

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:05 a.m. on March 22, 1993, in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Bob Stacks, Director of Employment Security, Kansas Department of Human Resources
Terry Leatherman, Executive Director, Kansas Chamber of Commerce and Industry
Jacki Summerson, Manpower Temporary Services
Wayne Maichel, Executive Vice President, AFL-CIO
Mary E. Turkington, Executive Director, Kansas Motor Carriers Association

Others attending: See attached list

Bob Stacks, Director of Employment Security, Kansas Department of Human Resources, reviewed SB 145 for the committee explaining the agency recommendations as well as changes added in the Senate. A synopsis of the bill is attached. (Attachment 1)

Terry Leatherman, Executive Director, Kansas Chamber of Commerce and Industry, appeared in support of SB 145. Employers will receive many million dollars of unemployment compensation tax relief through passage of this bill; however, the proposed schedule is designed to respond during times of chronic unemployment with higher taxes, thereby protecting the trust fund's solvency. KCCI supports the disqualification of individuals for unemployment compensation benefits when their dismissal was due to use or impairment from alcohol or drugs. On behalf of KCCI members who operate temporary employment services, Mr. Leatherman asked the committee to strike the final phrase of the amendment on page 26, line 4, concerning temporary employment, "which the claimant would have received for commensurate work at comparable pay." (Attachment 2)

Jacki Summerson, Manpower Temporary Services, testified in favor of SB 145, but asked the committee to modify the amendment regarding temporary employment contractors that was made on the Senate floor. The clause attempts to codify the Court of Appeals decision of Manpower, Inc., of Wichita v. State of Kansas Employment Security Board of Review. However, the clause in SB 145 goes further than the Court of Appeals decision. This change does not affect the claimant's eligibility for unemployment benefits. It would make it so that the temporary service agency's unemployment account is not charged. She would rather have this clause deleted altogether than to have it the way it is currently worded. (Attachment 3)

Wayne Maichel, Executive Vice President, AFL-CIO, appeared in supported of SB 145. The AFL-CIO would support the bill with or without the suggested amendment.

Mary Turkington, Executive Director, Kansas Motor Carriers Association, testified in support of SB 145, specifically the provisions addressing disqualification from receiving unemployment benefits for individuals whose use of alcohol or controlled substances causes them to be discharged. (Attachment 4)

The meeting adjourned at 9:44 a.m. The next meeting is scheduled for March 23, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: Mar 22

[illegible]

SB 145
KANSAS DEPARTMENT OF HUMAN RESOURCES
UNEMPLOYMENT INSURANCE LEGISLATIVE PACKAGE

	<u>Item Description and Statutory Citation</u>	<u>Fiscal Impact</u>
Pg 38-41 Pg 43; lines 32-42	Reduction in total yield, K.S.A. 44-710a(a)(3). This revision would be a ten percent reduction in total income using schedule III.	Reduction in income from employers estimated to be \$18.1 million the first year.
Pg 22; lines 40-43	Increase in salary for Board of Review members, K.S.A. 44-709(f)(3). This modification would have increased Board of Review salaries not to exceed \$24,000. Current salary is \$15,000. This amendment was amended by the Senate Commerce Committee.	Increase would be a total of \$27,000 for the three members.
Pg 2; lines 42-43 Pg 3; line 1	Change in earnings limitation on weekly benefit amount, K.S.A. 44-704(e). Current statute provides claimant may earn up to 25 per cent of WBA not to exceed \$47.00 before a dollar for dollar reduction is applied. This amendment would remove the \$47.00 limit. This would apply only to individuals whose WBA is \$189.00 or more.	Increase in benefit payments during state FY 1992 would be approximately \$300,000.
Pg 4; lines 20-30 & lines 40-43	Option trigger based on total unemployment rate (TUR), K.S.A. 44-704a(a)(2)(C). Additional language is contained which provides an additional trigger-on to extended benefits when the TUR equals or exceeds 6.5% for three months and is 110% of average for the two prior years.	None at present, if state triggers on to extended benefits at cost of providing share of 50 percent of federal and 50 percent state trust fund.
Pg 7; lines 10-19	Total extended benefit entitlement, K.S.A. 44-704a(e). Modify total amount of extended benefits which claimant would receive depending on severity of unemployment rate.	No extended benefit program at present.
Pg 8; lines 2-4	Additional eligibility criteria for extended benefits. K.S.A. 44-704a(f)(4). This allows payment of extended benefits to claimants if base period earnings equal to 40 times the weekly benefit amount.	No fiscal impact at present. No extended benefit program.
Pg 10; lines 24-31	Extended and EUC eligibility criteria same as regular program, K.S.A. 44-704b(b). Change needed in extended benefits program. This change would allow claimant eligibility and qualifications tests under EB to be identical to the state regular program. This change is effective for weeks after June 30, 1993 through January 1, 1995.	Conformity Issue. No extended benefit program at present.

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Attachment 1
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SB 145
KANSAS DEPARTMENT OF HUMAN RESOURCES
UNEMPLOYMENT INSURANCE LEGISLATIVE PACKAGE

	<u>Item Description and Statutory Citation</u>	<u>Fiscal Impact</u>
Pg 13; lines 7-12 lines 20-26 lines 32-38	K.S.A. 44-706(b) Misconduct. This amendment expands this section to permit better administration of the treatment of instances relating to use of alcohol or drugs or refusal to take chemical tests when mandated by federal, state or other political subdivisions.	Insignificant.
Pg 26; lines 4-10	K.S.A. 44-710(c)(2)(A)(iii). This amendment codifies the Court of Appeals decision of <i>Manpower, Inc. v. Kansas Employment Security Board of Review</i> , 11 K.A. 2d 382, 386, 389, 724 P. 2d 690 (1986).	No change.

<u>Item</u>	<u>Intermediate</u>	<u>Unemployment Period</u> <u>High</u>
Total unemployment rate (TUR) trigger	6.5% for 3 months & 110% of 2 prior years	8.0% for 3 months & 110% of 2 prior years
Total extended amount is lesser of:	50%	80%
A. Percent of regular program entitlement, or	13	20
B. Maximum Weeks		

On Page 4, line 20--an additional optional "trigger on" indicator is added. This indicator allows the state to begin payment of benefits from the Federal-State EB program if the total unemployment rate (TUR) reaches an average of 6.5% for the most recent three months and is 110% above the average for the two preceding calendar years. If we "trigger on" with this amendment, benefits will be paid for a maximum of 13 weeks.

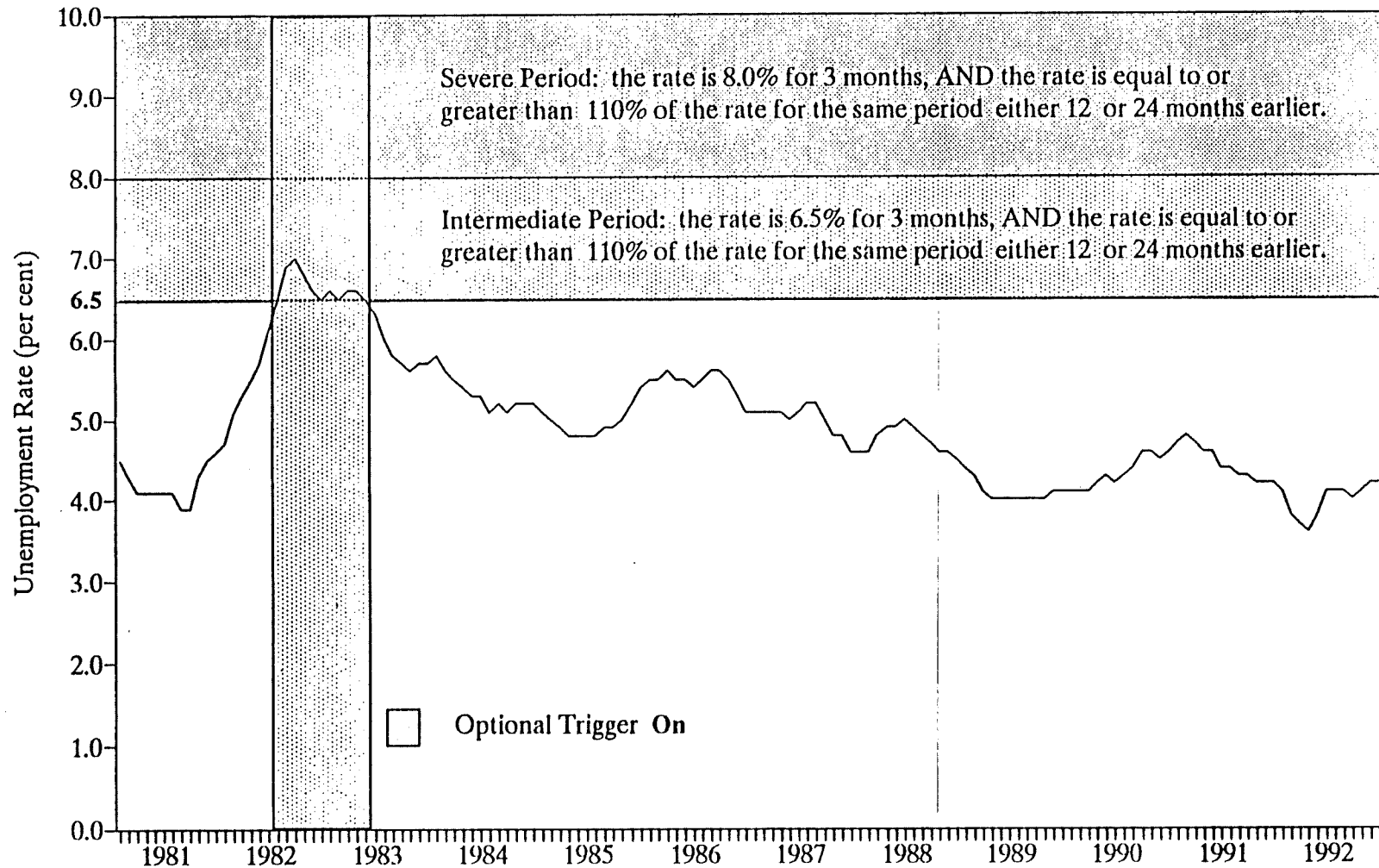
One Page 7, line 10--if the state experiences a severe unemployment period and the TUR reaches 8% (up from 6.5%) then a maximum of 20 weeks would be available.

EXAMPLE:

		<u>Extended Benefits</u>	
	<u>Regular Program</u>	<u>Intermediate Period</u>	<u>Severe Period</u>
Total unemployment rate (TUR)	less than 6.5%	6.5% and 110% of prior 2 years	8.0% and 110% of prior 2 years
Weeks of Entitlement	maximum of 26	additional 13	additional 20
Maximum Monetary Award	up to 26 x weekly benefit amount	50% of regular program entitlement	80% of regular program entitlement

4-1

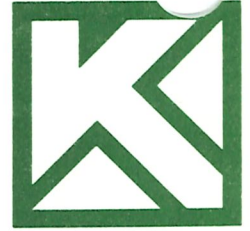
Graph 1
Total Unemployment Rates 1981-1992
Three-Month Average



LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

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A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 145

March 22, 1993

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
House Committee on Labor and Industry
by
Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber supports passage of SB 145.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

If SB 145 were law today, Kansas employers would pay many million dollars less in unemployment compensation taxes this year. This fact creates one very obvious reason why

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... supports SB 145. However, I will attempt to demonstrate today not only how employees will receive deserved unemployment compensation tax relief through passage of SB 145, but also why this tax reduction is deserved and how it is achieved in a way to assure adequate reserves for unemployment compensation benefits for employees who become unemployed through no fault of their own.

When an individual is awarded unemployment compensation, their benefits are paid from the Kansas Employment Security Trust Fund. All of the money in the trust fund comes from taxes paid by employers and from interest earned on the millions in the fund. Over the past decade, the Kansas Trust Fund has grown substantially.

	<u>TOTAL INSURED WAGES</u>	<u>TRUST FUND BALANCE</u>
1982	\$13,215,000,000	\$135,100,000
1983	\$13,751,000,000	\$152,500,000
1984	\$15,009,000,000	\$234,700,000
1985	\$15,711,000,000	\$295,700,000
1986	\$16,553,000,000	\$322,700,000
1987	\$17,387,000,000	\$355,000,000
1988	\$18,437,000,000	\$404,400,000
1989	\$19,422,000,000	\$461,700,000
1990	\$20,721,000,000	\$526,900,000
1991	\$21,576,000,000	\$560,300,000
from 82 to 91	up 63%	up 315%

While the size of the Kansas Employment Security Trust Fund has grown substantially in the past decade, so has its strength. When the condition of the state trust fund is compared regionally and nationally, it shows that Kansas has reserves which far exceed nearly every state. The three tests of trust fund adequacy **shown on the following page** demonstrate that fact. The first column is "high cost multiple," which measures the ability of a state trust fund to meet the potential demand for benefits during recessionary times. The second column measures how many months of benefits could be paid, based on benefits paid the previous year. The final column is the state reserve percentage, which is determined by dividing a state's trust fund balance by total wages.

	HIGH COST MULTIPLE (June 92)	MONTHS OF BENEFITS (2nd Qtr. 92)	STATE RESERVE PERCENTAGE (Dec. 91)
KANSAS	1.55 (6)	38.9 (8)	2.93 (13)
OKLAHOMA	1.63 (4)	36.3 (11)	2.26 (19)
IOWA	1.22 (12)	35.5 (15)	3.30 (8)
NEBRASKA	0.99 (22)	36.0 (12)	1.43 (35)
COLORADO	0.89 (24)	21.4 (32)	1.11 (38)
ARKANSAS	0.22 (46)	5.3 (45)	0.77 (42)
MISSOURI	0.08 (49)	1.8 (49)	0.30 (48)
U.S. AVE.	0.64	13.6	(10/91) 1.66

The chart shows that Missouri has been nearly a polar opposite of Kansas in unemployment compensation. While Kansas has an extremely solvent trust fund, Missouri has gone broke and faces borrowing money from the federal government to pay taxes. However, from an employer's perspective, when a Kansas business person has been paying \$100 in unemployment taxes, an identical business in Missouri or Nebraska has been paying \$40. Even after paying surcharges required to repay money borrowed from the federal government to pay benefits, a Missouri employer will pay less in unemployment compensation taxes than a Kansas employer.

In stressing the current unemployment tax burden Kansas employers face, KCCI is not suggesting our state bankrupt our trust fund to reduce taxes. SB 145 will produce lower taxes, but will do so responsibly.

As of July 31, 1992, the total payroll of Kansas employers totaled over \$17.6 billion. On the same day, the Kansas Employment Security Trust Fund had a balance of \$623 million. The table below shows how unemployment taxes would compare between the current system and the proposed schedule in SB 145.

	Payroll	Trust Fund	Ratio	Tax Needed
CURRENT SYSTEM	\$17.6 B	\$623 M	.90	\$158.8 M
SB 145	\$17.6 B	\$623 M	.80	\$141.4 M

Obviously, SB 145 will produce tax reductions which are deserved, when you consider the recent history of unemployment in Kansas. However, the key issue to consider is how the new tax schedule will respond if unemployment in Kansas grew dramatically. In light of recent news concerning potential layoffs at Boeing and Sears, and with the Kansas

Legislature considering closing a state hospital facility, how SB 145 will respond in times of high unemployment is an unfortunately realistic concern.

The chart below shows "worst case scenario" unemployment. The benefits paid column reflects benefits paid in 1992, plus an increase of 30,000 employees who, for our purposes, received the maximum 26 weeks of unemployment compensation at the highest current benefit rate.

"WORST CASE SCENARIO" PROJECTION	
Trust Fund Balance (7/31/92)	\$623.4 million
Taxes Collected	\$141.4 million
Interest Income	\$40.0 million
(total)	\$804.8 million
Unemployment Benefits Paid	\$369.9 million
(total)	\$434.9 million

(TAXES FOR THE NEXT YEAR)	
Total Wages	\$17,643.7 million
Trust Fund Balance % of total wages	2.465%
Planned Yield from SB 145 schedule	1.01
Contribution on Taxable wages	2.69
Taxes Collected the next year	\$178.0 million

In short, the tax schedule in SB 145, like the current system, is directly related to trust fund balance. As a result, the proposed schedule will respond in cases of chronic unemployment with higher taxes, thereby protecting the trust fund's solvency.

While the change in the unemployment compensation tax structure is at the heart of KCCI's position in support of SB 145, I would like to briefly comment on two other items in the bill.

First, KCCI supports the proposed change in SB 145 concerning the disqualification of individuals for unemployment compensation benefits when their dismissal was due to use or impairment from alcohol or drugs. The change should make it clear to the unemployment compensation legal network that positive drug tests which are performed by employers to

comply with federal or state law and regulations does establish conclusive evidence of employee misconduct.

The final point I would like to comment on in SB 145 is on the behalf of KCCI members who operate temporary employment operations. An amendment to current law on page 26, line 4, of the bill concerns charging temporary employment agencies with benefits awarded to an employee who completes a temporary work assignment and then files for, and receives, unemployment compensation benefits, without giving the temporary agency a chance to assign the individual to a new assignment. The amendment is unfortunately needed because the Kansas Department of Human Resources refuses to abide by a court ruling (*Manpower Inc. of Wichita v. State of Kansas Employment Security Board of Review*) on this matter.

To correct this injustice, the Kansas Senate attempted to codify the Manpower decision. However, the final phrase in the amendment, "which the claimant would have received for commensurate work at comparable pay," is not a part of the court ruling, but was drawn from the arguments from one of the attorneys in the case.

The Kansas Chamber has no formal policy position on this issue. However, KCCI would appreciate the Committee's consideration of the concerns of temporary employment agencies by striking the final portion of the amendment.

Mr. Chairman, thank you for the opportunity to comment on why the Kansas Chamber supports SB 145. I would be happy to answer any questions.



MANPOWER
TEMPORARY SERVICES

STATEMENT OF TESTIMONY
House Labor & Industry Committee

DATE: March 22, 1993

RE: Senate Bill 145, relating to Employment Security Law

FROM: Jacki Summerson, Manpower Temporary Services (913/267-4060)

My husband and I own and operate the Manpower Temporary Services franchise offices in Kansas. We have fourteen offices throughout the state. Our company is one of several employers in the State of Kansas that provide thousands of employment opportunities to people who are in the process of looking for permanent employment but need work or simply want limited employment. On the average, we employ approximately 2,000 people per week. In 1992, we sent out about 11,000 W-2s. Some of these people would otherwise be drawing unemployment benefits if we didn't provide them with work.

In general, I am here to testify in favor of Senate Bill 145. However, I would like for you to modify an amendment regarding temporary employment contractors that was made on the Senate floor.

Many of our temporary employees are sent on assignments that do not have a definite end date. Maybe it is a special project that our customer wants help on until it is finished but they aren't sure exactly how long it will take. Or maybe it is a replacement for someone who is sick and the customer isn't sure exactly when their permanent employee will return to work. Our employees bring us a time ticket each week that records their hours worked during the prior week. Sometimes when they bring us their time ticket, we discover that the job assignment ended during the prior week. It is our policy for all temporary employees that if their assignment has ended, they must call in and make themselves available for another job assignment. They sign a statement that they must call in for new work assignments both on their employment application and on our orientation procedures. It is also printed in bold letters on our weekly time tickets that they turn in each week. We fill our job orders from the list of employees who have called in available.

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Emporia, Kansas 66801
707 W. 6th Avenue
(316) 342-5751

Manhattan, Kansas 66502
555 Poyntz, Suite 245
(913) 776-1094

Junction City, Kansas 66441
838 A South Washington
(913) 776-1094

Lawrence, Kansas 66044
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(913) 749-2800

Ottawa, Kansas 66067
407 South Main
(913) 242-1002

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A Court of Appeals decision regarding unemployment benefits for employees of temporary employment contractors was decided in July of 1986. It reaffirmed a prior decision of the Sedgwick County District Court in 1973.

The Court of Appeals decision stated "The failure of an employee of a temporary employment contractor to report for work when assignments are available constitutes leaving work voluntarily without good cause attributable to the claimant employment under K.S.A. 1985 Supp. 44-710(c)(2)(A). Under such circumstances, unemployment benefits paid the claimant shall not be charged to the account of the base period employer".

Senate Bill 145 was amended on the Senate floor to include a clause regarding unemployment benefits for employees of temporary employment contractors. This clause is item iii on page 26 of Senate Bill 145, lines 4 through 10. This clause was attempting to put the Court of Appeals decision into the statutes. However, the clause in Senate Bill 145 goes much further than the Court of Appeals decision.

The amendment to Senate Bill 145 states that "if the claimant was an employee of a temporary employment contractor and voluntarily left this work, without good cause attributable to the claimant's work or the employer, by failure to report to the employer the next succeeding working day after completion of the most recent temporary assignment and was not available for further assignment which the claimant would have received for commensurate work at comparable pay".

First of all, commensurate work is a very subjective clause. Does it mean if someone has been working as a data entry clerk that doing file clerk work is not commensurate even if the pay is comparable? Or does that mean if someone has been helping at a warehouse and we ask them to take an assignment on an assembly line, that the work is not commensurate? A unemployment hearing referee can interpret this many different ways. No other employer is held to this standard. This goes much further than the Court of Appeals decision and we would ask that this clause be modified to match the court decision.

To agree with the Court of Appeals decision, the amendment should read "if the claimant is employed by a temporary employment contractor, failure to report to work and request a job assignment on the next succeeding working day when job assignments are available".

This change does not affect the claimant's eligibility for unemployment benefits. It simply makes it so that our unemployment account is not charged.

We would rather delete the clause altogether than to have it the way it is currently worded. I would appreciate your support on this change.

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Supporting Senate Bill 145 as amended
and passed by the Senate to address the
disqualification from receiving unem-
ployment benefits.

Presented to the House Labor and Industry
Committee, Rep. David Heinemann, Chairman;
Statehouse, Topeka, March 22, 1993.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here this morning along with Gary Davenport, Director of Safety and Membership Services for our Association, to ask your support for Senate Bill 145 as it was amended and passed by the Senate.

We are specifically concerned with the provisions addressing disqualification from receiving unemployment benefits for individuals whose use of alcohol or controlled substances causes them to be discharged.

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Attachment 4
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Currently, motor carriers must require testing of each driver who operates a commercial motor vehicle [as defined in Title 49 Code of Federal Regulations -- CFR -- Part 391.85] in interstate commerce and who is subject to the driver qualification requirements of 49 CFR Part 391.

We expect these regulations to be expanded soon to address alcohol testing as well.

The Federal Motor Carrier Safety Regulations now in effect, are precise in their application as to who must be tested, how tests are to be conducted on the five drugs for which tests are specified and the required testing program for pre-employment, periodic, reasonable cause, post-accident and random testing of commercial motor vehicle drivers.

All of these procedures are mandated and must be implemented by affected carriers. The drug testing program is designed to insure a drug-free transportation environment and to reduce accidents, injuries and fatalities.

Any driver who tests positive for the presence of any of the five specified drugs is medically unqualified to drive and must not operate a commercial vehicle. If the driver tests positive, for example, at a roadside random test site, the driver must immediately be removed from the vehicle and is medically unqualified for the work he was employed to do.

Companies must have a written company policy governing appropriate actions in the event a driver tests positive -- or refuses to take a drug test.

Companies also are required to establish an Employee Assistance Program (EAP) to provide education and training of personnel on the effects and consequences of controlled substance use including how to recognize signs of substance abuse. All drivers, supervisors, and designated company officials are required to attend at least one hour of training under this program.

In addition, the National Master Freight Agreement provides specific guidance in the event a driver covered by the agreement tests positive.

I enumerate these requirements to give you a better idea of the complexities and the mandates of this drug testing program governing affected drivers of commercial vehicles operating in interstate commerce. Effective May 1, 1993, our Kansas Corporation Commission expects to adopt identical rules and regulations for a drug testing program for controlled substances for intrastate drivers of such commercial motor vehicles. The universe of drivers required to comply with drug testing will be vastly expanded.

Even though carriers provide a clear understanding that drivers who test positive for the drugs enumerated under the Federal Safety Regulations are medically unqualified to drive a commercial motor vehicle, there are drivers who test positive and who, in some cases, have to be discharged.

Unfortunately, those drivers who were discharged because they are medically unqualified to work, turn around and file for unemployment compensation benefits against the very employer who invested time, money and effort into educating that driver employee about the 49 CFR Part 391 driver drug testing requirements.

Unfortunately also, in most instances such unemployment benefits have been granted.

We appreciate the support Senate Bill 145 has received from labor leaders in this session of the Legislature. We believe the provisions addressing this issue in the use of alcohol and/or controlled substances were, for the most part, suggested as reasonable solutions by labor officials.

Our industry believes that the bottom line is to help keep our work places safer and more productive for all concerned. We strongly support the provisions of Senate Bill 145 as the measure came to you from the Senate. We ask your favorable consideration of this important legislation.

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