

Approved: March 19, 1996  
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 18, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Jordan, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Betty Bomar, Committee Secretary

Conferees appearing before the committee:  
A. J. Kotich, General Counsel, Department of Human Resources

Others attending: See attached list

**SubHB 2986:** **Authorizing the recovery of attorney fees by the department of human resources while collecting wage claims**

A. J. Kotich, General Counsel, Department of Human Resources (DHR), testified in support of SubHB 2986. Mr. Kotich states SubHB 2986 provides a reasonable attorney fee if DHR prevails on behalf of a claimant's valid wage claim for unpaid wages; and lowers the amount for a valid wage claim for unpaid wages from the current \$10,000 to \$5,000 which DHR can pursue on behalf of a claimant. DHR needs this law to augment current law and relieve taxpayers from the obligation of paying for the pursuit of unpaid wages. It puts the onus on the unscrupulous employers.

Senator Feleciano moved, seconded by Senator Steffes, that **SubHB2986** be recommended favorable for passage. The recorded vote was in favor of the motion.

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

A. J. Kotich, General Counsel, Department of Human Resources (DHR), testified in support of HB 2987. Mr. Kotich stated HB 2987 abolishes the Division of Labor Management Relations and Employment Standards by statute. The Secretary of DHR reorganized the Department pursuant to his authority under the statute. Mr. Kotich stated the functions of this Division have been delegated to other division within the Department at a cost savings to the State General Fund of approximately \$80,000. The functions of the Division are being carried out in an efficient manner.

Senator Feleciano moved, seconded by Senator Gooch, that **HB 2987** be recommended favorable for passage and placed on the Consent Calendar. The recorded vote was in favor of the motion

**SubHB 2660:** **Increasing the caps on applicant fees which may be charged by private employment agencies**

Senator Downey moved, seconded by Senator Reynolds the Committee action recommending **SubHB 2660** favorable for passage be reconsidered. The voice vote was in favor of the motion.

Senator Feleciano moved, seconded by Senator Reynolds, that **SubHB 2660** be amended to reflect the following: deregulate private employment agencies; increase the license fee to \$100; retain the provision protecting public from false notices, advertisements or information, and provision providing the secretary of human resources enforcement powers; insert **SB 330** as amended to allow formerly commissioned law enforcement officers to perform on a non-licensed basis; and setting the licensure fee for a company not to exceed \$350; and for an individual officer not to exceed \$50. (Attachment 1) The voice vote was in favor of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m.  
on March 18, 1996.

the motion.

Senator Feleciano moved, seconded by Senator Reynolds, that **SubHB 2660** be recommended favorable for passage as amended. The recorded vote was in favor of the motion.

The Committee adjourned at 8:45 a.m.

The next meeting is scheduled for March 19, 1996.



# SUBSTITUTE for HOUSE BILL No. 2660

By Committee on Business, Commerce and Labor

2-20

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

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1995 Supp. 44-401 is hereby amended to read as  
16 follows: 44-401. As used in K.S.A. 44-401 through 44-412 and amend-  
17 ments thereto:

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

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

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

28 (d) "Person" means any individual, association, partnership or cor-  
29 poration.

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

32 (A) Secures employment; or

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

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

38 (A) Any educational, religious, charitable, fraternal or benevolent or-  
39 ganization which charges no fee for services rendered in securing em-  
40 ployment or providing information about employment;

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

43 (C) any temporary help service that at no time advertises or repre-

*See attached*

*Senate Committee on Commerce  
March 18, 1996  
Attachment 1 thru 1-13*

1 sents that its employee may, with the approval of the temporary help  
2 service, be employed by one of its client companies on a permanent basis;  
3 (D) any newspaper or publication of general circulation;  
4 (E) any radio or television station; or  
5 (F) any employment service where the fee is paid by the employer;

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

3 11 Sec. ~~1~~ K.S.A. 44-407 is hereby amended to read as follows: 44-407.

12 Where a ~~registration~~ fee is charged for receiving or filing applications for  
13 employment, said ~~the fee shall in no case exceed the sum of one dollar~~  
14 ~~(\$1), unless the salary or wages shall be more than three dollars (\$3) per~~  
15 ~~day, in which case a fee of not more than two dollars (\$2) may be charged~~  
16 ~~[\$100, for which]~~ a duplicate receipt shall be given (one copy to be kept  
17 by the employee and the other for the employer), in which shall be stated  
18 the name and address of the applicant, the date of such application, the  
19 amount of the fee, and the nature of the work to be done or the situation  
20 to be procured.

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

28 ~~[New Sec. 3. Any temporary help service which provides work-~~  
29 ~~ers to businesses on a temporary basis shall provide such tempo-~~  
30 ~~rary workers with written notice of all employee benefits provided~~  
31 ~~by their temporary employers including, but not limited to, health~~  
32 ~~insurance, workers compensation, employment security and re-~~  
33 ~~irement benefits. If the temporary employer provides no such~~  
34 ~~benefits, the temporary help service shall so notify the employee~~  
35 ~~in writing.]~~

36 Sec. ~~3~~. [4.] K.S.A. 44-407 and K.S.A. 1995 Supp. 44-401 are hereby  
37 repealed.

38 Sec. 4. [5.] This act shall take effect and be in force from and after  
39 its publication in the statute book.

See attached section #2

1-2

K.S.A. 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~~ \$100. 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.

## SENATE Substitute for Substitute for HOUSE BILL NO. 2660

By Committee on Commerce

AN ACT concerning licensing; repealing K.S.A. 44-402, 44-403, 44-404, 44-405, 44-406, 44-407, 44-408, 44-409, 44-410, 44-411 and 44-412 and K.S.A. 1995 Supp. 44-401.

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

Section 1. As used in this act:

(a) "Board" means the private security licensing board established under the provisions of section 2;

(b) "courier company" means a person who employs courier officers and offers and provides courier services;

(c) "courier officers" means an armed or unarmed person employed by a courier company;

(d) "courier service" means offering for hire, protection and transportation of moneys, currencies, coins, negotiable instruments and securities, bank deposits and transfers of funds, food stamps and any other form of tangible or intangible property, by courier vehicle;

(e) "courier vehicle" means a specially designed and constructed motor vehicle which may include protective armor, secure occupant compartments, internal safes and communications equipment, utilized by a courier company and operated by courier officers;

(f) "designated premises" means a physically defined premises, including all structures and any surrounding property, in or on which, a licensee under this act, provides security services;

(g) "firearm" means a pistol, revolver or similar device generally referred to as a hand gun capable of firing, discharging or directing a lethal or nonlethal bullet, ball, a cartridge, shot, gas or liquid;

(h) "law enforcement officer" means a person as defined by

subsection (10) of K.S.A. 21-3110 and subsection (13) of K.S.A. 22-2202 and amendments thereto;

(i) "license" means the document which is issued, in accordance with this act and the rules and regulations promulgated hereunder, by the board to a licensee and, which may thereafter, be revoked by the board;

(j) "licensee" means a courier company, courier officer, security company or security officer licensed pursuant to this act;

(k) "person" means an individual person or business entity;

(l) "security company" means a person who employs security officers and offers and provides security services;

(m) "security officer" means an armed or unarmed person employed by a security company;

(n) "security services" means offering for hire, safety, security and protection to persons and property, on or in, a designated premises;

(o) "temporary license" means a limited license to be issued by the board to a new employee of a courier company or a security company which shall satisfy minimal review as established by the board. A licensee of a temporary license shall not be permitted to carry a firearm, and such temporary license shall automatically expire 60 calendar days after issuance; and

(p) "weapon" means any instrument, except a firearm, used as a protective device, such as a leather pocket baton or slapper, aerosol tear gas dispenser, wood baton or night stick, knife or handcuffs.

Sec. 2. It shall be unlawful for any person to provide courier services or security services unless such person shall first establish a courier company or security company, obtain and maintain a current license from the private security licensure board in accordance with this act and rules and regulations promulgated hereunder and each employee of such company providing courier service or security service shall have also obtained and maintained a current license from the private security licensure



board in accordance with this act. The board may establish rules and regulations for the issuance of a temporary license.

Sec. 3. A commissioned law enforcement officer while acting for or on behalf of any federal, state or local governmental agency or subdivision shall not be required to obtain a license pursuant to this act. A retired, formerly commissioned, law enforcement officer shall not be required to obtain a license pursuant to this act.

Sec. 4. (a) There is hereby established in the executive department under the jurisdiction of the attorney general a private security licensure board, consisting of three members appointed by the attorney general as provided in K.S.A. 75-4315b and amendments thereto. Each member of the board shall be appointed for a term of four years and until a successor is appointed and qualified. Upon the expiration of any term of office of any member, the attorney general shall appoint a qualified successor. In case of a vacancy on the board prior to the expiration of a term, the attorney general shall appoint a successor of like qualifications to fill the unexpired term.

(b) The attorney general shall designate a member of the board who is regularly admitted to practice law in this state to serve as chairperson at the pleasure of the attorney general. Members of the board shall receive compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

Sec. 5. In addition to the powers and duties specified elsewhere in this act, the board shall have the following powers and duties:

(a) The duty to establish and maintain an office within this state, to appoint employees and agents as necessary and to prescribe their duties and compensation, all within the limitations and conditions of appropriations made therefor;

(b) the duty to adopt rules and regulations pertaining to the organization of the board, its operating procedures, and the manner in which it adopts licensing fees;

(c) the duty to adopt rules and regulations to carry out the provisions of this act, including rules and regulations pertaining to the process of obtaining a license, qualification of applicants for license, authority of licensee, training of licensee, insurance, identification of licensee, firearms, weapons, complaints against licensee, limitations on or suspension or revocation of a license. Rules and regulations adopted by the board shall be statements of general applicability which implement, interpret or prescribe policy, or describe the procedure or practice requirements of the board;

(d) the duty to prescribe forms on which applications for license shall be made;

(e) the duty to establish and levy a license fee upon each applicant for a license pursuant to this act, which fee shall not exceed \$350 annually for a company or \$50 for an individual officer and which shall be paid into a fund to underwrite the board and the implementation and enforcement of this act;

(f) the duty to hear and determine all matters relating to complaints and license revocation and the power to investigate or reopen claims without regard to statutes of limitation or periods of prescription;

(g) the power to request investigations and data from county and district attorneys and law enforcement officers;

(h) the power and duty to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings and receive relevant, nonprivileged evidence and to enter orders, decisions and opinions pertaining to applicants for license and all matters relating to a license permitted by this act;

(i) the power to take notice of judicially recognizable facts and general, technical and scientific facts within their specialized knowledge; and

(j) the duty to make available for public inspection all rules and regulations, written statements of policy, interpretations formulated, adopted or used by the board in

discharging its functions and decisions and opinions of the board.

Sec. 6. The licensing and regulation of courier services and security services shall be under the exclusive jurisdiction and control of the attorney general, as provided by this act, and no city may adopt any ordinance which provides for the licensing or regulation thereof. Any such ordinance which is adopted, or which has been adopted on or before the effective date of this act, is hereby declared null and void.

Sec. 7. A final decision of the board shall be subject to judicial review in accordance with the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto.

Sec. 8. The board shall prepare an annual report to the attorney general of its activities. The report shall include the names of all current licensees and actions taken with regard to the granting and revocation of licenses.

Sec. 9. A licensee under this act shall not:

(a) Wear, or permit its employees to wear a uniform, carry a badge or operate a vehicle which would be so similar to that of any law enforcement personnel with local jurisdiction as to be confusing to the general public or which would cause one to mistakenly identify the licensee as a law enforcement officer within the local jurisdiction of the law enforcement officer;

(b) operate a vehicle with an emergency flashing or rotating red or red and blue beacons;

(c) engage in any activity which would impede or hinder law enforcement officers in the discharge of their commissioned law enforcement responsibilities;

(d) carry a firearm or weapon without a current firearm permit issued pursuant to the rules and regulations of the board or other rules and regulations pertaining to licensing of persons authorized to carry firearms; and

(e) engage in any activity, based upon a license granted pursuant to this act, without current insurance coverage

prescribed pursuant to the rules and regulations of the board.

Sec. 10. A license issued by the board pursuant to this act shall expire one year from the date of issuance. Prior to expiration a licensee shall make application for renewal of such license. A license issued by the board may not be assigned.

Sec. 11. Each application for a license under this act shall be accompanied by a nonrefundable fee as established by rules and regulations of the board and each application for renewal of a license shall be accompanied by a nonrefundable fee as established by rules and regulations of the board. The application fees shall be used to implement this act.

Sec. 12. Any individual person seeking to obtain a license, or temporary license, or who is an officer, director, shareholder or partner with a controlling interest, employee, agent or consultant to a person seeking to obtain a license as a courier company or security company, pursuant to this act shall:

- (a) Be at least 18 years of age, or if seeking, in addition, a firearm permit, must be 21 years of age;
- (b) be a citizen of the United States;
- (c) be a high school graduate or have earned a graduate equivalency degree;
- (d) be of good moral character;
- (e) never been convicted of any felony crime or received any discharge from the armed services of the United States with a dishonorable or undesirable discharge;
- (f) comply with such other additional qualifications as the board may adopt by rules and regulations; and
- (g) demonstrate insurance coverage as prescribed by the board.

Sec. 13. All persons covered by the provisions of this act shall comply with the provisions of this act on or before January 1, 1996.

Sec. 14. K.S.A. 44-402, 44-403, 44-404, 44-405, 44-406, 44-407, 44-408, 44-409, 44-410, 44-411 and 44-412 and K.S.A. 1995 Supp. 44-401 are hereby repealed.

*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:**

Al. 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 Amity 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

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

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, 4-411; 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, 4-412; 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 (1955).

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. 5, 17, 18, 22 (1985).

"Forensic Psychiatry: Less Typical Applications", Roy B. Lacourriere, 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 1356, 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.