Approved awd 4-4-90
Date

MINUTES OF THE House COMMITTEE ON Labor & Industry.

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

9:05 a.m./~~p.m.~~ on March 21, 19 90 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
Kay Johnson - Committee Secretary

Conferees appearing before the committee:
Jim Yonally - Director, Kansas Chapter of the National Federation of Independent Business
Senator Michael Johnston
Wayne Maichel - Executive Vice President, Kansas AFL-CIO
Representative Arthur Douville

The meeting was called to order at 9:05 a.m. by Chairman Douville. Hearings were continued on SB 612, SB 645 and SB 679.

SB 679 - Employment security law, casual labor exemption.

Jim Yonally testified in support of SB 679. He stated he agreed with eliminating from the definition of employee certain groups of people who provide service not directly related t the business, attachment #1. He asked that the Senate amendment on page 12, line 7 be removed from the bill: "the cash remuneration paid for such service is $50.00 or more and The $50.00 stipulation is not appropriate in today's economy and is not enforced in the federal law.

Representative Hensley asked if this change had been proposed to the Employment Security Advisory Council. Mr. Yonally responded no.

SB 612 - Employment security law, effective date of shared work compensation program.

Senator Johnston explained that he introduced this bill because of a situation that occurred with an employer in his district who tried to lay off people a couple of days a week and, subsequent to the filing of his plan, he found the law prohibits any retroactive application of benefits. This bill, for cause, would allow for a retrocative effective date.

Representative Buehler asked why it is specified for 2 weeks. Is it related to pay periods and could it be longer, say 4 weeks? Senator Johnston responded he had no objections to going back longer, but thought the Department of Human Resources would have a problem with going back too far as it tests the reason for good cause. It is not related to pay periods.

SB 679 continued:

Representative Whiteman questioned the language on page 12, "not in the course of the employer's trade or business". Has this been defined in case law? Paul Bicknell, Department of Human Resources, speaking from the audience, responded that the language is from FUTA case law which has been interpreted over the years.

Wayne Maichel stated the Employment Security Advisory Council supports retaining the $50.00 stipulation as it is directly from the federal law. It would be irresponsible to recommend anything that puts the state out of conformity with federal law.

SB 645 - Employment security law, lessor employing units, board of review terms of office, contribution rates.

Representative Patrick expressed his concern about expanding the rate groups from 21 to 51. He asked what type of employers fall into the 0 - 10 category as outlined in a handout provided by the Department of Human Resources, attachment #2. Bill Layes, Department of

Human Resources, speaking from the audience, responded that you cannot generalize where a small or large employer falls in a category. He can provide information as to the size of employers within each category but is prohibited by law from releasing the names.

Referring to proposed Sub. HB 3069, copies of which were distributed at yesterday's meeting, Chairman Douville addressed the committee and explained that the situation to be faced is either health care cost containment or a curtailment of benefits. He reviewed specific parts of the bill as follows:

Page 7: addresses utilization review
Page 8: addresses peer review, for example, chiropractors would review chiropractic services; the schedule must be approved by the advisory panel.
Page 9: addresses the advisory panel and who the members would be; the panel will meet annually.
Page 10: if the fees involved are excessive, then they are void and the employee cannot be sued.
Page 17: refers to evaluation of permanent impairment; this only refers to body functions and does not refer to the determination of permanent partial disability.
Page 18: employee and employer are protected by providing that additional guidelines can be used and additional opinions and testimony can be taken.
Page 27: an employee cannot draw both unemployment compensation and workers compensation.
Page 33: if it is ultimately determined that an employee should receive less than originally awarded, the employer cannot get credit for future payments.

The following handouts were also distributed to committee members: revised written testimony from Julia Self, Work Fitness Center of Topeka, attachment #3 and additional information on SB 679 from the Department of Human Resources, attachment #4.

The meeting adjourned at 9:55 a.m. The next meeting of the committee is scheduled for Thursday, March 22, 1990 at 9:00 a.m. in room 526-S.

GUEST LIST

COMMITTEE: HOUSE LABOR & INDUSTRY

DATE: March 21, 1990

NAME	ADDRESS	COMPANY/ORGANIZATION
Wayne Maichel	Topeka	K-AFL-CIO
Jim Yonally	Overland Park	NFIB/Kansas
S. B. SIFERS	S. M. KS.	
Norm Wiles	TOPEKA	KASB
Brad Jennings	Topeka	KRCC
Robert A. Anderson	TOPEKA - Director, Division of Workcomp	
Chip Wheelen	Topeka	Ks Medical Soc.
Richard Fox	Topeka	DofA - Risk Mgr.
Tom Bell	"	Ks. Hosp Assn.
Terry Leatherman	Topeka	KCCI
Kelly Walden	Topeka	KCA
Kellye Johnston	Wichita	KTLA
Diane Burkhardt	Topeka	KS Dns. Dept.

NFIB Kansas

National Federation of
Independent Business

Testimony Before the House Committee on
Labor and Industry
March 21, 1990

Mister Chairman and members of the committee, my name is Jim Yonally, Director of the Kansas Chapter of the National Federation of Independent Business. I am pleased to appear today in support of Senate Bill 679, on behalf of the more than 8,000 small and independent businesses who are members of our organization.

Each year we submit a ballot to our members seeking their opinions on matters before the legislature. Our members have consistently supported some remedy for curbing confusion about who is an "employee" for purposes of paying employment security taxes. They have long felt that persons who, on a sporadic and irregular basis, provide some service to them that is not directly related to their business, should not be considered employees. Senate Bill 679 would provide that persons who work less than parts of 24 days in a quarter, providing some service not directly related to the business of the owner, would not be considered to be employees.

Darrell Butterfield, owner of Thriftway Exterminators, of Wichita, and a member of our NFIB/Kansas Guardian Advisory Council, reported to us about a year ago, that his company was audited by the Department of Human Resources. It was determined by the department that a young boy from the neighborhood who mowed a strip of lawn between Darrell's store and the street was, in fact, an employee and payment must be made to the fund on the basis of the salary paid to the young man.

In summary, we urge you to pass SB 679 for the following reasons:

1. We view this issue as our Number 1 priority, not because of it's "high dollar" impact, but because of it's impact on paperwork, disagreement with the department, and because it's right.
2. My latest information is that 32 states already have similar provisions relating to these types of workers.
3. Passage of this bill will not deny benefits to any worker as they would not have worked enough to qualify for benefits, anyway.
4. Kansas ranks well above the national average (19th) in terms of it's trust fund balance as a percent of total wages.

Thanks for this opportunity to be heard on this matter. I would be happy to try to answer any questions.

House Labor & Industry
Attachment #1
03-21-90

State Office
10039 Mastin Dr.
Shawnee Mission, KS 66212
(913) 888-2235

KANSAS DEPARTMENT OF HUMAN RESOURCES

OFFICE OF THE SECRETARY
401 S.W. Topeka Boulevard, Topeka, Kansas 66603-3182
913-296-7474

Mike Hayden, Governor

Ray D. Siehndel, Secretary

March 21, 1990

The Honorable Arthur Douville
Room 115-S
State Capitol
Topeka, Kansas 66612

SUBJECT: Senate Bill 645

Dear Representative Douville:

As was requested during committee hearings on March 20 on SB645, the following information is provided concerning the history of benefits, collections, and trust fund adequacy. A ten-year history is shown below.

Calendar Year	Benefit Payments	Contributions	Interest Earned	Months in Trust Fund
1980	$ 117.7	$ 83.3	$ 20.0	xxx
1981	112.3	88.2	22.1	xxx
1982	217.8	105.7	21.4	xxx
1983	165.9	157.5	14.0	xxx
1984	112.8	172.2	20.6	24.3
1985	139.7	167.9	28.2	27.9
1986	168.4	157.0	31.1	24.8
1987	166.1	158.3	30.3	25.7
1988	148.9	162.1	32.8	32.7
1989	153.4	163.6	37.5	37.3
TOTAL	$1,503.0	$1,415.8	$258.0	xxx

During that ten-year period, benefits paid to eligible claimants exceeded contributions from employers by $87.5 million. Also, shown below is the effect of changing from 21 to 51 rate groups on employers for rate year 1990.

House Labor & Industry
Attachment #2
03-21-90

Effect of Proposed Change
on 1990 Employer Contribution Rates
by Category of Rate Groups 1/

Effect of Proposed Change	Number of Employers by Category of Rate Groups			
	Total	0-10	11	12-21
Total	42,461	22,347	1,266	18,848
Lower Rate	14,250	3,602	469	10,179
No Change	12,241	6,706	547	4,988
Higher Rate	15,970	12,039	250	3,681

1/ Applies Only to Positive Eligible Employers

The increase in number of rate groups in SB645 applies only to "positive eligible accounts". Other effects of the change include:

1. Provides for smoother employer transition in effective rates. Example: Under current law a change from rate group 14 to the next higher rate represents a movement of .22 (twenty-two one hundredths). SB645 would provide for an increase of only .04 (four one-hundredths) up to a maximum of .22.

2. Due to the smoother transitioning, all employers receive a rate which more accurately reflects individual experience with unemployment.

3. SB645 makes no change in the minimum and maximum contribution rates with the current law. Therefore, no increase in total contributions is required. Individual experience within these ranges will vary to reflect individual experience.

We trust you find this information helpful. If we may provide additional information, please notify us.

Sincerely,

Ray D. Siehndel
Secretary of Human Resources

Attachment

cc: Rita Wolf

RDS:WHL:mw

WORK FITNESS CENTER OF TOPEKA

Mulvane Medical Plaza ■ 634 Mulvane, Suite 406 ■ Topeka, Kansas 66606 ■ 357-7688

March 16, 1990

Rep. Arthur Douville, Chairman
Labor and Industry Committee
House of Representatives
Capital Building, Room 112 South
Topeka, Kansas 66612

Dear Mr. Chairman:

Below is a revised edition of my written comments presented to the Committee. As the first was written and typed in haste without review in order to appear, upon later review, I wish to explain and expand my ideas (as well as correct some "typo's").

Please pay special attention to my comments on Page 2 (starting the end of Page 1) regarding medical fee scheduling and utilization review.

If I can be of further service in these issues please allow me that privilege.

Best regards,

Julia K. Self, R.N.
Manager

JKS:ja

Enclosure

House Labor & Industry
Attachment #3
03-21-90

03/15/90

WORK FITNESS CENTER OF TOPEKA
Suite 406 - 634 Mulvane
Topeka, Kansas 66606
(913) 357-7688

Speaker: Julia K. Self, R.N., Manager

Background: Industrial Health Coordinator, Jostens, 1985-1989
A.S., Industrial Safety and Health, Washburn
Certificates in Advanced Industrial Safety and Health and Audiology

MEDICAL FEE SCHEDULE AND UTILIZATION REVIEW

I feel we are missing the boat/the focus of the 1987 Statues by dismissing them as "unworkable."

Medical fee schedules for most vendors provides consistency in our regulated system. Most vendors provide similar services, such as seen with physical therapy, work reconditioning programs, vocational rehabilitation. I do feel that physicians may be the exception, in that they are the center of the wheel. All vendors may need consultation with the physician, so consultation visits, phone calls, or written communications should at least be considered in setting fee schedules for all vendors and expect this to be used frequently by centralized vendors. I do strongly feel

that panels from each vendor need to assist with fee scheduling so that both free-standing and hospital/large organizational operations are considered. The changes presented by Bob Anderson appear to only have representatives from the medical community (medical/chiropractic, osteopathic, etc.) and employer/employee on the fee schedule panel. Representatives from Vocational Rehabilitation; Physical Therapy, and Occupational Therapy who manage Work Reconditioning/Hardening Programs; and other involved vendors should also be present-with, again free-standing as well as hospital/large organizational concerns embodied.

Utilization review should run concurrent with therapy. Utilization review after treatment leads to adversarial differences between vendors and insurance companies. In reality, the client or injured worker is the loser with battles between insurance companies and vendors. We have given a lot of time and thought to this and hope we have come up with a solution. We are initiating weekly planning meetings to plan the progression of the client. Persons invited to attend these 15 minute sessions include the client, the employer, the insurance claims representative, the Rehabilitation Specialist, the physician, Vocational Rehabilitation Specialist and others involved, i.e. parties approved by the client, etc. Our own team consists of an Occupational Therapist, Physical Therapist and Certified Physical Therapy Assistants to assist us with focus from diverse disciplines. We are in the final stages of contracting with a local Vocational Rehabilitation

Specialist to be present and provide consultative assistance to our planning committee in cases showing early signs of difficult case resolution. We have provided a speaker phone to use with persons unable to attend except by conference phone. Minutes will be taken regarding attendance and decisions made. Part of the check list includes prognosis relating to expected date of return to work, as well as cost efficiency and effectiveness/cost containment questions.

Some ideas we use as part of cost containment are consideration of home treatment after 2-3 weeks in work reconditioning with periodic supervision by a therapist for objective test reporting; as well as early return to restricted duty after the worker advances and plateaus at 4 hours. We spend much time "marketing" with emphasis on education to employers on the benefits of retaining the worker, of providing restricted duty - even on a temporary basis during the worker's recovery and case resolution. The prevents the worker from deconditioning. It also allows the worker to feel a more normal separation from the company and his/her peers as he/she transfers to a job that parallels his/her work capabilities.
The job transfer should be handled openly between worker, employer, prospective employer, insurance representatives and the client's representatives during settlement issues. This will prove to the prospective employer that the client is ready, willing and able to work within his restrictions.

Here, in Topeka, we encourage employers to help recovered workers not able to return to restricted duty for whatever reason to retain their conditioning by 3 month memberships in the YWCA/YMCA/Fitness Centers during the vocational rehabilitation assessment period. For $104.20 (tax included), the worker can maintain his conditioning at the YWCA. This actually reflects a family membership (the YWCA does not have single membership fees) which would probably assure greater faithfulness with workers use of the Center. I am sure other facilities are as good as the YWCA, but I made the decision for our therapy program to use the YWCA as it appears to present a calming, caring attitude to their clients. I feel injured workers need this type of atmosphere rather than a "high-tech" super-charged atmosphere I felt in other fitness centers. An alternative offer we make to the employer is to monitor the home therapy sessions every 2-4 weeks, depending on client needs and company approval.

One area in which I feel we, the Workers Compensation System, is weak is that vocational rehabilitation needs to be involved at the start of the work reconditioning program. Clients come to us in anger regarding their injury and loss of income, and with fear regarding possible loss of their job. In many instances, they become isolated from peers at work or their managers/immediate supervisors who promote feelings of self-worth/company "family" relationships. Remember, they have gone through separation from

the company, medical intervention, possibly surgery and recovery before entering acute physical therapy, then finally reaching the work reconditioning program. This ranges from approximately one month post-injury to two years post-injury. The majority of our clients are then suspicious of us as being company representatives.

Our in-take process is crucial to enhancing the recovery, especially early recovery, of the worker. They need to know the company does not plan to abandon them if their injuries keep them from returning to their job. That does not mean they can always retain the employee. Employees realize this is at times unrealistic. But, they do want to trust their employer to be fair in providing therapy and helping locate new jobs.

We normally begin with 2-4 days of two hour sessions based on the client's endurance. In most cases, we have the client begin in the morning. With this the client could return home to rest, then meet with the vocational rehabilitation specialist later that day to begin that process. This needs only to be with the more serious cases if the insurance company chooses, but I honestly believe early intervention by vocational rehabilitation is one of the missing keys. Vocational Rehabilitation Specialists assisting with in-take conveying "we are a team, provided by your employer to help see you through this crisis," can enhance the worker's healing and early return to job or maximized improvement and minimize dollars

spent from a frustrated worker choosing avenues in which his/her needs are at least recognized, - listening to the client, providing crisis intervention, i.e., providing resources to help in financial budgeting such as Shawnee Community Mental Health Association who would pro-rate down to $2.00 per hour to assist with budget planning, etc., asking churches/school districts for volunteer babysitting. Vocational rehabilitation need only charge for time in assisting with client care/team meetings. At present, we at the Work Fitness Center are attempting to meet these needs, but I believe the system could be better served by professionals trained in crisis intervention.

Within 2-4 weeks, therapists can provide a fair estimate of the client's course of recovery/ability to return to job. If the client appears to be able to return to work, the vocational rehab can back off and await developments.

If client appears not able to return to job and the insurance claims department/rehabilitation specialist has not found a modified or new position within the company, the vocational rehabilitation specialist can begin testing concurrently with therapy so that time is saved for the vocational assessment. By having established an initial repoire with the client at in-take, the vocational rehabilitation specialist is accomplishing:

1. Trust in the employer, that the client has not been abandoned.

2. Education/assistance to the employee that relieves stress which enhances early maximum recovery.

3. Early assessment for those needing vocational rehabilitation training, so dollars are saved.

Yes, I do see cost shifts in installing those programs. But, I am firmly convinced that it would net less dollars spent in the final outcome. I am certain that increased medical costs are not the problem, but only the symptom of the real issue. That issue is management conflicts that arise from worker compensation injuries that leave managers frustrated with a sense of a loss of control and workers feeling betrayed, afraid and not in control - not easy feelings for any adult to accept.

We need to break that cycle early "in the game". Early vocational rehabilitation involvement with crisis intervention and on-going planning committee meetings will create openness so all parties are kept abreast of developments, and provide controls to both the client and the employer/insurance company during treatment, as well as better education to all parties involved of the rights and limits of the Worker Compensation system.

Thank you sincerely for providing me with an avenue to propose ideas that can enhance the care of our injured workers. I would appreciate working with any committee/task force in advancing the

Workers Compensation system. We have realized through transferring our fees to cost per time instead of cost per procedures that the CPT codes work well on some components of fee scheduling and poorly on others. My staff or I would appreciate assisting the State in implementing a State Workers Compensation Code System which later should be presented to the National AMA for promulgation.

I want to end with my understanding of what our mission in the Workers Compensation should be - that of extending the employer's caring arm beyond what he/she is physically capable of doing when one of his/her professional "family" has a crisis.

Thank you,

Julia Self

SENATE BILL NO. 679

Page 12, lines 6 through 18. The proposed legislation adds a new subsection (T) to K.S.A. 44-703(i)(4) which exempts from the term employment those services not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. This new subsection also provides criteria to determine if such employee is regularly employed.

The language used in this new subsection mirrors the exemption that appears in the Federal Unemployment Tax Act (FUTA), in Section 3306(c). There are currently 20 states, other than Kansas, that provides for an exemption that matches Federal and which is commonly referred to as "casual labor." There are also approximately 11 states that have a broader exclusion from coverage such as a larger dollar amount or no dollar limitation, however, there are specific consequences that occur when an exclusion from coverage is made broader under state law than that allowed under FUTA.

First, if the exclusion was broader--the exclusion could affect the Federal tax liability of private-for-profit employers subject to FUTA. If an individual is an employee of a private-for-profit employer, the individual may be excluded from state unemployment insurance coverage (and the employer relieved of state U.I. contributions) without violating any Federal requirements. However, relieving the employer of state contributions does not exempt the employer from FUTA tax on wages for services subject to FUTA. The employer would be liable for the full FUTA tax (currently 6.2 percent) on such wages and would not qualify for the tax credits available under Sections 3302(a)(1) and 3302(b), FUTA. In effect, the employer would be paying a Federal tax on the wages with no benefit to the state unemployment fund and no unemployment insurance coverage for the workers involved.

Second, in the circumstances that any of the excluded services of casual labor are performed for a governmental entity or nonprofit organization, the exclusion would raise an issue of consistency with the coverage requirement in Section 3304(a)(6)(A) and 3309(a)(1), FUTA. Section 3304(a)(6)(A) requires that services for governmental entities and nonprofit organizations must be covered under the same terms and conditions as other covered services. If the exclusion would affect employees of governmental entities or nonprofit organizations, the result is loss of certification for tax credits. A withholding of certification will result in all employers subject to the state law losing credits against the Federal tax. Lack of certification may also result in loss of grants for administration of the state's unemployment insurance and employment services programs.

House Labor & Industry
Attachment #4
03-21-90

Casual labor is interpreted under Federal rulings to include labor which is occasional, incidental, or irregular. The expression "not in the course of the employing unit's trade or business" includes labor that does not promote or advance the trade or business of the employer. Therefore, labor to come within the exemption of the Federal Unemployment Tax Act (FUTA) must be occasional, incidental, or irregular and must not promote the employer's trade or business. Labor which is occasional, incidental or irregular, but which is in the course of the employer's trade or business, does not come within the exemption.

The Employment Security Advisory Council has a responsibility to make certain that their recommendations do not subject Kansas employers to potentially adverse circumstances. As such, the Council recommended that the Federal language be used in this proposed exclusion. The Department shares the concern of the Council and also feels that a broader exclusion would make the exclusion unclear to employers and subject to considerable interpretation by both the Department and employers. Consequently, a broader exclusion would place an administrative burden on employers and the Department for additional employer inquiries, audit, and tax appeals which could be substantial.