

## 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 March 4, 1999 in Room 521-S of the Capitol.

All members were present except:   Rep. Phyllis Gilmore - excused  
   Rep. Broderick Henderson - excused  
   Rep. Rick Rehorn - 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:

Donald Rathbone, Legislative Chairman, Board of Technical Professions  
 Ron Gaches, Ks Society for Professional Engineers  
 George Barbee, Ks Consulting Engineers  
 Trudy Aron, AIA Kansas  
 Terry Leatherman, KCCI  
 Wayne Maichel, Ks AFL/CIO

Others attending: See attached list

Rep. Grant made a motion to approve the minutes of February 23 and 24 as written. The motion was seconded by Rep. Ruff. The motion passed and the minutes were approved as written.

Fiscal Notes for **HB 2520**, **HB 2427**, **Sub for SB 270** (Revised) were handed out to the committee.

**Hearing on: HB 2427 - State board of technical professions, clarifying exemptions from regulation and licensure requirements.**

Donald Rathbone, Legislative Chairman, Board of Technical Professions, appeared as a proponent of the bill. The Board proposed the bill for minor clarification of the statutes concerning the technical professions. The changes arose out of a district court case that overturned a ruling made by the Board that an unlicensed designer had violated the statutes. Attached to his testimony are letters supporting the changes from: Anna Marie Kinerk, Metropolitan Kansas City Chapter of the International Conference of Building Officials; Jim Yonally, Kansas Society of Land Surveyors; Rich Sternadori, Johnson County Building Officials Association, City of Prairie Village; Jim Hendershot, International Conference of Building Officials, City of Arkansas City; and Deborah S. Van Deun, American Society of Landscape Architects, Prairie Gateway Chapter. He ended his testimony by answering questions from the committee. (See Attachment 1)

Ron Gaches, Kansas Society for Professional Engineers (KSPE), testified that the bill will promote public safety by ensuring that all structures constructed in Kansas that might be used for any public use will be subject to the rigorous standards of a licensed Professional Engineer. (See Attachment 2)

George Barbee, representing Kansas Consulting Engineers (KCE), testified that the bill would clarify any future question in regard to interpretation of the statutes and allow the board to meet its statutory charge "...to safeguard the life, health, property and welfare of the public." (See Attachment 3)

Trudy Aron, American Institute of Architects (AIA Kansas), testified in support of **HB 2427**. The changes made in the bill are necessary to protect the occupants of buildings used as places of employment and/or those open to the public. The bill will require that licensed engineers design the engineering systems that are used in these buildings. (See Attachment 4)

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S Statehouse, at 9:02 a.m. on March 4, 1999.

No others were present to testify for or against **HB 2427** and Chairman Lane closed the hearing.

**Final Committee Action on HB 2427 -State board of technical professions, clarifying exemptions from regulation and licensure requirements.**

Rep. Swenson made a motion to pass out **HB 2427** favorably and place it on the Consent Calendar. The motion was seconded by Rep. Ruff. The motion carried.

**Hearing on: Sub. for SB 270 by Committee on Commerce - Employment security law, employer negative account surcharge, grounds for benefit disqualification.**

Bob Nugent, Revisor of Statutes, explained the changes that **Sub SB 270** would make to the employment security law. The bill changes the requirements necessary to prove employee misconduct due to absenteeism and doubles the surcharge assessed to employers with negative trust fund account balances. (See Attachment 5)

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), appeared to present KCCI's support for a series of reform ideas for the Kansas Employment Security Law. Three amendments to the absenteeism law begin on page 5, line 19, amending the current statute governing misconduct due to chronic absenteeism. The change for increasing the surcharge on negative balance employers to 2% is on page 16, lines 25-38. The current bill has been pared down from the original **SB 270**. He concluded his testimony by answering questions from the committee. (See Attachment 6)

Linda Tierce, Chief of Benefits, Division of Employment Security, KDHR, answered questions concerning the numbers of determinations made for unemployment and the percent that are due to absenteeism and the numbers that involve misconduct. She explained that there is no written list of reasons for absenteeism, that good cause is determined by the referee after listening to the facts of each case.

Wayne Maichel, Kansas AFL/CIO, appeared in support of the bill in its current form. They were against some of the proposed changes made in the original version.

Senator Les Donovan was Chairman of the Sub-Committee that heard the bill in the Senate. He explained what the effects of the surcharge would be on a negative balance employer. The employment security tax is now 5.4% on the first \$8,000 of an employee's wages, which is \$432. Negative balance employers now pay an extra 1% or \$80 for a total of \$512. **Sub for SB 270** would add to the surcharge another 1% making the surcharge 2% or \$160, making the total tax bill \$592. These figures may change when the moratorium ends and the proposal for lowering the rates is passed.

The hearing will be continued on March 5, 1999 and final committee action will be taken on **Sub SB 270** at that time.

Chairmen Lane adjourned the meeting at 10:01 a.m.

The next meeting is scheduled for March 5, 1999.





# KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

(785) 296-3053

<http://www.ink.org/public/ksbtp/>

Suite 507, Landon State Office Building 900 S.W. Jackson Street Topeka, Kansas 66612-1257

**STATEMENT TO THE  
BUSINESS, COMMERCE AND LABOR COMMITTEE  
BY THE  
KANSAS STATE BOARD OF TECHNICAL PROFESSIONS  
9:00 A.M., THURSDAY MARCH 4, 1999  
ROOM 521-S**

RE: House Bill 2427 - Proposed Amendments to the Kansas State Board of Technical Professions' Statutes

I am Donald Rathbone, Professional Engineer and Public Member of the Board of Technical Professions, and with me are Murray Rhodes, Land Surveyor Member and Chairperson of the Board; Stan Peterson, Architect Member of the Board; Charles Stryker, Engineer Member of the Board; and Betty Rose, Executive Director of the Board. I am testifying as the Legislative Chairperson of the Board. The Board appreciates the opportunity to testify before the Committee.

As you know, the Board of Technical Professions is the licensing and regulatory agency for architects, professional engineers, land surveyors, landscape architects, and geologists.

The bill you have before you today is being proposed by the Board of Technical Professions for minor clarification of the statutes. Specifically, the Board is proposing a minor adjustment to the exemptions for the requirement of a professional engineering license.

Currently, the act which regulates the practice of engineering specifically exempts owners of property who design or erect a structure on their own property for their own use. The Board's concern is when the owner's structure becomes open to the public, or its employees, or a place for human habitation, that structure or work must be safeguarded, and not exempted. The Board

HOUSE BUSINESS, COMMERCE & LABOR COMM.

3-4-99

Attachment 1

believes the Legislature intended this exemption to provide that a building or work could be exempt from the statute if it was for the owner's own personal use, and not for use by the public or the owner's employees. Therefore, to clarify any misunderstandings, the Board is proposing to get the language back to what the Board believes the Legislature originally intended.

The removal of Section K.S.A. 74-7035 (c) is intended to strengthen and clarify the existing exemption, which has been loosely called the "industrial exemption", located in Section K.S.A. 74-7033 (c). This exemption continues to allow industrial and manufactured products to be produced without requiring licensed professionals in their development and production.

Additionally, the amendment to K.S.A. 74-7033(b) is made for consistency and clarification to include in the engineering side of the law, the same definition contained in the architectural section of K.S.A. 74-7031(f)(2).

The Board has met with representatives of the Kansas Society for Professional Engineers, Kansas Consulting Engineers, AIA Kansas, Kansas Society for Land Surveyors, and the Kansas Society of Landscape Architects, to work out these proposed changes, and has their support.

In conclusion, the Board would request your favorable passage of H.B.2427 to assist the Board in fulfilling the requirements established by the Legislature by assuring that licensed individuals are designing facilities used by the public. Thank you. I stand for questions.

## ATTACHMENT A

The current language contained in K.S.A. 74-7033(a) was revised by the 1980 Legislature as shown in Attachment A. It appears that the intent of the Legislature was to provide that a building or work could be exempt from the statute if it was for the "owner's" own personal use, and not for use by the public or the owner's employees.



expired or been suspended or revoked; (f) (6) falsely advertise a licensed practitioner or as the holder of a certificate of authorization; (g) (7) use in connection with his or her such person's name, or otherwise assume, or advertise any title or description intended to convey the impression that he or she such person is a licensed practitioner or holds a certificate of authorization; (h) (8) otherwise violate any of the provisions of this act.

(b) The attorney general of the state or the district or county attorney of any county shall at the request of the board render such legal assistance as may be necessary in carrying out the provisions of this act; or the act which is supplementary hereto. Upon the request of the board, the attorney general or district or county attorney of the proper county shall institute in the name of the state or board the proper proceedings against any person regarding whom a complaint has been made charging him or her with the violation of any of the provisions of this act; or the act which is supplementary hereto. The attorney general, and such district or county attorney, at the request of the attorney general or of the board, shall appear and prosecute any and all such actions.

Sec. 10. K.S.A. 1979 Supp. 74-7031 is hereby amended to read as follows: 74-7031. The provisions of this act requiring licensure or the issuance of a certificate of authorization under section 1 to engage in the practice of architecture shall not be construed to prevent or to affect:

- (a) The practice of any person engaging in the publication of books or pamphlets illustrating architectural designs.
- (b) Persons preparing plans, drawings or specifications for one and two family dwellings or for agricultural buildings.
- (c) Persons furnishing, individually or with subcontractors, labor and materials, with or without plans, drawings, specifications, instruments of service, or other data concerning the labor and materials to be used for any of the following:
  - (1) Store fronts or facades, interior alterations or additions, fixtures, cabinet work, furniture, appliances or other equipment;
  - (2) work necessary to provide for installation of any item designated in (1) above;
  - (3) alterations or additions to a building necessary to or attendant upon installation of any item designated in (1) above, if the alteration or addition does not change or affect the structural system of the building.
  - (d) Work involving matters of rates, rating and loss prevention by employees of insurance rating organizations and insurance service organizations and insurance companies and agencies.
  - (e) The performance of services by a licensed landscape ar-

chitect or corporation issued a certificate of authorization to provide services in landscape architecture under section 1 in connection with landscape and site planning for the sites, approaches or environment for buildings, structures or facilities.

(f) The practice of architecture by any officer or employee of the federal government or of any interstate railroad system while engaged in the performance of official duties.

(g) For the purposes of this section:

- (1) "Building" means any structure consisting of foundation, floors, walls, columns, girders, beams and roof, or a combination of any number of these parts, with or without other parts and appurtenances thereto, including the structural, mechanical and electrical systems utility services, and other facilities as may be required for said structure.
- (2) "Agricultural building" means any structure designed and constructed to house hay, grain, poultry, livestock, or other horticultural products and for farm storage of farming implements. Such structure shall not be a place for human habitation or a place of employment where agricultural products are processed, treated, or packaged; nor shall it be a building or structure for use by the public.

Sec. 11. K.S.A. 1979 Supp. 74-7032 is hereby amended to read as follows: 74-7032. The provisions of this act requiring licensure or the issuance of a certificate of authorization under section 1 to engage in the practice of landscape architecture shall not be construed to prevent or to affect:

- (a) The right of any individual to engage in the occupation of growing and marketing nursery stock or to use the title nurseryman, landscape nurseryman or gardener, or to prohibit any individual to plan or plant his or her such individual's own property.
- (b) The right of nurserymen to engage in preparing and executing planting plans.
- (c) The practice of site development planning, in accordance with the practice of architecture, or the practice of engineering.
- (d) The practice of landscape architecture by any officer or employee of the federal or state governments while engaged in the performance of official duties.

Sec. 12. K.S.A. 1979 Supp. 74-7033 is hereby amended to read as follows: 74-7033. The provisions of this act requiring licensure or the issuance of a certificate of authorization under section 1 to engage in the practice of engineering shall not be construed to prevent or to affect:

- (a) The design or erection of any structure or work by the owner thereof, upon his or her such owner's own premises for his or her such owner's own use.



## Metropolitan Kansas City Chapter

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International Conference of Building Officials  
12350 W. 87th St. Pkwy. • Lenexa, KS 66215

March 3, 1999

Ms. Betty Rose, Executive Director  
Kansas State Board of Technical Professions  
900 SW Jackson Street, Ste 507  
Topeka, Kansas 66612-1257

Re: House Bill #2427

Dear Ms. Rose:

I am providing this letter of support for your amendment to KSA #74-7033 in the form of House Bill #2427. The Metropolitan Kansas City Chapter of the International Conference of Building Officials is composed of Building Officials and other code enforcement and design professionals from both sides of the state line. Our major concern is for insuring that the buildings and structures occupied and used by the citizens of the jurisdictions we represent meet minimum standards of life and fire safety. We rely heavily on the fact that licensed, design professionals are applying their judgement and expertise to insure the safety of these buildings.

As an Architect licensed in the State of Kansas and as a code enforcement official I feel strongly that this amendment is a necessary improvement to KSA #74-7033 which will enhance public safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Marie Kinerk". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anne Marie Kinerk, President  
Metropolitan Kansas City ICBO



## MEMO

TO: Betty Rose, Board of Technical Professions  
FROM: Jim Yonally, Lobbyist, Kansas Society of Land Surveyors  
RE: House Bill 2427

Betty, I am sorry that I will not be able to appear at the hearing on March 4 on House Bill 2427. I have discussed this bill with the leadership of KSLs and we are in complete agreement with the intent of the bill.

Please use this memo as our unqualified endorsement of HB 2427 and feel free to copy and distribute same to the committee if you determine that to be helpful.

Again, I am sorry that I cannot be present, but I know you will "carry the ball" for us in fine fashion.

If anyone would like to discuss this matter with me, please ask them to contact me at the lobbyist message center, 234-5500.

Thanks.



THE CITY OF PRAIRIE VILLAGE *Star of Kansas*

March 3, 1999

Ms Betty Rose, Executive Director  
Kansas State Board of Technical Professions  
900 SW Jackson St, Ste 507  
Topeka KS 66612-1257

RE: House Bill #2427

Dear Ms Rose:

I am providing this letter of support for your amendment to KSA #74-7033 in the form of House Bill #2427. I speak here, in part, as a representative for the jurisdictions within Johnson County. I currently serve as an officer of the Johnson County Building Officials Association, which serves 19 municipalities within the County.

In my service as Building Official with the City of Prairie Village Kansas, and my three years as a member of the State Board of Technical Professions, my experience tells me that this amendment is necessary and will further serve public safety without over regulating construction.

Should you or the legislators have any questions, please feel free to contact me at (913) 381-6464.

Yours very truly,

A handwritten signature in cursive script that reads "Rich Sternadori".

Rich Sternadori, CBO  
Secretary, Johnson County Building Officials Assn

t:cd/bldg/w/hsebill2.doc

1-7



# CITY OF ARKANSAS CITY

## BOARD OF COMMISSIONERS

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March 3, 1999

Kansas State Board of Technical Professions  
Betty Rose, Executive Director  
900 SW Jackson Street  
Topeka, KS 66612-1257

Re: Proposed amendment to KSA #74-7033, House Bill #2427

Dear Ms. Rose,

I received a phone call from Mr. Rich Sternadori, as well as information describing the amendment noted above included in House Bill #2427. On behalf of the Heart of America Chapter, International Conference of Building Officials, I offer the support of my office and our chapter to the proposal.

If I can be of further assistance, please feel to contact my office at 316-441-4420. Thank you for you hard work and efforts to regulate our industry in a progressive and positive manner.

Respectfully Submitted,

Jim Hendershot  
President, Heart of America Chapter, ICBO

cc: file



**American  
Society of  
Landscape  
Architects  
Prairie  
Gateway  
Chapter**

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March 3, 1999

Business, Commerce and Labor Committee  
State of Kansas

Re: House Bill 2427 – Proposed Amendments to the Kansas State Board of  
Technical Professions' Statutes

To Whom It May Concern:

On behalf of the Prairie Gateway Chapter of American Society of Landscape Architects (ASLA), I am writing in support of the proposed H. B. 2427 referenced above. As an officer of the Chapter, I have met with the Kansas State Board of Technical Professions to review the proposed changes to the Statutes. The changes to the Statutes are intended to clarify the exemptions for the requirement of a professional engineering license. This will ensure that licensed individuals are designing facilities used by the public.

I have discussed the proposed changes with members of my Chapter. It is with their encouragement and support that I write this letter. Our Chapter believes these changes will safeguard the welfare of the citizens of Kansas.

In conclusion, the Prairie Gateway Chapter of ASLA requests your favorable passage of H.B. 2427. Thank you for your thoughtful consideration of this important legislation.

Sincerely,

Deborah S. Van Deun, ASLA  
President-Elect

Cc: Betty Rose



# Kansas Society of Professional Engineers

*A state society of the National Society of Professional Engineers*

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**STATEMENT TO THE  
HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE  
PRESENTED BY  
RON GACHES, EXECUTIVE VICE PRESIDENT  
KANSAS SOCIETY OF PROFESSIONAL ENGINEERS  
9:00 A.M., THURSDAY MARCH 4, 1999**

RE: HB 2427 - Proposed Amendments to the Kansas State Board of Technical Professions' Licensing Law

I am Ron Gaches, Executive Vice President of the Kansas Society of Professional Engineers. KSPE is a professional society of nearly 1000 members from across the state of Kansas representing Kansas' licensed Professional Engineers. Our members are employed throughout Kansas in a wide variety of public and private sectors engineering positions including city, county and state government, as consulting engineers, as employees of Kansas public utilities, major manufacturers, our major universities and a wide variety of other roles.

Notwithstanding the diverse makeup of our membership, our members share a commitment to ensuring the public safety, health and welfare by encouraging licensure of Professional Engineers.

The passage of HB 2427 will promote public safety by ensuring that all structures constructed in Kansas that might be used for any public use will be subject to the rigorous standards of a licensed Professional Engineer.

This bill is needed because a recent Kansas District Court case broadly interpreted an exemption to the current Kansas licensing law in a way that was not consistent with the original intent of the legislature. The decision provides a significant loophole to our Kansas licensing statutes and could allow Kansans to work in or visit a public structure that had not been certified by a licensed Professional Engineer.

Earlier this year, I had the opportunity to work with the Board of Technical Professions committee that developed the changes contained in this bill. The committee examined the legislative history of the Kansas licensing law and the findings of the District Court and was unanimous in its support of clarifying the licensing exemption to protect the public from poorly engineered structures. The Kansas Society of Technical Professions supports the proposed amendments and encourages your favorable action on the bill.

HOUSE BUSINESS, COMMERCE & LABOR COMM.  
3-4-99  
Attachment 2



Affiliated with:

American Consulting Engineers Council  
Kansas Society of Professional Engineers  
National Society of Professional Engineers  
Professional Engineers in Private Practice

Statement to  
House Business, Commerce and Labor Committee  
on House Bill 2427  
Thursday, March 4

Mr. Chairman and members of the Committee, my name is George Barbee, and I am appearing today on behalf the Kansas Consulting Engineers. KCE has been a Kansas organization for 43 years. Its membership of 56 engineering firms employs over 4,000 people and offers design services to the public throughout the world.

The engineers of these firms are required by Kansas statute to be licensed to provide professional engineering services for the design and construction of roads, bridges, highways, water and sewer plants and systems, and buildings. To obtain their license, the engineers must have an appropriate degree, plus four years of experience and successfully complete 16 hours of exams. This is done to meet the requirements of the Kansas State Board of Technical Professions, which is statutorily charged to "establish and maintain the highest standard of integrity, skills and practice in the technical professions and to safeguard the life, health, property and welfare of the public..."

The engineering community has, for decades, been going about their business under the impression that the lengthy statutes and rules and regulations were protecting the public until a 1998 court decision. That decision established that engineering components for electrical and mechanical systems for a building could be designed by a person that has not met the minimum requirements of licensure, because the person was an employee of the owner.

The case was relative to a 160,000 square foot building occupied by approximately 110 employees, with a portion of the building dedicated to public access as a showroom. A building designed by a non-licensed employee.

The Board received a complaint, held hearings, and ruled that the non-licensed designer had violated the statutes. A District Court judge overturned that ruling last fall. KCE is not taking issue with the judge because the ruling was by the letter of the law. The law just did not do what we thought it did. The court felt it did not prevent unlicensed practice by an employee of an owner. The statutes simply were not as specific as they should have been when defining owner, corporation, and persons.

House Bill 2427 would clarify any future question in regard to these definitions and allow the Board to meet its statutory charge "...to safeguard the life, health, property and welfare of the public." Therefore, on behalf of the members of the Kansas Consulting Engineers, I urge you to act favorably on House Bill 2427 as amended.

I thank you for the opportunity to speak to this issue today, and I would be pleased to stand for any questions.

HOUSE BUSINESS, COMMERCE & LABOR COMM.  
3-4-99

Attachment 3

George Barbee, Executive Director



# AIA Kansas

A Chapter of The American Institute of Architects

March 4, 1999



TO: Representative Lane and Members of the House Business,  
Commerce and Labor Committee

FROM: Trudy Aron, Executive Director

RE: Support of HB 2427

*President*  
Gregory E. Schwerdt, AIA  
Topeka  
*President Elect*  
Neal J. Angrisano, AIA  
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Eugene Kremer, FAIA  
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William E. Mankin, AIA  
Salina  
Martin (Tony) Rangel, AIA  
Wichita  
Steven R. Roark, AIA  
Westwood  
Alan M. Stecklein, AIA  
Hays  
Andrew D. Steffes, AIA  
McPherson  
Robert Westberg, AIA  
Manhattan

*Executive Director*  
Trudy Aron, Hon. AIA, CAE

Good Morning, Mr. Chairman, and members of the Committee, I am Trudy Aron, Executive Director, of the American Institute of Architects in Kansas (AIA Kansas.) Thank you for the opportunity to testify in support of HB 2427.

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 100 private practice architectural firms designing a variety of project types for both public and private clients including justice facilities, schools, hospitals and other health facilities, industrial buildings, offices, recreational facilities, housing, and much more. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

HB 2427 is a bill requested by the Kansas State Board of Technical Professions which is the agency that regulates the practice of architecture, engineering, landscape architecture, land surveying, and geology. The changes made in this bill are necessary to protect the occupants of buildings used as places of employment and/or those open to the public. The bill will require that licensed engineers design the engineering systems that are used in these buildings.

This change is similar to the ones currently in place in the architectural exemptions.

We request the Committee take favorable action on HB 2427.

Thank you.

HOUSE BUSINESS, COMMERCE & LABOR COMM.  
3-4-99  
Attachment 4

## Substitute for SB 270

Substitute for SB 270 makes to changes to the employment security law. The bill changes the requirements necessary to prove employee misconduct due to absenteeism and doubles the surcharge assessed to employers with negative trust fund account balances.

The first change appears on page 5, in lines 20 through 26. This amendment changes the method and burden of proof necessary to disqualify an employee for benefits due to absenteeism. The employer must demonstrate that a notice indicating that future absence *may or will* result in discharge was sent only to the employee's last known address rather than proving that the employee actually received the notice. In addition, the burden of proof is shifted to the employee to establish that a majority of the absences which led to discharge were for good cause rather than the employer proving that the absences were not for good cause.

The second change appears on page 16, lines 25 through 38. The surcharge assessed to employers that have drawn more in benefit charges than they have contributed to the trust fund is doubled. The surcharge continues to be scheduled according to prior experience as set forth in schedule II. The surcharge is also doubled for those employers that have a negative account balance, but are not yet eligible for experience rating due to insufficient payroll history.

# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

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Sub. for SB 270

March 4, 1999

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce & Labor

by

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Madam Chairperson and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to present KCCI's support for a series of reform ideas for the Kansas Employment Security Law that is contained in Sub for SB 270. In an attempt to review the bill in an orderly fashion, the remainder of my testimony is broken into two topics addressed in the substitute bill.

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.

## **MISCONDUCT/ABSENTEEISM**

### **WHERE IT IS IN SB 270:**

Beginning on page 5, line 19, amendments to the current statute governing misconduct, due to chronic absenteeism is shown.

### **THE REFORM PROPOSES TO:**

Unemployment compensation benefits are intended to benefit individuals who have become unemployed through "no fault of their own." Traditionally, Kansas law has made clear that people who cause their unemployment through their own misconduct at work caused their unemployment, 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 employer gave or sent written notice to the individual, that future absence will lead to discharge, and;
4. The employee knew about the written absenteeism policy.

There are three amendments to the absenteeism law proposed in SB 270. They are:

1. Amend step #3 by adding the italicized language.

**The employer gave or sent written notice to the individual, at the individual's last known address, that future absence will lead to discharge, and;**

2. Further amend step #3 by adding the italicized language.

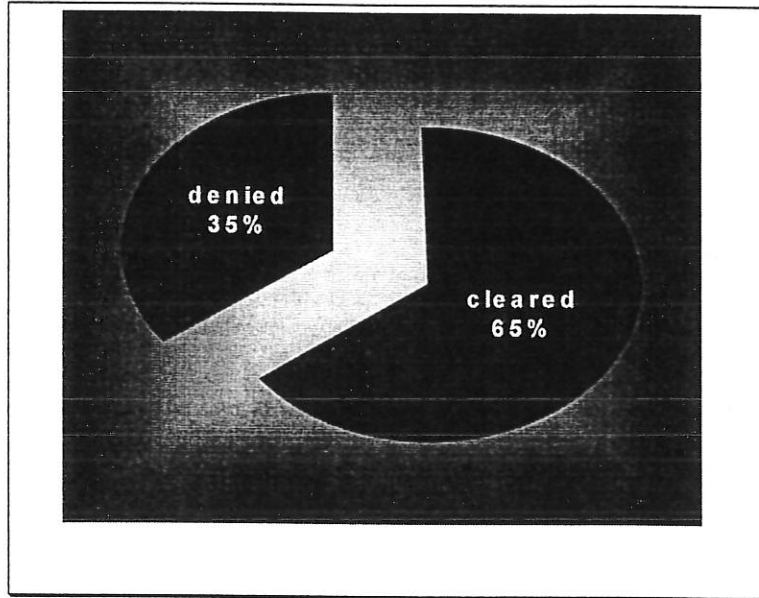
The employer gave or sent written notice to the individual, that future absence may, or will lead to discharge, and;

3. Add a new fifth step to the unemployment test.

**If the employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause.**

**WHY KCCI SUPPORTS AMENDING THE MISCONDUCT STATUTE:**

Some statistics regarding misconduct, due to chronic absenteeism, are included in my testimony. The pie chart concerns the 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 following table 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.

	1,131	48%
	849	36%
	123	5%
	74	3%
	50	2%
	47	2%
	102	4%

The proposed changes are an attempt to produce the following results.

- 1) By adding “the last known address” to the third test in the law, an employer would have a defense in cases where an employee was sent a written notice, but it was not received.
- 2) Adding a new section “E” to the law requiring an employee to present evidence that a majority of their absences were for good cause is proposed for the following reasons.
  - A) Realize the burden employers currently bear in an absenteeism/misconduct case. The employer must show the employee was absent, without good cause. It is often not known by the employer why the employee was absent from work, making this a very high burden. Adding the new section “E” would properly shift the burden to an employee to show why their absence would justify receiving benefits, because they were gone for “good cause.”
  - B) The new language also requires the employee to present evidence to justify a “good cause” claim. An employer complaint about today’s system is an employee can present a reason for being absent and have it accepted, without any supporting documentation to their claim.
  - C) The new language also requires a “majority” of the absences to be for good cause. In today’s process, many cases hinge on the employee’s final absence that led to dismissal. While an employee might have a long list of unjustified absences, showing the final one was for “good cause” will clear the individual to receive benefits.
- 3) KCCI also suggests the words “may, or” be included in the written notice test in the law. If amended, employers who send a written notice that future absence “may” lead to discharge, rather than “will” lead to discharge, can make a claim of absenteeism misconduct.



## NEGATIVE BALANCE EMPLOYERS

### *Where is it in Sub for SB 270:*

On page 16, line 21, the surcharge on negative balance employers is increased from 1% to 2%. This can be seen in the Schedule II Surcharge on Negative Accounts that follows.

### *The Reform Proposes to:*

Kansas has a separate tax bracket for “negative balance employers.” A negative balance employer is one who has been charged more benefits than has paid taxes over the business’ history. The negative balance employer tax range currently (when the moratorium is not in effect) is 5.4% to 6.4%.

The table below shows why a higher tax rate should be applied to employers who are “negative balance” under the reserve ratio system. In both 1996 and 1997, negative balance employers were charged around \$40 million in unemployment benefits. However, in both years, the negative employers paid only around \$20 million in taxes. These two years are examples of a consistent practice of negative balance employers paying well less in taxes than they are charged in benefits.

If the highest tax bracket is established at 7.4% and applied to employers in rate group 51 of the benefit ratio system, the employers in the bottom brackets will pay taxes which more closely reflect the benefits they cause. In addition, if these employers pay more in taxes, the employers in lower brackets will pay less.

