

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 22, 2006 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Others attending:

See attached list.

The Chairman said this was the last day for this Committee to meet on House Bills and final action would be taken on several bills today.

HB 2671: Workers compensation; occurrence deductibles, defined.

Staff briefed the committee on a balloon for **HB 2671**. On page 1, line 9 "occurrence" was struck and on line 9 after "occurrence" add "or per claimant, or both,".

Representative Schwab moved and Representative Grange seconded to adopt the balloon for **HB 2671**. The motion carried.

Representative Schwab moved and Representative Humerickhouse seconded to move **HB 2671** out as amended. The motion carried.

HB 2839: Residential landlord and tenant act; evictions; disposition of possessions.

Staff briefed the committee on **HB 2839**.

The Chairman recognized Representative Yonally who stated that he introduced **HB 2939 - Landlord and tenants; tenant may terminate rental agreement if a victim of felony offense or theft of \$500; notice required** late and would like to amend **HB 2939** into **HB 2839**.

Representative Pauls moved and Representative Ruff seconded to replace **HB 2839** with **HB 2938**.

For clarification the Chairman asked if this was a gut and go? Representative Pauls answered in the affirmative.

Vice Chairman Schwab said he was opposed to that as there were no opponents to **HB 2839**.

Vice Chairman Schwab moved and Representative Masterson seconded a Substitute Motion to pass **HB 2839** out favorably.

Representatives Roth and Wolf stated they liked Representative Yonally's bill.

Representative Grant said he liked **HB 2839** and Yonally's bill, **HB 2938**. If the Substitute Motion goes down, he would like to add **HB 2938** to **HB 2839**; not a gut and go.

Vice Chairman Schwab encouraged the Substitute Motion and **HB 2938** could be put in the bill on the Floor. A Division was called - Yeas 10 - Nays 9. The Substitute Motion carried.

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 22, 2006 in Room 241-N of the Capitol.

HB 2658 - Gift certificates, restrictions.

Vice Chairman Schwab briefed the committee on the Sub-Committee Report on **HB 2658**.

Vice Chairman Schwab moved and Representative Garcia seconded to adopt the Sub-Committee Report on **HB 2658**. The motion carried.

Representative Schwab moved and Representative Garcia moved to pass **HB 2658** out favorably as amended. The motion carried.

HB 2928 - Leave from employment for victims of domestic violence or sexual crimes.

Staff brief the committee on balloon amendment on **HB 2928**. This tightens up the bill and limits the time line (Attachment 1).

Representative Grant moved and Representative Schwab seconded to adopt the balloon on **HB 2928**. The motion carried.

Representative Pauls moved and Representative Grant seconded to move **HB 2928** out favorably as amended. The motion carried.

HB 2841 - Misclassifying employees as independent contractors prohibited.

Staff briefed the committee on the balloon of **HB 2841 - Misclassifying employees as independent contractors prohibited** (Attachment 2).

After discussion Representative Grant moved and Representative Ruff seconded to adopt the balloon on **HB 2841**.

The motion passed. Representative Kiegerl wished to be recorded as voting **NO**.

Representative Johnson moved and Representative Kiegerl seconded to Table **HB 2841**. A Division was called and there was a tie vote. The Chairman voted "Yea" and **HB 2841** was Tabled.

The Chairman thanked the Committee, the staff and secretary for their good work the first half of the session.

The meeting adjourned at 10:00 a.m. The next meeting is on call of the Chairman.

COMMERCE AND LABOR COMMITTEE

DATE February 22, 2006

NAME	REPRESENTING
Doug Wareham	Kansas Bankers Assn.
Derck Hein	High Law Firm
Ron Hein	"
John Denley	KS Lusk Assoc.
David Cunningham	KS Assn of School Bds
Jim McHaff	KS AFL-CIO
BRAD MALONE	KTLA
Senn Tombs	Division of the Budget
Eric Stafford	AGC of KS
Martha Ann Smith	KMTA

HOUSE BILL No. 2928

By Representatives Loganbill, Ballard, Crow, Faust-Condeau, Flaharty, Garcia, Gatewood, Hawk, Henderson, Huntington, Huy, Kelley, Kuetner, Long, Mah, Mast, Menghini, Judy Morrison, Pauls, Ruff, S. Sharp, Storm, Svaty, Thull, Trimmer, Winn and Yonally

2-14

12 AN ACT concerning employment; requiring employers to allow leave for
13 certain purposes; providing penalties and remedies for violations.

14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. As used in this act:

17 (a) "Domestic violence" means abuse as defined in K.S.A. 60-3102,
18 and amendments thereto.

19 (b) "Sexual assault" means any crime defined in K.S.A. 21-3502
20 (rape), 21-3503 (indecent liberties with a child), 21-3504 (aggravated in-
21 decent liberties with a child), 21-3505 (criminal sodomy), 21-3506 (ag-
22 gravated criminal sodomy), 21-3602 (incest) or 21-3603 (aggravated in-
23 cest), and amendments thereto.

24 Sec. 2. (a) An employer may not discharge or in any manner discrim-
25 inate or retaliate against an employee who is a victim of domestic violence
26 or a victim of sexual assault for taking time off from work to obtain or
27 attempt to obtain any relief, including, but not limited to, a temporary
28 restraining order, restraining order or other injunctive relief, to help en-
29 sure the health, safety or welfare of the victim or the victim's child/

30 (b) (1) As a condition of taking time off for a purpose set forth in
31 subsection (a), the employee shall give the employer reasonable advance
32 notice of the employee's intention to take time off, unless such advance
33 notice is not feasible.

34 (2) When an unscheduled absence occurs, the employer shall not take
35 any action against the employee if the employee, within a reasonable time
36 after the absence, provides a certification to the employer in the form of
37 any of the following:

38 (A) A police report indicating that the employee was a victim of do-
39 mestic violence or sexual assault;

40 (B) a court order protecting or separating the employee from the
41 perpetrator of an act of domestic violence or sexual assault, or other ev-
42 idence from the court or prosecuting attorney that the employee has
43 appeared in court; or

, to seek medical attention for injuries caused by domestic violence or sexual assault or to obtain services from a domestic violence shelter, program or rape crisis center as a result of domestic violence or sexual assault but leave for obtaining services from a domestic violence shelter, program or rape crisis center shall not exceed three days per calendar year unless a longer period of time is otherwise available to an employee under the applicable terms of employment or provided by a collective bargaining agreement

Comm + Labor
2-22-06
Atch # 1

1 (C) documentation from a medical professional, domestic violence
2 advocate or advocate for victims of sexual assault, health care provider or
3 counselor that the employee was undergoing treatment for physical or
4 mental injuries or abuse resulting in victimization from an act of domestic
5 violence or sexual assault.

6 (c) To the extent allowed by law, the employer shall maintain the
7 confidentiality of any employee requesting leave under subsection (a).

8 (d) An employee may use vacation, personal leave or compensatory
9 time off that is otherwise available to the employee under the applicable
10 terms of employment, unless otherwise provided by a collective bargain-
11 ing agreement, for time taken off for a purpose specified in subsection

12 (a). The entitlement of any employee under this section shall not be di-
13 minished by any collective bargaining agreement term or condition.

or may use unpaid leave of not to exceed five days per calendar
year, unless a longer period of time is otherwise available to an
employee under the applicable terms of employment or provided by
a collective bargaining agreement, for time taken off for a purpose
specified in subsection (a)

14 Sec. 3. (a) In addition to the requirements and prohibitions imposed
15 on employers pursuant to section 2, and amendments thereto, an em-
16 ployer with 25 or more employees may not discharge or in any manner
17 discriminate or retaliate against an employee who is a victim of domestic
18 violence or a victim of sexual assault for taking time off from work to:

19 (1) Seek medical attention for injuries caused by domestic violence
20 or sexual assault;

21 (2) obtain services from a domestic violence shelter, program or rape
22 crisis center as a result of domestic violence or sexual assault;

23 (3) obtain psychological counseling related to an experience of do-
24 mestic violence or sexual assault; or

25 (4) participate in safety planning and take other actions to increase
26 safety from future domestic violence or sexual assault, including tempo-
27 rary or permanent relocation.

28 (b) (1) As a condition of taking time off for a purpose set forth in
29 subsection (a), the employee shall give the employer reasonable advance
30 notice of the employee's intention to take time off, unless such advance
31 notice is not feasible.

32 (2) When an unscheduled absence occurs, the employer may not take
33 any action against the employee if the employee, within a reasonable time
34 after the absence, provides a certification to the employer. Certification
35 shall be sufficient in the form of any of the following:

36 (A) A police report indicating that the employee was a victim of do-
37 mestic violence or sexual assault;

38 (B) court order protecting or separating the employee from the per-
39 petrator of an act of domestic violence or sexual assault or other evidence
40 from the court or prosecuting attorney that the employee appeared in
41 court; or

42 (C) documentation from a medical professional, domestic violence
43 advocate or advocate for victims of sexual assault, health care provider or

1 counselor that the employee was undergoing treatment for physical or
2 mental injuries or abuse resulting in victimization from an act of domestic
3 violence or sexual assault.

4 (c) To the extent allowed by law, employers shall maintain the confi-
5 dentiality of any employee requesting leave under subsection (a).

6 (d) An employee may use vacation, personal leave or compensatory
7 time off that is otherwise available to the employee under the applicable
8 terms of employment, unless otherwise provided by a collective bargain-
9 ing agreement, for time taken off for a purpose specified in subsection
10 (a). The entitlement of any employee under this section may not be dimi-
11 nished by any collective bargaining agreement term or condition.

12 (e) This section does not create a right for an employee to take unpaid
13 leave that exceeds the unpaid leave time allowed under, or is in addition
14 to the unpaid leave time permitted by, the federal family and medical
15 leave act of 1993 (29 U.S.C. Sec. 2601 et seq.).

16 Sec. 4. (a) Any employee who is discharged, threatened with dis-
17 charge, demoted, suspended or in any other manner discriminated or
18 retaliated against in the terms and conditions of employment by the em-
19 ployee's employer because the employee has taken time off for a purpose
20 set forth in section 2 or 3, and amendments thereto, shall be entitled to
21 reinstatement and reimbursement for lost wages and work benefits
22 caused by the acts of the employer. Any employer who willfully refuses
23 to rehire, promote or otherwise restore an employee or former employee
24 who has been determined to be eligible for rehiring or promotion by a
25 grievance procedure or hearing authorized by law is guilty of a class C
26 misdemeanor.

27 (b) In addition to or in lieu of the criminal remedy provided by sub-
28 section (a), any employee who is discharged, threatened with discharge,
29 demoted, suspended or in any manner discriminated or retaliated against
30 in the terms and conditions of employment by the employee's employer
31 because the employee has exercised the rights set forth in section 2 or 3,
32 and amendments thereto, may bring a civil action in the district court of
33 the county in which the violation is alleged to have occurred or in which
34 the alleged violator resides or transacts business. If the court finds that a
35 violation has occurred, the court may award to the plaintiff actual dam-
36 ages, including, but not limited to, amounts to which the employee is
37 entitled pursuant to subsection (a), or \$500, whichever is greater, for each
38 violation. The court may also grant as relief any permanent or temporary
39 injunction or restraining order, including an order enjoining the defend-
40 ant from engaging in such violation or ordering such affirmative action as
41 may be appropriate. The prevailing party shall be awarded court costs
42 and reasonable attorney fees.

1 Sec. 5. This act shall take effect and be in force from and after its
2 publication in the statute book.

3

HOUSE BILL No. 2841

By Committee on Commerce and Labor

2-7

Commerce and Labor
2-22-06
Attach #2

9 AN ACT concerning employment; relating to the misclassification of em-
10 ployees; amending K.S.A. 2005 Supp. 79-3234 and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) It shall be unlawful to classify an employee as an
15 independent contractor for purposes of avoiding either state income tax
16 withholding and reporting requirements or state unemployment insur-
17 ance contributions reporting requirements.

18 (b) Any person violating subsection (a) shall be liable to the state for
19 a civil penalty of \$500, per misclassified employee and for each day such
20 violation continues shall be deemed to be a separate violation.

21 New Sec. 2. (a) The department of revenue in conjunction with the
22 department of labor shall establish a website to receive communications
23 concerning information on persons and business entities misclassifying
24 employees in violation of section 1, and amendments thereto.

25 (b) Upon receipt of such information, the department of revenue
26 shall work with the department of labor to investigate alleged violations.
27 The agencies shall cooperate and share information as necessary con-
28 cerning the alleged violations.

29 (c) The secretary of revenue and secretary of labor may apply for,
30 receive and accept moneys from any source for the purposes of estab-
31 lishing the website.

32 (d) The secretary of revenue and secretary of labor shall publicize,
33 distribute and disseminate information on the availability of the website
34 and concerning employee misclassification violations to employment
35 agencies, law enforcement agencies and other interested parties.

36 (e) The chief attorney of the department of labor, appointed pursuant
37 to K.S.A. 75-5722, and amendments thereto, shall be designated as special
38 assistant attorney general for the purposes of investigating, prosecuting
39 and litigating matters under section 1, K.S.A. 44-636 and K.S.A. 44-720,
40 and amendments thereto.

41 ~~New Sec. 3.~~ The secretary of revenue and secretary of labor, are
hereby authorized to adopt rules and regulations concerning the imple-
mentation of this act.

(f)

(g) No insurance company authorized to sell insurance in the state of Kansas or any agent or employee thereof while acting within the scope of being an agent or employee of such a company shall be subject to the provisions of the section.