

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 ~~am~~ p.m. on Monday, February 24, 1986 in room 527-S of the Capitol.

All members were present except:

Senator Norma Daniels (excused)

Senator Jack Steineger (excused)

Senator Eric Yost (excused)

Committee staff present:

Jerry Ann Donaldson, Research Department

Gordon Self, Revisor

Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Mario Bossi, Representative-Direct Selling Association, Washington, D.C.

Senator Phil Martin

Bill Wolter, Pharmacist-Dillon Food Chain of Kansas

Ed Schaub, Representative-Southwestern Bell Telephone Company

Wayne Maichel, Exec. Vice Pres., -Kansas State Federation of Labor

Jerry Powell, Chief Exec. Officer-Ks. Wage Payment Act, Dept. of Human Resources

Chairman Thiessen called the meeting to order a 1:30 p.m.

The Chairman stated today was the final day for committee bill requests to be considered, and called upon Mario Bossi.

Mario Bossi I represent 125 manufacturing companies across the nation, and in the Kansas City area, I represent The Fuller Brush Company, and House of Lloyd, Inc., both are manufacturers in the State of Kansas. I also, represent scores of self employed business people who sell consumer products in the State of Kansas, and I am here, with a request that I would like to see introduced as a committee bill.

What the language that you have in front of you (See Attachment A) (KSA 1984 Supplement 44-703) would do is, conform the Kansas Law with the change that the Federal Government adopted in 1982. (See Attachment B) Statutory Law says these individuals are not employees, and are not eligible for unemployment compensation. What this bill would do is state that these individuals are non-employees, and in that matter save the State of Kansas, as well as the Companies that are representative, administrative cost and inconveniences that are frequently involved with these cases, when they do arise.

I have had the opportunity to visit with a dozen or so unemployment compensation officials, mostly western States, and with almost no exception, all agreed with the position that I am advancing today, since the U.S. Congress and 12 State's, since 1982 have put this language, or almost identical to it, in their State Laws.

Senator Werts made a motion to have the bill drafted, seconded by Senator Gordon. Motion carried.

Chairman Thiessen called upon conferees for SB614.

SB614: An Act concering work hour limitations for individuals in certain occupations; prescribing certain powers, duties and functions for the secretary of human resources; providing certain civil penalties for violations thereof.

Proponents for SB614.

Senator Martin I would like to explain the reason I sponsored and introduced this piece of legislation.

Mr. Bill Wolter, a pharmacist with a food chain, which has pharmacies in their outlets, came to me, and said he was working 13 hour a day shifts, with no breaks for lunch, and no breaks during the shift for any reason. "I just could not believe this was happening," he said "I thought this type of work ended back in the early 1900s."

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

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

room 527-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Monday, February 24, 1986

According to the proposal, the Department of Human Resources would determine which occupations would be injurious to the public or to other workers if the professional employees do not receive rest breaks or lunch hours after every five hours of continuous work. Employers who violate the measure would be subject to a fine of between \$100 and \$500.

The bill calls for the department to conduct public hearings to determine which occupations require breaks to protect public safety. The department would hold additional hearings when new questions arise about professions on which the department has not previously ruled.

Senator Martin submitted a letter from Mr. Ray Lance, pharmacist in Mound City, KS., who could not be here today. (See Attachment C)

Bill Wolter I have a couple statement to add to what Senator Martin, has already stated. I have been working 13 hour days, and the pharmacy manager could still have his days off, and when I resisted, I was told, this is the way it is done. The Kansas Board of Pharmacy expects you to take care of any customer, but sets no mandatory rules, and the Board does not have the authority to come in and say you cannot work this man 13 hours a day and not let him have breaks. I feel after working 13 hours shifts, this could be dangerous to the public health, as working without breaks, causes mental fatigue, and leaves room for mistakes to be made in filling prescriptions. I ask this committee to pass this bill favorably out of committee.

Opponent to SB614.

Ed Schaub We at Southwestern Bell Telephone Company have looked at this bill, and I would like to bring to the attention of this committee, that by contract we have described breaks for our employees, the communication workers of America, but in our business we do have times of emergencies or disasters, where we kind of throw the rules of the contract out of the window, because we ask people like, linemen, installers, and splice hitters to work hours that are above normal, without taking a break. With that in mind, Mr. Chairman, I have prepared a little amendment here (See Attachment D) that would suggest if you are going to look favorably on SB614, that you give some consideration to this amendment, that in emergencies, we be excepted from those provisions of this bill.

Proponent Wayne Maichel We support the concepts of SB614, and we think the department has a good idea on the way that they want to handle this bill.

Jerry Powell I would like to say we at the Department of Human Resources get about 10 to 15 calls a week regarding breaks, lunch time, etc. I think most Companies, do give breaks. I believe we have heard from every type of occupation coming from both, big and small companies, and I cannot put my finger on one that is abused more than another, therefore we have drafted fiscal notes, where we thought everyone would be given a fair opportunity. (See Attachment E)

The meeting adjourned at 2:30 p.m.

has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term "qualified real estate agent" means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes.

(R) services performed as a direct seller. As used in this subsection (i)(4)(R) the term "direct seller" means any person if:

(i) Such person is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis or any similar basis which the secretary prescribes by regulations, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment, or such person is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid

in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than the number of hours worked; and

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed; and such person is not an active officer of a corporation for which the services are performed; and

(iiii) such person is not an active officer of a corporation for which the services are performed.

(j) "Employment Office" means any office operated by this state and maintained by the secretary of human resources for the purpose of assisting persons to become employed.

Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 268. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

(a) **GENERAL RULE.**—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

“SEC. 1502. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

“(a) **GENERAL RULE.**—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

“(1) the individual performing such services shall not be treated as an employee, and

“(2) the person for whom such services are performed shall not be treated as an employer.

“(b) **DEFINITIONS.**—For purposes of this section—

“(1) **QUALIFIED REAL ESTATE AGENT.**—The term ‘qualified real estate agent’ means any individual who is a sales person if—

“(A) such individual is a licensed real estate agent,

“(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

“(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

“(2) **DIRECT SELLER.**—The term ‘direct seller’ means any person if—

“(A) such person—

“(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in

the home or otherwise than in a permanent retail establishment, or

"(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,

"(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

"(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals)."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Treatment of Real Estate Agents and Direct Sellers

"(p) Notwithstanding any other provision of this title, the rules of section 3508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982,".

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier," and

(B) by striking out "taxes" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:

A Note from
Ray Lance

2-24-86

ATT C

Dear Phil,

Having been an employee at
Dillon's pharmacy # 108 in Pittsburg
Ks. from Nov. 15, 1984 to Aug. 26, 1985,
I heartily endorse the reading of
your senate Bill in committee.

I suggest a title for it as
"RIGHT TO SAFE WORK LAW". It no
doubt will safeguard the health of
both worker and consumer.

I remain,

Ray

Subtitle:

P.S. Nobody should have to work

13 hour shifts without a break

(especially when the public health
and safety is at stake)

Ray
P.O.

Mound City, Ks

66056

1-913-795-2490

His Royal Senatorship
(or something like that)

0046 the employer to enforce any order of the secretary, including
0047 collection of any penalty imposed by the secretary under this act.

0048 ~~(d) - Any employer who violates the provisions of this act shall~~ --- (d) This section shall not apply to repair work
0049 be subject to a civil penalty imposed by the secretary of not less
0050 than \$100 but not more than \$500.

0051 Sec. 2. This act shall take effect and be in force from and
0052 after its publication in the statute book.

(d) This section shall not apply to repair work performed by employees of public utilities during or immediately following times of disaster, public emergency, or similar occurrence.

(e) Any employer who violates the provisions of this act shall

The Honorable Dan Thiessen, Chairperson
Committee on Labor, Industry and Small Business
Senate Chamber
Third Floor, Statehouse

Dear Senator Thiessen:

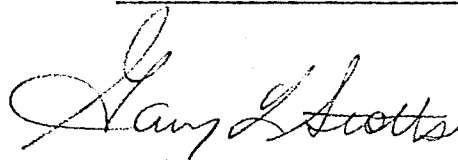
SUBJECT: Fiscal Note for Senate Bill No. 614 by Senator
Martin

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 614 is respectfully submitted to your committee.

Senate Bill No. 614 requires the Secretary of the Department of Human Resources to adopt rules and regulations specifying certain occupations which are potentially injurious to individuals and/or the public. Employers are required to provide for a paid or nonpaid rest or lunch break after every five continuous hours of work for such occupations. Employers who violate provisions of the act are subject to a civil penalty of not less than \$100 or more than \$500.

The Department of Human Resources indicates that a one-half time Labor Conciliator I position would be required in order to implement provisions of Senate Bill No. 614. Total first year costs are estimated to be \$13,605 in expenditures from the State General Fund, of which \$12,865 is for salaries and wages and \$740 is for other operating expenditures. It is not possible to reliably estimate the amount of revenues credited to the State General Fund which would be generated as a result of civil penalties imposed for violations of this act.

Passage of Senate Bill No. 614 will require the addition of one-half position and \$13,605 in expenditures from the State General Fund to the amounts in the FY 1987 Governor's Budget Report for the Department of Human Resources. Any increase in receipts credited to the State General Fund as a result of the penalty provisions of Senate Bill No. 614 would also be in addition to the those amounts in the FY 1987 Governor's Budget Report.



Gary L. Stotts
Acting Director of the Budget

GLS:PS:sr