

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND TOURISMThe meeting was called to order by Sen. Bill Morris at  
Chairperson1:30 ~~xxx~~/p.m. on Monday, February 20, 1984 in room 529-S of the Capitol.All members were present ~~except~~.

## Committee staff present:

Jerry Ann Donaldson, Research Department  
Gordon Self, Revisor  
Louise Cunningham, Secretary

## Conferees appearing before the committee:

Mr. Pete McGill, Pester Corporation  
Mr. Ron Smith, Pester Corporation  
Mr. Jack Fletcher, Pester Corporation, General Counsel, Des Moines, Iowa  
Mr. Jack Scurlock, Pester Corporation, Marketing Division, Denver, Colo.  
Sen. Frank Gaines  
Mr. Wayne Maichel, AFL-CIO  
Mr. Jerry Powell, Labor-Management Relations, Department of Human ResourcesA motion was made by Sen. Arasmith to approve the Minutes of February 13 and February 14. Motion was seconded by Sen. Werts. Motion carried.S.B. 641 - Relating to deductions from wages.

Mr. Pete McGill, representing the Pester Corporation explained the reason for requesting the bill. He said the Pester Corporation operates some of its stations for 24 hours a day and a manager is hired to run each station. They have a substantial investment in each station and large sums of money are involved. The manager is responsible for hiring employees and supervises the work. They have had some problems with managers and are requesting legislation to assist in solving some of these problems. Present law prohibits a pre-written contract with the manager and the owner cannot deduct money from a manager's wages. They contacted Mr. Arnold Berman, Department of Human Resources, and after many discussions with him they were told the changes could not be made through Rules and Regulations but there would have to be a change in the statutes. They were told there would be no objection from the Department to the amendment as long as the contract would not be with more than just the manager and this would mean just one person per establishment. Mr. McGill submitted a copy of his proposed amendment (Attachment 1). A copy of the present Iowa law was also submitted (Attachment 2).

Mr. Ron Smith said he had worked with the bill drafting department and this bill had been reviewed by Mr. Berman's office. When S.B. 641 was drafted it was found that it did not do what had been agreed to by both parties so the amendments were necessary.

Mr. McGill said the owner and manager would both agree to conditions of employment. It would make the managers more responsible and they would use better judgment. This would not involve the employees, but only the manager.

Mr. Scurlock, Pester Corporation, said some of the managers were careless about leaving a money bag laying around and if they were responsible they would be more careful. He was asked if they had insurance. Mr. Scurlock said this would be too expensive. This bill would allow the corporation to explain the responsibility to the managers. Mr. Scurlock said they had this in ten states but do not have it in Kansas.

Sen. Gaines spoke in support of the bill. He said the manager should be responsible for certain things. The manager has no investment in the corporation and Pester has to do something to make certain that the manager is responsible for certain duties. It would not take away any of his rights. This would just be an independent contract.

Rep. Kenneth W. Green submitted a letter to Sen. Morris dated February 20, 1984 expressing his support for S.B. 641. (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND TOURISM,  
room 529-S, Statehouse, at 1:30 ~~xxx~~/p.m. on Monday, February 20, 1984.

Mr. Scurlock and Mr. Jack Fletcher, General Counsel for Pester Corporation, answered questions from the committee.

Some members of the committee felt by signing a contract such as this, the manager would give up some rights as a citizen. The corporation could decide whether or not the manager was responsible for the shortage and could take deductions out of his wages down to the minimum wage. Also, there was some question as to the assistant managers on different shifts. This could involve three different contracts or the one manager would be responsible for shortages on all the shifts.

Mr. Jerry Powell, Labor-Management Relations, Department of Human Resources, spoke in opposition to the bill. He said he was not aware of Mr. Berman's discussions on S.B. 641 and that Mr. Berman had no right to speak for the Department on this issue. He was opposed to the bill. It deals with a lot more than allowing deductions from a manager's pay because of shortages. An employer could decide the manager was not working hard enough and could decide what amount he wanted to deduct. He could make deductions because of shoplifting. These losses could all be deductions from the manager's wages. This bill gives every business in the state the right to become the judge, the jury and the executioner. The manager could also be responsible for acceptance of bad checks as well as losses due to breakage. People would sign these contracts because they need jobs and without signing they would not be offered management jobs.

Mr. Powell said he believed there should be a deduction if the employee was stealing but the employer should file criminal charges and the employee should be found guilty before the deduction could be made. A copy of his statement is attached. (Attachment 4).

Mr. Wayne Maichel, AFL-CIO, said the proposed amendment, striking lines 53 through 58, could be subject to a court case.

Meeting was adjourned.

SENATE LABOR, INDUSTRY & TOURISM COMMITTEE

Date 2-20-84 Place 529-S Time 1:30

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Dick Sieder	Des Moines Ia	Pester Corp
Jack Slombeck	Dawson Co.	Pester Marketing
John Hatcher	Des Moines Ia	Pester Corp
John McKee	Topeka	Pester Corp
Wayne Muechel	Topeka	Kansas AFL-CIO
Ferry Powell	512 W 6th Topeka	D. H. R.
Skip Hark	512 W 6th	D. H. R.
Leroy Jones	Overland Park	B. L. E.
RON CALBERT	NEWTON	U. I. U.
HARRY D. HELSER	TOPEKA	AFL-CIO
RALPH M <sup>c</sup> C <sup>o</sup> BB	"	"

PROPOSED  
SENATE COMMITTEE AMENDMENT  
SB 641

Mr. Chairman:

I move to amend SB 641 as follows:

In line 20, before "Section" by adding the word "New"; by striking all after "Section 1."; by striking all of lines 21 through 29 inclusive;

In line 30, by striking "(b) The" and inserting in lieu thereof "The provisions of K.S.A. 44-319 notwithstanding, the";

In line 31, by striking all after the word "wages"; in line 32 by striking all before the colon; in line 36 after the word "writing" by inserting the phrase "signed by both parties that"; in line 38 before the semi-colon, by inserting ". Not more than one such agreement shall be in effect per establishment."

Further by striking all of lines 53 through 59 inclusive; in line 60 by striking "Sec. 3" and inserting in lieu thereof "Sec. 2";

In the title, in line 17, by striking all after the word "wages"; and by striking all of line 18.

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District \_\_\_\_\_

*Atch. 1*

# SENATE BILL No. 641

By Committee on Ways and Means

0017 AN ACT relating to deductions from wages; ~~amending K.S.A.~~  
0018 ~~44-319 and repealing the existing section.~~

Be it enacted by the Legislature of the State of Kansas:

0020 Section 1. ~~K.S.A. 44-319 is hereby amended to read as fol-~~  
0021 ~~lows: 44-319. (a) No employer may withhold, deduct or divert~~  
0022 ~~any portion of an employee's wages unless: (1) The employer is~~  
0023 ~~required or empowered to do so by state or federal law; (2) the~~  
0024 ~~deductions are for medical, surgical or hospital care or service,~~  
0025 ~~without financial benefit to the employer, and are openly, clearly~~  
0026 ~~and in due course recorded in the employer's books; or (3) the~~  
0027 ~~employer has a signed authorization by the employee for de-~~  
0028 ~~ductions for a lawful purpose accruing to the benefit of the~~  
0029 ~~employee.~~

[New]

0030 ~~(b) The following shall not be deducted from an employee's~~  
0031 ~~wages unless deducted pursuant to a written agreement signed~~  
0032 ~~by the employer and employee: (1) Cash shortage in a common~~  
0033 ~~money till, cash box or register operated by two or more em-~~  
0034 ~~ployees or by an employee and an employer. However, the~~  
0035 ~~employer and a full-time employee who is the manager of an~~  
0036 ~~establishment may agree in writing the employee will be re-~~  
0037 ~~sponsible for a cash shortage that occurs within 45 days prior to~~  
0038 ~~the most recent regular payday.~~

[The provisions of K.S.A. 44-319 notwithstanding, the]

[signed by both parties that]

[Not more than one such agreement shall be  
in effect per establishment.]

0039 (2) losses due to acceptance by an employee on behalf of the  
0040 employer of checks which are subsequently dishonored if the  
0041 employee has been given the discretion to accept or reject such  
0042 checks and the employee does not abuse the discretion given;  
0043 (3) losses due to breakage, lost or stolen property, unless  
0044 such tools and equipment are specifically assigned to and their  
0045 receipt acknowledged in writing by the employee from whom

0046 *the deduction is made;*

0047 (4) *damage to property, default of customer credit or non-*  
0048 *payment for goods or services rendered so long as such losses*  
0049 *are not attributable to the employee's willful or intentional*  
0050 *disregard of the employer's interests; and*

0051 (5) *gratuities received by an employee from customers of the*  
0052 *employer.*

~~0053 (b) (c) Nothing in this section shall be construed as prohib-~~  
~~0054 iting the withholding of amounts authorized in writing by the~~  
~~0055 employee to be contributed by him to charitable organizations,~~  
~~0056 nor shall this section prohibit deductions by check-off of dues to~~  
~~0057 labor organizations or service fees, where such is not otherwise~~  
~~0058 prohibited by law.~~

~~0059 Sec. 2. K.S.A. 44-319 is hereby repealed.~~

0060 ~~Sec. 2.~~ This act shall take effect and be in force from and  
0061 after its publication in the statute book.

[Sec. 2]

§ 91A.4  
Note 1

POLICE POWER

There is no express or implied statutory authority for paying county employees for unused sick leave upon retirement or termination of employment. Op.Atty.Gen. (Jones), Feb. 14, 1978.

91A.5. Deductions from wages

1. An employer shall not withhold or divert any portion of an employee's wages unless:
  - a. The employer is required or permitted to do so by state or federal law or by order of a court of competent jurisdiction; or
  - b. The employer has written authorization from the employee to so deduct for any lawful purpose accruing to the benefit of the employee.
2. The following shall not be deducted from an employee's wages:
  - a. Cash shortage in a common money till, cash box, or register operated by two or more employees or by an employee and an employer. However, the employer and a full-time employee who is the manager of an establishment may agree in writing signed by both parties that the employee will be responsible for a cash shortage that occurs within forty-five days prior to the most recent regular payday. Not more than one such agreement shall be in effect per establishment.
  - b. Losses due to acceptance by an employee on behalf of the employer of checks which are subsequently dishonored if the employee has been given the discretion to accept or reject such checks and the employee does not abuse the discretion given.
  - c. Losses due to breakage, lost or stolen property, unless such tools and equipment are specifically assigned to and their receipt acknowledged in writing by the employee from whom the deduction is made, damage to property, default of customer credit, or nonpayment for goods or services rendered so long as such losses are not attributable to the employee's willful or intentional disregard of the employer's interests.
  - d. Gratuities received by an employee from customers of the employer.

Acts 1975 (66 G.A.) ch. 90, § 5.

Library References

- Master and Servant ⇐ 73.
- C.J.S. Master and Servant § 102.

Notes of Decisions

I. In general

Under agreement between union and employer providing for establishment of stock acquisition and profit-sharing plans funded by payroll deductions, with funds to be initially used by employer as operating capital and ultimately to purchase stock whereby union would acquire controlling percentage, benefits deferred thereunder were not "wages" within meaning of this section precluding

withholding of wages without written authorization from employee, unless employer is required to do so by law, where the benefit payments were not "owed" to the employees during the terms of the interim agreement in that they were not yet due. Bodecker v. Local Union No. P-46, C.A. 1981, 640 F.2d 182.

Employer may deduct from employees wages for loss of tools and equipment acknowledged as received by the employee; and for other losses as enumerated in this section, whenever the employee demonstrates a willful or intentional disregard of the employer's interest. An employer may not deduct for damage to a third party's property. Op.Atty.Gen. (Johnson), April 27, 1979.

91A.6. Notice and record-keeping requirements

1. An employer shall after being notified by the commissioner pursuant to subsection 2:
  - a. Notify its employees in writing at the time of hiring what wages and regular paydays are designated by the employer.
  - b. Notify, at least one pay period prior to the initiation of any changes, its employees of any changes in the arrangements specified in subsection 1 that reduce wages or alter the regular paydays. The notice shall either be in writing or posted at a place where employee notices are routinely posted.
  - c. Make available to its employees upon written request, a written statement enumerating employment agreements and policies with regard to vacation pay, sick leave,

WAGE I

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d. Es showing employm

2. The employer liquidated penalty wages or money pe provisions provisions

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1. In gen Provision secure payr

Atch. 2

KENNETH W. GREEN  
REPRESENTATIVE, SEVENTY-FIFTH DISTRICT  
BUTLER COUNTY  
327 MARMATON  
EL DORADO, KANSAS 67042



TOPEKA

HOUSE OF  
REPRESENTATIVES

February 20, 1984

COMMITTEE ASSIGNMENTS  
MEMBER: LABOR AND INDUSTRY  
PUBLIC HEALTH AND WELFARE  
COMMUNICATION, COMPUTERS AND  
TECHNOLOGY

Senator Bill Morris  
Chairman, Labor and Industry Committee  
Capitol Building  
Topeka, KS

Dear Senator Morris:

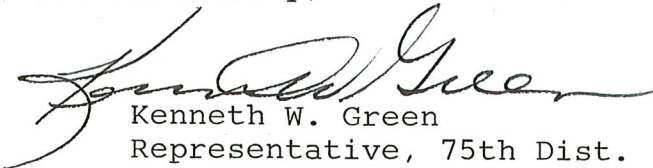
I am in support of SB 641.

My people in the labor organization also support this bill. I have visited with some of them in the leasing and management business, service stations, etc., and they also support this bill.

I think it is something that is long overdue. I urge the committee to pass this favorably out of committee. I am sorry I am unable to attend, but I have other commitments.

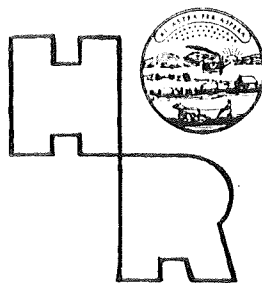
Thank you.

Sincerely,

  
Kenneth W. Green  
Representative, 75th Dist.

KWG/rh





KANSAS DEPARTMENT OF

Human Resources

LABOR-MANAGEMENT RELATIONS AND EMPLOYMENT STANDARDS

512 West 6th, Topeka, Kansas 66603-3178  
913-296- 3094

Testimony on Senate Bill 641  
Senate Labor and Industry Committee  
Date: February 20, 1984  
By: Jerry Powell

Mr. Chariman and members of the Committee I thank you for the opportunity to appear here today in opposition to Senate Bill 641. I am employed within the Labor-Management Relations and Employment Standards Division of the Department of Human Resources and serve, among other job duties, as chief administrator of K.S.A. 44-319 et seq., the Kansas Wage Payment Act. My first experience with the wage payment act was some ten years ago when I was first employed by the state. At that time the statute was relatively new and few cases were filed under the law. I served as the investigator, the conciliator and the hearing examiner. I did not type well thus I was provided with a secretary. I cannot now recall the case load, but I do remember that a majority of the cases filed with me were as a result of employers not being aware of the law.

In March of 1974 I was fortunate to be selected as Executive Director of the Public Employee Relations Board and have served in that capacity until the present time. It is in that position that I became acquainted with most of the members of this committee. In recent months we have reorganized our division in the Department of Human Resources and I now also work with the wage payment act. From that one man, one secretary operation with few cases ten years ago, the operation has grown to five investigators, one full-time hearing officer, and two clerical positions. Each investigator handles an active case load of 140 cases and there are currently 115 cases awaiting hearings approximately 135 cases are filed each month and in many instances numerous cases are filed against a single employer. I can tell you for certain that a majority of our cases these days are not due to ignorance of the law. Additionally, I will estimate that 85% of the claims filed with our office, are merited claims. During fiscal year 1983 we ordered that \$350,000 be paid to employees. Many of our cases are repeat offenses by the same employers.

The Department of Human Resources estimates that there are 56,000 employers in Kansas and that our Kansas workforce is approximately 1.3 million workers. So you can see, by simple arithmetic, that the vast majority of employers properly pay their employees. This law than effects a very few employers who have failed to properly pay their employees and a very few employees who falsify claims against employers. This law, like most other laws, served only to insure that all employers act in a manner that most employers would act even if there was no law.

Att. 4

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Committee

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February 20, 1984

Before we look closely at the provisions of this bill please allow me a moment to discuss the requirements of the existing statute. I am not quite sure everyone understands exactly what this law means. First of all, the statute states that an employer must pay all earned wages to employees. It does not specify any rate of wages to be paid. Rather, the law requires payment of the wage rate contracted between the parties. That is, the rate offered by the employer and accepted by the employee. That rate might run from say fifty cents per hour upward depending, of course, upon various wage laws. The rate might be based upon a piece rate or commission arrangement. This statute simply requires an employer to pay whatever wage he agreed to pay. Additionally, the law specifies that an employer's cost of doing business, theft, bad debt, breakage, etc., cannot be deducted from an employee's earned wages. I submit, Mr. Chairman, that that is as it should be. For if I go into business and I anticipate making, and hopefully do make, a profit, I should not be allowed to make my employees share in my risk of doing business. That Mr. Chairman and members of this committee is what this bill proposes to do.

Now you are no doubt going to hear that this bill allows an employer to withhold wages for employee theft and it does. Unfortunately, it also allows an employer to withhold for suspected theft and shoplifting by others. I will be the first to agree that an employer should not have to pay an employee who steals from him. However, if the State of Kansas suspected anyone of you of stealing, I am certain you would want your day in court before your wages were withheld. I know I certainly would. This bill allows an employer to be judge, jury and executioner.

You will hear that this amendment will allow an employer to give an incentive to employees to be more careful. I submit that that incentive exists under current statute. In fact thousands of Kansas employers now give such an incentive and remain within the parameters of the statute.

You will hear that employers need to have the right to deduct from earned wages for willful or intentional disregard for the employer's interests. I can but question what the statement means. I guess it means whatever an unscrupulous employer says it means. Under current statute an employer can simply fire an employee if he feels the employee is not doing his job. Additionally, I am sure an employer could recoup losses caused by willful acts of employees in a civil action. Given all the arguments you will hear in favor of this bill, I hope each of you will put yourselves in the employee's shoes and carefully consider the alternatives available to employers.

Please allow me a few minutes to look to the language of the bill. In its present form the bill is, at best in my opinion, laughable. I say this in light of the language contained in

paragraph (b) of section (1), wherein it states: "The following shall not be deducted unless deducted pursuant to a written agreement." Ladies and gentlemen those employers who would take advantage of an employee will require a written agreement as a condition of employment. Therefore, all of those items which may be deducted only under certain circumstances as specified in sub-paragraph 1, 2, 3, 4, 5, become deductible when a written agreement exists. Even item number five, gratuities received by an employee may be deducted if an employer requires an employee to sign an agreement in order to get or retain his job. I can but assume that amendments will be offered to correct this obvious oversight.

With that assumption in mind lets look at some of the circumstances under which deductions can be made. Sub-paragraph two at lines 0039 through 0042, allows an employer to deduct the cost of bad checks if the employee accepting the check "Abuses the discretion" given by the employer to the employee to accept checks. Who becomes the judge? I assume the employer. Now I do not know how many bad checks are passed each day but I can assure you that I will need numerous new hearing officers to adjudicate this abuse of discretion question.

Sub-paragraph four, lines 0047 through 0050 allow deductions from employee's wages for default of customer credit or nonpayment of goods and services if such losses are attributable to the willful or intentional disregard of the employer's interest. Once again, I wonder who will judge this disregard or for that matter what constitutes a willful disregard. Please remember to triple my budget if you pass this bill, for I am going to need many more hearing officers.

In summary, this bill allows employers the unilateral discretion to share or shift their cost of doing business to their employees. It is certainly conceivable that an unscrupulous employer could pay for the costs of goods and deduct all other costs from the wages of his employees. I know that the proponents of the bill will argue with this statement and I agree that the vast majority of Kansas employers will not abuse the law. However, some will exploit employees to the very limit. I strongly suspect that most Kansas business - men and women would stand before this committee in opposition to this bill since passage of the bill will allow unfair competition by those who would exploit employees. I respectfully request that members of this committee ask proponents why they need this bill and what they want to do that they cannot do under existing statute.

The bill will prove quite costly to Kansas taxpayers at least to the extent of requiring a drastic increase in the state wage payment budget if not from increased unemployment and welfare costs. On behalf of the Department of Human Resources I ask that all of

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Committee  
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you carefully consider this bill and I am sure you will agree that this bill should not become law.

I will be happy to answer any questions relating to the existing statute or the proposed bill.