

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on March 8, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Kevin Yoder- absent
Representative Rick Rehorn- absent

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renaë Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Wayne Maichel, Director of Employment Security, Kansas Department of Human Resources

Others attending:

See Attached List.

The Chairman called the meeting to order and stated there were two items on the agenda today, i.e., hearing on **SB 440**, and action on **SB 481** if the committee wishes. The Chairman opened the hearing on **SB 440 - Employment security law; rating successor employees.**

Staff gave a briefing on **SB 440**, stating there were two aspects: technical changes, deletion of obsolete and unnecessary provisions relating to the moratoriums of years past and clarifies existing law.

Wayne Maichel, Director of Employment Security, Kansas Department of Human Resources, testified as a proponent. This is a product of the Employment Security Advisory Committee and was endorsed unanimously by them. Last year's employment security legislation dealing with the eligibility for unemployment benefits for victims of domestic violence unnecessarily misnumbered and re-lettered existing subsections in the employment security law. Unnecessary language in the employment security law relating to extended benefits for 1993 through 1995 and compensation for Employment Security Board of Review members for fiscal year 1994 was deleted. Changes are needed in light of the interpretation handed down by the Kansas Supreme Court in *CPI Qualified Plan Consultants, Inc. Delaware vs. Kansas Department of Human Resources et al.*, 272 Kan. 1288, 38 P3d. 666, (2002). The Supreme Court in the CPI decision, however, held that the current statutory language does not allow for the interpretation that the department has applied. This change adds the necessary language to allow the department to administer and carry out the original intent of the statute.

While **SB 440** is a technical corrections bill, it is believed these corrections are necessary to insure the continued efficient administration of the employment security laws (Attachment 1).

The Chairman closed the hearing on **SB 440**.

The Chairman asked if there was any objection to working **SB 440**?

Representatives Ruff and Pauls objected to working **SB 440**.

The Chairman stated there was a hearing on **SB 481** on Friday, and in his opinion, this is a very minor bill. Staff earlier stated that the workers compensation issue was not germane to **SB 481**. Some opinion was expressed that this should be sent to the Council. However, it seems the Council has had adequate time. If the members thought they really needed to discuss this they could have made an effort to have hearings or work on this bill during the time-frame after it was submitted to the Council. They have not taken any action on it, so they must have no hard burning issues with this bill.

Representative Ruff stated she would respectively disagree. Although staff did say he did not think it was

CONTINUATION SHEET

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germane, that workers comp issues might not be germane to this particular bill, because the Act was referenced in this bill. On the Floor of the House it is felt that the Rules Chairman might be in a situation to rule that it is germane. I have seen several incidences on the Floor because an Act is referenced in a bill, that that opens up the door to having sixty-three votes so that it is germane. **SB 181** is very controversial. It is an issue that has come up many times and the proponents are desperate to get it on the Floor and it is not ready to go on the Floor. We do not want to have workers compensation legislation made on the Floor of the Kansas House with any number of amendments and it is far too dangerous to try to get it out.

In regard to the Employment Security Advisory Council, in talking further to members of that Council to find out what happened to this gentleman, I found that this Council does not accept individual requests. It has to have a specific bill to look at. It doesn't look at individual issues or individual requests from employers. It never has. The gentleman from Impact Design, that was advised otherwise, was very poorly advised on that issue. The Department at the time turned him down for consideration of his concern, nonetheless, the Employment Security Advisory Council does not individually take from an employer a request of consideration for a particular issue. I would like the Employment Security Advisory Council to take a look at it. I think there is a quick turn-around time, but more importantly, the potential of having **SB 181** put on the Floor and having work comp policy decided on the Floor of the House is too dangerous.

The Chairman said he would make a further comment in regards to **SB 481**. As you will notice, the Kansas Chamber of Commerce and Industry (KCCI) did not oppose this. They are usually the ones that speak up for business's concerns and they did not find anything per se that they opposed in this bill. In regards to existing businesses that may be in competition with the business of concern, the KCCI did not raise any objection to the passage of this bill. Any further comments or discussion? The Floor is open for action on this bill.

Representative Johnson moved and Representative Boyer seconded to move **SB 481** out favorably for passage.

Representative Ruff moved and Representative Grant seconded a substitute motion to refer **SB 481** to the Employment Security Advisory Council with a quick turn-around request that they look at this bill, discuss it, make a recommendation to this Committee as to what the impact will be on the Employment Security Trust Fund and also what the impact will be from the 20 other employers and get back to the Committee within 10 days.

The Chairman asked if anyone in the audience knew when the Employment Security Advisory Council would meet?

Mr. Maichel stated no meetings were planned and the Secretary of KDHR is the Chairman and he would be the one to call a meeting.

The Chairman asked for a vote on the motion.

There was a Division. Yeas - 9, Nays - 7.

SB 481 will be referred to the Employment Security Advisory Council.

Representative Hill questioned if there was a specific date the Council would have to reply?

Representative Ruff said yes, 10 days, by March 18.

The Chairman stated it appeared to him that because we are so worried about workers comp bills that this Committee probably is not going to pass anything out from here on out so we are adjourned.

The meeting adjourned at 9:30 a.m. The next meeting will be March 9, 2004.

**Testimony before the
House Commerce and Labor Committee
Senate Bill 440
Wayne Maichel, Director of Employment Security
Kansas Department of Human Resources
8 March 2004**

Chairman Dahl and Members of the Committee:

Thank you for the opportunity to appear today and share our support for Senate Bill 440 which makes technical corrections to last year's employment security legislation; deletes obsolete and unnecessary provisions relating to the moratoriums of years past; and clarifies existing law regarding the carry over of experience ratings factors to successor employers as a result of an interpretation by the Kansas Supreme Court. This bill has the unanimous endorsement of the Employment Security Advisory Council.

Technical Corrections Regarding Renumbering of Sections:

Last year's employment security legislation dealing with the eligibility for unemployment benefits for victims of domestic violence unnecessarily misnumbered and re-lettered existing subsections in the employment security law. Sections 1 through 4 of SB 440 restore the original lettering system and correct the references to K.S.A. 2003 Supp 44-706 in other statutes throughout the employment security law.

Technical Corrections Regarding Deletion of Unnecessary Language:

Sections 1, 3 and 5 remove all the language in K.S.A. 44-710a that dealt with establishment of contribution rates for employers during the period of the Unemployment Tax "Moratorium" – tax years 1995 through 1999; delete unnecessary language in the employment security law relating to extended benefits for 1993 through 1995; and compensation for Employment Security Board of Review members for fiscal year 1994.

Amendment Regarding Contribution Rate for A Qualifying Successor Employer:

The changes to section (b) (4) of K.S.A. 44-710a, clarify the intent of this section by adding new language at the beginning of the paragraph as well as in sub-paragraphs (A) and (B). These changes are needed in light of the interpretation handed down by the Kansas Supreme Court in *CPI Qualified Plan Consultants, Inc. Delaware vs. Kansas Department of Human Resources et al.*, 272 Kan. 1288, 38 P3d. 666, (2002). The department has administered and carried out the intended meaning of this provision since this section was amended in 1983. The Supreme Court in the *CPI* decision however held that the current statutory language does not allow for the interpretation that the department has applied. This change adds the necessary language to allow the department to administer and carry out the original intent of the statute.

Commerce Labor
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Conclusion

While Senate Bill 440 is a technical corrections bill, we believe these corrections are necessary to insure the continued efficient administration of the employment security laws. The corrections of the misnumbering places the domestic violence exception to the voluntary quit law on an equal level with the other eleven exceptions, as intended, and avoids possible confusion in the application of previous judicial and administrative decisions relating to dismissals for misconduct.

The deletion of unnecessary language relating to specific years, will help to streamline the employment security law, and the clarification of the procedure for qualification of successor employers will provide the language the Supreme Court found lacking to apply the procedure that the department has applied for several years.

I encourage your support of Senate Bill 440. Again, thank you for the opportunity to appear and express my thoughts. I will be glad to stand for any questions you may have.