

Approved: 2/9/94
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 8, 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: George E. McCullough, Topeka

Others attending: See attached list

Confirmation hearing on appointment of Public Employee Relations Board member, term expiring July 1, 1997

George E. McCullough, testified he practiced as an attorney from 1950 until he retired in 1987. He practiced mostly in the field of Workers' Compensation. He was a member of the Urban Renewal Board and served as Chairman. He also served as Chairman of the Topeka Metropolitan Airport Authority. On both boards he was involved with writing the personnel policies.

In answer to Committee questions, Mr. McCullough replied he had represented union workers for almost 40 years. He said it was his opinion there should be two more employees added to the staff of the Board. He stated all public employee groups should be included under the Public Employee Relations Act. It is his belief his former work qualifies him to fill the public position on the board and to make determinations on the basis of law.

Consideration of SB 523-Amending Employment Security Law definition of "employment"

Jim Wilson, Revisor of Statutes, explained in accordance with a memorandum supplied by Paul Bicknell, Chief of Contributions, Employment Security Division, SB 523 should contain an amendment on page 12, line 28, see attachment 1.

Senator Kerr moved and Senator Harris seconded to amend SB 523 to read on page 12, on line 28, "and (U) service which is performed by any person who is a member of a limited liability company, and which is performed as a member or manager of that limited liability company." The motion carried on a voice vote.

Senator Kerr moved and Senator Burke seconded to recommend SB 523, as amended, favorably for passage. The motion carried on a voice vote.

Consideration of HB 2576-Economic opportunity initiative fund

Following committee discussion, the Chairman announced that if members have problems with the bill they should have their amendments prepared before the Committee considers HB 2576 in the future.

Senator Reynolds moved and Senator Steffes seconded to adopt the minutes of February 7, 1994. The motion carried on a voice vote.

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

The next meeting is scheduled for February 9, 1994.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/8/94

[illegible]

DRAFT

MEMORANDUM FOR: WILLIAM H. HOOD
Acting Regional Administrator
Kansas City

FROM: BARBARA ANN FARMER
Administrator for
Regional Management

SUBJECT: Kansas Senate Bill 523 - Exclusion of
Individuals from Definition of Employment

We have reviewed Kansas Senate Bill (SB) 523, which would no longer include in the definition of "employment" under the Kansas Employment Security Law (MESL), services performed by "any active member or manager of a limited liability company."

The only circumstances under which deletion of services from the State's definition of employment would conflict with Federal law requirements would be if the services are performed for a governmental entity or nonprofit organization. However, we believe no situation would ever occur under which "any active member or manager of a limited liability company" would be performing these services in that capacity for a governmental entity or a nonprofit organization. Therefore, we do not believe a conformity issue is raised by the proposal.

It has been brought to our attention that the current bill may not be adopted in favor of a new approach. Apparently, this is because, even if the amendment were enacted, Kansas' common law test would still consider the services to be in "employment." Therefore, there is discussion that services performed by "any active member or manager of a limited liability company" may instead be specifically excluded from the definition of employment under State law. Under this circumstance, it is possible that the Internal Revenue Service would consider these individuals to be "employees," and, since there is no similar exclusion in Federal law, the employers subject to the Federal unemployment tax would lose the credits against that tax and be required to pay the full tax on the exempted services.

Please advise the Kansas agency of our comments with respect to this proposal. Please send us copies of all correspondence you have with the State on this matter.

2/8/94

Commerce

Attachment 1-1

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501 (c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code.

(j) "Employment office" means any office operated by this state and maintained by the secretary of human resources for the purpose of assisting persons to become employed.

(k) "Fund" means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) "State" includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which such individual

DRAFT OF AMENDMENTS TO SB 523

For Consideration By Senate Commerce Committee
(2-8-94)

; and

(U) service ^{which is} performed by any ^{person who is a} member or ~~manager~~ of a limited liability company.

*and which is performed ~~in the~~
capacity as a member or manager
of that limited liability company*