

Approved: March 14, 2012
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 8:30 a.m. on February 7, 2012, in Room 548-S of the Capitol.

All members were present except:

Senator Jay Emler – excused
Senator Oletha Faust-Goudeau – excused
Senator Susan Wagle - excused

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Reed Holwegner, Kansas Legislative Research Department
Mr. Jason Long, Office of the Revisor of Statutes
Mr. Chuck Reimer, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Ms. Kathie Sparks, Deputy Secretary, Department of Labor
Mr. Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber
Mr. Bruce Tunnel, Executive Vice-President, Kansas AFL-CIO

Others attending:

Attendance list was not available

Hearing on SB 352 – an act concerning the employment security law

Upon calling the meeting to order, Vice Chairperson Julia Lynn announced a hearing on SB 352 and recognized Mr. Reed Holwegner, Kansas Legislative Research Department, who explained the bill including:

Section 1, lines 25-26, are guidelines interpreting the Unemployment Security Law with a public policy statement being revised to read, “All persons and employers are entitled to a neutral interpretation of the employment security law.”

Section 2, page 2, gives the meaning of an alternative means of calculating a base period that is used for calculating UI benefits. On page 7 is a revision to the definition of “employment” to include reference to services performed that are under the control of the means of business. He said this definition would mirror the legislation passed last year dealing with misclassification. On page 14 there is a clean-up amendment. The workforce development was transferred from the DOL to the DOC by an Executive Order during the Sebelius administration. The bill change references Secretary of Labor to Secretary of Commerce.

Section 4, page 26, references to the criminal code would be revised. On page 27 there are several paragraphs and sub-paragraphs that have been deleted and reinserted on page 29, rearranging those provisions pertaining to employee misconduct and the definitions of alcohol and drug testing. On page 33

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there is revised terminology defining employee lateness and at the bottom of page 31 and the top of page 32 is the proposed new language as to say when an individual would be disqualified from benefits if that individual is terminated after the employee first gave notice of a future intent to quit and then commits misconduct. On page 33, subsection (g) starting on line 41, there is an increase from one to two years where an individual is disqualified from benefits if they mislead or lied on their forms of information they provided.

Section 5, page 39, subsection c in the determination of benefits, the appeals time limit may be waived by a referee or board of review if a timely response was impossible because of an excusable neglect;

Section 6, page 44, a reference is revised from part-time to less than full-time.

Section 7 includes substantive changes starting on page 52, line 27, repealing the prohibition on the Secretary employing any person who has or is seeking employment as a partisan elective public office. A new provision is proposed that would allow political involvement by employees to the extent allowed by law. Also proposed is a repeal of corresponding misdemeanor that is currently in statute. On page 69, there is a totally revised method to determine the interest rate owed on over payments. The interest would be less under the Social Security Act rather than state statute.

Lastly, Section 10, page 70, shows the final change of the bill stating over time there has been a reduction of requiring employees to file electronically. It is being proposed that employers having 14 or more employees be required to file electronically.

As there were no questions of Mr. Holwegner, the Vice Chair called upon the first of two proponents, Ms. Kathie Sparks, Deputy Secretary, Department of Labor who stated her testimony is somewhat similar to Mr. Holwegner's explanation of the bill and offered her explanations and concerns including:

- The neutral interpretation found in Section 1 – the DOL is just asking for a clarifying statement.
- The removal of the alternative base period found in Section 3 - when the Aura Funds became available, the DOL had to put in an alternative base period in order to use it. And now, since the Fund is no longer, the DOL is just asking it be removed for this reason. She said, there are also two reconciliations in this section to **HB 2135**, one on page 6 and the other on page 7. And on page 23 regarding the way they count injured workers returning to work for benefits. It is different than regular workers so it requires 3 conditions and they are only asking for the word “and” be added for clarification.
- In Section 4 as it relates to attendance, “lateness” has been added and it removes exceptions for absences on weekends and holidays for those who work those days. (Example, nurses, corrections officers, etc.)
- They are changing the definition of part-time employee and used an example of a person having two jobs, one full-time and one part-time. The person loses the full time through no fault of their own but still has the part-time. As it reads, they are granted benefits, but the part-time employer is also changed.

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- She offered two attachments from the U.S. Office of Special Counsel "Less-Restricted Employees – Political Restrictions and Prohibited Activities," or the Hatch Act, that has never been updated since it was introduced. Citing an example, if she was at her son's fraternity fundraiser and introduced as Deputy Secretary, she has committed a violation. So they are just asking that the Act be updated.

A copy of her testimony, attachments, and an amendment regarding "voluntary contributions," are Attachment 1.

Questions came from Senators Steineger, Faust-Goudeau and Holland including; clarification of the Red Line case, fraud issues, and a discussion between Senator Holland, Deputy Secretary Sparks, and Secretary Brownlee regarding interpretation of current Employment Security Law. (Referring to page 7, lines 32 through 43.)

The Vice Chair then called on the second proponent Mr. Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber who said the bill makes what they consider to be "structural changes", clarifies what constitutes misconduct and gives the DOL authority to seek review of the Board of Review decisions issued that might not otherwise be appealed by a party, especially with the drug and alcohol testing. He also offered an attachment outlining some of the historical action taken by the legislature over the past three years and a bill they have introduced in the House. A copy of his testimony and attachment is Attachment 2,

Also offered was written only testimony fro Mr. Phil Hayes, Director Elect of Kansas Society for Human Resource Management (SHRM). A copy of his written testimony is Attachment 3.

Next, the Chair called on the only opponent to testify, Mr. Bruce Tunnel, Executive Vice-President of Kansas AFL-CIO who stated the changes the bill makes to the Employment Security Law appear designed to relieve businesses from some of the burdens of complying with the commonsense provisions of the Law and put unnecessary burdens on Kansan workers and taxpayers. A copy of his testimony is Attachment 4.

Senator Holland asked Mr. Tunnel to outline particular concerns with the bill changes.

Written only testimony was also offered from Ms. Michelle Walters, President, Kansas Organization of State Employees (KOSE) and Ms. Terry Forsyth, President, Working Kansas Alliance. A copy of their testimonies are Attachment 5.

The Vice Chair recognized Deputy Secretary Sparks who wanted to update Mr. Stafford's handout that shows the loan amount from the Feds. She said their current balance is \$95M, not the \$244.4M shown on the attachment and by paying daily, have paid off almost \$160M and has helped reduce the interest payment.

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The Vice Chair the recognized Senator Holland who asked Ms. Sparks for clarification on "lateness" found on page 31, starting on line 23. As there was no further discussion, the hearing was closed.

Handout

Vice Chairperson Lynn then referred the Committee to Senator Wagle's memo of February 7, 2012 saying we have had some hearings and testimony on a forensic audit of the KBA. She went on to say what Senator Wagle has done with that information is put together a bill that would address the conflict of interest statute. Senator Wagle has also asked for a document she wrote, a "quick reference guide," to be distributed to help legislators understand why Secretary Rodman testified, "This story starts in Cleveland, and it ends in Cleveland." A copy of her memorandum is Attachment 6.

Adjournment

As there was no further business, or discussion, Chairperson Wagle adjourned the meeting. The time was 9:30 a.m.

The next meeting is scheduled for February 8, 2012.