

Approved: SPB 3-30-09
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:08 a.m. on March 20, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Delia Garcia- excused
Representative Scott Schwab- absent

Committee staff present:

Rena 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

Conferees appearing before the Committee:

Rachelle Colombo, Kansas Chamber of Commerce
Natalie Bright, Wichita Independent Business Association
Daniel S Murray, National Federation of Independent Business-Kansas

Others attending:

See attached list.

Rachelle Colombo, Kansas Chamber of Commerce continued her testimony as an opponent of **HB 2374** that was begun yesterday.

Representative Tietze asked what the problem was with a shift in policy. Rachelle said her point was that this was not a simple or minor change or easily done. This is actually a large policy shift and needs to be carefully studied. The implication was that this doesn't cost the state money but it will cost employers money.

Representative Grant said that the trigger raising UI tax rates would be tripped regardless of whether we go for the Federal money or not. Rachelle said that by accepting the provisions in the bill we would be qualifying more people for UI benefits and stretching the trust fund even more.

Representative Gatewood asked what percentage of the people who qualify for the Family Medical Leave Act would take advantage of provision 4c. Rachelle said that it was based on a national average and the trust fund could be faced with an additional \$35 million in payouts because of the changes to Kansas law. Her complaint was that the Department of Labor estimate did not show any affect of the FMLA.

Representative Quigley asked about the number of states rejecting these provisions, how many have only rejected part of the provisions. Rachelle said she could get that information.

Representative Grant asked what was the amount of time the states had to consider the 2nd part if they had accepted the first part. Rachelle deferred to the Department of Labor for that answer.

Natalie Bright, Wichita Independent Business Association presented testimony in opposition to **HB 2374** (Attachment 1). The members of the WIBA are opposed to **HB 2374** because they have not had enough time to understand the implications and costs of the bill and also the impact it will have on the trust fund. The proposed changes will expand the numbers of people receiving UI benefits and eventually force an increase in employers' contributions to keep the fund solvent. Any increase in UI tax rates is difficult for small business.

Representative Grange asked for a definition of small business. Natalie said it was less than 20 employees.

Representative Bethell asked how many of WIBA's members were aware of the possible increase in UI taxes. Natalie said that most of them are aware but that we need to educate them and make them more aware. Natalie said that the policy changes in the bill are making the small business owners nervous. Any cost increase is going to affect them negatively. Increased costs may cause them to cut back on other employee

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:08 a.m. on March 20, 2009, in Room 784 of the Docking State Office Building.

benefits such as health insurance.

Representative Quigley said that the concerns about additional benefits would be concerns for the long term. Natalie said that the provisions did have long term costs and that they would not last 17 years.

Daniel S Murray, National Federation of Independent Business-Kansas testified as an opponent of **HB 2734** (Attachment 2). First, he said, there is no need to hastily enact legislation that represents dramatic, costly and long-term UI policy changes. Concerning the mandatory provision of the Alternative Base Period he said that it would have an impact on the long-term solvency of the Kansas UI Trust Fund. Even an increased benefit of 1% will have a huge impact on the fund.

The provision for illness or disability of an immediate family member provides at least 26 weeks of additional UI benefits for individuals participating in approved training. This provision raises long-term policy issues regarding the shift of burden to employers to provide a new entitlement similar to FMLA that will have a substantial and negative long-term impact on the solvency of the UI Trust Fund. The long-term costs of the proposed changes will dwarf the short-term infusion of ARRA funds.

Representative Gatewood asked if there was another provision that he preferred. Daniel said that we really do need to take time to study the long-term impact of all the provisions.

Representative Brunk said that the original bill came in with the choice of provision number 1 and 4c because we must have two provisions to qualify for the funds. There was no consideration given to provision number 2 or provision number 3. Provision number 3 is expensive so provisions 2 and 4c are being considered. Daniel said that with provision 2 there might be other Federal funds available for training.

Representative Worley asked if the Alternative Base Period provision was less of a concern than the Illness/Disability provision. Daniel said personally he would say yes but it still is a significant change and long-term impact on the fund.

Representative Brunk asked Secretary Jim Garner if he had a mechanism to warn businesses about the trigger. Secretary Garner said that they put out a quarterly newsletter and they have an Advisory Council that monitors these changes.

Representative Gatewood asked that a letter from the National Employment Law Project be entered into the minutes. Representative Grange asked about the letter and was told that it was a national organization that deals with labor issues at the Federal level that had contacted Representative Raj Goyle and wished to testify (Attachment 3).

The Chairman closed the hearing on **HB 2374** and said that we have Monday, Tuesday and Wednesday next week to work this bill. He asked the members to take their folders.

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

COMMERCE & LABOR COMMITTEE

DATE: 3-20-09

NAME	REPRESENTING
Joe Mosimann	Hein Law
Kristen Rottinghaus	KDOL
Inayat Noormohamad	KDOL
Megan Inguire	KDOL
Jim Garner, Secretary	KDOL
Dan Murray	NFIB
Rachelle Colonels	KS Chamber
JEFF GLENDEN	"
Andrea Baden	Gates, Baden & Assoc.
Michelle Smith	KIMHA
Eric Efford	AGC of KS
Andy Sanchez	KS AFL-CIO
W. J. Leiker	KS AFL-CIO



Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

**House Committee on Commerce
Testimony in Opposition to HB 2374
By: Natalie Bright**

March 19, 2009

Chairman Brunk and honorable committee members,

I am Natalie Bright, Governmental Affairs Consultant for the Wichita Independent Business Association (WIBA). For those of you not familiar with WIBA, it is an organization that has been in existence for seventy-six years and is comprised of companies that are independently held. While the majority of our members are considered small employers, some of the largest employers in Kansas are members of WIBA. Currently we represent almost 1,000 businesses through out Kansas.

I appear before you today in opposition to HB 2374 because the members of WIBA have not had enough time to fully understand the implications and costs its passage will have on Kansas employers. In particular, our members are concerned with how the measure will impact the stabilization of the unemployment trust fund. It is our understanding that the Kansas Department of Labor (KDOL) has introduced this bill in an effort to capture additional dollars awarded under the recently passed American Recovery Act (ARA). Though we applaud KDOL for wanting to grab as much money for the state of Kansas in this time of economic crisis, our members are not supportive of implementing changes to our current system that we do not think may be sustainable when the federal assistance is no longer available.

As proposed, HB 2374 will impact the longevity and stabilization of the Kansas Unemployment Compensation Fund because it proposes to create an alternative base period as well as expand the qualifying factors in which a unemployed worker can access benefits. If implemented, both changes will expand those qualifying for benefits and eventually force an increase in employers' contributions to keep the fund solvent. It is our understanding the ARA allows states until 2011 to be in compliance and take advantage of the available funds. If this is the case, our members believe it is in the best interest of all involved that the proposals set out in HB 2374 be fully vetted before these significant policy changes are made. Thank you for the opportunity to appear before you to express our concerns with HB 2374. I will be happy to stand for questions at the appropriate time.

445 N. Waco Street / Wichita, KS 67202-371
316-267-8987 / 1-800-279-9422 / FAX 316-267-8964 / E-mail: info@wiba.c

House Commerce & Labor
Date: 3-20-09
Attachment # 1



The Voice of Small Business®

House Commerce & Labor Committee
Daniel S. Murray: State Director, NFIB-Kansas
Testimony in Opposition to HB2374
March 19, 2009

"Haste in every business brings failures." - Herodotus, Greek Historian (484BC - 430BC)

Mr. Chair, Members of the Committee: My name is Dan Murray and I am the State Director of the National Federation of Independent Business-Kansas. NFIB-KS is the leading small business association representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB-KS represents the consensus views of its 4,000 members in Kansas. Thank you for the opportunity to comment on HB2367.

GENERAL COMMENTS

NFIB-KS opposes HB2374. The American Recovery and Reinvestment Act of 2009 (ARRA) allows Kansas until Federal FY2011 to comply and request these unemployment insurance (UI) "stimulus" funds. First and foremost, there is no need to hastily enact legislation that represents dramatic, costly and long-term UI policy changes. Kansas has ample time to examine the changes required by ARRA and conduct a proper cost-benefit analysis of the long-term impact on the UI Trust Fund and employer taxes. We urge you to not adopt any of the required provisions without evaluating the long-term impact on administrative cost, benefit pay-out and employer tax rates.

Further, some of the required provisions in ARRA, and in HB2374, are greatly inconsistent with the original intent and role of UI. The bill proposes to shift more burden to employers to overcome prohibitions that individuals not be disqualified from receiving UI benefits. The bill would require payment of benefits when the reason for separation is not in connection with the work (i.e. illness or disability of a family member). Thus, the adoption of HB2374 would significantly increase benefit payout amounts and increase employer tax rates.

SPECIFIC CONCERNS

Alternative Base Period. UI modernization options fall into 2 groups. The first element of ARRA UI requirements, alternative base periods (ABPs), is mandatory. If states wish to receive modernization payments, their UI programs must have an "alternative base period." States that have ABPs use recent wages to determine UI eligibility. Those that do not have ABPs in their state UI laws must adopt ABPs as a first step toward receiving UI funds under ARRA. HB2376 would allow for ABPs and defines them to mean "eligibility shall be determined using a base period that consists of the four most recently completed calendar quarters preceding the start of the benefit year." If the legislature adopts this amendment to our UI law, Kansas will qualify for one-third of our overall portion of the \$7 billion in federal incentive payments.

Kansas should not enact an ABP before considering the significant impact on the implementation costs, long-term administrative costs and increased taxes. We urge you to conduct a thorough comparison of the implementation & administrative costs and increased taxes with the number of individuals who might become eligible to be paid or paid higher compensation. Further, we must know the impact on the long-term solvency of the Kansas UI Trust Fund if you chose to adopt an ABP.

In states implementing the ABP, increased benefit payout ranged from 1% to 6%.¹ Even an increased benefit payout in Kansas of 1%, will have a huge impact. Do we want to jeopardize the long-term solvency of the UI Trust Fund and increase employer tax rates for a one-time infusion of a relatively small amount of ARRA dollars?

¹ UWC - Strategic Services on Unemployment & Workers' Compensation (UWC)

Illness or Disability of an Immediate Family Member. To get the remaining two thirds of our potential ARRA UI funds, Kansas must have two of four of the following elements in our UI laws: (1) eligibility for part time workers who have a history of part time work, (2) permitting individuals to leave work without disqualification when they have compelling family reasons for quitting, (3) providing at least 26 weeks of additional UI benefits for individuals participating in approved training, and (4) paying dependents' allowances of at least \$15 a week per dependent.

In order to become eligible for this portion of the UI stimulus funds, HB2374 adds (2) from the above to the list of prohibited UI disqualifications. Specifically, if HB2374 was adopted, the following UI disqualification would be prohibited: "the individual left work due to the compelling family reason of caring for an immediate family member who has an illness or disability."

This provision would prohibit the disqualification of individuals who separate from employment due to illness or disability of an immediate family member as defined by the US Secretary of Labor. The definition of "illness", "disability", and "immediate family member" will be very important in determining the impact of this provision. Will the definitions mirror FMLA definitions? Will individuals in civil unions be considered to be immediate family members? What documentation will be needed for an employer or representative to show that the illness of an individual's immediate family member was not such as to require that the individual not be disqualified from receiving benefits.

The wording of the statute, once again, shifts the burden of showing that the individual should not be paid to employers and state agencies instead of current laws that disqualify the individuals but permit them to show good cause for separation. The primary sponsor of this provision, Rep. Jim McDermott (D-WA) has been quoted by Bloomberg as intending this provision to enable employees of small businesses to have access to FMLA just as employees of larger businesses.

This provision raises long-term policy issues regarding the shift of burden to employers to overcome the prohibition that an individual not be disqualified from benefits, and requires the payment of benefits when the reason for separation is not in connection with the work. The "family member" provision in HB2374 creates a new entitlement in the nature of FMLA, and will have a substantial and negative long-term impact on the solvency of the UI Trust Fund.

CLOSING

The changes proposed in HB2374 may look and seem very simple. However, these seemingly simple changes represent both an economically and philosophically significant policy change that will have long-term negative impacts on Kansas' UI Trust Fund and employer tax rates.

Before you dive into the ARRA swimming pool, we urge you to check for water. Take time to fully understand the significant changes proposed. And, certainly do not make a hasty decision in order to achieve a very short-term gain of \$68 million. The long-term costs of the proposed changes will dwarf the short-term infusion of ARRA funds. Thank you for the opportunity to comment.

NELP

**National Employment
Law Project**

March 19, 2009

Chairman Steve Brunk
House Committee on Commerce and Labor
300 SW 10th Avenue
Topeka, KS 66612

Chairman Brunk:

I am writing in my capacity as Policy Director of the National Employment Law Project, where I specialize in the unemployment insurance program and federal employment laws.

It is my understanding that a question has been raised related to House Bill 2374 as to the interaction between the provision allowing workers to qualify for unemployment benefits when they are forced to leave their jobs due to care for a sick family member and eligibility for leave under the Family and Medical Leave Act of 1993 (FMLA). For the reasons described below, the two situations are entirely distinct.

First, the proposed unemployment insurance provision, which is already in law in 16 states, applies to workers who are forced to leave work to take care of sick family members. Specifically, it exempts workers from being disqualified from unemployment benefits. Thus, these workers are, by definition, separated from their jobs and unemployed. Indeed, like with other disqualification exemptions, these workers also have to show they acted reasonably and made significant efforts to first preserve their job and find alternative care.

To collect unemployment benefits, the worker must not only be unemployed, but he or she must also be available for work and searching for work. The proposed exemption from disqualification relates to the individual's reasons for leaving work. However, it in no way exempts the worker from having to be available for work to collect unemployment benefits.

In conspicuous contrast, to qualify for family and medical leave, workers are by definition still employed with the employer who is providing the leave due to medical or family circumstances. In addition, because they are on leave for reasons that qualify under FMLA, they are also not available for work as required by the state's unemployment insurance laws.

Accordingly, there is no relationship between the proposed unemployment insurance provisions and leave under the FMLA. Indeed, they are entirely distinct. Please feel free to contact me with any questions at 510-663-5700.

Sincerely,
Maurice Emsellem
National Employment Law Project

House Commerce & Labor
Date: 3-20-09
Attachment # 3