

Approved: 3/13/96
Date

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

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on February 22, 1996 in Room 526-S of the Capitol.

All members were present except: 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: A. J. Kotich, KDHR
Wayne Maichel, Kansas AFL/CIO
L. J. Leatherman, Kansas Trial Lawyers
Craig Liskey, Employment Standards, KDHR

Others attending: See attached list

Committee Action on:

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

Rep. Geringer made a motion to recommend the bill favorably for passage. It was seconded by Rep. Becker. The motion failed. Reps. Ballard, Flora, Henderson, Pauls, Ruff, Standifer, and Swenson asked for their no votes to be recorded. Rep. Standifer made a motion to recommend the bill be passed out adversely. Rep. Henderson seconded the motion. A substitute motion was made by Rep. Geringer to reconsider the committee action on **HB 2987**. It was seconded by Rep. Grant. The motion carried. A motion was made by Rep. Packer to amend the bill by changing the enactment clause to publication in the Kansas Register. It was seconded by Rep. Beggs. The motion carried. Rep. Packer made a motion to recommend the bill be passed favorably as amended. It was seconded by Rep. Presta. The motion carried. Rep. Standifer requested her no vote be recorded.

Hearing on:

HB 2986 - Privatizing wage claim collections.

A. J. Kotich, Chief Counsel, Kansas Department of Human Resources (KDHR), appeared before the committee to explain the bill. There are eight persons working in the Wage Claim Collection Unit; two clerical, one hearing officer, four investigators, and one hearing officer/investigator. As a result of the recent re-organization of KDHR, the legal department has been able to supply additional hearing officers and they have been able to take care of the backlog of wage claims cases. Employees with wage claims against employers can ask for assistance from the department in collecting these claims. Reps. Lane, Packer and Pauls, along with the KDHR, had a meeting in which they worked out the language of a substitute bill with proposed amendments, including one lowering the claim amount of cases they will accept, and another that would provide the payment of attorney fees to the department. (see Attachment 1)

After a question about the numbers and types of cases handled, Mr. Kotich furnished the committee with a copy of Employment Standards, 1994 (Fiscal) Report. (See Attachment 2) He concluded by answering questions from the committee.

Craig Liskey, Employment Standards, KDHR, answered a question from the committee about wage claim cases. Typically the types of claims handled are for people who no longer work for an employer, but have a wage claim for their last pay check, vacation pay, bonuses, or commissions that are still owed to them. Another type of wage claim is the withholding from your pay of the amount of shortages in cash registers, which is illegal in Kansas.

Wayne Maichel, Kansas AFL/CIO, was an opponent of the original bill, but they support the bill with the proposed amendments.

L. J. Leatherman, Kansas Trial Lawyers, testified they would support the bill with proposed amendments. (see Attachment 3)

No others were present to testify for or against the bill, and Chairman Lane closed the hearing on **HB 2986**.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:05 a.m. on February 22, 1996.

Committee Action on:

HB 2986 - Privatizing wage claim collections.

Rep. Beggs made a motion to recommend the bill favorably for passage. It was seconded by Rep. Geringer. Rep. Swenson made a motion to amend the bill as proposed by the Department of Human Resources, Reps. Lane, Packer and Pauls (see Attachment 1). It was seconded by Rep. Geringer. The motion carried. Rep. Standifer made a motion to recommend the bill favorably for passage as amended. It was seconded by Rep. Ballard. Rep. Presta made a substitute motion to further amend the bill in Section c to clarify the language. as The proposed amendment would read, "If the secretary prevails on behalf of the employee, the court shall award a judgment to the agency in an amount equal to the cost of reasonable attorney fees for such action." It was seconded by Rep. Beggs. The motion carried. Rep. Packer made a motion to recommend the bill favorably for passage as amended and further amended. It was seconded by Rep. Geringer. The motion carried and the bill was passed out as amended.

Committee action on:

HB 2816 - Architects, responsibility on certain projects.

Rep. Geringer made a motion to recommend the bill favorably for passage and to place it on the Consent Calendar. It was seconded by Rep. Pauls. The motion carried.

Chairman Lane announced that the 1:00 p.m. meeting scheduled for today is canceled. The meeting was adjourned at 9:52 a.m.

The next meeting is scheduled for February 23, 1996.

PROPOSED AMENDMENT--Wage Claim Collection

Department of Human Resources --February 19, 1996

44-324. Proceedings; assignment of claims taken by secretary, when; fee; attorney fees; wage claim assignment fee fund. (a) Any proceeding by one or more employees to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction.

(b) Whenever the secretary determines under K.S.A. 44-322a and amendments thereto that an employee has a valid wage claim for unpaid wages and determines that the amount of the claim is less than ~~\$10,000~~ 5,000, the secretary, upon the written request of the employee, shall take an assignment of the claim in trust for such employee and shall take action appropriate to enforce or defend such claim. Whenever the secretary determines under K.S.A. 44-322a and amendments thereto that an employee has a valid claim for unpaid wages and determines that the amount of the claim is equal to or greater than ~~\$10,000~~ 5,000, the secretary, upon the written request of the employee, may take an assignment of the claim in trust for such employee and if the assignment is taken, shall take action appropriate to enforce or defend such claim. With the written consent of the assignor, the secretary may settle or adjust any claim assigned pursuant to this subsection. Whenever the secretary takes an assignment of a claim in trust for an employee under this section, the secretary shall charge and collect a fee therefor which fee shall be fixed by rules

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Attachment 1

Proposed amendment: K.S.A 44-324

February 19, 1996

and regulations adopted by the secretary. The fee shall be in an amount of not more than \$25 per claim assigned under this section.

(c) Whenever the secretary determines to take action under K.S.A. 44-322a and the amendments thereto to assert a valid claim for an employee's unpaid wages, the secretary shall assert an additional claim on behalf of the agency for attorney fees. The court shall award a judgment to the agency in an amount equal to the reasonable cost of attorney fees for said action.

~~(c)~~ (d) There is hereby created the wage claims assignment fee fund. The secretary shall remit all moneys received for *assignment and attorney* fees charged and collected under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty per-cent of each such deposit shall be credited to the state general fund and the balance shall be credited to the wage claims assignment fee fund. All expenditures from the wage claims assignment fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

EMPLOYMENT STANDARDS

1994 (FISCAL) REPORT

Of the 1937 new claims received in Fiscal Year 1994, 1670 claims were actually served. The others were either closed prior to service, referred to proper agency or sent back for additional information.

A total of *\$641,438.95 was collected and paid to Kansas employees during fiscal year 1994 (prior to referral to the legal department for litigation and collection efforts).

AREA	CLAIMS SERVED	CLAIMS CLOSED	CASES PAID	AMOUNT COLLECTED
1 Wyandotte Co. Johnson Co.	419	361	182	\$206,128.95
2 Southeast KS including Wichita	422	347	212	\$123,000.01
3 West of Wichita North & South	461	311	178	\$104,654.99
4 Northeast KS Atchison, Topeka Manhattan, etc.	368	366	277	\$131,335.09
TOTAL:	1670	1385	849	*\$565,119.04

MINIMUM WAGE/OVERTIME CLAIMS
YEARLY

New Cases Filed 18
 Number of Cases paid 8
 Number of Cases Closed 12
 Amount paid *\$2888.91

AREA	REFERRED TO HEARING	HEARINGS HELD	ORDERS WRITTEN	APPEALS	ORDERS (NO PAYT.)	ORDERS PAID
1	140	125	88	18	43	29
2	96	100	100	24	99	17
3	142	181	131	6	27	20
4	85	90	71	16	39	20
	463	496	400	64	208	86

*\$73,431.00

FISCAL YEAR 1994/LEGAL SERVICES

Cases received from Employment Standards Section	75
Monies owed Claimants from cases	\$235,000.00
Monies received during fiscal year 1994	\$ 22,000.00
Cases closed from all cases fiscal year 1994	30
Judgments satisfied on cases during fiscal year 1994	20

*None
BCph
2/22/96
Att 2*

EMPLOYMENT STANDARDS

1995 (FISCAL) REPORT

Of the 1887 new claims received in Fiscal Year 1995, 1590 claims were actually served. The others were either closed prior to service, referred to proper agency or sent back for additional information.

A total of *\$550,410.23 was collected and paid to Kansas employees during fiscal year 1995 (prior to referral to the legal department for litigation and collection efforts).

AREA	CLAIMS SERVED	CLAIMS CLOSED	CASES PAID	AMOUNT COLLECTED
1 Wyandotte Co. Johnson Co.	447	366	177	\$205,547.78
2 Southeast KS including Wichita	355	308	149	\$ 91,699.92
3 West of Wichita North & South	403	331	194	\$106,888.03
4 Northeast Kansas Atchison, Topeka Manhattan	385	303	290	\$ 75,571.98
TOTAL:	1590	1308	810	* \$479,707.71

MINIMUM WAGE/OVERTIME CLAIMS
YEARLY

New Cases Filed 29
 Number of Cases paid 13
 Number of Cases Closed 22
 Amount paid * \$6553.14

AREA	REFERRED TO HEARING	HEARINGS HELD	ORDERS WRITTEN	APPEALS	ORDERS (NO PAYT.)	ORDERS PAID
1	107	113	76	17	71	21
2	91	79	64	8	58	21
3	51	22	35	4	90	9
4	55	79	35	5	92	15
	304	293	210	34	311	66

*\$64,149.38

FISCAL YEAR 1995/Legal Services

Cases received from Employment Standards Section	85
Monies owed Claimants from cases	\$247,092.46
Monies received during fiscal year 1995	\$ 24,195.66
Cases closed from all cases fiscal year 1995	25
Judgments satisfied on cases during fiscal year 1995	15

PROJECTIONS FOR 1996 (FISCAL)

BASED ON FIRST 6 MONTHS DATA

1700 claims will be served.

1600 will be closed.

1100 of the closed will be paid.

400 hearings will be held.

\$700,000.00 will be collected.

**Kansas Trial Lawyers Association
Written Testimony on HB 2986
Prepared By: John Gage II
February 22, 1996**

Chairman Lane and distinguished members of the House Business, Commerce & Labor Committee. My name is John Gage II. I am a specialist in employment law and, President of Plaintiffs' Employment Attorneys of Kansas, the Kansas affiliate of the National Employment Lawyers Association.

The Kansas Trial Lawyers Association has over 900 members, who represent the interests of thousands of middle-class Kansans who consume a variety of legal services including representation in a wide range of civil cases. Traditionally, KTLA has encouraged legislation to further the interests of those consumers who in turn represent a significant portion of the electorate.

This bill, in its current form is not clear. It purports to delete section (b) of K.S.A. 44-324, providing for automatic assignment for collection of wage claims of less than \$10,000 determined to be valid through hearings before a referee designated by the secretary of human resources, and optional assignment for collection of valid claims in excess of \$10,000. Subsection (b) also provides for a fee to "be fixed by rules and regulations adopted by the secretary" for each claim assigned to the secretary for collection "in an amount not more than \$25 per claim assigned."

Strangely enough, the bill leaves intact section (c) of the statute, redesignating it as section (b), even though section (c) merely creates a "wage claims assignment fee fund" into which funds collected pursuant to section (b) are paid and provides for the distribution of that fund. The only funding source for the fund created by section (c), insofar as I am able to determine, is section (b) which HB 2986 proposes to delete. Unless I am wrong, its deleting subsection (b) will render section (c) totally superfluous.

If collection of wage claim awards is not cost effective under the current statutory scheme, this bill could always provide for a fee higher than "\$25 per claim." If this bill intends to remove the secretary of human resources as a statutory attorney general under K.S.A. 44-324 for the purpose of collecting final wage claims determined to be valid under

Terry Humphrey, Executive Director

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K.S.A. 44-322a, particularly for claims of less than \$10,000, it should substitute a provision providing for the payment of attorneys' fees by the employer to any employee forced to initiate collection procedures to obtain payment in connection with any final determination that wages are due and owing pursuant to K.S.A. 44-322a. The vast majority of wage claims filed with the secretary of human resources involve employers who have withheld the final paychecks of employees terminated, which claims accordingly are for no more than a thousand dollars even if the employer is eventually held responsible for the 1% per day civil penalty for willful violations. It would be practically impossible for any such employee who received a final order of the secretary requiring his employer to pay such claims to hire a lawyer to collect them without expending at least one-third of the wages due and owing him in the event he could get the attorney to agree to a contingency fee arrangement. For lower paid employees, it would be impossible to obtain an attorney at all, rendering the final order of the secretary of human resources under the Wage Payment Act totally unenforceable.

The statute in question serves an important social purpose by insuring that Kansas employers are responsible for payment of wages due and owing their employees as a matter of established Kansas public policy.

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