

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 8:30 A.M. on March 17, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Representative Judith Longanbell
Sandy Barnett-Kansas Coalition Against Sexual & Domestic Violence
Secretary Joan Wagnon- Department of Revenue

Others attending:

See attached list.

Chairperson Jordan opened the hearing on **HB 2928-Leave from employment for victims of domestic violence or sexual assault** by introducing Helen Pedigo from the Revisors Office to explain the bill. Ms. Pedigo stated the bill would prohibit an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence or a victim of sexual assault for taking time off work to obtain or attempt to obtain any relief. She stated that the employee would be required to give reasonable advance notice unless such notice is not feasible. She further stated the employee may use vacation, personal leave or compensatory time off that is otherwise available to an employee under the terms of employment.

Upon completion of Ms. Pedigo's explanation of the bill, Chairperson Jordan introduced Representative Judith Longanbill to give her testimony as a proponent for **HB 2928**. Representative Longanbill presented written testimony. (Attachment 1) Representative Longanbill stated **HB 2928** is a bill which will afford those individuals who need to take time off from work to obtain relief due to domestic violence or sexual assault, the assurance that they will not suffer discrimination or retaliation from their employer. The bill seeks to assure that individuals will be able to report, to protect themselves, or to protect their family, and know they will not lose their job by doing so. She stated the bill does not ask the employer to give paid leave. It sets out language that the employee must give advance notification unless advance notice is not feasible. In closing, Representative Loganbill stated if the state is truly committed to dealing with the seriousness of sexual offense and assault, then we must supply people with necessary tools to help bring those offenders to justice.

Upon conclusion of Representative Longanbill's testimony the floor was opened for questions. Senator Kelly had questions on the number of days allowed without pay. She made note of Page 1, line 34. The type of leave was discussed and it was determined that the intent of the bill was for 5 days total. Representative Longanbill stated that a total of 6 days might be better and maybe the language should be tightened up and the number of days changed to 6 total. Senator Brownlee entered the discussion asking if it was a common practice for someone to loose their job under these circumstances. Representative Loganbill stated is was common. Senator Reitz entered the discussion with concerns in regard to the language "advance notice" and what if someone is unable to give advance notice because of being incapacitated by violence. Representative Loganbill stated the bill language states "advance notice when feasible". The discussion turned back to the 5 days allowed for the unpaid leave and if the employee had vacation time and sick time could they take that instead.

Chairperson Jordan introduced, Sandy Barnett representing the Kansas Coalition Against Sexual and Domestic Violence to give her testimony as a proponent for **HB 2928**. Ms. Barnett presented written testimony. (Attachment 2) Ms. Barnett stated HB 2928 will help victims of both domestic violence and sexual assault by ensuring protections from employers who terminate, discipline, or otherwise punish victims when they must tend to the critical safety needs of themselves and their children. She stated maintaining employment is of the utmost importance for victims. The lack of financial stability is one of the greatest barriers to leaving an abusive partner for victims of domestic violence, second only to safety concerns. She further stated that the bill seeks to remedy employment related barriers for victims by prohibiting the firing or punishment of

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victims when they must tend to victim-related issues requiring them to miss work.

Chairperson Jordan opened the floor for questions. Senator Emler entered the discussion regarding vacation time and asked if the intent of the bill is to allow the employee to use whatever type of leave time they preferred. Ms. Barnett stated the problem with paid leave time is that part-time employees usually do not have benefits which include paid vacation or sick time. The bill would address this issue.

Being no more questions or discussion on **HB 2928**, Chairperson Jordan closed the hearing.

Chairperson Jordan opened the hearing on **SB 560-Creation of emerging industry investment oversight council; powers and duties**, by making comments on the bill along with an explanation. Senator Jordan stated the bill was introduced to talk about ways of handling differences of conflict with Department of Revenue and the Bioscience Authority on what fits the NAICS code and what doesn't fit the NAICS code. The intent of the bill is that the Department of Revenue and the Bioscience Authority could come together and agree on which companies fit the NAICS code. **SB 560** does two things, it sets up a council to mediate any conflicts with the NAICS codes. The second part is a policy change which is on page 2 of the bill to include pharmaceutical companies in the Bioscience Authority revenue stream. Chairperson Jordan stated he is not sure if the Committee needs to move this bill. He feels the original intent was for the Secretary and the Bioscience Authority to work together.

Chairperson Jordan introduced Secretary Joan Wagon from the Department of Revenue to give her testimony as an opponent to **SB 560**. Secretary Wagon presented written testimony. (Attachment 3) Secretary Wagon stated since the inception of this program, approximately 1,350 companies have been included. There are 1,000 companies that fall within one of the 21 NAICS codes as provided in the legislation, leaving 100 companies in the other category or within a NAICS code that is not provided in the legislation. There are approximately 250 EIN's in our bioscience master list that have no withholding account. The Department of Revenue has currently certified two different payments to the Bioscience Development and Investment Fund for a total of \$9,290,201.35. She stated for the estimated payment request on January 27, 2006, the Department of Revenue compared withholding information for the majority of the Kansas Bioscience Companies for the first half of the calendar year (January-June) of 2005 and the first half of the base year (January-June) of 2003. The estimated payment request did not include any withhold from the State Universities. The Department of Revenue anticipates making an estimated payment for the second half of the calendar year (July-December) of 2005 and the second half of the base year (July-December) of 2003 in the very near future. These estimated payments will be reconciled by the Department in July. She also stated they are moving ahead to try to provide quarterly payments. She stated this bill creates an emerging industry investment oversight council. She feels the oversight council is not needed. She also stated she feels to eliminate conflicts when the NAICS fits or doesn't fit, a better definition of a bioscience company is needed because the present definition is very broad. In closing, Secretary Wagon stated the Department of Revenue is opposed to **SB 560**.

Upon conclusion of Secretary Wagon's testimony, there was discussion with the Committee regarding the payments to the Bioscience Authority. Senator Barone, who is on the Board for the Bioscience Authority, stated he felt the Department of Revenue and the Bioscience Authority has worked well together. Chairperson Brownlee entered the discussion and stated she felt this was just growing pains of a new setup and there will be differences of opinions to work out.

Upon the conclusion of the discussion, Chairperson Jordan closed the hearing on **SB 560**.

Chairperson Jordan called the Committee's attention to the minutes for approval. **Senator Reitz made a motion to approve the minutes for March 7th, March 8th, March 9th, and March 10th. Senator Emler seconded. Motion carried.**

Chairperson Jordan turned the meeting over to Chairperson Brownlee. Chairperson Brownlee called the Committee's attention to **HB 2696-Workers compensation; administrative law judges, requirements, salary and application; establishing the workers compensation administrative law judge nominating and review committee**. Chairperson Brownlee recognized Senator Wagle. **Senator Wagle made a motion**

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to amend the 80% pay increase for the ALJ's and make it 75%. Senator Kelly seconded. Motion carried.

Chairperson Brownlee stated after receiving information for Dick Thomas representing the Division of Workers Compensation regarding the recourse for an employee if the work comp carrier did not follow the ruling of an ALJ, the amendment she had offered to give the ALJ's the power of contempt is not necessary. The Committee discussed this issue and they all agreed. **Senator Jordan made a motion to move the bill out favorably as amended. Senator Reitz seconded. Motion carried.**

Chairperson Brownlee stated the Committee would work the **HB 2928-Leave from employment for victims of domestic violence or sexual assault,** on Tuesday and there would not be a meeting on Monday.

The meeting was adjourned at 9:30 a.m. with the next meeting scheduled for March 21, 2006 at 8:30 a.m. in room 123S.

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TOPEKA
 HOUSE OF
 REPRESENTATIVES

House Bill 2928

An act concerning employment; requiring employers to allow leave for certain purposes; providing penalties and remedies for violations.

Chairman Brownlee, Chairman Jordan, Senator Barone, and members of the Commerce Committee;

Thank-you for this opportunity to come before you to present testimony on **HB 2928**.

HB 2928 is a bill which will afford to those individuals who need to take time off from work to obtain relief due to domestic violence or sexual assault, the assurance that they will not suffer discrimination or retaliation from their employer.

When one has been the victim of domestic violence or sexual assault, being able to obtain a restraining order or ensuring the safety of oneself or the safety and health of one's child is uppermost in that survivor's mind. Facing the reality though, that you might just lose your job because you need to be gone, is unfortunately a reality that happens far too often.

This bill seeks to assure that individual that they will be able to report, to protect themselves, or to protect their family, and know that they will not lose their job by doing so. This bill does not ask the employer to give them paid leave. It simply sets out language that provides for the employee to give reasonable notice that they need to take this time off. If there is not time for advance notification the bill lays out what the employee is to provide to their employer. It further defines what types of different leaves an employee may use.

Abusers are powerful people. They know how to twist words. They know what to do to ensure that the recipient of their abuse knows just how far they can and cannot go. If you were certain that you would lose your job because you had to take time off to go to court to obtain a Protection From Abuse order, would you go? Many do not. The abuser is aware of that and uses it to their advantage. I want us to put a stop to that twisted power.

I am told that the number of sexual offenders that are currently incarcerated represents less than 5% of the actual offenders. If this state is truly committed to dealing with the seriousness of sexual offense and assault, then we must supply people with necessary tools to help bring those offenders to justice. HB 2928 is one such tool. It is a place to begin.

Respectfully,


 Representative Judith Loganbill

Senate Commerce Committee
 March 17, 2006

Attachment 1-1

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HB 2928
Proponent
March 17, 2006

Chairwoman Brownlee and Members of the Senate Commerce Committee;

The Kansas Coalition Against Sexual and Domestic Violence is a membership organization representing the 31 domestic violence and sexual assault programs and the victims they serve.

HB 2928 will help victims of both domestic violence and sexual assault/rape by ensuring protections from employers who terminate, discipline, or otherwise punish victims when they must tend to the critical safety needs of themselves and their children.

"I had one client who took 4 hours of jail time for rescinding her statement because she had been to court three times and was afraid if she took off one more time she would lose her job at this was just two weeks ago." Advocate at the YWCA, Wichita

"Two children were victimized by a stranger who broke into the home at night. The family is Hispanic and the parents do not speak English. Several law enforcement interviews with the parents and children were conducted throughout the investigation. Initially the mother's employer was supportive and understood the need for her to miss work or leave early to meet these obligations.

The father notified the mother at work of another interview that would take place the next day. The mother notified her shift manager of her need to miss work the following day and due to the language barrier, the mother had the daughter call the shift manager to verify that she would not be at work the next day. The shift manager took the day off and forgot to tell the supervisor that the mother would be absent. The supervisor called the mother the next day and fired her. The daughter called the supervisor to explain why mom missed work and to verify that they had spoken with the shift manager. The supervisor indicated that the mother should have spoken to him since the shift manager was not there and the termination stands." Advocate, Wichita Area Sexual Assault Center

These are just two examples of how employer practices put victims into impossible situations or result in unfair terminations or punishments.

Maintaining employment is of the utmost importance for victims. The lack of financial stability is one of the greatest barriers to leaving an abusive partner for victims of domestic violence, second only

to safety concerns. Victims of sexual assault and rape must participate with law enforcement for evidence collection and investigation of these crimes. Evidence must be collected within a few hours after an assault.

Victims who believe their employment is threatened if they must be absent from work to seek medical treatment, or for forensic evidence collection, or to meet with law enforcement may discontinue their participation with the criminal justice system, risking other kinds of punishment. In either case, justice will not be served.

Victims often need to undertake activities that may only be done during regular business hours, such as:

- Filing a protection from abuse or protection from stalking order
- Meeting with investigators from law enforcement or prosecutors offices
- Seeking emergency medical treatments for evidence collection or an injury as a result of an assault
- Seeking safe shelter. Shelter may only be available more than an hour or two away from their home community and employment. Victims may not seek safe shelter if it means the loss of their employment too
- Attending court hearings
- Attending parole hearings
- Attending an appointment to verify compensation claims or to attend a compensation claim appeal
- Attending counseling and support services, which are often, but not always available after regular work hours.

HB 2928 seeks to remedy employment related barriers for victims by prohibiting the firing or punishment of victims when they must tend to victim-related issues requiring them to miss work. HB 2928 does require employees provide verification for the reason why an absence from work is necessary.

Although HB 2928 does not specifically address it, KCSDV assumes it is a defense against criminal or civil sanctions if the employees absence from work could have been avoided because the service or activity could be accomplished other than during work hours.

KCSDV fully supports HB 2928 and urges the House Commerce and Labor Committee to pass it favorably out of committee.

Respectfully Submitted,

Sandy Barnett
Executive Director

Testimony to the Senate Committee on Commerce
Joan Wagnon

March 17, 2006
Senate Bill 560

Senators Brownlee and Jordan and Members of the Committee:

The Department of Revenue opposes SB 560. The creation of an oversight council is not warranted. There isn't any real documented problem. There have only been two times that I recall when the department has disagreed with KTEC (representing the Bioscience Authority) over including a company in the base or designating it as a bioscience company. Since the inception of this program, approximately 1,350 companies have been included. There are 1,000 companies that fall within one of the 21 NAICS codes as provided in the legislation, leaving 100 companies in the other category or within a NAICS that is not provided in the legislation. (There are approximately 250 EIN's in our bioscience master list that have no withholding account.)

The Department of Revenue has currently certified two different payments to the Bioscience Development and Investment Fund for a total of \$9,290,201.35.

Date of Certification		2003 KS WH	95% of 2003	2004 KS WH	95% of 2004	Difference
July 1, 2005	Bioscience Companies	\$75,448,111.83	\$71,675,706.24	\$81,098,336.75	\$77,043,419.91	\$5,367,713.67
	State Universities	\$7,197,627.06	\$6,837,745.7	\$7,855,526.75	\$7,462,750.41	\$625,004.71
	Total	\$82,645,738.89	\$78,513,451.94	\$88,953,863.5	\$84,506,170.32	\$5,992,718.38

Date of Certification		2003 KS WH Jan-June	95% of 2003 Jan-June	2005 KS WH Jan-June	95% of 2005 Jan-June	Difference
January 27, 2006	Bioscience Companies	\$35,778,600.65	\$33,989,670.63	\$39,249,635.36	\$37,287,153.60	\$3,297,482.97

For this estimated payment request on January 27, 2006, the Department of Revenue compared withholding information for the majority of the Kansas Bioscience Companies for the first half of the calendar year (January-June) of 2005 and the first half of the base year (January-June) of 2003. This estimated payment request did not include any withholding from the Kansas State Universities. We anticipate making an estimated payment for the second half of the calendar year (July-December) of 2005 and the second half of the base year (July-December) of 2003 in the very near future. These estimated payments will be reconciled by the Department in July.

We also proposed, based on correspondence with the Bioscience Authority, dated September 23, 2005, that the Department supply Mr. Dan Schmisser, KTEC with the following quarterly withholding information beginning for the calendar year 2006.

- EIN of Bioscience Company
- NAICS of Bioscience Company as registered with KDOR
- Filing Status of Bioscience Company (annual, quarterly, monthly, etc)
- Withholding amount remitted by Bioscience Company in applicable quarter

Senate Commerce Committee
March 17, 2006

Attachment 3-1

The following schedule indicates our timeline for sharing this information:

January, February, March 2006 withholding information will be provided by May 15, 2006;
April, May, June 2006 withholding information will be provided by August 15, 2006;
July, August, September 2006 withholding information will be provided by November 15, 2006; and
October, November, December 2006 withholding information will be provided by February 15, 2007.

There is no reason why quarterly estimated payments to the Bioscience Development and Investment Fund couldn't be made at those times as well based on the legislation that was passed last year (2005 HB 2003). No new legislation is needed for this purpose. Reconciliation of these estimated payments can be made in June or July following the end of the calendar year. (The reason for the lag time is that the KW-3, the annual withholding tax return, submitted by companies is not due until the last day of February. Since this is right in the middle of our peak processing season for income tax returns, the processing of the KW-3's may be delayed. KDOR usually has the majority of the KW-3's processed by the end of June.)

New Section 1, creates the emerging industry investment oversight council. However, what this bill provides is "override" not "oversight". It consists of six members but only names five. It designates KTEC staff to be the secretary but then says the KTEC person is not a member of the council. Where is the sixth member? There are four legislators, or their designees, and the Governor or her designee. The council can meet any time and can create its own rules and govern itself. A majority of those present can act. The appointment mechanisms are non-existent, the terms of service not defined, etc.

Its stated first purpose is to supervise the Department of Revenue and audit it in the performance of these responsibilities which is most unusual. Typically, should the legislature question the functioning of an executive branch agency, Legislative Post Audit is called in to examine how the agency has performed. In this case, if there is a question as to the completeness and accuracy of information, a request to LPA would be entirely appropriate. They have statutory authority to look at confidential tax information. This oversight council does not. Why create this special council to bypass existing legislative oversight? The language on lines 42-3 where the council can adjust the amount of tax dollars (withholding) certified by Revenue is really troublesome. There is NO restriction on this body's power and this council is answerable to no one. The council, in essence, receives a "blank check" against the state general fund.

Conflict or Agreement by two or More Parties?

The bill is written in such a way that it suggests that if the Authority and the Secretary of Revenue don't agree on a classification of a business, there is a conflict. That completely changes the standard the legislature set last year, and was agreed to by all parties. The current statutory language presumes that if a company falls within the listed NAICS codes, that company is a bioscience company. There is no conflict. No decision.

When the company does **not** have the correct NAICS code, the two parties must agree that it fits the **definition** of a bioscience company. The standard shifts from identification by NAICS code to fitting within the definition to be named a bioscience company, admittedly a more subjective measure. It is a matter of reaching agreement between the two groups (Revenue and the Authority) that despite not having the correct NAICS code, there is verifiable evidence that the company fits the definition. The old adage, "two heads are better than one" makes for a more accurate determination. There is no conflict at that point – only two independent judgments that a certain company fits the definition. And with only a couple of exceptions, there has been agreement and cooperation. Certainly, not enough to warrant changing the law.

Definition Change Proposed

Section 2 of the bill removes from the definition of bioscience companies the language regarding entities engaged in the distribution or retail sale of pharmaceuticals. A little history would be helpful. Last year the initial legislation was revised to include wages paid to hospital employees in the base in exchange for other revisions to the law. That action had the effect of adding about \$57 million to their base, and increasing the overall income to the Authority. Revenue and Commerce supported that move. Part of the revision to the act was limiting the definition to exclude "entities engaged in the distribution or retail sale of pharmaceuticals." Some, including the Governor's Office felt Kansas was opening the door to all sorts of retail pharmaceutical companies, such as every Walgreen pharmacies, without it. One of the disputed companies, Prescription Solutions, wanted to locate in Johnson County. I did not agree to include them (not one of the NAICS codes designated as bioscience) because in my view they clearly did not fit within the parameters of the law. The Authority did give KU some money on their behalf to do research in Robotics, but my decision would prevent their new employees from being included in the base salary computation. I believe Commerce also provided incentives to Prescription Solutions and they did locate in Kansas.

The best way to eliminate these "conflicts" when the NAICS code doesn't fit the statute, is to have a better definition of a bioscience company because the one we have is very broad. For example, how do you classify a company like Hills Pet Products here in Topeka that is primarily a manufacturer and has that NAICS code, but also has a bioscience-type research facility associated with it. Are they bioscience, or manufacturer? Because of that, Revenue has endeavored to qualify companies that appear to fit within the intent of the legislature. Requiring Revenue and the Authority to agree, based on verifiable evidence, allows for exceptions to the NAICS codes, but also provides more objective balance to the process.

At this time the process appears to be working. Adding another layer of bureaucracy to adjudicate these decisions is unnecessary. Therefore, the Department of Revenue opposes SB 560.