

Approved: February 1, 2000
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 31, 2000 in Room 123-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Mary Becker, Kansans Respond
Wayne Maichel, AFL - CIO
Ron Hein, Kansas Restaurant & Hospitality Association
Hal Hudson, National Federation of Independent Businesses
Tawny Stottlemire, Kansas Association of Community Action Programs

Others attending: See attached list

SB 265 - Increasing minimum wage to \$5 an hour

Mary Becker, Kansans Respond, continued her testimony from January 28 in support of **SB 265**, citing Economic Policy Institute Center on Budget and Policy figures which reflect that Kansas is one of ten states where income inequality has grown the most since the 1970's, which has resulted in an increased reliance on emergency service providers. The Kansas Foodbank Warehouse increased its distributions by 37% in 1999; Topeka Rescue Mission is completing a \$2 million expansion due to an increase in homelessness among families; and Catholic Charities in Wichita served 5,500 clients for emergency services during the first 10 months of 1999, and turned away 8,500 people during the same time period, due to lack of resources. (Attachment 1)

The Committee raised questions pertaining to the membership of the Economic Policy Institute, whether the figures are scewed due to the inclusion of Johnson County, whether supplemented public support was calculated in income, and the percentage of those living in poverty are single family parents. Ms. Becker responded she was unaware of the makeup of the Economic Policy Institute and that about half of those living in poverty are single family parents.

Wayne Maichel, AFL-CIO, testified in support of **SB 265**, stating Kansas' minimum wage is next to the bottom of the 43 states that have a minimum wage and it has not been adjusted since 1988. Mr. Maichel informed the Committee that agriculture and domestic service employees are presently exempt from Kansas law. The Committee has three choices relating to this legislation: 1) leave the wage as it is, next to the lowest in the nation, 2) repeal the minimum wage in Kansas, or 3) pass the bill, bringing the minimum wage more in line with the rest of the states. (Attachment 2)

Ron Hein, Kansas Restaurant and Hospitality Association, testified in opposition to **SB 265**, stating minimum wage often adversely affects the very people the legislation is intended to help. The result of minimum wage legislation forces the employer to reconsider a decision to employ the least educated, least trained, least experienced worker. The government can increase the minimum wage, but cannot force employers to pay a higher wage to those least employable and most at risk. (Attachment 3)

Mr. Hein stated the impact of the minimum wage is different for the restaurant, lodging and hospitality industry due to the fact that many employees also receive tips. Under federal law, the

CONTINUATION SHEET

minimum wage is \$5.15 per hour but only \$2.13 of that wage is required to be paid by the employer if the tips received are sufficient to exceed the \$5.15 minimum. If the tips do not bring the total wage to \$5.15, the employer must then make up the difference. In Kansas, the minimum wage is \$2.65 per hour, but a maximum of 40% of such amount can be in tips. If the minimum wage is raised to \$5.00, the employer must pay a cash wage of \$3.00 per hour, since only 40% of the \$5.00 (\$2.00) could be counted in tips. To clarify the difference between federal and state minimum wage laws, Mr Hein explained that under federal law, the payment of \$2.13 plus \$4.00 in tips per hour results in a wage of \$6.13 per hour. Under state law, passage of **SB 265** would mean the employee would have to be paid \$3.00 by the employer, and would add their \$4.00 in tips, resulting in wage of \$7.00 per hour.

Mr. Hein stated that although the Restaurant Association opposes **SB 265**, it has no objection to repealing the state minimum wage as long as the legislation prohibits local minimum wage ordinances.

Hal Hudson, State Director, National Federation of Independent Business (NFIB), testified in opposition to **SB 265**, stating the imposition of rules and regulations pertaining to conditions of employment does not help the business owner. NFIB members have consistently opposed the establishment of any minimum wage as an intrusion in their right to run their businesses, and urge the Committee to reject the increase proposed in **SB 265**. Mr. Hudson stated that if a minimum wage is retained in Kansas, a provision prohibiting the state or any political subdivision authority to establish a minimum wage exceeding that established by Congress should be enacted. (Attachment 4)

Tawny Stottlemire, Executive Director, Kansas Association of Community Action Programs, testified in support of **SB 265**, stating that inasmuch as the persons most impacted by this legislation are teenagers and college students working in service industries, a failure to pass the increase in the state minimum wage sends the message that Kansas supports cheap child labor. **SB 265** provides Kansas an opportunity to make its young people understand their value as workers and provides a positive outlook on their future in the job market. (Attachment 5)

The hearing on **SB 265** was concluded.

Senator Steffes moved, seconded by Senator Gooch, that a bill requested by the Department of Commerce and Housing relating to enterprize zones, 9rs2031, be introduced as a Committee bill. The voice vote was in favor of the motion.

Upon motion by Senator Donovan, seconded by Senator Umbarger, the Minutes of the January 28, 2000 Meeting were unanimously approved.

The meeting concluded at 9:00 a.m.

The next meeting is scheduled for February 1, 2000.

Kansans Respond

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TO: Members of the Senate Commerce Committee

FROM: Mary Becker, Executive Director

DATE: January 28, 2000

RE: Testimony in support of SB 265,
Raising the state minimum wage

I. Discussion of Report on Income Inequality.

Last week a major national report was released by the Center on Budget and Policy Priorities and the Economic Policy Institute, called "Pulling Apart: A State-by-State Analysis of Income Trends". Below is a brief summary of the report's findings:

- Income inequality is wide and it increased in all states but four over the last two decades.
- Kansas is one of only 15 states whose poor have actually become poorer in the decade of the '90's, while high-income families grew richer.
- Kansas ranks 6th worst in the **growth** of inequality between the richest and poorest families from the late 1980's to the late 1990's.
- Kansas had more income disparity than any of our four neighboring states and Iowa.

From the report:

It is not that the poor and middle class are simply getting a slightly smaller share of the growth; it is that virtually all of the growth is going to the top end.

On wages:

The growth of income inequality is primarily due to the growth in wage inequality. Wages at the bottom and middle of the wage scale have been stagnant or have declined over the last two decades. The wages of the very highest paid employees, however, have grown significantly.

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Attachment # 1 thru 1-3

States have long played a major role in the establishment of labor market policies such as rules governing the formation of unions, the design of the unemployment insurance system, and the establishment of state minimum wages, all of which affect income inequality.

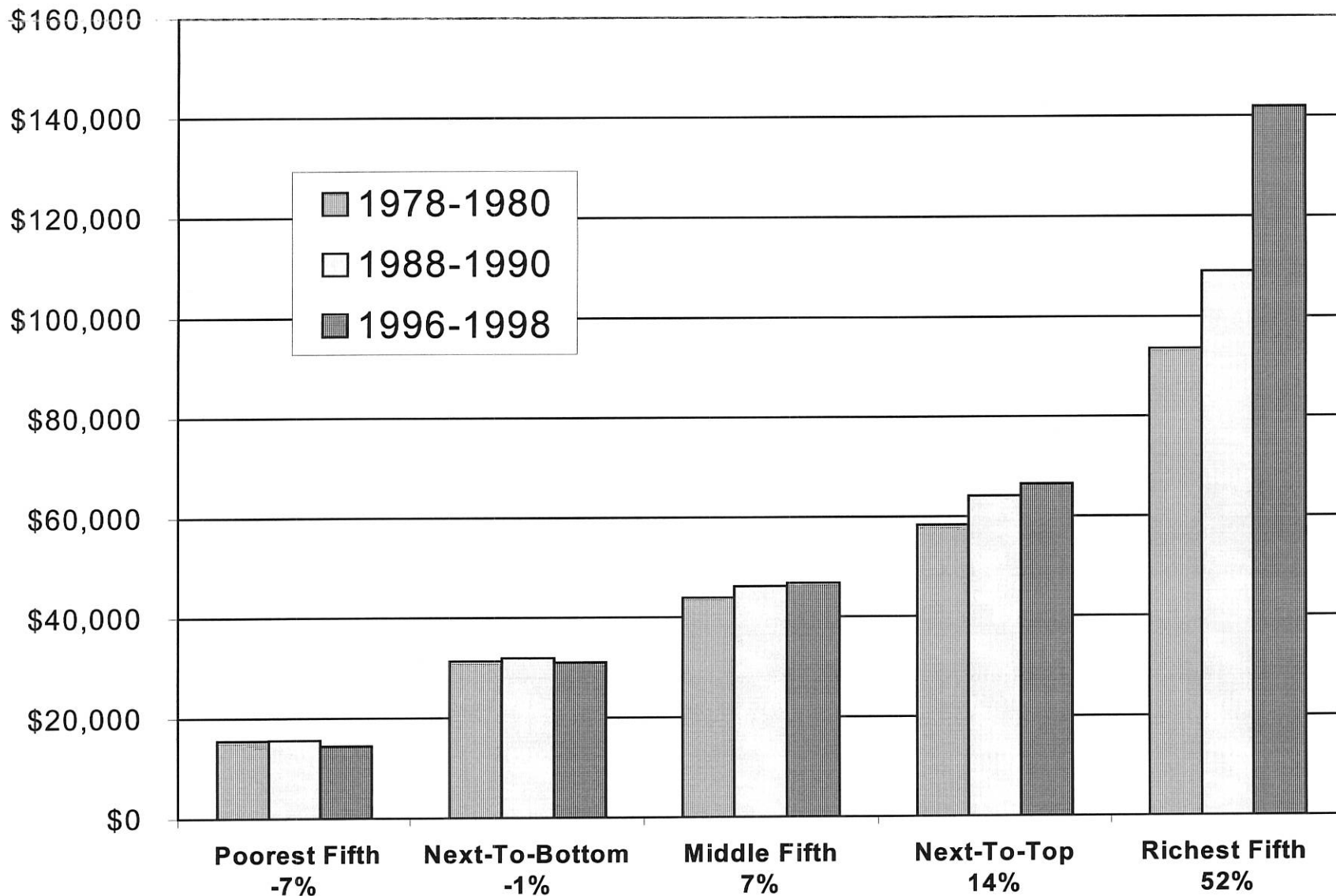
The minimum wage, for example, has a direct bearing on individual earnings. The value of the federal minimum wage has fallen considerably since the late 1970s. One way that policymakers could help reverse or moderate the decline in wages for workers at the bottom of the pay scale would be to enact a higher minimum wage. Eight states have compensated for the decline in the value of the federal minimum wage by establishing higher state-level minimum wage standards.

II. Level of Need Being Experienced by Low-Income Kansans

Emergency service providers throughout the state report a high volume of clients, some report record increases. Increasingly, agencies report that a large percentage of their clients, if not the majority, are working people. They are turning to community agencies for emergency help for rent, utilities, food, transportation, medical care, and prescription drugs.

- The Kansas Foodbank Warehouse, food distributor to 450 food programs in the state such as food pantries and soup kitchens, increased their distributions by 37 percent in 1999.
- Topeka Rescue Mission is nearing completion of a \$2 million expansion due to the dramatic increase in homelessness among families in recent years.
- Catholic Charities in Wichita served 5,500 clients for emergency services in the first ten months of 1999. They turned away 8,500 people during the same time period, due to lack of resources.

Average Income of Kansas Families



Inflation-adjusted 1997 dollars. Data is from Census Bureau's March Current Population Survey public use database.
Income from capital gains not included.

Graph by Kansas Respond (1/2000)

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1/28/00

**Testimony Presented to the
Senate Commerce Committee
by the
Kansas AFL-CIO
in support of SB 265
by Wayne Maichel**

The Kansas AFL-CIO supports the provisions of SB 265 which increases the Kansas Minimum Wage from \$2.65 to \$5.00.

A majority of states in this country have state minimum wages and Kansas ranks near the bottom with their \$2.65 minimum. This rate has not been adjusted for a number of years, and we believe it is time to take action now.

We would point out Madam Chairperson and members of the committee that there are exemptions for certain classes of employees already in the statute. Some of them are:

1. Individuals employed in agriculture.
2. Individuals employed in domestic service in or around the private home and other exemptions for administrative or executive positions.

40% of the Kansas Minimum Wage can be offset against tips and gratuities if they are part of the employees' wages and if the employees concerned actually received and retained such tips and gratuities.

We ask that the committee consider recommending SB. 265 favorable for passage.



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Attachment # 2

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Senate Commerce

TESTIMONY RE: SB 265, Minimum Wage Bill

Presented by Ronald R. Hein

on behalf of

Kansas Restaurant and Hospitality Association

February 28, 2000

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is a trade association for restaurant, hotel, lodging and hospitality businesses in Kansas.

The KRHA opposes SB 265. Minimum wage legislation, on the surface, sounds good in concept. It would appear to help insure a certain, arbitrarily picked wage to all workers.

But, in practice, minimum wage legislation oftentimes works adversely to the very people that minimum wage legislation is intended to help. Most workers whose worth is higher than the minimum wage, including professionals, technically skilled workers, skilled laborers, and others, are not even impacted by minimum wage legislation. So, generally, the intent is to raise the wages of those people who are untrained, unskilled, probably but not always young, inexperienced workers either just entering the workforce, or in many instances, those who are attempting to get work experience while going to school or otherwise.

The result of such minimum wage legislation is oftentimes to force the employer to reconsider his or her willingness to employ the least educated, least trained, least experienced worker for employment. If he has to pay more than what they are worth at that point in time, the worker might decide to employ an individual who is more skilled, more experienced, or more trained. In short, the government can increase the minimum wage, but cannot force employers to pay a higher wage to those least employable and highest at risk workers.

With that said, it is already the law of this country at the federal level that there is a minimum wage. Looking at the minimum wage set out in Kansas, it certainly appears, if the state is going to have a minimum wage, to be extremely low.

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Attachment # 3-1 thru 3-5

The impact of the minimum wage, both federal and state, is slightly different for the restaurant, lodging, and hospitality industry due to the fact that many employees of our industry also receive tips. Under federal law, the minimum wage is \$5.15 per hour. But only \$2.13 of that minimum wage is required to be paid by the employer if the employee receives tips in a sufficient amount to exceed the \$5.15 minimum wage. If the tips do not bring the total wage to the minimum wage level, then the employer must make up the difference in cash payment to meet that minimum wage.

Under state law, the minimum wage is \$2.65 per hour, but a maximum of 40% of such amount can be in tips. If the minimum wage is raised to \$5.00, the employer must pay a cash wage of \$3.00 per hour, since only 40% of the \$5.00 (\$2.00) could be counted in tips.

To clarify this distinction, take an employee who is covered by state minimum wage vs. an employee who is covered by federal minimum wage. Assume both employees receive tips of \$4.00 per hour. Under federal law, the payment of \$2.13 plus the \$4.00 in tips per hour would result in a total employee pay of \$6.13 per hour. Under state law, the employee would have to be paid \$3.00 by the employer, and would add their \$4.00 in tips to that, resulting in \$7.00 total wages per hour. Thus, under that and similar scenarios, SB 265 would require a higher payment than the federal minimum wage.

Although the KRHA opposes SB 265, they would have no objection to the repeal of the state minimum wage. A vast majority of food and beverage employees in Kansas, which constitutes approximately 13.5% of the workforce, already pay in excess of the federal minimum wage. For the restaurant, lodging and hospitality business, the federal system of dealing with wages and tips is preferable to the state statute.

The federal Fair Labor Standards Act of 1938, as amended, provides that the act "applies to enterprises that have employees who are engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or working on good or materials that have been moved in or produced for interstate commerce."

There is a so-called "enterprise" test, which requires \$500,000 annual volume to be engaged in interstate commerce. But even if the income is below that, any businesses are covered, or specific employees are covered, to the extent that they are otherwise meeting the definition of the act. The act has also been interpreted to cover those businesses which have credit card sales because of the interstate nature of credit cards.

Although this has not yet been a particular problem in Kansas, other states have seen cities attempt to pass or successfully pass local minimum wage ordinances. This would

constitute a significant problem for our industry for a variety of reasons. Such local ordinances would be especially problematic in communities such as in Johnson County, where one can drive from city to city without leaving the urban area. There are already enough differing governmental levels of laws and regulations on our industry as well as others, without having a third level of legislation in the area of minimum wage or other working conditions.

In light of this, the KRHA would support the repeal of the state minimum wage and a prohibition of local minimum wage ordinances, but cannot support SB 265.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Employment Data Covered By the Unemployment Insurance Program. (ES-202 Data)

Another major program of KDHR-LMIS is the Covered Employment and Wages Program under the Unemployment Insurance program. These data, referred to as ES-202 information, represent a universe of employers, approximately 70,000, which are required to report through the Unemployment Insurance program. This information is then developed by LMIS and provided to the Bureau of Labor Statistics. Much of the information contained in the ES-202 is descriptive information concerning the type of business or industry of employers liable under the Unemployment Insurance program in Kansas. Along with the number of establishments and employment by industry code, employers are required to report total and taxable wages up to an \$8,000 base for each employee on the payroll.

One means to examine the incidence of minimum wage would be to identify those industries in which the average annual wage for that industry is calculated at less than the average wage for all employees.

Calculated Federal Minimum Wage:

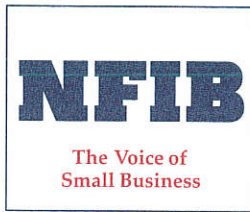
$$\$5.15 \text{ per hour} \times 2,080 \text{ hours worked} = \$10,712$$

Certain industries demonstrate average wages considerably less than the calculated annual minimum wages of \$10,712. This assumes full-time work of 2,080 hours per year. This does not account for part-time workers on the payroll for less than 2,080 hours. It is intended only as an indication since without hours worked reported, it is impossible to calculate an accurate annual hourly average.

The following Table 3 indicates the most frequently identified industries in which wages paid to workers is considerably less than the calculated statewide average of \$10,712.

Table 3
 Kansas Industries by Employment
 Calculated Average Wage Less Than \$10,712

<u>Industry</u>	<u>Employment</u>
Eating & Drinking Places	45,246
Amusement & Recreation.....	6,173
Food Stores.....	4,855
Hotels, Rooming Houses, etc.	4,304
Social Services.....	2,942
Apparel & Accessory Stores.....	2,360
Motion Pictures.....	2,165
Miscellaneous Retail.....	1,370
Private Households	1,220
Membership Organizations.....	1,196
Business Services	1,169



NFIB Kansas

Statement by
Hal Hudson, State Director
National Federation of Independent Business
Before the Senate Commerce Committee
on Senate Bill 265
January 28, 2000

Synopsis:

1) As demand for a business' goods or services grows, and management needs to add employees to fulfill that demand, the imposition of rules and regulations by law pertaining to conditions of employment - wages and benefits - does not help the business owner. In fact, the ability of the business to grow and expand its workforce most often is impeded by government.

2) Year-after-year NFIB members, nationwide, and in Kansas, consistently have opposed the establishment of any minimum wage by law as an intrusion in their right to run their businesses as they see fit.

3) If Kansas did away with the minimum wage law on the books, very few employees or employers would be affected. But, Legislators could be spared perpetual attempts in future years of dealing with this issue.

4) On behalf of small business owners of Kansas, I urge you to reject the increase in the Kansas minimum wage proposed in Senate Bill 265, and to consider how Kansas might be better off if there were no minimum wage set by state law.

5) If a minimum wage is retained in Kansas law, I urge you to include in the act a provision prohibiting the state or any political subdivision authority to establish a minimum wage exceeding that established by the Congress of the United States.

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Attachment # 4-1 thru 4-5



NFIB Kansas

Statement by
Hal Hudson, State Director
National Federation of Independent Business
Before the Senate Commerce Committee
on Senate Bill 265
January 28, 2000

Madam Chair and Member of the Senate Commerce Committee:

My Name is Hal Hudson, and I am State Director of the 7,000-member Kansas Chapter of the National Federation of Independent Business.

Let me begin by saying that year-after-year NFIB members, nationwide, and in Kansas, consistently have opposed the establishment of any minimum wage by law as an intrusion in their right to run their businesses as they see fit.

As demand for a business' goods or services grows, and management needs to add employees to fulfill that demand, the imposition of rules and regulations by law pertaining to conditions of employment - wages and benefits - does not help the business owner. In fact, the ability of the business to grow and expand its workforce most often is impeded by government.

As you know, the federal government, for many years, has imposed a minimum wage under provisions of the Fair Labor Standards Act (FLSA). The federal minimum wage applies to those employers who are covered by the federal FLSA, regardless of whether a state has its own minimum wage law. Because some of the smallest employers are not covered by FLSA, states originally enacted minimum wage laws to cover those employers not covered by FLSA.

Note the following language from the U.S. Department of Labor concerning which employers are subject to the federal law:

"The minimum wage law applies to all employers of enterprises that have annual dollar volumes of at least \$500,000. It also applies to employees of smaller firms if the employees are engaged in interstate commerce or in the production of goods for commerce, such as employees who work in transportation or communications or who regularly use the mails or telephones for interstate communications."

We have objected to this law and the perennial attempts by some groups to persuade Congress to increase the federal minimum. Having said that, I believe that I am correct in saying that very few, if any, members of NFIB are able in today's tight labor market to hire employees, even in entry-level full time jobs, for less than the federal minimum. To retain the services of good reliable workers, they know they must pay more.

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The problem with increasing the Kansas minimum wage is not the \$5.00 proposed in Senate Bill 265. The concern is where will it go next year, and the year after. Furthermore, as the minimum wage required by law increases, employees who already earn more than the minimum expect their wages to be increased to maintain the differential.

To avoid possible perennial attempts to increase the Kansas minimum, it might be more prudent public policy for Kansas to join the seven other states who have no minimum wage law. (AL, AZ, FL, LA, MS, SC and TN).

The federal minimum wage applies to those employers who are covered by the federal Fair Labor Standards Act, regardless of whether or not a state has its own minimum wage law.

If a state does not have a minimum wage law, employers subject to FLSA pay the federal minimum and employers not covered by FLSA have no legal obligation with respect to the minimum wage. ***However, if the state minimum wage is higher than the federal, then all employers in the state who are covered by the state or federal law must pay the higher state rate.***

If Kansas did away with the minimum wage law on the books, very few employees or employers would be affected. But, Legislators could be spared perpetual attempts in future years of dealing with this issue.

On behalf of small business owners of Kansas, I urge you to reject the increase in the Kansas minimum wage proposed in Senate Bill 265, and to consider how Kansas might be better off if there were no minimum wage required by state law.

Finally, if you decide that Kansas should retain a minimum wage law on the books, I urge you to include in the language of the act a provision that would prohibit the state or any political subdivision from enacting a minimum wage that exceeds the federal minimum wage established by the Congress of the United States.

I will attempt to answer questions, if there are any.

Thank you.

Hal Hudson
Kansas State Director
National Federation of Independent Business
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National Federation of Independent Business

Kansas

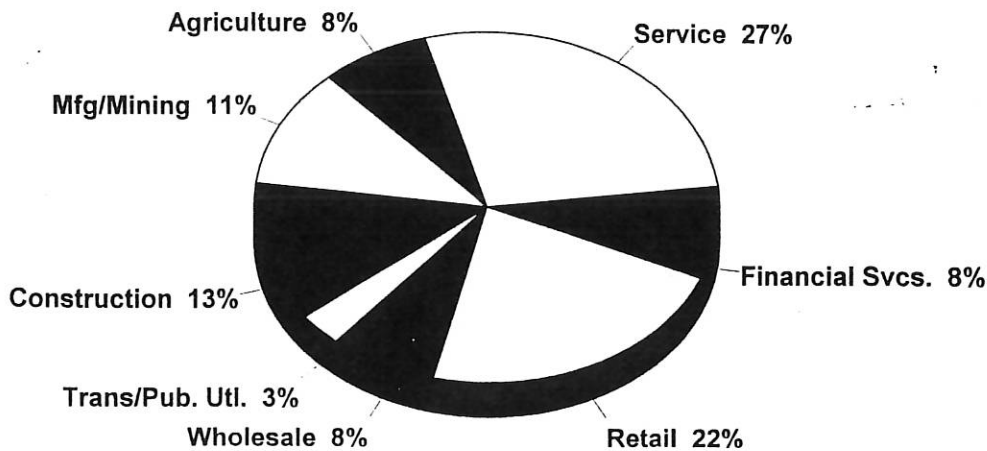
About NFIB-Kansas

Since 1943, business owners from all walks of commercial life have joined the National Federation of Independent Business to have a powerful, united voice in government decision making. Today, NFIB's Kansas chapter has more than 7,000 members, making it the largest small-business advocacy group in the state.

Each year, NFIB-Kansas polls its entire membership on a variety of state legislative and regulatory issues. The federation uses the poll results to set its legislative agenda and aggressively promotes those positions approved by a majority vote.

This democratic method of setting policy assures that the positions advanced by NFIB reflect the consensus view of the entire small-business community rather than the narrow interests of any particular trade group. Lawmakers wanting to know how proposed legislation and regulation will affect Main Street businesses can get the authoritative answer from NFIB's legislative office in Topeka.

NFIB-Kansas by Industry Classification



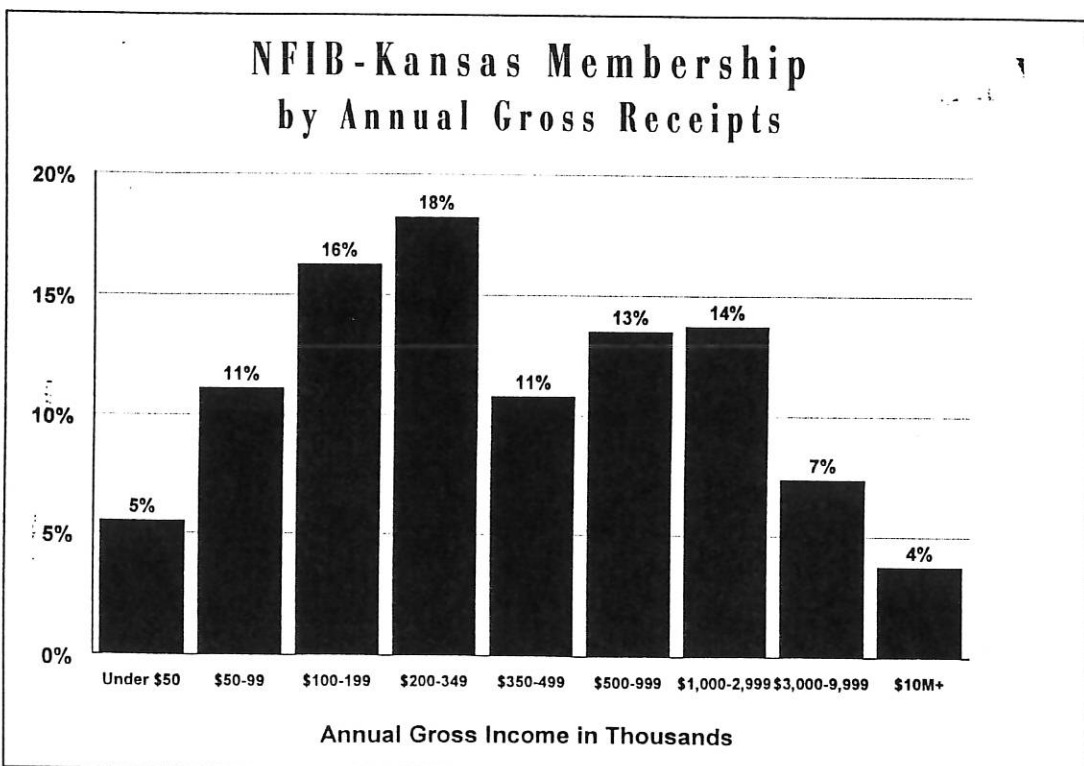
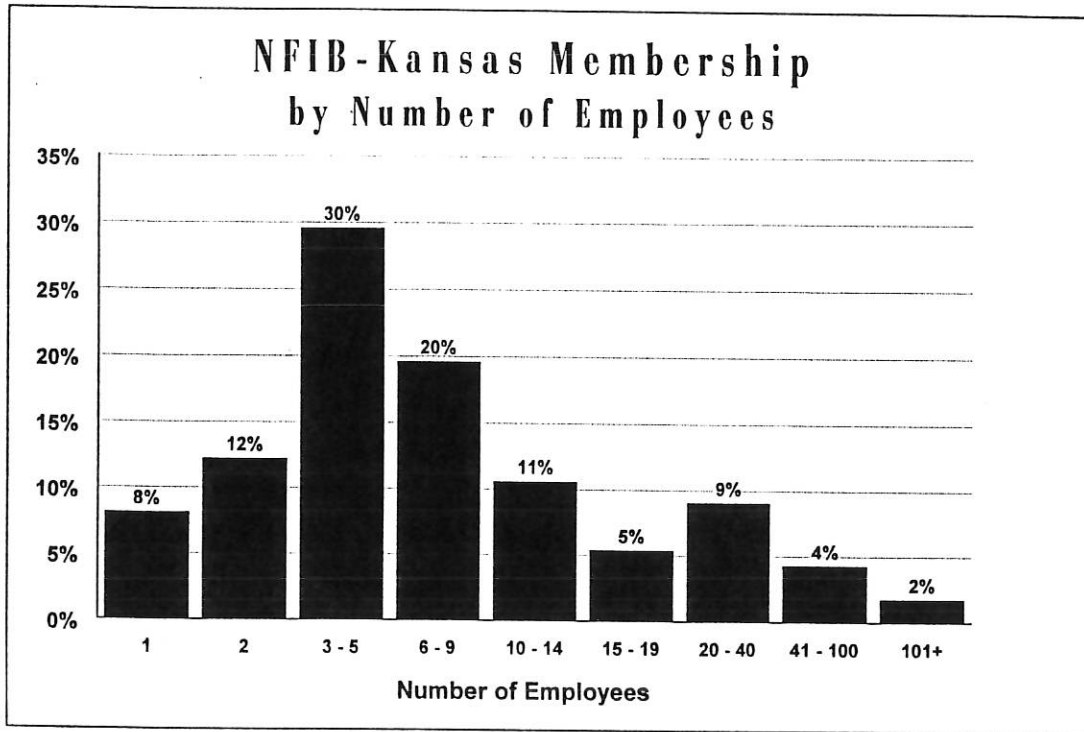
...and NFIB works for small business.

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NFIB-Kansas Membership Profile

NFIB-Kansas represents the entire spectrum of independent business, from one-person home-based operations to enterprises employing more than 100 people. The typical NFIB-Kansas member is quite small, employing six workers and ringing up gross sales of about \$340,000 per year. Yet, in aggregate, the membership is a potent economic force, employing more than 110,000 and earning about \$8 billion (gross) annually.



TESTIMONY SUBMITTED IN FAVOR OF SB265
Raising the Kansas Minimum Wage

Submitted by:
Tawny Stottlemire, Executive Director
Kansas Association of Community Action Programs (KACAP)
January 31, 2000

The Committee has heard testimony that can be summarized by the following:

- a. The majority of Kansans most likely to be impacted by the current minimum wage are probably **teenagers and college students working in service industries.**
- b. The actual number of individuals impacted is uncertain, but it appears that reasonable estimates place the figures between **2 and 4.3% of the workforce.**
- c. There is some sentiment, legitimately expressed by reasonable individuals, that since the State minimum wage impacts a relatively small number of individuals, and since Kansas has the second lowest minimum wage in the nation, that what SB265 is really concerned with, is improving the **IMAGE of Kansas**, more so than improving the lives of a significant number of low wage earners.

KACAP submits to the Honorable Chair and Members of the Commerce Committee that it is, indeed, the **MESSAGES** that our State government sends that are critical to consideration of this legislation. For the status quo, those messages are:

- (1) The State of Kansas, by supporting the second lowest minimum wage in the nation, ***believes in the validity of cheap labor from our youth.***
- (2) The State of Kansas wants our leaders and workers of tomorrow to begin their careers with a clear understanding that as teenagers and struggling college students, ***they are not worth more than \$2.65 per hour.***

Kansas is a GOOD state and Kansas is a CARING state. Our messages and the image they convey about our State **SHOULD** be better. One very important way to reduce poverty, reduce crime, and increase a sense of personal responsibility is to convince people that **THEY ARE VALUED**. There can be very few, more important messages that we can give to our youth than to say, "You, my friend, are a valuable part of our world." A State minimum wage law of \$2.65 per hour does not demonstrate our State's belief in that message.

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If we can convince just ONE young worker that he or she HAS VALUE, that he or she WILL SEE UPWARD MOBILITY from their efforts in the job market, then we HAVE used our energies wisely. Increasing the Kansas minimum wage has the ability to impact more than just ONE person – we have the ability to impact 2% of the total working population – that’s approximately 20,000 VALUABLE people. And these numbers represent the smaller end of the estimates.

SB265 provides us with an opportunity to feel good about the image of Kansas – but more importantly, it provides us with an opportunity to make our young people understand their value as Kansas workers, and provide them with a POSITIVE OUTLOOK on their future in the job market.

KACAP respectfully thanks Committee Chair Salisbury for providing time in the Commerce Committee for this issue to be considered.



KACAP is a private, not-for-profit association of Kansas’ Community Action Agencies. KACAP partners with Community Action Agencies and other anti-poverty organizations to help them grow professionally, enhance the quality of their services, and improve the lives of low-income Kansans.

Questions about KACAP may be directed to (785) 234-0878.