

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on March 13, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

April Holman, Legislative Research Department
Renae Jefferies, Revisor of Statutes
Lea Gerard, Secretary

Conferees appearing before the committee:

Steve Rarrick, Deputy Attorney General
Janet Stubbs on behalf o Kansas Building Industry
Williams Layes, Chief of Labor Market
Information Services
Paul Bicknell, Chief of Contributions, Dept. of
Human Resources

Others attending:

See attached sheet.

Upon motion by Senator Jenkins, seconded by Senator Emler, the Minutes of February 21, 27 and 28, 2001 meetings were unanimously approved.

Steve Rarrick, Deputy Attorney General Consumer Protection, appeared on behalf of Attorney General Carla J. Stovall to testify in support of **HB 2206**. The Attorney General seeks to amend the definition of consumer in the Kansas Consumer Protection Act (KCPA) to include transactions involving husbands and wives and family partnerships. Currently, the definition of "consumer" includes only "an individual or sole proprietor" (Attachment 1).

Senator Emler moved that **HB 2206** be reported favorably to the full senate and placed on the consent calendar, Senator Brungardt seconded the motion. The motion unanimously carried.

Janet Stubbs testified on behalf of the Kansas Building Industry Workers Compensation Fund in support of **HB 2263**. The Kansas Building Industry Workers Compensation Fund, KBIWCF, began actual operation of writing workers compensation insurance coverage for the residential and light commercial construction industry related businesses on February 1, 1993. The bill was requested to enable the Board of Trustees to "declare" a dividend at the end of a fund year prior to December 31 of that fund year. Current statute prohibits a fund board from declaring a dividend less than 12 months after the end of the fund year. Therefore, the dividend amount cannot be deducted from the federal income tax filing and taxes must be paid upon it. Because the IRS will not allow more than a 2-year carry back for deductions and because all workers comp claims for each year do not close out in time to permit approval of a dividend within that 2 year time period, a Fund loses the ability to recover that already paid 34% tax

The Department of Insurance suggested two changes be made to the bill on Page 2, Line 4 and 9. (Attachment 2).

Senator Kerr made a motion to accept the Department of Insurance's amendments on Page 2, Line 4 and Line 9, seconded by Senator Jordan. The voice vote was in favor of the motion.

Senator Kerr moved, seconded by Senator Jordan, that **HB 2263** be recommended favorably for passage as amended. The voice vote was in favor of the motion.

Bill Layes, Chief of Labor Market Information Services, Kansas Department of Human Resources, testified in support of **HB 2303**. The bill provides for classification of employers under the North American Industry Classification System (NAICS). The change becomes necessary due to the North American Free Trade Agreement (NAFTA). The US Department of Labor, Bureau of Labor Statistics and many other federal and state agencies are adopting the NAICS classification system (Attachment 3).

Paul Bicknell, Chief Contributions, Kansas Department of Human Resources spoke in favor of an amendment to be made to **HB 2303**. On December 21, 2000, the President signed the Consolidated Appropriations Act, 2001 (CAA) affecting the Federal-State Unemployment Compensation program. The CAA amended Federal law to change the way American Indian tribes are treated under the Federal Unemployment Tax Act (FUTA). Specifically, the Indian tribes are now to be treated similarly to State and local governments. Services performed in the employ of a tribe must be covered for State UC law purposes when the services are excluded from the FUTA definition of "employment" solely by reason of being performed for the tribe (Attachment 4).

The amendment was not available due to the absence of the Revisor and was presented to the Committee later in the day.

Meeting adjourned at 9:30 a.m.

Next meeting scheduled March 14, 2001 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: MARCH 13, 2001

NAME	REPRESENTING
Michael L. Hunt	Kearney Law Office
Janet Stubbs	Ks. Bldg. IND. W.C. FUND
Bill Curtis	Ks Assoc of School Boards
Art Brown	M. Co. A.
Steve Kariel	ATTORNEY GENERAL
PAUL BICKNELL	KDHR
Bill Hayes	KDHR
A. J. Kotich	KDHR
BRAD HAMILTON	KDHR advise on legal affairs
Bruce Dimmitt	Independent
Jeff Bottoburg	State Farm
Dore Trunko	RGC
Shirley Allen	Bottoburg Assoc.
George Barbee	Garber, Braden, Barbee



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699

CONSUMER HOTLINE
1-800-432-2310

Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Commerce Committee
RE: HB 2206
March 13, 2001

Chairperson Brownlee Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to testify in support of HB 2206. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

In HB 2206, Attorney General Stovall seeks to amend the definition of consumer in the Kansas Consumer Protection Act (KCPA) to include transactions involving husbands and wives and family partnerships. Currently, the definition of "consumer" includes only "an individual or sole proprietor." Many small family-run businesses and farms do not qualify as a consumer under this definition, and the Attorney General believes they should have the same protection as a sole proprietorship.

Under well-established rules of statutory construction, the current definition of consumer in the KCPA does not provide protection to businesses owned by more than one owner. Under K.S.A. 50-624(b), "[c]onsumer" means **an individual or sole proprietor** who seeks or acquires property or services for personal, family, household, business or agricultural purposes."

Black's Law Dictionary (6th ed. 1990) defines the terms "sole," and "sole proprietorship" as follows (bold emphasis added):

Sole. Single; individual; separate; the opposite of joint; as a *sole tenant*. Comprising only of **one person**; the opposite of aggregate; as a *corporation sole*. Without another or others. Unmarried; as a *feme sole*.

Sole proprietorship. A form of business in which **one person** owns all the assets of the business in contrast to a partnership, trust, or corporation. The sole proprietor is solely liable for all of the debts of the business.

Senate Commerce Committee
MARCH 13, 2001
Attachment 1-1

The Attorney General seeks this amendment not to expand her jurisdiction, but to clarify what we believe the legislature originally intended when the KCPA was passed. Attorney General Stovall believes husband and wife proprietors and family partnerships should receive protection under the KCPA. As a result, we ask you to amend the definition of "consumer" as requested in this bill.

On behalf of Attorney General Stovall, I urge you to pass this bill out favorably. I would be happy to answer questions of the Chair or any member of the Committee.

LEGISLATIVE



TESTIMONY



2206 SW 29th, Terr., Topeka, KS 66611

◆ 785-267-2936 Fax 785-267-2959 ◆

E-mail: janetstubbs@worldnet.att.net

SENATE COMMERCE COMMITTEE

March 12, 2001

HB 2263

MADAM CHAIR & MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs and I am appearing today on behalf of the Kansas Building Industry Workers Compensation Fund in support of HB 2263.

The Kansas Building Industry Workers Compensation Fund, KBIWCF, began actual operation of writing workers compensation insurance coverage for the residential and light commercial construction industry related businesses on February 1, 1993. Although I was legally the "Administrator" of the KBIWCF, the policy services and the claims were handled by a third party administrator, or TPA, until 1997, at which time we brought the entire operation "in-house". It is a decision which has been very beneficial for the participating companies as we have grown into an extremely competitive coverage provider, marketed through independent agents, for the industry.

The KBIWCF is a homogeneous pool which historically has catered to the smaller companies involved in the construction industry. Now we are finding that the current market conditions are making us much more attractive to many larger companies as well. We have six full time staff people-- including a loss control staff person who provides individualized safety training to a company, as well as safety seminars for now required attendance when a company's loss ratio is over 40%, and a full time nurse case manager to assure that the injured workers are receiving the proper medical attention, while at the same time protecting the participating employer from unnecessary medical charges or malingering workers. We contract out the private investigation services.

Senate Commerce Committee

March 13, 2001

Attachment 2-1

I requested introduction of HB 2263 to enable a Board of Trustees, of a pool regulated under chapter 44, to “declare” a dividend of the profits of a fund year prior to December 31 of that fund year. Current statute prohibits a fund board from declaring a dividend less than 12 months after the end of the fund year. Therefore, the dividend amount cannot be deducted from the federal income tax filing and taxes must be paid upon it. Because the IRS will not allow more than a 2 year carry back for deductions and because all workers comp claims for each year do not close out in time to permit approval of a dividend within that 2 year time period, a Fund loses the ability to recover that already paid 34% tax.

Madam Chair, our members are required to then pay federal tax on the dividend when it is returned to them. This means that as much as 68% of the total amount of money to be returned to the participating companies is sent to the federal government instead of going back into the Kansas economy.

By changing the language of the statute only slightly so that a Board may declare the dividend but still must have approval of the Department prior to disbursement of the actual money, the Fund may deduct the amount from the tax filing, carry the dividend as a liability on the financial statement, and seek approval from KID for actual disbursement at the appropriate time .

I gave the Department a copy of the bill draft at the time of introduction. They have 2 suggested changes to which we have no objections. First, page 2 line 4 of the bill after the word “year” and before the “,” they suggest adding “or anytime thereafter”. On Page 2 line 9, they suggest changing the word “fund” to “pool”.

These changes were not made in the House because the committee leadership of both parties wanted this bill to be put on the Consent Calendar of the House, which it was. HB 2263 passed the House on a vote of 124-0.

Committee, I appreciate the opportunity to be heard on HB 2263 and request committee approval of this bill with the changes suggested by the Department staff, if you deem those changes acceptable. I would be glad to attempt to answer any questions you might have.

TESTIMONY- HB2303
SENATE COMMERCE COMMITTEE
MARCH 13, 2001

Good morning, Chairman and members of the committee, my name is Bill Laves. I am the Chief of Labor Market Information Services, Kansas Department of Human Resources. Thank you for the opportunity to appear before you to report on HB2303.

This bill provides for classification of employers under the North American Industry Classification System (NAICS). Currently employers are classified using the Standard Industrial Classification (SIC) Manual. The current law provides for nine industry divisions such as construction, manufacturing, services, government, etc. HB2303 provides industry sectors and is more detailed in nature. This change becomes necessary due to the North American Free Trade Agreement (NAFTA). The U.S. Department of Labor, Bureau of Labor Statistics and many other state and federal agencies are adopting the NAICS classification system. Under existing law new employers ineligible for a contribution rate calculation for Unemployment Insurance based on their own experience are assigned an industry rate until such time as sufficient experience is obtained. For rate year 2001, two rates are assigned. Contractors are assigned a rate of 2.74 percent and all others a rate of 2.0 percent. The change to NAICS provides for a more detailed designation among employers. Employers are assigned an average tax rate for their industry sector or for all sectors, whichever is higher. This bill will have no effect on the UI Trust Fund or payments from the fund. A description of existing SIC codes and the NAICS codes are listed on the back of this document.

Thank you for allowing me to appear before you today. I will try to answer any questions.

Senate Commerce Committee
March 13, 2001
Attachment 3-1

**Standard Industrial Classification (SIC) Divisions
And
North American Industry Classification System (NAICS) Sectors**

<u>SIC Divisions</u>	<u>NAICS Sectors</u>
Agriculture, forestry, and fishing	Agriculture, forestry, fishing, and hunting
Mining	Mining
Construction	Utilities
Manufacturing	Construction
Transportation, communications, electric, gas, and sanitary services	Manufacturing
Wholesale trade	Wholesale trade
Retail trade	Retail trade
Finance, insurance, and real estate Services	Transportation and warehousing
Public administration	Information
Non-classifiable establishments	Finance and insurance
	Real estate and rental and leasing
	Professional, scientific, and technical services
	Management of companies and enterprises
	Administrative and support and waste management and remediation services
	Educational services
	Health care and social assistance
	Arts, entertainment, and recreation
	Accommodation and food services
	Other services (except public administration)
	Public administration

**TESTIMONY
SENATE COMMERCE COMMITTEE
MARCH 13, 2001**

Good morning, Madam Chair and members of the committee, my name is Paul Bicknell. I am Chief of Contributions, Kansas Department of Human Resources. Thank you for the opportunity to appear before you to speak to you regarding the need for the amendment to House Bill 2303.

On December 21, 2000, the President signed the Consolidated Appropriations Act, 2001 (CAA) affecting the Federal-State Unemployment Compensation (UC) program. The CAA amended Federal law to change the way American Indian tribes are treated under the Federal Unemployment Tax Act (FUTA). Specifically, the Indian tribes are now to be treated similarly to State and local governments.

This means –

- Services performed in the employ of tribes generally are no longer subject to the FUTA tax.
- As a condition of participation in the Federal-State UC program:
 - Services performed in the employ of tribes are, with specified exceptions, required to be covered under State UC laws. Prior to the CAA amendments, coverage was at the option of the State. (Kansas currently has Indian tribal entities under UC coverage but only as a result of the voluntary election for coverage by each entity.)
 - Tribes must be offered the reimbursement option. Prior to the CAA amendments, States were prohibited from offering the reimbursement option to Indian tribes.
- Extended Benefit payments based on services performed in the employ of tribes no longer qualifies for Federal sharing. Unlike State and local governments, if an Indian tribe fails to make required payments to the State's unemployment fund or payments of penalty or interest, then the tribe will become liable for the FUTA tax and the State may remove tribal services for State UC coverage.

Senate Commerce Committee
March 13, 2001
Attachment 4-1

As a condition of employers in the State receiving credit against the FUTA tax, FUTA requires State law to provide the UC must be –

Payable on the basis of service to which 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of the other services subject to such law. [Section 3304(a)(6)(A),FUTA.]

These requirements are generally referred to as the “required coverage” and “equal treatment” provisions. They apply to the services described in Section 3309(a)(1), FUTA. Section 3309(a)(1)(B) applies to “service excluded from the term ‘employment’ solely by reason of Section 3306(c)(7), FUTA. Since services performed in the employ of an Indian tribe are now included in Section 3306(c)(7), FUTA, they fall within the scope of the required coverage and equal treatment provisions.

In brief, this means that services performed in the employ of a tribe must be covered for State UC law purposes when the services are excluded from the FUTA definition of “employment” solely by reason of being performed for the tribe. It means that “equal treatment” must be provided in the payment of UC based services performed in the employ of a tribe. States may not create special eligibility provisions related to tribal services within the scope of Section 3306(c)(7), FUTA, without conflicting with Federal Law.

Only States with “Indian tribes” within their State boundaries must amend their laws – Kansas is among these States. The amendments “apply to services performed on or after the date of enactment” of the CAA. (Section 166(e)(1) of the Community Renewal Tax Relief Act of 2000, as enacted by the CAA.) The coverage and reimbursement requirements were, therefore, effective on December 21, 2000, and all affected States must enact conforming legislation immediately and retroactive to December 21, 2000. Because the US Department of Labor recognizes that States will need time to introduce and enact legislation, the Department will take no enforcement action prior to October 31, 2001.

Failure to Conform –

Federal sanctions can be levied against Kansas if state law or agency practices are not consistent with federal requirements. There is a specific fiscal impact upon Kansas employers if held to be out of conformity.

Each year a state's unemployment insurance program is certified by the Department of Labor if state statutes are in conformity, and state policies and administrative practices are in compliance with federal law. Certification enables a state to receive federal funds for administrative costs and allows employers in the state to use contributions paid to the state to offset federal unemployment taxes. There are two types of offset credits: a base offset credit and an additional offset credit. Each is contingent on state adherence to a different set of state standards, or requirements. With both credits, an employer's federal tax liability is reduced from 6.2 percent to 0.8 percent of the federal taxable wage base for each employee of \$7,000.

The following would occur if Kansas was out of conformity in CY 2001:

If Kansas was not certified for a FUTA base tax credit in CY 2001, employers would pay an additional \$422.2M in federal taxes and \$44.7M in state taxes:

- **Employers would lose the 5.4 percent tax credit.**
- **Employers would continue to pay the effective 0.8 percent FUTA tax.**
- **Employers would continue to pay state tax contributions as provided in K.S.A. 44-710a.**
- **Employers would pay 0.5 percent on the state taxable wage base for each employee of \$8,000 for administrative costs as provided in K.S.A. 44-710(b)(2).**

We have worked with Brad Hamilton, our Director of Native American Affairs and he has shared this information with the appropriate Indian leaders in Kansas.

Thank you for allowing me to appear before you today. I would be happy to answer any questions.