

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

The meeting was called to order by Chairman Al Lane at 9:07 a.m. on February 13, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused

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

Conferees appearing before the committee: Bob Nugent, Revisor of Statutes
Rep. Cindy Empson
Terry Leatherman, KCCI
Ed Gietl, Acme Foundry, Inc.
Mark Turman, Raytheon Aircraft Co.
Art Brown, Mid-American Lumbermens Assn.
Wendy McFarland, ACLU

Others attending: See attached list

The minutes for January 22 and 23 were handed out to the members of the committee. They will be approved at the next meeting.

Hearing on: HB 2124 - Failure of scheduled drug test disqualifies applicant for employment security benefits.

Bob Nugent, Revisor of Statutes, gave a short history of the bill. It is a reaction to an Appellate Court decision. It clarifies the definition of misconduct on page 3 of the bill as: the failure of or refusal to submit to a chemical test administered as a condition of employment shall also be conclusive evidence of misconduct.

Rep. Cindy Empson appeared as the author of the bill. It was requested by one of her constituents in SE Kansas. The bill makes it clear that if an employee fails or refuses to submit to a chemical test that is administered as a condition of employment, that failure or refusal is conclusive evidence of misconduct and the individual will not be eligible for unemployment benefits. (see Attachment 1)

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), appeared as a proponent to explain why the Kansas Chamber supports passage of the bill. The chamber feels that the bill is very consistent with the philosophy of the legislature that the drug or alcohol user has caused their unemployment and should be refused unemployment compensation benefits for employee misconduct. (see Attachment 2)

Ed Gietl, Director of Human Resources for Acme Foundry, Inc. of Coffeyville, appeared as the individual who proposed this bill to Rep. Empson. He feels that the current situation of paying drug users unemployment insurance benefits is not fair for employers and their law abiding employees. (see Attachment 3) He ended his testimony by answering questions from the committee.

Mark Turman, Raytheon Aircraft Company, and Chairman of the South Central Coalition for Unemployment Compensation Reform, appeared as a proponent of the bill. The coalition endorses the bill as it will expand the scope of employer rights and it will simplify the statutory language. (see Attachment 4) He concluded his testimony by answering questions from the committee.

Linda Tierce, KDHR, seated in the audience, answered a question from the committee on why the federal law was part of the legislation. She stated that Drug-free Workplace Act provisions were incorporated into our law in 1995.

Art Brown, Mid America Lumbermens Association, appeared as a supporter of the bill. If an employee tests positive on a random drug test, and in good faith asks the employer to help them solve their problem and retain employment, the employer needs to take the step to see that they receive it. But should we reward a person with compensation in the form of unemployment benefits if they are not willing to get help? (see Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:07 a.m. on February 13, 1997.

Wendy McFarland, American Civil Liberties Union, appeared as a opponent of the bill. She asks the question: Who stands to benefit the most if the proposed amendment to current law is passed by this committee? She feels that the private employer is the sole beneficiary in this case. (see Attachment 6) She will return tomorrow when the hearing on the bill is continued.

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

The next meeting is scheduled for February 14, 1997.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIRMAN: HOUSE SELECT COMMITTEE ON
HIGHER EDUCATION

CHAIRMAN: LEGISLATIVE EDUCATIONAL PLANNING
COMMITTEE

VICE CHAIRMAN: HOUSE ECONOMIC DEVELOPMENT
COMMITTEE

MEMBER: HOUSE TAXATION COMMITTEE

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 848
INDEPENDENCE, KANSAS 67301

TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612
(913) 296-7685

DATE: February 13, 1997

RE: HB 2124

TO: Chairman Al Lane
House Business, Commerce and Industry Committee

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear before you in support of HB 2124. This is a relatively long bill, but in my opinion, the concept is elementary. This bill makes it clear that if an employee fails or refuses to submit to a chemical test that is administered as a condition of employment, that failure or refusal is conclusive evidence of misconduct and the individual will not be eligible for unemployment benefits.

As a legislature we have spent a lot of time tightening our drug laws. We have made it clear that we won't tolerate drugs around schools. I believe we should also make it clear that we won't tolerate drugs in the workplace. Allowing an employee who gets caught intentionally violating a condition of his employment to turn around and draw unemployment benefits against his/her employer is a direct contradiction to the other drug laws we've passed. We are penalizing an employer for carrying out company policy that was known to that employee when he/she took the job.

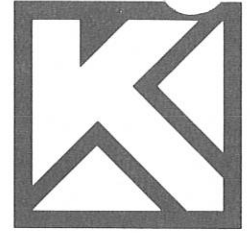
I introduced this bill at the request of one of my constituents who is here today to testify. It's time to show employers that we also consider a drug free workplace a priority.

I would appreciate your favorable consideration of HB 2124.

*Business, Commerce
& Labor Committee
2/13/97
Attachment 1*

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2124

February 13, 1997

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber supports passage of HB 2124.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 46% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The subject of employee drug or alcohol use constituting misconduct for unemployment compensation purposes is not a new subject to the Kansas Legislature, or to this Committee. A quick review shows:

*Business, Commerce
& Labor Committee
2/13/97
Attachment 2*

In 1991, legislation was approved to establish a chain of custody for chemical testing for drugs and alcohol and established misconduct to be use, possession, or impairment from a non-prescribed controlled substance.

- In 1993, legislation was approved to establish any chemical test required by law or regulation be accepted as proof of misconduct, and created a "conclusive evidence" standard when use or impairment existed.
- In 1995, the drug use provision was amended to include reference to the Drug Free Workplace Act, follow-up testing regarding employee assistance programs, and whether the test may be performed by a "licensed," rather than "independent" health care provider.

One observation I would have of all deliberations in this area is that it is appropriate for an employer to dismiss the drug and alcohol abuser. Further, the Legislature has consistently felt the drug or alcohol user has caused their unemployment, and should be refused unemployment compensation benefits for employee misconduct.

KCCI would contend the changes proposed in HB 2124 are very consistent with this philosophy concerning drug use and employee misconduct. The legislation proposes to make clear that an employer who takes the steps to stamp out drug and alcohol use by employees by requiring drug testing as a condition of employment, and then puts teeth to this testing requirement by taking employment action against violators, will receive unemployment compensation relief for their appropriate action.

Today's drug use/misconduct law, which is a patchwork of several legislative repair attempts, still permits employees who are fired for drug and alcohol use to qualify for unemployment benefits. The bottom line of HB 2124 is a drug or alcohol abuser will not be cleared for unemployment benefits merely because their employer did not fit in one of the appropriate drug testing notches established in K.S.A. 44-706(b)(2).

Thank you for the opportunity to explain why KCCI supports passage of HB 2124. I would be happy to answer any questions.

2-2

TESTIMONY TO THE KANSAS HOUSE OF REPRESENTATIVES
BUSINESS, LABOR AND COMMERCE COMMITTEE
RE: BILL 2124
BY EDWARD W. GIETL, DIRECTOR OF HUMAN RESOURCES
ACME FOUNDRY, INC., COFFEYVILLE
DATE: FEBRUARY 13, 1997

GOOD MORNING MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE. MY NAME IS ED GIETL, AND I AM THE INDIVIDUAL WHO PROPOSED THIS BILL TO IT'S SPONSOR, REPRESENTATIVE CINDY EMPSON. I AM THE DIRECTOR OF HUMAN RESOURCES FOR ACME FOUNDRY, INC. OF COFFEYVILLE. WE ARE ONE OF COFFEYVILLE'S OLDEST AND IT'S LARGEST EMPLOYER WITH OVER 450 EMPLOYEES. WE MANUFACTURE HIGH QUALITY GRAY IRON CASTINGS SENT WORLD WIDE TO SUCH CUSTOMERS AS JOHN DEERE, CATERPILLAR AND EATON. I WOULD LIKE TO THANK OUR COMPANY PRESIDENT, DICK TATMAN FOR SUPPORTING AND ENCOURAGING ME IN THIS ENDEAVOR. WITHOUT HIS SUPPORT, WE WOULD NOT BE HERE TODAY.

A POSSIBLE SCENARIO TAKING PLACE TODAY IN THE GREAT STATE OF KANSAS IS AS FOLLOWS: FICTITIOUS EMPLOYEES JOHN DOE AND BILL SMITH DRIVE ONTO A COMPANY'S PARKING LOT. BEFORE GOING IN, THEY CONSUME SOME ILLEGAL DRUGS. THEY CLOCK IN AND GO TO WORK. TWO HOURS LATER, JOHN DOE HAS A MINOR INJURY AND IS SENT TO THE COMPANY PHYSICIAN AND BILL SMITH'S NAME HAS BEEN RANDOMLY SELECTED BY COMPUTER TO PARTICIPATE IN A COMPANY-WIDE, UNANNOUNCED DRUG SCREEN. BOTH SAMPLES ARE HANDLED IN STRICT CONFORMANCE TO KSA 44-706 REGARDING THE CHAIN OF CUSTODY, A FEDERALLY CERTIFIED LABORATORY AND SAMPLES BEING CONTEMPORANEOUS WITH THE INCIDENTS. BOTH SAMPLES COME BACK POSITIVE FOR AN ILLEGAL DRUG.

THE HUMAN RESOURCE DIRECTOR THEN MEETS WITH BOTH MEN AND EXPLAINS THE COMPANY'S DRUG REHABILITATION PROGRAM. IN ESSENCE, THEIR JOBS, BENEFITS AND SENIORITY WILL BE HELD AND THE COMPANY WILL PLACE THEM ON MEDICAL LEAVE PAYING THEM \$100 PER WEEK. THEY WILL BE REQUIRED TO UNDERGO AN OUT-PATIENT COUNSELING PROGRAM FOR FOUR TO SIX WEEKS FOR \$250, SOME OF WHICH CAN BE PAID BY THE COMPANY'S HEALTH INSURANCE PLAN. IF THEY DO NOT ACCEPT THE "LAST CHANCE" PROGRAM, THEY WILL BE DISCHARGED. BOTH MEN REJECT THE OFFER AND THE COMPANY TERMINATES THEIR EMPLOYMENT.

BOTH THEN APPLY FOR UNEMPLOYMENT INSURANCE BENEFITS AND ACCURATELY CONVEY THE FACTS BEHIND THE DISCHARGES. THE COMPANY DOES LIKEWISE AND IS ASTONISHED TO RECEIVE AN EXAMINER'S DETERMINATION THAT AWARDS FULL UNEMPLOYMENT INSURANCE BENEFITS TO THESE MEN BECAUSE "MISCONDUCT ON THE JOB CANNOT BE ESTABLISHED". THE COMPANY REASONS THAT CERTAINLY THE EXAMINER ERRED, AND THAT APPEALING AND BEING HEARD BEFORE A REFEREE WILL CORRECT THIS. THE HEARING TAKES PLACE AND ONCE AGAIN SHOCK, DISBELIEF AND NOW ANGER ARE EVIDENT AS THE COMPANY OFFICIALS READ THE REFEREE'S RULING THAT UPHOLDS THE EXAMINER'S DETERMINATION THAT "MISCONDUCT ON THE JOB CANNOT BE ESTABLISHED". WITH INCREASED CYNICISM AND DWINDLING FAITH IN THE SYSTEM, THE COMPANY APPEALS TO THE EMPLOYMENT SECURITY BOARD OF REVIEW ONLY TO RECEIVE THEIR DECISION THAT FINDS THAT "THE DECISION OF THE REFEREE SHOULD BE AFFIRMED".

LADIES AND GENTLEMEN, WHILE THE NAMES ARE FICTITIOUS, THE SCENARIOS ARE NOT AND ARE CURRENTLY HAPPENING THROUGHOUT THE STATE OF KANSAS.

THE EXAMPLE OF JOHN DOE, WHO HAD A MINOR MEDICAL INJURY IS PRECISELY WHAT HAPPENED TO ME AND MY COMPANY. THE JOHN DOE WHO WORKED FOR US BROKE STATE AND FEDERAL DRUG LAWS, AND ANY LAW ENFORCEMENT OFFICER IN THE STATE COULD HAVE ARRESTED HIM AND CHARGED HIM WITH A VIOLATION OF LAW. MOREOVER, HE KNOWINGLY VIOLATED COMPANY DRUG POLICY AND ENDANGERED HIMSELF AND HIS CO-WORKERS, NOT TO MENTION INCURRING MASSIVE, POTENTIAL LIABILITY TO THE COMPANY. YET DESPITE THAT, HE WAS AWARDED FULL BENEFITS UP TO \$5,800.00. IS IT ANY WONDER WHY PEOPLE HAVE BECOME DISILLUSIONED WITH THE GOVERNMENT'S PROTECTING THE INTEREST OF THE LAW BREAKERS AT THE EXPENSE OF THE LAW ABIDING? IF COMING TO WORK UNDER THE INFLUENCE OF ILLEGAL DRUGS IS NOT MISCONDUCT CONNECTED WITH THE JOB, WHAT IS? WHAT TYPE OF MESSAGE DOES THIS SEND TO EMPLOYERS AND THEIR EMPLOYEES ABOUT WHAT IS TOLERATED IN THE KANSAS WORKPLACE?

IN CONCLUSION, I ASK THAT THIS BILL GO DIRECTLY TO THE FLOOR OF THE LEGISLATURE WITH UNANIMOUS BI-PARTISAN BACKING AND THAT EACH MEMBER OF THIS DISTINGUISHED COMMITTEE PERSONALLY ASSENT TO CORRECT THIS NONSENSICAL INJUSTICE. THOSE WHO OPPOSE THIS BILL SHOULD BE CONSIDERED AS CONDONING THE RIGHTS OF DRUG ABUSERS AT THE EXPENSE OF THE TAXPAYERS, BUSINESSES AND EMPLOYEES OF THIS STATE. PEOPLE UNDERSTAND THE NEED FOR LAWS AND REGULATIONS BUT THEY DON'T UNDERSTAND INEQUITY. THE CURRENT SITUATION IN THE STATE IS NOT FAIR FOR EMPLOYERS AND AS NOTED, FOR THEIR LAW ABIDING EMPLOYEES WHICH FAR OUTNUMBER THEIR IRRESPONSIBLE CO-WORKERS.

PLEASE DO NOT LET THIS BILL DIE IN COMMITTEE OR BE DEFERRED TO THE EMPLOYMENT SECURITY ADVISORY COUNCIL OR BE LOST IN OBLIVION. THE FIX IS SIMPLE AND STRAIGHT FORWARD AS YOU HAVE BEFORE YOU ON PAGES FOUR AND FIVE OF THE BILL. THE CURRENT INTERPRETATION OF THE LAW IS OSTENSIBLY TO BE FAIR BUT HAS PRODUCED EXACTLY THE OPPOSITE EFFECT. I SPEAK ON BEHALF OF DOZENS OF EMPLOYERS WHO ARE CLOSELY WATCHING THESE DEVELOPMENTS WITH HOPE THAT FAIRNESS WILL PREVAIL. PLEASE, DO NOT LET US DOWN.

THANK YOU VERY MUCH

3-2

Marc Turman
House Bill 2124
2/13/97

Good morning, my name is Marc Turman. I am the Chairman of the South Central Coalition for Unemployment Compensation Reform and I serve on the State of Kansas Employment Security ~~Adversary~~ ^{Advisory} Council.

Under the current Statute a disqualification of unemployment benefits is only allowed if the employer is required by law to administer a drug testing program.

House Bill 2124 amends the Employment Security Law in relation to misconduct disqualification concerning drug testing. The Amendment expands the employer rights for those businesses who hold themselves to a higher ethical standard, creating a drug free work environment ----- with concern for the safety of their workers and customers. This bill will allow disqualification of an individual for refusing to submit to, or failing a drug test, regardless of whether the test is required by law.

The South Central Coalition for Unemployment Compensation Reform endorses this legislation, as it will expand the scope of employer rights and it will simplify the statutory language.

Thank you for your time and consideration with this matter.

*Business, Commerce
& Labor Committee
2/13/97
Attachment 4*

**SOUTH CENTRAL COALITION FOR UNEMPLOYMENT
COMPENSATION REFORM MEMBERS**

- CESSNA AIRCRAFT
- CITY OF WICHITA
- DOLD FOOD INC.
- WESLEY MEDICAL CENTER
- LEAR JET
- WICHITA INDEPENDENT BUSINESS ASSOC.
- COLEMAN
- RAYTHEON AIRCRAFT COMPANY
- EMPLOYERS UNITY, INC.
- MID-AMERICA BUILDING MAINTENANCE INC.



MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE

House bill No. 2124

February 12, 1997

Mister Chairman, members of the Committee, my name is Art Brown. I come before you today, representing the retail lumber and building material dealers in Kansas through the Mid-America Lumbermens Association as a supporter of House Bill No. 2124.

Earlier this week, I had a member from Wichita at the State House to testify on another issue. He employs 550 + employees among which many are employees with CDL's. I told him about this bill. His concerns to me were so strong that there was no doubt in his mind or mine that I would testify about this issue.

To understand the paradox of my member, lets look at his concerns. Under federal law, he must administer drug testing to all employees who have a CDL. (Commercial Drivers License.) If at any time an employee shows up with a positive result of this test, that employee is terminated at once. There are no exceptions and no recourse under federal law . The State , however, has no such mandated provisions, and as in the case that brought about this bill, an employee can test positive on a drug test, be fired and still collect unemployment benefits. Let me present a situtation under the Drug Free Workplace act that helps both the employer and the employee and we feel strikes to the heart of the issue as to the good faith of the employee in this issue.

An employer must provide random testing under the Drug Free Workplace act An employee is to provide a sample for analysis. At the time the sample is to be provided, the employee states that they may be providing a sample which will test positive for drug or alcohol



*Business, Commerce
& Labor Committee
2/13/97
Attachment 5*

abuse. Under the act, the employer must provide the necessary assistance and treatment to see that the employee is rehabilitated., provided that the employee has asked for such assistance. What this tells an employer is that this person wants to retain their employment, and treatment for their problem. If the employee is willing to take the step to seek assistance, the employer needs to take the step to see that they receive it. To us, this is an employee working in good faith to solve their problem and retain employment. On the other hand, if an employee has an abuse problem, and tests positive on a random drug test, why we ask, should we reward this person with compensation in the form of unemployment benefits, just so they can take this money and go out and continue to contribute to their addiction? Talk about rubbing it in the employers face! Another major concern we have with this issue is that under 44-501 (d) (2), of the Workers Compensation law, no employer shall be held liable under the Workers Compensation act where the injury, disability, or death of an employee is contributed by that employee's use of consumption of alcohol or drugs (not withstanding prescription drugs.) If said employee is precluded from financial remuneration for such acts under the Workers Compensation law, why should an employee collect unemployment benefits when there is known abuse? Make no mistake, such an employee is a potential safety hazard at the workplace to their fellow workers, as well as the employee themselves. This is a lose - lose situation for the employer and to other employees who have to work with a person who is affected by these problems.

Opponents will probably argue that such a positive result on a drug test could be associated with recreational usage and has nothing to do with violation of any drug policy the employer may have in place. There may well be an argument involving the amount of impairment such abuse constitutes in job performance. I guess the only response I can give to this, is that employees, and potential employees, know if an employer utilizes random drug testing. If not covered by federal law, than the employer has such a drug policy in place and employees are made aware of same. Knowing that such a policy exist, why risk termination by involving

pg 3- Testimony on HB 2124- House Business, Commerce & Labor-February 12, 1997

themselves with drug abuse. To be blunt about it, it's against the law to use drugs socially, so why allow it in the work place, and then reward this person with unemployment benefits when such offenders under the criminal justice system receive no such benefits if they break laws regarding the same issue?

I know for a fact, that this is a Committee that has certainly heard the "war stories" regarding Workers Compensation and the abuses that have proliferated over the years in that system. When the 1993 bill was passed into law, both labor and management had the sense of reason, to realize benefits should not be paid in this situation where a worker violates substance abuse standards as I stated earlier in my testimony. We are asking that such common sense be applied in the area of unemployment benefits. We ask that this Committee look favorably upon passage of HB 2124 into a law that makes sense, and does not send a negative message to the good and credible workers in our State and their employers.

I appreciate this opportunity to visit with you about this issue, and stand for any questions or comments you may have about this testimony.

ACLU

American Civil Liberties Union

Wendy McFarland - Lobbyist
(913) 575-5749

TESTIMONY ON HB 2124
DELIVERED 2/13/97

WHO STANDS TO BENEFIT THE MOST IF THE PROPOSED AMENDMENT TO CURRENT LAW IS PASSED BY THIS COMMITTEE?

NOT THE STATE UNLESS YOU ARE WANTING TO LESSEN THE WORKLOAD OF STATE EMPLOYEES WHO WILL HAVE LESS UNEMPLOYMENT CASES TO HANDLE.

NOT THE INDIVIDUAL WHO LOSES THEIR JOB BECAUSE THEY EITHER FAILED A DRUG TEST OR REFUSED TO SUBMIT TO ONE.

SURELY NOT THE CHILDREN OF THE FIRED EMPLOYEE WHO WILL SUFFER WHEN THEIR PARENT IS DENIED THE BENEFITS THAT COULD TEMPORARILY PUT FOOD ON THE TABLE.

THE PRIVATE EMPLOYER IS THE SOLE BENEFICIARY IN THIS CASE. THEY ALONE WILL BE THE WINNER BECAUSE THEY WILL HAVE WON EVEN GREATER STATUTORY SANCTION IN FIRING EMPLOYEES WITH OR WITHOUT GOOD CAUSE NOT TO MENTION THE SAVINGS IN UNEMPLOYMENT DOLLARS THAT WILL NOT GO TO THE EMPLOYEE THEY DECIDED TO TERMINATE.

AS THIS BILL READS, AN INDIVIDUAL IN THE STATE OF KANSAS WHO EITHER AGREES TO A CHEMICAL TEST WHICH PRODUCES A POSITIVE RESULT OR ONE WHO REFUSES TO SUBMIT TO THIS TEST WILL BE DEEMED GUILTY OF MISCONDUCT, NOT ONLY BY THE EMPLOYER, BUT BY THE STATE AS WELL AND THEREFORE WILL NOT ELIGIBLE FOR ANY UNEMPLOYMENT BENEFITS.

BEFORE ANYONE POINTS OUT THAT THERE ARE PROVISIONS BUILT IN THAT, IN MOST CASES, WOULD REQUIRE PROBABLE CAUSE TO BE ESTABLISHED BEFORE THE TEST WAS DEMANDED OF THE EMPLOYEE, I WOULD REMIND THEM THAT PROVING THE ABSENCE OF PROBABLE CAUSE WILL MOST OFTEN COME DOWN TO THE WORD OF A SINGLE EMPLOYEE AGAINST THE WORD OF AN ENTIRE COMPANY AND AS YOU MAY CORRECTLY ASCERTAIN, THE COMPANY ALMOST ALWAYS PREVAILS.

*Business, Commerce
& Labor Committee
2/13/97
Attachment 6*

THERE IS NO COMPASSION IN THIS AMENDMENT. IT IS PUNITIVE, HARSH, AND GOES AGAINST WHAT MOST REASONABLE KANSANS EXPECT OF THEIR ELECTED OFFICIALS. AN ELEMENT OF FAIRNESS AND A PROMISE TO REPRESENT THE INDIVIDUAL KANSAN'S INTERESTS WHEN FACED WITH THE STRONG LOBBY OF CORPORATIONS AND OTHER LARGE EMPLOYERS.

IS IT WRONG TO SHOW SOME COMPASSION IN WRITING LAWS THAT WILL AFFECT SO MANY KANSAS WORKERS AND THEIR FAMILIES?

NO ONE IS ATTEMPTING TO SHACKLE CORPORATIONS HERE. THE FACT IS THEY CURRENTLY ENJOY ENORMOUS POWER TO TERMINATE EMPLOYEES FOR LITTLE REASON. THAT IS THE NATURE OF THE 'EMPLOYMENT AT WILL' DOCTRINE IN OUR STATE.

THE POSITION OF THE ACLU IS THAT DRUG TESTS ARE AN INVASION OF PRIVACY AND SHOULD NEVER BE TRIGGERED WITHOUT A WELL FOUNDED BELIEF THAT A PARTICULAR EMPLOYEE IS WORKING UNDER THE INFLUENCE.

ONE SHOULD ASK WHETHER THE STATE SHOULD EVER DENY UNEMPLOYMENT BASED UPON THE RESULTS OF OR FAILURE TO SUBMIT THEIR BODY TO A DRUG TEST.

HOWEVER, SINCE THEY HAVE ALREADY GIVEN THEMSELVES THAT POWER IN CURRENT LAW, THEN LET US NOT ADD INSULT TO THE INJURY OF LOSING A JOB BY GIVING PRIVATE EMPLOYERS EVEN MORE LATITUDE IN THEIR BROAD ABILITY TO TERMINATE EMPLOYMENT WITH LITTLE CAUSE.

WE ASK YOU TO TAKE A STAND FOR ALL KANSANS WHO REPORT TO WORK EACH DAY IN RESTAURANTS, GROCERY STORES, GAS STATIONS OR ANYWHERE THEY CAN TO EARN AN HONEST LIVING.

TAKE THAT STAND ON THEIR BEHALF BY VOTING AGAINST THIS UNKIND AMENDMENT. THEY WILL THANK YOU FOR IT.

FINDING AN ATTORNEY TO CHALLENGE WRONGFUL TERMINATION IS NEARLY IMPOSSIBLE BECAUSE IT COSTS TOO MUCH FOR A PERSON WITH NO INCOME AND IT'S VERY HARD TO PROVE. BESIDES, PROBABLE CAUSE IS NOT REQUIRED IN ALL SITUATIONS WHERE AN EMPLOYEE IS TOLD TO TAKE A DRUG TEST.

*GO TO GEARY STORY AND THEN TO STANLEY STORY

MOST WORKERS LIKE BOB STANLEY WOULD INSTINCTIVELY RESIST SUCH REQUIREMENTS...NOT BECAUSE THEY ARE GUILTY BUT BECAUSE THEY ARE INNOCENT AND BELIEVE THEY OWE THEIR EMPLOYER AN HONEST DAY'S WORK BUT NOT AUTHORITY OVER THEIR LIVES.

TERMINATED WORKERS IN KANSAS CALL THE ACLU DAILY TO SAY THEIR CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED. OUR RESPONSE IS, NOT UNLESS YOU'RE A GOVERNMENT WORKER. THE CONSTITUTION DOESN'T APPLY TO THE PRIVATE SECTOR. THEREFORE MOST WORKERS IN THE STATE OF KANSAS ARE WITHOUT ANY PROTECTION OTHER THAN WHAT YOU GOOD PEOPLE OFFER THEM IN LAWS THAT YOU PASS.

LABOR UNIONS PROVIDE SOME PROTECTION BUT REPRESENT FEWER THAN 20 PER CENT OF AMERICAN WORKERS AND MANY UNION CONTRACTS DO NOT CONTAIN PROVISIONS THAT PROTECT THE RIGHT TO PRIVACY...NOT THAT THEY HAVEN'T TRIED TO GET THAT PROTECTION. THEY TOO, LOOK TO YOU FOR PROTECTION THAT EMPLOYERS ARE UNWILLING TO OFFER.

IN KANSAS, AS IN MOST OTHER STATES, AN EMPLOYER CAN GENERALLY FIRE YOU FOR ANY REASON, EVEN A BAD REASON, OR NO REASON AT ALL. AND WITH THAT POWER, IN MOST STATES, THEY CAN MAKE YOU SUBMIT TO URINE TESTS FOR WHAT YOU MIGHT HAVE DONE AT A PARTY TWO OR THREE WEEKENDS AGO OR WHAT YOU MIGHT HAVE HAD TO DRINK THE NIGHT BEFORE.

SOME OF THE LANGUAGE STRICKEN BY THIS AMENDMENT ADDRESSES EMPLOYEES WHO ARE APPARENTLY TRYING TO GET HELP WITH A DRUG OR ALCOHOL PROBLEM THROUGH AN EMPLOYEE ASSISTANCE PROGRAM OR OTHER TREATMENT PROGRAM.

ANY PROTECTION THEIR GOOD EFFORTS TO GET SOBER HAVE HAD UP TO NOW, WILL NO LONGER PROTECT THEM FROM THEIR EMPLOYER DECIDING TO SHOW THEM THE DOOR REGARDLESS OF THEIR EFFORTS IN GETTING TREATMENT.

IN EFFECT, THE EMPLOYER WASHES HIS HANDS OF THE PROBLEM AND THE STATE, VIA THE UNEMPLOYMENT OFFICE, WILL THROW HIM A TOWEL TO DRY OFF WITH BY TELLING THE TERMINATED EMPLOYEE..."YOU'LL GET NO UNEMPLOYMENT MONEY FROM US".