

Approved: 2/7/96 haw
Date

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

The meeting was called to order by Chairman Al Lane at 9:08 a.m. on January 31, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Geringer - excused
Rep. Merritt - excused
Rep. Ruff - excused

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

Conferees appearing before the committee: Bob Nugent, Revisor of Statutes
Roger Aeschliman, Deputy Secretary, KDHR
C. Steven Rarrick, Deputy Attorney General
Ron Hein, Legislative Counsel for HASSA
John Thomas, President, HASSA

Others attending: See attached list

The minutes of January 23, 24, and 25 were offered for approval. Corrections to January 25 were to excuse the members who were absent. Rep. Packer asked that his two questions to Commissioner Sebelius concerning his request for her to return to talk about the Workers Comp attorney investigation and about the rates being available from NCCI to non-member insurance companies be added to the minutes of January 24. A motion was made by Rep. Ballard to approve the minutes of January 23, 24, and 25 with the corrections noted above. It was seconded by Rep. Packer. The minutes were approved as corrected.

Chairman Lane asked for persons from the audience who would like to introduce bills to the committee. There was no one present with a bill introduction request.

Hearing on:
HB 2660 - Concerning deregulating private employment agencies

Bob Nugent, Revisor, briefed the committee on the bill. It is a repealing bill that repeals the statutes that allow the Kansas Department of Human Resources to regulate private employment agencies. He furnished the members with a copy of the statutes. (see Attachment 1)

Roger Aeschliman, Deputy Secretary, Kansas Department of Human Resources (KDHR), appeared before the committee to furnish information about the use of these statutes. The agency is authorized to license and regulate private employment agencies which charge a fee to job seekers in Kansas. He stated that there are no private employment agencies licensed at this time. It stated that the current law is not difficult to administer because nothing ever happens. (see Attachment 2) He concluded by answering questions from the committee.

C. Steven Rarrick, Deputy Attorney General, appeared to tell the committee how the Kansas Consumer Protection Act (KCPA) would be applied to private employment agencies if the statutes were repealed by **HB 2660**. The KCPA would provide authority for the Attorney General to investigate deceptive and unconscionable acts and practices committed by private employment agencies. It does not, however, provide the authority to "regulate" these agencies like the provisions in the statutes that would be repealed by the bill. His written testimony summarizes the results of **HB 2660**. (see Attachment 3) He ended his testimony by answering questions from the committee.

Ron Hein, appeared as a proponent of **HB 2660** representing the Heart of America Staffing Services Association (HASSA). After hearing testimony during the Interim and hearing from the Department of Human Resources that they would prefer that the jurisdiction for regulation of the industry be transferred to the Attorney General, and after reviewing the statutes in other states, HASSA has come to the conclusion that it would have no objection if the bill was passed to totally deregulate the industry. (see Attachment 4) He concluded his testimony by answering questions from the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:08 a.m. on January 31, 1996.

John Thomas also appeared before the committee representing HASSA. In his testimony he stated that these laws are in need of many changes to reflect the new look of the Employment Industry. It is his recommendation that the current Employment Agency Laws be repealed, because in their current condition they do not represent the employment industry of the 1990's and beyond. (see Attachment 5)

The hearing on **HB 2660** will be continued at the next meeting, February 1, 1996.

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

The next meeting is scheduled for February 1, 1996.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE January 31, 1996

NAME	REPRESENTING
Wayne Maichro	76, AFL-CIO
Terry Leatherman	KCCI
Patti Bossert	HASSA
John Thomas	HASSA
Ron Hein	HASSA
Julie Hein	HASSA
Roger Aeschliman	KDHR
Angela Goering	KDHR
JASON PITZENBERGER	BRAD SMOOT
Don Doestler	KDHR-legal
Tim Appenteller	Intern
Nancy Lindberg	AG office
STEVE RARRICK	A.G.

Grain-The Heiman Company, Inc., 841 F.Supp. 1500, 1515 (1993).

44-322.**CASE ANNOTATIONS**

4. Cited; whether KDHR letter stating individual was employee for KWPA (44-301 et seq.) purposes was official opinion examined. *Herr v. McCormick Grain-The Heiman Company, Inc.*, 841 F.Supp. 1500, 1514 (1993).

44-322a.**CASE ANNOTATIONS**

6. Cited; whether KDHR letter stating individual was employee for KWPA (44-301 et seq.) purposes was official opinion examined. *Herr v. McCormick Grain-The Heiman Company, Inc.*, 841 F.Supp. 1500, 1514 (1993).

Article 4.—PRIVATE EMPLOYMENT AGENCIES

44-401. Definitions. As used in K.S.A. 44-401 through 44-412 and amendments thereto:

(a) "Applicant" means any person who uses or attempts to use the services of a private employment agency in seeking employment.

(b) "Employer" means a person employing or seeking to employ a person for compensation, or any representative or employee of such a person.

(c) "Fee" means anything of value, including money or other valuable consideration or services or the promise of any of the foregoing, required or received by a private employment agency in payment for any of its services or any act rendered or to be rendered by the private employment agency.

(d) "Person" means any individual, association, partnership or corporation.

(e) (1) "Private employment agency" means any business which is operated for profit in this state and which:

(A) Secures employment; or

(B) by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself.

(2) "Private employment agency" does not include:

(A) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment;

(B) any employment service operated by the state, the United States or any political subdivision of the state, or any agency thereof;

(C) any temporary help service that at no time advertises or represents that its employee may, with the approval of the temporary help service, be employed by one of its client companies on a permanent basis;

(D) any newspaper or publication of general circulation;

(E) any radio or television station;

(F) any employment service where the fee is paid by the employer; or

(G) any business that publishes employment information through the use of a computerized data base which, prior to July 1, 1993, received a written statement from the secretary of human resources indicating that it was not a private employment agency as defined in this subsection.

History: L. 1911, ch. 187, § 1; R.S. 1923, 44-401; L. 1971, ch. 178, § 1; L. 1976, ch. 370, § 9; L. 1984, ch. 180, § 1; L. 1995, ch. 235, § 1; July 1.

Article 5.—WORKERS COMPENSATION**Law Review and Bar Journal References:**

"Equal Protection and the New Workers Compensation Act," Timothy A. Short, J.K.T.L.A. Vol. XVII, No. 3, 25 (1994).

"Fire At Will? The Status of Judicially Created Exceptions to Employment-at-Will in Kansas," Diane S. Worth and Nancy M. Landis, 64 J.K.B.A. No. 2, 22, 36 (1995).

44-501.**Law Review and Bar Journal References:**

"An Overview of the 1993 Amendments to the Kansas Workers Compensation Act," David J. Rebein, 62 J.K.B.A. No. 5, 30, 31, 34 (1993).

"Preventing Occupational Exposure to Bloodborne Pathogens: The Final OSHA Standard," Jeffrey A. Chanay, 62 J.K.B.A. No. 8, 26, 32 (1993).

"Enforcement Remedies of Workers' Compensation Awards," Beth Regier Foerster, J.K.T.L.A. Vol. XVI, No. 3, 6, 11 (1993).

"Workers' Compensation Review," Patrick Nichols, J.K.T.L.A. Vol. XVIII, No. 2, Work. Comp. Review Section, 1, 2 (1994).

"Workers' Compensation Review," Patrick Nichols, J.K.T.L.A. Vol. XVIII, No. 3, Work. Comp. Review Section, 1, 2, 3 (1995).

"Worker's Compensation Review," Patrick Nichols, J.K.T.L.A. Vol. XVIII, No. 6, Work. Comp. Review Section, 1 (1995).

"Tort Action Or Workers' Compensation Claim? Private Animosity Defeats The Exclusive Remedy Rule," Frank D. Taff, J.K.T.L.A. Vol. XVIII, No. 6, 27 (1995).

K.S.A. 44-342 by a corporate employer, either the corporation or any officer thereof or any agent having the management of the corporation who knowingly permits the corporation to engage in such violation shall be deemed the principal for purposes of this act.

History: L. 1987, ch. 185, § 5; July 1.

44-346. Same; proceedings to enforce act. Any proceeding by one or more commission salespersons to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction.

History: L. 1987, ch. 185, § 6; July 1.

44-347. Same; collection of commissions not covered by act. Nothing in this act shall be construed to prevent a commission salesperson from collecting commissions on merchandise ordered prior to the last day of the contractual relationship but delivered, accepted or paid for after termination of the contractual relationship but the penalty prescribed in K.S.A. 44-342 shall apply only with respect to the payment of commissions earned through the last day of the contractual relationship.

History: L. 1987, ch. 185, § 7; July 1.

Article 4.—PRIVATE EMPLOYMENT AGENCIES

44-401. Definitions. As used in K.S.A. 44-401 through 44-412, and amendments thereto:

(a) "Applicant" means any person who uses or attempts to use the services of a private employment agency in seeking employment.

(b) "Employer" means a person employing or seeking to employ a person for compensation, or any representative or employee of such a person.

(c) "Fee" means anything of value, including money or other valuable consideration or services or the promise of any of the foregoing, required or received by a private employment agency in payment for any of its services or any act rendered or to be rendered by the private employment agency.

(d) "Person" means any individual, association, partnership or corporation.

(e) (1) "Private employment agency" means any business which is operated for profit in this state and which:

(A) Secures employment; or

(B) by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in

employment for the applicant with any employer other than itself.

(2) "Private employment agency" does not include:

(A) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment;

(B) any employment service operated by the state, the United States or any political subdivision of the state, or any agency thereof;

(C) any temporary help service that at no time advertises or represents that its employee may, with the approval of the temporary help service, be employed by one of its client companies on a permanent basis;

(D) any newspaper or publication of general circulation;

(E) any radio or television station; or

(F) any employment service where the fee is paid by the employer.

History: L. 1911, ch. 187, § 1; R.S. 1923, 44-401; L. 1971, ch. 178, § 1; L. 1976, ch. 370, § 9; L. 1984, ch. 180, § 1; July 1.

Research and Practice Aids:

Licenses — 11(7).

C.J.S. Licenses § 30.

44-402. Private employment agencies; license required; fees; duration of license. (a)

No person may open, operate or maintain any business performing any private employment agency activities or service without first obtaining a private employment agency license from the state department of human resources. The annual fee for the license shall be \$25. Every license shall contain the city, street and building number of the location where the licensee conducts the licensee's employment agency. The license, together with a copy of this act, shall be posted in a conspicuous place in each employment agency.

(b) A license issued pursuant to this act shall expire one year after its issuance. A license may be renewed upon application and payment of the annual fee not less than 30 days prior to the expiration of the license.

History: L. 1911, ch. 187, § 2; R.S. 1923, 44-402; L. 1984, ch. 180, § 2; July 1.

44-403. Bond of licensee. The secretary of human resources shall require with each application for a license a bond in the penal sum of five hundred dollars with one or more sureties to be approved by said secretary, and conditioned that the obligors will not violate

Legislative Administration

any of the duties, terms, conditions, provisions or requirements of this act.

History: L. 1911, ch. 187, § 3; R.S. 1923, 44-403; L. 1976, ch. 370, § 10; July 1.

44-404. Action on bond. The secretary of human resources is authorized to commence action or actions on said bond or bonds in the name of the state of Kansas, by filing complaint with the attorney general or other proper prosecuting officer of any violations of its conditions.

History: L. 1911, ch. 187, § 4; R.S. 1923, 44-404; L. 1976, ch. 370, § 11; July 1.

44-405. Revocation of license; hearings. The secretary of human resources is authorized to revoke any license, whenever in the judgment of the secretary, the party licensed violates any of the provisions of this act whenever written complaint shall have been filed with the secretary and the secretary gives the case full and fair hearing in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1911, ch. 187, § 5; R.S. 1923, 44-405; L. 1976, ch. 370, § 12; L. 1988, ch. 356, § 140; July 1, 1989.

44-406. Register of applicants; examination by secretary. It shall be the duty of every licensed agency to keep a register in which shall be entered the name and address of every person who shall make application for employment, and the name and nature of employment wanted. Such register shall, at all reasonable hours be kept open to the inspection and examination of the secretary of human resources or a person or persons designated by said secretary.

History: L. 1911, ch. 187, § 6; R.S. 1923, 44-406; L. 1971, ch. 178, § 2; L. 1976, ch. 370, § 13; July 1.

44-407. Registration fee; refund. Where a registration fee is charged for receiving or filing applications for employment, said fee shall in no case exceed the sum of one dollar (\$1), unless the salary or wages shall be more than three dollars (\$3) per day, in which case a fee of not more than two dollars (\$2) may be charged, for which a duplicate receipt shall be given (one copy to be kept by the employee and the other for the employer), in which shall be stated the name and address of the applicant, the date of such application, the amount of the fee, and the nature of the work to be done or the situation to be procured.

In case the said applicant shall not obtain a situation or employment through such licensed agency within three days after registration as aforesaid, then said licensed agency shall forthwith repay and return to such applicant, upon demand being made therefor, the full amount of the fee paid or delivered by said applicant to such licensed agency: *Provided*, That said employment agency shall make no additional charge for their service rendered other than the fees set out above.

History: L. 1911, ch. 187, § 7; R.S. 1923, 44-407; L. 1931, ch. 216, § 1; L. 1971, ch. 178, § 3; April 15.

Research and Practice Aids:

Labor Relations ← 19.

C.J.S. Master and Servant § 26.

CASE ANNOTATIONS

1. State cannot fix fee that employment agent shall charge for his services. *Ribnik v. McBride*, 277 U.S. 350, 371, 48 S.Ct. 545, 72 L.Ed. 913; but, see *Olsen v. Nebraska*, 313 U.S. 236 and later cases.

44-408. False notices, advertisements or information. That any licensed agency shall not publish or cause to be published any false or fraudulent notice or advertisement, or give any false information or make any false promise concerning or relating to work or employment to anyone who shall apply for employment, and no licensed agency shall make false entries in the register to be kept as herein provided.

History: L. 1911, ch. 187, § 8; May 22; R.S. 1923, 44-408.

44-409. Complaints and prosecutions. It shall be the duty of the secretary of human resources, or a person or persons designated by said secretary, when informed of any violation of this act, to file a complaint of such violation with the attorney general or with the district attorney or county attorney of the county in which such violation is alleged to have occurred and it shall be the duty of the official informed to institute criminal proceedings for the enforcement of the penalties.

History: L. 1911, ch. 187, § 9; R.S. 1923, 44-409; L. 1976, ch. 370, § 14; July 1.

44-410. Penalties for violations. Any person convicted of a violation of any of the provisions of K.S.A. 44-401 to 44-412, inclusive, and amendments thereto shall be guilty of a class C misdemeanor.

History: L. 1911, ch. 187, § 10; R.S. 1923, 44-410; L. 1984, ch. 180, § 3; July 1.

44-411. Disposition of moneys received from fees. All money or moneys received by or

for the secretary of human resources from fees under this act shall be remitted to the state treasurer by the secretary at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the state general fund.

History: L. 1911, ch. 187, § 11; R.S. 1923, 44-411; L. 1976, ch. 370, § 15; July 1.

44-412. Rules and regulations. The secretary of human resources shall adopt any rules and regulations necessary to administer and enforce the provisions of K.S.A. 44-401 through 44-412, and amendments thereto.

History: L. 1911, ch. 187, § 12; R.S. 1923, 44-412; L. 1976, ch. 370, § 16; L. 1984, ch. 180, § 4; July 1.

Research and Practice Aids:

Labor Relations — 17.

C.J.S. Master and Servant § 26.

44-413.

History: L. 1957, ch. 297, § 1; L. 1968, ch. 51, § 1; Repealed, L. 1975, ch. 257, § 9; July 1.

44-414.

History: L. 1957, ch. 297, § 2; L. 1963, ch. 272, § 1; L. 1968, ch. 51, § 2; L. 1974, ch. 348, § 15; L. 1975, ch. 256, § 1; Repealed, L. 1975, ch. 257, § 9; Repealed, L. 1976, ch. 370, § 104; July 1.

44-415.

History: L. 1957, ch. 297, § 3; L. 1968, ch. 51, § 3; L. 1975, ch. 256, § 2; Repealed, L. 1975, ch. 257, § 9; July 1.

44-416, 44-417.

History: L. 1957, ch. 297, §§ 4, 5; L. 1968, ch. 51, §§ 4, 5; Repealed, L. 1975, ch. 257, § 9; July 1.

Article 5.—WORKERS COMPENSATION

Revisor's Note on Case Annotations:

Most of the workers compensation act annotations in ch. 44, art. 5, K.S.A. written through 1973, have been arranged by subject matter instead of the former chronological arrangement. This was found convenient for the reason that the workers compensation act was originally enacted in 1911 and was completely revised in 1917, 1927 and 1993. Furthermore, it has been amended at nearly every regular session of the legislature.

Annotations added since 1973, are again arranged in chronological order.

Cross References to Related Sections:

Occupational diseases, see ch. 44, art. 5a.

Director of workers compensation, administrative activities, see ch. 74, art. 7.

Department of human resources, see ch. 75, art. 57.

Law Review and Bar Journal References:

The voir dire examination of jurors, T. E. Akinson, 1 J.B.A.K. 125, 132 (1932).

Liability without fault; the importance of intent and motive in tort law, Paul Smith, 3 J.B.A.K. 37, 38 (1934).

The workmen's compensation law in action, Joe Nickell, 18 J.B.A.K. 127, passim (1949).

Defining accidents and determining disability, E. P. Villepigue, 26 J.B.A.K. 392 (1958).

Aggravation of pre-existing conditions, Joseph Cohen, 20 J.B.A.K. 343 (1952).

Practices and procedures before the compensation commissioner, Edward Curry, 27 J.B.A.K. 367 (1959).

Act discussed and cases cited, Albert M. Ross, 4 K.L.R. 325, passim (1955); 6 K.L.R. 272, passim (1957).

"Statutory Changes of Interest to Lawyers," Robert F. Bennett, 36 J.B.A.K. 169, 214 (1967).

Survey of Kansas law on workmen's compensation (1965-1969), 18 K.L.R. 478 to 491 (1970).

"The 1970 Kansas Legislature in Review," Robert F. Bennett, 39 J.B.A.K. 107, 195 (1970).

Extensively discussed in "Survey of Kansas Law: Workers' Compensation," William A. Kelly, 27 K.L.R. 377 (1979).

"Permanent Total and Partial Disability under the Kansas Workmen's Compensation Act," Holly Nielson Keaton, 29 K.L.R. 121 (1980).

"Survey of Kansas Law: Workmen's Compensation," 29 K.L.R. 619, 623, 624, 625, 627, 628, 629, 630, 631, 632, 633, 635 (1981).

"Workers' Compensation: Reconsidering the 'Right to Control' as the Exclusive Test for Employment Status," Catherine M. Foster, 23 W.L.J. 379, 385 (1984).

"Workers' Compensation: The Exclusive Remedy Rule is Alive and Well in Kansas [Hormann v. New Hampshire Insurance Co., 236 Kan. 190, 689 P.2d 837 (1984)]," Janet K. Kerr, 25 W.L.J. 192, 199 (1985).

"Law Students/Liability/Compensation," Robert J. Fowks, 85 No. 12, J.K.M.S. 341, 343 (1984).

"Tort Law: Kansas Further Limits Employment-at-Will By Providing Relief for Whistleblowers [Palmer v. Brown, 242 Kan. 893, 752 P.2d 685 (1988)]," Lisa K. Hammer, 28 W.L.J. 172, 180, 182, 184 (1988).

"Worker's Compensation: Is Medical Malpractice a Defense in Kansas?," Steven Day, 57 J.K.B.A. No. 8, 17, 18, 22 (1988).

"Forensic Psychiatry: Less Typical Applications", Roy B. Lacoursiere, M.D., 30 W.L.J. 29, 39 (1990).

"Workers Compensation: Narrowing the Test for Determining Permanent Partial General Disability Under the Kansas Workers Compensation Act [Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990)]," Lowell B. Meeks, 31 W.L.J. 380 (1992).

Attorney General's Opinions:

Performance of community service. 86-149.

CASE ANNOTATIONS

1. Exclusive remedy provision of act held constitutional; corporate directors were immune from liability because of provision. Davidson v. Hobart Corp., 643 F.2d 1386, 1387, 1388 (1981).

2. Act held constitutional; civil damage action cannot be maintained by person against fellow employee for compensation for injury covered by this act. Rajala v. Doresky, 233 K. 440, 661 P.2d 1251 (1983).

44-501. The obligation; burden of proof; defenses; exceptions; legislative intent; benefits reduced for certain retirement benefits.



Kansas Department of Human Resources

Bill Graves, Governor
Wayne L. Franklin, Secretary

Office of the Secretary

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Roger Aeschliman, Deputy Secretary
Testimony before House Committee on Business, Commerce and Labor
January 31, 1996

Our agency is authorized to license and regulate private employment agencies which charge a fee to job seekers in Kansas. These agencies are limited to a fee of \$2 which must be refunded if the job-seeker does not find employment within three days. Any agency seeking to do this kind of business in Kansas must apply for a license and pay \$25. There are no private employment agencies licensed at this time.

During the 1995 Legislative Session, an amendment to a bill was passed and signed into law that created an exemption for on-line, computerized listings. This exemption was limited to those on-line services currently existing - two. There are a number of other exemptions to the law as well. Our concern is that the current exemptions open the state up to a number of lawsuits regarding equal treatment under the law. Further, the existing law lacks any provision for civil enforcement. All enforcement must be routed to the attorney general's office and are treated as criminal misdemeanors. The existing law does not provide any discretion allowing us to adapt to the changing world.

The current law is not difficult to administer. Nothing ever happens.

However, the future holds many concerns, especially as more and more exemptions are carved out. This week we received a complaint regarding a Topeka person who has apparently set up a 900-phone number to provide job listings. If true, this would be in violation of the current law. We have initiated a preliminary investigation, but certainly that person and we are interested in any action taken on the bill.

Changes in the law will likely spur development of private employment agencies in Kansas, placing the private sector in direct competition with Job Service. In light of federal funding cutbacks, additional job placement service in the state may not be a bad idea.

For purely technical, administrative reasons, KDHR would like to see changes made in the law. It is not within our scope as an administrative agency to address the issue of good policy.

*House Business, Commerce
& Labor Committee
1/31/96
Attachment 2*



CARLA J. STOVALL
ATTORNEY GENERAL

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Testimony of
C. Steven Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Business, Commerce and Labor Committee
RE: House Bill 2660
January 31, 1996

Chairperson Lane and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla Stovall to provide information on House Bill 2660. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

I have been asked to present testimony regarding how the Kansas Consumer Protection Act (KCPA) would be applied to private employment agencies if HB 2660 repeals the provisions of K.S.A. 44-401 et seq. The Office of the Attorney General has no record of ever receiving complaints against private employment agencies, either to the Consumer Protection Division directly from consumers or as referrals from the Secretary of Human Resources pursuant to the provisions of K.S.A. 44-401 et seq. The absence of complaints is because the statutes in question essentially prohibit charging employees for the services of private employment agencies. Because of this, it is difficult to say what impact the repeal of these statutes will have on the workload of the Consumer Protection Division.

If HB 2660 is passed and the provisions of K.S.A. 44-401 et seq. are repealed, the KCPA would provide authority for the Attorney General to investigate deceptive and unconscionable acts and practices committed by private employment agencies. However, the KCPA does not provide authority to "regulate" private employment agencies, unlike the provisions of K.S.A. 44-401 et seq. I have attempted to summarize, as briefly as possible, the result of HB 2660 repealing these regulatory statutes and whether the KCPA will or will not provide similar protection to consumers:

1. Private employment agencies will not be required to be licenced under K.S.A. 44-402.
2. The bonds currently required by K.S.A. 44-403, and K.S.A. 44-404 will not be available to pay for deceptive acts or other violations by private employment agencies.
3. The duty of agencies to keep a register of applicants seeking employment and the nature of the employment sought will no longer be required.

*House Business, Commerce
& Labor Committee*

1/31/96

Attachment 3

4. The ability to administratively revoke a license of a private employment agency under K.S.A. 44-405 will be eliminated. However, injunctive relief is available under the KCPA in cases of extremely severe violations of the KCPA.
5. The specific prohibitions on false notices, false advertisements, false information, and false promises contained in K.S.A. 44-408 will be eliminated. However, the general prohibitions of deceptive acts or practices under the KCPA will apply.
6. The criminal penalty provided for in K.S.A. 44-410 will not be available.
7. The most significant result of HB 2660 is that private employment agencies will be able to charge employees for their services. This could result in up-front fees being charged to employees which would raise questions about whether the agency performed work for the up-front fee and the amount of the fee in general. With regard to up-front fees, we anticipate complaints being filed when the private employment agency fails to obtain employment for the employee. To prove deception, we would have to prove the private employment agency never intended to perform the services promised, which is a difficult burden, especially if the employee doesn't have good job skills or experience. With regard to the amount of the fee, the KCPA only prohibits prices which are unconscionable, which means the price must grossly exceed the price readily available with other private employment agencies. Courts have interpreted this to mean the prices must shock the conscience of the court, not simply be higher than the average.

I hope the information above is helpful in your consideration of HB 2660. Thank you for the opportunity to provide information on this bill.

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HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
TESTIMONY RE: HB 2660
Presented by Ronald R. Hein
on behalf of
HEART OF AMERICA STAFFING SERVICES ASSOCIATION
January 31, 1996

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Heart of America Staffing Services Association, representing the temporary and full-time staffing service firms in Kansas.

I appear before you today regarding HB 2660 which deregulates the personnel industry by repealing all of the statutes currently regulating employment agencies.

The Board of Directors of HASSA, after consideration of the laws in other states and the issue currently pending before Kansas, has come to the conclusion that the existing Kansas Consumer Protection Act, specifically the section with regards to deceptive practices, should provide sufficient protection for applicants seeking services from providers in the personnel services industry.

After hearing the testimony during the Interim, and hearing from the Department of Human Resources that they would prefer that the jurisdiction for regulation of the industry be transferred to the Attorney General, and after reviewing the statutes in other states, HASSA has come to the conclusion that it would have no objection if the Legislature decided that the most appropriate way to deal with this subject was to totally deregulate the industry.

Applicant fees are permitted in some states, and restricted or regulated in some capacity or another in others. Given the nature of the industry, which is heavily telecommunications oriented, it is virtually impossible for such restrictions to be imposed in such a manner as to protect the citizens of a state. At most, such regulation will simply prohibit the industry from having its business located within the state, as was evidenced by Cattleman's decision to move their operation to Oklahoma when they were subject to the restriction of existing state law. Existing law does not stop the conduct from occurring, nor Kansas consumers from having the availability of the applicant paid fee services.

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Lastly, HASSA acknowledges that there is not a compelling need to regulate what otherwise could be a competitive, free-market business.

HASSA is still concerned about the possibilities of misrepresentation of what services will be provided to applicants under such applicant fee service arrangements, but believes that the language under the Consumer Protection Act provides a mechanism which will permit applicants to seek relief for deceptive practices, including misrepresentation or other deceptive acts. In addition, having the industry be regulated, as all other industries, pursuant to the Consumer Protection Act, would also accomplish KDHR's desired goal of moving jurisdiction over to the Attorney General. The Consumer Protection Act is generally enforced by the Attorney General, the county or district attorneys, and numerous city attorneys pursuant to each respective jurisdiction's Consumer Protection Division. (City attorneys must rely upon city statutes or utilize the procedure simply to forward the information on to the county or district attorney or to the Attorney General.)

In addition, there are civil penalties provided under that statute, and other relief, which should be sufficient to perform all of the enforcement currently available under the existing statutes enforced by KDHR, and to provide additional remedies for the injured party.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

**TESTIMONY ON DE-REGULATION
OF THE EMPLOYMENT INDUSTRY**

Good Morning ladies and gentlemen.

My name is John Thomas and I am the Vice President of Kaplan & Associates, an accounting and finance placement company. I am also the President of the *Heart of America Staffing Services Association*, which represents the Temporary and Full-time staffing firms here in the state of Kansas. I am here today to express my thoughts in regard to deregulating the employment industry.

I have been in the employment industry for 12 years. I have worked in both the Temporary and the Full-time placement sides of our industry. Our Association is comprised of both Temporary and Full-time placement companies.

The Staffing services industry serves as a mechanism to achieve full employment for our states by matching unemployed people with jobs, as well as matching employed people with new employers looking to fill open positions. This system has been an effective tool for over forty years with a few exceptions.

The Employment Agency laws here in Kansas have been on the books since 1911. Many of the changes over the years have been very minor in scope to the vast changes that have taken place in the Employment Industry during the same time period. For example, in a letter used in testimony before the Labor, Industry & Tourism committee in 1982, Jerry Powell, Employment Relations Administrator for the Department of Human Resources stated that there were 62 (SIXTY-TWO) licensed agencies operating in Kansas. In 1995 there are 0 (ZERO) licensed agencies in the state of Kansas. It is my understanding that the 62 (SIXTY) licenses were for wall plaques only. In 1982 the KDHR was handling approximately 1 complaint/inquiry per month. In 1995 the complaints/inquiries to the KDHR were very limited. In fact the only complaints/inquires made, may have been the ones made by our Association.

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As I have testified before, these laws are in need of many changes to reflect the new look of the Employment Industry. But as I have stated in previous testimony, this Industry has existed here in Kansas employing thousands of workers on a daily basis with very few, if any, complaints or concerns of its employees. The exceptions to which I speak involve those situations in which a person is charged a fee for locating employment. According to the KDHR Employment Standards Division, virtually ALL of the complaints they deal with involve cases where a person believes they have been wronged when a company charged them money to locate a job.

The current Employment Agency Laws provides no protection or method of recourse for an individual that feels they have been wronged by an employment agency. Additionally, the Employment Agency is required by law to abide by all employer regulations on the State and Federal level. Through EEOC & Affirmative Action laws the applicant has means of seeking justice if the applicant believes they have been wronged by the Employment Agency. The only area that the applicant is at risk, is that of being *charged a fee* for seeking employment. Again the current Employment Agency Laws are outdated in their language addressing the many ways that an individual can be *charged a fee* for seeking employment.

But at this time given the low unemployment rate and the need for qualified workers, I do not feel that there is going to be a dramatic increase in applicant paid fee companies opening offices in Kansas. In Missouri, where Agencies are able to charge fees, there is less than 3% of all employment agencies that charge applicants a fee for finding employment. On a National level, according to the National Association of Personnel Services, less than 40 of the 900 plus members in 1994 were charging a fee to individuals for finding employment. Let me also state that even with the existing Employment Agency Laws those few companies that would try applicant paid fees can still open and operate until they are uncovered in their business practices.

A mechanism for wronged consumers to seek justice would be through the Attorney General's office. In reviewing the current consumer protection laws it is my understanding that there is adequate protection to an individual that feels they have been treated unjustly through the Consumer Protection Laws..

As President of the Heart of America Staffing Services it is my recommendation that the current Employment Agency Laws be repealed, as that in their current condition they do not represent the employment industry of the 1990's and beyond.

Thank you for your time.