

Approved: SRB 3-30-09
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:00 a.m. on March 18, 2009, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Renaë Jefferies, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Others attending:

See attached list.

The Meeting was called to order by Chairman Steve Brunk at 9:00 a.m. He opened the hearing on **SB 160**.

SB 160 - Kansas minimum wage law; minimum wage increase.

The Chairman called upon Renaë Jefferies, Assistant Revisor to explain **SB 160**. It increases the Kansas Minimum Wage to \$7.25 an hour on January 1, 2010. Section 1 (b) has new language that allows tips and gratuities received by the employee to be used to make up the \$7.25 an hour. If the tips and gratuities are not enough to make up the \$7.25 an hour then the employer must make up the difference. Renaë then introduced Balloon Amendment Representative Brunk.1 (Attachment 1). This balloon struck everything in Section 1 and has the effect of repealing the Minimum Wage Law. The second Balloon Amendment dated March 18, 2009 (Attachment 2) adds two new amendments to the bill. Each of these amendments should be considered separately. The first amendment has to do with newly hired employees who are less than 20 years of age, that in lieu of the minimum wage they may be paid a wage of not less than \$4.25 an hour for 90 consecutive calendar days. The other amendment adds a new Section 2 which allows the Secretary of Labor from and after January 1, 2010 to adopt rules and regulations establishing the state minimum wage which is consistent with and not less than the minimum wage established by the federal fair labor standards act.

Representative Grant wanted to lower the age in the first amendment from 20 to 18 years of age.

Representative Schwab asked if under the second amendment the Secretary of Labor could enact rules and regulations to make the Kansas Minimum Wage higher than the Federal Minimum Wage. Renaë said that if it was more than the Federal rate it would not be consistent.

Representative Grange asked who does the bill cover. Renaë said that it would cover those employees of companies who do not deal in interstate commerce.

Representative Tietze asked Daniel Yoza to look up the age requirements in the Fair Labor Standards Act.

Representative Bethell mentioned some Amish farmers who are self sufficient and do a restaurant setting, providing a meal out of what they produce, that they might not fall under the Fair Labor Standards Act.

Representative Ruiz asked if the military fell under a different law. Renaë said she thought that there was an exemption for them in the Fair Labor Standards Act.

Representative Bowers asked about using the language "equal to" rather than "consistent with" in the second amendment. Renaë said that this was the language for a proper delegation.

Representative Brunk said that even though the amendments had his name on them it did not mean that he was advocating for them. It was only because he asked Renaë to draft the amendments.

Representative Tietze asked if the language "full time student" was just high school or did it include college as well. Representative Brunk explained that a company wishing to hire a full time student would have to

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:00 a.m. on March 18, 2009, in Room 784 of the Docking State Office Building.

apply for an exemption to the Federal law. The Kansas law does not get in to that because it is covered by the Federal law.

Representative Grange made a motion to adopt the language in the first amendment of the second Balloon Amendment dated March 18, 2009. Representative Ruiz seconded the motion.

Representative Worley said that if we adopted the other Balloon Amendment which basically eliminates the minimum wage that this amendment would not be necessary.

Representative Gatewood made a substitute motion to lower the age from 20 to 18 years of age, seconded by Representative Garcia.

Representative Brunk said that since the language was "less than 20 years of age" the effect would be to eliminate those who are 19 years old from the bill.

Representative Grange suggested that Representative Gatewood make it a floor amendment and indicated that he would vote against the substitute motion.

Representative Schwab agreed with Representative Grange and said that he had a problem with going above what the Federal law established.

The Chairman called for a voice vote on the substitute motion. The substitute motioned failed.

Back on the original motion to amend the Chairman called for a voice vote. The original motion to amend the base bill carried.

Representative Schwab made a conceptual amendment to exempt non-profit business from the requirements of the bill to pay the minimum wage. Representative Grange seconded the motion.

Daniel Yoza said that we should check to see if non-profits are already covered under the Fair Labor Standards Act.

Representative Garcia asked if non-profits fall under the Fair Labor Standards Act. Daniel thought that they were.

Representative Ruiz suggested that we carry that amendment on the floor. Representative Prescott agreed and Representative Pottorff said that this issue should have come up before since the law has been in effect for a long time.

The Chairman called for a vote on the conceptual amendment. The motion failed.

We are back on the bill as amended. Representative Grange made a motion to adopt the language of the Balloon Amendment that requires the Secretary to adopt rules and regulations establishing the minimum wage. The motion was seconded by Representative Bethell.

Representative Quigley asked if this amendment tied Kansas to the Federal Minimum Wage. Renae said that the amendment would allow the Secretary to raise the minimum wage to be consistent with the Federal Minimum wage and it would not have to come before the legislature to be raised.

Representative Schwab asked what would happen if the Fed raised the minimum wage \$2.50. He would not support giving that much power to the Feds and would vote against this amendment. Representative Palmer was also concerned with giving too much authority to the Feds. Representative Prescott said that was the reason we are considering this today. We are considering raising the minimum wage to \$7.25 to match the Feds. Representative Garcia asked if the minimum wage had ever been decreased. The consensus was that it had never gone down.

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:00 a.m. on March 18, 2009, in Room 784 of the Docking State Office Building.

The Chairman called for a voice vote on the motion. The Chairman was in doubt on the vote and called for a hand count. The hand count was 12 aye and 7 no. The motion carried.

Representative Grant made a motion to pass SB 160 out favorably for passage as amended. Representative Hermanson seconded the motion.

Representative Grange suggested that the Representatives work with the Revisor to answer any questions they may have.

The Chairman called for a voice vote. The motion carried.

The Chairman called the Committee's attention to a document that was passed out about **HB 2374 (Attachment 3)**. He advised that this was for information only and that we would have a hearing on it on March 19, 2009. This is part of the stimulus package and provides approximately 69 million dollars to the unemployment trust fund for people that are unemployed. It comes in two sections. A third of the money or \$22,990,048 can only come if we change the base period for qualifying someone for unemployment benefits. It is a policy change that would allow more people to receive unemployment benefits. The other two thirds would come if we have two of the four provisions listed on the form. Kansas already has provision one. In order to receive the money we would have to pick up a second policy change. Provision number four has three reasons for allowing a worker to leave employment and qualify for unemployment benefits. Kansas already has two of the three reasons in Kansas law. The progenitor of the bill chose to add the third reason under provision four to make Kansas qualify with two provisions in law. So we are gathering information about the meaning of the third reason in provision four. We will also be asking about the long run costs of adopting the provision and if we can add a sunset to it. We are also looking at the options under provision number two.

Representative Bethell asked if reason three of provision four allowed them to collect UI benefits while they were taking care of a sick family member. Representative Brunk said that they have to first quit working for their company and then they would be eligible for benefits only when they come back into the labor market actively seeking employment.

Representative Garcia asked if we were going to hear this bill tomorrow. The answer was yes.

The next meeting is scheduled for March 19, 2009.

The meeting was adjourned at 10:17 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 3-18-09

NAME	REPRESENTING
John Millburn	AP
Megan Ingnire	KDOL
Heidi Ullmer	Raise the Wage
Jake Lower	KAN / Wichita Labor Fed.
Jason Croucher	Kansas Jackass (dog)
Amy Johnson	Rep Louis Reuz - Intern
Greg Stephens	Salina, KS Representing myself
Brend Koods	Hein Law Firm
Dennis Phillips	KSCFF
Ed Redmon	KSCFF
Andy Sanchez	KS AFL-CIO
Ben Seibe	KAFA
JEFF GUENDINE	KS Chamber
RACHUL CAMBO	"
Dan Murray	NFIB

SENATE BILL No. 160

By Senators Francisco, Faust-Goudeau, Haley, Hensley, Holland, Kelly, Kutala, Reitz, Steineger and Wysong

2-2

Balloon Amendment
Representative Brunk.1
February 26, 2009

House Commerce & Labor
Date: 3-18-09
Attachment # 1

11 AN ACT concerning the minimum wage and maximum hours law;
12 amending K.S.A. 44-1203 and repealing the existing section.

repealing K.S.A. 44-1203

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

15 Section 1. ~~K.S.A. 44-1203 is hereby amended to read as follows: 44-~~
16 ~~1203. (a) Except as otherwise provided in the minimum wage and maxi-~~
17 ~~imum hours law, every employer shall pay to each employee wages at a~~
18 ~~rate of not less than \$2.65 an hour. as follows:~~

19 ~~(1) Prior to September 1, 2009 January 1, 2010, employee wages~~
20 ~~shall be paid at a rate of not less than \$2.65 an hour; and~~

21 ~~(2) on and after September 1, 2009 January 1, 2010, employee wages~~
22 ~~shall be paid at a rate of not less than \$7.25 an hour.~~

23 ~~(b) In calculating such minimum wage rate, an employer may include~~
24 ~~tips and gratuities received by an employee in an amount equal to not~~
25 ~~more than 40% of the minimum wage rate if such tips and gratuities have~~
26 ~~customarily constituted part of the remuneration of the employee and if~~
27 ~~the employee concerned actually received and retained such tips and~~
28 ~~gratuities. The secretary shall require each employer desiring approval of~~
29 ~~an allowance for gratuities to provide substantial evidence of the amounts~~
30 ~~of such gratuities on account of which the employer has taken an allow-~~
31 ~~ance pursuant to this section. In calculating such minimum wage rate,~~
32 ~~an employer may include tips and gratuities received by an em-~~
33 ~~ployee if such tips and gratuities have customarily constituted part~~
34 ~~of the remuneration of the employee and if the employee concerned~~
35 ~~actually received and retained such tips and gratuities. For em-~~
36 ~~ployees receiving tips and gratuities, the employer shall pay a min-~~
37 ~~imum wage of at least \$2.13 an hour. If when combined with the~~
38 ~~minimum wage rate prescribed in this subsection the amount of the~~
39 ~~employee's tips and gratuities are:~~

40 ~~(1) At least equal to \$7.25 an hour, no further payment is re-~~
41 ~~quired by the employer; or~~

42 ~~(2) less than \$7.25 an hour, the employer must pay the employee~~
43 ~~the difference between \$7.25 an hour and the actual hourly amount~~

1 ~~received by the employee determined by combining the amount of~~
2 ~~tips and gratuities received by the employee with the minimum~~
3 ~~wage prescribed by this subsection paid by the employer.~~

4 ~~(b)(e)~~ The provisions of this section shall not apply to any employers
5 and employees who are covered under the provisions of section 6 of the
6 fair labor standards act of 1938 as amended (20 U.S.C.A. § 206), and as
7 amended by the fair labor standards amendments of 1974 and any other
8 acts amendatory thereof or supplemental thereto.

9 ~~Sec. 2.~~ K.S.A. 44-1203 is hereby repealed.
10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.

And by renumbering the remaining section accordingly

1-2

SENATE BILL No. 160

By Senators Francisco, Faust-Goudeau, Haley, Hensley, Holland, Kelly,
Kutala, Reitz, Steineger and Wysong

2-2

11 AN ACT concerning the minimum wage and maximum hours law;
12 amending K.S.A. 44-1203 and repealing the existing section.

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

15 Section 1. K.S.A. 44-1203 is hereby amended to read as follows: 44-
16 1203. (a) Except as otherwise provided in the minimum wage and maxi-
17 mum hours law, every employer shall pay to each employee wages at a
18 rate of not less than ~~\$2.65 an hour.~~ *as follows:*

19 (1) ~~Prior to September 1, 2009~~ **January 1, 2010**, employee wages
20 shall be paid at a rate of not less than \$2.65 an hour; and

21 (2) ~~on and after September 1, 2009~~ **January 1, 2010**, employee wages
22 shall be paid at a rate of not less than \$7.25 an hour.

23 (b) ~~In calculating such minimum wage rate, an employer may include~~
24 ~~tips and gratuities received by an employee in an amount equal to not~~
25 ~~more than 40% of the minimum wage rate if such tips and gratuities have~~
26 ~~customarily constituted part of the remuneration of the employee and if~~
27 ~~the employee concerned actually received and retained such tips and~~
28 ~~gratuities. The secretary shall require each employer desiring approval of~~
29 ~~an allowance for gratuities to provide substantial evidence of the amounts~~
30 ~~of such gratuities on account of which the employer has taken an allow-~~
31 ~~ance pursuant to this section.~~ *In calculating such minimum wage rate,*
32 *an employer may include tips and gratuities received by an em-*
33 *ployee if such tips and gratuities have customarily constituted part*
34 *of the remuneration of the employee and if the employee concerned*
35 *actually received and retained such tips and gratuities. For em-*
36 *ployees receiving tips and gratuities, the employer shall pay a min-*
37 *imum wage of at least \$2.13 an hour. If when combined with the*
38 *minimum wage rate prescribed in this subsection the amount of the*
39 *employee's tips and gratuities are:*

40 (1) *At least equal to \$7.25 an hour, no further payment is re-*
41 *quired by the employer; or*

42 (2) *less than \$7.25 an hour, the employer must pay the employee*
43 *the difference between \$7.25 an hour and the actual hourly amount*

Representative Brunk
Balloon Amendment
March 18, 2009

House Commerce & Labor
Date: 3-18-09
Attachment # 2

1 *received by the employee determined by combining the amount of*
2 *tips and gratuities received by the employee with the minimum*
3 *wage prescribed by this subsection paid by the employer.*

4 ~~(b)~~ (c) The provisions of this section shall not apply to any employers
5 and employees who are covered under the provisions of section 6 of the
6 fair labor standards act of 1938 as amended (29 U.S.C.A. § 206), and as
7 amended by the fair labor standards amendments of 1974 and any other
8 acts amendatory thereof or supplemental thereto.

9 Sec. 2. K.S.A. 44-1203 is hereby repealed.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.

Newly hired employees who are less than 20 years of age, in lieu of the minimum wage prescribed in subsection (a), may be paid by an employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than \$4.25 an hour. No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

(d)

2-2

New Sec. 2. (a) From and after January 1, 2010, the secretary shall adopt rules and regulations establishing the state minimum wage. These rules and regulations shall be consistent with and not less than the minimum wage established by the federal fair labor standards act.

(b) This section shall be part of and supplemental to the minimum wage and maximum hours law.

And by renumbering the remaining sections accordingly

Recovery Act – UI Provisions

According to the USDOL, Kansas is eligible to receive

\$68,970,143

1/3 \$22,990,048	2/3 \$45,980,095					
To receive the first 1/3 of Special Transfer to UI Trust Fund:	To receive remaining 2/3 of Special Transfer to UI Trust Fund, State law must have <u>TWO</u> of the four following provisions:					
	1	2	3	4		
State must have Alternative Base Period	Provide benefits to workers seeking part-time employment	Extend UI benefits while worker is in training <i>WIA</i>	Provide a weekly dependent allowance of at least \$15	Workers will not be disqualified for leaving work for compelling family reasons, which must include the following THREE reasons:		
				Domestic Violence	Spouse Relocation	Illness/Disability of Immediate Family
↓	↓	↓	↓	↓	↓	↓
Needs to be added to Kansas law	Has been policy of Kansas for years – need codification of long-standing practice	Kansas does not have such law	Kansas does not have such law	Kansas has this in law K.S.A. 44-706(a)(12)	Kansas has this in law K.S.A. 44-706(a)(4)	Kansas does not have such law

