

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Karin Brownlee at 8:30 A.M. on February 8, 2005 in Room 123-S of the Capitol.

Committee members absent:

Senator Susan Wagle-excused

Committee staff present:

Kathie Sparks, Legislative Research
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Marlee Carpenter, Kansas Chamber of Commerce
Greg Bernhardt, Attorney, Wichita
Richard Clinesmith, Employers Unity, Inc.
Chief Counsel A.J. Kotich, Department of Labor
Jim Edwards, Kansas Association of School Boards

Others attending:

See attached list

Chairperson Brownlee opened the meeting by introducing Kathie Sparks, Legislative Research to explain the SB 55. Ms. Sparks stated SB 55 would amend the employment security laws with regard to breath alcohol testing and conclusive evidence of misconduct. The bill amends the law to include the condition that an employee's refusal to submit to a breath alcohol test is conclusive evidence of misconduct if the test meets the requirements. A positive breath alcohol test would be conclusive evidence to prove misconduct if the foundation evidence establishes, by a preponderance of the evidence, that the results are reliable. (Attachment 1)

Chairman Brownlee questioned Ms. Sparks regarding the wording, controlled substance asking if prescription medicine is considered to be a controlled substance. Ms. Sparks stated controlled substance means any substance which impairs ability to work. The definition was stated in current law.

Chairperson Brownlee opened the hearing on SB 55 by introducing Marlee Carpenter with the Kansas Chamber of Commerce. Ms. Carpenter stated the Kansas Chamber of Commerce and its members support SB 55. She stated the last few weeks they have worked closely with the AFL-CIO and have come to an agreement on many items. She attached a balloon to her testimony with the changes. (Attachment 2) in closing she stated it was her understanding there was no opposition to this bill.

Ms. Carpenter introduced Mr. Ray Bernhardt, an attorney in private practice in Wichita. Mr. Bernhardt stated SB 55 addresses two major concerns and submitted written testimony (Attachment 3) He stated the present statute as written has an unfair impact on small to medium size employers who discharge an employee for failing a random drug/alcohol test. He also stated the current statute fails to provide a distinction between breath alcohol tests and chemical tests and also fails to define chemical test.

Chairperson Brownlee introduced Richard Clinesmith, Vice President with Employers Unity, Inc. out of the Wichita office. Mr. Clinesmith is in support of SB 55. He stated SB 55 would assist Kansas employers, in prevailing on an unemployment claim should they discharge an employee for violation of their drug and alcohol policy. (Attachment 4) Upon completion of his testimony, Mr. Clinesmith stood for questions.

Senator Emler asked Mr. Clinemith if he was in support of SB 55 as recommended by Ms. Carpenter and the Kansas Chamber of Commerce, including all the changes. Mr. Clinesmith stated he was in support of the bill including the changes.

There was some concern by the committee regarding the definition of employer and who would request

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the test. Also there was discussion regarding employees having the right under law to request the employer or supervisor also be subject to testing. Ms. Carpenter stated if a company had a drug or alcohol policy in place it would cover all employees from bottom to top. Senator Barone asked Ms. Carpenter to verify her statement and provide the committee with a copy of an employers drug/alcohol policy for an example.

Chairperson Brownlee recognized Jim DeHoff, Kansas AFL-CIO. Mr. DeHoff stated he did not want to speak against the bill but there is a correction that needs to be made on page 2 to add a phrase or positive breath alcohol test. This phrase was left out in error.

Chairperson Brownlee introduced A.J. Kotich, Chief Counsel, Department of Labor. Chief Counsel Kotich provided written testimony (Attachment 5) His written testimony is his interpretation of the bill line by line. Chief Counsel Kotich stands for questions.

There was discussion on the proposed balloon and how it might the line by line interpretation of Chief Counsel Kotich because he had not seen the balloon. Committee members discussed random testing with Chief Counsel Kotich. Also there was discussion concerning page 6 of the bill striking language and adding certified or authorized.

Senator Brownlee requested Ms. Carpenter to explain the balloon and asked her to get with Mr. DeHoff on the language he felt was left out in error. Ms. Carpenter explained the balloon referring to her written testimony. (Attachment 2)

During discussion with Mr. DeHoff, Senator Jordan asked if the AFL-CIO supported the bill with the balloon. Mr. DeHoff stated they were not in agreement but were close enough they would not oppose. There was more discussion on the language not making sense and the committee asked Ms. Carpenter and Mr. DeHoff to work on that and give an explanation to the committee. Chairperson Brownlee closed the hearing on SB 55.

Chairperson Brownlee introduced Helen Pedigo, Revisor of Status, to explain the bill SB 107. Ms. Pedigo stated that this bill would exempt charging of benefits to the account of a contributing employer if the employee is disqualified and meets the provisions of 24-796.

Chairperson Brownlee opened the hearing on SB 107 by introducing Jim Edwards, Kansas Association of School Boards to give his testimony. (Attachment 6) Mr. Edwards explained the bill and stated the Kansas Association of School Boards was in support of this bill. He stated they visited with the Department of Labor yesterday and the Department of Labor had asked if the bill could be narrowed a little to add specific schools and they would like to work with the Association of School Boards to achieve that.

There was discussion by the committee on narrowing the bill. The committee would like for the bill to be written to cover more than schools. Chairperson Brownlee asked for a more comprehensive prospective other than just the schools. Chairperson Brownlee stated the hearing would stay open.

Written testimony was submitted by the Lenexa Chamber of Commerce (Attachment 7) in support of SB 55 and SB 107.

Chairperson Brownlee announced the Department of Commerce would be giving a presentation the first part of the meeting tomorrow and then they would hearing SB 109. Meeting adjourned at 9:23 a.m. The next meeting scheduled for Wednesday, February 9, 2005 at 8:30 a.m. in room 123S.