

Approved March 20, 1992

Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley

Chairperson

a

9-07 a.m./~~pm~~ on March 3 1992 in room 526-S of the Capitol

All members were present except:

Rep. Gjerstad - excused

Rep. Grant - excused

Committee staff present:

Jim Wilson, Revisor of Statutes

Jerry Donaldson, Principal Analyst

Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Nancy Echols, Director, Div. of Personnel Services, Kansas Department of Administration

Keith Myers, Personnel Administrator, Kansas Department of Administration

Rep. David Heinemann

Dee Likes, Exec. Vice-Pres., Kansas Livestock Association

The meeting was called to order at 9:07 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley informed the committee that he had handed out copies of the fiscal notes on House Bills no. 3023 and 2993 (attachments #1 and #2).

The chairman re-opened the public hearings on House Bill No. 3117, and introduced the first opponent, Nancy Echols, Director, Division of Personnel Services, Kansas Department of Administration.

Ms. Echols distributed and read written material in opposition to the bill (attachment #3). She answered questions from several members of the committee. She then introduced Keith Myers, personnel administrator, who described the rationale behind the points system for disciplining employees in the Buildings and Grounds division of the Department (attachment #4). Mr. Myers also answered questions from committee members.

The chairman closed the public hearing on House Bill No. 3117, and opened the public hearing on House Bill No. 2993, by introducing its sponsor, Rep. David Heinemann.

Rep. Heinemann stated that House Bill No. 2993 had been introduced at the request of the Garden City city commission, whose members were concerned about abuses in the area of unemployment compensation. He explained the changes in the law proposed by the bill. He stated that the primary purpose of the bill was to disqualify persons from unemployment... compensation benefits who quit their job due to the "involuntary" transfer of a spouse to another job. He then answered questions from members of the committee.

The next proponent of House Bill No. 2993 was Dee Likes, Executive Vice-President, Kansas Livestock Association. Mr. Likes distributed and read written material in support of the bill (attachment #5).

Chairman Hensley announced that due to the lack of time, the hearings on House Bill No. 2993 would continue tomorrow.

The meeting was adjourned at 9:58 a.m.

GUEST LIST

COMMITTEE: House Labor and Industry

DATE: March 3, 1992

NAME	ADDRESS	COMPANY/ORGANIZATION
BILL CLAWSON	TOPEKA	DHR
BOB STACKS	"	"
JOHN COLLINS	"	DOA-PWA-Saw
J. KEITH MEYERS	"	"
Nancy Echols	"	"
Bobbi Mariani	"	"
Bell Place	"	DEM/Blip/Grub
Cornie Hapentine	"	KDOT
Mark Rickerson	"	JRS
Norm Wilks	"	KASB
TED D. AVRES	"	BOARD OF REGENTS
Wayne Manrup	"	K. AFL-CIO
Jim Lott Hoff	"	KS AFL-CIO
James J. Whan Jr	"	B & G
Phillip D. Bradley	"	B & G
Corby Michaels	"	B & G
Russell Holloway	"	"
Kay Layl	"	B & G
Mick DALLI	"	B & G
Marilyn Rose Sanders	"	B & G
James J. Hesse	"	"
Robert Edwards	"	B & G
George FICKETT	Wichita/TOPEKA	KRHA

STATE OF KANSAS



DIVISION OF THE BUDGET

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State Capitol Building
Topeka, Kansas 66612-1578

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JOAN FINNEY, GOVERNOR

GLORIA M. TIMMER, Director

February 28, 1992

The Honorable Anthony Hensley, Chairperson
Committee on Labor and Industry
House of Representatives
Third Floor, Statehouse

Dear Representative Hensley:

SUBJECT: Fiscal Note for HB 3023 by Representatives
O'Neal, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 3023 is respectfully submitted to your committee.

This bill concerns changes to the Workers' Compensation Act. Several provisions of the bill would limit or eliminate the payment of compensation to an injured worker under certain circumstances. For example, claims would be reduced or disallowed in the event of the following: (1) a pre-existing condition, (2) impairment because of alcohol or drugs, (3) a prior claim that could have been collected, or (4) accidental injury resulting from an age-related disability. In cases involving fraudulent claims made by the employee to obtain compensation, the Director of Workers' Compensation would have the authority to cancel future benefits. The bill also provides for the enforcement of child support against compensation due.

HB 3023 would also implement changes in the way in which the Workers' Compensation Act is administered. Under this bill, the Director of Workers' Compensation would have the authority to create a plan for approving maximum medical fees. The current medical fee advisory panel would no longer have approval authority, but would continue to assist the Director in developing a plan for approving maximum fees. Provisions of the Workers' Compensation Act concerning vocational rehabilitation would be amended by HB 3023 to include time limitations within which certain actions must be completed. Another change would allow an employee to request the Director of Workers' Compensation to calculate the potential benefits to which the claimant might be entitled.

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attachment #1*

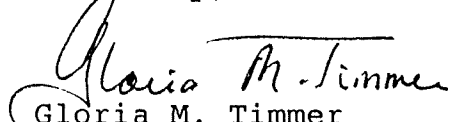
Other changes to the Workers' Compensation Act, as proposed in HB 3023, include: (1) a provision to make the computation of disability compensation caused by repetitive use the same as that used for occupational disease, (2) a requirement for a pre-trial conference 10 days prior to every full hearing, (3) a provision to allow an employer to present evidence against a disputed claim during a preliminary hearing, (4) additional restrictions placed on claims for attorney fees, and (5) an increase in the threshold payroll exemption for employers from \$10,000 to \$20,000.

The Department of Human Resources (DHR) anticipates a minimum fiscal impact of \$96,143 to the Workmen's Compensation Fee Fund as a result of HB 3023. The bill is also expected to reduce expenditures from the Workers' Compensation Fund administered by the Insurance Department; however, the Insurance Department cannot determine the actual amount of savings.

In order to provide potential claimants with benefit calculations, the Department of Human Resources indicates that it would require the addition of at least one office assistant to the Division of Workers' Compensation. The costs of this position and the associated capital outlay and other operating expenditures are estimated at \$31,543 from the Workmen's Compensation Fee Fund.

DHR states that when taken together, the legal procedure changes proposed in HB 3023 would increase the workload of the Division of Workers' Compensation enough to require an additional administrative law judge. Salary and capital outlay expenses for an additional judge are estimated at \$64,600 from the Workmen's Compensation Fee Fund.

Sincerely,


Gloria M. Timmer
Director of the Budget

cc: Ron Nitcher, Insurance Dept.
Sid Snider, Human Resources

278-47 3

STATE OF KANSAS



DIVISION OF THE BUDGET

JOAN FINNEY, GOVERNOR

GLORIA M. TIMMER, Director

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February 27, 1992

The Honorable Anthony Hensley, Chairperson
Committee on Labor and Industry
House of Representatives
Third Floor, Statehouse

Dear Representative Hensley:

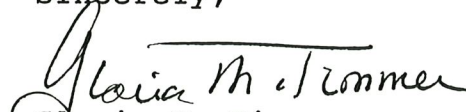
SUBJECT: Fiscal Note for HB 2993 by Representative
Heinemann

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2993 is respectfully submitted to your committee.

HB 2993 concerns changes to the Employment Security Act.
The bill would disallow unemployment benefit payments for
separations that involve an individual who accompanies a
transferred spouse to his or her new job location. The bill
would also lessen restrictions for individuals who leave their
places of employment because of harassment in the workplace.
In addition, language deletions to KSA 44-706(b)(4)(B) would
implement stronger restrictions for separations because of an
individual's failure to meet work performance standards.

The Department of Human Resources anticipates no fiscal
impact as a result of HB 2993.

Sincerely,


Gloria M. Timmer
Director of the Budget

cc: Sid Snider, Department of Human Resources

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Attachment #2

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**Testimony To The
HOUSE LABOR AND INDUSTRY COMMITTEE**

**By
Nancy M. Echols
Division of Personnel Services
Department of Administration**

**Monday, March 2, 1992
Re: HB 3117**

Mr. Chairperson, members of the Committee, thank you for the opportunity to present testimony in opposition House Bill 3117. My name is Nancy Echols and I am the Director of Personnel Services for the Department of Administration. By statute, I am responsible for developing and administering effective and efficient human resource management programs, policies and regulations for state agencies to carry out the provisions of the Kansas Civil Service Act.

House Bill 3117 amends K.S.A. 75-2949 to prohibit any permanent classified employee from being dismissed, demoted or suspended as a result of applying an agency's leave or attendance policies that is based solely on points or demerits.

Subsection (a)(2) of House Bill 3117, if adopted, would create inconsistency and conflict between current K.S.A. 75-2949e. Currently under K.S.A. 75-2949e (a)(5) and (6), appropriate disciplinary action may be administered when there is habitual or

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Attachment #3*

flagrantly improper use of leave privileges and when an employee habitually fails to report for duty at the assigned time and place or to remain on duty. The amendment would restrict agency management and supervisory latitude in disciplining employees and would make it more difficult to discipline or remove employees under K.S.A. 75-2949e for personal conduct which adversely affects state service. The Civil Service Board determines the reasonableness of the application of the attendance policy to the employee. Furthermore, the effect of the language in Section 2 tends to create disparate treatment of classified employees by applying attendance policies to employees in a different manner. Additionally, the bill would adversely affect employee morale and productivity among employees who perceive inequitable treatment of co-workers when addressing leave and attendance matters.

Agencies, including the Department of Administration, have implemented policies and procedures to address habitual use of sick leave, excessive use of same day requests for annual leave and employee tardiness in a progressive, consistent and equitable manner.

The second amendment to K.S.A. 75-2949 further provides that all disciplinary actions be progressive in severity unless the agency can prove the employee's infraction would substantially

impair the operations and functions of the agency.

It appears this amendment shifts the burden of proof from the employee to the agency and conflicts with paragraph (f) which says the employee has the burden of proof. The amendment states agencies would be required to fully substantiate that the actions of an employee substantially impaired the operations and functions of the agency. It is highly unlikely that one employee's personal conduct, despite the seriousness of such actions, will have such a dramatic impact on their agency that it would substantially impair the operations of the agency or bring the agency to its knees.

K.S.A. 75-2949f establishes causes for discipline; therefore, obviating any need for the agency or the Civil Service Board to determine there was substantial impairment of the agency's operations and functions. The Kansas Court of Appeals upheld this interpretation in *Sanstra v. The Kansas Highway Patrol*.

Employees come to the Civil Service Board to appeal disciplinary actions only after extensive opportunities to take corrective action and present their view of the matter to their supervisors and managers. For these reasons, it is appropriate for the employee to demonstrate that his or her personal conduct does

HB 3117 Testimony
Nancy Echols
Page 4

not warrant the disciplinary action.

It is my opinion, as the Director of Personnel Services, that agency attendance and leave policies are still necessary to handle leave and attendance problems and to ensure fair, equitable and reasonable treatment of all employees.

Thank you for allowing me this time. I would be happy to answer any questions you may have.

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**Testimony To The
HOUSE LABOR AND INDUSTRY COMMITTEE**

By

**D. Keith Meyers, PHR
Personnel Administrator
Department of Administration**

The purpose of the following remarks is to rebut incorrect statements made regarding the Buildings and Grounds Attendance Policy and to provide clarifications on the policy.

First, employees only get points for what are defined as disciplinary absences. Under the policy, an employee's normal use of sick leave is considered to be a non-disciplinary absence and not subject to point assessment.

Last year Buildings and Grounds Services adopted an approach used in the Division of Printing Attendance Policy that has been very effective in addressing employee problems with habitual leave use. This approach involves the division reviewing each employee's leave record every six months. If an employee is found to have used 40 or more hours of undocumented sick leave or 3 or more days of undocumented sick leave in conjunction with scheduled days off, the employee receives an advisory letter informing the employee that improvement is necessary and if improvement does not occur over the following six months, the employee will be required to provide a doctor's verification for all future use of sick leave. Only if improvement does not occur over the following six month period would an employee be subject to point assessment and, even then,

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attachment #4*

points would only be assessed if a verification was not provided.

It may be helpful to review the impact this approach has had at the Division of Printing. [EXHIBIT #1] In 1988, the division issued 17 advisory letters to employees meeting the criteria. This number dropped to 3 in 1991. After the first 6 months in 1988, only 7 employees met the criteria which required them to provide doctor's verifications. This dropped to 2 in 1991.

To really see the impact of the policy is in the area of leave balances. [EXHIBIT #2] At the time the Attendance Policy was implemented, 24 employees (26% of the total employees) with an average length of service of 9.75 years were carrying sick leave balances of less than 40 hours. This number dropped to 4 by 1991.

[EXHIBIT #3] In addition, the total number of employees with leave balances less than 100 hours decreased from 34 to 20.

Last year, 23 of the 215 Buildings and Grounds employees received advisory letters. Buildings and Grounds is currently reviewing leave records and preparing to advise employees on the progress made during the first six months of this provision.

Clarification is necessary on the subject of points. Points are given for disciplinary absences on the basis of 1 point for absences of 3 hours or greater and 1/2 point for absences of less than 3 hours. Points are maintained on a twelve month rolling

basis. In other words, once a point is one year old, it falls off the employee's record. As a result, the employee is not permanently penalized and is rewarded for improved attendance.

Points accumulate toward progressive disciplinary action: 3 points, verbal warning; 4 points, written warning; 6 points, 1-day suspension proposal; 8 points, 3-day suspension proposal; 9 points, dismissal proposal.

It was suggested that an employee could be dismissed after being late nine times. This would be true if each incidence of lateness was 3 hours or more, but it would take 18 occurrences of lateness in a 12-month rolling period if they were less than 3 hours.

It should also be noted that points are not maintained in the employee's official personnel file in the Department of Administration Personnel Office.

The discussions yesterday established the no-fault nature of this policy. This type of an approach assures that all employees will be treated equally. If individual reasons are considered in each circumstance, the likelihood for disparate treatment will become substantial. If we are unable to administer a consistent policy, there really is no policy.

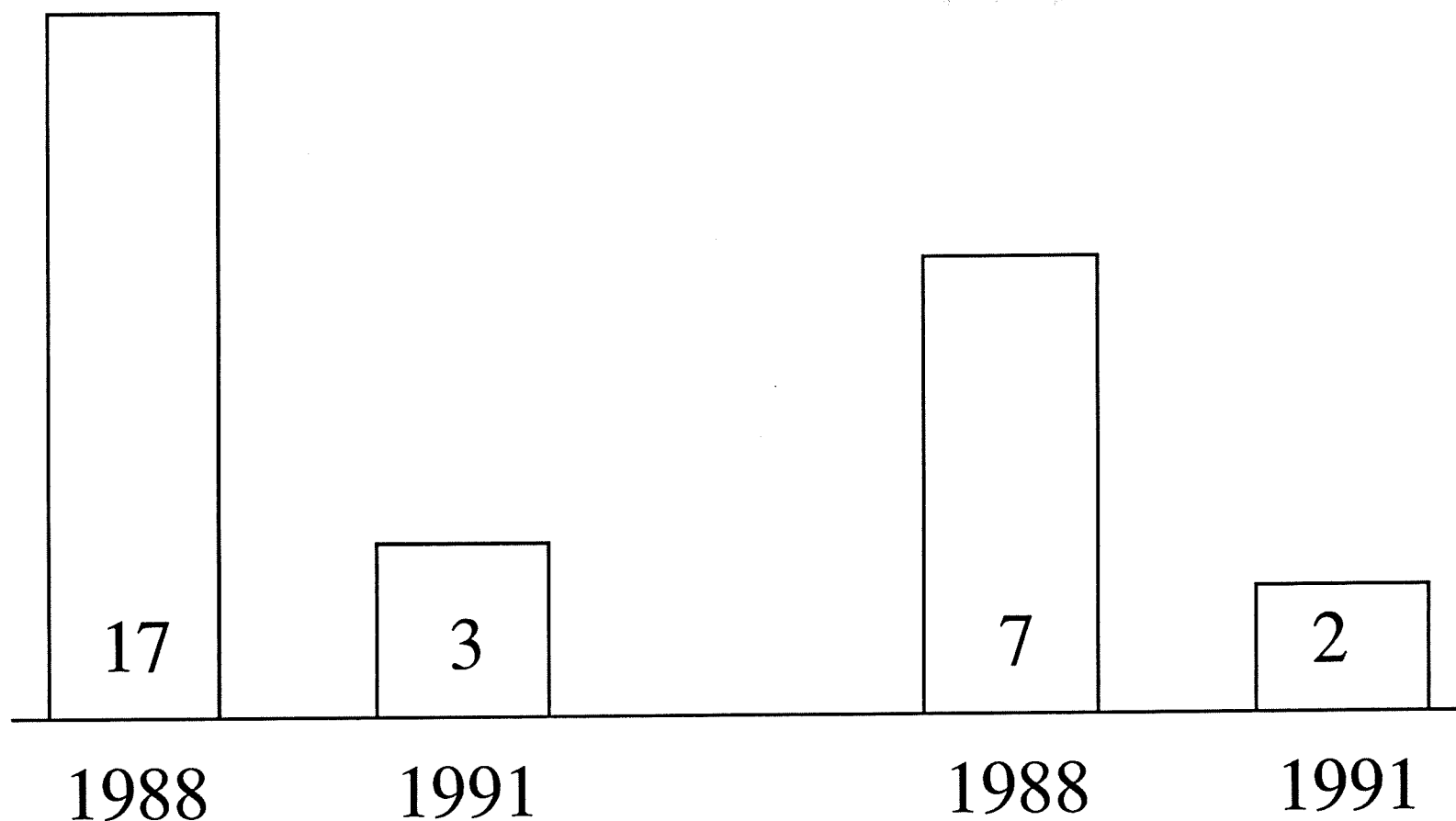
The KAPE representative raised an issue regarding an employee he represented in front of the Civil Service Board. It is important to note that in the two cases involving this employee, the Civil

Service Board upheld the attendance policy each time and upheld the employee's dismissal the second time. The employee's attendance record was issued as an exhibit during the civil service board hearing and a copy of it is available here today if any of you would like to review it.

Buildings and Grounds Services and the Division of Printing value their human resources highly. Given the large number of skilled trades positions they employ, these divisions must invest a great deal in their employees' training. To utilize a policy that would have the effect of unreasonably discharging employees would not be in their best interests. These divisions clearly understand that their employees are entitled to use the sick leave they accrue; however, the statutes are clear that use should not be habitual or flagrant. As a result, the attendance policies in the Department of Administration have been constructed liberally and responsibly in their interpretation of K.S.A. 75-2949 et. seq. and the applicable regulations.

IMPROVED PATTERN/HABITUAL USE

DIVISION OF PRINTING

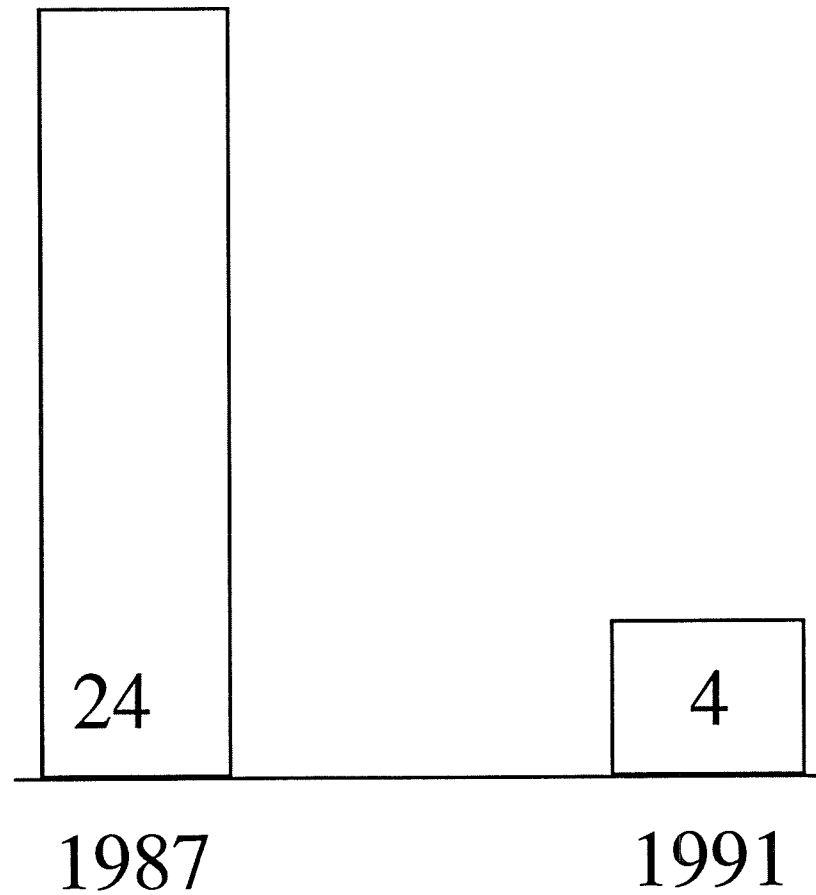


Advisory
Letters

Require Dr
Verification

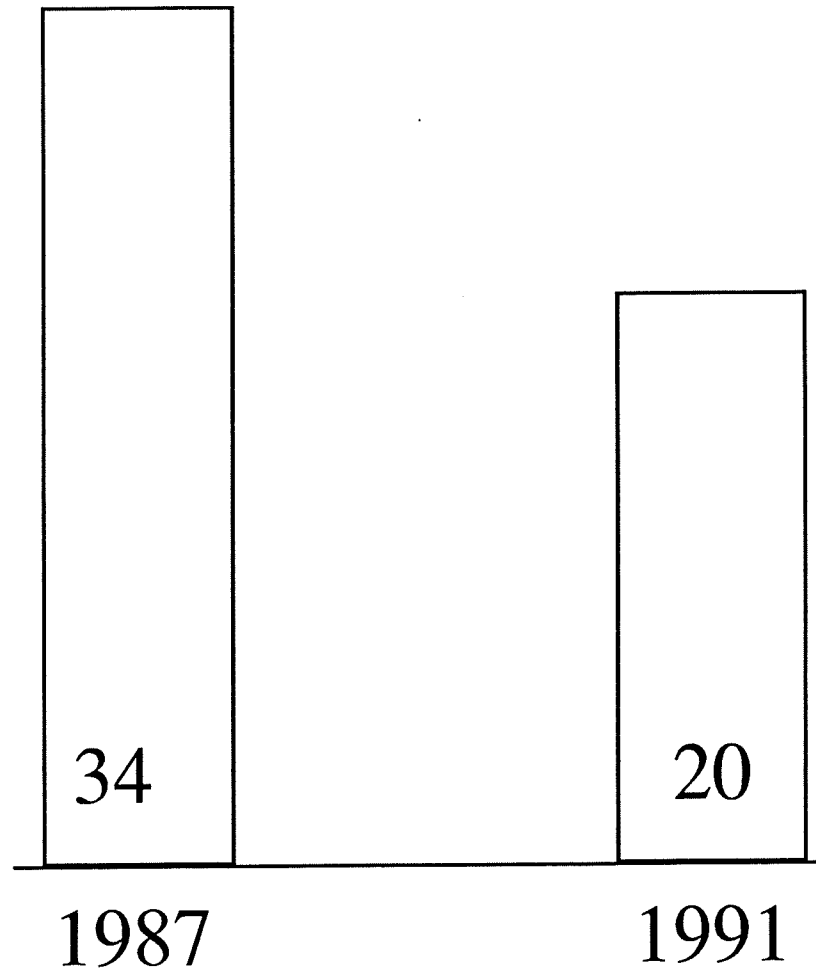
EMPLOYEES WITH SICK LEAVE BALANCES LESS THAN 40 HOURS

DIVISION OF PRINTING



EMPLOYEES WITH SICK LEAVE BALANCES LESS THAN 100 HOURS

DIVISION OF PRINTING





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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

**STATEMENT OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
HOUSE LABOR AND INDUSTRY COMMITTEE
REPRESENTATIVE ANTHONY HENSLEY, CHAIRMAN
PRESENTED BY
DEE LIKES, EXECUTIVE VICE PRESIDENT
REGARDING HB 2993
UNEMPLOYMENT COMPENSATION
MARCH 3, 1992**

The Kansas Livestock Association (KLA) is a trade organization made up of 10,000 members located in all of the 105 counties. KLA, founded in 1894, has members who are actively involved in numerous aspects of livestock production that include cow-calf/stocker producers, feeders, sheep producers, swine operators, and general farming and ranching enterprises.

The Kansas Livestock Association supports the changes proposed in House Bill 2993. The changes appear logical and defensible.

The first proposed change, found on lines 38 - 40 of page one, simply state that if an employee's spouse voluntarily transfers from one job location to another, making it unreasonable for the employee to continue to work, the employer shall not be responsible for unemployment benefits. This change seems only fair as the employee and spouse should consider all aspects of voluntarily changing locations, including what effect the move would have on each others' job. Said in other words, an employer should not be penalized because an employee's spouse voluntarily changed locations making it impossible for the employee to continue work. Keep in mind, as the bill reads, the employee would remain eligible for benefits if the spouse is transferred involuntarily to a new location.

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Attachment #5*

On page two, lines 25 - 27, the proposed change clarifies that an employee is eligible for benefits if he leaves employment due to harassment in the work environment. Under current law, an individual could leave work and be eligible for benefits due to disputes with fellow employees that occur completely separate and outside of the work place. Surely this was not the intent of the legislature when this act was passed.

Under current law, an employee may leave work and receive benefits if the employer instructs him/her to perform a duty that is in violation of an ordinance or statute. The change proposed in lines 40 - 41 on page two, specifies the employer must have knowledge the duty is in violation of an ordinance or statute for an employee to be eligible to receive benefits. With the increasing number of statutes, regulations, and ordinances and the constantly changing regulatory interpretations, this change is logical and necessary.

We also support the change proposed on lines 36 - 40 on page four which allows an employer to dismiss an employee for inefficiency, inability and/or incapacity, without being liable for benefits.

Thank you for giving consideration to our support for the changes proposed in HB 2993!