

SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 352

As Amended by Senate Committee on
Commerce

Brief*

SB 352, as amended, would revise provisions of employment security law (Unemployment Insurance or UI) pertaining to guidelines, disqualifications to receive benefits, UI personnel, appeals, refunds, and electronic filings. The bill also would clarify existing terms and procedures, making them consistent with previously enacted legislation. The guide to the interpretation and application of the State's UI System would be revised to include a statement that "All persons and employers are entitled to a neutral interpretation of the employment security law."

Under current law, certain misconduct disqualifies an individual from receiving UI benefits. The disqualifications due to alcohol or drug misconduct would be reorganized. The bill also would add another disqualifying condition. An employee would be ineligible if there was a violation of an employer's written alcohol or drug policy that was known to the employee and if the policy was a requirement of employment. Under current law, there is employee misconduct if: alcohol or drugs are used on the job; the employee was impaired; or there was a positive alcohol or drug test. In certain circumstances an individual's absences from work or lateness also would be classified as employee misconduct. An individual would not receive benefits if that person commits misconduct after informing the employer of the person's intention to quit. If an individual commits fraud relating to UI benefits, the length of time that person would be prohibited from receiving benefits would increase from one year to two years.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would repeal the current prohibition placed on the Secretary of Labor from employing persons who are politically active. The ban on the political activity of UI employees also would be repealed, as well as the corresponding misdemeanor imposed upon that activity. UI employees could participate in all political activity not specifically restricted by law, including candidacy for nonpartisan office or political party office. An individual who violated a political activity restriction would be discharged immediately.

With regard to benefit appeals to the UI Board of Review, the bill would allow the Department of Labor to appeal in addition to the employer or individual. Appeals are to be requested within 16 calendar days after a decision has been issued. A referee or the Board of Review could waive or extend the time period if a timely response was impossible due to excusable neglect.

Instead of using the provisions of KSA 79-2968 to calculate the interest owed on an employer's overpayment refund, Section 903 of the Social Security Act would determine the interest rate. The bill would remove the window of 120 days that positive rate employers have to opt into UI's Shared Work Program. Positive rate employers are those who have paid more into Unemployment Insurance than what their former employees have taken out as benefits. Instead of a workforce layoff, the Shared Work Program allows positive rate employers to reduce the hours worked by employees. The employees then qualify for partial UI benefits. The bill would allow positive rate employers to qualify at any time.

Employers having 14 or more employees would be required to file wage reports, contribution returns, and payments electronically with the Labor Department. Since July 1, 2010, employers with 50 or more employees are required to file electronically.

The alternative means for calculating an individual's wage base period would be repealed due to the expiration of

federal funding under the American Recovery and Reinvestment Act (ARRA) of 2009. The term “employment” would be revised to make it consistent with the substantive definition that was enacted in 2011 Sub. for HB 2135. That bill revises the procedures used to determine if employees have been misclassified as independent contractors. The term “part-time employment” would be revised to mean less than full-time rather than concurrent employment for two or more employers.

UI provisions that refer to the State’s criminal code would be updated, as would be references to employment centers being the responsibility of the Secretary of Commerce instead of the Secretary of Labor.

Background

The Department of Labor provided proponent testimony, stating the bill was necessary for clarifying existing provisions of law and for making the UI System more efficient for employers and claimants. The Kansas Chamber and the Kansas Society for Human Resource Management also spoke in favor of the bill.

The Kansas AFL-CIO, the Working Kansas Alliance, and the Kansas Organization of State Employees spoke in opposition to the bill. Opponents expressed concern that in UI claim disputes the bill would shift the burden of proof from the employer to the laid-off employee.

The Senate Committee on Commerce amended the bill to:

- Include the violation of an employer’s written alcohol or drug policy as a disqualification from receiving UI benefits; and
- Permit positive rate employers to qualify for the Shared Work Program at any time.

According to the fiscal note prepared by the Division of the Budget, the bill would have a negligible effect on the agency's expenditures and no effect on revenues.