

## MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR.

The meeting was called to order by Chairperson Al Lane at 9:02 a.m. on February 3, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. Broderick Henderson - excused

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

Conferees appearing before the committee: Rep. Bob Bethell  
Rep. Melany Barnes  
Rep. Dave Gregory  
Terry Leatherman, KCCI  
Art Brown, MLA  
Mike Helbert, KTL  
Wayne Maichel, KS AFL/CIO

Others attending: See attached list

Rep. Grant made a motion to approve the minutes of February 2, 1999, as written. The motion was seconded by Rep. Swenson. The motion passed.

Chairman Lane made an announcement that all fiscal notes would be copied and given to all members of the committee. The fiscal notes from Duane Goossen of the Budget Department usually contain an easy to read short explanation of the bills. Handed out today were fiscal notes for **HB 2068** and **HB 2075**. He also made announcements about upcoming meetings concerning the briefings on unemployment tax and the review of the post audit report on workers' compensation.

Introduction of Bills:

Rep. Bob Bethell asked the committee to introduce a bill concerning the exempting of an employer due to workers comp claims from any liability when the injury or death of an employee results from the gross negligence of the employer or the injury or death results from the gross negligence of a co-worker acting within the scope of his or her employment for the common employer. Rep. Swenson made a motion to introduce the bill as a committee bill. Rep. Long seconded the motion. The motion carried.

Rep. Melany Barnes made a motion to introduce a bill that would add to current statute the language that in case of gross negligence or criminal conduct by employers or workers, that the deceased workers' heirs would be able to file civil suits against the employers for their injuries or losses. It is her understanding that current statute doesn't provide adequate incentives for employers to maintain safe work places. The motion was seconded by Rep. Swenson. The motion passed.

**Hearing on: HB 2068 - Unemployment law; absenteeism policy-rebuttable presumption.**

Rep. Dave Gregory appeared as a proponent of **HB 2068**. Many small employees do not have an employee's handbook that spells out their employer's policy about misconduct and absenteeism. The bill addresses what he thinks are four shortcomings present in the current unemployment laws, one of which is to furnish the employee with a handbook. (See Attachment 1) Included with his testimony is a balloon with two changes.

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), explained why KCCI supports the bill and encouraged the committee's careful review of the subject of chronic absenteeism within the state's employment security law. He also included some new language KCCI would request added to the legislation. (See Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE, Room 521-S  
Statehouse, at 9:02 on February 3, 1999.

Art Brown, Mid-America Lumbermens Association (MLA), appeared before the committee as a proponent of the bill. When talking with the members of the association, absenteeism and misconduct are the most expressed common concerns. He thought the author of the bill is generous in allowing a five day window for an employee to justify absenteeism, that three days might accomplish the same effect. (See Attachment 3)

Mike Helbert, Vice-president for legislation for the Kansas Trial Lawyers Association, appeared as a proponent of **HB 2068**. Included in his testimony is an amendment which they feel will more closely accord with the intent of the legislation. (See Attachment 4)

Wayne Maichel, Kansas AFL/CIO, appeared as an opponent of the bill, but would withdraw their opposition with one minor change on line 29, page 5. They would strike ~~satisfactory explanation~~ and insert the phrase *good cause*. (See Attachment 5) He also made the recommendation that if many amendments were added when the bill was acted upon, that it should go to the Employment Security Advisory Council (ESAC).

No others were present to testify for or against the bill and the hearing on **HB 2068** was closed by Vice-Chairman Beggs.

The meeting was adjourned at 9:38 a.m.

The next meeting is scheduled for February 4, 1999.

# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE February 3, 1999

NAME	REPRESENTING
Paul Bicknell	KDHR
Bob Lierz	KDHR
Linda Tierce	KDHR
Bob Bethell	Dist 113
Art Braun	Mid Bus Lumbermen (M.L.A.)
Dave Gregory	Dist 94
Wayne Mankie	KS AFL-CIO
Janet Stubbins	Ks Bldg. Ind. Assn.
Michael Helbert	Ks Trial Lawyers Assn
Jim Humphrey	Ks Trial Lawyers Assn.
Harold Pridde	Pridde & Assoc.
Richard Christmith	Employers Unity Inc.
Orin McJannet	Leadership Journeymen - Lansing
Gene M. Stubbins	KTCA
Elaine Episkie	Div. of the Budget



TOPEKA

HOUSE OF  
REPRESENTATIVES

HB2068

Testimony Before The House Committee On  
Business, Commerce & Labor on HB2068  
February 3, 1999  
Representative Dave Gregory

Thank you Chairman Al Lane and distinguished members of The Business, Commerce, & Labor Committee for the opportunity to speak to you today about a common sense approach to Unemployment Law fairness.

Several very small business owners and a constituent have complained to me regarding how the Department Of Human Resources handles Unemployment claims. HB2068 is designed to be a solution to the problems that these and other Kansas business owners and constituents have or may face.

HB2068 addresses four shortcomings present in the current unemployment law. The first three provisions relate and address the problems faced by the three very small employers. The final point deals with the constituent who was denied benefits because she refused to participate in an illegal act and was subsequently terminated for her refusal to violate the law. Please consider this bill as a step to foster a fairer Unemployment Law.

These provisions in HB2068 make the following four improvements:

1. HB2068 assumes the employer has provided the employee with a copy of the employee handbook, unless the employee can prove otherwise.
2. If the employer does not have a written employee policy, HB2068 puts in place a fall back provision which may assume an employee abandoned his job after five days of unauthorized absence.
3. Under provisions of this bill, an employer's burden of proof for misconduct in relationship to absenteeism cases changes from substantial

HOUSE BUSINESS, COMMERCE & LABOR COMM.  
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Attachment 1

DAVE GREGORY

REPRESENTATIVE, NINETY-FOURTH DISTRICT

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STATE CAPITOL, 156-E

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COMMITTEE ASSIGNMENTS

TAXATION  
KANSAS 2000  
JUDICIARY

to a preponderance of evidence. The employer must prove absenteeism with a preponderance of evidence. The employer is still required to prove the employee's misconduct, but it takes a more reasonable and balanced approach of a burden of proof.

4. Individuals who are asked by the employer to perform a service or commit an act, that is in violation of an ordinance, and are subsequently terminated for refusal to commit the illegal act, will now be covered under this unemployment plan.

In conferring with other unemployment compensation experts they suggested language that improves and clarifies the bill. I have attached a balloon amendment for your consideration.

I applaud your efforts to deal with misconduct and absenteeism issues in a fair and responsible manor. Thank you for your attention and I ask for your consideration and that you recommend HB 2068 with its amendments favorable for passage.

1-3

1 States department of health and human services or licensed by the de-  
2 partment of health and environment, except that a blood sample may be  
3 tested for alcohol content by a laboratory commonly used for that purpose  
4 by state law enforcement agencies;

5 (E) the test was confirmed by gas chromatography, gas chromatog-  
6 raphy-mass spectroscopy or other comparably reliable analytical method,  
7 except that no such confirmation is required for a blood alcohol sample;  
8 and

9 (F) the foundation evidence must establish, beyond a reasonable  
10 doubt, that the test results were from the sample taken from the  
11 individual.

12 (3) For the purposes of this subsection (b), misconduct shall include,  
13 but not be limited to repeated absence, including lateness, from sched-  
14 uled work if the facts show:

15 (A) The individual was absent without good cause;

16 (B) the absence was in violation of the employer's written absentee-  
17 ism policy;

18 (C) the employer gave or sent written notice to the individual that  
19 future absence will result in discharge; and

20 (D) the employee had knowledge of the employer's written absen-  
21 teeism policy.

22 For the purposes of paragraph (3) of this subsection (b), the ~~employee's~~  
23 production of a written absenteeism policy shall create a rebuttable pre-  
24 sumption that the employer furnished a copy of the absenteeism policy to  
25 the employee. If the employer does not have a written absenteeism policy  
26 or if the employee establishes that the employer failed to provide a copy  
27 of the absenteeism policy to the employee, the employee's unauthorized  
28 absence from work for a period of five consecutive working days, for  
29 which the employee does not ~~provide a satisfactory explanation~~, may be  
30 considered by the employer as abandonment of the job, a presumed res-  
31 ignation by the employee, and repeated absence within the meaning of  
32 paragraph (3) of this subsection (b). The employer shall establish the em-  
33 ployee's misconduct based upon absenteeism by a preponderance of the  
34 evidence.

employer's

show good cause

35 (4) An individual shall not be disqualified under this subsection (b)  
36 if the individual is discharged under the following circumstances:

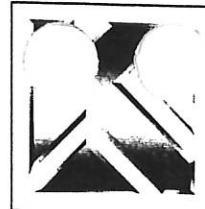
37 (A) The employer discharged the individual after learning the indi-  
38 vidual was seeking other work or when the individual gave notice of future  
39 intent to quit;

40 (B) the individual was making a good-faith effort to do the assigned  
41 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-  
42 formance due to inability, incapacity or lack of training or experience, (iii)  
43 isolated instances of ordinary negligence or inadvertence, (iv) good-faith



# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



web: [www.kansaschamber.org](http://www.kansaschamber.org)

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HB 2068

February 3, 1999

## 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:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why KCCI supports HB 2068 and would encourage this Committee's careful review of the subject of chronic absenteeism in the state's employment security law.

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 47% 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.

Permit me to begin with the basics. Unemployment compensation benefits are intended to benefit individuals who have become unemployed through "no fault of their own." Traditionally,

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Attachment 2

Kansas law has made clear that people who cause their unemployment through their own misconduct at work, are not unemployed through "no fault of their own," and are not entitled to benefits. One of the specific areas in the law where misconduct is declared involves employees who are dismissed for "chronic absenteeism."

Current law establishes several steps that an employer must meet to establish chronic absenteeism constitutes misconduct. Those steps are:

1. The employee was absent, without good cause;
2. The absence violated a business' written absenteeism policy;
3. The employee was sent written notice that future absence will lead to discharge, and;
4. The employee knew about the written absenteeism policy.

Attached to my testimony are some statistics regarding misconduct, due to chronic absenteeism. The first page shows there were nearly 3,700 unemployment cases where absenteeism misconduct was alleged in fiscal year 1997. 65% of the time, the employer's suggestion of misconduct was rejected and the employee was cleared for unemployment benefits. Slightly more than a third of the time (35%) was the employee denied unemployment, due to chronic absenteeism.

The next sheet takes a closer look at the 2,376 times an employee was cleared for benefits in FY 1997, in spite of the claim of chronic absenteeism. Nearly half the time, the employee received benefits because it was decided the employee was absent for "good cause." 41% of the time the clearance was because an employer did not send a written notice to the workers that further absence would lead to discharge, even though the employee had been excessively absent or late. There were 50 cases that fell into the category addressed by HB 2068, where an employee's absence did not violate the company's absenteeism policy.

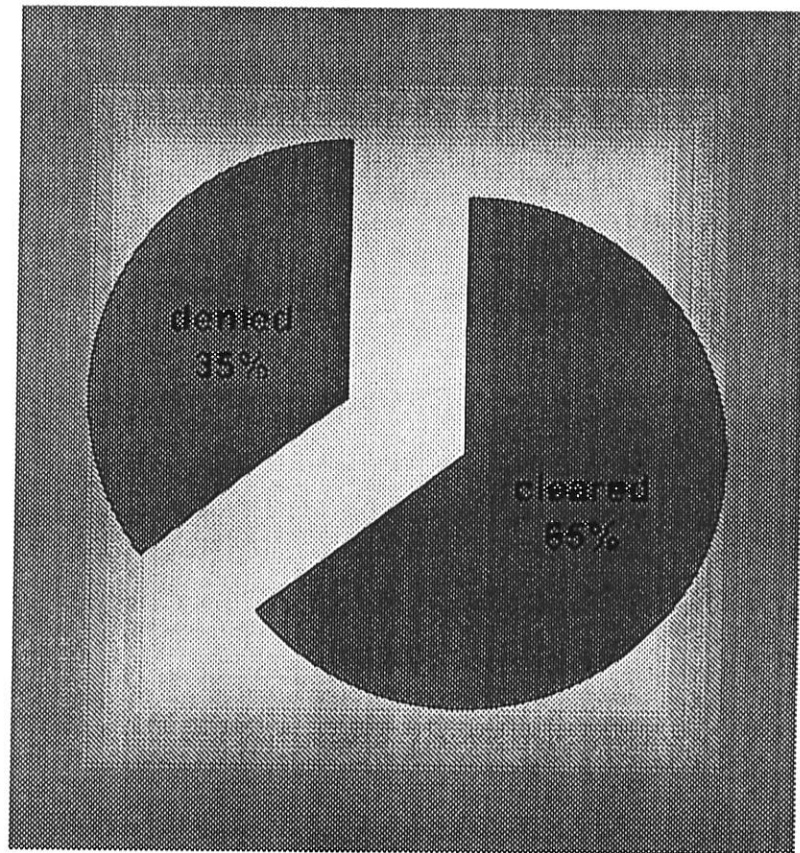
From the Kansas Chamber's perspective, these statistics raise a concern. The absenteeism of some workers would justify a misconduct declaration by the spirit of the law, but they are awarded benefits by a technicality. HB 2068 would address cases where an employee abandons work, yet qualifies for benefits because an employer does not have a written absenteeism policy. However, KCCI would request the Committee consider several other changes to this area of the law. These changes are attached.

Mr. Chairman, thank you for the opportunity to comment on HB 2068 and the absenteeism provision in the Kansas Employment Security Law. I would be happy to answer any questions. 2-2



# Unemployment Compensation Absenteeism Misconduct

- In FY '97, there were 3,680 cases classified as absenteeism
- In 1,304 cases (35%) benefits were denied
- In 2,376 cases (65%) the employee was cleared for benefits



# Unemployment Compensation Absenteeism Misconduct

Absent with good cause	1,131	48%
Absent, but no written notice	849	36%
Late, but no written notice	123	5%
Replaced while on leave	74	3%
Absence did not violate policy	50	2%
Late with good cause	47	2%
Other reason for clearance	102	4%

KSA 44-706

(3) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeat absence, including lateness, from scheduled work if the facts show:

(A) The individual was absent without good cause;

(B) The absence was in violation of the employer's written absenteeism policy;

(C) The employer gave or sent written notice to **the last known address of** the individual that future absence **may, or** will result in discharge; and

(D) The employee had knowledge of the employer's written absenteeism policy.

(E) **If an employee disputes being absent without good cause, the employee shall present evidence that a majority of the absences, including lateness, were for good cause.**



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## MID-AMERICA LUMBERMENS ASSOCIATION

### TESTIMONY

# HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE

**FEBRUARY 2, 1999**      *House Bill 2068*

*Mister Chairman, and members of the Business , Commerce and Labor Committee. My name is Art Brown, and I appear before you today representing the retail lumber and building material dealers in the State of Kansas as a proponent of HB 2068.*

*I have had several opportunities to visit not only with our members, but several small business owners in a variety of venues including seminars, meetings, and discussion groups. Although these folks share a variety of concerns, absenteeism and misconduct are the most expressed common concerns. HB 2068 gives certain employers the latitude to deal with covering a situation where an absenteeism policy is not in place. Let's start by saying that many companies already have a policy which addresses the area of misconduct as addressed in the*

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Attachment 3

language of the bill on page 5. I have attached 2 such policies to my testimony. One is with a Kansas company who has a 3 day maximum for unexplained missed days of employment. The other is a "fill in the blank" policy regarding the same situation for a generic employment manual to any business regardless of size or business type. The language in HB 2068 addresses a situation where no such policy exist. It seems the author of the bill is being generous in allowing a 5 day window for an employee to justify absenteeism from their place of employment. It would seem that 3 days would accomplish the same effect as 5 and be less costly to the impacted business. We would bow to the wisdom of the Committee in this matter. The language in this bill would appear to address one of the concerns we have regarding this misconduct situation. To us, it just seems difficult to argue with the common sense that is the intent of the language in this bill. We hope you agree and support this part of the bill for passage.

We also totally support the language on page 6 lines 5 - 8. I was surprised to learn that such language was not already in statute. As a policy of our membership and our Board of Directors, we would never condone an action that would put an employee in a position of knowingly breaking a law or ordinance. If any employer we represent would violate this policy, I can speak for our Board of Directors and state that they should reap what they sow if they participate in such an activity. This issue is a "no-brainer" and the language has our total support.

I thank you for giving me the opportunity regarding the issues in HB 2068. It is

*pg. 3--Testimony on HB 2068--House Bus. Com. & Labor Comm.--Feb 2, 1999*

*our hope that when you give your consideration to this bill, that you see the merits of its intent, and recommend the bill favorably for passage. I will stand for any questions or comments regarding this testimony.*



## ATTENDANCE AND PUNCTUALITY

701:2

6) Employees will not be required or permitted to work any period of time before or after scheduled starting or quitting times for the purpose of making up time lost because of tardiness, unauthorized absence, authorized absence, or any other reason if the result will be that the employee works more than forty hours during the workweek. All make-up time or overtime needs to be approved by the supervisor.

7) Employees must report to their supervisor after being late or absent, give an explanation of the circumstances surrounding their tardiness or absence, and, when applicable, certify that they are fit to return to work. The supervisor should record the information in the employee's file and forward a copy to the Personnel Department. When appropriate, the supervisor should counsel the employee on the importance of good attendance and warn that excessive tardiness or absences may lead to discipline, up to and including termination.

8) Employees must obtain permission from their supervisor in order to leave the Company premises during working hours.

9) Unauthorized or excessive absences or tardiness will result in disciplinary action, up to and including termination. An absence is considered to be unauthorized if the employee has not followed proper notification procedures or the absence has not been properly approved. Absences in excess of those allowed in Policies 702 and 703, and tardiness or early departure (i.e., beyond ten minutes of starting or quitting time) more than three times in a three-month period generally are grounds for discipline.

10) Employees who are absent from work for three consecutive days without giving proper notice to the Company will be considered as having voluntarily quit. At that time, the Company will formally note the termination and advise the employee of the action by mail (preferably certified) to the employee's last known address.

## NO SOLICITATION

In the interest of maintaining a proper business environment and preventing interference with work and inconvenience to others, employees may not distribute literature or printed materials of any kind, sell merchandise, solicit financial contributions or solicit for any cause during working time. Furthermore, employees may not distribute literature or printed material of any kind in working areas at any time.

Non-employees are likewise prohibited from distributing material or soliciting employees on Company premises at any time.

Working time includes the working time of both the employee doing the soliciting and distributing and the employee to whom the soliciting or distributing is being directed.

## ATTENDANCE AND PUNCTUALITY

Regular attendance and punctuality are very important at \_\_\_\_\_ Company. Employees are expected to begin and end work on schedule. The Company recognizes that circumstances beyond an employee's control may cause him to be absent from work. However, excessive absenteeism or tardiness in connection with scheduled work times, breaks and meal periods will result in disciplinary action up to and including discharge.

Should an employee be unable to report to work due to illness, he must notify the \_\_\_\_\_ by \_\_\_\_\_ a.m. on each day of the absence. Failure to properly notify the Company will result in an unexcused absence.

If an employee is absent more than \_\_\_\_\_ consecutive workdays, a statement from a physician may be required before the employee is permitted to return to work.

Employees who are absent from work for \_\_\_\_\_ consecutive days without giving proper notice to the Company will be considered to have voluntarily resigned.

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**Testimony Before the House Business, Commerce and Labor Committee  
House Bill #2068**

Representative Al Lane -- Chairman

Good Morning, my name is Michael Helbert, I am a resident of Emporia, Kansas. I am also the Vice-president for legislation for the Kansas Trial Lawyers Association. I am here on behalf of the Kansas Trial Lawyers Association to speak in favor of House Bill #2068. We would however, like to offer a friendly amendment to that legislation. We would propose that on page 6 line 7 that the language occurring after the word "which" be stricken and that the following language be substituted "the employee reasonably believes is a violation of an ordinance or statute."

We are proposing this modest change because we feel that it will more closely accord with the intent of this legislation. The legislation was obviously designed to provide some protection for an employee who had been discharged for whistle blowing activity. Under the circumstances, most of the public may know when something is wrong, but they may not know that it is a violation of a specific ordinance or a statute. If we include this language, an employee who has a reasonable belief that doing such an act would violate an ordinance or a statute, would be provided some protection under our laws.

We believe that such a change is good public policy, and would more appropriately provide protection to individuals who may not know with a certainty that an act or service would be in violation of any particular local ordinance or state law. We hope that this change meets with the approval of the committee and believe it is in the best interests of the citizens of the state of Kansas.

Thank you.

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Attachment 4

4-2

1 errors in judgment or discretion, or (v) unsatisfactory work or conduct  
2 due to circumstances beyond the individual's control; or

3 (C) the individual's refusal to perform work in excess of the contract  
4 of hire; or

5 (D) *the individual was instructed or requested by the employer, a  
6 supervisor or a fellow employee to perform a service or commit an act in  
7 the scope of official job duties, which is in violation of an ordinance or  
8 statute.*

the employee reasonably believes  
is a violation of an ordinance or statute.

9 (c) If the individual has failed, without good cause, to either apply  
10 for suitable work when so directed by the employment office of the sec-  
11 retary of human resources, or to accept suitable work when offered to  
12 the individual by the employment office, the secretary of human re-  
13 sources, or an employer, such disqualification shall begin with the week  
14 in which such failure occurred and shall continue until the individual  
15 becomes reemployed and has had earnings from insured work of at least  
16 three times such individual's determined weekly benefit amount. In de-  
17 termining whether or not any work is suitable for an individual, the sec-  
18 retary of human resources, or a person or persons designated by the  
19 secretary, shall consider the degree of risk involved to health, safety and  
20 morals, physical fitness and prior training, experience and prior earnings,  
21 length of unemployment and prospects for securing local work in the  
22 individual's customary occupation or work for which the individual is rea-  
23 sonably fitted by training or experience, and the distance of the available  
24 work from the individual's residence. Notwithstanding any other provi-  
25 sions of this act, an otherwise eligible individual shall not be disqualified  
26 for refusing an offer of suitable employment, or failing to apply for suit-  
27 able employment when notified by an employment office, or for leaving  
28 the individual's most recent work accepted during approved training, in-  
29 cluding training approved under section 236(a)(1) of the trade act of 1974,  
30 if the acceptance of or applying for suitable employment or continuing  
31 such work would require the individual to terminate approved training  
32 and no work shall be deemed suitable and benefits shall not be denied  
33 under this act to any otherwise eligible individual for refusing to accept  
34 new work under any of the following conditions: (1) If the position offered  
35 is vacant due directly to a strike, lockout or other labor dispute; (2) if the  
36 remuneration, hours or other conditions of the work offered are substan-  
37 tially less favorable to the individual than those prevailing for similar work  
38 in the locality; (3) if as a condition of being employed, the individual would  
39 be required to join or to resign from or refrain from joining any labor  
40 organization.

41 (d) For any week with respect to which the secretary of human re-  
42 sources, or a person or persons designated by the secretary, finds that the  
43 individual's unemployment is due to a stoppage of work which exists be-

4-2

**TESTIMONY BROUGHT TO THE  
HOUSE, COMMERCE, LABOR & BUSINESS COMMITTEE**

**February 4, 1999**

**BY: Wayne Maichel, Executive Vice President, Kansas AFL-CIO**

Mr. Chairman, members of the committee, we appreciate the opportunity to appear before your committee and present our views on H.B. 2068. Although we appear as opponents of this legislation, we don't believe H.B. 2068 will have much impact on laid off Kansas workers.

We would withdraw our opposition entirely, with one minor change on line 29, page 5. We would strike (satisfactory explanation) and insert the phrase (good cause).

We believe this would be consistent with other provisions in the Employment Security Law.

Mr. Chairman and members of the committee, if any of you have any questions, I would be happy to try to answer them.

Thank you.

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2-3-99  
Attachment 5