

Approved: 3/13/96 *lan*  
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 February 20, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Greg Packer - excused  
Rep. Gary Merritt - excused

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

Conferees appearing before the committee: Rep. Shari Weber  
Janet Stubbs, Kansas Building Industry Assn  
Pat Mulvihill, KS Insurance Dept.  
Bill Curtis, KASB  
Kim Gulley, KS League of Municipalities  
Chris McKenzie, KS League of Municipalities  
Trudy Aron, Am. Institute of Architects  
Thaine Hoffman, Director, Architectural Services  
Roger Aeschliman, KDHR  
Scott Stone, Ex. Director, KAPE  
A. J. Kotich, KDHR  
Paul Bicknell, KDHR

Others attending: See attached list

Sub-Committee Report on:

**HB 2660 - Concerning deregulating private employment agencies**

Rep. Shari Weber, Chairman, gave the committee a report on the actions taken by the sub-committee. Others on the sub-committee were Rep. Standifer and Rep. Presta. They offered a Substitute for **HB 2660**. (see Attachment 1) The sub-committee answered questions from the committee about the bill.

Rep. Pauls made a motion to accept the sub-committee report on **HB 2660**. It was seconded by Rep. Becker. The motion carried.

Rep. Geringer made a motion to recommend **Sub. HB 2660** favorably for passage. It was seconded by Rep. Beggs. The motion carried.

Hearing on:

**HB 2769 - Group-funded workers compensation pools permitted to invest in repurchase agreements**

Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund, appeared in support of the bill. The bill expands the investment authority in statute to allow group funded pools to use repurchase agreements. The bill was requested when they realized repurchase accounts used by these pools were not authorized by statute. (see Attachment 2) She concluded her testimony by answering questions from the committee.

Pat Mulvihill, Assistant Chief Examiner of the Kansas Insurance Department, appeared as a proponent of the bill. He stated that the bill is to expand the types of investments which may be made by group-funded workers' compensation pools. It allows them to invest in repurchase agreements which are collateralized by United States government securities. He offered an amendment which makes the repurchase agreements subject to similar requirements set forth in statute which allows property and casualty insurance companies to invest in repurchase agreements. (see Attachment 3)

Bill Curtis, Kansas Association of School Boards, appeared as a proponent of the bill. They would like the authority extended to their pools. They have used repurchase agreements with a bank to protect accounts that exceed the FDIC limit of \$100,000. Without the ability to use repurchase agreements the pool would not be able to place more than \$100,000 in any one bank. (see Attachment 4) He concluded by answering questions from the committee.

Kim Gulley, Kansas League of Municipalities, appeared in support of the bill. She stated in her testimony that

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S  
Statehouse, at 9:08 a.m. on February 20, 1996.

the bill extends the authority to invest in repurchase agreements only to private group-funded pools. They request that the bill be amended to allow public pools the same investment flexibility as that extended to private pools. (see Attachment 5) She ended her presentation by answering questions from the committee.

She deferred some questions to Chris McKenzie, Executive Director of the Kansas League of Municipalities, to be answered.

Chairman Lane asked for others who wanted to testify on the bill. No other conferees came forward, and he closed the hearing on HB 2769.

Hearing on:

**HB 2816 - Architects, responsibility in certain projects.**

Trudy Aron, American Institute of Architects, appeared before the committee to testify in support of the bill. Language in Kansas Statutes requires architects who provide services to the State to carry professional liability insurance. The statute makes the architect responsible for all errors. Professional liability insurance only covers "negligent" acts, errors or omissions. The bill asks for a change in the language of the statute from all errors to "*negligent acts, errors, or omissions in the performance...*" (see Attachment 6)

Thaine Hoffman, Director of the Department of Architectural Services, Department of Administration, appeared in support of the bill. The bill would change the language in the statute to match the language in professional liability insurance policies. The discrepancy in language has caused problems on numerous occasions. (see Attachment 7)

No others wanting to testify on the bill were present and Chairman Lane closed the hearing on HB 2816.

Hearing on:

**HB 2987 - Abolishing division of labor management relations and employment standards.**

Roger Aeschliman, Deputy Secretary of Kansas Department of Human Resources (KDHR), appeared in support of the bill. The statutes call for five divisions in the KDHR. The functions of the Labor Management Relations and Employment Standards Division have been dispersed to the other four divisions of KDHR and the programs are still being performed. The bill would repeal KSA 75-5710 to reflect the current existing structure and practice. These changes make for more effective management and efficient use of scarce resources. (see Attachment 8) He closed by answering questions from the committee.

Scott A. Stone, Executive Director of the Kansas Association of Public Employees (KAPE), appeared as an opponent of the bill. Their concerns was that the public labor laws are still enforced by employees who specialize in that area. He wants questions answered about the division being abolished to make sure that the functions of the division are now carried out by employees hired for that purpose. (see Attachment 9)

Roger Aeschliman and A. J. Kotich, Chief Counsel of Legal Services in the KDHR, answered some of the concerns voiced by Mr. Stone and the committee.

Hearing on:

**HB 2988 - Correcting federal conformity issues.**

Paul Bicknell, Chief of Contributions, Division of Employment Security of the KDHR, appeared to report on the bill which makes four amendments to the Employment Security Law. The four changes were brought before the Employment Security Advisory Council and received unanimous support. (see Attachment 10)

Due to the time, Mr. Bicknell will return on February 21, 1996, to finish his testimony.

Chairman Lane adjourned the meeting at approximately 10:00 a.m.

The next meeting is scheduled for February 21, 1996.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE  
GUEST LIST

DATE February 20, 1996

NAME	REPRESENTING
Bill Laves	Ks. Dept Human Resources
A. J. Kotlik	DHR
Roger Aeschliman	KDHR
<del>Andrew DeConroy</del>	KS Insurance Dept.
Patrick Mulvihill	KS. Insurance Dept.
PAUL BICKNELL	KDHR
Linda Tierce	KDHR
Scott Stone	KAPE
TRUDY ARON	AM INSTITUTE OF ARCHITECTS
Thaine Hoffman	DOAS
Don Doesken	KDHR-legal
Pat. Morris	K.A.I.A.
TERRY LEATHERMAN	KCCI
JASON PITSBERGER	BRAD SMOOT
Melissa Wangemann	Hern. Elect & Weir
Jenny Westz	Sec of State
Chuck Knapp	Sec of State
Kim Gully	League of KS Municipalities
Wayne Maucha	K. AFL-CIO
Tom Slattery	ABC of Ks.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE  
GUEST LIST

DATE 2-20-96 (cont)

NAME	REPRESENTING
D. WAYNE ZIMMERMAN	KBIWCF
<del>KEVIN ROBERTSON</del>	<del>KS SELF-EMPLOYERS ASSOC.</del>
JOEL BROWN	Mid. Am. - URMEN ARSN
JANET STUBBS	Ks. Bldg. IND. ASSN. WCF
Kim Gullon	League of Kansas Municip.
Chris McKenzie	"
Gina Cappelletti	Intern
Joni DeHoff	KS AFL-CIO

## SUBSTITUTE for HOUSE BILL NO. 2660

By Committee on Business, Commerce and Labor

AN ACT concerning private employment agencies; relating to applicant paid fees; amending K.S.A. 44-407 and K.S.A. 1995 Supp. 44-401 and repealing the existing sections.

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

Section 1. K.S.A. 1995 Supp. 44-401 is hereby amended to read as follows: 44-401. 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

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& Labor Committee  
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Attachment 1*

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; ~~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.~~

Sec. 2. K.S.A. 44-407 is hereby amended to read as follows:  
44-407. Where a registration fee is charged for receiving or filing applications for employment, ~~said~~ the 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~~ \$100, 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.

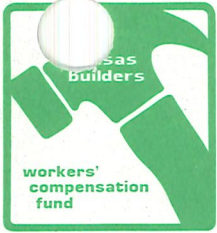
~~In case the said applicant shall not obtain a situation or employment through such licensed agency within three days after registration as aforesaid, then said licensed agency shall forthwith repay and return to such applicant, upon demand being made therefor, the full amount of the fee paid or delivered by~~

~~said--applicant--to--such--licensed--agency--~~Provided~~7-That-said~~ An  
employment agency shall make no additional charge for their  
service rendered other than the fees set out above.

Sec. 3. K.S.A. 44-407 and K.S.A. 1995 Supp. 44-401 are  
hereby repealed.

Sec. 4. This act shall take effect and be in force from and  
after its publication in the statute book.





KS Building Industry Association

# Kansas Building Industry Worker's Compensation Fund

816 Tyler • Topeka, Kansas 66612 • 913-233-9853 • FAX 913-233-9876

HOUSE  
BUSINESS, COMMERCE AND LABOR COMMITTEE  
HB 2769

February 16, 1996

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund, appearing today in support of HB 2769.

K.S.A. 44-586 authorizes the investment of moneys reserved for claims or future obligations of the group funded pool until such time as it is needed. Our intention when we requested this amendment to K.S.A. 44-586 was to expand the language to permit the use of Repurchase Agreements. Financial institutions are utilizing these now to permit a higher return on money than would a money market savings account, etc., while providing quick availability of the money for payment of claims and administrative expenses.

The Kansas Building Industry Workers Compensation Fund began operation on February 1, 1993. We currently have approximately 300 employers connected with the residential and light commercial construction industry participating in our Fund for an estimated annual premium of approximately \$4 million. These are primarily small employers who, back in the late 80's and early 90's were being put in the assigned risk pool because their agents did not have a market for this mandated coverage. They found that wherever they obtained coverage it was very expensive.

One of the selling points of the KBIWCF is the ability of the members to do a monthly reporting of their payroll and forward a check for the appropriate amount by the 10th of the following month. The small employers of the construction industry find this is a significant cash flow benefit and alleviates a large lump sum payment at the end of the year, if their payroll has been much greater than expected and, of course, avoids a higher premium payment at the beginning of the year than is necessary.

This means that we have monthly deposits of approximately 1/12 of the annual premium rather than one annual deposit as many funds have. Therefore, we have searched for a way to obtain the highest rate of interest to increase our income while having access to some of the funds when needed.

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*2/20/96*

*Attachment 2*



Currently, we make deposits into one account which has a limited maximum balance established. The financial institution, Commerce Bank & Trust, sweeps the dollars in excess of that amount into a "Repo" account. That agreement covers a 1 day period of time, is secured by government securities such as Treasury Bills, FNMA, and GNMA. Each day we receive notice of that #, interest rate, the security information, etc. We view this as a very secure way to avoid going over the FDIC insurance amount while providing accessibility to our funds.

In addition, we have some 12 and 24 month "repos" secured by T-Bills. This avoids searching for numerous financial institutions from which to purchase CD's to avoid the FDIC limitation. Being a young fund, we have not ventured into the longer term instruments.

We have been using this "sweep" account since the Fund was formed and did not realize it was not authorized by statute until November. I asked the Fund attorney to assist in solving this problem which is the bill you see. However, it is my understanding that the Revisor has communicated with the Chief Financial Officer of the Department of Insurance and a small amendment is needed to make this language acceptable to the Department.

Mr. Chairman, administrators of other Kansas funds are operating in this same manner. During a recent meeting of the informal coalition of fund administrators, it was agreed to support this amendment as a group. We urge you to also support HB 2769.

Thank you for the opportunity to appear and I would be happy to attempt to answer any questions.



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|||||  
KS BUILDING INDUSTRY WORKERS  
COMPENSATION FD/ADIM ACCT  
816 SW TYLER ST STE 300A  
TOPEKA KS 66612-1635

FUNDS PURCHASED FROM YOU THROUGH A REPURCHASE AGREEMENT

REPO NUMBER	11810	SETTLEMENT DATE	2/12/96
INTEREST RATE	3.720	MATURITY DATE	2/13/96
PRINCIPAL	210,444.11	DAYS	1
INTEREST	21.45	DEPOSITED TO ACCOUNT	1009702

CONFIRMATION OF REPO AGREEMENT TRANSACTION PURSUANT TO MASTER AGREEMENT. THIS TRANSACTION IS NOT A DEPOSIT AND IS NOT INSURED BY THE FDIC. AS COLLATERAL WE GIVE YOU A SECURITY INTEREST IN THE FOLLOWING DESCRIBED SECURITIES.

CUSIP #	PAR	MARKET	DESCRIPTION	RATE	MATURITY
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2-3

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Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

**MEMORANDUM**

**TO:** House Business, Commerce and Labor Committee

**FROM:** Patrick Mulvihill  
Assistant Chief Examiner

**DATE:** February 16, 1996

**SUBJECT:** House Bill No. 2769 (Investments by Group-Funded Workers' Compensation Pools)

K.S.A. 44-586 presently sets forth the types of investments which may be made by group-funded workers' compensation pools (hereinafter referred to as "pools"). House Bill No. 2769 is a proposal to expand this investment authority to allow pools to invest in repurchase agreements which are collateralized by United States government securities. A repurchase agreement is an agreement between a seller and buyer whereby the seller agrees to repurchase the securities at an agreed upon price and, usually, at a stated time.

We do not have any objection to the concept of allowing pools to make such investments. However, we believe that the repurchase agreements should be subject to requirements which are similar to those currently set forth in K.S.A. 40-2a21, which allows property and casualty insurance companies to invest in repurchase agreements. The proposed amendment to House Bill No. 2769 is attached to my testimony.

House Bill No. 2769 will give pools more investment flexibility. The Kansas Insurance Department requests the Committee's approval of House Bill No. 2769 with the changes that are reflected in the attachment to this memorandum.

Attachment

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*House Business, Commerce  
& Labor Committee  
2/20/96  
Attachment 3*

420 SW 9th Street  
Topeka, Kansas 66612-1678

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Fax 913 296-2283  
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1 800 432-2484 (Toll Free)

44-586 Investments

The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to Kansas workers' compensation. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank; ~~repurchase agreements collateralized by United States government securities;~~ or in shares or savings deposits in a federally insured savings and loan association; *or in repurchase agreements whereby the principal amount of the agreement represents qualified investments in bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof. Further, the repurchase agreement must be in writing; must have a specific maturity date; must adequately identify each security to which the agreement applies and must state that in the event of default by the party agreeing to repurchase the securities described in the agreement at the terms contained in the agreement, title to the described securities must pass immediately to the group-funded workers' compensation pool without recourse.*



Testimony on HB2769  
before the House Committee on Business, Commerce and Labor  
by  
Bill Curtis  
Kansas Association of School Boards  
February 16, 1996

Mr. Chairman and members of the committee, we appreciate the opportunity to testify today in favor of HB2769. The Kansas Association of School Boards has a workers compensation pool that currently has 220 members with a total payroll in excess of \$1 billion and coverage for over 50,000 employees. We are specifically asking the committee to add the amended language in HB2769 into K.S.A. 12-2622. K.S.A. 12-2622 reads the same as K.S.A. 44-586.

There are two different statutes covering pools in Kansas. K.S.A. 44-581 *et seq.* covers pools in the private sector while K.S.A. 12-2616 *et seq.* covers pools for municipalities. The KASB pool operates under the latter. We would like to have the additional investment authority.

Actually we are asking for the language to clarify a situation that has been a point of discussion for several years between the Department of Insurance and the KASB pool. KASB has used repurchase agreements with a bank to protect accounts that exceed the FDIC limit of \$100,000. That is necessary because at the beginning of a policy year the account will total between \$5 and \$6 million. It is also necessary during the year as the account used to pay claims must have a monthly balance of approximately \$400,000. Without the ability to use repurchase agreements the pool would not be able to place more than \$100,000 in any one bank. To do so would place those funds at risk.

Thank you for listening to our testimony. We hope the committee will act favorably upon the request.

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Attachment 4*





**League of  
Kansas  
Municipalities**

**Legal Department  
300 S.W. 8th  
Topeka, Kansas 66603  
Phone: (913) 354-9565/ Fax: (913) 354-4186**

**Legislative Testimony**

To: House Business, Commerce and Labor Committee

From: Kim Gulley, Assistant General Counsel

Date: February 20, 1996

Re: HB 2769

Thank you for allowing the League to appear today in support of HB 2769 as amended. As you may know, the League administers a workers compensation pool, the Kansas Municipal Insurance Trust (KMIT), under the Kansas Municipal Group-Funded Pool Act, K.S.A. 12-2616 *et seq.* We urge that the provisions of HB 2769 be modified to include KMIT and other public pools organized under this act.

The investment powers of municipal group-funded pools are restricted by K.S.A. 12-2622 which allows these public pools to invest in treasury bills, certificates of deposit, and savings deposits. While individual member cities are authorized to invest operating funds in repurchase agreements pursuant to K.S.A. 1995 Supp. 12-1675, the group-funded pools made up of these cities are not afforded the same investment opportunities. We are asking that municipalities involved in group-funded pools be allowed to invest as a group in the same manner as the individual members who make up the group.

Currently, the language in K.S.A. 44-586 restricting the investments of private pools is identical to the language in K.S.A. 12-2622 restricting the investments of public pools. As written, HB 2769 extends the authority to invest in repurchase agreements only to private group-funded pools. We request that HB 2769 be amended to allow public pools the same investment flexibility as that extended to private pools. This would allow those fiduciaries charged with the investment of idle public funds a safe, responsible option in seeking to maximize investment proceeds.

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& Labor Committee  
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Attachment 5*

# AIA Kansas

A Chapter of The American Institute of Architects  
75th Anniversary 1921-1996

February 16, 1996



TO: Representative Lane and Members of the House Business, Commerce and Labor Committee

FROM: Trudy Aron, Executive Director

RE: Support for HB 2816

I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas (AIA Kansas). Thank you for the opportunity to testify in support of HB 2816.

For several years, our association has received calls from our members regarding the language in KSA 75-1258 subsection (b) which makes the architect responsible for all their errors.

This clause is broader than professional liability insurance coverage, which only covers "negligent" acts, errors or omissions. Courts have held that architects are not held to a standard of perfection and not all errors are deemed "negligent."

As recognized in subsection (a) of this statute, the State requires that the project architect carry professional liability insurance. As the insurance only covers "negligent" acts, errors or omissions, any error which is not deemed "negligent" would not be covered by the insurance. To make matters worse, professional liability insurance companies are advising our members not to sign contracts which contain the "all errors" language since their coverage is not this broad. As this contract language is in statute not just the state contract, our only redress is to ask the legislature to change the statute.

To date, this statute has not caused a problem. The State recognizes the need for liability insurance. Therefore, it is in the best interest of the State to make sure that its contract language does nothing to invalidate or lessen the protection that this insurance affords.

Thank you for allowing us this opportunity to provide you with information on our support for HB 2816. I'll be happy to respond to any questions you may have.

*President*  
F. Lynn Walker, AIA  
*President Elect*  
Vincent Mancini, AIA  
*Secretary*  
Alan M. Stecklein, AIA  
*Treasurer*  
Gregory E. Schwerdt, AIA  
*AIA Kansas City Director*  
Neal J. Angrisano, AIA  
*ALA Flint Hills President*  
Madlen Simon, AIA  
*AIA Topeka President*  
Jerry E. Volesky, AIA  
*ALA Wichita President*  
Martin (Tony) Rangel, AIA  
*Associate Representative*  
Leslie L. Fedde, Associate AIA  
*Directors At Large*  
David G. Emig, AIA  
Sarah L. Garrett, Associate AIA  
Gary R. Gegen, AIA  
Jeffrey Van Sickle, AIA  
*Ex Officio Directors*  
*Past President*  
Donnie D. Marrs, AIA  
*University Liaisons*  
John Gaunt, FAIA, KU  
Eugene Kremer, FAIA, KSU

*Executive Director*  
Trudy Aron, Hon. AIA, CAE

700 SW Jackson, Suite 209  
Topeka, Kansas 66603-3757  
Telephone: 913-357-5308  
800-444-9853  
Facsimile: 913-357-6450

*House Business, Commerce  
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Attachment 6*

February 2, 1996

Re: Written Testimony

HB 2816, Change language in architectural contracts from  
"errors" to "negligent acts, errors or omissions".

Our present architectural contracts are required by K.S.A. 75-1258(b) to reads "...the project architect shall be responsible for all of such architect's errors in the performance of such contract." This legislation would add the word "*negligent acts, errors or omissions* in the performance...".

There could be discussions as to who this favors. Adding the word "negligent" does somewhat restrict the meaning of the word "errors". "Negligent acts or errors" might generally be defined as below the standards of the profession. It is doubtful that we could win a suit for an error that was "above the standard of the profession", but that possibility exist. On the other hand, adding the word "omissions" would seem to be helpful to the state.

The reason for the change is that the professional liability insurance policies use the proposed language. The present discrepancy in language has caused problems on numerous occasions. When the proposed contract is reviewed by the consultant's attorney or insurance agent, they advise that the inconsistency could leave an area where the insurance would not cover the situation. The consultant is then advised not to sign the contract. The consultant is placed in the position of either not accepting the contract, or accepting the risk without insurance.

We question how much "protection" we actually receive by sticking to the term "error" rather than the industry standard "negligent acts, errors or omissions".

We therefore favor the proposed change.

Thaine Hoffman  
Director - Department of Architectural Services

*House Business, Commerce  
& Labor Committee  
2/20/96  
Attachment 7*



# Kansas Department of Human Resources

Bill Graves, Governor  
Wayne L. Franklin, Secretary

## Office of the Secretary

401 S.W. Topeka Boulevard, Topeka, Kansas 66603-3182  
913-296-7474 -- 913-296-0179 (Fax)

Testimony regarding the abolishment of the Labor-Management Relations and Employment Standards Division of the Kansas Department of Human Resources.

H.B. 2987 - February 20, 1996

by Roger Aeschliman to the House Committee on Business, Commerce and Labor

Kansas statutes require that the Kansas Department of Human Resources have five divisions - Workers Compensation, Employment Security (better known as unemployment insurance), Employment and Training, Staff Services, and Labor Management Relations and Employment Standards. While each of the other four divisions has at least 110 employees, the Labor Management division had fewer than forty employees when Secretary Franklin assumed the leadership of the department 13 months ago.

That small number of employees required all the support that a larger, more complex division would require, including an unclassified division director and a secretary to that director.

After a thorough review of all of the functions of the division, Secretary Franklin chose to not fill the division directorship. We also did not fill the vacancy of the director's secretary upon retirement. All of the division's functions remain and are being satisfied. Boiler Inspections and Industrial Safety and Health are under the division of workers compensation. Wage Claims is under the chief counsel. The Public Employee Relations Board is under the division of unemployment insurance. The apprenticeship program and council are under the division of employment and training.

Other than chopping off top management and improving communications, nothing in terms of conduct of the programs has changed. This is strictly an issue of effective management and efficient use of scarce resources.

On behalf of Secretary Franklin and KDHR, I ask that you repeal KSA 75-5710 to reflect our existing structure and practice.

*House Business,  
Commerce & Labor Comm.  
2/20/96  
Attachment 8*



1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

~~68850~~ TESTIMONY OF SCOTT A. STONE  
Executive Director and Chief Counsel,  
Kansas Association of Public Employees (KAPE)

Before the House Committee on Business, Commerce and Labor.

February 20, 1996, 9:00 a.m.  
State Capitol, Room 526-S

In opposition to House Bill 2987.

My name is Scott A. Stone and I am the Executive Director and Chief Counsel for the Kansas Association of Public Employees (KAPE). Members of the committee, I appreciate the opportunity to appear before you today to discuss the House Bill 2987.

The bill is obviously brief and I would like to raise some brief concerns. Usually, the transfer of duties within an agency is at the discretion of the governor. The division of labor-management relations and employment standards was created statutorily to ensure that the public employee labor laws were enforced by employees who would specialize in that area.

Enforcement of the public bargaining law has already allegedly been moved to employment security division. Are unemployment hearing examiners going to be administering collective bargaining disputes? It would be just as unfair to the hearing examiner as it would to the parties for an examiner to hear an unemployment appeal one day and a week-long bad faith charge in the next.

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KAPE urges this committee to answer some of these questions before deciding on this Bill.

I would like to thank the members of this committee for their time and consideration on this matter. I will gladly stand for any questions the committee-persons may have. Thank you.

## *Testimony*

*H.B. 2988 - Concerning the Employment Security Law*

*February 20, 1996*

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Good morning Mr. Chairman and members of the Committee. My name is Paul Bicknell and I am the Chief of Contributions with the Kansas Department of Human Resources. I appear before you this morning to report on H.B. 2988 which makes four amendments to the Employment Security Law.

Section 1 amends K.S.A. 44-710(e)(1)(D) on page 5, lines 36 and 37, to clarify that a retroactive election to become a reimbursing employer may not be earlier than January 1 of the year such election is filed. The allowed reimbursing employer payment option election first became available effective January 1, 1972. K.S.A. 44-710(e)(1)(D) was written to insure that no election could be any earlier than with respect to benefits paid after December 31, 1971. Since 1972, the department has for good cause shown, allowed the time period to be extended as to when such election is filed and has allowed a retroactive election, but no earlier than January 1 of the year such election was received. This amendment merely clarifies the effective date for both the agency and the employer.

Section 2 amends K.S.A. 44-714(j) on page 14, lines 38 through 43, and page 15, lines 1 through 9, by repealing the subparagraph on protection against self-incrimination. In the department's experience, this provision is both unnecessary and counterproductive.

This provision creates problems for our agency as we administer the law, because it encourages taxpayers to claim the privilege even when it is not applicable. When this occurs, our staff attorneys must either litigate the question whether the privilege is applicable or excuse the taxpayer from the subpoena. Granting the requested immunity is seldom a viable option.

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*Attachment 10*

Under the Fifth Amendment to the U.S. Constitution, an individual can claim a privilege against self-incrimination whenever their testimony is being compelled and the individual believes their testimony might lead to criminal penalties. The fifth amendment privilege allows an individual to refuse to answer questions about his or her business documents, such as whether any documents exist, whether the documents belong to that individual, and whether the documents are accurate. However, the privilege can be claimed only by individuals and cannot be used by an individual to refuse to produce documents belonging to a corporation, partnership, or other artificial entity. Unfortunately, K.S.A. 44-714(j) suggests that any "person" can claim the privilege and that all types of documents are subject to the privilege.

Our research shows that the language of K.S.A. 44-714(j) was derived from a similar provision about self-incrimination in the National Security Act. That Act allows the U.S. Government to grant broad immunity to individuals when necessary to investigate matters of national security. In such cases, the interests of the nation are paramount and a broad grant of immunity may be required to speed the investigation and protect the public from danger.

However, in our employment security law, a broad grant of immunity is not appropriate because we normally work on civil matters not criminal cases and we investigate questions of importance to individual employers and employees, rather than questions of national security.

In addition, our agency does not have sufficient authority to grant the broad immunity from "prosecution," "penalty," or "forfeiture" contemplated by K.S.A. 44-717(j). We have no power to charge individuals with crimes, so we cannot grant immunity from criminal prosecution without the blessing of the U.S. Attorney, the Kansas Attorney-General, the local district attorney, or other prosecuting authority.

Finally, without a full investigation, criminal prosecutors are unwilling to grant blanket immunity to anyone. Prosecutors are normally willing to grant immunity only for narrowly defined, limited purposes, after a full investigation of the facts of a particular case. Thus, in most cases, we cannot offer immunity to an employer in order to obtain their compliance with our agency subpoena. The federal constitution and the existing case law already offer adequate protection for individuals who wish to invoke their fifth amendment privilege.

Section 3 amends K.S.A. 44-718 on page 20, lines 1 through 21, by adding a new subparagraph (e) that provides that an individual claiming unemployment compensation may elect to have federal income taxes withheld from the individual's payment of unemployment compensation. The withholding of income tax from unemployment compensation was mandated by amendments made by Public Law 103-465, commonly known as the legislation on "GATT," the General Agreement on Tariffs and Trade. Under this legislation, states will be required to deduct and withhold federal income tax from unemployment insurance benefits if the individual so elects. This amendment is required to be in place for benefit payments made on and after January 1, 1997.

Section 4 amends K.S.A. 44-706(s) on page 30, lines 7 through 16. This subsection was added to the law in 1989 and allows the department to allocate back-pay awards during the period when wages would have been paid and also sets-up a disqualification for benefits of those individuals receiving a back-pay award. This amendment adds two subparagraphs and provides for establishment of an overpayment to be collected from the claimant for such weeks the individual received remuneration in the form of a back-pay award and from the employer when the employer chooses to withhold the amount of UI benefits paid the claimant before they pay the back-pay award to the individual. All collection remedies authorized under K.S.A. 44-717 are available in securing the withheld UI benefit amount.

In closing, I might add these four changes were brought before the Employment Security Advisory Council and received unanimous support.

Mr. Chairman, this concludes my testimony. I will be pleased to answer any questions you may have at this time.