

Approved: _____

1/20/94
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 19, 1994 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Salisbury, 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: Bob Stacks, Director, Division of Employment Security, Department of Human Resources

Others attending: See attached list

Report from Employment Security Advisory Council

Bob Stacks, Director, Division of Employment Security, Department of Human Resources, reported on the Employment Security Advisory Council's (ESAC) recommendations on 14 items submitted to them for review by the Commerce Committee in a letter dated September 17, 1993, see attachment 1. The ESAC recommended adopting an amendment to K.S.A. 44-706. Their amendment to K.S.A. 44-706 is: In temporary employments, failure of an individual to affirmatively request an additional assignment, when comparable work is available, on the next succeeding work day, if required, after completion of a given work assignment, shall constitute leaving work voluntarily. The advisory council will request legislation be introduced. An amendment to K.S.A. 44-706B in regard to the definition of misconduct also was recommended by the council. The amendment would delete "or evil design". On all of the other items, the advisory council recommended no changes be made, or that they would make no recommendations.

Committee action on bills held over

The Chairman suggested SB 12, SB 144 and SB 215 be reported adversely as they were taken care of in other bills last session. Since the advisory council unanimously recommended the taxable wage base remain as it currently stands, Senator Burke moved to report SB 165, as well as SB 12, SB 144, and SB 215 adversely. The motion was seconded and carried on a roll call vote.

A motion was made by Senate Burke to approve the minutes of January 18, 1994. The motion was seconded and carried on a voice vote.

The Chairman adjourned the meeting at 9:00 a.m.

The next meeting is scheduled for January 20, 1994.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 1/19/94

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bill Jarrell	WICHITA	BOEING
JOE DICK	TOPEKA	DHR
Terry Leatherman	Topeka	KCCT
Jim McHaff	Topeka	KS AFL-CIO
Wayne Maiches	Top	KS AFL-CIO
Don Bruner	Topeka	KDHR
Patricia Kuder	Topeka	KDHR
Bill Capps	Topeka	KDHR
Linda Tierce	Topeka	KDHR
PAUL BICKNELL	TOPEKA	KDHR
Marlin White	Holtz	KDHR
Claude Lee	Topeka	KDHR
Joe Lee	Topeka	Council on WED
Roger Franke	"	KS Gov Consulting
Mark Barcellina	Topeka	KDOCAH
John Koepke	Topeka	KASB
M. Hanna	"	Hanna's Capital Reports
Bernie Koch	Wichita	Wichita Area Chamber
BRENT DAVIS	WICHITA	KAAUTS
Charles Warner	Topeka	Kansas Inc.
Scott Hessel	Topeka	Kansas Inc.
Dave Cleveland	Topeka	KDOCAH



Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Office of the Secretary

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January 18, 1994

The Honorable Alicia L. Salisbury
State Senator
State Capitol, Room 120 South
Topeka, KS 66612-1504

Dear Senator Salisbury:

This letter and the attached information represents the Employment Security Advisory Council's recommendations on the 14 items submitted for review. As you may be aware, the Council met twice late last year in an effort to fully review the potential legislative issues put before them. I must commend the Council members for their diligent work in establishing recommendations on some very difficult issues.

As a matter of clarity, I have listed each item followed by the Council's recommendation and a general statement as to how that recommendation was reached. I have also attached an information document that was presented to each Council member prior to reviewing the issues. This document served as an information piece for Council members in an effort to assist them in their deliberations. The document listing the Council's recommendations was distributed to each Council member for review prior to submitting it to your office.

I hope that this information will assist you and your committee as you consider Employment Security issues this legislative session. It is my understanding that the Senate and House Committees will be taking up unemployment issues early in the session. On behalf of the Kansas Department of Human Resources we look forward to working with both the Senate and the House this legislative session and if I can provide any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe Dick', written over a horizontal line.

Joe Dick
Secretary of Human Resources

1/19/94
Commerce

Attachment 1-1

**RECOMMENDATIONS BY THE EMPLOYMENT SECURITY ADVISORY COUNCIL
ON THE FOURTEEN ITEMS SUBMITTED BY
SENATOR SALISBURY AND THE SENATE COMMERCE COMMITTEE**

1. **The issue concerning temporary work assigned and disqualification for benefits and noncharge provisions as outlined in the *Manpower* case. The Department of Human Resources, Employment Security Division has suggested language to amend K.S.A. 44-710. A suggestion was made to insert a similar provision into K.S.A. 44-706.**

This issue was referred to a subcommittee made up of Mr. Terry Leatherman, Mr. Wayne Maichel and Dr. Charles Krider. At the full Council meeting, Dr. Krider submitted the subcommittee's recommendation in regards to failure to report to the employer the day following completion of temporary employment. That language was as follows:

In temporary employments, failure of an individual to affirmatively request an additional assignment on the next succeeding working day, if required, after completion of a given work assignment, shall constitute leaving work voluntarily.

After this language was introduced the Agency submitted an amendment to the subcommittee's recommendation for the purposes of clarification. That amendment read as follows (bold print represents new language):

After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding work day, **if required by the employment agreement**, after completion of a given work assignment, shall constitute leaving work voluntarily.

It was then suggested by Mr. Wayne Maichel that the term "when comparable work is available" be inserted after the words "an additional assignment". A great deal of discussion ensued regarding comparable work at which time approval was granted to allow Ms. Jacki Summerson and Mr. Stewart Entz, both from Manpower, to address this subject. Mr. Entz indicated that in the six cases that went before Judge Buchele, a ruling by the Judge implied that proof of comparable work was not necessary providing that the claimant did not report. Following Mr. Entz, Mr. Claude Lee, Chief of Appeals, argued that according to the *Wichita Manpower Case*, comparable work must be available and that this is the only case that has gone beyond the District Court to the Court of Appeals. He indicated that the *Wichita Manpower Case* would still be used as the basis for making rulings in these type of issues.

Following the comments by both parties, a motion was made to accept the amendment to the subcommittee report. The motion was passed and the final language as proposed is as follows:

*with
reg. req.
additional
clarif* *44-706* **In temporary employments, failure of an individual to affirmatively request an additional assignment, when comparable work is available, on the next succeeding work day, if required, after completion of a given work assignment, shall constitute leaving work voluntarily.**

After discussion the amendment passed 6-5. Following this it was moved and seconded to adopt the subcommittee report as amended and that motion passed 6-4 with one abstention.

2. **The taxable wage base, specifically the wisdom of increasing the taxable wage base amount, to what level, or whether the statutory wage base should be determined in accordance with the changes in the statewide average annual wage.**

On this particular item, the Agency indicated that it had no position on a possible increase of the taxable wage base. Current wage base information, as well as projections if the wage base were raised and other possible affects were discussed. (See Attachment #1)

Following the Agency's comments, Ms. Jacki Summerson distributed information regarding increasing the taxable wage base. (See Attachment #2) Following her presentation, Mr. Dan McClenny moved and was seconded that the wage base remain as it currently stands. It passed 10-0 with one abstention.

3. **The wisdom of liberal construction in the implementation of the Employment Security Law and enacting statutory language to overturn case law in this area.**

On this particular issue, the Agency assumed that the question referred to what has been termed as a liberal interpretation of the law and the use of certain statutes and case law in making determinations. The Agency's position was presented to the Council, however the Council was not sure how a response to this particular question could be couched. They were also unclear as to what the question meant and felt that they could not adequately respond to it. There was a request to clarify which case law the question was referring to.

4. **The misconduct definition as contained in K.S.A. 44-706(b). At the September hearing there was mention that the Louisiana statute may be too broad, but a possible start. Consider the advisability of removing the intent requirement.**

The Agency presented a copy of the law and indicated that the current law, which was introduced in 1985, is based on a Wisconsin court case. This Wisconsin court case has been utilized by the vast majority of states in the development of a misconduct definition. The Agency presented information (the back page of Attachment #1) which indicates the ratio of denials to clearances. It was pointed out that 83.1% of the misconduct determinations are cleared. However, approximately 40% of these are cleared because there has been no response from the employer. In these circumstances, the determination then is based on claimant information only and therefore stands a much greater chance of being cleared.

It was then brought up by Mr. Leatherman that the words "wrongful, willful, or evil" should not be kept as part of the definition. After some discussion, Mr. Maichel moved and was seconded that the term "or evil design" be deleted. It passed unanimously. Following this the Council agreed to let Mr. Jerry Pope, an employer, speak to his concerns regarding proof of wrongful, willful or evil intent. Mr. Pope indicated that he felt that the entire history of an individual's work problems should be taken into consideration rather than judging the individual on his or her last misconduct.

Following Mr. Pope's comments, Mr. Clive Fullagar moved and it was seconded that the language that currently exists in the statute be left alone with no changes. Before this motion was voted on, Mr. Terry Leatherman introduced a substitute motion that was seconded that would strike the words "willful and" and replace them with "intentional", this occurred under Section A. In Section B, Mr. Leatherman proposed that the first sentence be struck and replaced with the term "intentional or negligent". This substitute motion failed on a 5-4 vote with one abstention.

Following the failure of the substitute motion to be approved, the original motion to leave the language unchanged was voted on and passed 6-4.

5. **Disqualification for misconduct: Should the Kansas requirements of earning three times the individual's weekly benefit amount for reinstatement continue to be so liberal as compared to the national average of requiring eight times the weekly benefit amount.**

The Agency indicated that whether a misconduct disqualification is three times the weekly benefit amount or eight times is actually immaterial. The claimant must still go back to work regardless and separate from that work in a qualifying manner. Mr. Maichel moved and was seconded to keep the disqualification at three times the weekly benefit amount. The motion passed unanimously.

6. **A proposal to provide for a burden of proof shift. There was discussion of a recent Shawnee County District Court case handed down by Judge Buchele which addressed the burden of proof matter.**

Mr. Claude Lee, Chief of Appeals, stated that there were only two instances in which the burden of proof is not on the claimant, in fraud cases and misconduct. Several of the Council members indicated that they could not see a clear relationship between the Buchele case and the burden of proof issue. Mr. Dan McClenny moved and was seconded to leave the current definition of burden of proof as is and it passed 9-1.

7. **A community service requirement whereby an individual who, after drawing unemployment benefits for a certain period of time, say four weeks, could be required to perform some sort of community service in order to continue receiving benefits.**

Mr. Terry Leatherman made a motion and it was seconded that the Council feels that the unemployment insurance claimants should be seeking and be available for reemployment and that this type of policy change should not be done at this level. The motion passed unanimously.

8. **Should there be a standard for determining chronic absenteeism in establishing whether there is a basis for disqualification for benefits.**

The Agency summarized current law and policy (see page 12 on Attachment #4). Mr. Dan McClenny voiced the opinion that it was the employer who should have the right to establish the number of days that an employee can be absent. There was extensive discussion with regard to patterns of absenteeism and various types of absenteeism and the bearing that they should have determining disqualifications for benefits.

After discussions ended Ms. Debbie Snow moved and was seconded that the Council make no recommendation on the issue at this particular time. The motion passed 5-4 with one abstention.

9. **Linking unemployment insurance more closely with retraining strategy. Explore funding possibilities.**

The Agency informed the Council that the U.S. Department of Labor will be submitting legislation at the beginning of the new year that would address this particular issue in great detail. There was also discussion of the types of funding sources being utilized by states. It was recommended by the Agency that further

discussion on this issue should be tabled until everyone had an opportunity to review the new Federal initiatives.

Mr. Wayne Maichel then moved and was seconded in a motion to state that the Council supports unemployment insurance more closely linking to retraining and educational efforts; however, at this time they oppose using trust fund monies or its interest for this purpose. The motion passed unanimously.

10. **The employment security system in its entirety, specifically whether structural or policy changes are needed in order to accommodate the current societal needs as contrasted with the needs that existed when the system was implemented.**

The Agency provided the Council with information regarding the U.S. Department of Labor and the mandate by the President and Congress to study the Employment Security system. There is no question that a great deal of interest has been generated with regard to changing the current unemployment insurance system and that the Commission appointed to review the overall effectiveness of the unemployment insurance system will be submitting a report in January 1995.

Mr. Jim DeHoff moved and was seconded on a motion to wait to examine the Federal study before taking any position on this issue. The motion passed unanimously.

11. **The matter of allowing random drug testing in the nongovernmental sector to establish misconduct.**

The Agency shared with the Council the law as it is currently (Attachment #3 Section (2)(b)). It was explained that in fiscal year 1992 there were 35 claims relating to drugs, of which only three were cleared. It was the Agency's position that most of the gaps with regard to utilization of drug and alcohol have been filled by the action taken last legislative session.

Mr. Terry Leatherman made a motion, it was seconded. The motion indicated that the Council should wait a year to see if any leaks develop from the recently enacted legislation. The motion passed unanimously.

12. **The ten day notice of appeal provisions on the part of the employer and whether this is sufficient, particularly for large employers.**

It was pointed out that it was the recommendation of the Employment Security Advisory Council in 1986 to drop the limit from 12 days to 10 days. Mr. Roger Morris mentioned that it has been his experience as an employer that 10 days was plenty of time and explained that there are ways within rules and regulations to extend the time limit if needed.

Mr. Wayne Maichel made a motion and was seconded to leave the limit at 10 days. The motion passed unanimously.

13. What provisions could be adopted that would streamline the process for claiming and reviewing employment compensation benefits?

The Agency explained that there is an ongoing effort to improve service delivery and that Kansas ranks very high with regard to compliance to federal standards that are imposed on each state for service delivery. It was pointed out that the size of the federal budget for service delivery in unemployment insurance is not conducive to obtaining funds for the kinds of automation that can significantly enhance service delivery. The Department remains in constant contact with other state agencies with regard to information sharing on enhancement of delivery systems and that there is an ongoing effort to secure additional grant funding for the purposes of streamlining and enhancing employment compensation benefit delivery.

Dr. Richard Olson moved and was seconded on a motion to confirm that the Agency is continuously seeking new ways to improve service delivery and is always receptive to input and suggestions. The motion passed unanimously.

14. The concept of supplemental pay, whereby an individual who might otherwise be discouraged from seeking or accepting lower pay or less skilled employment could accept a lesser job on a full or part time basis and still receive partial unemployment benefits.

The Agency explained that the current law allows a claimant to work part time and earn up to 25% of their weekly benefit before deductions are taken. The Shared Work Program allows employers to reduce their employee's work hours by no more than 40%. This allows employers to reduce their payroll thus allowing them to avoid layoffs or closing its doors.

Dr. Richard Olson made a motion, it was seconded that the Agency explain more fully to the Senate Committee how the system currently works and why it is maintained in this manner. The motion passed unanimously.