Approved: March 25, 2004
Date

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 9, 2004 in Room 241-N of the Capitol.

All members were present except:
Representative Don Hill- excused

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renae Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Marlee Carpenter, Vice President Government Relations, The Kansas Chamber
Richard Clinesmith, Branch Manager, Employers Unity, Inc.
Brian J. Powers, MBA, Home Healthcare Connection, Inc.
Garry Lambert, Director of Human Resources, Safety and Training, Prestige, Inc., Neodesha

Others attending:
See Attached List.

The Chairman stated there would be hearings on two bills today; **SB 483** and **SB 410**.

The Chairman opened the hearing on **SB 483 - Employment security laws; disqualification from receipt of benefits.**

Staff gave a briefing on **SB 483** amending the Employment Security Law to add conditions when an individual would be disqualified from receiving unemployment benefits: 1. If an employee failed to return to work after expiration of approved personal and/or medical leave. 2. Incarceration would not be considered good cause for absence or tardiness. 3. Failure of the employee to notify the employer of an absence shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment. 4. Under current law, if an employee disputes being terminated without good cause, he or she can present evidence of good cause. If the employee alleges their repeated absences were the result of health related issues, the bill specified that good cause will include documentation from a treatment provider that shows the absence to be the result of illness or treatment.

Marlee Carpenter, The Kansas Chamber, testified as a proponent, stating their members support the absenteeism changes in **SB 483**. Ms. Carpenter introduced Mr. Richard Clinesmith who would testify in support of the bill (Attachment 1).

Richard Clinesmith, Branch Manager, Employers Unity, Inc., Wichita, testified as a proponent to **SB 483**. Employers Unity, Inc. is an unemployment cost control company which has been in business since 1977 and has its headquarters in Arvada, Colorado. Employers Unity has over 200 clients in Kansas all have attendance policies and normally abide by progressive disciplinary guidelines. Many of these employers also allow employees to use sick leave, and/or vacation leave, if needed, for absences, and normally have guidelines on what is considered an excused absence, and/or, an unexcused absence. Most attendance discharges occur after repeated absences, and prior verbal, and or written warnings have been issued.

Mr. Clinesmith offered an amendment that would help shift the burden of proof of good cause for absence and tardiness to the claimant. As the statute is currently, it simply asks the claimant to submit evidence that the majority of their absences were for good cause. Their testimony without any supporting documentation has met that specific requirement of the statutes (Attachments 2 & 3).

Brian Powers, MBA, Home Healthcare Connection, Inc., testified as a proponent to **SB 483**. Home

Healthcare Connection, Inc., is a provider of home health care and staff relief services in Kansas. The company is Medicare and Medicaid licensed/certified, and since 1991 has employed part-time nursing personnel for temporary placement with its clients, either in private homes or in institutional settings. About three hundred workers are employed on any given day. We advertise and recruit almost daily throughout many areas of the state in order to fulfill our clients' requests for services. Many employees work for more than one employer, but the majority chose sole employment with our company. It is in this choice to work part-time for one employer that all employers suffer the unintended consequences of the Employment Security Law, i.e., with only one part-time employer, these workers qualify for, and receive, unemployment benefits.

According to the Wichita Unemployment Insurance Call Center, our employees all qualify for benefits. A supervisor with that office stated that, "Yes, theoretically, all qualify for benefits that would make up for any work time less than forty hours." That theory is reality since some of our employees have discovered the secret. Some of the state's other employers, Wal-Mart, Dillons, and the vast number of fast-food establishments that employ only part-time workers, might be surprised to learn that their employees also qualify for payment of benefits chargeable to the employer. If all the part-time workers in the state decided to file for benefits today under the provisions of this subsection, the fund might be depleted before the end of the current legislative session.

Awarding benefits to employed individuals is currently allowed, and even encouraged. Two of our employees recently applied for, and received benefits, because they were advised that they qualified under this subsection. It is not believed that the intention of the Legislature was to subsidize the earning of part-time employees through the state's unemployment insurance fund. Suggested amendment is attached (Attachments 4 & 5).

The Chairman closed the hearing on **SB 483**.

The Chairman opened the hearing on **SB 410 - Employment security law, failure to pass pre-employment drug screen**.

Garry Lambert, Director of Human Resources, Safety, and Training, Neodesha, testified as a proponent to **SB 410**. As employers we have an obligation to take every step necessary to insure our employees have a safe work environment. Drug and alcohol testing has proved to be a key factor in the reduction of accidents. Drug and alcohol testing has also been a major contributor in the reduction of employee turnover and absenteeism rates. Accidents, turnovers and absenteeism have a huge impact on the health of our company. It is just plain wrong for employers to have to foot the bill for employees who flagrantly violate State and Federal laws by using illegal drugs and abusing alcohol in the workplace (Attachment 6).

After hearing testimony it was decided that someone from the Department of Human Resources needed to brief the committee on part-time employment benefits and drug screening.

Written testimony as a proponent on **SB 410** was provided by Marlee Carpenter, Kansas Chamber of Commerce (Attachment 7).

The committee adjourned at 10:30 a.m. The next meeting will be March 10, 2004.

COMMERCE AND LABOR COMMITTEE

Date March 9, 2004

NAME	AGENCY
BRIAN J. POWERS	HOME HEALTHCARE CONNECTION, INC.
Bernie Koch	Wichita Area Chamber
Garry Lambert	Prestige, Inc.
John Frederick	Boeing
Barb Conant	KTLA

Legislative Testimony

SB 483

March 9, 2004

Testimony before the Kansas House Commerce and Labor Committee

By Marlee Carpenter, Vice President Government Relations

THE KANSAS CHAMBER

The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: info@kansaschamber.org

www.kansaschamber.org

I am Marlee Carpenter with the Kansas Chamber and our members support the absenteeism changes in SB 483. Employers are frustrated in adjudicating unemployment compensation cases especially in absenteeism cases. There are several ways that SB 483 will help clarify these rules.

The first provision requires an employee to notify an employer if they are unable to be at work. If they do not, the absence is prima facie evidence of a duty owed to an employer.

Another frustration for employers is the level of proof that is required when establishing the reason for absences. An employer must notify an employee that continued absence from work could end in termination. In return, an employee should seek documentation in an effort to remain employed. The bill spells out medical proof, but documentation for other absences should be required as well.

Finally, in Kansas, if an individual is absent due to incarceration, the individual is typically allowed benefits and the employer's experience rating is charged. In Oklahoma, when an individual is absent from work for one week or longer due to incarceration, it is considered misconduct and the individual is disqualified form receiving benefits. In Illinois, if the absences were due to incarceration, the individual is allowed benefits, but the employer's experience rating is not charged.

These changes are important to Kansas employers, especially in times of high unemployment. Unemployment compensation is for employees who are unemployed through no fault of their own. The changes in SB 483 would help clarify some of the absenteeism provisions in Kansas law.

Thank you for your time and I will be happy to answer any questions.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.

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Atch #1

March 9, 2004

Testimony before the House Commerce and Labor Committee
By: Richard Clinesmith
Branch Manager
Employers Unity, Inc.

Mr. Chairman and Members of the Committee,

My name is Richard Clinesmith, I am the Branch Manager in the Wichita, Kansas office of Employers Unity, Inc.

Employers Unity, Inc, is an unemployment cost control company, and has been in business since 1977, with its headquarters in Arvada, CO. We have had an office in Wichita, KS, since 1982, employing three full-time Kansan's, and one Part-time, Kansan.

I appreciate the opportunity to address the committee to explain why I support the passage of SB483. SB483 proposes changes that would address issues referencing returning after leaves of absence, no call no show, and the burden of proof of good cause reasons for absences and/or tardiness. The recommended changes in SB483, helps to distinguish these separation issues, and allows for them to be decided on their own specific merits.

On separations due to failing to return to work after the expiration of an approved personal and/or medical leave, it is our experience, they are most commonly adjudicated as an attendance issue. As a result, the individual exceeding his medical leave has been granted benefits, citing good cause for not returning. In these scenarios, the employer's account has also been charged and employers feel that this is not equitable.

Employers Unity has over 200 clients in the state of Kansas, of which all have attendance policies, and normally abide by progressive disciplinary guidelines. Many of these employers also allow employees to use Sick Leave, and/or Vacation Leave, if needed for absences, and normally have guidelines on what is considered an excused absence, and/or, an unexcused absence. Most attendance discharges occur after repeated absence, and prior verbal, and or written warnings have been issued.

In the no call, no show category, it is common for this type of separation to be categorized as an attendance discharge. In doing so the employer has to fulfill all the statutory requirements for an attendance discharged in order to prevail. In most instances,

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employers have testified that, had the claimant merely made the phone call notifying the employer of their absence or tardy prior to the beginning of their shift, could have resulted in them continuing employment. The claimants' refusal to call in prior to the beginning of their shift was the cause of their separation. We believe this is a duty or obligation, reasonably owed the employer as a condition of employment, and should be differentiated from attendance discharges.

I would like to call the Chairman and Committee Members attention to Exhibit 1. This proposed amendment to SB483, would help shift the burden of proof of good cause, for absence and tardiness to the claimant. As the statute is currently, it simply asks the claimant to submit evidence that the majority of their absences were for good cause. Their testimony without any supporting documentation has met that specific requirement of the statutes. We request that these changes be input to SB483, on page 6, lines 28-36. This requires the claimant to present some form of substantiating documentation to prove their good cause reasons for being absent. In many cases if the claimant had presented such documentation to the employer it probably would have prohibited the separation. We also take the stance that missing work, or being tardy, due to being incarcerated, should not be considered good cause.

I thank the committee for allowing me the time and opportunity to address them, and to give my reasons why I support SB483, and request they consider my Exhibit 1 amendment to SB483. I would be happy to answer any questions you might have at this time.

Thank you.

Exhibit 1

SB483 Page 6 Lines 25 thru 36

KSA 44-706 (d)(B)

If an employee disputes being absent and / or tardy without good cause the employee shall prove by a preponderance of physical evidence that a majority of the employee's absences and / or tardys were for good cause. If the employee alleges the tardiness or absence was the result of health related issues such evidence shall include documentation from a licensed and practicing health care professional as defined in (a)(1). Incarceration shall not be considered good cause for absence or tardiness.

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Committee on Commerce and Labor
The Honorable Donald Dahl (R-70), Chairperson
Testimony submitted by Brian J. Powers, MBA
Home Healthcare Connection, Inc.
March 9, 2004

Mister Chairman and Honorable Members of the Committee, I appreciate the opportunity to address you regarding the benefits awarded to employed workers under the Employment Security Law [KSA 44-710(c)(2)(b)], a law created to provide temporary benefits to unemployed workers.

I represent Home Healthcare Connection, Inc., a provider of home health care and staff relief services in Kansas. The company is Medicare and Medicaid licensed/certified, and since 1991 has employed part-time nursing personnel for temporary placement with its clients, either in private homes or in institutional settings. We employ about three hundred such workers on any given day, some of whom have been employed with the company for over a decade, albeit the majority work less than a year. We advertise and recruit almost daily throughout many areas of the state in order to fulfill our clients' requests for services. Despite our current employee population, and our efforts to recruit more nursing personnel, many requests for services are unfulfilled. The nursing shortage is acute. The employment agreement with our employees includes the description of the work required, that it is part-time, and that no guarantee of work hours is made. The flexibility provided through employment with our company allows the workforce employed to pursue other interests, such as educational opportunities, providing child-care or care for other family member, or even other employment. Many of our employees work for more than one employer, but the majority choose sole employment with our company. It is in this choice to work part-time for one employer that all employers suffer the unintended consequences of the Employment Security Law: with only one part-time employer, these workers qualify for, and receive, unemployment benefits.

The statute addresses employer liability for benefits and the charging of benefit payments to employers, and therein lies the definition for part-time employment, which creates a subsidy for employed workers. The definition of part-time workers per this statute follows:

> "Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2)(b), 'part-time employment' means any employment when an individual works concurrently for two or more employers and also works less than full-time for at least one of those employers because the individual's services are not required for the customary, scheduled full-time hours prevailing at the work place or the individual does not customarily work the regularly scheduled full-time hours due to personal choice or circumstances."

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The concurrent employment clause contained in the subsection assumes that:

1. individuals who work less than 40-hours per week will seek concurrent employment from one or more employers;
2. individuals who work "less than full-time for at least one employer" actually work full-time for at least one employer, negating the definition of part-time employment for the purpose of this subsection;
3. it is customary to offer only full-time employment;
4. a prevailing full-time environment exists at all places of employment; and,
5. individuals work less hours because of personal choice and circumstance.

Unfortunately, four of these five assumptions are either erroneous or irrelevant. Not all part-time workers seek concurrent employment; few full-time workers seek additional employment; the "customary" work schedules are as varied as the number of employers; and, "prevailing" full-time employment schedules exist in fewer and fewer work environments. It is true that personal choice and circumstances dictate an individual's work schedule – that is exactly why our employees work part-time.

Nevertheless, according to the Wichita Unemployment Insurance Call Center, our employees all qualify for benefits. A supervisor with that office stated that, "Yes, theoretically all qualify for benefits that would make up for any work time less than forty hours." That theory is reality, since some of our employees have discovered the secret. Some of the state's other employers, Wal-Mart, Dillons, and the vast number of fast-food establishments that employ only part-time workers might be surprised to learn that their employees also qualify for payment of benefits chargeable to the employer. If all the part-time workers in the state decided to file for benefits today under the provisions of this subsection, the fund might be depleted before the end of the current legislative session.

Awarding benefits to employed individuals is currently allowed, and even encouraged. Two of our employees recently applied for, and received benefits, because they were advised that they qualified under this subsection. Both were long-term employees; they did not seek other employment while employed part-time, but recently sought the additional financial assistance offered through this channel. They both claimed reduction of hours or layoffs, yet the base period used to calculate benefits demonstrated the same work schedules as those existing at the time of application for benefits. In fact, one employee refused almost half the assignments scheduled in one base period quarter for personal reasons, a factor that should have provided a disqualification for benefits. Another employee actually worked more hours in the months and weeks preceding her application. Still, benefits were awarded since both worked part-time for only one company. The claims were appealed, but the findings of the judge affirmed the decision to provide benefits. In these instances as well as in most, employees assume that the money disbursed in the form of unemployment insurance benefits is deducted from their earnings, and exhibit disbelief when informed that it is an employer-funded program. Many refuse to believe and demand their "unemployment" because of a financial need unrelated to earnings.

Ironically, the potential for litigation and further liability exists for our company regarding terminations attributed to the filing for unemployment benefits. This places employers in a precarious if not impossible position: fire a working employee for filing a claim for unemployment insurance benefits and risk being sued for retaliatory discharge. It is, after all, legal to file for, and obtain, benefits while working part-time for only one employer, and a discharge allegedly based on a lawful claim against an employer might result in further monetary awards to the employee.

We are now experiencing an increase in claims for unempoloyment benefits from employed part-time workers; however, this is not a new problem. For example, one such worker has been filing for, and receiving, unemployment benefits since October 2002, and is still employed with our company. He retired from his nurse aide position with the Veteran's Administration about two years ago and works part-time for our company. He still receives unemployment benefits chargeable to our account [since we were the only base period part-time employer], along with the benefits earned from his decades of employment with that previous entity. In our appeal, the judge found that he did not meet the definition of part-time employment, and thus was eligible for benefits. This employee still works for our company, yet refuses many assignments because he stated that to do so would jeopardize his unemployment benefits. As his employment continues, so the base period wages accrue for future claims. As more workers become aware and/or accustomed to this subsidy, others join in to receive "their share." Left unchecked, the problem may prove exponential.

Businesses that employ part-time personnel are being penalized by this outdated provision of the Employment Security Law. The archaic notion that employers "owe" employees a 40-hour work schedule is no longer relevant in a recovering economy. Existing businesses and entrepreneurs alike are provided a disincentive for job creation, since hiring part-time employees provides no economic benefit – the payment of unemployment insurance premiums and benefits chargeable to an employer's account offset any inducement to create part-time jobs. In fact, the employees mentioned previously will receive benefit totals that exceed the gross profits earned from their services during the base period employment. Why create jobs or continue to employ part-time workers if the cost of wages, benefits and insurance premiums exceed the profits earned from that effort?

I do not believe that the intention of the Legislature was to subsidize the earnings of part-time employees through the State's unemployment insurance fund. I believe that we should reserve this resource for unemployed workers. I respectfully propose that the definition of part-time employment in the Employment Security Law be amended to read:

> "Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2)(b), "Part-time employment means any employment when an individual works less than full-time."

This clarification creates and sustains jobs, promotes business growth and employment opportunities, and corrects an avenue of unintended subsidy.

Attached please find examples of the Kansas Department of Human Resources' findings in this regard, which substantiate this testimony. Thank you for your kind consideration of this matter.

44-710

Chapter 44.--LABOR AND INDUSTRIES
Article 7.--EMPLOYMENT SECURITYLAW

44-710. Employer contributions, liability for and payment of; pooled fund; election to become reimbursing employer; payments in lieu of contributions; group accounts. (a) *Payment.* Contributions shall accrue and become payable by each contributing employer for each calendar year in which the contributing employer is subject to the employment security law with respect to wages paid for employment. Such contributions shall become due and be paid by each contributing employer to the secretary for the employment security fund in accordance with such rules and regulations as the secretary may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of $.01 shall be disregarded unless it amounts to $.005 or more, in which case it shall be increased to $.01. Should contributions for any calendar quarter be less than $1, no payment shall be required.

(b) *Rates and base of contributions.* (1) Except as provided in paragraph (2) of this subsection, each contributing employer shall pay contributions on wages paid by the contributing employer during each calendar year with respect to employment as provided in K.S.A. 44-710a and amendments thereto.

(2) (A) If the congress of the United States either amends or repeals the Wagner-Peyser act, the federal unemployment tax act, the federal social security act, or subtitle C of chapter 23 of the federal internal revenue code of 1986, or any act or acts supplemental to or in lieu thereof, or any part or parts of any such law, or if any such law, or any part or parts thereof, are held invalid with the effect that appropriations of funds by congress and grants thereof to the state of Kansas for the payment of costs of administration of the employment security law are no longer available for such purposes, or (B) if employers in Kansas subject to the payment of tax under the federal unemployment tax act are granted full credit against such tax for contributions or taxes paid to the secretary of human resources, then, and in either such case, beginning with the year in which the unavailability of federal appropriations and grants for such purpose occurs or in which such change in liability for payment of such federal tax occurs and for each year thereafter, the rate of contributions of each contributing employer shall be equal to the total of .5% and the rate of contributions as determined for such contributing employer under K.S.A. 44-710a and amendments thereto. The amount of contributions which each contributing employer becomes liable to pay under this paragraph (2) over the amount of contributions which such contributing employer would be otherwise liable to pay shall be credited to the employment security administration fund to be disbursed and paid out under the same conditions and for the same purposes as other moneys are authorized to be paid from the employment security administration fund, except that, if the secretary determines that as of the first day of January of any year there is an excess in the employment security administration fund over the amount required to be disbursed during such year, an amount equal to such excess as determined by the secretary shall be transferred to the employment security fund.

(c) *Charging of benefit payments.* (1) The secretary shall maintain a separate account for each contributing employer, and shall credit the contributing employer's account with all the contributions paid on the contributing employer's own behalf. Nothing in the employment security law shall be construed to grant any employer or individuals in such employer's service prior claims or rights to the amounts paid by such employer into the employment security fund either on such employer's own behalf or on behalf of such individuals. Benefits paid shall be charged against the accounts of each base period employer in the proportion that the base period wages paid to an eligible individual by each such employer bears to the total wages in the base period. Benefits shall be charged to contributing employers' accounts and rated governmental employers' accounts upon the basis of benefits paid during each twelve-month period ending on the computation date.

(2) (A) Benefits paid in benefit years established by valid new claims shall not be charged to the account of a contributing employer or rated governmental employer who is a base period employer if the examiner finds that claimant was separated from the claimant's most recent employment with such employer under any of the following conditions: (i)

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Discharged for misconduct or gross misconduct connected with the individual's work; or (ii) leaving work voluntarily without good cause attributable to the claimant's work or the employer.

(B) Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2)(B), "part-time employment" means any employment when an individual works concurrently for two or more employers and also works less than full-time for at least one of those employers because the individual's services are not required for the customary, scheduled full-time hours prevailing at the work place or the individual does not customarily work the regularly scheduled full-time hours due to personal choice or circumstances.

(C) No contributing employer or rated governmental employer's account shall be charged with any extended benefits paid in accordance with the employment security law, except for weeks of unemployment beginning after December 31, 1978, all contributing governmental employers and governmental rated employers shall be charged an amount equal to all extended benefits paid.

(D) No contributing employer, rated governmental employer or reimbursing employer's account shall be charged for any additional benefits paid during the period July 1, 2003 through June 30, 2004.

(E) No contributing employer or rated governmental employer's account will be charged for benefits paid a claimant while pursuing an approved training course as defined in subsection (s) of K.S.A. 44-703 and amendments thereto.

(F) No contributing employer or rated governmental employer's account shall be charged with respect to the benefits paid to any individual whose base period wages include wages for services not covered by the employment security law prior to January 1, 1978, to the extent that the employment security fund is reimbursed for such benefits pursuant to section 121 of public law 94-566 (90 Stat. 2673).

(G) With respect to weeks of unemployment beginning after December 31, 1977, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection (c)(2)(F), the term "previously uncovered services" means services which were not covered employment, at any time during the one-year period ending December 31, 1975, except to the extent that assistance under title II of the federal emergency jobs and unemployment assistance act of 1974 was paid on the basis of such services, and which:

(i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-703 and amendments thereto or domestic service as defined in subsection (aa) of K.S.A. 44-703 and amendments thereto, or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto, or

(iii) are services performed by an employee of a nonprofit educational institution which is not an institution of higher education.

(G) No contributing employer or rated governmental employer's account shall be charged with respect to their pro rata share of benefit charges if such charges are of $100 or less.

(3) The examiner shall notify any base period employer whose account will be charged with benefits paid following the filing of a valid new claim and a determination by the examiner based on all information relating to the claim contained in the records of the division of employment. Such notice shall become final and benefits charged to the base period employer's account in accordance with the claim unless within 10 calendar days from the date the notice was sent, the base period employer requests in writing that the examiner reconsider the determination and furnishes any required information in accordance with the secretary's rules and regulations. In a similar manner, a notice of an additional claim followed by the first payment of benefits with respect to the benefit year, filed by an individual during a benefit year after a period in such year during which such individual was employed, shall be given to any base period employer of the individual who has requested such a notice within 10 calendar days from the date the notice of the valid new claim was sent to such base period employer. For purposes of this subsection (c)(3), if the required information is not submitted or postmarked within a response time limit of 10 days after the base period employer notice was sent, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. The examiner shall notify the employer of the

KANSAS DEPARTMENT OF HUMAN RESOURCES
401 SW TOPEKA BLVD
TOPEKA KS 66603-3182
TELEPHONE: 785-296-3497

EXAMINER'S DETERMINATION

COPY

861744514
CREATIVE CARE CORPORATIO
ATTN KEVIN KEAGY HR DIR
4747 S EMPORIA
WICHITA KS 67216

SSN: [redacted]
BYB: AUG 25, 2003
NAME: [redacted]
SERIAL: 216289
EXAMINER: 13
CODE: 19014
MAILED: NOV 15, 2003

RECONSIDERED BASE PERIOD EMPLOYER DETERMINATION

THE APPROPRIATE PRO RATA SHARE OF BENEFITS PAID ON THIS CLAIM **WILL BE CHARGED** TO YOUR FIRM'S ACCOUNT.

K.S.A. 44-710(C)(2)(B) PROVIDES THAT WHERE BASE PERIOD WAGE CREDITS REPRESENTS PART-TIME EMPLOYMENT AND THE CLAIMANT CONTINUES IN THAT PART-TIME EMPLOYMENT DURING THE PERIOD FOR WHICH BENEFITS ARE PAID, THEN THAT EMPLOYER'S ACCOUNT SHALL NOT BE CHARGED. THE LAW FURTHER DEFINES PART-TIME EMPLOYMENT WHEN AN INDIVIDUAL WORKS CONCURRENTLY FOR TWO OR MORE EMPLOYERS AND ALSO WORKS LESS THAN FULL-TIME FOR AT LEAST ONE OF THOSE EMPLOYERS.

THE CLAIMANT'S EMPLOYMENT WITH YOUR FIRM DOES NOT MEET THE DEFINITION OF PART-TIME EMPLOYMENT SINCE THE CLAIMANT DID NOT WORK CONCURRENTLY FOR TWO OR MORE EMPLOYERS.

Appeal Rights: This determination becomes final sixteen(16) days after it is mailed, unless appealed in writing on or before the final date. (If the 16th day falls on a Saturday, Sunday or a Holiday, the next working day is the final date). If you disagree with this determination, an appeal may be filed by letter stating you wish to file an appeal and the reason(s) you disagree with the decision. Mail your appeal to the Office of Appeals, 1430 SW Topeka Blvd., Topeka, KS 66612-1897 or fax to 785-296-4065. Please include in your letter, your name, mailing address, telephone number and social security number. You may also contact the Call Center for additional information and assistance about filing an appeal. If you do not file a timely appeal, it may still be considered timely if you can establish a timely response was impossible due to excusable neglect.

K-BEN 452 (REV. 7-90)

KANSAS DEPARTMENT OF HUMAN RESOURCES

401 SW TOPEKA BLVD
TOPEKA KS 66603-3182
TELEPHONE: 785-296-3497

COPY

EXAMINER'S DETERMINATION

SSN: [redacted]
BYB: FEB 1, 2004
NAME: [redacted]
SERIAL: 248956
EXAMINER: 709
CODE: 19033
MAILED: FEB 20, 2004

860651437
HOME HEALTHCARE CONNEC

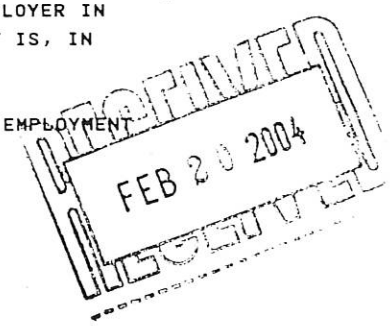
PO BOX 16205
WICHITA KS 67216-0205

RECONSIDERED BASE PERIOD EMPLOYER DETERMINATION

THE APPROPRIATE PRO RATA SHARE OF BENEFITS PAID ON THIS CLAIM WILL BE CHARGED TO YOUR FIRM'S ACCOUNT.

THE CLAIMANT WAS, OR IS CURRENTLY, NOT PERFORMING ANY SERVICES FOR THE EMPLOYER IN ACCORDANCE WITH THEIR SCHEDULED/NONSCHEDULED WORK AGREEMENT. THE CLAIMANT IS, IN EFFECT, LAID OFF DUE TO A LACK OF WORK.

THIS RECONSIDERED DETERMINATION IS MADE UNDER KSA 44-710(C) OF THE KANSAS EMPLOYMENT SECURITY LAW.



Appeal Rights: This determination becomes final sixteen(16) days after it is mailed, unless appealed in writing on or before the final date. (If the 16th day falls on a Saturday, Sunday or a Holiday, the next working day is the final date). If you disagree with this determination, an appeal may be filed by letter stating you wish to file an appeal and the reason(s) you disagree with the decision. Mail your appeal to the Office of Appeals, 1430 SW Topeka Blvd., Topeka, KS 66612-1897 or fax to 785-296-4065. Please include in your letter, your name, mailing address, telephone number and social security number. You may also contact the Call Center for additional information and assistance about filing an appeal. If you do not file a timely appeal, it may still be considered timely if you can establish a timely response was impossible due to excusable neglect.

K-BEN 452 (REV. 7-90)

KANSAS DEPARTMENT OF HUMAN RESOURCES

401 SW TOPEKA BLVD
TOPEKA KS 66603-3182
TELEPHONE: 785-296-3497

RECEIVED
FEB 20 2004

COPY EXAMINER'S DETERMINATION

SSN: [redacted]
BYB: FEB 1, 2004
NAME: [redacted]
SERIAL: 248956
EXAMINER: 747
CODE: 19013
MAILED: FEB 19, 2004

221654515
HOME HEALTHCARE CONNEC

PO BOX 16205
WICHITA KS 67216-0205

RECONSIDERED BASE PERIOD EMPLOYER DETERMINATION

THE APPROPRIATE PRO RATA SHARE OF BENEFITS PAID ON THIS CLAIM WILL BE CHARGED TO YOUR FIRM'S ACCOUNT.

THE KANSAS EMPLOYMENT SECURITY LAW, 44-710(C) PROVIDES THAT THERE WILL BE NO CHARGE TO AN EMPLOYER'S EXPERIENCE RATING ACCOUNT IF THE CLAIMANT WAS---(1) DISCHARGED FOR MISCONDUCT OR GROSS MISCONDUCT CONNECTED WITH THE WORK, (2) THE CLAIMANT VOLUNTARILY LEFT WORK WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE WORK OR THE EMPLOYER, OR (3) THE CLAIMANT CONTINUES TO WORK AS A PART-TIME EMPLOYEE.

THE EVIDENCE SUBMITTED DOES NOT ESTABLISH A SEPARATION UNDER ANY OF THE ABOVE CONDITIONS. THEREFORE, THE NONCHARGE PROVISION OF SECTION 44-710(C) OF THE LAW DOES NOT APPLY.

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K-BEN 452 (REV. 7-90)

Testimony of: Garry W. Lambert
10 Century Parkway
Neodesha, Ks. 66757

My name is Garry Lambert, I represent Prestige, Inc., a cabinet manufacturer located in Neodesha, Ks. Our current level of employment is 375. I am the Director of Human Resources, Safety, and Training.

I am here today to testify as a proponent to Senate Bill 410.

I would first like to make a brief statement regarding the importance of drug and alcohol testing in the workplace. We as employers have an obligation to take every step necessary to insure our employees have a safe work environment. Drug and alcohol testing has proved to be a key factor in the reduction of accidents. Drug and alcohol testing has also been a major contributor in the reduction of employee turnover and absenteeism rates. All three of these items, accidents, turnover and absenteeism have a huge impact on the health of our Company. I submit the following statistics to support these comments:

Prior to pre-hire and random drug and alcohol testing.

Year	Accident Incidence Rate	Turnover Rate	Absenteeism Rate
1999	20%	170%	8.9 %
2000	19%	185%	11%

After implementing pre-hire and random drug and alcohol testing.

Year	Accident Incidence Rate	Turnover Rate	Absenteeism Rate
2001	12%	96%	6.8%
2002	13%	105%	7.2%
2003	10%	79%	6.8%
Average Reduction	7.8%	84%	3%

Commerce Labor
3-9-04
Atch #6

The reasons we support SB 410 are as follows:

1. It is absurd that an employee who fails or refuses to take a required (by company policy) drug and alcohol test is currently allowed unemployment benefits. On three occasions in the past two years benefits were allowed and our account charged for employees we terminated for failing required drug and alcohol tests. In two of these cases the employee was hired then took the pre-hire test and allowed to start work immediately. In both these cases the employee worked for several days before we received notification that they had failed the test for having illegal drugs in their system. Pursuant to Company policy they were terminated. Both individuals applied for and were granted, even after appeal, unemployment benefits. The third case involved an employee who failed a random test and was terminated. This employee was also allowed benefits. There were several other employees who were terminated for violations of our company drug and alcohol policy who under current laws were eligible for unemployment benefits but fortunately did not apply.

2. It is often necessary to put new employees to work on very short notice. This is due to lots of different factors, including, consumer demand and unexpected employee losses. If we wait for the results of the pre-hire test to be completed, we may not be able to put the new employee to work for up to ten days. That is ten days that we are short a needed employee and ten days an employee (taxpayer) is without a needed income.

In closing I would like to say that it is just plain wrong for employers to have to foot the bill for employees who flagrantly violate State and Federal Laws by using illegal drugs and abusing alcohol in the workplace.

The Kansas Chamber
Legislative Testimony

SB 410

March 9, 2004

Testimony before the Kansas House Commerce and Labor Committee

THE KANSAS CHAMBER

The Force for Business

835 SW Topeka Blvd.
Topeka, KS 66612-1671
785-357-6321
Fax: 785-357-4732
E-mail: info@kansaschamber.org
www.kansaschamber.org

The Kansas Chamber of Commerce supports the intent of SB 410 and other measures to reform the unemployment compensation system in Kansas.

SB 410 addresses problems that employers have faced when dealing with employees who lose their jobs because of their use of drugs and alcohol on the job. Unemployment compensation is intended for employees when they loose their job due to no fault of their own. SB 410 attempts to clarify the law so that individuals who cause their own unemployment due to their drug or alcohol use should not receive unemployment compensation benefits.

These clarifying changes will be beneficial to both the business community and the employee. Only those employees that loose their job due to no fault of their own will receive benefits and SB 410 will provide some relief to the Unemployment Compensation trust fund.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.

Comm & Labor
3-9-04
Atch #7