

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 416**

As Recommended by House Committee on
Commerce and Economic Development

Brief*

House Sub. for SB 416 would revise the powers and duties of the Secretary of the Department of Labor. The bill would repeal the assignment of unpaid wage claims and various provisions of state labor law pertaining to employment standards and workplace inspections which currently are covered by federal law. The bill also would revise provisions pertaining to accident prevention programs that are provided to employers. The substitute bill would revise provisions of Employment Security Law, commonly referred to as Unemployment Insurance (UI), pertaining to the calculation of weekly benefits, the postponement of UI benefits if separation or severance pay was paid to a claimant, the notice given to employers about their UI experience ratings, and the Employee Security Advisory Council.

State Workplace Health and Safety Program

The State Workplace Health and Safety Program would be transferred from the Secretary of the Department of Health and Environment to the Secretary of the Department of Labor and provide a funding source for the program. The bill would establish a new fund to be called the State Workplace Health and Safety Program Fund. The new fund would receive funding from the State Workers Compensation Self-Insurance Fund, with the amount agreed upon by the two department secretaries. The bill also would transfer the responsibility for

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the State Workers Compensation Self-Insurance Fund from the Secretary of the Department of Administration to the Secretary of the Department of Health and Environment.

Repeal Assignment of Unpaid Wage Claims

The bill would repeal the authority granted to the Secretary of the Department of Labor to accept assignment of an employee's unpaid wage claim and attempt to collect wages for a fee. Under current law, the Secretary is mandated to accept the assignment for a claim less than \$10,000, and the Secretary has discretionary authority to accept claims over that amount. The fee charged to the employee for assignment is capped at \$25.

Accident Prevention Programs

The bill would require insurance companies or group-funded self-insured plans that provide workers compensation coverage to provide accident prevention programs to their covered employers at no cost to the employer. Current law requires accident prevention services to be provided to employers at their request. The availability of accident prevention services also would be noted on group-funded self-insured certificates. Insurance companies or group-funded self-insured plans would report information about their accident prevention services to the Director of Industrial Safety and Health instead of the Director of Workers Compensation as currently provided by statute.

Other Repeals

The bill would repeal the Secretary of Labor's authority to enforce the state's labor laws on railroads. The bill also would repeal the Secretary's power to enter private business establishments for the purposes of gathering facts, statistics, and workplace safety inspections. The bill would clarify that employers covered by federal Occupational Safety and Health Act (OSHA) are exempt from state inspections.

The provisions briefly described in the following list of statutes would be repealed:

- KSA 44-601b. Children in industry and inspections of factories, workshops, and mills;
- KSA 44-603. Relating to food products, clothing, mining of fuel substances, public utilities, and common carriers;
- KSA 44-607. Investigations and temporary findings of labor disputes;
- KSA 44-608. Orders affecting hours, ways and conditions of employment;
- KSA 44-609. Modification of rights and contracts of parties;
- KSA 44-610. Notice of investigation or hearing;
- KSA 44-611. Investigatory powers;
- KSA 44-612. Judicial review of Secretary's actions;
- KSA 44-614. Unions to be recognized and may appear before the Secretary in proceedings; right to bargain collectively recognized; collective bargains and agreements subject to provisions of KSA 44-609;
- KSA 44-615. Unlawful acts against witnesses and litigants;
- KSA 44-616. Business operations; limitation or cessation, hearings; changing conditions;
- KSA 44-617. Violations of Act; quitting employment; picketing intimidation;

- KSA 44-618. Penalties for violating KSA 44-601 to KSA 44-628;
- KSA 44-619. Inducing violation of Act or orders and associated penalty;
- KSA 44-620. Emergency control and operation;
- KSA 44-621. Authority of Secretary pertaining to controversies between employer and employee in an industry not mentioned in above statutes;
- KSA 44-623. Orders as to minimum or standard wage; accounts pending investigations;
- KSA 44-624. Investigation and inquiries of industrial conditions and relations;
- KSA 44-625. Effect of Act on other rights and remedies;
- KSA 44-626. Powers contained in KSA 44-601 to KSA 44-628 to be liberally construed;
- KSA 44-628. Severability clause; and
- KSA 44-631. Full jurisdiction over factory, workshop, mill, and mine inspections.

The Secretary of Labor would continue to have authority to inspect public works, state agencies, or institutions.

Employment Security Law

When calculating weekly UI benefits, the bill would delete the requirement that holiday pay be included. Instead, it would become discretionary to include either vacation or holiday pay in the calculation, depending upon whether it was attributable to a week for which the individual claimed benefits.

If an employee received a single lump sum separation or severance payment, then weekly UI benefits would be postponed for a period of time commensurate with the number of weeks of compensation the lump sum would represent. An employer would be required to report the lump sum data to the Secretary of the Department of Labor.

For new employers who start businesses in rate year 2014, the bill would reduce the UI contribution rate from 4.0 percent to 2.7 percent of wages paid. The rate for employers in the construction industry who are ineligible for an experience rate would continue to pay the statutory rate of 6.0 percent.

The deadline for the Labor Secretary to notify employers of their UI contribution rates for the subsequent rate year would be November 15. Currently, no deadline is specified in statute.

The State Employment Security Advisory Council would be abolished. The Council is appointed by the Labor Secretary to provide advice on the administration of the UI System. There is no limit to the size of the Council, and there is to be an equal number of persons representing employers, and employees, plus representatives of the general public. The term of office is four years.

Background

The State Workplace Health and Safety Program provides services to public sector employers regarding occupational safety and employee health issues. According to the Department of Labor's proponent testimony, the agency has provided this service through memorandas of understanding (MOU) with the Department of Administration, the Kansas Health Policy Authority, and Department of Health and Environment when each agency has been assigned responsibility for the program. The Department of Labor

stated there would be no transfer of personnel between the Department of Health and Environment and the Department of Labor. There was no additional testimony.

The House Committee on Commerce and Economic Development recommended a substitute bill that contains the contents of:

- SB 416, as approved by the Senate, which would have transferred the State Workplace Health and Safety Program from the Department of Health and Environment to the Labor Department;
- SB 355, as recommended by the Senate Commerce Committee, which would have repealed certain powers of the Labor Secretary; and
- HB 2638, as recommended by the Senate Commerce Committee, which would make various revisions to the state's Unemployment Insurance but keep the reduced rate multiplier at 1.2 as currently provided by law.

According to the fiscal note provided by the Division of the Budget, SB 416 would have no fiscal impact. According to the fiscal note on SB 355, there would be a reduction in the collection of attorney fees currently allowed under the Kansas Wage Payment Act. Past recoveries have seldom been realized, and the Labor Department's costs for collection attempts have exceeded collections. According to the revised fiscal note on HB 2638, as amended by the House, revenues derived from new employers would be reduced by approximately \$4.2 million, from \$12.9 million to \$8.7 million. A reduced rate multiplier from 1.2 to 1.0 would reduce the UI Trust Fund's balance by approximately \$122.0 million, from \$732.1 million to \$610.0 million. The Department's current estimate for the Trust Fund's ending balance for 2015 is \$315.5 million, which is less than what would be needed to grant a reduction in the contribution amounts.