

Approved: 3/20/95 ka  
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:10 a.m. on March 14, 1995 in Room 526-S of the Capitol.

All members were present except: Rep. Gary Boston - excused  
Rep. Candy Ruff - excused

Committee staff present: Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Bev Adams, Committee Secretary

Conferees appearing before the committee:

Bill Jarrell, Boeing Company  
Mark Turman, Supervisor of Employment, Raytheon Aircraft, Wichita  
Kevin Polian, Learjet Director of Personnel, Wichita  
Roland Smith, Wichita Independent Business Association, Wichita  
Gary Strodman, Director of Human Resources, Coleman Company, Wichita  
Jack Cowden, Vice-President Human Resources, Collins Industries, Hutchinson  
Jerry Vinson, Human Resources Manager, Collins Bus Corporation, Hutchinson

Others attending: See attached list

After Chairman Lane called the meeting to order, he introduced Rep. Pauls, who would be the Acting Chair for today's meeting.

The minutes of March 7-10 were passed out. They will be approved at our next meeting.

Hearing on: **SB 106**—**Employment security, benefit disqualification for leaving work voluntarily or misconduct**

The testimony of Jerry L. Pope, Manager of Manufacturing Services, The Garage Door Group, Inc. in Lawrence, was passed out to the committee. He submitted written testimony because he was unable to attend the hearings (see Attachment 1).

Bill Jarrell, representing the Boeing Company, appeared to introduce a Wichita group representing the South Central Coalition For Unemployment Compensation Reform, who are in Topeka to testify in support of **SB 106**. The companies forming this coalition employ more than 50,000 Kansans and the suppliers across the state employ thousands more. Mr. Jarrell introduced Mike Turman as the next conferee. There will be no questions until the Wichita group is finished.

Mark Turman, Supervisor of Employment, Raytheon Aircraft, appeared as a supporter of **SB 106**. He has represented his company in unemployment hearings for seven years. In 1994, a group of small and large employers from Wichita formed the South Central Coalition For Unemployment Compensation Reform, to address issues of unemployment compensation. He is the chairman of the committee. Their goal is to impact unfavorable statutes in the employment security law (see Attachment 2). Mr. Turman introduced Kevin Polian.

Kevin Polian, Learjet Director of Personnel, appeared to offer comments regarding **SB 106**. He stated that the proposed changes are necessary for two reasons: 1) Kansas Employers should not be unduly burdened with higher unemployment tax rates because employees do not exercise normal care in the preservation of their job, and 2) Kansas Employees must recognize that they have an equal responsibility in both job creation and job retention (see Attachment 3). Mr. Polian introduced Roland Smith.

Roland Smith, Wichita Independent Business Association, appeared in support of **SB 106**. The businesses who belong to the association have in common the problems with the burden of proof in unemployment compensation claims as the process is not properly balanced between the employer and the employee in the vast majority of cases. He has been working with the South Central Kansas Coalition for Unemployment Compensation Reform as a representative for small businesses, to help develop and support some needed changes in the statutes that they believe would be a first step towards a more balanced system. He believes **SB 106** would help do this (see Attachment 4). Mr. Smith finished by introducing Gary Strodman.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S  
Statehouse, at 9:10 a.m. on March 14, 1995.

Gary Strodman, Director of Human Resources with the Coleman Company in Wichita, appeared as a proponent of **SB 106**. He feels that the proposed changes will shift some of the responsibility of employment to the employee. He feels these changes are essential to preserve the work ethic that Kansans are known for (see Attachment 5).

Jack Cowden, Vice-President Human Resources, Collins Industries, appeared to ask the committee to remove language from **SB 106**. It is his position that the language concerning the employee being absent without good cause should be deleted. He states in his testimony that the criteria that should be considered is as follows: 1) the employer has a written absenteeism policy, 2) the employers written policy has been communicated to the employee prior to his/her termination, 3) the employee violated the provisions of the written policy, and 4) the policy has been consistently applied (see Attachment 6).

Jerry Vinson, Human Resources Manager for Collins Bus Corporation, Hutchinson, is the legislative representative for the Central Kansas Chapter of the Society of Human Resources Management. They are in favor of **SB 106** but would like to see the wording "the employee was absent without good cause" deleted from the bill (see Attachment 7).

The hearing on **SB 106** will be continued on Wednesday, March 15.

The meeting was adjourned at 9:59 a.m.

The next meeting is scheduled for March 15, 1995.

# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE March 14, 1995

NAME	REPRESENTING
Jonathan Small	Learjet, Inc.
KEVIN POLIAN	LEARJET INC.
Pyland Smith	WIBA
Gary Strodtman	Coleman
DICK RADER	BOEING
MARC TURMAN	RAYTHEON
JERRY VINSON	COLLINS BUS CORP. CENTRAL KS SHRM
Jack Courden	Collins Industries, Inc.
Jodi Summers	Manpower
Lennie O'Neil	Riverside Health System
Frank Schulte	Adorers of Blood of Christ
ALAN COBB	KS ASSOC. FOR Small Business
Bill Jance	BOEING
Mary Ellen Colie	St Francis Regional Med. Center
<del>P. J. [unclear]</del>	<del>DXIA</del>
Rossie Lewis	KDHR
Linda Tierce	KDHR
PAUL BICKNELL	KDHR
JUDY GWAERICHT	KDHR
Wayne March	B. AFL-CIO



# The Garage Door Group, Inc.

East Hills Business Park  
3800 Greenway Circle  
Lawrence, KS 66046

Office 913/865-5500  
FAX 913/865-5600

March 10, 1995

Representative Al Lane, Chairman  
Business & Labor Committee  
Room 115 South, State Capital Bldg.  
Topeka, KS 66612

Dear Representative Lane:

I understand that your committee will be hearing testimony regarding Senate Bill 106 on Tuesday, March 14th. I testified in favor of this bill before the Senate Commerce Committee on February 22nd and would very much like to appear before your Committee. Unfortunately, I must be out of town on business the entire week of March 13th, therefore, I am sending this letter to express my company's views on this bill.

The Garage Door Group, Inc. believes 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.

In 1992 and 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 these 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

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Attachment 1*

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"wrongful intent or evil design". In another case the Board ruled that an employee's absences were for "good cause". In every the 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 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 106 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 106.

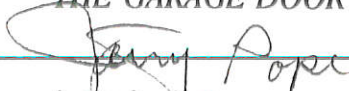
The Garage Door Group also supports the changes which SB 106 would make to KSA 44-706(b)(3), with one exception. We would like to see "(A) the individual was absent without good cause" changed to, "(A) the absence was within the control of the individual". Almost universally every individual believes 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 106. Thank you.

Sincerely,

*THE GARAGE DOOR GROUP, INC.*



Jerry L. Pope  
Manager of Manufacturing Services

JLP:dwf

Ladies and Gentleman - good morning.

My name is Marc Turman, I'm Supervisor of Employment for Raytheon Aircraft. We are a 10,000 employee worldwide company of which nearly 5,800 are located in Wichita, Andover and Salina Kansas.

I have represented my company in Unemployment Hearings for the past 7 years.

This past June a group of both small and large employers from the Wichita area formed the South Central Coalition for Unemployment Compensation Reform to address issues with Unemployment Compensation. I am Chairman of this committee.

Our goal is to impact unfavorable statutes in the Employment Security Law. Company members present here in support of these changes include representatives from:

- The Coleman Company
- Boeing
- Wichita Independent Business Association
- Learjet
- Cessna

Other employer members not present, but represented on the committee are:

- Bank IV
- HCA Wesley Medical Center
- Riverside Hospital
- Idelman Telemarketing
- Mid-American Bldg. Maintenance, Inc.
- Dold Foods

Combined we represent over 48,000 employees.

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Attachment 2*

Kevin Polian, Director of Personnel, Learjet, will testify first followed by Roland Smith, Executive Director for Wichita Independent Business Association who represents small business and Gary Strodtman, Director of Human Resources for The Coleman Company will testify last.

Thank you for this opportunity and now, I would like to introduce Kevin Polian. Kevin.



TESTIMONY OF KEVIN POLIAN, LEARJET DIRECTOR OF PERSONNEL, WICHITA, KANSAS,  
IN FAVOR OF SENATE BILL NO. 100, BEFORE THE HOUSE BUSINESS COMMERCE AND  
LABOR COMMITTEE

TUESDAY, MARCH 14, 1995

GOOD MORNING REPRESENTATIVES, LADIES AND GENTLEMEN, I'M KEVIN POLIAN,  
DIRECTOR

OF PERSONNEL FOR LEARJET INC. IN WICHITA.

I'M HONORED TO HAVE THIS OPPORTUNITY TO OFFER COMMENTS REGARDING SENATE  
BILL 100. I BELIEVE THAT THE CHANGES PROPOSED IN THIS BILL MORE ACCURATELY  
REFLECT THE WORKING CONDITIONS PREVAILING WITHIN KANSAS' WORK PLACES  
TODAY. I ALSO BELIEVE THAT GREATER RESPONSIBILITY WILL BE SHIFTED TO THE  
INDIVIDUAL TO INSURE PRESERVATION OF THEIR JOB. THE PROPOSED CHANGES ARE  
NECESSARY FOR TWO REASONS:

1) KANSAS EMPLOYERS SHOULD NOT BE UNDULY BURDENED WITH HIGHER  
UNEMPLOYMENT TAX RATES BECAUSE EMPLOYEES DO NOT EXERCISE NORMAL CARE  
IN THE PRESERVATION OF THEIR JOBS.

2) ~~KANSAS EMPLOYEES MUST RECOGNIZE THAT THEY HAVE AN EQUAL~~  
RESPONSIBILITY IN BOTH JOB CREATION AND JOB RETENTION. EMPLOYEES ARE AN  
INTEGRAL PART OF THE OVERALL ECONOMIC PROCESS AND MUST RECOGNIZE THEIR  
RESPONSIBILITIES FOR IT'S SUCCESS.

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Attachment 3*

PLEASE NOTE THAT THE CHANGES PROPOSED IN SENATE BILL 100 WILL HAVE NO AFFECT ON EMPLOYEES WHO LOSE THEIR JOB THROUGH NO FAULT OF THEIR OWN.

EMPLOYEES WHO ARE LAID OFF DUE TO ECONOMIC CONDITIONS, WHO LEFT A JOB DUE TO HARASSMENT OR UNSAFE WORKING CONDITIONS, WHO LEFT THE JOB DUE TO A PERSONAL EMERGENCY, OR WHO JUST CAN'T PERFORM THE WORK, DO NOT LOSE THEIR ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION UNDER THIS BILL.

THE PROPOSED CHANGES DO AFFECT THOSE WHO DON'T WANT TO COME TO WORK, THOSE WHO DON'T SEEK WORK, AND THOSE WHO ENGAGE IN SUBSTANCE ABUSE TO THE DETRIMENT OF THEMSELVES, THEIR EMPLOYERS, AND THEIR COWORKERS. AS I'M SURE YOU HAVE HEARD BEFORE, ABSENTEEISM IS ONE OF THE SINGLE BIGGEST ISSUES WE FACE WHEN DEALING WITH EMPLOYEE PROBLEMS. ABSENTEEISM IS THE PRIMARY REASON EMPLOYEES LOSE THEIR JOBS WITH THE MAJOR MANUFACTURING EMPLOYERS IN WICHITA.

I SHOULD ADD HERE THAT THE TERMINATION OF AN EMPLOYEE FOR ANY REASON IS NOT TAKEN LIGHTLY OR DONE ARBITRARILY. THE PROTECTIONS AFFORDED EMPLOYEES TODAY IN KANSAS AT THE FEDERAL STATE AND LOCAL LEVELS LITERALLY FILL BOOKSHELVES IN ATTORNEY'S OFFICES.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AGE DISCRIMINATION ACT, ~~AMERICANS WITH DISABILITIES ACT, KANSAS ACT AGAINST DISCRIMINATION AND THE~~ FAMILY MEDICAL LEAVE ACT ARE AMONG THE STATUTES THAT OFFER PROTECTION TO EMPLOYEES FROM ARBITRARY ACTS BY THE EMPLOYER. ADD TO THESE THE LABOR AGREEMENTS IN EFFECT AT MOST MAJOR MANUFACTURERS AND YOU HAVE A

VERITABLE SUIT OF ARMOR FOR PROTECTION AGAINST UNFAIR OR ARBITRARY TREATMENT.

BUT PERHAPS THE MORE IMPORTANT REASON WHY EMPLOYERS TREAT A TERMINATION AS A VERY SERIOUS EVENT IS BECAUSE WE DON'T WANT TO LOSE SKILLED PEOPLE. THE COMPETITION FOR QUALIFIED EMPLOYEES IS FIERCE. CONSEQUENTLY WHEN AN EMPLOYEE BEGINS TO HAVE PROBLEMS, ALL MAJOR EMPLOYERS HAVE POSITIVE METHODS FOCUSED ON TRYING TO IMPROVE THE EMPLOYEE'S PERFORMANCE.

INTERVENTION, EMPLOYEE ASSISTANCE PROGRAMS, COUNSELING AND PROGRESSIVE DISCIPLINARY POLICIES ARE AVAILABLE TO ALL EMPLOYEES.

SUBSTANCE ABUSE CONTINUES TO BE ANOTHER MAJOR PROBLEM IN THE WORKPLACE. BUSINESSES IN THE TRANSPORTATION OR AVIATION FIELDS HAVE HAD MANDATORY DRUG PLANS IN PLACE SINCE 1988. THE CHANGES MADE TO THE EMPLOYMENT SECURITY LAW IN THE LAST TWO YEARS RECOGNIZE THIS REALITY.

LET ME CONCLUDE BY SAYING FIRMS ARTICULATE AND PUBLISH SUBSTANCE ABUSE POLICIES FOR THE PROTECTION OF THEIR EMPLOYEES, THEIR CUSTOMERS AND THEMSELVES. AN EMPLOYEE WHO VIOLATES A PUBLISHED SUBSTANCE ABUSE POLICY AND WHO SUBSEQUENTLY LOSES THEIR JOB HAS KNOWINGLY COMMITTED SUCH AN ACT AND HAS ASSUMED RESPONSIBILITY FOR HIS OR HER ACTIONS. THAT PERSON ~~SHOULD NOT BE AFFORDED THE SAME BENEFITS AVAILABLE TO THOSE WHO ARE~~ UNEMPLOYED THROUGH NO FAULT OF THEIR OWN.

I ASK THAT YOU GIVE FAVORABLE CONSIDERATION TO THE CHANGES IN SENATE BILL  
100. THESE CHANGES WILL BENEFIT KANSAS EMPLOYEES AND KANSAS BUSINESS.  
TOGETHER WE CAN CONTINUE TO BUILD A BETTER KANSAS.

THANK YOU,



## WICHITA INDEPENDENT BUSINESS ASSOCIATION

Riverview Plaza Suite 103 • 2604 W. 9th St. N. • Wichita, Kansas 67203-4794  
(316) 943-2565 FAX (316) 943-7631 1-800-279-WIBA or 1-800-279-9422

ROLAND E. SMITH, Executive Director

March 14, 1995

### STATEMENT TO THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE IN SUPPORT OF SENATE BILL 106 by Roland Smith, WIBA Executive Director

Mr. Chairman, Members of the Committee and Staff... Thank You! for the opportunity today to express WIBA's support for passage of SB 106.

I am, Roland Smith, Executive Director for the Wichita Independent Business Association. WIBA is an association of around 800 very diversified types of businesses in the Wichita trade area. One thing they have in common are the problems with the burden of proof in unemployment compensation claims as the process is not properly balanced between the employer and the employee in the vast majority of cases. Many small employers do not even contest their claims, even when they know it is an invalid claim, because they feel they will lose. Employers want to keep good employees and help those that have valid claims, but the system is so skewed that those that work the system are being helped by those operating it. Even the preamble to the unemployment compensation section in the statutes paint all employers as the bad guys. This preamble language is not being addressed in this bill, however a number of problem areas are addressed in this bill to help balance the burden of proof between the employee and the employer. I have been working with the South Central Kansas Coalition For Unemployment Compensation Reform as a representative for small businesses to help develop and support some needed changes in the statutes that we believe would be a first step towards a more balanced system. I believe SB106, if passed, would help do that.

Anyone involved in the unemployment areas realizes that changes in the statutes are only part of the solution. There also are needed changes in the administration of unemployment compensation claims. Discussions have been held with the past administration regarding inconsistent rulings and apparent outright fraud in some cases with little success. A prime example of the prevailing attitude of those operating the system was the statement by the Chief Referee, Claude Lee, in a meeting with him when he stated "Unemployment Compensation was small potatoes". Frankly this infuriated a WIBA member business owner present who has 400 employees and pays a great deal of money into the unemployment compensation fund. This is but one example of the bureaucratic attitude problem many employers are facing in dealing with unemployment compensation claims. There was a meeting last month with the new Secretary, Wayne Franklin, and he is very interested in our problems and stated he is willing to consider administrative changes to help correct the unbalanced and many times unfair situation many employers in Kansas face today. We were very encouraged with our meeting with him.

Other speakers this morning will address and discuss the major areas of concern addressed in SB106 including absenteeism, drug testing, misconduct and others so for the sake of time I will not address the specifics in the bill.

We all want to create jobs, improve employee benefits for the producing and valuable employees. The costs in many small businesses for unemployment compensation and workers compensation cut into their ability to increase employee benefits. All the employers I know want to help the employee that have lost his or her job due to no fault of their own. It is sad and unfortunate that under the current system many abuse it and drive the cost of doing business up resulting in the actual loss of some jobs. One of the common fears I hear from the self-employed business I deal with is that they will not put on any employees until they are forced to because of all the requirements and related costs of which unemployment compensation is one.

Thank You! again and I ask on behalf of WIBA for you to pass SB106 out of committee favorable for passage and support it with your vote in the House.

*Business, Commerce  
& Labor*

*3/14/95*

*Attachment 4*

TESTIMONY OF GARY STRODTMAN, ON BEHALF OF SENATE BILL  
NO. 106, BEFORE THE HOUSE COMMITTEE ON BUSINESS,  
COMMERCE AND LABOR

TUESDAY, MARCH 14, 1995

GOOD MORNING. MY NAME IS GARY STRODTMAN, DIRECTOR OF HUMAN RESOURCES WITH THE COLEMAN COMPANY, INC., IN WICHITA.

THANK YOU FOR THIS OPPORTUNITY TO COMMENT ON SENATE BILL NO. 106. THE PROPOSED CHANGES WILL SHIFT SOME OF THE RESPONSIBILITY OF EMPLOYMENT TO THE EMPLOYEE. I FEEL THESE CHANGES ARE ESSENTIAL TO PRESERVE THE WORK ETHIC THAT KANSANS ARE KNOWN FOR.

FROM OCTOBER 1993 TO OCTOBER 1994, COLEMAN HAD 169 UNEMPLOYMENT FILINGS, 64 OF THESE WERE NOT PROTESTED BY OUR COMPANY AND WE ATTENDED 28 APPEAL HEARINGS. 72 OF THESE DEALT WITH ATTENDANCE, JOB ABANDONMENT, OR DRUG TEST FAILURES.

OUR ATTENDANCE POLICY ALLOWS FIVE UNEXCUSED ABSENCES BEFORE TERMINATION RESULTS. THIS WOULD ALSO INCLUDE FIVE WRITTEN NOTICES. THESE UNEXCUSED ABSENCES DO NOT INCLUDE MEDICAL LEAVES OF ABSENCE, VACATION, HOLIDAYS, PERSONAL TIME OFF. IN EACH CASE THERE ARE NORMALLY MORE THAN FIVE WRITTEN NOTICES AND MORE THAN FIVE ABSENCES OR TARDIES AS WE TRY TO GIVE ADDITIONAL CHANCES IN ORDER TO SALVAGE THE EMPLOYEE.

DRUG ABUSE IS A PROBLEM NOT ONLY PLAGUING OUR BUSINESSES, BUT SOCIETY. WE ARE NOT PROPOSING ACROSS THE BOARD RANDOM TESTING, OR ANY CHANGE WITH THE DRUG FREE WORKPLACE ACT. AS IS COMMON PRACTICE WE WILL ONLY RANDOM TEST THOSE EMPLOYEES THAT HAVE HAD PRIOR SUBSTANCE OF ABUSE PROBLEMS, PROBABLE CAUSE, POST ACCIDENT AND AFTER LEAVES LASTING LONGER THAN 30 DAYS. ONLY POSITIVE TESTS WILL BE SUBJECT TO FURTHER RANDOM TESTING TO ENSURE ABSTINENCE. WE ONLY PROPOSE THESE EMPLOYEES BE ACCOUNTABLE FOR THEIR ACTIONS AND DENIED BENEFITS RESULTING IN TERMINATION FOR POSITIVE TESTS. PROOF OF IMPAIRMENT SHOULD NOT EVEN BE AN ISSUE. POSITIVE TESTS ARE A BREACH OF POLICY AND THE USE OF THESE SUBSTANCES DEEMED ILLEGAL IN SOCIETY, BUT UNDER CURRENT LEGISLATION THESE PEOPLE ARE CLEARED FOR BENEFITS UNLESS IMPAIRMENT CAN BE SHOWN. IMPAIRMENT ISN'T THE ISSUE AND IS VERY DIFFICULT TO PROVE. I THINK YOU WILL FIND THAT MORE THAN NINETY PERCENT THAT GO THROUGH APPEALS ARE CLEARED.

THE PROPOSED CHANGES IN MISCONDUCT WILL SHIFT MORE OF THE BURDEN OF PROOF TO THE CLAIMANT. REASONABLE, GOOD CAUSE, AND ADVERSE ARE ALL WORDS THAT ALLOW FOR BROAD INTERPRETATION AND INCONSISTENT ADMINISTRATION. MUCH OF THE BURDEN OF PROVING

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Attachment 5*

CURRENTLY RESTS WITH THE EMPLOYER. THIS FORCES SPECULATION ON WHAT THE EMPLOYEE'S MOTIVES WERE IN WHAT IS GENERALLY A PERSONAL SITUATION, HENCE THIS BURDEN SHOULD BE THE CLAIMANT'S. NOBODY WANTS TO SEE A TERMINATION OCCUR, BUT THE EMPLOYEE MUST EXERCISE RESPONSIBILITY IN PRESERVING THEIR JOB.

DON'T MISUNDERSTAND ME ON THESE ISSUES, I AM PLEASED WITH OUR TAX RATE. WE DO HAVE FAVORABLE RULINGS ON MOST OF THE CASES, THIS IS NOT JUST AN EFFORT TO WIN MORE CASES. I DO THINK OUR UNEMPLOYMENT SYSTEM NEEDS SOME REFINEMENT TO HELP DECREASE FRAUDULENT CLAIMS THAT CAN'T BE DISAPPROVED AND TO PRESERVE THE INTENT OF THE SYSTEM. I AM CONCERNED THAT THE SYSTEM COULD SLIP INTO A PERCEIVED SOCIAL PROGRAM, WHICH WILL HELP CONTRIBUTE TO A DECREASING WORK ETHIC.

PLEASE FEEL FREE TO CONTACT ME OR REFER COMMITTEE MEMBERS IF THERE ARE FURTHER ISSUES.

GARY STRODTMAN



February 23, 1995

Senator Dave Kerr  
State Capitol  
Room 120-S  
Topeka, Kansas 66612

Dear Dave:

SB-106 contains some long-needed changes in the Kansas Employment Security Law and needs to be enacted. However, I have serious doubts that the bill, as it stands now, will do much to relieve employer's liability when an employee is terminated for absenteeism. It is my understanding that there are three criteria that must be met in order to have absenteeism constitute "misconduct." They are (1) the employee was absent without good cause; (2) the absence was in violation of the employer's written absenteeism policy; and (3) the employee had knowledge of the employer's written absenteeism policy.

My concern is with having to find that the employee was absent without good cause. Many employers have adopted "no-fault" absenteeism policies in order to protect themselves from claims of discrimination. If companies make decisions as to what constitutes good cause, they are wide open for challenges that employees in a protected class have been discriminated against because in the eyes of the KDHR or the EEOC, their reason for being absent was just as much good cause as another employee who was not terminated and is not a member of a protected class. Thus, employers are faced with a choice as to whether it is best to design an absenteeism system to satisfy all applicable discrimination laws or the Employment Security Law.

It is my position that the language concerning the employee being absent without good cause should be deleted. The criteria that should be considered is as follows: (1) the employer has a written absenteeism policy; (2) the employer's written policy has been communicated to the employee prior to his/her termination; (3) the employee violated the provisions of the written policy; (4) the policy has been consistently applied. These are the same criteria used to test discrimination claims.

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Attachment 6*



Senator Kerr  
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Realizing that organized labor will oppose such a no-fault system, an argument would be that this is the same criteria guiding arbitrators in grievance hearings. By that I mean, where there is clear, written language to govern a decision, the arbitrator cannot substitute his judgment for that of management. In this case, there would be clear, written language of the employer's policy, and the hearing examiner could not substitute his judgment for that of management. By keeping the good cause language in SB-106, we will continue having hearing examiners substitute their judgment for that of the employer as to whether or not an absence was for good cause - even if the employer's written and communicated policy was violated.

The good cause language also leads to having to focus in on a particular absence, often the employee's last absence. At the hearing, the employee's whole pattern of absenteeism that resulted in his being repeatedly warned and ultimately terminated is ignored if the last absence was for "good cause." With employees who play games with an absenteeism system, that's often the type of thing you see. The employee will go right up to the limit without having good cause for missing work. Then, all of a sudden, they are legitimately absent and that puts them over the limit and results in discharge. Actually, their whole record results in their discharge but you are forced to focus on the last absence and whether it was for good cause.

Please delete the good cause language from SB-106.

Sincerely,

COLLINS INDUSTRIES, INC.



Jack Cowden  
Vice President Human Resources



March 13, 1995

MEMO TO: Members of the House of Representatives  
FROM: Jerry Vinson, Human Resources Manager  
SUBJECT: SB 106

=====

My name is Jerry Vinson, and I am the Human Resources Manager for Collins Bus Corporation in Hutchinson, Kansas. I am also the legislative representative for the Central Kansas Chapter of the Society of Human Resources Management (SHRM).

Currently, you are considering SB 106 concerning unemployment. I want to state that the Central Kansas SHRM is in favor of this bill if a change can be made pertaining to attendance. We are particularly concerned about the following statement -- "an employee is disqualified for benefits if: the employee was absent without good cause."

This does not seem to be any different than the law which allows a judgment call by the referee without taking into consideration the number of absences the employee had. It has been my experience, and the experience of others in the Hutchinson area, that if the company must appear in front of a referee, the employee will receive their unemployment. It has been proven time and again that no matter how many days an employee was absent, even though proper disciplinary action was followed, the employee may be excused for about any reason given.

For example, I know of one hearing in which the employee had been terminated after accumulating 23 days of absences in less than 12 months. The employee appealed the original decision (disqualification) and was granted unemployed benefits because the employee stated he missed the 23rd day due to car trouble which rendered him unable to go to work. Even though the company was able to show the amount of absences and all the steps followed to correct the absenteeism problems, the referee reversed the original decision and gave the employee unemployment benefits.

Employers need to be able to depend upon their employees being on the job. When an employee is absent, it makes hardships on other employees who have to do extra work to cover for the absent employee. It is because of this that employers have written policies giving guidelines for proper attendance and any disciplinary procedures to be followed.

I strongly urge that the wording "*the employee was absent without good cause*" be deleted from this bill. Deleting this wording would make this bill a fair bill for all.

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& Labor  
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Attachment 7*

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