

Approved

Al H. Douville 4-22-86
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Dorothy Nichols at
Co- Chairperson

9:00 a.m. on February 13, 1986 in room 526-S of the Capitol.

All members were present except:

Representative Douville, excused.

Committee staff present:

All Present.

Conferees appearing before the committee:

Wayne Maichel, KS AFL-CIO
A.J. Kotich, Dept. of Human Resources

The committee continued its discussion of H.B. 2761. Wayne Maichel said that labor supports the bill. He also pointed out a place in the bill that needed to be changed to reflect the corrected name of his organization. Representative Friedeman made a motion to strike the words "state federation of labor" on page 15 line 551 of the bill. The motion was seconded by Representative Sifers. There being no discussion a vote was taken and the motion was carried.

Representative Green made a motion to insert section 4, which was handed out earlier to the committee, into the bill. The motion was seconded by Representative Sifers. A discussion followed.

Representative O'Neal passed out attachment #1 to the committee members. The attachment regards confidentiality language in H.B. 2761.

Representative O'Neal made a substitute motion to amend section 4. Representative Friedeman seconded the motion. There was further discussion regarding the amended language. A.J. Kotich fielded questions of the committee members regarding the substitute motion. Representative Sifers requested that the committee hold its vote on this substitute motion for further consideration. Representative O'Neal withdrew his substitute motion. The committee was back on its original motion to amend section 4 into the bill. There being no further discussion a vote was taken and the motion carried.

The meeting was adjourned at 9:30 a.m.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date 2-13-86

Name	City	Representing
A. J. Kotch	Topeka,	DHR
Bill Crawford	"	"
Paul Bicknell	"	"
Ken Caches	WICHITA	BMWAL
Wayne Manley	Top	K. AFL-CIO
Irene McElroy	Hutchinson	
Carelyn Wells	Hutchinson	CWA 6400
Bill Schumaker	Osage	CWA 6324
Marion Beckmore	Merriam	CWA 6327
Larry Mathews	Newton	CWA 6400

MICHAEL R. (MIKE) O'NEAL
 REPRESENTATIVE, 104TH DISTRICT—HUTCHINSON
 RENO COUNTY
 P.O. BOX 1868
 HUTCHINSON, KANSAS 67504



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HOUSE OF
 REPRESENTATIVES

MEMORANDUM

COMMITTEE ASSIGNMENTS
 MEMBER: JUDICIARY
 LABOR AND INDUSTRY
 PUBLIC HEALTH AND WELFARE

TO: House Labor and Industry Committee
 FROM: Representative Mike O'Neal
 DATE: February 12, 1986
 RE: Proposed Confidentiality Language in HB 2761

As you know a question has come up concerning the Department of Human Resources' request for stricter confidentiality language in HB 2761. The Department's policy of closed records, particularly insofar as it relates to information from the Division of Worker's Compensation, has caused a number of problems. The Department's proposed language is in response to the recent district court decision which allowed limited disclosure of the transcript of an unemployment compensation hearing.

The Department stated in its testimony to our Committee that their policy on confidentiality is mandated by federal law. I asked at our meeting a few days ago for the department to furnish me with the federal law so that we can determine what the minimum requirements are. The department has complied with that request.

As noted by the Department, the Division of Employment of the Department of Human Resources was created by the Wagner-Peyser Act, Title 29, Section 49 et seq. Under that Act a Secretary of Labor is authorized "to make such rules and regulations as may be necessary to carry out the provisions of this title" (see 29 USC 49 (k)). In order to receive federal monies states must comply with federal rules and regulations and enact laws in each respective state when directed by the United States Department of Labor.

The policy of the Chief Administrator of the Federal Employment Service is set forth in the Code of Federal Regulations 604.16 which state in pertinent part as follows:

"It is the policy of the United States Employment Service to permit disclosure of information from the files and records of the Employment Service:

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(a) to individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling, and other employment service functions.

...

(d) to any officer or employee of any agency of the federal government or a state or territorial government, lawfully charged with the administration of a law providing for old age assistance, or other public assistance, work relief, pension, retirement, or other benefit payments, but only for purposes reasonably necessary for proper administration of such law.

...

(f) to all governmental authorities, such as antidiscrimination and fair employment practice authorities, whose functions will aid the employment service in carrying out an amplified and more effective placement service, including information relating to fair employment practices.

(g) to individuals, organizations, and agencies or for purposes other than as specified in the other paragraphs of this section if such disclosure will not impede the operation of, and is not inconsistent with the purposes of, the public employment service program, and is authorized in writing in individual cases by the state agency official responsible for the employment service program."

In response to the federal regulations Kansas Administrative Regulation 50-4-2 was enacted. That Kansas Administrative Regulation provides in pertinent part as follows.

"(a) Information obtained from any worker, employing unit, or other persons or groups pursuant to the administration of employment security law shall not be disclosed, directly or indirectly, in any manner revealing the individuals or employing units identity except in the following circumstances:

...

(4) Information shall be disclosed as required by any other statute of the federal government or the State of Kansas if the request for information is in writing and the statutory authorization for the release of the requested information is cited in the written request."

The requirement of confidentiality therefore is not nearly as narrow as the department suggests. The present confidentiality statute is actually more restrictive than the federal rule, which states a policy of disclosure when doing so is consistent with the purpose of the unemployment security law.

The policy of nondisclosure is obviously intended to assist in the orderly processing of employment services without impediment from outside sources and under circumstances having no logical connection with the administration of the employment service.

In Kansas however, there is a need within the Department of Human Resources itself to have certain information made available to the Division of Worker's Compensation, for example, in cases which involve the same employer and same employee that were involved in the unemployment security claim.

I am currently handling a worker's compensation case where strict enforcement of a nondisclosure policy by the Department is working a hardship on both the employer and the employee. The employee was injured on the job under circumstances which pointed to a breach of the employer's safety rules and a failure to use a safety device. The incident resulted in the employee being fired for breach of duty and an unemployment compensation claim was filed and appeals were taken. A worker's compensation claim was also filed and the employer defended on the basis that the claimant failed to use a safety device and should be denied benefit. The issues in the worker's compensation case were almost identical to the issues in the unemployment benefit claim case yet the department would not turn over to either the claimant or employer the transcript of the unemployment claim proceedings wherein a number of witnesses appeared to testify. It is unconceivable to me that the intent of the federal law was to prevent disclosure in such a case and in fact a review of the above federal regulations fails to indicate such an intent. By way of example, the federal regulations suggest that such information could be disclosed to our Commission on Civil Rights in the event a discrimination claim were filed. (CFR604.16(f))

Therefore rather than adopting the Department's suggested language prohibiting disclosure of the hearing transcript, the present law should be amended to allow such disclosure where there is a commonality of parties involved. If an individual appears at an unemployment benefit claim case and testifies under oath that testimony should be available in another administrative agency hearing where the same individual testifies under oath and provided the information is relevant.

As a footnote, it is arguable that the Division of Worker's Compensation could access those records under current law as a "public employee" (Kansas Commission on Civil Rights v. Carlton 216 K. 735)

MO/bs