

Approved: 3/16/93
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 10, 1993 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Jr., Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Sub for SB 73-- Economic development assistance for qualified firms

Bob Nugent, Revisor of Statutes, explained the amendments proposed by the Committee at the 4:15 p.m. meeting, on March 9.

Senator Burke moved to adopt the balloon including the amendments that had received approval at the March 9 meeting. Senator Steffes seconded the motion and the motion passed.

Senator Ranson moved to recommend **Sub for SB 73**, as amended, favorably for passage. Senator Reynolds seconded the motion. The motion passed on roll call vote.

SB 144--Employment security law, extended benefits, state administrators

SB 145--Employment security law, regular and extended benefits, employer contribution rates and board of review

Senator Burke reported the subcommittee on employment security issues recommended some amendments to **SB 144 and SB 145**, and that the provisions of **SB 144** be included in **SB 145**. He also stated the subcommittee recommended the employment security laws be the subject of an interim study.

Jim Wilson, Revisor of Statutes, reviewed the amendments proposed by the subcommittee. He stated they are part of K.S.A. 44-706, which addresses disqualification for benefits under the unemployment compensation act, see Attachment 1. An amendment to the statute states "it shall be conclusive evidence of misconduct" in regard to the use of, or impairment caused by, an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working, "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 interest.

Senator Burke moved and Senator Hensley seconded to adopt the proposed amendment. The motion passed.

Jim Wilson explained the other two amendments relate to an individual's refusal to submit to chemical tests.

Senator Burke moved and Senator Hensley seconded to adopt the proposed amendments. The motion passed.

Senator Burke moved to reduce board members compensation from \$24,000 to \$15,000 per year, in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 10, 1993.

Sec. 3 (3) in **SB 145**. Senator Reynolds seconded the motion, and the motion passed.

Staff pointed out the dates in **SB 144**, Section 1, (5) (c) should be changed from March 6, 1993 to June 30, 1993. There was a consensus to adopt the technical change.

A motion was made by Senator Burke and seconded by Senator Ranson to recommended **SB 145**, as amended, favorably for passage, and to include the language of **SB 144** in **SB 145**. The motion passed by roll call vote.

A motion was made by Senator Burke that the Committee request an interim study on the employment security laws. Senator Reynolds seconded the motion, and the motion passed.

The Committee meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for March 15, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 3/10/92

[illegible]

(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 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 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) 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;

(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.

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

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 constituted a required condition of employment for the individual's job, or

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 constituted a required condition of employment for the individual's job, or (ii)

3/10/93

Commerce

Attachment 1