

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 8, 2012, in Room 548-S of the Capitol.

All members were present except:
Senator Jay Emler – 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:
Senator Tom Holland
Mr. Andy Sanchez, Executive Secretary-Treasurer, Kansas AFL-CIO
Mr. Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber
Ms. Nichol Proulx-Aiken, Staff Attorney, League of Kansas Municipalities
Mr. David Murray, Kansas State Director, National Federation of Independent Business (NFIB)
Ms. Kathie Sparks, Deputy Secretary, Department of Labor (DOL)
Mr. Bruce Tunnell, Executive Vice President, Kansas AFL-CIO

Others attending:
See attached list.

Hearing on SB 295 – an act concerning the fair consideration of the unemployment act

Upon calling the meeting to order, Chairperson Wagle said the Committee would be hearing testimony on SB 295 and called on Mr. Jason Long, Office of the Revisor of Statutes, who explained the bill including: creating some new sections of law, essentially prohibiting an employee or employment agency or labor organization from discriminating against an individual on the basis of their status as unemployed or by fact they had a gap in their employment history. Section 5 requires a civil penalty be assessed up to \$5K for the first violation and up to \$10K for each subsequent violation. The act is administered by the Secretary of Labor. In Section 7, there are key definitions shown on page 2 and 3 including what is an employer and what is a gap in employment. Lastly, if anyone feels that they have been discriminated against, they can file a complaint with the Secretary who is required to review the complaint, may investigate, and take any administrative action the Secretary deems necessary under the act.

As there were no questions of Mr. Holwegner, the Chair called upon the first of two proponents, Senator Tom Holland who stated the bill would make it illegal to refuse to consider or hire the unemployed. He stated New Jersey has made it illegal to use language in job announcements that discriminate against the unemployed, while similar legislation has been introduced in New York, Michigan and Illinois. A copy of his testimony is Attachment 1.

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The second proponent recognized was Mr. Andy Sanchez, Executive Secretary-Treasurer, Kansas AFL-CIO who explained this bill does not guarantee anyone a job, it doesn't give a preference, it simply gives the unemployed a fair shot. Also, there are numerous other reasons for being unemployed including: caring for an elderly parent, a sick child, relocation, etc. A copy of his testimony is Attachment 2,

The Chair then called on the first of three opponents to testify, Mr. Eric Stafford, Senior Director of Government Affairs, The Kansas Chamber who stated as we begin the recovery, employers should have the right to know why an applicant was laid off and also, be allowed to question an applicant who has multiple periods of unemployment or gaps in unemployment in a short period of time. If the applicant comes from an industry which suffered greatly during the 2008-2010 recession such as construction or architecture, the employees should be able to articulate the act of unemployment in a manner which removes any concerns for the employer. A copy of his testimony is Attachment 3.

The second opponent recognized was Ms. Nichol Proulx-Aiken, State Attorney, League of Municipalities, who testified the League consistently recommends that its member cities conduct a background check and ask about employment history before hiring a job applicant, especially with the high cost of rehiring and retraining. In addition she added, it is not clear if background checks would even be allowed under this bill. A copy of her testimony is Attachment 4.

The final opponent was Mr. Daniel Murray, Kansas State Director, National Federation of Independent Business (NFIB) who explained: they are not convinced there is a verified systematic effort to discriminate against those with a particular unemployment status; unemployment status is very different than the EEOC recognized discrimination types; they are concerned about the reporting and enforcement of this proposal; and finally, the Division of Budget does report this will have a fiscal impact on the DOL. A copy of his testimony is Attachment 5.

Also offered was written only testimony from Mr. Phillip Hayes, Vice President, HP Services and Operators for the Arnold Group out of Wichita. A copy of his testimony is Attachment 6.

A discussion with Senators Wagle, Schodorf, and Holland came about regarding the concern this is raising unemployment to the same penalty as discrimination with race and religion, how would a posting or ad look, are there examples where this has happened in Kansas? As there was no further discussion or questions, the Chair closed the meeting.

Hearing on SB 355 – an act concerning employment; relating to employment requirements for certain state contracts; relating to employment requirements for certain state tax benefits

The next order of business was a hearing on SB 355 and Chairperson Wagle called on Mr. Jason Long, Office of the Revisor of Statutes to explain the technical aspects of the bill. Mr. Long explained SB 355 makes various amendments regarding the DOL's duties and functions and maintaining safe employment standards in businesses in Kansas. The first amendment on page 1, Section 1, revolves around the Wage Payment Act which is being stricken but currently requires the Secretary to take assignment of a claim

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that is less than \$10K on behalf of the employee, litigate to collect the amount of the claim and his understanding, the Department only receives \$25 for its services in taking that assignment. And so this would simply remove the requirement to take the assignment. It does not remove the duties in working with the employee to recover the wage payment claim from the employer through more informal proceedings.

On page 2, Section 2, line 23, is an amendment 44-5, 104 which will provide that accident prevention programs are to be provided at no cost to the insured. Also, on page 3, lines 18-19. notice of action prevention services are to be listed on the insurance policy of a group funded workers compensation self-insurance plan certificate of coverage, basically to make sure that all types of workers comp insurance have that notice. On page 3, Section 4, lines 22 and 42, there is a transfer of duties under inspection from the Director of Workers Comp to the Director of Industrial Safety & Health.

The rest of the bill is clean-up language. Some areas are covered by federal regulations. (Ex. Page 4, line 39, page 5 lines 5-8 and line 19.) On page 7, line 12 a new provision has been added. Lastly, a number of statutes are being repealed within the Place of Employment Safety Regulation Article, and believes federal regulations in private work places already cover. He offered to provide the Committee with a list with a brief summary of those sections.

As there were no questions of Mr. Long, the Chair called on the only proponent, Ms. Kathie Sparks, Deputy Secretary, Department of Labor who offered an outline of the changes the bill purposes in current employment Standards and Industrial Health and Safety Law. If the DOL determines a valid dispute exists, it attempts informal resolution which resolves a large number of the disputes presented to the Department. (Chart 1 and 2.) If it is over \$10K, the DOL is not required to take the assignment and the claimant utilizes a private attorney.

Section 4 amends the labor statutes to reflect the reality of federal government oversight, but the state will however, continue to have the power to enter into and inspect any public works or state agency or institution. A copy of her testimony and attachments are Attachment 7.

The Chair then recognized the only opponent to testify was Mr. Bruce, Tunnell, Executive Vice President, Kansas AFL-CIO who stated this is a commonsense provision that protects workers regardless of their ability to pay for representation or navigate the appeals process themselves. And they also oppose eliminating the authority for the Secretary to step in during a critical time and conduct those inspections. A copy of his testimony is Attachment 8.

A discussion ensued between Chairperson Wagle, Ms. Sparks, and Mr. Tunnell regarding: the wage change, how does this change current law? Ms. Sparks said it is all the same until it goes to court. Also, on the smaller amount claims, less than \$10K, the court usually awards attorney fees, average is \$300. Mr. Tunnell stated finding a lawyer, who is in business for a profit, that would take the claim for \$300 is not going to happen, that is why the DOL. Paper costs cannot be covered and get no federal money from this program and are mandated to have it. Also discussed was clarification of the second chart and the process

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asked by Senator Lynn and inspections from Senator Holland. Secretary Brownlee also offered clarification concerning the research certificate and the safety program. As there was no further questions or discussions, the Chair closed the hearing.

Adjournment

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

The next meeting is scheduled for February 9, 2012.