

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley a  
Chairperson

9:06 a.m./p.m. on February 22, 1991 in room 526-S of the Capitol

All members were present except:

Rep. Douville - excused

Committee staff present:

Barbara Dudney, Committee Secretary

Jim Wilson, Revisor

Jerry Donaldson, Research Assistant

Conferees appearing before the committee:

The meeting was called to order at 9:06 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley announced that before the committee returned to discussion and final action on House Bill No. 2278, he would entertain comments from persons in the audience on the substitute bill draft handed out yesterday. The chairman recognized Tom Slattery, Executive Vice President, Associated General Contractors of Kansas.

Mr. Slattery stated that the proposed substitute bill would confirm his testimony of February 19th in which he contended that a prevailing wage requirement on state projects would increase paperwork for contractors. He also stated that if the bill passed, compliance with the law will be very important.

The chairman then handed out copies of a letter written by Kansas Attorney General Robert Stephan in response to an inquiry by Representative Kenneth King concerning the compliance of paying the prevailing wage rate on the El Dorado prison project. The chairman stated that, according to this letter, the Attorney General believes that since the prison project is a contractual agreement between the Department of Corrections and the Contractor, the Department is "obliged to enforce the prevailing wage provisions of its El Dorado prison contracts" (attachment #1). Rep. Diane Gjerstad asked if the substitute bill draft was necessary in light of the Attorney General's opinion? The chairman responded that the substitute bill draft was very likely unnecessary.

Rep. George Gomez suggested that the bill be amended to delete any reference made to "public works" and insert in lieu thereof, "capital improvements."

Rep. Darrel Webb moved to amend House Bill No. 2278 by deleting the words "public works" at each place they appear in the bill, inserting in lieu thereof, "capital improvements," and that the bill be reported favorable for passage as amended. Motion was seconded by Rep. Richard Edlund. Motion carried by a vote of 10 to 9.

The chairman announced that the next order of business is to hear a report on the recommendations of the subcommittee on House Bill No. 2076, the Family and Medical Leave Act. The chairman recognized Rep. Denise Everhart, subcommittee chairperson, who presented this report.

Rep. Everhart handed out a "balloon" version of the bill to committee members and explained various amendments recommended by the subcommittee (attachment #2). She answered questions from several committee members. Rep. Everhart also handed out a second "balloon" version of the bill containing amendments that were suggested by interested persons but not recommended by the subcommittee (attachment #3).

The chairman announced that the committee would discuss and take final action on the subcommittee recommendations at a later date.

The meeting was adjourned at 9:52 a.m.





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 14, 1990

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

The Honorable Kenneth R. King  
State Representative, Seventy-Seventh District  
Route 1  
Leon, Kansas 67074

Dear Representative King:

You request my opinion regarding the authority or obligation of the department of corrections to enforce the prevailing wage provisions of its contracts for construction of the Eldorado prison.

The contract provision in question states that "the employees of all contractors and subcontractors shall be paid in accordance with prevailing wages determined in accordance with job classification and wage rates prescribed under the federal Davis-Bacon Act which would apply to a federally funded project at the construction site." Document E-5, Item 56A. This provision was made a part of the Eldorado prison construction contracts pursuant to L. 1989, ch. 31, § 9 which provides in part:

"No money appropriated for fiscal year 1990 . . . for the department of corrections for construction of any new state correctional facility . . . may be used for the purposes of financing such construction, unless the construction contracts to be entered into for any such state correctional facility . . . are based on bid specifications prescribing that employees of any such contractor or any subcontractor shall be paid in accordance with prevailing wages determined in accordance with job classifications and wage rates prescribed under the federal Davis-Bacon act which

*Labor & Industry*  
*2-22-91*

*attachment # 1-1*


would apply to a federally funded project  
at the location of any such state  
correctional facility. . . ."

This provision does not incorporate or adopt the Davis-Bacon Act, 40 U.S.C.A. § 276a et seq., in its entirety. Further, we are advised that no federal funds are being expended for the project in question so that the Act does not apply independently of L. 1989, ch. 31, § 9. See Anderson Construction Co. v. City of Topeka, 228 Kan. 73 76 (1980). The question thus becomes, absent provisions for monitoring compliance with the federal wage rate, is the department of corrections nonetheless obligated to enforce the contract provision. I believe that it is.

Failure to enforce the provision once a breach of that provision has come to the department's attention would, in my opinion, fly in the face of the legislative intent behind L. 1989, ch. 31, § 9. I do not believe the legislature merely intended to pay lip service to the wage rate requirements of the Davis-Bacon Act by requiring only that the provision be made a part of the contract but not that it be enforced. See In re Estes, 239 Kan. 192, 195 (1986) (in determining legislative intent, a court may properly look to the purpose to be accomplished, the necessity and effect of the statute, and the effect the statute may have under the various constructions suggested); In re adoption of Baby Boy L, 231 Kan. 199, 209 (1982) (in the construction of statutes, courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute; citing 73 Am.Jur.2d Statutes § 249).

Based on the foregoing, it is my opinion that, absent a recognized defense, the department of corrections is obliged to enforce the prevailing wage provisions of its Eldorado prison contracts when violations of the provisions are brought to the agency's attention.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

RTS:JLM:jm

HOUSE BILL No. 2076

By Committee on Labor and Industry

1-30

PROPOSED AMENDMENTS TO HB 2076

Submitted by Subcommittee

For Consideration by House Committee on Labor and Industry

2-22-91

Handwritten notes: Labor + Industry, 2-22-91, attachment # 2-1

8 AN ACT enacting the family and medical leave act; providing for
9 unpaid leaves of absence from employment for certain employees
10 for births, adoptions and family illnesses.

12 Be it enacted by the Legislature of the State of Kansas:

13 Section 1. This act may be cited as the family and medical leave
14 act.

15 Sec. 2. As used in this act:

16 (a) "Child" means a birth child, adopted child, foster child, step-
17 child or legal ward to whom any of the following applies:

18 (1) The individual is less than 18 years of age.

19 (2) The individual is 18 years of age or older and cannot care
20 for the individual's self because of a serious health condition.

21 (b) "Christian ~~science~~ practitioner" means a ~~christian science~~
22 practitioner ~~residing in this state~~ who is listed as a practitioner in
23 ~~the christian science journal~~.

24 (c) "Employee" means an individual employed in this state by
25 an employer, except the employer's parent, spouse or child.

26 (d) "Employer" means a person engaging in any activity, enter-
27 prise or business in this state employing at least 50 individuals on
28 a permanent basis. Employer includes the state and any office, de-
29 partment, independent agency, authority, institution, association, so-
30 ciety or other body in state government created or authorized to be
31 created by the constitution or any law, ~~including the legislature and~~
32 ~~the courts~~.

33 (e) "Employment benefit" means ~~an insurance, leave or retire-~~
34 ~~ment~~ benefit which an employer makes available to an employee.

35 (f) "Health care provider" means a person licensed to practice a
36 branch of the healing arts, a licensed dentist, a certified advanced
37 registered nurse practitioner, a licensed professional nurse, a licensed
38 practical nurse, a licensed optometrist, a licensed psychologist, a
39 licensed podiatrist, a registered physical therapist ~~or~~ a registered
40 occupational therapist.

41 (g) "Parent" means a birth parent, foster parent, adoptive parent,
42 stepparent or legal guardian of an employee or an employee's spouse.

43 (h) "Serious health condition" means a disabling physical or men-

Science

Christian Science

The Christian Science Journal

within this state

, except that employer does not include any office or agency of the
legislative or judicial branch of state government

any

under a welfare or fringe benefit program

or a licensed social worker

2-2

1 tal illness, injury, impairment or condition involving any of the  
2 following:

3 (1) Inpatient care in a medical care facility, as defined in K.S.A.  
4 65-425 and amendments thereto; adult care home, as defined in  
5 K.S.A. 39-923 and amendments thereto; psychiatric hospital or men-  
6 tal health center licensed pursuant to K.S.A. 65-3307b and amend-  
7 ments thereto; or hospice.

8 (2) Outpatient care that requires continuing treatment or super-  
9 vision by a health care provider.

10 (i) "Spouse" means an employee's legal husband or wife.

11 Sec. 3. (a) Nothing in this act prohibits an employer from pro-  
12 viding employees with rights to family leave or medical leave which  
13 are more generous to the employee than the rights provided under  
14 this act.

15 (b) This act does not limit or diminish an employee's rights or  
16 benefits under the workers compensation act.

17 (c) This act only applies to an employee who has been employed  
18 by the same employer for more than 52 consecutive weeks and who  
19 worked for the employer for an average of 20 hours per week during  
20 the preceding 52-week period.

21 Sec. 4. (a) An employee may take family leave for any of the  
22 following reasons:

23 (1) The birth of the employee's birth child, if the leave begins  
24 within 16 weeks of the child's birth.

25 (2) The placement of a child with the employee for adoption or  
26 as a precondition to adoption but not both, if the leave begins within  
27 16 weeks of the child's placement.

28 (3) To care for the employee's child, spouse or parent, if the  
29 child, spouse or parent has a serious health condition.

30 ~~(b) This act does not entitle an employee to take more than 10~~  
31 ~~weeks of family leave in a 24 month period for any combination of~~  
32 ~~reasons specified under subsection (a).~~

33 (c) Except as provided in subsection (d), an employee shall sched-  
34 ule family leave after reasonably considering the needs of the em-  
35 ployee's employer.

36 ~~(d) An employee may take family leave as partial absence from~~  
37 ~~employment. An employee who does so shall schedule all partial~~  
38 ~~absence so it does not unduly disrupt the employer's operations.~~

39 Sec. 5. (a) Subject to subsections (b) and (c), an employee who  
40 has a serious health condition which makes the employee unable to  
41 perform the employee's employment duties may take medical leave  
42 for the period during which the employee is unable to perform those  
43 duties.

or Christian Science practitioner

(d) Each office or agency of the legislative or judicial branch of state government shall provide family and medical leave benefits which are no less comprehensive than those provided by this act.

or more

(e) This act does not entitle an employee to take more than 12 weeks, or the equivalent thereof, of family leave or medical leave, or any combination of family leave or medical leave, during any 12-month period.

and employer

An

(b)

The employer may require the use of accrued leave with pay prior to granting leave without pay.

2-3

1 ~~(b) This act does not entitle an employee to take more than 6~~  
2 ~~weeks of medical leave during a 12-month period.~~

3 ~~(c) An employee may schedule medical leave as medically~~  
4 ~~necessary.~~

(b)

5 Sec. 6. ~~(a) This act does not entitle an employee to receive wages~~  
6 ~~or salary while taking family leave or medical leave.~~

7 ~~(b) An employee may substitute, for portions of family leave or~~  
8 ~~medical leave, paid or unpaid leave of any other type provided by~~  
9 ~~the employer.~~

10 Sec. 7. (a) If an employee intends to take family leave for the  
11 reason specified in subsection (a)(1) or (2) of section 4, the employee  
12 shall, in a reasonable and practicable manner, give the employer  
13 advance notice of the expected birth or placement.

14 (b) If an employee intends to take family leave because of the  
15 planned medical treatment or supervision of a child, spouse or parent  
16 or intends to take medical leave because of the planned medical  
17 treatment or supervision of the employee, the employee shall do all  
18 of the following:

19 (1) Make a reasonable effort to schedule the medical treatment  
20 or supervision so that it does not unduly disrupt the employer's  
21 operations, subject to the approval of the health care provider of  
22 the child, spouse, parent or employee.

23 (2) Give the employer advance notice of the medical treatment  
24 or supervision in a reasonable and practicable manner.

25 Sec. 8. (a) If an employee requests family leave for a reason  
26 described in subsection (a)(3) of section 4 or requests medical leave,  
27 the employer may require the employee to provide certification, as  
28 described in subsection (b), issued by the health care provider or  
29 christian science practitioner of the child, spouse, parent or em-  
30 ployee, whichever is appropriate.

31 (b) No employer may require certification stating more than the  
32 following:

33 (1) That the child, spouse, parent or employee has a serious  
34 health condition.

35 (2) The date the serious health condition commenced and its  
36 probable duration.

37 (3) ~~Within the knowledge of the health care provider or christian~~  
38 ~~science~~ practitioner, the medical facts regarding the serious health  
39 condition.

Christian Science

40 (4) If the employee requests medical leave, an explanation of the  
41 extent to which the employee is unable to perform the employee's  
42 employment duties.

43 (c) The employer may require the employee to obtain the opinion

1 of a second health care provider, chosen and paid for by the em-  
2 ployer, concerning any information certified under subsection (b).

3 Sec. 9. (a) Subject to subsection (c), when an employee returns  
4 from family leave or medical leave, the employee's employer shall  
5 immediately place the employee in an employment position as fol-  
6 lows:

7 (1) If the employment position which the employee held im-  
8 mediately before the family leave or medical leave began is vacant  
9 when the employee returns, in that position.

10 (2) If the employment position which the employee held im-  
11 mediately before the family leave or medical leave began is not  
12 vacant when the employee returns, in an equivalent employment  
13 position having equivalent compensation, benefits, working shift,  
14 hours of employment and other terms and conditions of employment.

15 (b) No employer may, because an employee received family leave  
16 or medical leave, reduce or deny an employment benefit which  
17 accrued to the employee before the employee's leave began or,  
18 consistent with section 10, accrued after the employee's leave began.

19 (c) Notwithstanding subsection (a), if an employee on a medical  
20 or family leave wishes to return to work before the end of the leave  
21 as scheduled, the employer shall place the employee in an employ-  
22 ment position of the type described in subsection (a)(1) or (2) within  
23 a reasonable time not exceeding the duration of the leave as  
24 scheduled.

25 Sec. 10. (a) Except as provided in subsection (b), nothing in this  
26 act entitles a returning employee to a right, employment benefit or  
27 employment position to which the employee would not have been  
28 entitled had the employee not taken family leave or medical leave  
29 or to the accrual of any seniority or employment benefit during a  
30 period of family leave or medical leave.

31 (b) ~~Subject to subsection (c),~~ during a period an employee takes  
32 family leave or medical leave, the ~~employee's~~ employer shall maintain  
33 group health insurance coverage under the conditions that applied  
34 immediately before the family leave or medical leave began. If the  
35 employee continues making any contribution required for partici-  
36 pation in the group health insurance plan, the employer shall con-  
37 tinue making group health insurance premium contributions as if the  
38 employee had not taken the family leave or medical leave.

39 ~~(c) (1) An employer may require an employee to have in escrow~~  
40 ~~with the employer an amount equal to the entire premium or similar~~  
41 ~~expense for eight weeks of the employee's group health insurance~~  
42 ~~coverage, if coverage is required under subsection (b).~~

43 ~~(2) An employer may pay the amount required under subsection~~

The employer may require the employee to pay, in advance of family leave or medical leave, all or part of the ascertainable amount of contribution required for participation in the group health insurance plan during the period of family leave or medical leave.



1' ~~(c)(1) in equal installments at regular intervals over at least a 12-~~  
2 ~~month period. An employer shall deposit the payments at a financial~~  
3 ~~institution in an interest-bearing account.~~

4 (3) Subject to subsection (c)(4), an employer shall return to the  
5 employee any payments made under subsection (c)(1), plus interest,  
6 when the employee ends employment with the employer.

7 (4) If an employee ends employment with an employer during  
8 or within 30 days after a period of family leave or medical leave,  
9 the employer may deduct from the amount returned to the employee  
10 under subsection (c)(3) any premium or similar expense paid by the  
11 employer for the employee's group health insurance coverage while  
12 the employee was on family or medical leave.

13 ~~(d) If an employee ends employment with an employer during~~  
14 ~~or at the end of a period of family leave or medical leave, the time~~  
15 ~~period for conversion to individual coverage shall be calculated as~~  
16 ~~beginning on the day that the employee began the period of family~~  
17 ~~leave or medical leave.~~

18 Sec. 11. Nothing in this act prohibits an employer and an em-  
19 ployee with a serious health condition from mutually agreeing to  
20 alternative employment for the employee while the serious health  
21 condition lasts. No period of alternative employment, with the same  
22 employer, reduces the employee's right to family leave or medical  
23 leave.

24 Sec. 12. (a) No person may interfere with, restrain or deny the  
25 exercise of any right provided under this act.

26 (b) No person may discharge or in any other manner discriminate  
27 against any individual for doing any of the following:

28 (1) Opposing a practice prohibited under this act.

29 (2) Filing a charge or instituting or causing to be instituted any  
30 proceeding under or related to this act.

31 (3) Assisting or intending to assist in an investigation or pro-  
32 ceeding relating to a right under this act.

33 (4) Testifying or intending to testify in an investigation or pro-  
34 ceeding relating to a right under this act.

35 Sec. 13. (a) As used in this section, "department" means:

36 (1) ~~The civil service board~~, if the employee is employed by the  
37 state or any office, department, independent agency, authority, in-  
38 stitution, association, society or other body in state government cre-  
39 ated or authorized to be created by the constitution or any law,  
40 including the legislature and the courts.

41 (2) The department of human resources, if the employee is em-  
42 ployed by an employer other than one described in subsection (a)(1).

43 (b) An employee who believes the employee's employer has vi-

(c)

continuation of

pursuant to the provisions of the federal consolidated omnibus budget reconciliation act.

and section 14

an employer which is

department of administration

other than any office or agency of the legislative or judicial branch of state government

olated section 12 may, within 30 days after the violation occurs or the employee should reasonably have known that the violation occurred, whichever is later, file a complaint with the department alleging the violation. The department shall investigate the complaint and shall attempt to resolve the complaint by conference, conciliation or persuasion. If the complaint is not resolved and the department finds probable cause to believe a violation has occurred, the department shall proceed in accordance with the Kansas administrative procedure act.

(c) If two or more health care providers disagree about any of the information required to be certified under subsection (b) of section 8, the department may appoint another health care provider to examine the child, spouse, parent or employee and render an opinion as soon as possible. The department shall promptly notify the employee and the employer of the appointment. The employer and the employee shall each pay 50% of the cost of the examination and opinion.

(d) The department shall issue its decision and order within 30 days after the hearing. If the department finds that an employer violated section 12, it may order the employer to take action to remedy the violation, including providing requested family leave or medical leave, reinstating an employee, providing back pay accrued not more than two years before the complaint was filed and paying reasonable actual attorney fees to the complainant.

~~Sec. 14. (a) An employee or the department may bring an action in district court against an employer to recover damages caused by a violation of section 12 after the completion of an administrative proceeding, including judicial review, under section 13 concerning the same violation.~~

~~(b) An action under subsection (a) shall be commenced with the later of the following periods, or be barred:~~

~~(1) Within 60 days from the completion of an administrative proceeding, including judicial review, under section 13 concerning the same violation.~~

~~(2) Within 12 months after the violation occurred, or the department or employee should reasonably have known that the violation occurred.~~

~~Sec. 15. (a) Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this act. Violation of this section is a misdemeanor punishable by a fine of not more than \$100 for each offense.~~

~~(b) Any person employing 25 or more individuals shall post, in~~

27

1 ~~one or more conspicuous places where notices to employees are~~  
2 ~~customarily posted, a notice describing the employer's policy with~~  
3 ~~respect to leave for the reasons described in subsection (b) of section~~  
4 ~~4 and subsection (a) of section 5.~~  
5 Sec. ~~16~~<sup>15</sup> This act shall take effect and be in force from and after  
6 its publication in the statute book.

HOUSE BILL No. 2076

By Committee on Labor and Industry

1-30

2-21-91

Submitted Without Recommendation

Labor & Industry  
2-22-91  
Attachment # 3-1

8 AN ACT enacting the family and medical leave act; providing for  
9 unpaid leaves of absence from employment for certain employees  
10 for births, adoptions and family illnesses.  
11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act may be cited as the family and medical leave  
14 act.

15 Sec. 2. As used in this act:

16 (a) "Child" means a birth child, adopted child, foster child, step-  
17 child or legal ward to whom any of the following applies:

18 (1) The individual is less than 18 years of age.

19 (2) The individual is 18 years of age or older and cannot care  
20 for the individual's self because of a serious health condition.

21 (b) "Christian science practitioner" means a christian science  
22 practitioner residing in this state who is listed as a practitioner in  
23 the christian science journal.

24 (c) "Employee" means an individual employed in this state by  
25 an employer, except the employer's parent, spouse or child.

26 (d) "Employer" means a person engaging in any activity, enter-  
27 prise or business in this state employing at least 50 individuals on  
28 a permanent basis. Employer includes the state and any office, de-  
29 partment, independent agency, authority, institution, association, so-  
30 ciety or other body in state government created or authorized to be  
31 created by the constitution or any law, including the legislature and  
32 the courts.

33 (e) "Employment benefit" means an insurance, leave or retire-  
34 ment benefit which an employer makes available to an employee.

35 (f) "Health care provider" means a person licensed to practice a  
36 branch of the healing arts, a licensed dentist, a certified advanced  
37 registered nurse practitioner, a licensed professional nurse, a licensed  
38 practical nurse, a licensed optometrist, a licensed psychologist, a  
39 licensed podiatrist, a registered physical therapist or a registered  
40 occupational therapist.

41 (g) "Parent" means a birth parent, foster parent, adoptive parent,  
42 stepparent or legal guardian of an employee or an employee's spouse.

43 (h) "Serious health condition" means a disabling physical or men-

1 tal illness, injury, impairment or condition involving any of the  
2 following:

3 (1) Inpatient care in a medical care facility, as defined in K.S.A.  
4 65-425 and amendments thereto; adult care home, as defined in  
5 K.S.A. 39-923 and amendments thereto; psychiatric hospital or men-  
6 tal health center licensed pursuant to K.S.A. 65-3307b and amend-  
7 ments thereto; or hospice.

8 (2) Outpatient care that requires continuing treatment or super-  
9 vision by a health care provider.

10 (i) "Spouse" means an employee's legal husband or wife.

11 Sec. 3. (a) Nothing in this act prohibits an employer from pro-  
12 viding employees with rights to family leave or medical leave which  
13 are more generous to the employee than the rights provided under  
14 this act.

15 (b) This act does not limit or diminish an employee's rights or  
16 benefits under the workers compensation act.

17 (c) This act only applies to an employee who has been employed  
18 by the same employer for more than 52 consecutive weeks and who  
19 worked for the employer for an average of 20 hours per week during  
20 the preceding 52-week period.

Except for employees of the state or any agency thereof,

21 Sec. 4. (a) An employee may take family leave for any of the  
22 following reasons:

Subject to employer approval,

23 (1) The birth of the employee's birth child, if the leave begins  
24 within 16 weeks of the child's birth.

25 (2) The placement of a child with the employee for adoption or  
26 as a precondition to adoption but not both, if the leave begins within  
27 16 weeks of the child's placement.

28 (3) To care for the employee's child, spouse or parent, if the  
29 child, spouse or parent has a serious health condition.

30 (b) This act does not entitle an employee to take more than 10  
31 weeks of family leave in a 24-month period for any combination of  
32 reasons specified under subsection (a).

33 (c) Except as provided in subsection (d), an employee shall sched-  
34 ule family leave after reasonably considering the needs of the em-  
35 ployee's employer.

36 (d) An employee may take family leave as partial absence from  
37 employment. An employee who does so shall schedule all partial  
38 absence so it does not unduly disrupt the employer's operations.

(e) The employer may reduce or deny the leave if the employer is unable to obtain a qualified temporary replacement for the employee.

39 Sec. 5. (a) Subject to subsections (b) and (c), an employee who  
40 has a serious health condition which makes the employee unable to  
41 perform the employee's employment duties may take medical leave  
42 for the period during which the employee is unable to perform those  
43 duties.

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1 (b) This act does not entitle an employee to take more than 6  
2 weeks of medical leave during a 12-month period.

3 (c) An employee may schedule medical leave as medically  
4 necessary.

5 Sec. 6. (a) This act does not entitle an employee to receive wages  
6 or salary while taking family leave or medical leave.

7 (b) An employee may substitute, for portions of family leave or  
8 medical leave, paid or unpaid leave of any other type provided by  
9 the employer.

10 Sec. 7. (a) If an employee intends to take family leave for the  
11 reason specified in subsection (a)(1) or (2) of section 4, the employee  
12 shall, in a reasonable and practicable manner, give the employer  
13 advance notice of the expected birth or placement.

14 (b) If an employee intends to take family leave because of the  
15 planned medical treatment or supervision of a child, spouse or parent  
16 or intends to take medical leave because of the planned medical  
17 treatment or supervision of the employee, the employee shall do all  
18 of the following:

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20 or supervision so that it does not unduly disrupt the employer's  
21 operations, subject to the approval of the health care provider of  
22 the child, spouse, parent or employee.

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23 (2) Give the employer advance notice of the medical treatment  
24 or supervision in a reasonable and practicable manner.

25 Sec. 8. (a) If an employee requests family leave for a reason  
26 described in subsection (a)(3) of section 4 or requests medical leave,  
27 the employer may require the employee to provide certification, as  
28 described in subsection (b), issued by the health care provider or  
29 christian science practitioner of the child, spouse, parent or em-  
30 ployee, whichever is appropriate.

31 (b) No employer may require certification stating more than the  
32 following:

33 (1) That the child, spouse, parent or employee has a serious  
34 health condition.

35 (2) The date the serious health condition commenced and its  
36 probable duration.

37 (3) Within the knowledge of the health care provider or christian  
38 science practitioner, the medical facts regarding the serious health  
39 condition.

40 (4) If the employee requests medical leave, an explanation of the  
41 extent to which the employee is unable to perform the employee's  
42 employment duties.

43 (c) The employer may require the employee to obtain the opinion

1 (c)(1) in equal installments at regular intervals over at least a 12-  
2 month period. An employer shall deposit the payments at a financial  
3 institution in an interest-bearing account.

4 (3) Subject to subsection (c)(4), an employer shall return to the  
5 employee any payments made under subsection (c)(1), plus interest,  
6 when the employee ends employment with the employer.

7 (4) If an employee ends employment with an employer during  
8 or within 30 days after a period of family leave or medical leave,  
9 the employer may deduct from the amount returned to the employee  
10 under subsection (c)(3) any premium or similar expense paid by the  
11 employer for the employee's group health insurance coverage while  
12 the employee was on family or medical leave.

13 (d) If an employee ends employment with an employer during  
14 or at the end of a period of family leave or medical leave, the time  
15 period for conversion to individual coverage shall be calculated as  
16 beginning on the day that the employee began the period of family  
17 leave or medical leave.

18 Sec. 11. Nothing in this act prohibits an employer and an em-  
19 ployee with a serious health condition from mutually agreeing to  
20 alternative employment for the employee while the serious health  
21 condition lasts. No period of alternative employment, with the same  
22 employer, reduces the employee's right to family leave or medical  
23 leave.

24 Sec. 12. ~~(a) No person may interfere with, restrain or deny the~~  
25 ~~exercise of any right provided under this act.~~

26 (b) No person may discharge or in any other manner discriminate  
27 against any individual for doing any of the following:

28 (1) Opposing a practice prohibited under this act.

29 (2) Filing a charge or instituting or causing to be instituted any  
30 proceeding under or related to this act.

31 (3) Assisting or intending to assist in an investigation or pro-  
32 ceeding relating to a right under this act.

33 (4) Testifying or intending to testify in an investigation or pro-  
34 ceeding relating to a right under this act.

35 Sec. 13. (a) As used in this section, "department" means:

36 (1) The civil service board, if the employee is employed by the  
37 state or any office, department, independent agency, authority, in-  
38 stitution, association, society or other body in state government cre-  
39 ated or authorized to be created by the constitution or any law,  
40 including the legislature and the courts.

41 (2) The department of human resources, if the employee is em-  
42 ployed by an employer other than one described in subsection (a)(1).

43 (b) An employee who believes the employer's employer has vi-

(c) An employee who feels that the employer's decision to deny requested use of family leave or medical leave is unreasonable may challenge the reasonableness of that decision in accordance with section 13.

1 olated section 12 may, within 30 days after the violation occurs or  
 2 the employee should reasonably have known that the violation oc-  
 3 curred, whichever is later, file a complaint with the department  
 4 alleging the violation. The department shall investigate the complaint  
 5 and shall attempt to resolve the complaint by conference, conciliation  
 6 or persuasion. If the complaint is not resolved and the department  
 7 finds probable cause to believe a violation has occurred, the de-  
 8 partment shall proceed in accordance with the Kansas administrative  
 9 procedure act.

10 (c) If two or more health care providers disagree about any of  
 11 the information required to be certified under subsection (b) of sec-  
 12 tion 8, the department may appoint another health care provider to  
 13 examine the child, spouse, parent or employee and render an opinion  
 14 as soon as possible. The department shall promptly notify the em-  
 15 ployee and the employer of the appointment. The employer and the  
 16 employee shall each pay 50% of the cost of the examination and  
 17 opinion.

18 (d) The department shall issue its decision and order within 30  
 19 days after the hearing. If the department finds that an employer  
 20 violated section 12, it may order the employer to take action to  
 21 remedy the violation, including providing requested family leave or  
 22 medical leave, reinstating an employee, providing back pay accrued  
 23 not more than two years before the complaint was filed and paying  
 24 reasonable actual attorney fees to the complainant.

25 Sec. 14. (a) An employee or the department may bring an action  
 26 in district court against an employer to recover damages caused by  
 27 a violation of section 12 after the completion of an administrative  
 28 proceeding, including judicial review, under section 13 concerning  
 29 the same violation.

30 (b) An action under subsection (a) shall be commenced with the  
 31 later of the following periods, or be barred:

32 (1) Within 60 days from the completion of an administrative pro-  
 33 ceeding, including judicial review, under section 13 concerning the  
 34 same violation.

35 (2) Within 12 months after the violation occurred, or the de-  
 36 partment or employee should reasonably have known that the vio-  
 37 lation occurred.

38 Sec. 15. (a) Each employer shall post, in one or more conspic-  
 39 uous places where notices to employees are customarily posted, a  
 40 notice in a form approved by the department setting forth employees'  
 41 rights under this act. Violation of this section is a misdemeanor  
 42 punishable by a fine of not more \$100 for each offense.

43 (b) Any person employing 25 or more individuals shall post, in

or has unreasonably denied the employee's request  
 for family leave or medical leave,