

Approved: 3/1/94
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 23, 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: Anita Larson, Assistant Counsel, Security Benefit Life Insurance Company
Linda Tierce, Chief of Benefits, Department of Human Resources
Senator Marge Petty
Paul Dickhoff, Kansas Association of Public Employees
Gene Johnson, Kansas Association of Alcohol and Drug Directors
Chris McKenzie, Executive Director, League of Kansas Municipalities

Hearing on SB 766--Employment security law, determination of weekly benefit amount, employee welfare benefit plans included as wage

Anita Larson, Assistant Counsel, Security Benefit Life Insurance Company, testified in support of SB 766. She stated that under current law, a person's unemployment benefits will be reduced by severance pay a person receives from a former employer if all other employment benefits are continued as though the severance had not occurred. However, an employer does not always have control of a retired employee's coverage provided by an unrelated third party. An amendment to K.S.A. 44-704 would define severance pay benefits as those defined under ERISA and which the employer has the option to continue after the employee's last day. A person should not be entitled to receive more during unemployment than he or she would have received while working. Not only does this arrangement place an unfair burden on the employer, but also it may operate as a disincentive for terminated employees to find replacement employment during their severance pay period, see attachment 1.

Linda Tierce, Chief of Benefits, Department of Human Resources, testified that the amendments take into consideration whether the employer has control of certain employment benefits as defined in Section 3 of the Federal Employee Retirement Income Security Act of 1974, see attachment 2.

A motion by Senator Petty, seconded by Senator Burke, to recommend SB 766 favorably for passage was carried on a roll call vote.

Hearing on SB 705--Public Employee Drug Treatment Referral

Senator Marge Petty explained SB 705 is a drug free public workforce act. She stated (B) on page 2, lines 11 and 12 should be deleted.

Paul K. Dickhoff, Jr., Director of Negotiations, Kansas Association of Public Employees, testified in support of SB 705. He agreed that a drug free workplace is preferred. A few reasonable protections are desired. The program should not be used as a harassment tool. If testing is to be done, it should be done under the provisions of a medically valid original testing procedure and the results be substantiated by an equally valid medical confirming procedure. Such programs should recognize human frailties, and be used as remedial rather than punitive measures, see attachment 3.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 23, 1994.

Gene Johnson, Kansas Association of Alcohol and Drug Program Directors, appeared in support of SB 705. He submitted amendments to the legislation because of the existing Kansas Statute concerning those offenders who have been convicted of a DUI or a drug offense, see attachment 4. He stated (B) on page 2 should remain in the bill.

Chris McKenzie, Executive Director, League of Kansas Municipalities, recommended the Committee exempt cities and other local units. He based this recommendation on the lack of information about the possible impact of this legislation on cities, its possible preemption of local personnel policies, and the possible financial impact on local budgets, see attachment 5.

Senator Vidricksen moved and Senator Reynolds seconded to adopt the minutes of February 18, 1994. The motion carrier on a voice vote.

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

The next meeting is scheduled for February 24, 1994.



The Security Benefit
Group of Companies

Security Benefit Life Insurance Company
Security Benefit Group, Inc.
Security Distributors, Inc.
Security Management Company

700 Harrison St.
Topeka, Kansas 66636-0001
(913) 295-3000

February 23, 1994

Subj: Senate Bill 766
Amendment to Employee Security Law

Dear Chairperson and Committee Members:

The Security Benefit Group of Companies is a diversified financial services organization offering life insurance, mutual funds, annuities and retirement plans. The parent company, Security Benefit Life Insurance Company, has been in business for over 100 years. The Security Benefit Group of Companies has nearly \$4 billion in assets under management and employs over 500 Kansans. We support Senate Bill 766.

Under current law, a person's unemployment benefits will be reduced by severance pay a person receives from his or her former employer if all other employment benefits are continued as though the severance had not occurred.

Like many employers, Security Benefit has a severance plan. Under our package, we continue full pay for a period of time based upon length of service and, if we can, we continue all employee benefit plans that the employee had been receiving during employment with the company. Unfortunately, Security Benefit is unable to continue to provide all benefits due to the displaced employee's ineligibility for certain coverage. For example, Security Benefit cannot continue the employee's long term disability insurance because our long term disability insurer will not cover persons unless they are actively employed by Security Benefit.

Although Security Benefit cannot control the eligibility of an employee under a coverage provided by an unrelated third party, our inability to continue such coverage precludes our severance package from qualifying as "wages" under K.S.A. 44-704. This costs Security Benefit money. Not only do we pay for the severance package, but also, our experience account is charged for the person's unemployment benefits he or she is receiving at the same time.

We believe that unemployment benefits are an essential benefit for the citizens of Kansas. They provide the security that people need in the event their employment is terminated and other employment has not been found. However, if someone is receiving pay from their former employer and substantially all other benefits the person had

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during his or her employment, the need for unemployment benefits is not present.

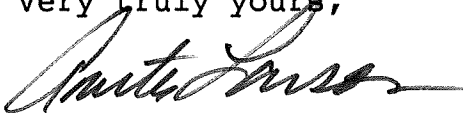
We believe that terminated employees should commence receiving unemployment benefits after their severance pay ceases. We believe that a person should not be entitled to receive more during unemployment than he or she would have received while working. Not only does this arrangement place an unfair burden on the employer, but also it may operate as a disincentive for terminated employees to find replacement employment during their severance pay period.

We believe that most individuals want to be employed and commence new jobs as quickly as possible. It is our hope that most displaced employees will find a new job during their severance pay period. Presently, displaced employees can get two payments during the severance pay period (one from Security Benefit and one from the state), but as noted, SBG essentially pays for both. We pay the severance pay, and our experience account is charged for the person's unemployment benefits.

Security Benefit does not contend that displaced persons are not entitled to unemployment benefits after their severance pay ceases as long as they have weeks of eligibility remaining. We contend that a person is not entitled to both unemployment benefits (that are not offset by severance pay) and severance pay at the same time, as long as all other employee benefit plans within the employer's control are continued.

We support Senate Bill 766 and hope that you will vote in favor of the proposal. Thank you for your time and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Anita Larson", written in dark ink.

Anita Larson
Assistant Counsel
Security Benefit Life Ins. Co.

TESTIMONY
SENATE COMMERCE COMMITTEE
Amendments to SB 766

Madam Chair, Members of the Committee, my name is Linda Tierce. I am the Chief of Benefits representing the Department of Human Resources, Division of Employment Security.

The department stands neutral on Senate Bill 766 but wishes to offer the following comments:

Section 44-704(e) of the Kansas Employment Security Law was amended in 1991 to define remuneration received as wages which would be used to reduce a claimant's weekly benefit amount. This section was added in an attempt to codify various court decisions in the treatment of vacation, holiday, and severance pay.

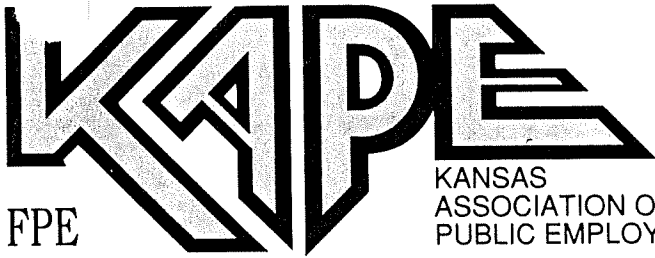
Under current law, an individual's unemployment benefits are reduced by severance pay received from a former employer only if all other employment benefits are continued as though the severance had not occurred.

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Amendments on page three of Senate Bill 766, lines two and three and lines 20 through 26 take into consideration whether the employer has control of certain employment benefits as defined in section 3 of the Federal Employee Retirement Income Security Act of 1974, commonly called ERISA. The primary concern, as we understand it, is that the employer cannot control or does not have the option to continue all employee benefits once the severance occurs. As an example, the employer cannot continue long term disability coverage during the severance period once an employee no longer works for the employer because of requirements of their long term disability insurer.

And finally, for your information, a total of 2,987 unemployment insurance cases involving severance pay issues were identified during state fiscal year 1993. Of that number, 2,839 cases, or 95%, were cleared for payment and 150 were denied. Typically, the cases are cleared because all other employment benefits such as health insurance and vacation or sick leave accrual are not continued once the severance occurs.

This concludes my prepared testimony. However, I would be happy to answer any questions. Thank you.



KANSAS
ASSOCIATION OF
PUBLIC EMPLOYEES

1300 South Topeka Avenue Topeka, Kansas 66612 913-235-0262 Fax 913-235-3920

TESTIMONY

Paul K. Dickhoff, Jr. Director of Negotiations, KAPE
Before the Senate Commerce Committee
In Support of Senate Bill 705

Members of the committee, good morning. I appreciate the opportunity to appear before you this morning in support of Senate Bill 705.

As you may know, KAPE is the representative of some 15,000 state employees for negotiations purposes under Kansas law. It may come as a shock to some that I am here today to speak in support of a bill whose passage may potentially cost a state employee his or her job some day. I would submit, however that most state employees will never be negatively impacted by the contents of this bill. To the contrary, most employees embrace the concept of a drug free workplace, and view such a place of employment as a better place in which to earn their living.

It is impossible to ignore the fact that drugs in this country are a major problem, and that problem can extend into the workplace. Once we all agree that a drug free workplace is preferred, there are only a few reasonable protections normally desired by most innocent employees. They ask that the program not be used as a harassment tool. In other words, that testing of employees be based on probable cause. Second, if testing is to be done that it be done under the provisions of a medically valid



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original testing procedure and the results be substantiated by an equally valid medical confirming procedure. Third, that such programs recognize human frailties, and be used as remedial rather than punitive measures.

People can and certainly do make mistakes, but the public is much better served by salvaging those people who want to be helped rather than casting them aside. In my opinion, Senate Bill 705 has at least taken those issues into consideration and done a reasonably good job of addressing them. Certainly, there are many details of such a program which must be worked out through in depth discussions, but the elements of an acceptable program are contained in Senate Bill 705. For that reason, KAPE, and I, as their Director of Negotiations, encourage this committee to act favorably on passage of Senate Bill 705. Thank you for your consideration and I would be happy to respond to any questions.

Testimony

Senate Bill 705
Senate Commerce Committee
Wednesday, February 23, 1994
8:00 a.m.

Good Morning, Madame Chairman and Members of the Committee:

My name is Gene Johnson and I represent the Kansas Community Alcohol Safety Action Project Coordinators Association, the Kansas Alcohol and Drug Addiction Counselors Association, the Kansas Association of Alcohol and Drug Program Directors. We appear today in support of Senate Bill 705. We feel that this is excellent legislation in the prevention and intervention of future alcohol and drug abuse with our public employees, throughout the State of Kansas.

We would suggest some changes in the legislation, largely because of the existing Kansas Statute concerning those offenders who have been convicted of a DUI or a drug offense.

We suggest on page 1, line 40, after the word "treatment", the words or education be added. Our concern is that every individual convicted of a drug or alcohol offense on a onetime basis, may not have a serious problem with alcohol or drugs but may have just made an error in judgement on that particular instance.

Also, on page 1, line 43 and going on to page 2, starting with "(1) Submit to an assessment of alcohol and other drug problems," as provided in KSA 8-1008, and striking all the language on page 2, lines 1 and 2. Again, on page 2, line 3, subsection "(2) actively engage in, striking (appropriate supervised) and adding licensed or certified treatment or education services, "in accordance with, strike (clinical) alcohol and other drug abuse assessments."

On page 2, line 8, "the violator shall place himself or herself on a, strike the word (certified), "waiting list, and add the language, provided by the licensed or certified program, then continue on with that sentence, "until a position for the recommended course of of treatment becomes available."

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Senate Bill 705
Testimony
February 23, 1994
page 2

On page 2, line 31, subsection c, "Any employee who is convicted for a second or a subsequent time," add the words, 'within the last five years,' then continue on, "under the laws of this state." In line 35, after "other drugs shall be," strike (terminated from public employment, and shall be ineligible for other public employment for a period of five years from the most recent date of conviction.) Add on line 35 after "other drugs shall be," placed on probation for a period of two years. Any violation of that probation would constitute reason for termination from public employment.

By adding this language the State is acknowledging that alcohol and drug addiction is an illness. Those public employees who contract this illness, if they follow through with a treatment plan, will not lose their employment. Keep in mind that some of these people are valuable employees and it will take a considerable length of time to retrain others to do the job they are doing at the present time.

Another suggested change would be on page 3, under subsection "b", line 8, "employment for a period of strike (five) and insert three years, and continue, "from the most recent date of conviction."

Most alcohol and drug treatment programs who select recovering people to work in their programs, insist on a minimum of three years of complete abstinence from their drug of choice before these recovering people are eligible to be hired in a program that is attempting to assist others who are addicted to this dreadful disease.

Thank you for allowing me to appear before this Committee this morning and I will attempt to answer any questions.

Respectfully submitted,



Gene Johnson
Legislative Liaison
Kansas Alcoholism and Drug Addiction Counselors Association
Kansas Association of Alcohol and Drug Program Directors
Kansas Community Alcohol Safety Action Project Coordinators Association



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Commerce Committee

FROM: Chris McKenzie, Executive Director *Chris McKenzie*

DATE: February 23, 1994

SUBJECT: SB 705--Concerning Public Employees Convicted of Drug and Alcohol Offenses

Thank you for the opportunity to appear today to comment on Senate Bill 705. After conferring with Senator Petty, I am aware that the purpose of the bill is to help create a work environment in which persons convicted of certain criminal offenses the first time could not be dismissed by a public employer, including cities, but to require probation for 60 days or longer if they complete the course of treatment prescribed in the bill.

Questions

SB 705 raises a number of questions that I would like to mention to the Committee, including the following:

- Does the bill apply to local government employers and employees? The title would indicate it does not, but the definitions contained in Section 2 clearly do apply.
- Persons charged with the offense of DUI for the first time are typically not prosecuted but are placed on "diversion". This does not constitute a conviction for purposes of the law or this bill. Yet Section 3 refers only to employees for are "convicted for the first time". Persons who are initially given diversion and who later commit the offense again may have only one conviction, but they have been charged with the same act twice and punished twice.
- Would an employer have to pay the public employee described in Section 3 during the terms of the employment, or would it be leave without pay (or rely on accrued vacation/sick leave?) as some local agencies would provide?
- Who would pay for the cost of treatment specified in Section 3--the employer or employee?
- Would all public employees convicted of the offenses referenced in the bill--including those who operate heavy equipment and provide public safety services (police, fire, ambulance) be granted the rights created in SB 705? If so, we may have impaired employees operating such equipment and delivering such services.

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PREEMPTION AND MANDATE

Many cities have personnel rules and regulations which address the subject of discipline for employees who are convicted of criminal acts. Many of those rules, in our experience, would allow serious disciplinary action, including dismissal, as a consequence of conviction of the acts described in this bill. SB 705 would appear to preempt these local procedures and policies and mandate the procedure contained in the act.

OPTIONS

The Committee would appear to have the following options in addressing the above concerns about preemption and mandates:

- (1) Completely exempt cities and other local units from the bill, making the bill applicable only to state government..
- (2) Provide for a partial exemption for cities that have adopted personnel rules and regulations, including provisions dealing with the discipline of individuals for the commission of the acts described in SB 705.
- (3) Provide for state assumption of all costs associated with local compliance with the procedures in SB 705.

RECOMMENDATION

Based on the lack of information about the possible impact of this legislation on cities, its possible preemption of local personnel policies, and the possible financial impact on local budgets, we respectfully recommend the Committee exempt cities and other local units from its application, making the bill applicable only to state government.

Thank you very much for your consideration of our comments and recommendation.