Approved: March 12, 1998
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 11, 1998 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, Gooch, Jordan, Ranson, Steffes, Steineger and Umbarger.

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:
Roger Werholtz, Deputy Secretary, Department of Corrections
Paul Bicknell, Department of Human Resources
Thomas A. Whitaker, Kansas Motor Carriers Association
Phillip Harness, Director, Workers Compensation Division
Wayne Maichel, AFL-CIO
Terry Leatherman, Kansas Chamber of Commerce and Industry

Others attending: See attached list

Upon motion by Senator Steineger, seconded by Senator Steffes, the Minutes of the March 6, 1998 Meeting were unanimously approved.

HB 2534 - Correctional inmates; eligibility for unemployment benefits

Roger Werholtz, Deputy Secretary, Department of Corrections, testified in support of **HB 2534**. Mr. Werholtz distributed a Memorandum from Secretary Charles E. Simmons, stating **HB 2534** clarifies that inmates are prohibited from receiving unemployment benefits while incarcerated. **HB 2534** codifies the Department of Human Resources' administrative practice of disqualifying incarcerated inmates from receiving unemployment compensation benefits while incarcerated. This request is a result of the "Prison Made Goods Act" which requires that offenders employed in a correctional industries program be ineligible to receive unemployment compensation while incarcerated. (Attachment 1)

Mr. Bicknell submitted recommendations from the Employment Security Advisory Council and asked that they be amended into **HB 2534**. Mr. Bicknell informed the Committee the Council requests three changes to K.S.A. 44-717 dealing with "payments in lieu of contributions"; striking the last sentence in subsection (h); and striking subsection (i) in its entirety. The striking of subsection (i) is a conformity issue dealing with the "withdrawal standard" required by the Department of Labor. (Attachment 2)

The Council recommends six additional changes, none of which are conformity issues, which provide employers with the same coverage requirements for both their state and federal unemployment compensation taxes resulting from the Taxpayer Relief Act of 1997 and the Balanced Budget Act of 1997. They are as follows: 1) Amend KSA 44-703(i)(4) by adding an exclusion from the definition of employment for certain "election workers"; 2) provide an exclusion for services for "non-profit elementary or secondary schools operated primarily for religious purposes"; 3) amend KSA 44-712(d) dealing with the administration of Reed Act fund; 4) amend KSA 44-716a allowing interest payments to employers to be paid out of the Special Employment Security Fund; 5) amend KSA 44-718(c) allowing for the continuous levy of individual benefit amounts to comply with the Internal Revenue Code; 6) amends subsection (d) which makes a technical change in the cite of the social security act which defines the legal process for purposes of intercepting child support.

Mr. Bicknell stated under the Federal Unemployment Tax Act, there is a federal unemployment levy tax of 6.2% on an employer's taxable payroll and a 5.4% offset credit is extended to Kansas employers as long as the state employment security law remains in conformity with federal legislation.

Senator Ranson moved, seconded by Senator Gooch that the Employment Security Advisory Council recommendations be amended into **HB 2534.** Senator Brownlee made a substitute motion seconded by Senator Jordan that all recommendations be adopted excluding "2)" above which excludes "services for non-profit elementary or secondary schools operated primarily for religious purposes". The substitute motion prevailed on a voice vote.

Senator Steffes moved, seconded by Senator Donovan that **HB 2534** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

HB 2531 - Workers compensation; motor carriers

Tom Whitaker, Kansas Motor Carriers Association, testifying in support of **HB 2831,** stated a *News & Views Article* published by the Division of Workers Compensation concerning HB 2011 passed in 1997 indicated it would be unlawful for a general contractor to charge back workers compensation insurance premiums to an independent contractor. This determination caused great anxiety throughout the motor carrier industry. In August, the *News and Views Article* reversed its earlier decision. As a result of the uncertainty created by these opinions, the Kansas Motor Carriers Association requested legislation to clarify the issue. (Attachment 3)

Mr. Whitaker stated the Motor Carrier industry has relied on independent owner-operators for years. They have invested substantial resources leasing to a licensed motor carrier under long-term leases to transport freight and they are not employees. The owner-operators are not paid a salary; they establish contracts with licensed motor carriers for a percentage of the freight revenue, paying their costs of insurance, fuel, license fees, federal heavy vehicle use tax and related costs incurred by the operation of their individually owned over-the-road equipment. **HB 2831** does not change current coverage requirements for owner-operators who elect not to be covered by an occupational accident insurance policy and is a guarantee that relationships between licensed motor carriers and independent owner-operators remain unchanged.

Phillip Harness, Director, Workers Compensation Division, stated the Workers Compensation Advisory Council considered the provision in **HB 2831** and took no action.

Wayne Maichel, AFL-CIO, stated the union has no concern regarding **HB 2831.**

Terry Leatherman, Kansas Chamber of Commerce and Industry, stated his association has no concern regarding **HB 2831**.

Senator Feleciano moved, seconded by Senator Barone that **HB 2831** be recommended favorable for passage and be put on the Consent Calendar. The recorded vote was unanimous in favor of the motion.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for March 12, 1998.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 11, 1998

NAME	REPRESENTING
Rod Bordert	KCCI
Tom Whitaker	KS Motor Carriers Assn
Leonard Ewell	KDOC
Roger Werholtz	KDOC
Jan Johnson	KDOC
Mark Bannister	KDOC&H
Paul Bicknell	KDHR
Linda Tierce	KDHR
Bill Layes	KDHR
Terry Leatherman	KCCI
Roger Trabert	KS Gov Consulting
Brad Thurman	Workers Comp.
Wayne Maichel	75, AFL-CIO
Jim McHaff	KS AFL-CIO

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

Date: March 11, 1998

To: Senate Commerce Committee

From: Charles E. Simmons
Secretary of Corrections

Re: HB 2534

The Department of Corrections supports HB 2534.

HB 2534 is intended to make it clear that inmates are prohibited from receiving unemployment benefits while incarcerated. As background, the Department of Corrections sought introduction of HB 2151 amending the provisions of K.S.A. 44-703 pertaining to the definition of "employment". However, after discussion with the Department of Human Resources during the 1997 legislative session, it appeared that a different statute should be amended, since HB 2151 in its current form, would have unintentionally denied federal tax credits to employers by limiting the definition of the term "employment". The Department of Human Resources advised that a better method of accomplishing the goal of the Bill would be through amendment of the benefit eligibility conditions established by K.S.A. 44-705. HB 2534 incorporates the Department of Human Resources' recommendation and accomplishes the intent of the Department of Corrections. HB 2534 directly prohibits inmates from receiving unemployment compensation while incarcerated irrespective of whether the offender had been employed prior to his or her incarceration or whether the offender would be entitled to receive unemployment compensation due to his or her participation in the correctional industry program once released from confinement.

The disqualification of an incarcerated offender from receiving unemployment compensation while incarcerated serves the purpose of insuring that any private industry employment will conform to the requirements of the federal "Prison Made Goods Act". The federal "Prison Made Goods Act" requires that offenders employed in a correctional industries program be ineligible to receive unemployment compensation while incarcerated.

Senate Commerce Committee

Date 3-11-98

Attachment # 1-1 thru 1-2

The Department of Corrections supports prohibiting incarcerated inmates from receiving unemployment benefits. Inmates in the custody of the department are employed both within the confines of correctional facilities in the private industry program and through the work release program. The Department of Human Resources has consistently found that inmates who are removed from private employment but remain incarcerated are "unavailable for work". However, this administrative finding may be subject to challenge on the ground that some employment opportunities, albeit limited, nonetheless exist within the confines of a correctional facility. Additionally, the federal Prison Made Goods Act, 18 U.S.C. § 1761, requires that inmates engaged in a correctional industry be ineligible to receive any payments for unemployment compensation while incarcerated.

Due to the requirement of federal Prison Made Goods Act and the absence of a need to extend unemployment compensation benefits to incarcerated inmates, the department urges that favorable consideration be given to HB 2534. This amendment would codify the Department of Human Resources' administrative practice of disqualifying incarcerated inmates from receiving unemployment compensation benefits while incarcerated.

CES/TGM/nd

cc: Legislation file

TESTIMONY

SENATE COMMERCE COMMITTEE

March 11, 1998

Good morning Madam Chair and members of the committee, my name is Paul Bicknell and I am the Chief of Contributions with the Department of Human Resources. I appear before you this morning to provide a briefing on the actions taken by the Employment Security Advisory Council and their recommendations.

For the new members on this legislative committee, I offer the following information. The Employment Security Advisory Council is composed of 12 members, four of whom come from the labor field, four from the employer community, and four from the public sector. The term of appointment for members is four years, and the terms are staggered. The Council recently voted Wayne L. Franklin, Secretary of Human Resources, as Council Chair and Reginald O. Davis, Director of Employment Security, as Vice-Chair. The Council meets as needed on the call of the Chair. The law states that the council "shall aid the secretary in formulating policies and discussing problems related to the administration of this act and in securing impartiality and freedom from political influence in the solution of such problems."

The Advisory Council met twice and acted on one mailing to consider legislative issues concerning the Employment Security Law raised by department staff and council members. Their recommendations are as follows and are attached to this testimony in balloon versions of the law.

1. In it's December meeting, the council voted to make three changes to K.S.A. 44-717. The first change was made to provide some clarification to subsection (a) dealing with "payments in lieu of contributions." The second change was to strike out the last sentence in subsection (h). This language was added by passage of S.B. 140 during the last session and as a result the U.S. Department of Labor has informed the agency that the language presents a conformity issue dealing with the "withdrawal standard." The third change was to strike out the entire subsection (i) which is no longer applicable.

2. The council also considered seven additional possible changes to the Employment Security Law during their January meeting. These changes were proposed as a result of the passage of the Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997. The council recommended six of the changes be forwarded for legislative consideration. The council also considered a mailing regarding one additional issue and recommended the change. None of these are conformity issues; however, by adopting these amendments, employers will have the same coverage requirements for both their state and federal Unemployment Compensation Taxes.

There are two changes that amend K.S.A. 44-703(i)(4) by adding an exclusion from the definition of employment for certain "election workers" and services for "non-profit elementary or secondary schools operated primarily for religious purposes." An amendment to K.S.A. 44-703(o), which excludes "educational assistance to an employee" from the definition of wages. An amendment to K.S.A. 44-712(d), dealing with the administration of Reed Act funds. An amendment to K.S.A. 44-716a that allows interest payments to employers to be paid out of the Special Employment Security Fund. And finally,

two amendments to K.S.A. 44-718 in which subsection (c) allows for the continuous levy of an individual's benefit amount in accordance with Section 6331 of the federal internal revenue code of 1986 and subsection (d) makes a technical change in the cite of the social security act which has a definition of the legal process for purposes of intercepting child support obligations from an individual's benefit amount.

The only proposed change that presents a conformity issue with the U.S. Department of Labor is the change necessary to K.S.A. 44-717(h). Again, for the new members on this committee, federal sanctions can be levied against Kansas if state laws or agency practices are not consistent with federal requirements. Under the Federal Unemployment Tax Act, commonly known as FUTA, which is found in the Internal Revenue Code of 1986, levies federal unemployment tax of 6.2% on an employer's taxable payroll. A 5.4% offset credit is extended to Kansas employers as long as the Kansas Employment Security Law remains in conformity with federal legislation.

Federal authorizing statutes are found in FUTA and in Titles III and IX of the Social Security Act. These measures require that each state establish and operate an Unemployment Insurance program which conforms to federal statutes, rules and regulations. Conformity is ensured through the funding process and through the above mentioned offset provisions for Kansas employers. Nonconformity would result in lost employer tax credits and reduced administrative funding.

This concludes my briefing on the actions taken by the Employment Security Advisory Council. We respectfully request that the attached recommendations be amended into House Bill 2534 and considered by this committee.

44-717. Collection of employer payments; penalties and interest, past-due reports and payments; priorities; liens, enforcement; seizure and the sale of property; procedure; refunds; cash deposit or bond; liability of officers and stockholders and members and managers of limited liability companies. (a) Penalties *on past-due reports, interest on past-due contributions, payments in lieu of contributions and benefit cost payments*. Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection (a) for each month or fraction of a month until the report or return is received by the secretary of human resources. The penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than $25 nor more than $200 for each such report or return not timely filed. ~~Payments in lieu of contributions shall be filed by the last day of the month following the close of each calendar quarter to which they are related.~~ Contributions and benefit cost payments ~~not filed~~ by the last day of the month following the last calendar quarter to which they are related, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of human resources except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of human resources that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of human resources may abate any penalty or interest or portion thereof provided for by this subsection (a). Interest amounting to less than $1 shall be waived by the secretary of human resources and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a and amendments thereto shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. ~~A~~ wage report, a contribution return, a contribution, a payment in lieu of contribution or a benefit cost payment is deemed filed as of the date it is placed in the United States mail.

unpaid

and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges

For purposes of this subsection, a

to be

or paid

lieu of contributions, benefit cost payments, interest and penalty have been paid.

(g) *Remedies cumulative*. The foregoing remedies shall be cumulative and no action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action under this section to the exclusion of any other remedy or action for which provision is made.

(h) *Refunds*. If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments or interest under this law and the secretary of human resources determines that such amount or any portion thereof was erroneously collected, except for amounts less than $1, the secretary of human resources shall allow such individual or organization to make an adjustment thereof in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of human resources shall refund the amount, except for amounts less than $1, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, benefit cost payments or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of human resources shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968 and amendments thereto shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section. ~~Such interest may be deducted from subsequent contributions or as part of a refund as described in this subsection and in subsection (i).~~

~~(i) *Refund for reimbursing employer*. Upon termination of an employer's business or termination of any election to make payments in lieu of contributions, a reimbursing employer may file for a refund of any payments made to the fund which are in excess of any regular or extended benefits which have been charged or could become chargeable to the reimbursing employer's account. No refund may be made within a twenty-four-month period following termination of a reimbursing employer's business or election for payments in lieu of contributions.~~

(4) The term "employment" shall not include:

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(aa) is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(bb) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes; and

(iv) for purposes of this act, a sale or a sale resulting exclusively form a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection.

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000.

(X) service performed for an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a) of the federal internal revenue code of 1986.

(o) "Wages" means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total $20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died; or

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986.

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds, but shall be maintained in separate bank accounts.

(c) *Withdrawals*. Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and warrants for the payment of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812 and amendments thereto shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) *Administrative use*. (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged.

(2) Money credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

44-716a. Special employment security fund; creation; authorized expenditures and transfers. (a) There is hereby created in the state treasury a special fund to be known as the special employment security fund. All interest and penalties collected under the provisions of the Kansas employment security law shall be paid into this fund. No such moneys shall be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which in the absence of such moneys would be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent such moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Except as otherwise authorized by this section or by appropriations act, the moneys in this fund may be used by the secretary of human resources only for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants, or other funds, received for or in the employment security administration fund. In addition to the other purposes for which expenditures may be made from the special employment security fund as authorized by this section or by appropriations act, moneys from this fund may be used to finance activities as deemed necessary by the secretary of human resources for the efficient operation of activities under or the administration of the employment security law, except that (1) no moneys shall be used for such purposes unless the secretary has determined that no other funds are available or can be properly used to finance expenditures for such purposes, and (2) expenditures during any fiscal year for purposes authorized under this section shall not exceed $110,000 except upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c and amendments thereto. No expenditures of this fund shall be made except on written authorization by the governor and the secretary of human resources.

(b) The director of accounts and reports is hereby directed to draw warrants upon the state treasurer against the money in the special employment security fund for the use and purposes authorized under this section upon vouchers, approved by the secretary of human resources, and accompanied by the written authorization of the governor and the secretary of human resources. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the federal social security act, as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the secretary of human resources for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund, except as otherwise authorized in subsection (c) or subsection (d).

(c) In addition to expenditures authorized by this section, the director of accounts and reports may transfer funds from the special employment security fund to the accounting services recovery fund as provided in K.S.A. 75-3728b and 75-6210 and amendments thereto.

(d) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the department of human resources federal indirect cost offset fund on July 1 of each year in the amount contained in appropriation bills to be expended from the federal indirect cost offset fund for that fiscal year.

(e) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the clearing account of the employment security fund to be expended in the payment of interest due employers from erroneously collected contributions or benefit cost payments as provided in K.S.A. 44-717(h).

L. 1976, ch. 227, § 1; L. 1979, ch. 159, § 7;
L. 1981, ch. 205, § 3; L. 1983, ch. 169, § 8;
L. 1984, ch. 147, § 11; L. 1986, ch. 191, § 5;
L. 1992, ch. 74, § 4; L. 1995, ch. 71, § 2;
Amended 1997 S.B. 140, July 1

44-718. Protection of rights and benefits; penalties. (a) *Waiver of rights void.* No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by an individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than $100 nor more than $1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of human resources or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of human resources or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of human resources. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than $50 nor more than $500, or imprisoned for not more than six months, or both.

(c) *No assignment of benefits; exemptions.* No assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

(d) *Support exception.* (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations as defined under paragraph (7). If any such individual discloses that such individual owes support obligations, and is determined to be eligible for unemployment compensation, the secretary shall notify the state or local support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual that owes support obligations as defined under paragraph (7):

(A) The amount specified by the individual to the secretary to be deducted and withheld under this subsection, if neither (B) nor (C) is applicable; or

(B) the amount, if any, determined pursuant to an agreement submitted to the secretary under section 454(20)(B)(i) of the social security act by the state or local support enforcement agency, unless subparagraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in section ~~462(e)~~ 459(i)(5) of the social security act) properly served upon the secretary.

(3) Any amount deducted and withheld under paragraph (2) shall be paid by the secretary to the appropriate state or local support enforcement agency.

except in accordance with Section 6331 of the federal internal revenue code of 1986, and shall be exempt from,

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"If you've got it, a truck driver brought it!"

KMCA 61 YEARS

LEGISLATIVE TESTIMONY

by the

Kansas Motor Carriers Association

Supporting House Bill No. 2831 – An act concerning workers compensation; relating to subcontracting by licensed motor carriers.

Presented to the Senate Commerce Committee
Senator Alicia Salisbury, Chairman
Wednesday, March 11, 1998

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Tom Whitaker, director of governmental relations and membership services for the Kansas Motor Carriers Association. We appear here this morning representing our more than 1,350 member firms and the Kansas trucking industry. We ask for your support of House Bill No. 2831.

In July of 1997, the Division of Workers Compensation published a *News & Views Article* concerning the provisions of House Bill No. 2011. This publication indicated that it would be unlawful for a general contractor to charge back workers compensation insurance premiums to an independent subcontractor. The prohibition against the ability to "charge back" premiums also was published in the Kansas Association of Insurance Agent's *Technical Advisory, 1997 No. 3.* This determination sent a shock wave throughout the motor carrier industry.

Senate Commerce Committee
Date 3-11-98
Attachment #3-1 thru 3-3

The ability to "charge back" premiums for workers compensation insurance to independent owner-operators has been a long-standing business practice for the trucking industry. In late August of 1997, the Division of Workers Compensation issued a revised *News and Views Article* reversing its earlier decision. The uncertainty created because of these advisory opinions is the reason the Kansas Motor Carriers Association requested House Bill No. 2831.

Our industry has relied on quality, independent owner-operators for many years. These independent businessmen have invested substantial resources to earn a living leasing to a licensed motor carrier under a long-term lease to transport freight. These independent owner-operators are not employees.

Such owner-operators are not paid a salary. They establish contracts with a licensed motor carrier for a percentage of the freight revenue. Owner – operators also pay the costs of insurance, fuel, license fees, federal heavy vehicle use tax and related costs incurred by the operation of their individually owned over-the-road equipment.

H.B. 2831 will not change current coverage requirements for owner-operators who elect not to be covered by an occupational accident insurance policy. The bill makes the following changes to Kansas's law governing independent owner-operators leased to licensed motor carriers:

- Removes language in K.S.A. 44-503(h) concerning owner-operators and places current law in a new section of the Kansas statutes.

- Amends the current definition of "licensed motor carrier" by adding, "certificate of public service" to the list of necessary authorities. This provision reflects congressional amendments to section 211 of the Airport Improvement Bill of 1994.
- Affirms in Kansas' law the current industry practice of charging back workers compensation insurance premiums to an owner-operator when so stated in a lease agreement or contract.

H.B. 2831 is a straightforward approach to guarantee that relationships between licensed motor carriers and independent owner-operators remain unchanged. We respectfully request your favorable consideration of H.B. 2831.

Thank you for the opportunity to appear before you today. We would be pleased to respond to any questions you may have.