

Approved February 25, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at
Chairperson

1:30 ~~xxx~~ p.m. on Tuesday, February 18, 1986 in room 529-S of the Capitol.

All members were present except:

Senator Eric Yost (excused)

Committee staff present:

Jerry Ann Donaldson, Research
Gordon Self, Revisor
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Jerry Powell, Chief Executive Officer-Kansas Wage Payment Act KSA 44-313
Larry Wolgast, Secretary-Kansas Department of Human Resources
Steve McQueen, Representative of Commissioned Salespersons, Ottawa, Kansas
Robert Cloughley, Representative of Independent Garment Manufacturers
Roy Moore, Sales Representative-Bureau of Wholesale Sales
Norman Gale, Sales Representative-Bureau of Wholesale Sales
Karen McClain, Representative-Kansas Association of Realtors

The Chairman called the meeting to order at 1:30 p.m..

A motion was made by Senator Gordon and seconded by Senator Daniels to approve the Minutes of Monday, February 10, 1986. Motion carried.

The Chairman called upon Jerry Powell, and asked if the Kansas Wage Payment Act had anything they would like to comment on, before he called on conferees regarding SB586.

SB586An Act concerning the prompt payment of commissions to commissioned salespersons when the contractual relationship terminates.

Jerry Powell I'm not sure how KSA 44-313 fits in with this bill. Independent Contractors, are not employees, and KSA 44-313 applies only to employees. There are a lot of commissioned salespersons, who are not employees, and we would like to make a determination as to whether wages are due. There is a Federal test set out in determination as to whether or not they are Independent Contractors, and if they are, then we have no jurisdiction. Simply because you are an outside commissioned salesperson, doesn't exempt you from KSA 44-313.

The following conferees are proponents for SB586.

Larry Wolgast I would like to refresh your memory of what the voluntary quits law HB2254, which passed legislation last year, was supposed to do. First, the period of disqualification was changed, and secondly, codified the definition for voluntary quits, and set out exceptions where payment of benefits would be accepted.

My purpose here today is to show you the effects of that law for approximately a 6 month period. I also, feel it is really too early to tell, exactly where it is going to fall. I can show you some statistics, where the amount paid is substantially less than a year ago (See Attachment A). Our research people estimate that the fund will save approximately \$4.5M per year as a result of HB2254. In regard to the 11 exceptions, the statistics show they are going 50-50. (See Attachment B)

Steve McQueen I represent over 7,000 commissioned salespersons who reside in the State of Kansas. A commissioned salesperson is an independent businessperson who usually represents more than one manufacturer, and pays all of his own expenses, and is reimbursed by the manufacturer. Many times a manufacturer goes out of business, or moves to another State, leaving a commissioned sales-

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,

room 529-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Tuesday, February 18, 1986

person without collecting funds due him, leading to legal action, and this type of unscrupulous tactics have become more common place in the past few years. By the time a salesperson goes through legal action, the recovery is about 50%, because he pays legal fees to recover what is due him. This bill would take care of the unfair types of practices for all Kansas salespersons, and I ask this committee to give favorable passage to the bill. (See Attachment C.)

Robert Cloughley I represent over 500 salesmen, in Ladies and Childrens apparel. We sell to department stores, specialities stores, etc., but we are not classified as independent contractors. From our stand point, we must go to another State, and file suit to recover commissions due us, and we would like for them to have to come to Kansas, because we are Kansas residents. We are not employees, we pay our own social security, and our own expenses, and we are not reimbursed for these expenses, so they say, we are definitely a independent contractor, and we don't fall under this law. Several other State's have adopted this law, and it works very well, and I ask this committee to vote favorably for passage.

Chairman Thiessen asked Jerry Powell, if we included KSA 44-313, would they then have to come to Kansas to defend themselves from law suits, or would our people still have to go to their State to file a law suit against them?

Jerry Powell I can't speak for the legal ramifications of contract law, but there are attorney's in our department that could. We do try to hold hearings in the area where the offense took place.

Roy Moore In a particular lawsuit that I had against a Company in New York City, I sued out of the State of Kansas with the understanding, that when it went to court, they would have to bring their lawyers to the State of Kansas, and that was one reason that they settled, but they would have to had come to Kansas because I filed suit in the State of Kansas against them.

Norman Gail I was instrumental in getting this bill passed in Indiana, and we have found it very effective. Two weeks after the bill passed in Illinois, we had trouble with a manufacturer, and regardless of the reason, they severed connections, makes no difference, he took a copy of his bill and sent it to New York, and the check came in the mail the next day.

Gentlemen, we need this type of bill for this specific industry, and I know you are working for all the commissioned salespersons, and we are calling upon you to assist us, and it cost nothing to the State of Kansas, there is no cost involved what so ever. All we want is some protection, and I ask you to pass this bill favorably.

Opponent to SB586

Karen McClain Real Estate Salespersons do not fit into this catagory, and we have a real problem with the language, and the way it is going to effect real estate contracts. Accordingly, we ask that you pass this bill out of this committee, with an unfavorable recommendation, or take their group from the provisions of SB586. (See Attachment D)

Chairman Thiessen stated, we will schedule this for discussion at a later date.

The meeting adjourned at 2:25 p.m.

VOLUNTARY QUIT DISQUALIFICATION LEGISLATION

3-18-86
Att A
A. J. H. H. H.

Immediately prior to July 1, 1985, the disqualification period for voluntary quit without good cause was the week of filing for benefits and the 10 weeks following. Experience with this legislation demonstrated that numerous cases could be documented in which the claimant(s) served this period of the disqualification and subsequently received benefits. During fiscal year 1984 a total of 6,010 claimants received \$8.6M in benefits after having served an 11 week disqualification for voluntary quit.

H.B. 2254 of the 1985 legislative session changed the ease of drawing benefits through the invokement of much more rigorous treatment for individual job relinquishment. Two features of this bill were paramount. First, the period of disqualification was changed and second, a definition for voluntary quit was identified by statute.

The period of disqualification enacted by H.B. 2254 essentially now set out an "indefinite" period of disqualification whereas earlier the term was merely 11 weeks. The claimant must now take action on his own behalf to demonstrate reattachment to the labor force through reemployment and earnings equal to three times his/her weekly benefit amount. Until these conditions are met the disqualification remains in effect and no benefits can be granted.

As was mentioned, H.B. 2254 also codified the definition of voluntary quit and set out 11 exceptions whereby job abandonment may be acceptable in that the payment of benefits would be allowed.

- 1) Forced to leave because of illness or injury
- 2) Left temporary work for regular employment
- 3) Military enlistment rejected or delayed
- 4) Transfer of spouse
- 5) Hazardous working conditions
- 6) Approved training
- 7) Unwelcome harassment
- 8) Acceptance of better work
- 9) Instructed to violate statute or ordinance
- 10) Employer violation of work agreement
- 11) Personal emergency

Limited experience with the new legislation indicates a substantial decline in the number and amount of benefits paid to persons following voluntary job relinquishment and is evidence of the rigorous terms of the new requirements.

	<u>July-December</u> <u>1985</u>	<u>July-December</u> <u>1984</u>	<u>Per Cent</u> <u>Change</u>
Number of Claimants.....	618	1,952	-68.3
Amount Paid.....	\$739,892	\$2,974,608	-75.1

As the table illustrates six months experience since July 1985 shows payments down 75 per cent from a year ago. It is estimated that total payments from the fund will be reduced by \$4.5M per year as a result of H.B. 2254.

Voluntary Quit Appeals Decisions by Clearance Issue
 Number in Favor of Claimant or Employer
 July - December 1985

<u>Issue</u>	<u>Lower Authority</u>		<u>Higher Authority</u>	
	<u>Favor of Claimant</u>	<u>Favor of Employer</u>	<u>Favor of Claimant</u>	<u>Favor of Employer</u>
Illness or injury.....	58	62	5	7
Left temporary work.....	1	0	0	0
Armed forces enlistment.....	0	0	0	0
Spouse transfer.....	58	49	6	6
Hazardous working conditions.....	27	20	4	2
Approved training.....	0	0	0	0
Unwelcome harassment.....	17	16	3	2
Acceptance of better work.....	24	19	1	2
Ordinance or statute violation....	6	5	0	1
Work agreement violation.....	90	91	9	8
Personal emergency.....	34	58	0	2

Kansas Department of Human Resources
 Division of Employment and Training
 Research and Analysis Section
 February 1986

Attachment B
 Senate Labor, Industry
 and Small Business
 February 18, 1986

February 18, 1986

KANSAS STATE SENATE

LABOR AND INDUSTRY COMMITTEE

RE: Senate Bill #586 Commission Salespersons Protection Act

by: Steve Queen - Ottawa, Kansas

I am told that I am here representing over 7,000 commissioned salespersons who reside in, and do business in the state of Kansas. I cannot verify those numbers, but I can state definitely that Senate Bill #586, if approved and passed into law, will have a positive effect, either directly or indirectly, on each and every sales person who resides in Kansas.

To give you some background on this issue, and being aware and thankful that this bill addresses all commissioned salespersons, I would like to relate several examples concerning what I know best, the apparel industry.

First, I would like to define what a "commissioned salesperson or sales representative" is. He is an independent businessperson who usually, without any guarantee of delivery, acceptance of orders, etc., but in good faith, represents usually more than one manufacturer, earnestly developing a client and product base in a given territory. This sales rep. usually pays all of his own expenses, provides for his own transportation and most times works without a written legal contract. He sells some product or service to a limited number of merchants or customers in a specific area of interest.

Remember, if a truck brought it-a salesman sold it.

For years the sales rep depended on the integrity of manufacturers and the industry and a minimal amount of competition in each specific area to protect him. However, in recent years it seems that everyone is expanding into new areas. Everything is changing rapidly.

Likewise, sales reps change lines very frequently ^{OR NEED TO} and ^{WE} need protection from unscrupulous manufacturers. Companies go out of business to get the fast dollar rather than hang in there and ride out tough economic times. Companies will

solicit reps to pioneer territories and develop a customer and product base and then decide to eliminate or change its salesforce and/or re-align territories. In doing so, some companies not only eliminate the sales rep from future commissions but put tremendous hardships on the sales rep in trying to recoup his commissions, for which he has already worked and spent his own money developing.

As more and more manufacturers emerge, unscrupulous tactics have become more commonplace. Sales reps who are owed commissions have to resort to collection. Many times this collection procedure is more far-reaching than you would imagine. A salesperson, by necessity, must file a legal suit in order to recover those commissions but any salesperson who might initiate such a suit also runs the risk of being labeled a troublemaker or whatever by the industry or manufacturers, and thus jeopardizes future employment as well. But, if he decides to go ahead, the suit when filed, either may, or may not, be recognized by the state in which the manufacturer or company resides, or manufactures in.

Therefore, possibly a second suit, and another lawyer, in that other state is needed, and the farce continues. The salesperson must then go to that other state. When the suit is ready for court the company usually decides to settle, many times for less than what is really owed. Due to the confusion, the delays and with the knowledge that only the unpaid commissions can be recovered, and at the advise of his attorney, the salesrep usually settles because he can't afford to take it further.

So, the commissioned salesperson has been involved. Isn't it understandable why he is soured on the "system". A system that allows a company, with lawyers on retainer, to delay payment of monies to any individual who has spent his own money, in good faith, in advance, and then be deprived of not only the money to which he is entitled legally, but also make him pay up to 50% of it in legal fees, etc, and then recover only a portion of it.

You have the ability to end these unfair types of practices for all Kansas salespersons with the approval of Senate Bill 586.

I would not only encourage ^{adoption of} this bill, but ask you to consider the addition or ammendment to this bill that states "any person, as defined in section 1 (d), who fails to comply with this Bill concerning timely payment or with any provision concerning payment of commissions due upon the termination of the contractual relationship with the commission salesperson, shall be liable in a civil action for exemolary damages in an amount which does not exceed 3 times

the amount of the commissions owed to the sales representative. Additionally, such person shall pay the sales representatives reasonable attorney's fees and court costs."

This type of stimulation has been adopted in Illinois^{of which I have a copy,} and several other states and further exemplifies what the commissioned salesperson really and truly wants, the backing of our state and protection against the big businesses that currently are refusing to pay us the commissions we have earned and spent our money to acquire. Simply stated, we wish to say "pay us what is legally ours NOW, or you will be required to pay us later plus damages, because we're from Kansas and Kansas cares.

Is Kansas any less concerned for the welfare of its citizens than Alabama, California, Florida, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri or Tennessee? These 10 states have all enacted legislation similar to Senate Bill 586 within the past 3 or 4 years and are thus protecting those commissioned salespersons who reside in their states. We feel certain that you the members of the Labor and Industry Committee, and your fellow Senators and Representatives in the House will be no less responsive to the rights of Kansas citizens than these other states were.



Executive Offices:
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TO: SENATE LABOR, INDUSTRY AND SMALL BUSINESS COMMITTEE
FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: FEBRUARY 18, 1986
SUBJECT: SB 586

On behalf of the Kansas Association of REALTORS®, I am here to speak in opposition to SB 586.

The Kansas Association of REALTORS® feels that the bill has serious ramifications on the sale of real estate which have not been taken into consideration.

SB 586 would require payment of earned commissions within thirty days of the days of the termination of a contractual relationship between two parties to solicit and make sales.

The bill does not define the term "earned". Under rules of statutory construction, language which is not specifically defined by law, are to be given their ordinary meaning in usage. Webster's New Collegiate Dictionary defines the word "earn" as "1. to receive as return for work done or services rendered, 2. to come to be duly worthy of or entitled or suited to."

Under this definition, there is no allowance for definitions in sales contracts of what "earned" means, and this leads to a lot of problems where the sale of real estate is involved. In a real estate sales transaction, a sales commission is earned when the agent produces a "willing and able buyer." The time for determining whether a "willing and able buyer has been produced" is the time of closing, when the buyer actually produces the purchase price of the property. The timing for closings can be as long as 90 days to a year after the purchase contract has been signed. This may be months after the contractual relationship for a salesperson has terminated. Yet, under this broadly worded

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statute, a salesperson could force a broker to pay out the commission within thirty days after his or her termination, if the salesperson claimed that the commission had been "earned", under the definition given above, and by totally ignoring the provisions of a contract, which the salesperson signs.

Another problem arises for members of our association, because by being a member of the Kansas Association of REALTORS®, a salesperson agrees to arbitrate any disputes over, among other things, whether an agent is entitled to a commission. This arbitration would come into play where there was a dispute within a firm over which agent was the "procuring cause" of the sale, or it can arise where there is a dispute between agents in different firms over who was the "procuring cause". The arbitration procedure can take as long as 130 days to be completed. There is also a right of a district court appeal if the claimant or respondent does not agree with the decision of the arbitration panel. Yet, due to this broadly worded statute, an agent could demand the commission within 30 days of the termination of the contractual relationship.

What this law would then, in effect do is to statutorily override and interfere with any contract which salespersons agree to. The Kansas Association of REALTORS® feels very strongly that interference by the state with contractual, arms length transactions, is a very dangerous business for the state to be in, and interferes with fundamental American rights.

We request that this committee closely examine the impact of a law such as this on all commission salesperson relationships in this state before they begin passing such legislation, which may have intended to protect a few commission salespersons.

Accordingly, we ask that you pass this bill out with an UNFAVORABLE recommendation.