Kansas agencies before the KHRC? It is also unknown if any investigations completed by the Office of the Attorney General would qualify for payment under the worksharing agreement between the KHRC and the U.S. Equal Employment Opportunity Commission (EEOC) for investigation of complaints falling within the jurisdictions of the KHRC and EEOC, which could decrease revenue provided by the EEOC contract.

Section 5, page 12, lines 12-33: The passage proposed to be stricken from the KAAD overwhelming describes the unlawful discriminatory practices in public accommodations of refusing service, denying service, or making a distinction in service because of the individual's protected class. This passage provides the language for public accommodation complaints filed with the agency. The intent of the strikeout is unclear as other KAAD passages continue to reference public accommodations.

In summary, we note for the Committee's consideration that portions of Sections 2 through 5 proposing amendments to the Kansas Act Against Discrimination are unclear, unnecessary, add a duplicative layer of government by proposing that the Attorney General carry out powers and duties already with the Commission, may establish a conflict of interest, and may unintentionally adversely impact payments from the EEOC to the KHRC.

Thank you for your consideration of our testimony. We are available for any questions.

¹ While this testimony is designed as neutral, the KHRC is in favor of increasing the amount of potential award for pain, suffering and humiliation from \$2,000.00 to \$10,000.00 as proposed at line 30 of page 9.