

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

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

1:45 ~~am~~/p.m. on March 24, 1986 in room 527-S of the Capitol.

All members were present except:

Senators Daniels, Morris, and Yost were excused.

Committee staff present:

Gordon Self, Revisor of Statutes' Office
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Larry Wolgast, Secretary, Department of Human Resources
Jim Cobler, Director, Division of Accounts and Reports, Department of Adminis-
tration

The minutes of the meetings of March 17 and 18, 1986, were approved.

HB 2761 - Concerning the employment security law.

A hearing was held on the bill. Larry Wolgast, Secretary, Department of Human Resources, said the bill makes changes in the employment security law and were recommended by the Employment Security Advisory Council. The bill codifies current administrative practices. Nothing new has been added. He reviewed areas of change (Attachment No.1) and gave the reasons they were needed. Paul Bicknell, Employment Security Division, and A. J. Kotich, Assistant Secretary, responded to questions during the review.

Mr. Wolgast said changes in the law include: the amount a person on unemployment can earn working part-time before offset occurs was raised to encourage people to look for part-time employment; "misconduct" and "gross misconduct" were defined, and, because of a Michigan case law, certain benefits were provided for a person accused of misconduct; had the changes made on pages 6 and 7 regarding disqualification been in effect in 1985, \$3.9 million would have been saved, and the new provisions in the section starting on line 256 would save \$400,000; the time span for employers to respond to separation notices was lengthened as being more realistic; clarification was made that transcripts cannot be used for discovery purposes; and penalty and enforcement provisions regarding filing of liens prevent delinquent employers from moving companies out-of-state before action can be brought to collect money owed. Changes regarding failure to file wage reports or contribution returns when due relate to a graph (Attachment No.2) which indicates the rise in money loss due to untimely reports. Mr. Wolgast noted that some employers do not file timely because paying the penalty costs less than paying the account. The change in penalty to .05% of total wages, no less than \$25 or more than \$200 for each report places the Department of Human Resources at the same level as the Department of Revenue in this regard. Untimely filings as they may relate to bankruptcy was discussed.

Mr. Wolgast explained that changes on page 33, line 595, are the result of a Shawnee County District Court ruling which stated the law was not specific enough regarding bonding of subcontractors. New provisions would give contractors the option of bonding subcontractors or being liable for their unpaid debts. A member of Associated General Contractors was a member of the Advisory Council when this change was considered. Changes on page 44, lines 1005-1007, allow the director to retain a collection fee from setoff proceeds to be used for collection of debts arising out of the employment security law.

Jim Cobler, Director, Division of Accounts and Reports, Department of Administration (DOA), objected to provisions on page 44, starting on line 1007, regarding setoff and collection fees. He pointed out that a Post Audit report

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 527-S, Statehouse, at 1:30 ~~a.m.~~ ^{XXX}p.m. on March 24, 1986.

indicated agencies had not been making adequate collections and use of collection agencies or attorneys. He believed agencies should collect routine debts but the DOA should handle problem accounts. Changing its collection fee would reduce the Division's budget by \$10,000. He suggested that the Ways and Means Committee also consider the impact of the bill.

Mr. Wolgast said provisions in HB 2761 affected only the Department of Human Resources and do not affect other agencies. His agency does not use the DOA for collections because it is more costly.

The Chairman said the hearings on HB 2761 and HB 3016, also scheduled for this meeting, would continue the next day, March 25. He adjourned the meeting at 2:35 p.m.

3-24-86

<u>NAME</u>	<u>ADDRESS</u>	<u>REPRESENTING</u>
BILL CLAWSON	TOPEKA	DHR
Paul Bicknell	"	"
A. J. Kotich	"	"
Wayne Mauchel	Topeka	Ks. AFL CIO
Bob Hodges	Topeka	KCCI
DW CRANT	"	"
WB Damm	Topeka	J. Ballenberg
M. Havao	"	Cap-Senator
Jim Cobler	"	Dept of Adm.
David R. Jan	"	Dept. of Adm.
Beth Walker	"	205 Sent Council
Groves Kastner	"	Ks Food Dealer Assn
Jim Youally	Overland Park	NFIB/Kansas
Janet Stubbs	Topeka	HBAK

LEGISLATIVE RECOMMENDATIONS
OF THE ADVISORY COUNCIL OF THE
DEPARTMENT OF HUMAN RESOURCES

The Kansas Employment Security Advisory Council is composed of equal representation from employer groups, employee groups and the general public. The function of the Council is to provide advice and guidance to the Secretary regarding promulgation of legislation. Each Departmental proposal is subject to full discussion by the Council prior to its introduction in the State Legislature. It is through a spirit of cooperation and compromise that Department proposals take their final form.

Proposals which have been discussed and endorsed by the Council are:

K.S.A. 44-704

Summary:

This proposal changes the formula for determining the amount of deduction to be made from benefit payments for wages received in partial employment.

Background:

Present law provides a claimant may earn up to \$8.00 per week before any deduction is made in weekly benefit payments. This measure was passed in 1957 when the maximum weekly benefit amount was \$32.00.

This proposal provides for an offset of wages earned in partial employment which exceeds 25% of the claimant's determined benefit amount and the deduction shall not exceed \$47.00 per week. This change acts as an incentive for the unemployed to see partial employment. As an example, should an individual's determined weekly benefit amount be set at \$160, then such claimant could receive \$40 in earnings ($\$160 \text{ weekly benefit amount} \times .25 = \40.00) before any offset would be made.

K.S.A. 44-706

Summary:

This proposal deletes the phrase "breach of duty", defines "misconduct" and re-defines "gross misconduct". In addition, it amends the penalties for disqualification.

Background:

The present law does not have a definition of "breach of duty" although this term and "misconduct" are both used in the statute. "Misconduct" and "gross misconduct" are defined as follows:

"For the purpose of this subsection, 'misconduct' is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must show: (1) willful and intentional action which is substantially adverse to the employer's interests, or (2) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. The term 'gross misconduct' as used in this subsection shall be construed to mean conduct evincing extreme, willful and wanton misconduct as defined in this subsection."

The proposed legislation also sets forth a list of reasons for discharge which do not disqualify the individual.

"An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(1) the employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(2) the individual was making a good-faith effort to do the assigned work but was discharged due to: (A) inefficiency, (B) unsatisfactory performance due to inability, or lack of training and experience, (C) isolated instances of ordinary negligence or inadvertence, (D) good

faith errors in judgment or discretion, or (E) unsatisfactory work or conduct due to circumstances beyond the individual's control;

(3) the individual's refusal to perform work in excess of the contract of hire."

The present law provides for a disqualification for eleven weeks and a requirement the individual shall forfeit benefit entitlement equal to 10 times the individual's determined weekly benefit amount.

The proposed legislation in cases of misconduct requires the individual to become re-employed and earn three times the weekly benefit amount from insured employment before becoming eligible for benefits.

In cases of gross misconduct, all wage credits attributable to the employer from which the individual was discharged shall be cancelled. However, no cancellation of credits shall affect prior separations.

The proposed language states:

"An individual shall be disqualified for benefits:

If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if the individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until he or she has become reemployed and has had earnings from insured work of at least eight times such individual's weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be cancelled. No such cancellation of wage credits shall affect prior payments as a result of a prior separation."

K.S.A. 44-706(c)

Summary:

Changes penalty for Job Refusal to begin with the week in which such failure occurred and shall continue until the individual has become re-employed and has had earnings from insured work of at least three times the individuals determined weekly benefit amount.

K.S.A. 44-709

Summary:

This proposal would change the length of time given employers to respond to requests for separation information.

Background:

Regulations currently require employers to respond to requests for separation information within 48 hours. This time limit is not followed as it is not administratively feasible to enforce the regulation. Employers are given, instead, a total of 19 days to respond which is the statutory time limit to provide charge/noncharge information.

The Department has been subject to criticism from the Federal government because not all payments are made in a timely manner. Much of the delay is due to the inordinate amount of time given employers to respond.

This proposal would allow employers ten days to respond, an increase of eight days over current regulation. Response time may be enlarged upon a timely request or upon a showing of excusable neglect. The proposal would establish a procedure which would be feasible to administer.

K.S.A. 44-710g

Summary:

This section is no longer necessary and should be repealed.

Background:

This statute pertained to unbudgeted 1983 and 1984 local government expenditures, and allowed no-fund warrants to be issued in order to pay unemployment insurance taxes without permission of the Board of Tax Appeals. The provision is now obsolete.

K.S.A. 44-710h

Summary:

This section is no longer necessary and should be repealed.

Background:

This statute permitted surcharges to be levied on employers for the years of 1983 and 1984 in order to insure the solvency of the fund. The provision is now obsolete.

K.S.A. 44-714

Summary:

This proposal would provide that appeal hearing transcripts shall be confidential.

Background:

Most agency records are confidential by statute. Recently, there have been several attempts by attorneys to secure hearing transcripts for discovery purposes. Each of these attempts required legal action by the Department in order to quash the subpoena.

Enactment of this legislation would ensure that appeal hearings are held in conformity with federal procedure and the testimony of witnesses would not be available in unrelated cases.

K.S.A. 44-716a

Separate Bill - HB 3016

~~Summary:~~

~~This proposal would provide the Governor and the Secretary more discretion in the use of the Special Employment Security Fund.~~

~~Background:~~

~~Currently the Employment Security Fund may be used solely for payment of audit exceptions, for loans pending receipt of Federal funds and for the payment of off set costs. At present, the fund contains \$1.34 million. This proposal, patterned after Missouri law, would allow the Secretary, with the Governor's consent, to expend funds for~~

~~Employment security activities which are either not Federally funded or are funded in an inadequate amount.~~

K.S.A. 44-717(a)

Summary:

This proposal modifies the statute to increase penalties and interest assessed against delinquent employers.

Background:

The current interest rate assessed on delinquent contributions is .8% per month or fraction thereof; the penalty on delinquent reports is \$5.00 per month or fraction thereof. The rate of interest was set in 1938 and the penalty rate was established in 1959.

Due to the inadequacies of the amounts charged, neither serves as either a deterrent to delinquencies or as an incentive for payment.

The proposed legislation would establish an interest rate of 1.5% per month or fraction thereof. The penalty would amount to .05% per month or fraction thereof, of total wages paid, with a minimum of \$25.00 and a maximum amount of \$200.00.

K.S.A. 44-717(b)(3)

This proposal modifies the statute to impose absolute liability for the payment of taxes on a prime contractor on account of its failure to require a sub-contractor to post bond guaranteeing the tax payments.

Summary:

This proposal results from a recent federal court decision in Kansas which found a prime contractor was not liable for a sub-contractor's tax debt under a "safe-harbor" provision the court read into the law. The court held that the department had to be specific concerning the manner in which withheld funds were segregated if the prime contractor was to be held liable. To eliminate this problem, this legislation would impose strict liability for payment on the

prime contractor unless the prime contractor required the sub-contractor to post a bond.

K.S.A. 44-717(e)

Summary:

This proposal would modify the statute to allow inclusion of penalties in lien filings.

Background:

This modification would resolve a technical problem because penalties currently may not be included in liens.

K.S.A. 44-717(e)

Summary:

This proposal would allow levies against employers.

Background:

Currently the unemployment insurance law does not permit levies to be made as a result of filing a tax lien under K.S.A. 44-717(e). There is no enforcement provision contained in the lien law.

This proposed change would allow the Department to issue levies against delinquent employers 10 days after notice and demand is made as permitted in federal tax collections cases. If implemented, the modification would allow the Department to become more effective in the collection of past due contributions.

K.S.A. 44-717

Summary:

A proposal to require a cash deposit by chronically delinquent employers.

Background:

Unpaid contributions have significantly increased over the last three years. This proposal would require chronically delinquent employers either to make a cash deposit or to post a bond in an amount equal to the highest liability incurred in two of the last four quarters.

K.S.A. 44-717

Summary:

A proposal to impose personal liability for willful failure to pay contributions, payments in lieu of contributions or benefit cost payments

Background:

The problem under the present law is the liability to pay the taxes of a corporation, non-profit organization or governmental entity is restricted to the assets of them. There is no motivation for individuals in charge of the entities to ensure payment of taxes because there is no liability for failure to do so. Since the trust funds involved are collected solely from employers and dispersed solely to employees in benefits, any failure to collect taxes imposes a larger burden on complying employers. In addition, other agencies impose personal liability so there is a motivation to pay them and not the Department of Human Resources.

This proposal, an expansion of a concept in California law, would provide for individual liability for tax debts if it could be proven that the individual willfully failed to pay contributions, payments in lieu of contributions, and benefit costs payments.

K.S.A. 44-719

Summary:

This proposal would allow civil liability as well as criminal penalties for willful failure to pay contributions due.

Background:

Current law provides criminal penalties for willful failure to pay contributions due. This section of the law is seldom used as (1) it is difficult to prove criminal intent, and (2) prosecutors are reluctant to take these cases. This proposal would allow the Department to pursue these cases as civil actions in order to effect collections.

K.S.A. 44-719

Summary:

This proposal would allow for waiver of overpayments in cases of administrative inadvertence.

Background:

There have been instances in which claimants, through no fault of their own have been paid benefits erroneously.

K.S.A. 75-6210(b)

Summary:

This proposal establishes a "cap" on the amount charged by the Department of Administration when collections are made through set-off.

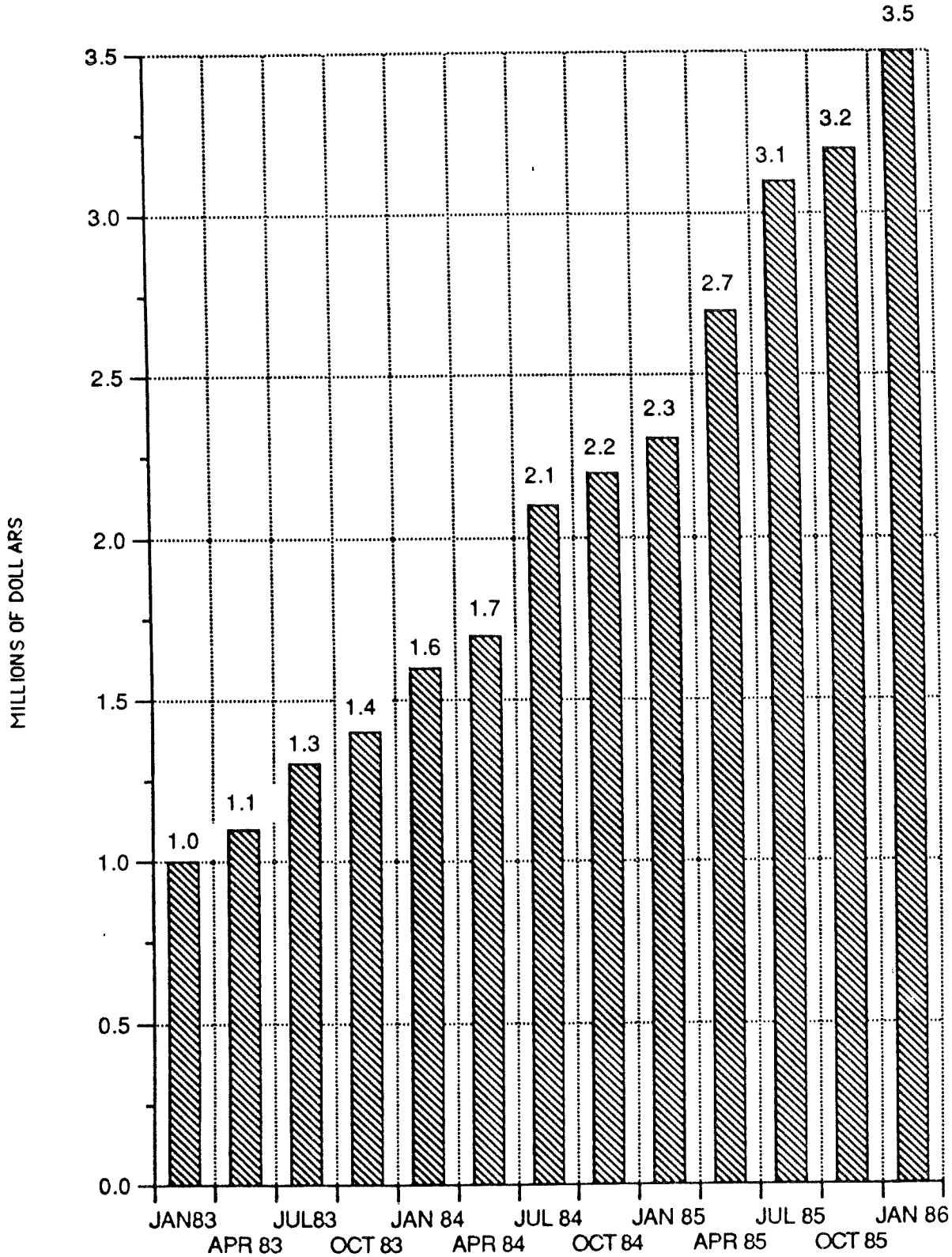
Background:

At present, the Department of Administration charges a fee of 15 percent for making collections of past due contributions through set-offs against funds owed the employer. This 15% is transferred from the Special Employment Security Fund, ~~and placed in the Unemployment Insurance Trust Fund~~

This proposal would place a "cap" on the amount to be charged as the lesser of (a) 15 percent of the amount collected, or (b) \$300. This "cap" would provide adequate payment for services while insuring the special fund remains solvent.

**CHART OF OUSTANDING
RECIEVABLES
1983 THROUGH 1985**

ATTACHMENT
No. 2
3-24-86



**KANSAS DEPARTMENT OF HUMAN RESOURCES
DIVISION OF EMPLOYMENT SECURITY
CONTRIBUTIONS BRANCH
JANUARY 3, 1986**

Senate Labor, Industry and Small
Business Attachment 2 3-24-86