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S.B. 36 Neutral Testimony
Staffing: Ruth Glover, Executive Director, Kansas Human Rights Commission
January 11, 2024

RE: AN ACT concerning the Kansas act against discrimination; relating to ancestry; including hair texture and protective hairstyles in the definition thereof; amending K.S.A. 44-1002 and 44-1015 and repealing the existing sections.

The Kansas Human Rights Commission (KHRC) is responsible for administering and enforcing the Kansas Act Against Discrimination (KAAD). 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. The Commission also conducts a public education program as a proactive measure to prevent discrimination by explaining the requirements of Kansas law.

The KHRC's public accommodations jurisdiction does not extend to student enrollment and student activities, pursuant to a Kansas Supreme Court ruling in *Kansas Comm'n on Civil Rights v. USD No. 501*, 755 P. 2d 539 - Kan: Supreme Court 1988. The ruling contains the following:

- **“We believe that public schools are not places of public accommodations as contemplated by the Act. Places of ‘public accommodations’ are those which are held out as open to the general public and which members of the public generally are invited to patronize and otherwise visit.”**
- **“The legislative intent appears to be that the term ‘public accommodations’ includes all businesses which can reasonably be described as offering goods, services, facilities, and accommodations to the public.**
- **“In addition, the inclusion of the word ‘services’ in section (h) can reasonably be construed to mean business and not educational services.”**

Therefore, the KHRC does not have jurisdiction over student admissions to a school and related student matters dealing with a school, such as student interactions with other students, teachers, school staff, or school administration. As such, the KHRC is not be able to assist students who have been discriminated against by a school, etc. due to their natural hair. The State's anti-bullying statute at K.S.A. 72-6147 might be an appropriate place to prohibit discrimination by other students, schools, school staff, school administration, school boards, etc. based on a student's natural hair, if the Legislature or proponents would like to pursue that option. We currently refer parents who feel their child has been discriminated against in a school setting to the U.S. Department of Education, Office of Civil Rights, and/or to their school or school district.

As an unbiased, fact-finding, investigative body, the KHRC takes a neutral stance on the proposed legislation and to avoid the presumption the agency may favor one side or other if the legislation is adopted. It is vital that “Probable Cause” or “No Probable Cause” determinations made on complaints filed with this agency be accepted with credibility.

Current law provides that individuals may file complaints of discrimination in employment, housing, and public accommodations on the basis of race, religion, color, sex, disability, national origin, ancestry, genetic screening and testing (employment only), familial status (housing only), and retaliation with the KHRC.

Individuals currently can include complaint allegations that they have been subjected to discriminatory actions based on hair texture or a hairstyle historically associated with their ancestry or another applicable protected class, i.e., national origin, sex, race, religion, disability, etc.

The KHRC has a work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC) for the processing and resolving of employment complaints jointly filed under Kansas statutes and federal regulations, including Title VII of the Civil Rights Act. Any complaints alleging ancestry discrimination filed with the Kansas Human Rights Commission and falling within the EEOC's jurisdiction are filed under the basis of national origin with the EEOC. The EEOC provides that national origin discrimination includes discrimination because of an individual's or his or her ancestor's, place of origin, including employment discrimination against an individual because of that individual's physical, linguistic, and/or cultural characteristics closely associated with a national origin group. The EEOC's *Compliance Manual on Race and Color Discrimination* states,

“Appearance standards generally must be neutral, adopted for nondiscriminatory reasons, consistently applied to persons of all racial and ethnic groups, and, if the standard has a disparate impact, it must be job-related and consistent with business necessity.....Employers can impose neutral hairstyle rules – e.g., that hair be neat, clean, and well-groomed – as long as the rules respect racial differences in hair textures and are applied evenhandedly. For example, Title VII prohibits employers from preventing African American women from wearing their hair in a natural, unpermed “afro” style that complies with the neutral hairstyle rule. Title VII also prohibits employers from applying neutral hairstyle rules more restrictively to hairstyles worn by African Americans.”

A change in the law may increase awareness and prompt individuals who did not realize they could file a complaint to do so. However, the KHRC anticipates any increase in complaints and associated workload can be absorbed within existing resources.

A measure related to S.B. 36 is the CROWN Act, which proposes a prohibition on race-based hair discrimination because of hair texture or protective hairstyles including braids, locs, twists or bantu knots in employment and educational settings. The acronym CROWN stands for “Creating a Respectful and Open World for Natural Hair”. As of January 9, 2024, the website www.thecrownact.com reports 23 states have adopted The CROWN Act, including Colorado and Nebraska. The same website reports 21 states, including Missouri and Nebraska, have the legislation filed or pre-filed. The City of Atchison, City of Lawrence, and the City of Wichita adopted CROWN Act language as ordinances in 2023. The website further reports the U.S. House of Representatives passed H.R. 2116, *Creating a Respectful and Open World for Natural Hair*, on March 18, 2022, with a vote of 235-189, but the proposed legislation has not passed in the U.S. Senate.

In FY 2023, the Kansas Human Rights Commission received 1,032 complaints, including 1,002 in employment, 9 in housing, and 21 in public accommodations. The complaints included 152 allegations of ancestry/national origin discrimination.

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