

Approved: 3/11/94
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 10, 1994 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Salisbury, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Linda Tierce, Chief of Benefits, Department of Human Resources
Jerry L. Pope, Garage Door Group, Lawrence
Kevin Polian, Director of Personnel, Learjet, Inc., Wichita

Others attending: See attached list

Discussion and action on SB 795-Business entities, annual reports & franchise fees

After committee discussion Senator Burke moved and Senator Ranson seconded to change \$30,000 in line 24 on page 1 to read \$30,001 and to change \$50,000 in line 25, page 1 to read \$50,001. The motion carried on a voice vote.

Senator Ranson moved and Senator Reynolds seconded to delete on page 3, (b), lines 20 through 40 and on page 9, (c), lines 16 through 38, regarding agricultural land. The motion carried on a voice vote.

Senator Burke moved and Senator Ranson seconded to report SB 795, as amended, favorably for passage. The motion carried on a roll call vote.

Hearing and possible action on SB 692-Employment security, benefit disqualification for misconduct

Linda Tierce, Chief of Benefits, Department of Human Resources, testified the amendments on page 3 of SB 692, lines 22 through 27, will eliminate the "intention" and "employer harm" provisions from the definition of misconduct. By removing this clarification from the law, any violation of a duty or obligation reasonably owed the employer as a condition of employment will result in a finding of misconduct. She stated the Department staff believes that removing the "intention" and "employer harm" provisions may have a tendency to tilt the balance between employee and employer by reducing the employee's ability to address unreasonable employer policies and practices. The amendment on page 5, lines 5 through 12, reduces the four pronged method of addressing repeated absences to a simple violation of the employer's written absenteeism policy. The concerns regarding this amendment revolve around the reasonableness of the employer's policy. One employer can have a written policy stating that one day of absence in six months is cause for dismissal while another employer might have a more liberal leave policy. There was also concern whether this amendment could be equally and consistently applied, see attachment 1.

Jerry L. Pope, The Garage Door Group, Inc., testified in support of SB 692. He stated this bill would simplify the definition of misconduct under the unemployment compensation laws and save time and money in the administration of unemployment compensation cases. He recommended changing the language "(A) the individual was absent without good cause;" to "(A) the absense was within the control of the individual", see attachment 2.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 10, 1994.

Kevin Polian, Director of Personnel, Learjet, Inc., Wichita, testified they employ over 2,800 people in the state of Kansas. The major single reason for termination is the violation of the attendance policy. Over 40% of the people who leave Learjet do so because they fail to come to work. He said this is particularly hard to understand when you consider the total amount of paid and unpaid time off available to employees before they get into trouble. Changes in SB 692 will place more responsibility on the individual to safeguard and protect their employment which is where the responsibility belongs. He strongly supports passage of SB 692.

The Chairman adjourned the meeting at 9:00 a.m.

The next meeting is scheduled for March 11, 1994.

TESTIMONY

SENATE COMMERCE COMMITTEE

Amendments to SB 692

Madam Chair, Members of the Committee; My name is Linda Tierce. I am the Chief of Benefits for the Department of Human Resources, Division of Employment Security.

Today's testimony is an opportunity to provide written comments with regard to the proposed amendments to Senate Bill 692 and to provide the department's position on the amendments.

Amendments on page three of Senate Bill 692, lines 22 through 27, will eliminate the "intention" and "employer harm" provisions from the definition of misconduct. By removing this clarification from the law, any violation of a duty or obligation reasonably owed the employer as a condition of employment will result in a finding of misconduct. Under current law, the employee action had to be substantially adverse to the employer's interests to constitute misconduct. In that way, rules that were somewhat arbitrary were given less weight in determining whether an individual who had just lost their job over the infraction would also lose their unemployment insurance income. As an example, a female grocery clerk was discharged for violation of a written policy that required a skirt or shorts to be worn under an apron instead of slacks which were only allowed in winter. Under present law there was no misconduct because the action was not shown to be substantially adverse to the employer's interests. Under the proposed amendment, the policy violation would be misconduct.

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If you will recall, in my testimony last September, I mentioned that the misconduct section was last amended during the 1986 legislative session as a result of intensive scrutiny from the Employment Security Advisory Council. The resulting language was a compromise and was unanimously agreed to by labor, industry, and the public members of the Council. This year, at the request of this Senate Committee, the Employment Security Advisory Council again scrutinized the misconduct section and finally voted 6-4 to leave the language unchanged.

Department staff believes that removing the "intention" and "employer harm" provisions may have a tendency to tilt the balance between employee and employer by reducing the employee's ability to address unreasonable employer policies and practices.

The attached Table 1 is a complete listing of ordinary misconduct issues identified in state fiscal year 1993. It is believed that the aforementioned amendment would substantially increase the number of individuals denied benefits for misconduct. However, it is not possible to accurately determine the extent of this increase.

The amendment on page 5 of SB 692, lines 5 through 12, reduces the four pronged method of addressing repeated absences to a simple violation of the employer's written absenteeism policy. Staff concerns regarding this amendment revolve around the reasonableness of the employer's

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policy. One employer can have a written policy stating that one day of absence in six months is cause for dismissal while another employer might have a more liberal leave policy. In other words, the employer determines when misconduct occurs by an arbitrary written policy. Department staff also has concerns whether this amendment can be equally and consistently applied.

This section on absenteeism was last amended in 1991 on the recommendation of the Employment Security Advisory Council. Again, at this Senate Committee's request, the Advisory Council discussed making changes, but in the end voted 5-4 with one abstention to make no recommendation on this issue.

Elimination of the term "substantially adverse to the employer's interests" and the written notice requirement would have increased the number of absenteeism denials in state fiscal year 1993 by 42 percent. A breakdown of absenteeism issues is shown in Table 2.

Ladies and gentlemen, this concludes my testimony. I appreciate this opportunity to appear before you to discuss the Employment Security Law and will be happy to answer any questions you may have.

Thank you.

Table 1
Misconduct Nonmonetary Determinations
SFY 1993

<u>Issue</u>	<u>Number</u>	<u>Per Cent 1/</u>
<u>Total</u>	<u>21,031</u>	<u>100.0</u>
<u>Clearances</u>	<u>17,497</u>	<u>83.2</u>
Accepted other work.....	8	a/
Notice of intent to leave.....	113	0.5
Seeking other work.....	20	0.1
Not qualified for job.....	152	0.7
Physical or health problem.....	172	0.8
Work performance unsatisfactory.....	2,772	13.2
Incompatibility, not intentional.....	52	0.2
Failed to pass physical exam.....	7	a/
False work application.....	40	0.2
Work assigned in excess of contract.....	8	a/
Unavoidable absenteeism.....	329	1.6
Unavoidable tardiness.....	42	0.2
Replaced while on bonafide leave of absence.....	54	0.3
Off-the-job incident.....	103	0.5
Unknown reasons.....	142	0.7
Conduct or attitude.....	1,462	7.0
Driver's license suspended.....	55	0.3
Involuntary retirement.....	5	a/
Employment terminated by mutual agreement.....	195	0.9
Failed drug screening test.....	133	0.6
Failed to comply with company policies.....	762	3.6
Failed to participate in drug screening test.....	17	0.1
Lateness--no written notice.....	71	0.3
Lateness--late with good cause.....	68	0.3
Absence--not substantially adverse to the employer.....	36	0.2
Absence--no written notice.....	488	2.3
Absence--absent with good cause.....	977	4.6
Lack of work--employer protest	611	2.9
Claimant reported fired--employer reports quit--lack of work or not for misconduct.....	747	3.6
No employer response.....	7,584	36.1
Claimant reported fired, employer's report is different-- lack of work or not misconduct.....	271	1.3
Refused to submit to drug test--no probable cause.....	1	a/

<u>Issue</u>	<u>Number</u>	<u>Per Cent</u> /
<u>Denials</u>	<u>3,534</u>	<u>16.8</u>
Unexcused absences.....	416	2.0
Repeated tardiness.....	81	0.4
Failed to report to work.....	201	1.0
Refused to work overtime.....	14	0.1
Attendance standards not met.....	336	1.6
Fighting on the job.....	63	0.3
Sleeping on the job.....	35	0.2
Insubordination.....	103	0.5
Failure to comply with company policies.....	720	3.4
Damage to equipment or property.....	31	0.1
False work application.....	17	0.1
Refused to perform assigned work.....	56	0.3
Causing dissention among employees.....	12	0.1
Property use unauthorized.....	30	0.1
Work standards not met.....	75	0.4
Consumed intoxicants on job.....	18	0.1
Reported to work intoxicated.....	30	0.1
Possessed controlled substance on employer's property.....	9	a/
Conduct or attitude.....	760	3.6
Converting employer's monies or property.....	103	0.5
Loss of driver's license.....	8	a/
Continued absence from work.....	284	1.4
Continuing to report late for work.....	74	0.4
Impaired by nonprescribed controlled substance while working—probable cause to believe use, possession, or impairment.....	16	0.1
Failed drug test—test sample established as same sample taken from claimant.....	2	a/
Failed drug test—test performed by approved laboratory.....	12	0.1
Failed drug test—test sample confirmed by gas chromatography or other comparably reliable analytical method.....	2	a/
Failed drug test—test sample taken timely with event establishing probable cause.....	1	a/
Refused to submit to drug test—probable cause.....	5	a/
Absence—no notice but adverse to the employer's interest —other than last employer.....	2	a/
Earnings not verified—DOU not satisfied.....	18	0.1

1/ Percentages may not sum to 100 due to rounding.

a/ Less than 0.1 per cent.

Table 2
Absenteeism
Nonmonetary Determinations
SFY 1993

<u>Issue</u>	<u>Number</u>	<u>Per Cent 1/</u>
<u>Total</u>	<u>3,473</u>	<u>100.0</u>
<u>Clearances</u>	<u>2,065</u>	<u>59.5</u>
Unavoidable absenteeism.....	329	9.5
Unavoidable tardiness.....	42	1.2
Replaced while on bonafide leave of absence.....	54	1.6
Lateness – no written notice.....	71	2.0
Lateness – late with good cause.....	68	2.0
Absence – not substantially adverse to the employer.....	36	1.0
Absence – no written notice.....	488	14.1
Absence – absent with good cause.....	977	28.1
 <u>Denials</u>	 <u>1,408</u>	 <u>40.5</u>
Unexcused absences.....	416	12.0
Repeated tardiness.....	81	2.3
Failed to report to work.....	201	5.8
Refused to work overtime.....	14	0.4
Attendance standards not met.....	336	9.7
Continued absence from work.....	284	8.2
Continuing to report late for work.....	74	2.1
Absence – no notice but adverse to the employer's interest – other than last employer.....	2	0.1

1/ Percentages may not sum to 100 due to rounding.

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TESTIMONY BEFORE THE KANSAS SENATE COMMERCE COMMITTEE
IN FAVOR OF SENATE BILL 692
March 10, 1994

The Garage Door Group, Inc. expresses its appreciation for the opportunity to testify in favor of SB 692. We believe that this bill will simplify the definition of misconduct under the unemployment compensation laws and save time and money in the administration of unemployment compensation cases.

The unemployment compensation laws of the State of Kansas were created to relieve the economic distress of individuals who find themselves unemployed through no fault of their own or for reasons beyond their control. The Garage Door Group supports both the letter and the spirit of this legislation, and each year pays thousands of dollars in taxes to do so.

However, the legislature in its wisdom recognized that some people would become unemployed because they refuse to meet the obligations of employment, and it provided that they should not be compensated for their misconduct. It provided definitions for misconduct and charged the Board of Review with resolving disputes in these cases.

From April of 1992, through August of 1993, The Garage Door Group spent over \$10,000 in legal fees seeking judicial relief from four decisions of the Board. Happily for our company, we prevailed in all four cases. Although our experience rating, and therefore our tax rate, was favorably influenced by these court rulings, this was not the primary reason for our pursuing relief from the Board's decisions.

Our primary reason for seeking reversal of the Board's decisions is that we believe the right to discharge employees for cause is the very heart of the disciplinary system of any company. The ultimate source of the power to discipline, and therefore the power to maintain order, is the threat of discharge. If the penalty of discharge is eased by the award of unemployment benefits, the power to discipline is severely undermined, and the order of an organization is seriously threatened.

In three of our four cases, the Board ruled that there was no "substantial adversity" to the employer. In two cases the Board also ruled that there was no "willful or intentional action" or "wrongful intent or evil design". In another case the Board ruled that an employee's absences were for "good cause". In every case the court said that the Board was wrong. In three of the four cases, the court said that the Board had improperly applied and interpreted the law.

Why would there be such a discrepancy between the Board and the courts in the interpretation of the unemployment compensation laws regarding misconduct? If we assume conscientiousness

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The Garage Door Group, Inc.

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on the part of both the Board and the courts, the answer must center on a lack of agreement as to what constitutes phrases such as, "substantially adverse", "willful and intentional action", "wrongful intent", "evil design", and "good cause".

These phrases are pejorative and emotional, and their definitions can be difficult to agree on. These phrases involve value judgments which some people may be loathe to make. The changes which SB 692 would make to KSA 44-706(b)(1) would eliminate much of the need for placing these value judgments on the conduct of an employee and leave us with a much simpler task of deciding whether the employee's actions were a "violation of a duty or obligation reasonably owed the employer as a condition of employment". For this reason The Garage Door Group strongly supports SB 692.


The Garage Door Group also supports the changes which SB 692 would make to KSA 44-706(b)(3), with one exception. We would like to see "(A) the individual was absent without good cause" changed to "(A) the absence was within the control of the individual". Almost universally every individual believes that there is good reason for his or her absence, but if the individual has control over the absence then he or she must assume some responsibility for it.

The Garage Door Group is not a vindictive employer. It cares deeply for its employees. They are its most important asset, and their goodwill and cooperation are essential to its success. When some of our employees must be laid off or discharged for reasons other than misconduct, The Garage Door Group strongly supports their right to receive unemployment compensation. But when employees are discharged because they choose not to abide by reasonable rules and policies, then we believe that for them to receive unemployment compensation benefits is unfair to the Company, its employees, and the citizens of the State of Kansas.

We therefore urge the passage of Senate Bill 692. Thank you.

Respectfully submitted,

THE GARAGE DOOR GROUP, INC.



Jerry L. Pope
Manager of Manufacturing Services

JLP:dwf