

Approved Al W. Douville 3-7-88
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:11 a.m./~~p.m.~~ on February 10, 1988 in room 526-S of the Capitol.

All members were present except:

- Representative Dillon - Excused
- Representative Gjerstad - Excused
- Representative Green - Excused

Committee staff present:

- Jerry Ann Donaldson - Kansas Department of Legislative Research
- Juel Bennewitz - Secretary to the Committee

Conferees appearing before the committee:

- Paul Bicknell - Chief of Contributions, Department of Human Resources
- Bill Clawson, Chief of Benefits, Department of Human Resources
- Rob Hodges, Kansas Chamber of Commerce and Industry

Paul Bicknell began the explanation of changes to H.B. 2764 with the first change on page 3, lines 115-121, the original section c which should not have been stricken. The chairman noted this as a drafting error for which the revisor's office has taken full responsibility. The original section d, lines 122-128 should have been stricken. This relates to the charging of benefit payments. Currently, Kansas employers are not subject to a pro rata share charge of benefits paid to former employees when the wages that are used in a combined wage claim are insufficient to entitle them to a Kansas claim. This change will remove that basic non-charging provision and require the department to charge in force accounts or actually notify the employer of a potential charge of their pro rata share of wages that are used in a combined wage claim. The Department of Labor considers this to be a conformity change. It is to encourage states to fortify their experienced rating systems and provide more direct charges to employers' accounts and less socialized costs.

The chairman asked for an estimate of cost to Kansas employers. Mr. Bicknell responded it would be miniscule. The chairman requested copies of federal requirements be provided to the committee whenever a conformity change is necessary since state representatives do not have a great deal of contact with legislation at the federal level.

Representative Buehler asked the source of the money for the payment of claims. The response was that all claims are paid from the Employee's Security Trust Fund. Mr. Bicknell explained that charging and non-charging is for determining an employer's tax risk. No matter which way an employer pays, it comes out of the general trust fund. If it does not result in a direct charge to an employer's account, those that are not directly charged are then shared by all employer's within the system because it lowers the fund and the amount in the fund determines the overall tax rate for a given year.

At the request of the chairman, Bill Clawson gave the following examples of costs not charged back to the individual employer:

1. If an individual quits without cause.
2. If an employee is dismissed for misconduct or gross misconduct.
3. If an employee is in approved training.
4. If an employee is continuing in part-time work and has worked part-time during the base period.

An additional example of an employee being able to draw benefits and the employer not being charged, is if the employee voluntarily quits and if the quit is attributable to the employment. An example would be harassment on the job and it was condoned or if an employee was discharged as unsatisfactory, as in not passing a probationary period.

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The next change is found on page 6 and concerns the election to become a reimbursing employer. Those eligible to become a reimbursing employer are:

1. Governmental entities.
2. Certain non-profit organizations exempt under 501 (c) 3 of the Internal Revenue Code.

Currently the only time the law allows the non-profit employer to elect this option is:

1. If they establish liability through K.S.A. 44-703 (h) 9, which requires them to have four or more employers for 20 weeks during a calendar year.
- or 2. Voluntary election through K.S.A. 44-711.

One other provision for establishing liability is if a non-profit organization purchases or acquires from another liable employer the operation of a business through what the department determines as successorship, which comes under K.S.A. 44-703 (h) 4.

As the statute stands, the department cannot allow that non-profit organization (even though it is the type that may elect a reimbursing option) to make that election. Mr. Bicknell stated it is felt this was a legislative oversight.

For this type of employer, the department has allowed that employer to elect reimbursement later on but only after it has met the normal provisions of four or more employees for 20 weeks of a calendar year and then the next calendar year, the employer is allowed to elect the reimbursement payment option. Striking this provision would allow a non-profit organization, normally entitled to a reimbursement payment option to elect an option. This allows that organization to finance its employment through reimbursement.

The third and last change begins on page 12 and has to do with a change in K.S.A. 75-3728b, the write-off statute, the authority followed by the department in writing off an account for the employment security division. This refers to an account that cannot be collected for various reasons. An example is an employer having fled the State of Kansas with all efforts to trace him having failed. Rather than maintain that account infinitely, the department recommends it be charged off. It is submitted to the Department of Administration and approval received to write off the account. Currently, when the account is written off, it is assigned by the Secretary of Administration to the Director of Accounts and Reports. It is then listed for set-off.

With the set-off program, anytime any funds due from the State of Kansas are discovered, the debt is set-off and that amount collected. When that amount is collected, it is paid into the Employment Security Trust Fund. An equal amount is transferred from the Special Employment Security Trust Fund and is paid into the Account Services Recovery Fund. (The Account Services Recovery Fund is basically a fund used to cover the cost of the set-off program in the State of Kansas.) The employment security division has other means of locating and collecting debts that have been charged off. When an account is recommended to be charged off, there is a program on which the employer is listed and run quarterly against the department's base wage file. Were an employer to return to Kansas and begin working for a Kansas employer, it would appear on the department's file. The individual is contacted, a repayment agreement is attempted as well as an effort to collect the funds.

The amendment would allow the department to reinstate that charge-off record, if the employer is found and the potential for collection exists, on the records of the employment security division and pursue that collection. If the amount is collected, it is deposited in the Employment Security Trust Fund.

The Penalty and Interest Fund is the special fund which is used for penalties. Mr. Bicknell stated he would have to investigate the amount currently in that fund. He stated the department often lists accounts for set-off that are active in the system. The payment and control branch which recovers overpayments of benefits also uses the fund. Collections obtained through the set-off program are paid over and this amendment would not change that. Even if an account were set-off, the department could not reinstate that account.

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Representative Hensley asked for a date in terms of the law for this conformity legislation. Mr. Bicknell responded the only change which had to be approved is the first one which relates to charging of interest. The first change has to be in effect by October 1, 1989. Failure to meet the conformity date could result in: loss of grant funds to fund the unemployment insurance or unemployment service of the federal government and the loss of off-set credit.

Rob Hodges, Kansas Chamber of Commerce and Industry, stated these proposals were considered by the Employment Security Advisory Council during the interim and the council supports them. A further clarification to the chairman's earlier question regarding the change on page four, Mr. Hodges stated it could result in increased cost to the employer but an off setting factor is that to the degree that it is now a charge, the non-charges are included and all other employers who had been sharing in that non-charge will not be assuming that non-charge. It is more a redirection of that charge than an increase other than for the one employer.

The chairman questioned the changes on page 14. Mr. Hodges's response was the Director of Accounts and Reports may experience some difficulty with the change. Mr. Bicknell responded the money would go in the Accounts Recovery Fund (utilized for the cost of the set-off program). It was clarified that the Penalty Fund is the Special Employment Security Fund. Under this bill, if the Employment Security Agency collects the fund it would not require the amount to be collected to be taken out of the Special Employment Security Fund and transferred over to the Special Audit Account Fund. If the Secretary collects it through set-off, then the department would have to take an equal amount out of the Special Employment Security Fund and transfer it over to the Special Audit Account Fund. The money collected goes into the Employment Security Trust Fund, not the Penalty and Interest Fund.

Unless there are objections at tomorrow's meeting, the minutes of the January 27 and January 28, 1988 meetings will stand approved as presented.

The meeting was adjourned at 9:30 a.m. Next meeting of the committee will be February 11, 1988 9:00 a.m. in Room 526-S.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date February 10, 1988

Name	City	Representing
Rob Hodges	Topeka	KCCI
Kathy Marney	Topeka	MCAK
Bob AR Butcher	Topeka	KTLA
Wayne Marches	Top.	K. AFL-CIO
Guy J. Schindl	Topeka	DHR
Paul Bicknell	Topeka	DHR
Bill Clawson	Topeka	DHR