

Approved 3-14-90 Date _____

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business

The meeting was called to order by Senator Alicia Salisbury at _____
Chairperson

1:30 ~~a.m.~~/p.m. on March 1, 1990 in room 527-s of the Capitol.

All members were present except:

Senator Feleciano and Senator Morris

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes Office
Phil Lowe, Secretary to Committee

Conferees appearing before the committee:

Senator Dave Kerr, State Senate
Ray Siehndel, Secretary Department of Human Resources
Jim Yonally, Director Kansas Chapter of the National Federation
of Independent Business
Wayne Maichel, Kansas AFL-CIO
Paul Bicknell, Department of Human Resources

The meeting was called to order by the Chairman, Senator Salisbury, who opened the hearing on SB 679, which was introduced by the Committee on Economic Development.

Senator David Kerr, Chairman of the Committee on Economic Development, explained SB 679, concerning the employment security law and relating to the definition of casual labor. The definition proposed on page 12, subsection (T) is the federal definition of casual labor minus the words "the cash remuneration paid for such service is \$50 or more and."

Ray Siehndel, Secretary of Human Resources, referred to his letter addressed to the Senate Committee on Economic Development advising them of the Employment Security Advisory Council's recommendation on the passage of a casual labor exemption. (Attachment I). The Council feels that considering any language other than the strict federal statutory language should be done with extreme caution.

Jim Yonally, Director of the Kansas Chapter of the National Federation of Independent Business, appeared in support of SB 679 on behalf of more than 8,000 small and independent businesses who are members of their organization. His written remarks are Attachment II. Mr. Yonally urged the committee to pass SB 679, but preferred that the committee not pass the \$50 limitation.

Wayne Maichel, Kansas AFL-CIO, and a member of the Employment Security Council, testified that the Council's recommendation was to adopt the exact federal guidelines on casual labor.

Senator Martin moved to amend SB 679 to include the federal language on page 12, line 6, after the word "unless" by adding the words "the cash remuneration paid for such service is \$50 or more and". Senator Petty seconded the motion and the motion carried. Senator Oleen moved to recommend SB 679, as amended, favorably for passage. Senator Petty seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
room 527-S, Statehouse, at 1:30 ~~xxx~~/p.m. on March 1, 1990

The Chairman announced that there had been a request for further explanation on SB 645, concerning the employment security law as it relates to leased employment; the public member of the board of review and contribution rates of contributing employers.

Paul Bicknell, Chief of Contributions, DHR, explained the provisions of SB 645 which had been approved by the Employment Advisory Council. He said Section I is a new section to the law relating to "Lessor Employing Units" which was brought about by the need to recognize a new industry in the state of Kansas. He said the language on page 2, line 12 defines "total wages", and that on page 5, line 11, there is a technical correction which removes the word "or". On page 16, lines 25 through 29, all the language is now stricken as it no longer is needed. Mr. Bicknell said on page 20, lines 10 through 15, contains all new language and defines the "Lessor employment unit", and "Client lessee". Page 22, lines 7 and 8 clarifies the appointment of the public member to the Board of Review, a change recommended by the Board. The Council also proposed an amendment to K.S.A. 44-710(a) (2) (D) to expand the number of rate groups from 21 to 51 to allow a positive eligible employer's tax rate to more nearly reflect the relationship of such employer's experience rating to the experience rating of all other possible eligible employers. He further noted that by increasing the number of rate groups to 51, the number of groups that an employer may reduce his rate would be changed from 2 to 5 in K.S.A. 44-710a(c).

Senator Oleen moved to amend SB 645, Section 1 (a), line 21, by inserting the words to read: "For the purpose of this act no client lessee shall". Senator Sallee seconded the motion. The motion carried. Senator Sallee moved to report SB 645 favorably for passage as amended. Senator Petty seconded the motion. The motion carried.

The meeting was adjourned by the Chairman at 2:30 p.m.

The next meeting of the committee is scheduled for next Monday, March 5, 1990, at 1:00 p.m.



OFFICE OF THE SECRETARY
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Mike Hayden, Governor

Ray D. Siehndel, Secretary

February 2, 1990

The Honorable David Kerr, Chairman
Senate Committee on Economic Development
Kansas State Senate
Room 120-S, State Capitol Building
Topeka, Kansas 66612

Dear Senator Kerr:

As stated in my letter of January 29, 1990, the Employment Security Advisory Council met today to discuss the issue of casual labor.

Following a lengthy discussion on the issue, the council voted to recommend to the Senate Committee on Economic Development and the 1990 Kansas Legislature the passage of a casual labor exemption which follows the federal statutory language:

Service 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. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if

- (A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day services not in the course of the employer's trade or business, or
- (B) such individual was regularly employed (as determined under subparagraph (A)) such employer in the performance of such service during the preceding calendar quarter.

The council also requested that this legislation be included in the council's recommended bill for consideration by the 1990 legislature.

The council felt that considering any language other than the strict federal statutory language should be done with extreme caution. The council, although not necessarily opposed to a broader exclusion, feels that everyone should be aware of the consequences that a broader exclusion would hold for Kansas employers. Such consequences of a broader exclusion would include:

- A) The employment would be excluded from state unemployment insurance coverage (and the employer relieved of state U. I. contributions); however, relieving the employer of state contributions does not exempt the employer from FUTA tax on wages for services subject to

Attachment I
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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 FUTA.

- B) Should the individual file a claim for benefits, the wages covered under the broader exclusion would not be available for benefit purposes despite the fact that the employer paid full FUTA taxes.
- C) The council felt that a broader exclusion might make the exclusion for casual labor less clear to the employer. Consequently, there may also be an administrative burden placed on employers and the Department of Human Resources for additional employer inquiries, audit and tax appeals which could be substantial.

The council wishes to thank the committee for the opportunity to provide input into this issue. If I may provide additional information, please do not hesitate to call on me. I will be pleased to discuss the issue with you at your convenience.

Sincerely,



Ray D. Siehndel
Secretary of Human Resources

cc: Advisory Council Members

SENATE BILL NO. 679

Page 12, lines 5 through 16. 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 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.

There are currently 20 states, other than Kansas, that provide for an exemption that matches the Federal Unemployment Tax Act (FUTA) provision that is commonly referred to as "casual labor." This provision as set forth in Section 3306(c) of FUTA does allow for an exemption for "services not in the course of an employer's trade or business unless remuneration is \$50 or more per quarter and performed by an individual regularly employed by such employer to perform such services." There are also approximately 11 states that have a broader exclusion from coverage, however, there are specific consequences that occur when an exclusion from coverage is made broader under state law--such as the proposed language in Senate Bill 679--than that allowed under FUTA.

First, the proposed 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.

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.

Obviously the proposed exclusion is made very broad by the elimination of the \$50 limitation and as such, the Department fears that it will be unclear to employers--subject to considerable interpretation by both the Department and employers. Consequently, there may be an administrative burden placed on employers and the Department for additional employer inquiries, audit and tax appeals which could be substantial.

1990 Proposed Amendments to
Employment Security Law
Approved by Employment Security Advisory Council

1. New Section--Lessor employing units (Treatment under the Law.)
Employee leasing is a relatively new, however rapidly increasing industry in Kansas. Current provisions of the Kansas Employment Security Law do not allow such firms to operate in Kansas. Recognizing that there are definite advantages to small Kansas businesses through the use of employee leasing, the Council has recommended a proposed amendment to allow employee leasing companies to operate in accordance with the law. This proposed amendment addresses two main concerns of the Council:
 - 1) Individual lessee firms and their employees must remain identifiable to the Department of Human Resources.
 - 2) Must provide a trust fund protection provision.
2. K.S.A. 44-703(a)(3)--Defines and adds a definition for "total wages."
3. K.S.A. 44-703(h)(4)(B)--Successor Employer--technical correction only (removes an extra "or.")
4. K.S.A. 44-703(ff)--Defines "Lessor employing unit."
5. K.S.A. 44-703(gg)--Defines "Client lessee."
6. K.S.A. 44-709(f)--Board of Review--clarifies appointment of the public member.
7. K.S.A. 44-710a(a)(2)(D) and Schedule I--Eligible Employers Computation of Contributing Employer Rates - Schedule I is used to assign tax rates to experience rated employers by the array method which was enacted into the Employment Security Law by the 1974 Session of the Legislature. It is used to divide employers eligible for experience rating into 21 approximately equal groups.

The Council has proposed an expansion of the number of rate groups in Schedule I from 21 to 51. The purpose is to allow a positive eligible employer's tax rate to more nearly reflect the relationship of such employer's experience rating to the experience rating of all other positive eligible employers. (Note: Neither the expansion or the contraction of the number of rate groups in Schedule I would have an affect on the overall total planned yield.)
8. K.S.A. 44-710a(c)--Voluntary Contributions
As a result of increasing the number of rate groups in Schedule I from 21 to 51, the number of groups that an employer may reduce his rate would be changed from 2 to 5.

NFIB Kansas

National Federation of
Independent Business

Testimony before the Senate Committee on
Labor, Industry and Small Business
March 1, 1990

Madam 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.

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The Guardian of
Small Business

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

Attachment II