Approved: 4-5-93
Date

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 24, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Carmody (excused)
Representative Donovan (excused)
Representative Hayzlett (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Chairman Heinemann distributed copies of correspondence received since our last meeting concerning technical questions regarding random alcohol and drug testing in SB 145. (Attachments 1 and 2) Two changes were suggested. At the bottom of page 13, line 42, strike the words "establishing probable cause" and add the language "established in Subpart (A)(i) or (ii), above;" At the top of page 14, line 1, after the word "professional" add the language "or any other individual authorized to collect or label test samples by state or federal law, including law enforcement personnel;" Representative Pauls moved and Representative Mayans seconded to make these changes. Motion carried.

Representative Packer moved on page 26 to re-enter all of line 9 and re-enter "received" on line 10 with a period following "received" to correct the problem of whether or not this amendment would affect other parts of the bill. Representative Lane seconded the motion.

Jerry Donaldson reported that Bob Stacks had contacted her and indicated that the Department of Human Resources had been in contact with the Federal Agency and this provision could be, but not necessarily is, in violation of the uniform method of charging. Chairman Heinemann said he had also visited with Mr. Stacks. The chairman thought we should go ahead and make these changes and let them respond as there will be time to make any corrections in conference committee. Following objections by the Department that this amendment would not correct the problem, Representative Packer withdrew his motion with the consent of Representative Lane.

The Department indicated that by adding Jim Wilson's terminology discussed yesterday following the word "received" on line 10 would correct the problem. Representative Nichols moved to re-enter all of line 9 and the word "received" on line 10 on page 26 and add the language "except that a determination pursuant to this clause (iii) shall not affect or be considered in a determination of whether an individual shall be disqualified for benefits pursuant to K.S.A. 44-706 and amendments thereto." Representative Lynch seconded, motion carried.

Chairman Heinemann stated there was an error on Page 8, line 2, after (B) "has earned" should be "has been paid" and asked for a motion to correct this. Representative Garner moved and Representative Lane seconded the motion to make the correction. Motion carried.

Representative Packer moved that SB 145 be passed out favorably as amended. Representative Webb seconded, motion carried.

Representative Grant moved and Representative Packer seconded that the minutes of February 17 - 26 be approved as presented. Motion carried.

The meeting adjourned at 9:21 a.m.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 3-24-93

NAME	ADDRESS	COMPANY/ORGANIZATION
PAUL BICKNELL	TOPEKA	KDHR
CLAUDE LEE	✓	✓
BILL CLAWSON	✓	✓
BILL LAYES	✓	✓
Linda Tiercie	✓	✓
Wayne Maha	✓	Ks AFL-CIO
Tom Whitaker	✓	Ks Motor Carriers Assn
GARY DAVENPORT	TOPEKA	Ks Motor Carriers Assn
Cindy Kelly	Topeka	KASB
Jerry Leatherman	Topeka	KCCI
Julie Summerson	Topeka	Manpower

Hi Bill -
Received this today. Its something we should consider in our meeting tomorrow.
Bill Mason

B & S AIRCRAFT PARTS & ACCESSORIES, INC.
1414 SOUTH MOSLEY • WICHITA, KANSAS 67211-3387
316-264-2397 FAX 316-264-7898

March 22, 1992

Representative William Mason
State Capitol
Topeka, KS 66612

Dear Representative Mason:

This letter is to seek your support for Senate Bill No. 145. The major provision of this bill, which our company supports, is the disqualification from receiving unemployment benefits currently paid to individuals who are discharged after testing positive for use of illicit drugs.

The bill as it is presently written, however, does not provide us the relief we need. Page 13, Line 38, Condition (B) "the test sample was collected at a time contemporaneous with the events establishing probable cause" should be deleted. In its present form the rule requires that probable cause be establish to warrant an employer having an employee drug tested. Without probable cause the evidence is not considered admissible. The FAA requires companies as ours to mandate **random** testing. Hence, drug test of employees are required without the establishment of probable cause. Omitting the probable cause provision will eliminate the current loophole payment of unemployment benefits to individuals discharged who test positive for use of illicit drugs.

Representative Mason, we need your help. Hundreds of small businesses' as ours, are required to comply with the FAA mandated drug testing. We have spent thousands of dollars to put anti-drug programs in place. The present system of awarding discharged individuals for use of an illicit drug, and charging the employer's experience rating is incredulous. Please make the necessary changes to halt this travesty of justice.

Your time and interest in this cause is sincerely appreciated.

Sincerely,

B&S Aircraft Parts & Accessories, Inc.

Mike James,
Operations Manager

House Labor and Industry
Attachment 1
3-24-93

LAW OFFICES
ENTZ & CHANAY
3300 SW VAN BUREN STREET
TOPEKA, KANSAS 66611

STEWART L. ENTZ
JEFFREY A. CHANAY
CARLA J. STOVALL

TELEPHONE
AREA CODE 913
267-6004
FAX 267-7106

March 23, 1993

Hon. David Heinemann
State Representative, District 123
State Capitol Building, Room 112-S
Topeka, Kansas 66612

Re: Senate Bill 145/K.S.A. 44-706(b)(2)

Dear Rep. Heinemann:

Mary Turkington of the Kansas Motor Carriers Association has requested that I write you concerning the proposed amendments to the drug testing provisions of K.S.A. 44-706(b)(2) as presented by Senator Pat Ranson to the House Labor and Industry Committee. As you are aware, Senate Bill 145 amends K.S.A. 44-706(b)(2) to permit drug testing for reasons other than probable cause where testing is required by federal or state law, or other types of governmental rule, regulation, or ordinance.

After reviewing the proposed amendments, I believe the amendments are not necessary. Although the Kansas Motor Carriers Association or any other interested employer would not oppose the amendments as they are not harmful to business, the proposed amendments merely recite provisions that are already contained in SB 145. The current language enjoys the support of KCCI, the AFL-CIO, and the Department of Human Resources, and thus a broad-based consensus has been achieved. Frankly, the proposed amendments do not add any protections for employers that are not already contained in the bill.

As one final matter, in reviewing SB 145, there does appear to be the need for two technical amendments to conform the Senate Commerce Committee amendments to K.S.A. 44-706(b)(2) to the preexisting language. Specifically, K.S.A. 44-706(b)(2)(B) needs to be amended to clarify that test samples must be collected at a time contemporaneous with the events establishing non-probable cause or probable cause testing. Also, K.S.A. 44-706(b)(2)(C) needs to be amended to permit collection and labeling of test samples by individuals who are authorized by state or federal law to perform such tasks, and also by law enforcement personnel. For your information and review, I have attached a draft copy of these two technical amendments. It is respectfully requested that the House Labor and Industry Committee consider adding these technical amendments to SB 145.

House Labor and Industry
Attachment 2
3-24-93

Thank you for your attention to these matters, and if I can answer any questions, please do not hesitate to contact me.

Sincerely,

Jeffrey A. Chanay

jac/sja

PROPOSED AMENDMENTS
TO K.S.A. 44-706 (6)(2)(B) and (C)

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating; or

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification.

(b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection (b), "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must

show: (A) Willful and intentional action which is substantially adverse to the employer's interests, or (B) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. The term "gross misconduct" as used in this subsection (b) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (b).

(2) For the purposes of this subsection (b), the use of, ~~possession of,~~ *or impairment caused by an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which was substantially adverse to the employer's interests. Alcoholic liquor shall be defined as provided in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701 and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 65-4101 and amendments thereto of the uniform controlled substances act. An individual's refusal to submit to a chemical test shall not be admissible evidence to prove misconduct unless the test was required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity, and the test constituted a required condition of employment for the individual's job, or, there was probable cause to believe that the individual used, possessed or was impaired by an alcoholic beverage, a cereal malt beverage or a controlled substance while working. The results of a chemical test shall not be admissible evidence to prove misconduct unless the following conditions were met:*

(A) Either (i) the test was required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity, and the test constituted a required condition of employment for the individual's job, or (ii) there was probable cause to believe that the individual used, had possession of, or was impaired by the alcoholic beverage, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected at a time contemporaneous with the events ~~*establishing probable cause;*~~ established in Subpart (A)(i) or (ii), above;

(C) the collecting and labeling of the test sample was performed

by an independent health care professional;

(D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

(F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including lateness, from scheduled work if the facts show:

(A) The individual was absent without good cause;

(B) the absence was substantially adverse to the employer's interests;

(C) the employer gave written notice to the individual that future absence may result in discharge; and

(D) the individual continued the pattern of absence without good cause.

(4) An individual shall not be disqualified under this subsection (b) if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of human resources, or to accept suitable work when offered to the individual by the employment office, the secretary of human resources, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue

or any other individual authorized to collect or label test samples by state or federal law, including law enforcement personnel;