

SESSION OF 2005

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 55**

As Amended by House Committee on  
Commerce and Labor

**Brief\***

SB 55 would amend the Employment Security Law with regard to breath alcohol testing and chemical testing and conclusive evidence of misconduct and, hence, disqualification for unemployment benefits. The bill would amend 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 required:

- ! The use of the standards of The Drug Free Workplace Act;
- ! The test was administered as part of an employee assistance program; or other alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;
- ! The test was otherwise required by law and the test constituted a required condition of employment for the individual's job;
- ! The test was requested pursuant to a written policy of the employer which the employee had knowledge of and was a required condition of employment; or
- ! There was probable cause to believe that the individual used, possessed, or was impaired by an alcoholic beverage, a cereal malt beverage, or a controlled substance while working.

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\*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>

A positive breath alcohol test or a positive chemical test would be conclusive evidence to prove misconduct if the foundation evidence establishes that the results are reliable.

The House Committee made the following changes:

- ! The term alcoholic beverage is changed to alcoholic liquor.
- ! The chemical testing of hair is deleted from the chemical tests that include testing of urine, blood, or saliva.
- ! A positive breath test means a test showing an alcohol concentration of .04 or greater. Breath tests must be administered by trained individuals using certified and reliable instruments according to the manufacturers directions
- ! Deleted the section regarding the rule and regulation authority for the Kansas Department of Labor.

Other changes are clarifying and technical in nature.

## **Background**

Proponents for the bill included representatives of the Kansas Chamber of Commerce, Employers Unity, and a private attorney from Wichita. A representative of the Department of Labor appeared as neutral on the bill. The Senate Committee amendments to the bill were a joint effort between the AFL-CIO and the Kansas Chamber of Commerce and included the rule and regulation authority for the Department of Labor and the addition of the wording "which the employee had knowledge of."

The House Committee amendments were primarily due to cooperative efforts of the Kansas Chamber and the Kansas AFL-CIO.

The fiscal note indicates that the Department of Labor has included appropriate training costs in its budget if this bill is enacted.