

Approved AD Date 3-23-90

MINUTES OF THE House COMMITTEE ON Labor & Industry

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

9:05 a.m./~~p.m.~~ on March 1, 1990 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson - Legislative Research Department
Jim Wilson - Revisor of Statutes' Office
Cindy Wulfkuhle - Committee Secretary

Conferees appearing before the committee:

Terry Leatherman - Kansas Chamber of Commerce and Industry

The meeting was called to order at 9:05 a.m. by Chairman Douville.

HB 3063: Employment security, disqualification for benefits, illegal drug use.

Representative O'Neal presented an overview of HB 3063. This bill was introduced at the request of James Hargrove, Attorney, El Dorado, Kansas. Representative O'Neal read the letter he received from Mr. Hargrove, attachment #1.

Representative Webb stated that 50% or better of people cannot pass the drug test. He has no objection to employers demanding drug tests if it's going to save lives, even if it may take away a little bit of people's rights. He stated that we might be overstepping the bounds when we start taking away benefits. Isn't just keeping them off the job good enough? Are we trying to save lives or just save a few bucks?

Representative Cribbs said that he has talked to the Department of Corrections concerning the drug testing results and was told the tests are only 90% accurate. His concern is with the other 10%. Is there going to be a safety net for them?

Representative O'Neal stated that whether the drug usage took place on the job or off the job, the fact remains that the drugs are still in the system while the person is at work and reflects on his work performance.

A.J. Kotich, Department of Human Resources, stated that the way this bill is written now would not change anything from the way misconducts are handled. In order not to allow unemployment benefits we would have to show there is a relation between the drug usage and the quality of work performed. We also have to show the usage was willful or intentional and has an impact on work before the employee can be terminated.

Terry Leatherman spoke as a proponent of the bill, attachment #2. Employers have instituted employee drug abuse programs that include rehabilitation for employees who step forward seeking help. The programs also include disciplinary action, including dismissal of workers who are found to be illegal drug abusers.

Representative O'Neal stated he was in favor of having the Advisory Council look over this bill and that it be given full consideration in the 1991 session.

Wayne Maichel, AFL-CIO, did not appear before the committee but distributed a handout, attachment #3.

Regarding previous testimony on HB 2710, Representative Lynch distributed a handout questioning whether or not employees had ample opportunity to speak to city officials about matters of concern, attachment #4.

The meeting adjourned at 9:55 a.m. The next meeting of the committee is scheduled for Friday, March 2, 1990 at 9:00 a.m. in room 526-S.

JAMES L. HARGROVE
ATTORNEY AT LAW

112 W. Pine
316-321-2802

P.O. Box 31
El Dorado, KS 67042-0031

September 19, 1989

Representative Michael R. O'Neal
335 N. Washington St., Suite 260
P.O. Box 2977
Hutchinson, KS 67504-2977

Re: National Gypsum Co.
vs. Kansas Employment Security Board of Review
244 Kan 679

Dear Mike:

I am writing to you concerning the above Supreme Court case which was decided on April 14, 1989. The gist of the case appears to be that an employee's off-the-job drug usage does not disqualify the employee from receiving unemployment compensation benefits.

I have several clients that are trying to establish drug-free workplaces. These clients supply much of the manpower for the oil refineries here in the State of Kansas. One of them, Edwards Construction Company, recently had an employee fail a urinalysis while on the job at the Texaco Refinery. Texaco's contract with Edwards specifically says that such employee cannot be on the job site. Edwards terminated that individual. When Edwards refused to pay unemployment compensation, the matter went to the examiner who informed Edwards that under the above Supreme Court case, the employee was entitled to unemployment compensation.

Mike, at a time when President Bush and Governor Hayden are speaking about the war on drugs, it seems incongruous that we can have a situation in our state whereby an employee is actually rewarded for his illegal conduct.

I would ask on behalf of my client and myself that the Senate and House take a close look at amending K.S.A. 44-706(b)(1). It is going to become more and more difficult for employers once the outcome of the National Gypson case becomes better known amongst the employees subject to drug testing. The case negates any effective drug testing program when the offending employee is able to walk down to the unemployment office and receive compensation for his wrongful acts.

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Representative Michael R. O'Neal
September 19, 1989
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Thank you for your cooperation. Should you need any witness at a committee hearing, please let me know.

Yours very truly,


James L. Hargrove

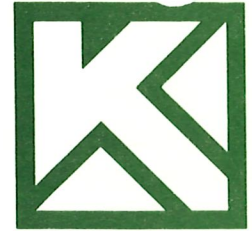
JLH:lu

cc: J. R. Cox, Jr.
John Banks
Rep. Kenneth Green
Sen. Frank Gaines
Rep. Kenneth King

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

HB 3063

March 1, 1990

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express the Kansas Chamber's support for HB 3063.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

HB 3063 addresses a concern we have heard from members of KCCI, who are required to comply with the federal Drug-Free Workplace Act of 1988. All businesses which obtain

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03-01-90

Federal government contracts worth \$25,000 or more are required to certify their workplace is drug-free. The penalties for failing to comply are severe. They include suspension of payment, cancellation of contracts, and being banned from receiving federal contracts for up to five years.

In order to maintain good graces with federal regulations, employers have instituted employee drug abuse programs. Typically, the programs include rehabilitation for employees who step forward seeking help for drug dependency or addiction. The programs also include disciplinary action, including dismissal of workers who are found to be illegal drug abusers.

However, an employer can follow their drug abuse program to the letter, yet still be found responsible for unemployment compensation benefits for the dismissed worker. HB 3063 would reverse that, making the employee guilty of misconduct against the employer, and thereby disqualified from unemployment compensation benefits, if the worker does not report to work drug-free.

It is important to note the Drug-Free Workplace Act does not require employees be fired for using drugs. However, the reason which compelled Congress to pass the Act support an employer's decision to dismiss an employee who uses drugs. According to the National Institute on Drug Abuse, the drug abusing employee is twice as likely to be guilty of excessive absenteeism, three times more likely to late for work, and four times more likely to be involved in a workplace accident, which injures themselves or a co-worker.

Thank you for allowing me to express KCCI's views on this issue. I would be happy to attempt to answer any questions.

Doc 6, 7988

KSA 44-706n:

Mr. Clawson indicated this measure would eliminate pension offsets except in cases where a pension is one hundred percent financed by a base period employer. He indicated that passage would cost approximately \$1.5 million annually to the fund but would greatly lessen administrative costs.

Mr. Maichel made a motion that this item be tabled and added to the list for further study. Seconded by Mr. Hodges. Motion carried.

KSA 44-703(h)(4)
KSA 44-710a(b)(3):

On reconsideration, Mr. Hodges made a motion, seconded by Mr. Maichel, that this item be forwarded to the legislature for consideration with a positive recommendation. Motion carried.

Other Issues:

Mr. Nordstrom requested that a listing be prepared of issues being forwarded to the legislature. (Note: The listing, as well as items deferred for study, is attached.)

Old Business:

None.

New Business:

Mr. Hodges brought to the council's attention a problem presented by his constituents. He stated that some employers have an active Employee Assistance Program. He stated that employees which have been through the programs for substance abuse have repeated offenses and have been terminated. Some of the unemployment insurance claims in these cases have been cleared for payment.

Mr. Hodges recommended the issue of substance abuse be reviewed including an analysis of what other states have done. He wants to work on a council policy on this issue. Mr. Clawson stated that Oregon has undertaken an exhaustive study of the issue and that information from the study would be made available to the council.

Mr. McClenny stated that any analysis of the pension offset by the council should not be perceived as encouragement for employers to eliminate pension plans.

Oct. 26, 1989

Review of 1988 Legislative issues

Mr. Clawson indicated that all measures had passed.

Mr. Kotich announced that the Court of Appeals ruled in Batt v. Globe Engineering Company, Inc. and Jack Johnson that the transcript of any benefit hearing under K.S.A. 44-701 et seq. shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. He further stated the court ruled that the transcripts shall not, in any case, be deemed a public record. Kotich stated the department would still have to file motions to quash requests for transcripts, but that the case law would ease the department's workload. (See attached ruling).

Mr. Kotich then remarked on drug use in the work place, an issue discussed during the last council meeting, but no action was taken. He stated the Kansas Supreme Court ruled that a properly administered drug test may be used as grounds for dismissal provided it is connected with the work.

Status of the Trust Fund:

Mr. Layes presented a historical perspective on the Kansas Employment Security Trust Fund. He further reported on the current level of the trust fund and the position of fund adequacy measures. Layes reported that while the fund is not at an ideal position as recommended by the Federal Department of Labor, it is rapidly approaching that level.

Mr. Hodges noted that contributions have exceeded benefits in recent years. He asked if the trend is expected to continue. Mr. Layes responded "no" and indicated that the automatic financial provisions of the law were operating as designed. Layes estimated that the maximum employer contribution rate is expected to drop from 4.50 in 1989 to 4.39 for rate year 1990. If the estimates by the department are accurate the following should occur for rate year 1990:

<u>Employers Receiving Tax</u>	<u>Number</u>
Total	55,863
Increase	17,104
Decrease	36,669
No change	2,090

Proposal to Expand Rate Groups:

Mr. Layes reported the House Subcommittee reviewing last year's DHR budget had expressed concern with the financial provision of the Kansas law.. Members mentioned that the law lacks selectivity in the assignment of tax rates based on individual employer experience. Layes surmised that employers had contacted subcommittee members with concerns that rates were increasing despite often modest changes in factors which could affect the tax rates.

At the request of the Director of Administration, Labor Market Information Services prepared new rate structures with several options which would expand the number of rate

NOV. 30, 1989

KSA 44-704(h)(4)(B):

Mr. Hodges asked if this item was merely to delete a extraneous term from the statute to which Mr. Bicknell responded in the affirmative.

Motion made by Mr. Hodges, seconded by Mr. Maichel, to forward this proposal to the 1990 Kansas Legislature with a favorable recommendation. Motion Carried.

44-703(o):

Mr. Bicknell explained that this proposal would define severance/vacation/holiday pay as wages under the law. Mr. McClenny requested that this item be deferred until all issues relating to severance/vacation/holiday pay are considered.

Old Business:

Chairman Siehndel reported that he had spoken with Representative Chronister, Chair of the Economic Development Committee, and that she has no strong feeling on the issue of independent contractors. She suggested that the matter be discussed with chairs of committees dealing with the issue. Chairman Siehndel indicated he is unaware of any bill which would be forthcoming on this issue, but felt assured any such measure would be forwarded to the appropriate committee.

Chairman Siehndel then noted that the issue of drug abuse is of great concern to the Governor and the Legislature. He stated that the current Employment Security Law does not fully address the issue of drug abuse in the work place, but to make the necessary revisions to fully address the issue would require massive revisions to the misconduct section of the law.

Mr. Kotich stated he has been reviewing both drug abuse and attendance as misconduct issues. He concurred that to fully address these issues would require more study than time permits before the beginning of the 1990 session.

Mr. Maichel suggested that this issue be given full consideration prior to the 1991 session and that a comprehensive package be delivered at that time. Chairman Siehndel reported he would write the governor informing him of the council's intent.

Next Meeting Date:

The next meeting of the council will be held on January 5, 1990, at 9:30 AM in the third floor conference room at 401 SW Topeka Avenue.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

ELOISE LYNCH
REPRESENTATIVE, 71ST DISTRICT

705 S. SANTA FE
SALINA, KANSAS 67401
(913) 823-3594 HOME
(913) 296-7669 CAPITOL OFFICE

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL
RESOURCES
LABOR AND INDUSTRY
LOCAL GOVERNMENT

Tuesday
February 27, 1990

TO: House Committee on Labor and Industry
FROM: Eloise Lynch *EL*
RE: Local option provision of the PEER Act (HB2710)

In recent testimony on the question of local options provided under the PEER Act, Dennis Kissinger, City Manager of Salina, stated, "On January 8, 1990, the Salina City Commission unanimously voted against the Resolution to come under the PEER Act. At the same time, they reconfirmed their commitment to good employee relations and directed the staff to continue to work with employees at developing better and more effective means of addressing employer - employee issues and concerns."

When I asked what these effective means might be, he replied that all persons had ample opportunity to speak to city officials about matters of concern.

Since the hearing, I have been able to obtain a copy of the section of the City of Salina Personnel Manual which covers work regulations. For your information, I am reproducing page 30 which contains Sec. V-2 entitled Chain of Command. I direct your attention particularly to the marked section as it would appear to be contradictory to Mr. Kissinger's reply.

Sec. V-2.

CHAIN OF COMMAND

The chain of command is the organizational structure established for the operation and supervision of all departments. All communications, orders, requests and recommendations must be channeled through this chain, in both directions, in order to avoid confusion, misunderstanding and oversight. Supervisors and administrators at every level cannot carry out their responsibilities and perform effectively without an appreciation for and observation of these processes.

Unless specifically authorized by the City Manager, no employee shall contact members of the City Commission for the purpose of promoting or opposing department regulations, programs, projects or other administrative matters. The previous statement does not apply to employees involved in carrying out their assigned responsibilities with appointed boards or commissions which include members of the City Commission.

Employees have the right to contact and confer or correspond with members of the City Commission on any subject so long as it is not in conflict with the above prohibitions.