

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on February 24, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Donald Betts, Excused  
Representative Rob Boyers, Excused  
Representative Broderick Henderson, Excused  
Representative Mary Kauffman, Excused  
Representative Kevin Yoder, Excused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department  
Rena Jefferies, Revisor of Statutes  
Mitchell Rice, Revisor of Statutes  
June Evans, Secretary

Conferees appearing before the committee: Representative Rocky Nichols  
A. J. Kotich, Kansas Department of Human Resources  
Terry Leatherman, Kansas Chamber of Commerce and Industry  
Jim DeHoff, Executive Secretary, AFL-CIO

Others attending: See attached sheet

The Chairman called the meeting to order at 9:00 a.m. and stated there are two days left for hearing House bills; thereafter the committee will be hearing Senate bills if they send any over.

The Chairman opened the hearing on **HB 2353 - Employment Security Insurance Act for Domestic Violence.**

Staff gave a briefing saying there were some technical amendments that should be addressed when working the bill.

Representative Nichols, a proponent to **HB 2353**, stated a balloon would be arriving soon and his comments were about the balloon. The balloon is actually what was intended, but due to time constraints he did not get information from Department of Human Resources to put in the original bill. This does not change current policy. The fiscal note is zero. Representative Nichols stated he would like to go over the balloon when it arrives (Attachments 1 & 2).

Terry Leatherman, Vice President - Legislative Affairs, Kansas Chamber of Commerce and Industry (KCCI), stated the KCCI had no policy direction to permit comments in support or opposition to **HB 2353**. Since domestic violence victims currently qualify for benefits and **HB 2353** only clarifies this practice, KCCI does not oppose the legislation. A revised fiscal analysis, dated February 19, 2003 and signed by Acting Kansas Department of Human Resources Secretary Jim Garner, indicated there would be no fiscal impact on Kansas employers (Attachment 3).

Jim Garner, Acting Secretary, Department of Human Resources, stated **HB 2353** would amend the Kansas Employment Security Law to enact special eligibility provisions allowing receipt of unemployment insurance benefits for individuals coping with the effects of domestic violence. The impact of the Unemployment Trust Fund would be minimal and would have no affect on the State General Fund. All training and administrative costs would be paid from FUTA grants for administration of the employment security system.

The Chairman announced that there were no opponents. He would postpone further action until the balloon to **HB 2353** arrived.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 24, 2003 in Room 243-N of the Capitol.

The Chairman opened the hearing on **HB 2329 - Wage Payment Act Definitions**.

Staff gave a briefing on **HB 2329** stating “limited liability company or other organization” had been added in Section 1, lines 15 and 16. Section 2. (b) was struck and replaced with “Any officer, manager, major shareholder or other person who has charge of the affairs of an employer, and who knowingly permits the employer to engage in violations of K.S.A. 44-314 or 44-315, and amendments thereto, may be deemed the employer for purposes of this act.

Jim DeHoff, Executive Secretary, AFL-CIO, stated the AFL-CIO supported **HB 2329**.

A. J. Kotich, Chief Counsel, Kansas Department of Human Resources, testified as a proponent to **HB 2329**. The bill proposes two amendments to the Kansas Wage Payment Act. The first amendment defining “employer” modernizes the definition of employer in the Act. This ensures that the law applies equally across the board to protect all Kansas employees, including employees of limited liability companies and other types of organizations that are now very common, but did not exist at all when the wage payment law was first enacted in 1973.

The second amendment updates the personal responsibility for payment section of the Wage Payment Act so it would apply across the board to all business entities, including limited liability companies and other kinds of organizations that did not exist when the wage payment law was enacted in 1973 (Attachment 4).

There was discussion and Representative Grant moved and Representative Carlson seconded to move **HB 2329** out favorably for passage. The motion carried.

The Chairman stated that written balloons would not be ready on **HBs 2064 and 2211** until February 25 so they would be worked at that time.

The Chairman stated the balloon on Representative Nichols bill, **HB 2353**, had arrived so the committee could continue to work the bill.

Representative Nichols reviewed the balloon on **HB 2353**.

Chairman Dahl asked if this couldn't be accomplished by rules and regulations.

Representative Nichols stated that it could and, short of that, it could be accomplished by being in the manual the employees use. This is really about awareness. This bill will be covered by the media and many people in need of this will know the law exists. If this information is in statute it would be easier to locate. This is just to make certain everyone knows it is the law of our land. This has been law since the early 1980s but in a recent survey sent out none knew they had this protection. This hearing does raise awareness.

The Chairman stated that a bill of this nature deserves thought and hopes all committee members would read the bill and balloon. **HB 2353** will be on the agenda to work tomorrow, February 25.

Written testimony only: Keith Landis, Christian Science Committee on Publication for Kansas (Attachment 5).

The meeting was adjourned at 10:00 a.m. and the next meeting will be February 25.



STATE OF KANSAS

**ROCKY NICHOLS**  
STATE REPRESENTATIVE  
58TH DISTRICT



HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

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MEMBER: EDUCATION BUDGET COMMITTEE  
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OFFICE

STATEHOUSE—284 WEST WING  
TOPEKA, KANSAS 66612-1504  
(785) 296-7651

HOME  
2329 S.E. VIRGINIA AVE.  
TOPEKA, KANSAS 66605-1358  
(785) 357-6262  
E-MAIL—ROCKYNICHOLS@COX.NET  
INTERNET HOMEPAGE—  
HTTP://WWW.ROCKYNICHOLS.COM

February 24, 2003

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of HB 2353. I want to call your attention to the copy of the balloon amendment that the Revisor of Statutes has prepared. My comments are about this balloon amendment version of the bill.

HB 2353 more clearly restates current law and current policies in order to ensure that victims of domestic violence are not disqualified from obtaining unemployment compensation benefits if they must leave work. I want to stress that HB 2353 does not change the current policy of the state of Kansas. Because it does not change the current policy, the fiscal impact is zero. Rather, this bill clearly spells out in law the current policy that victims of domestic violence will not be disqualified from unemployment compensation benefits and it places into statute the definitions and parameters of this policy, giving both employers and victims of domestic violence the certainty that they need to understand the policy.

After the original version of HB 2353 was introduced and published, the Department of Human Resources legal division provided some additional and clarifying language to ensure that the bill fully conforms to federal law. The Department was also helpful in developing language carrying out the policy intent of ensuring that victims of domestic violence have the time and flexibility to get their lives in order and protect themselves from personal harm. In short, the balloon amendment is what the bill would have looked like, if not for the legislative deadlines that were placed on introducing this as a bill with individual sponsors.

Victims of domestic violence are often forced to leave employment either to protect themselves from further physical harm or because they cannot perform at work due to consequence of the violence. To quote a recent paper about domestic violence and unemployment compensation, "domestic violence is not confined to the home. It often follows the victim to work. A perpetrator may stalk a victim at her workplace because it may be the only place he knows that he can find her." Unfortunately, my family has a personal real-life experience which enables me to testify to the horrible truth of that statement.

Commerce &  
Labor  
2-24-03  
Atch # 1

For those of you who may ask why we need to restate Kansas law in order to make it crystal clear that victims of domestic violence are not disqualified from unemployment compensation, I have a personal story that may help. On July 31, 2001, my big sister, Risa, was taken from this earth because of domestic violence.

My sister Risa was in an abusive marriage. After being the victim of domestic violence for far too long, Risa had finally gotten up the courage to leave her abusive husband. One day in early July of 2001, Risa gathered up a few belongings and moved herself and her twin daughters out of that abusive home and into a safe place to live. Risa contacted the local Topeka battered women's shelter, and she was starting to get her life in order. There was just one problem. She had to keep working at her day job to put food on the table and clothes on her daughters' backs. Though her estranged husband had made death threats and Risa knew that her life was in danger, she bravely went to work every day in order to make ends meet.

Risa did not even realize that she had the option to protect her life by leaving her job and applying for unemployment compensation.

Her abusive husband did not know where she was living, but he of course knew where she worked. On July 30, 2001, he staked out her place of employment and tried to follow her home. When my sister pulled out of the parking lot on her way home from work, she noticed that her abusive husband was following her. Risa darted in and out of neighborhoods and did whatever it took to lose him. I remember her telling us how scared she was. However, because of her maneuvering she thought that she gave him the slip. She thought that she was safe and that he didn't follow her home from work. Unfortunately, she was wrong. It was the very next day, July 31, 2001, that Risa was murdered by her abusive husband. He was waiting outside of her new apartment because he found out where she was living by following her home from work. Risa was leaving in the morning for work when he took her life.

Imagine what might have happened if the policy of Kansas was more clearly spelled out in law so that Risa and other victims of domestic violence could clearly see that they have the potential to obtain unemployment compensation if they have to leave their jobs in order to protect their lives. If having this policy clearly spelled out in Kansas law can save just one life and prevent just one Kansas family from having to suffer a loss like our family has suffered, then why wouldn't we pass that law?

Thank you for your time and attention to this matter. I would stand for any questions.

# HOUSE BILL No. 2353

By Representatives Nichols, Flaharty, Horst, Kassebaum, Kirk,  
Kuether, Ruff, Swenson and Yoder

2-12

10 AN ACT concerning the employment security laws; relating to domestic  
11 violence; amending K.S.A. 2002 Supp. 44-706 and repealing the exist-  
12 ing section.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. This act shall be known and may be cited as the  
16 employment security insurance act for domestic violence survivors.

17 New Sec. 2. As used in this act, unless the context clearly shows  
18 otherwise:

19 (a) "Abuse" means:

- 20 (1) Causing or attempting to cause physical harm;
- 21 (2) placing another person in fear of imminent physical harm;
- 22 (3) causing another person to engage involuntarily in sexual relations  
23 by force, threats or duress, or threatening to do so;
- 24 (4) engaging in mental abuse, which includes threats, intimidation  
25 and acts designed to induce terror;
- 26 (5) depriving another person of medical care, housing, food or other  
27 necessities of life; and
- 28 (6) restraining the liberty of another.

29 (b) "Domestic violence" means abuse committed against an em-  
30 ployee or an employer's spouse or dependent child by:

- 31 (1) A current or former spouse of the employee;
- 32 (2) a person with whom the employee shares parentage of a child in  
33 common;
- 34 (3) a person who is cohabitating with, or has cohabitated with, the  
35 employee;
- 36 (4) a person who is related by blood or marriage; or
- 37 (5) a person with whom the employee has or had a dating or engage-  
38 ment relationship.

39 New Sec. 3. ~~(c)~~ The secretary of human resources shall implement  
40 a training curriculum for employees who will interact with claimants un-  
41 der the provisions of sections 1 through 6, and amendments thereto. Such  
42 curriculum shall be approved by the ~~centers for disease control or the~~  
~~health services designated state domestic violence and sexual assault~~

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Labor  
2-24-03  
Attach # 2



state domestic violence and sexual assault coalition designated by the center for disease control or health and human services

1 coalition.

2 ~~(b) All officers and employees implementing the employment security law and who may interact with such claimants shall be trained in this curriculum no later than 60 days from the effective date of this section. The secretary shall develop an ongoing plan for employees of the department who interact with such claimants to be trained in the nature and dynamics of domestic violence so that employment separations stemming from domestic violence are reliably screened and adjudicated, and so victims of domestic violence are able to take advantage of the full range of job services provided under the employment security law.~~

3 ~~(c) The secretary of human resources shall adopt rules and regulations to implement the provisions of this act.~~

4 New Sec. 4. No contributing employer or rated governmental employer's account shall be charged with respect to the benefits paid to a claimant who is eligible to receive employment security benefits due to domestic violence as set forth in section 3, and amendments thereto.

5 New Sec. 5. This act shall be deemed part of and supplemental to the employment security law.

6 Sec. 6. K.S.A. 2002 Supp. 44-706 is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

7 (a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

8 (1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

9 (2) the individual left temporary work to return to the regular

1 employer;

2 (3) the individual left work to enlist in the armed forces of the United  
3 States, but was rejected or delayed from entry;

4 (4) the individual left work because of the voluntary or involuntary  
5 transfer of the individual's spouse from one job to another job, which is  
6 for the same employer or for a different employer, at a geographic loca-  
7 tion which makes it unreasonable for the individual to continue work at  
8 the individual's job;

9 (5) the individual left work because of hazardous working conditions;  
10 in determining whether or not working conditions are hazardous for an  
11 individual, the degree of risk involved to the individual's health, safety  
12 and morals, the individual's physical fitness and prior training and the  
13 working conditions of workers engaged in the same or similar work for  
14 the same and other employers in the locality shall be considered; as used  
15 in this paragraph (5), "hazardous working conditions" means working con-  
16 ditions that could result in a danger to the physical or mental well-being  
17 of the individual; each determination as to whether hazardous working  
18 conditions exist shall include, but shall not be limited to, a consideration  
19 of (A) the safety measures used or the lack thereof, and (B) the condition  
20 of equipment or lack of proper equipment; no work shall be considered  
21 hazardous if the working conditions surrounding the individual's work are  
22 the same or substantially the same as the working conditions generally  
23 prevailing among individuals performing the same or similar work for  
24 other employers engaged in the same or similar type of activity;

25 (6) the individual left work to enter training approved under section  
26 236(a)(1) of the federal trade act of 1974, provided the work left is not  
27 of a substantially equal or higher skill level than the individual's past  
28 adversely affected employment (as defined for purposes of the federal  
29 trade act of 1974), and wages for such work are not less than 80% of the  
30 individual's average weekly wage as determined for the purposes of the  
31 federal trade act of 1974;

32 (7) the individual left work because of unwelcome harassment of the  
33 individual by the employer or another employee of which the employing  
34 unit had knowledge;

35 (8) the individual left work to accept better work; each determination  
36 as to whether or not the work accepted is better work shall include, but  
37 shall not be limited to, consideration of (A) the rate of pay, the hours of  
38 work and the probable permanency of the work left as compared to the  
39 work accepted, (B) the cost to the individual of getting to the work left  
40 in comparison to the cost of getting to the work accepted, and (C) the  
41 distance from the individual's place of residence to the work accepted in  
42 comparison to the distance from the individual's residence to the work  
3 left;



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1 (9) the individual left work as a result of being instructed or requested  
2 by the employer, a supervisor or a fellow employee to perform a service  
3 or commit an act in the scope of official job duties which is in violation  
4 of an ordinance or statute;

5 (10) the individual left work because of a violation of the work agree-  
6 ment by the employing unit and, before the individual left, the individual  
7 had exhausted all remedies provided in such agreement for the settlement  
8 of disputes before terminating; or

9 (11) after making reasonable efforts to preserve the work, the indi-  
10 vidual left work due to a personal emergency of such nature and com-  
11 pelling urgency that it would be contrary to good conscience to impose a  
12 disqualification; or

13 (12) the individual left work due to circumstances resulting from do-  
14 mestic violence, including:

, but not limited to:

15 (A) The individual's reasonable fear of future domestic violence at or  
16 en route to or from the individual's place of employment;

17 (B) the individual's need to relocate to another geographic area in  
18 order to avoid future domestic violence;

or

19 (C) the individual's need to address the physical, psychological and  
20 legal impacts of domestic violence;

21 (D) the individual's need to leave employment as a condition of re-  
22 ceiving services or shelter from an agency which provides support services  
23 or shelter to victims of domestic violence; or

24 (E) the individual's reasonable belief that termination of employment  
25 is necessary to avoid other situations which may cause domestic violence  
26 and to provide for the future safety of the individual or the individual's  
27 family.

28 (b) An individual may prove the existence of domestic violence by  
29 providing one of the following:

30 (1) A restraining order or other documentation of equitable relief by  
31 a court of competent jurisdiction;

32 (2) a police record documenting the abuse;

33 (3) documentation that the abuser has been convicted of one or more  
34 of the offenses enumerated in articles 34 and 35 of chapter 21 of the  
35 Kansas Statutes Annotated, and amendments thereto, where the victim  
36 was a family or or household member;

or

37 (4) medical documentation of the abuse;

38 (5) a statement provided by a counselor, social worker, health care  
39 provider, clergy, shelter worker, legal advocate, domestic violence or sex-  
40 ual assault advocate or other professional who has assisted the individual  
41 in dealing with the effects of abuse on the individual or the individual's  
42 family; or

43 (6) a sworn statement from the individual attesting to the abuse.

1 (c) No evidence of domestic violence experience by an individual, in-  
2 cluding the individual's statement and corroborating evidence, shall be  
3 disclosed by the department of human resources unless consent for dis-  
4 closure is given by the individual.

5 (b) (d) If the individual has been discharged for misconduct con-  
6 nected with the individual's work. The disqualification shall begin the day  
7 following the separation and shall continue until after the individual be-  
8 comes reemployed and has had earnings from insured work of at least  
9 three times the individual's determined weekly benefit amount, except  
10 that if an individual is discharged for gross misconduct connected with  
11 the individual's work, such individual shall be disqualified for benefits  
12 until such individual again becomes employed and has had earnings from  
13 insured work of at least eight times such individual's determined weekly  
14 benefit amount. In addition, all wage credits attributable to the employ-  
15 ment from which the individual was discharged for gross misconduct con-  
16 nected with the individual's work shall be canceled. No such cancellation  
17 of wage credits shall affect prior payments made as a result of a prior  
18 separation.

19 (1) For the purposes of this subsection (b), "misconduct" is defined  
20 as a violation of a duty or obligation reasonably owed the employer as a  
21 condition of employment. The term "gross misconduct" as used in this  
22 subsection (b) shall be construed to mean conduct evincing extreme, will-  
23 ful or wanton misconduct as defined by this subsection (b).

24 (2) For the purposes of this subsection (b), the use of or impairment  
25 caused by an alcoholic beverage, a cereal malt beverage or a nonprescri-  
26 bed controlled substance by an individual while working shall be conclu-  
27 sive evidence of misconduct and the possession of an alcoholic beverage,  
28 a cereal malt beverage or a nonprescribed controlled substance by an  
29 individual while working shall be prima facie evidence of conduct which  
30 is a violation of a duty or obligation reasonably owed to the employer as  
31 a condition of employment. For purposes of this subsection (b), the dis-  
32 qualification of an individual from employment which disqualification is  
33 required by the provisions of the drug free workplace act, 41 U.S.C. 701  
34 et seq. or is otherwise required by law because the individual refused to  
35 submit to or failed a chemical test which was required by law, shall be  
36 conclusive evidence of misconduct. Refusal to submit to a chemical test  
37 administered pursuant to an employee assistance program or other drug  
38 or alcohol treatment program in which the individual was participating  
39 voluntarily or as a condition of further employment shall also be conclu-  
40 sive evidence of misconduct. Alcoholic liquor shall be defined as provided  
41 in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be  
42 defined as provided in K.S.A. 41-2701 and amendments thereto. Con-  
43 trolled substance shall be defined as provided in K.S.A. 65-4101 and

1 amendments thereto of the uniform controlled substances act. As used  
2 in this subsection (b)(2), "required by law" means required by a federal  
3 or state law, a federal or state rule or regulation having the force and  
4 effect of law, a county resolution or municipal ordinance, or a policy  
5 relating to public safety adopted in open meeting by the governing body  
6 of any special district or other local governmental entity. An individual's  
7 refusal to submit to a chemical test shall not be admissible evidence to  
8 prove misconduct unless the test is required by and meets the standards  
9 of the drug free workplace act, 41 U.S.C. 701 et seq., the test was ad-  
10 ministered as part of an employee assistance program or other drug or  
11 alcohol treatment program in which the employee was participating vol-  
12 untarily or as a condition of further employment, the test was otherwise  
13 required by law and the test constituted a required condition of employ-  
14 ment for the individual's job, or, there was probable cause to believe that  
15 the individual used, possessed or was impaired by an alcoholic beverage,  
16 a cereal malt beverage or a controlled substance while working. The re-  
17 sults of a chemical test shall not be admissible evidence to prove miscon-  
18 duct unless the following conditions were met:

19 (A) Either (i) the test was required by law, the test was administered  
20 pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the  
21 test was administered as part of an employee assistance program or other  
22 drug or alcohol treatment program in which the employee was partici-  
23 pating voluntarily or as a condition of further employment, (iii) the test  
24 was required by law and the test constituted a required condition of em-  
25 ployment for the individual's job, or (iv) there was probable cause to  
26 believe that the individual used, had possession of, or was impaired by  
27 the alcoholic beverage, the cereal malt beverage or the controlled sub-  
28 stance while working;

29 (B) the test sample was collected either (i) as prescribed by the drug  
30 free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an em-  
31 ployee assistance program or other drug or alcohol treatment program in  
32 which the employee was participating voluntarily or as a condition of  
33 further employment, (iii) as prescribed by a test which was required by  
34 law and which constituted a required condition of employment for the  
35 individual's job, or (iv) at a time contemporaneous with the events estab-  
36 lishing probable cause;

37 (C) the collecting and labeling of the test sample was performed by  
38 a licensed health care professional or any other individual authorized to  
39 collect or label test samples by federal or state law, or a federal or state  
40 rule or regulation having the force and effect of law, including law en-  
41 forcement personnel;

42 (D) the test was performed by a laboratory approved by the United  
43 States department of health and human services or licensed by the de-

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1 partment of health and environment, except that a blood sample may be  
2 tested for alcohol content by a laboratory commonly used for that purpose  
3 by state law enforcement agencies;

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

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

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

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

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

17 (C) the employer gave or sent written notice to the individual, at the  
18 individual's last known address, that future absence may or will result in  
19 discharge;

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

22 (E) if an employee disputes being absent without good cause, the  
23 employee shall present evidence that a majority of the employee's ab-  
24 sences were for good cause.

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

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

30 (B) the individual was making a good-faith effort to do the assigned  
31 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-  
32 formance due to inability, incapacity or lack of training or experience, (iii)  
33 isolated instances of ordinary negligence or inadvertence, (iv) good-faith  
34 errors in judgment or discretion, or (v) unsatisfactory work or conduct  
35 due to circumstances beyond the individual's control; or

36 (C) the individual's refusal to perform work in excess of the contract  
37 of hire.

38 (c) If the individual has failed, without good cause, to either apply  
39 for suitable work when so directed by the employment office of the sec-  
40 retary of human resources, or to accept suitable work when offered to  
41 the individual by the employment office, the secretary of human re-  
42 sources, or an employer, such disqualification shall begin with the week  
43 in which such failure occurred and shall continue until the individual

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1 becomes reemployed and has had earnings from insured work of at least  
 2 three times such individual's determined weekly benefit amount. In de-  
 3 termining whether or not any work is suitable for an individual, the sec-  
 4 retary of human resources, or a person or persons designated by the  
 5 secretary, shall consider the degree of risk involved to health, safety and  
 6 morals, physical fitness and prior training, experience and prior earnings,  
 7 length of unemployment and prospects for securing local work in the  
 8 individual's customary occupation or work for which the individual is rea-  
 9 sonably fitted by training or experience, and the distance of the available  
 10 work from the individual's residence. Notwithstanding any other provi-  
 11 sions of this act, an otherwise eligible individual shall not be disqualified  
 12 for refusing an offer of suitable employment, or failing to apply for suit-  
 13 able employment when notified by an employment office, or for leaving  
 14 the individual's most recent work accepted during approved training, in-  
 15 cluding training approved under section 236(a)(1) of the trade act of 1974,  
 16 if the acceptance of or applying for suitable employment or continuing  
 17 such work would require the individual to terminate approved training  
 18 and no work shall be deemed suitable and benefits shall not be denied  
 19 under this act to any otherwise eligible individual for refusing to accept  
 20 new work under any of the following conditions: (1) If the position offered  
 21 is vacant due directly to a strike, lockout or other labor dispute; (2) if the  
 22 remuneration, hours or other conditions of the work offered are substan-  
 23 tially less favorable to the individual than those prevailing for similar work  
 24 in the locality; (3) if as a condition of being employed, the individual would  
 25 be required to join or to resign from or refrain from joining any labor  
 26 organization.

27 (d) For any week with respect to which the secretary of human re-  
 28 sources, or a person or persons designated by the secretary, finds that the  
 29 individual's unemployment is due to a stoppage of work which exists be-  
 30 cause of a labor dispute or there would have been a work stoppage had  
 31 normal operations not been maintained with other personnel previously  
 32 and currently employed by the same employer at the factory, establish-  
 33 ment or other premises at which the individual is or was last employed,  
 34 except that this subsection (d) shall not apply if it is shown to the satis-  
 35 faction of the secretary of human resources, or a person or persons des-  
 36 ignated by the secretary, that: (1) The individual is not participating in or  
 37 financing or directly interested in the labor dispute which caused the  
 38 stoppage of work; and (2) the individual does not belong to a grade or  
 39 class of workers of which, immediately before the commencement of the  
 40 stoppage, there were members employed at the premises at which the  
 41 stoppage occurs any of whom are participating in or financing or directly  
 42 interested in the dispute. If in any case separate branches of work which  
 43 are commonly conducted as separate businesses in separate premises are

;

(4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological safety, and/or legal needs relating to said domestic violence

conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d), be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of human resources.

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.



1 (j) For any week of unemployment on the basis of service in any  
2 capacity other than service in an instructional, research, or administrative  
3 capacity in an educational institution, as defined in subsection (v) of  
4 K.S.A. 44-703 and amendments thereto, if such week begins during the  
5 period between two successive academic years or terms if the individual  
6 performs such services in the first of such academic years or terms and  
7 there is a reasonable assurance that the individual will perform such serv-  
8 ices in the second of such academic years or terms, except that if benefits  
9 are denied to the individual under this subsection (j) and the individual  
10 was not offered an opportunity to perform such services for the educa-  
11 tional institution for the second of such academic years or terms, such  
12 individual shall be entitled to a retroactive payment of benefits for each  
13 week for which the individual filed a timely claim for benefits and for  
14 which benefits were denied solely by reason of this subsection (j).

15 (k) For any week of unemployment on the basis of service in any  
16 capacity for an educational institution as defined in subsection (v) of  
17 K.S.A. 44-703 and amendments thereto, if such week begins during an  
18 established and customary vacation period or holiday recess, if the indi-  
19 vidual performs services in the period immediately before such vacation  
20 period or holiday recess and there is a reasonable assurance that such  
21 individual will perform such services in the period immediately following  
22 such vacation period or holiday recess.

23 (l) For any week of unemployment on the basis of any services, sub-  
24 stantially all of which consist of participating in sports or athletic events  
25 or training or preparing to so participate, if such week begins during the  
26 period between two successive sport seasons or similar period if such  
27 individual performed services in the first of such seasons or similar per-  
28 iods and there is a reasonable assurance that such individual will perform  
29 such services in the later of such seasons or similar periods.

30 (m) For any week on the basis of services performed by an alien  
31 unless such alien is an individual who was lawfully admitted for perma-  
32 nent residence at the time such services were performed, was lawfully  
33 present for purposes of performing such services, or was permanently  
34 residing in the United States under color of law at the time such services  
35 were performed, including an alien who was lawfully present in the  
36 United States as a result of the application of the provisions of section  
37 212(d)(5) of the federal immigration and nationality act. Any data or in-  
38 formation required of individuals applying for benefits to determine  
39 whether benefits are not payable to them because of their alien status  
40 shall be uniformly required from all applicants for benefits. In the case  
41 of an individual whose application for benefits would otherwise be ap-  
42 proved, no determination that benefits to such individual are not payable  
43 because of such individual's alien status shall be made except upon a

1 preponderance of the evidence.

2 (n) For any week in which an individual is receiving a governmental  
3 or other pension, retirement or retired pay, annuity or other similar pe-  
4 riodic payment under a plan maintained by a base period employer and  
5 to which the entire contributions were provided by such employer, except  
6 that: (1) If the entire contributions to such plan were provided by the  
7 base period employer but such individual's weekly benefit amount ex-  
8 ceeds such governmental or other pension, retirement or retired pay,  
9 annuity or other similar periodic payment attributable to such week, the  
10 weekly benefit amount payable to the individual shall be reduced (but  
11 not below zero) by an amount equal to the amount of such pension,  
12 retirement or retired pay, annuity or other similar periodic payment  
13 which is attributable to such week; or (2) if only a portion of contributions  
14 to such plan were provided by the base period employer, the weekly  
15 benefit amount payable to such individual for such week shall be reduced  
16 (but not below zero) by the prorated weekly amount of the pension, re-  
17 tirement or retired pay, annuity or other similar periodic payment after  
18 deduction of that portion of the pension, retirement or retired pay, an-  
19 nuity or other similar periodic payment that is directly attributable to the  
20 percentage of the contributions made to the plan by such individual; or  
21 (3) if the entire contributions to the plan were provided by such individ-  
22 ual, or by the individual and an employer (or any person or organization)  
23 who is not a base period employer, no reduction in the weekly benefit  
24 amount payable to the individual for such week shall be made under this  
25 subsection (n); or (4) whatever portion of contributions to such plan were  
26 provided by the base period employer, if the services performed for the  
27 employer by such individual during the base period, or remuneration  
28 received for the services, did not affect the individual's eligibility for, or  
29 increased the amount of, such pension, retirement or retired pay, annuity  
30 or other similar periodic payment, no reduction in the weekly benefit  
31 amount payable to the individual for such week shall be made under this  
32 subsection (n). The conditions specified in clause (4) of this subsection  
33 (n) shall not apply to payments made under the social security act or the  
34 railroad retirement act of 1974, or the corresponding provisions of prior  
35 law. Payments made under these acts shall be treated as otherwise pro-  
36 vided in this subsection (n). If the reduced weekly benefit amount is not  
37 a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

38 (o) For any week of unemployment on the basis of services per-  
39 formed in any capacity and under any of the circumstances described in  
40 subsection (i), (j) or (k) which an individual performed in an educational  
41 institution while in the employ of an educational service agency. For the  
42 purposes of this subsection (o), the term "educational service agency"  
43 means a governmental agency or entity which is established and operated

1 exclusively for the purpose of providing such services to one or more  
2 educational institutions.

3 (p) For any week of unemployment on the basis of service as a school  
4 bus or other motor vehicle driver employed by a private contractor to  
5 transport pupils, students and school personnel to or from school-related  
6 functions or activities for an educational institution, as defined in subsection  
7 (v) of K.S.A. 44-703 and amendments thereto, if such week begins  
8 during the period between two successive academic years or during a  
9 similar period between two regular terms, whether or not successive, if  
10 the individual has a contract or contracts, or a reasonable assurance  
11 thereof, to perform services in any such capacity with a private contractor  
12 for any educational institution for both such academic years or both such  
13 terms. An individual shall not be disqualified for benefits as provided in  
14 this subsection (p) for any week of unemployment on the basis of service  
15 as a bus or other motor vehicle driver employed by a private contractor  
16 to transport persons to or from nonschool-related functions or activities.

17 (q) For any week of unemployment on the basis of services per-  
18 formed by the individual in any capacity and under any of the circum-  
19 stances described in subsection (i), (j), (k) or (o) which are provided to  
20 or on behalf of an educational institution, as defined in subsection (v) of  
21 K.S.A. 44-703 and amendments thereto, while the individual is in the  
22 employ of an employer which is a governmental entity, Indian tribe or  
23 any employer described in section 501(c)(3) of the federal internal rev-  
24 enue code of 1986 which is exempt from income under section 501(a) of  
25 the code.

26 (r) For any week in which an individual is registered at and attending  
27 an established school, training facility or other educational institution, or  
28 is on vacation during or between two successive academic years or terms.  
29 An individual shall not be disqualified for benefits as provided in this  
30 subsection (r) provided:

31 (1) The individual was engaged in full-time employment concurrent  
32 with the individual's school attendance; or

33 (2) the individual is attending approved training as defined in sub-  
34 section (s) of K.S.A. 44-703 and amendments thereto; or

35 (3) the individual is attending evening, weekend or limited day time  
36 classes, which would not affect availability for work, and is otherwise  
37 eligible under subsection (c) of K.S.A. 44-705 and amendments thereto.

38 (s) For any week with respect to which an individual is receiving or  
39 has received remuneration in the form of a back pay award or settlement.  
40 The remuneration shall be allocated to the week or weeks in the manner  
41 as specified in the award or agreement, or in the absence of such speci-  
42 ficity in the award or agreement, such remuneration shall be allocated to  
43 the week or weeks in which such remuneration, in the judgment of the

secretary, would have been paid.

2 (1) For any such weeks that an individual receives remuneration in  
3 the form of a back pay award or settlement, an overpayment will be  
4 established in the amount of unemployment benefits paid and shall be  
5 collected from the claimant.

6 (2) If an employer chooses to withhold from a back pay award or  
7 settlement, amounts paid to a claimant while they claimed unemployment  
8 benefits, such employer shall pay the department the amount withheld.  
9 With respect to such amount, the secretary shall have available all of the  
10 collection remedies authorized or provided in K.S.A. 44-717, and amend-  
11 ments thereto.

12 Sec. 7. K.S.A. 2002 Supp. 44-706 are hereby repealed.

13 Sec. 8. This act shall take effect and be in force from and after its  
14 publication in the statute book.

2-13

# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: [kcci@kansaschamber.org](mailto:kcci@kansaschamber.org) • [www.kansaschamber.org](http://www.kansaschamber.org)

HB 2353

February 24, 2003

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Committee on Commerce and Labor  
By Terry Leatherman, Vice President – Legislative Affairs

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to comment today on HB 2353.

KCCI is a member-driven organization. The policy positions KCCI expresses in the Statehouse are a product of a KCCI member committee process and are ratified by our Board of Directors. On the topic addressed in HB 2353, KCCI has no policy direction to permit us to comment in support or opposition to the bill. However, since KCCI has been a vocal advocate of the concerns of Kansas business on the other unemployment compensation issues that have been heard by this Committee, it seems appropriate for KCCI to address HB 2353.

According to officials with the Kansas Department of Human Resources, a domestic violence victim who leaves their job to seek shelter would qualify for unemployment compensation benefits under the general exception in the state "voluntary quit" statute. Generally, someone who voluntarily quits their job is obviously not "unemployed through no fault of their own," which is the litmus test for receiving unemployment. The voluntary quit statute sets out those exceptions where an employee will qualify for benefits, although they left employment voluntarily. Since domestic violence victims currently qualify for benefits and since HB 2353 attempts only to clarify this current practice, KCCI does not oppose the legislation. Further, KCCI appreciates the bill making clear employers involved in this situation will not be charged for the benefits on their experience rating.

When testifying before this Committee on HB 2281 last week, I expressed concern about a fiscal impact statement of that legislation, prepared by KDHR, on the domestic violence provision in that bill. It indicated this issue would lead to \$15.4 million in additional unemployment benefits being paid under the domestic violence provision. I have reviewed a revised fiscal analysis of that bill, dated February 19 and signed by Acting KDHR Secretary Jim Garner. It has

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revised the benefit impact of HB 2281 downward by \$15.4 million. I draw from that Secretary Garner now feels the domestic violence codification would have no fiscal impact on Kansas employers, although that is not stated in the department document. Further, it is my understanding KDHR might offer additional clarifying language as an amendment to HB 2353. We look forward to working with the parties involved to make sure the legislation retains the bill's original intent.

Mr. Chairman, thank you for permitting me to testify on this bill to clarify that individuals who are under the duress of domestic violence and leave their jobs, are unemployed "through no fault of their own" and should qualify for benefits. I would be happy to answer any questions.

**About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. 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.



**Testimony before the House Commerce and Labor Committee  
on House Bill 2329  
by A. J. Kotich, Chief Counsel  
Kansas Department of Human Resources  
February 24, 2003 - 9:00 a.m. - Room 243-N**

Good morning, Chairman Dahl and members of the Committee. Thank you for the opportunity to appear this morning. My name is A. J. Kotich, Chief Counsel for the Kansas Department of Human Resources.

I am here this morning to discuss H.B. 2329. This bill proposes two amendments to the Kansas Wage Payment Act. First, it amends the definition of "Employer" under the Act. This amendment will modernize the definition of employer in the Act to ensure that the law applies equally across the board to protect all Kansas employees, including employees of limited liability companies (LLC's) and other types of organizations that are now very common, but did not exist at all when the wage payment law was first enacted in 1973. The Kansas Supreme Court has ruled that the current definition of employer is not broad enough to automatically protect employees of LLC's.

The second amendment updates the personal responsibility for payment section of the Wage Payment Act so it would apply across the board to all business entities, including limited liability companies and other kinds of organizations that did not exist when the wage payment law was enacted in 1973. The current law is inequitable because it applies only to corporations.

Mr. Chairman, and members of the Committee, thank you again for this opportunity. I would be happy to stand for any questions you may have.

# Christian Science Committee on Publication For Kansas

700 SW Jackson St., Suite 807  
Topeka, Kansas 66603-3758

e-mail [cscom@mindspring.com](mailto:cscom@mindspring.com)

Phone 785-233-7483  
Fax 785-233-4182

February 24, 2003

To: House Committee on Commerce and Labor

Re: House Bill No. 2353

I request amendment of this bill on page 1, in line 26, by striking "medical" care and inserting "health" care.

There are Kansas residents who rely only on spiritual care and treatment for themselves and their families in lieu of medical care and treatment. Some of them have been doing this for five generations. The requested change would allow them to continue this practice without being branded as abusers because medical care was not used.

This change would not interfere with providing medical care where that is the treatment of choice.

Over the years, the Kansas Legislature has kindly provided accommodations in statutes for the religious beliefs of Kansans and this consideration is appreciated.



Keith R. Landis  
Committee on Publication  
for Kansas

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