Approved ______________________
Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:30 a.m./~~p.m.~~ on April 24, 1984 in room 526-S of the Capitol.

All members were present except:

Representative David Webb

Committee staff present:

All present.

Conferees appearing before the committee:

Mr. Charles B. Jennings, VP, IBP, Inc.
Mr. Bryce Moore, Dept. of Human Resources
Mr. Stu Entz, IBP
Mrs. Kathleen Sebelius, Lawyer
Mr. George Malet, Lawyer
Mr. George McCullough, Lawyer
Mr. Wayne Maichel, AFL-CIO
Mr. Mike Wallace, Lawyer
Mr. Ken Cobb, IBP
Mr. Rob Hodges, KCCI
Mr. Lykes, Livestock Industry
Val Agua Corporation

Chairman Douville called the meeting to order at 9:30 a.m. He asked that all the proponents of either H.B. 2980 or Substitute for H.B. 2980 speak to the committee first. The first speaker was Mr. Lykes, he said that the livestock industry approves of the original version of the bill.

Mr. Charles Jennings was the next speaker. He spoke as a proponent of the original version of H.B. 2980. See attachment #1. The following people all spoke as proponents of the original version of H.B. 2980: Mr. Stu Entz, Mr. Rob Hodges, Mr. Ken Cobb and a man from Val Agua.

Then the opponents spoke. They were: Mrs. Kathleen Sebelius, Mr. George Malet, Mr. George McCullough (see attachment #2), Mr. Wayne Maichel and Mr. Mike Wallace. Mr. Bryce Moore answered questions of the committee members. Mr. Mike Wallace brought with him a women named Mary who has bi-lateral carpel tunnel syndrome. Mary told the committee has she acquired this "disease" and then answered questions of the committee members. There was a short discussion about what some companies are doing to eliminate the problem, and a support glove was passed around to the committee members.

The committee broke for lunch at 11:30 a.m. to convene at 1:30 p.m.

Representative R.D. Miller made a motion to amend Substitute for H.B. 2980 to reflect the provisions in the original bill. The motion was seconded by Representative Jerry Friedeman. There was a discussion. Representative Hensley made a substitute motion to put Substitute for H.B. 2980 and H.B. 2980 into an interim committee. The motion was seconded by Representative Darrel Webb. There was a discussion. The committee voted and the substitute motion was defeated 7 to 8. Back to Representative Miller's original motion to amend. The committee voted and the motion passed. Representative Miller made a motion to pass the amended version of Substitute for H.B. 2980 out favorably. The motion was seconded by Representative Don Sallee. The committee voted and the motion passed 9 to 7.

The meeting was adjourned at 2:20 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

4-24
#1

STATEMENT OF IBP, INC.

BEFORE THE KANSAS HOUSE COMMITTEE ON LABOR & INDUSTRY

TOPEKA, KANSAS - APRIL 24, 1984

BY

CHARLES B. JENNINGS, VICE PRESIDENT

Atch. 1

MY NAME IS CHARLES JENNINGS, VICE PRESIDENT OF IBP, INC. I AM HERE TO SPEAK TO YOU ABOUT A MATTER OF TREMENDOUS CONCERN TO IBP AND I BELIEVE TO INDUSTRY IN GENERAL IN KANSAS. HOUSE BILL 2980, WHICH IS NOW BEFORE YOUR COMMITTEE, IS THE REASON FOR THAT CONCERN.

AS YOU KNOW, IBP IS A LARGE EMPLOYER IN KANSAS. WE HAVE MEAT PACKING PLANTS AT EMPORIA AND FINNEY COUNTY, WHICH TOGETHER EMPLOY APPROXIMATELY 4,000 PEOPLE. OUR ANNUAL KANSAS PAYROLL IS $70 MILLION. THE VALUE OF THE CATTLE THAT WE SLAUGHTER AT THOSE TWO PLANTS EACH YEAR IS ABOUT $1.6 BILLION. IBP IS JUST ONE OF SEVERAL MEAT PACKERS IN THE STATE. OTHERS ARE REPRESENTED HERE TODAY AND WILL MAKE THEIR VIEWS KNOWN TO THE COMMITTEE.

WE HOPE TO EXPAND OUR KANSAS OPERATIONS IN A WAY THAT COULD APPRECIABLY INCREASE THE NUMBER OF EMPLOYEES WE HAVE IN THE STATE. HOWEVER, THESE PLANS ARE THREATENED BY DRAMATIC RECENT INCREASES IN OUR KANSAS WORKERS' COMPENSATION COSTS. WE HAVE NOT EXPERIENCED THE SAME DEGREE OF INCREASE AT OUR PLANTS IN OTHER STATES. I BELIEVE IT IS NO SECRET THAT IN THE MEAT PACKING INDUSTRY LABOR COSTS ACCOUNT FOR MORE THAN HALF OF THE OPERATING COSTS, AND PROFIT MARGINS GENERALLY ARE ONLY ABOUT ONE PERCENT OF SALES. THUS, IF WE PAY WORKERS' COMPENSA-

TION AWARDS THAT ARE SIGNIFICANTLY HIGHER AT SOME PLANTS THAN AT OTHERS, IT HAS A TREMENDOUS IMPACT ON OUR LABOR COSTS. HIGH WORKERS' COMPENSATION COSTS CAN MAKE A PARTICULAR PLANT UNCOMPETITIVE BOTH WITH OUR PLANTS IN OTHER STATES AND WITH OUR COMPETITOR'S PLANTS IN OTHER STATES.

IN THE LAST TWO YEARS OUR PER EMPLOYEE WORKERS' COMPENSATION COSTS HAVE RISEN 135% IN KANSAS. IN 1983 ALONE WE EXPERIENCED A $700,000 INCREASE IN THOSE COSTS IN KANSAS. THIS IS FAR IN EXCESS OF THE COST INCREASES THAT WE HAVE EXPERIENCED IN NEARBY STATES SUCH AS IOWA, WHERE WE HAVE THREE PLANTS, AND IN NEBRASKA, WHERE WE HAVE TWO PLANTS.

HOUSE BILL 2980 IN ITS ORIGINAL FORM ADDRESSED AND CORRECTED THE BIGGEST SINGLE REASON FOR THAT INCREASE IN OUR WORKERS' COMPENSATION COSTS. THAT BILL NOW HAS BEEN AMENDED TO TREAT REPETITIVE INJURIES, SUCH AS CARPAL TUNNEL SYNDROME, AS OCCUPATIONAL DISEASES. LADIES AND GENTLEMEN, I STRONGLY URGE YOU TO RETURN TO THE ORIGINAL CONCEPT OF HOUSE BILL 2980; TO TREAT REPETITIVE USE CONDITIONS OCCURRING IN OPPOSITE EXTREMITIES AS SCHEDULED INJURIES.

LET ME DISCUSS WITH YOU THE NATURE OF THE INJURIES WE ARE TALKING ABOUT. REPETITIVE USE INJURIES, SUCH AS TENDONITIS OR CARPAL TUNNEL SYNDROME CAN OCCUR IN THE WRISTS OR THE ELBOWS, AND USUALLY ARE COMPLETELY CORRECTABLE BY CONSERVATIVE TREATMENT OR MINOR SURGERY. IT

IS UNUSUAL, FOR EXAMPLE, FOR A CARPAL TUNNEL SYNDROME VICTIM TO HAVE A RESULTING FUNCTIONAL DISABILITY OF MORE THAN 10% TO EACH WRIST. USUALLY THE PERMANENT DISABILITY IS ONLY 2% OR 3%. WE ARE TALKING HERE ABOUT "ACHE AND PAIN" INJURIES WHICH DO NOT DRASTICALLY AFFECT ONE'S ABILITY TO ENGAGE IN GAINFUL EMPLOYMENT OR TO PERFORM EVERYDAY TASKS. IN VIRTUALLY ALL OF THE SURROUNDING STATES REPETITIVE USE INJURIES ARE COMPENSATED AS SCHEDULED INJURIES EVEN WITH BOTH EXTREMITIES INVOLVED. EMPLOYEES IN THOSE STATES OFTEN RETURN TO THEIR OLD JOBS AFTER RECOVERY. I WANT TO EMPHASIZE HERE THAT WE ARE NOT TALKING ABOUT CHANGING THE LAW IN ANY RESPECT FOR TRAUMATIC INJURIES SUCH AS BROKEN BONES, LACERATIONS, AMPUTATIONS, ETC.

UNFORTUNATELY, THE CURRENT LAW AMOUNTS TO A HORROR STORY FOR MOST OF THE INDUSTRIAL EMPLOYERS IN KANSAS BECAUSE IT ALLOWS WORKERS WHO ARE ONLY SLIGHTLY INJURED TO RECOVER AWARDS OF $50,000 TO $75,000. YOU MAY ASK, HOW CAN THIS HAPPEN? IT HAPPENS BECAUSE UNDER CURRENT LAW IF A PERSON SUFFERS REPETITIVE USE INJURY TO BOTH HANDS WITH LITTLE OR NO DISABILITY TO EITHER HAND, IT IS TREATED AS AN UNSCHEDULED INJURY TO THE BODY AS A WHOLE. FURTHERMORE, IF A DOCTOR CAN BE FOUND WHO SUGGESTS THAT THE PERSON NOT GO BACK TO HIS OLD JOB, THE WORKER THEN MAY RECEIVE A WORK DISABILITY OF AS MUCH AS 100%. THIS IS AN ABUSE

OF THE SYSTEM. IT ALLOWS A WORKER WITH PERHAPS 2% TO 3% ACTUAL DISABILITY IN EACH WRIST TO GET A $50,000 TO $75,000 AWARD. THAT IS MORE THAN ANOTHER WORKER WOULD RECEIVE FOR AN AMPUTATED HAND.

WE HAVE ONE CASE ON APPEAL RIGHT NOW TO THE KANSAS COURT OF APPEALS WITH THESE FACTS: THE WOMAN IN QUESTION COMPLAINED OF PAIN AND NUMBNESS IN BOTH WRISTS. HOWEVER, A NERVE CONDUCTION STUDY DESIGNED TO SHOW THE EXISTENCE OF CARPAL TUNNEL SYNDROME WAS NEGATIVE. THE NEUROLOGIST CONCLUDED THAT SHE HAD NO DISABILITY. HOWEVER, ANOTHER DOCTOR TESTIFIED THAT SOLELY ON THE BASIS OF HER SUBJECTIVE COMPLAINTS, HE CONSIDERED THAT SHE HAD A 10% DISABILITY OF EACH WRIST. BASED ON THIS EVIDENCE SHE WAS GIVEN A WORK DISABILITY OF 75% WHICH AMOUNTS TO AN AWARD OF $61,420. AFTER THIS INJURY WAS DIAGNOSED, SHE CHOSE NOT TO GO BACK TO WORK, BUT WE HAVE PHOTOGRAPHS OF HER ENGAGING IN A SOFTBALL GAME IN WHICH SHE MADE A GOOD THROW FROM RIGHT FIELD AND ALSO GOT ON BASE WITH A LINE DRIVE HIT. IN OTHER WORDS, SHE ISN'T VERY DISABLED.

WE'RE TALKING ABOUT VERY SLIGHT INJURIES AND VERY BIG AWARDS IN THE CASE OF REPETITIVE USE INJURIES. IF SOMEONE HAS AN INJURY, HE SHOULD BE COMPENSATED FOR IT. THE COMPENSATION SHOULD BE PROPORTIONATE TO THE INJURY. SLIGHT INJURIES SHOULD NOT CAUSE HUGE AWARDS.

IN ITS PRESENT FORM HOUSE BILL 2930 WOULD TREAT REPETITIVE USE INJURIES AS AN OCCUPATIONAL DISEASE. THIS IS WRONG. THIS WOULD MEAN THAT THE AMOUNT OF COMPENSATION AWARDED TO AN INJURED WORKER WOULD DEPEND SOLELY ON WHETHER OR NOT THAT WORKER SUFFERED A LOSS IN HIS EARNING CAPACITY AFTER THE INJURY. (THUS, IF ONE WORKER IS ABLE TO DO SOME DIFFERENT JOB AT THE SAME PAY RATE AS BEFORE HE WOULD GET NO COMPENSATION AT ALL UNDER THE OCCUPATIONAL DISEASE PHILOSOPHY. IF HE CANNOT DO A JOB THAT PAYS AS MUCH, HE WOULD GET MORE COMPENSATION.) THE POINT IS THAT UNDER THE OCCUPATIONAL DISEASE FORMULA, AWARDS WOULD BE HIGHLY ERRATIC AND WOULD BEAR LITTLE OR NO RELATION TO THE DEGREE OF DISABILITY OR THE SERIOUSNESS OF THE INJURY THAT THE EMPLOYEE SUFFERED. YOU COULD STILL HAVE VERY LARGE AWARDS TO SLIGHTLY INJURED EMPLOYEES AND VICE VERSA.

LADIES AND GENTLEMEN, THERE CAN BE ONLY ONE APPROACH THAT WILL CORRECT THE ABUSE THAT WE HAVE BEEN DISCUSSING. THAT IS, TO REVISE HOUSE BILL 2930 TO PROVIDE THAT REPETITIVE USE INJURIES TO OPPOSITE EXTREMITIES SHOULD BE TREATED AS THEY ARE TO ONE EXTREMITY, THAT IS, AS SCHEDULED INJURIES. THIS WILL BRING KANSAS INTO LINE WITH SURROUNDING STATES. THIS WILL PRESERVE IN KANSAS A VIABLE BUSINESS

ENVIRONMENT. FAILURE TO DO THIS THREATENS EXISTING JOBS AND THE POTENTIAL FOR NEW JOBS IN THE FUTURE IN THE STATE.

THANK YOU VERY MUCH.

4-2
#2

POSITION PAPER CONCERNING SUBSTITUTE FOR HOUSE BILL 2980

The substitute bill 2980 would create serious legal problems for people who suffer injuries to the arms and legs.

It is apparent that this amendment attempts to address carpal tunnel syndrome but this amendment goes much further. It also affects repetitive use of legs, arms, fingers and toes, not just forearms where the injury occurs.

We cannot agree to this amendment until all contingencies are thoroughly studied. If the law is to be amended so that repetitive use is to be considered an occupational disease rather than a series of miniature accidental injuries, then we would suggest reenacting a clause as it was prior to 1974.

Prior to 1974, covered occupational disease were listed and only listed diseases were compensable.

Prior to 1974 the occupational disease that applied to carpal tunnel syndrome provided as follows:

> "11. Synovitis, tenosynovitis or bursitis
> the result of repeated pressure, friction or
> overuse."

This particular section of the old law would adequately cover carpal tunnel but would not include the legs as well as the arms or other appendages of the body. This by itself, however, would create further problems to be addressed later.

Atch. 2

The proposed amendment in substitute for House Bill 2980 provides for repetitive use of extremities. Therefore under the law if one arm was involved with a carpal tunnel it would be an accident and compensation would be allowed as per the rules defining compensation for an accident for a scheduled injury. If both arms are involved, doing exactly the same thing, it would be an occupational disease and compensation allowed under rules for an occupational disease.

This means that an individual whose suffered a carpal tunnel in one arm would receive compensation for his functional loss of use of that member. If both arms were involved and this person was well educated and was able to find a job where the use of his hands was unnecessary and gained a wage equal to what this person was earning at the time of injury would receive no compensation for the reason there would be no wage loss. One line of occupational disease cases rules that compensation is to be based on two-thirds of the wage loss. Another line of cases may allow compensation for impairment but what line of cases would be followed by the Court is unknown at this time.

One Court of Appeals case ruled that if the worker could not return to work there is no post-injury wage to apply two-thirds so as to draw temporary partial disability.

The Court ruled that the worker could not draw two-thirds of the difference in pre-earning and post-earning pay but must be compensated on the basis of permanent partial. Permanent partial for an accident

is the percentage of disability. This case was an accident case. In accident cases temporary partial is wage loss as is permanent partial in occupational disease cases. So this suggested amendment would surely create a void in compensation for bilateral carpal tunnel injuries.

A further problem is that this amendment would discriminate against women for the reason that in my practice more women develop the carpal tunnel than do men.

With so many problems, all contingencies that may occur because of this suggested amendment should be thoroughly studied before enacted into the law of this state.

To avoid some of the problems, it should be considered that substitute for House Bill 2980 be amended as follows by striking all the new language beginning at page 1, line 0038 through the new language at 0041 and inserting the following.

> "Repetitive use condition occurring in an upper extremity or extremities shall be construed to be an occupational disease and compensation for an occupational disease for permanent partial disability shall in no case be less than the medical impairment suffered as a result of said occupational disease. Further, any compensation for wage loss shall include loss of wages from inability to find work as well as the difference between earnings if work is available."

The above suggested amendment would limit change to the upper extremities which of course include the forearms and would overrule

prior court cases that would provide for no compensation unless the worker suffered a wage loss.

The above language would also overrule a Court of Appeals decision wherein the Court ruled that if a worker was not working so that there was no new earnings from which to apply the wage difference and apply two-thirds. The above amendment would provide that zero could be used if the worker was unable to go to work to deduct from earnings prior to the occupational disease and apply two-thirds thereto so that this worker could receive that amount per week. Under present law this could not be done because of that Court of Appeals decision.

Another suggested amendment to substitute for House Bill 2980 could be by eliminating the above changes to K.S.A. 44-501 and adding a new section (f) immediately following page 3, line 0104 and adding the following language.

> "Synovitis, tenosynovitis or bursitis the result of repeated pressure, friction or overuse is an occupational disease and compensation for an occupational disease for permanent partial disability shall in no case be less than the medical impairment suffered as a result of said occupational disease. Further, any compensation for wage loss shall include loss of wages from inability to find work as well as the difference between earnings if work is available."

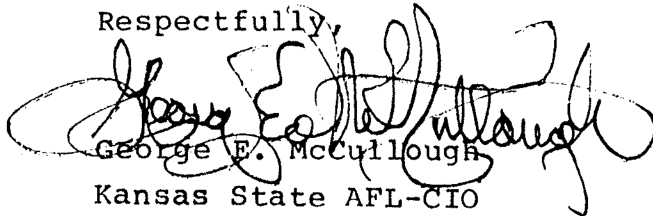
This would provide that zero could be used if the worker was unable to go to work to deduct from earnings prior to the occupational disease

and apply two-thirds thereto so that this worker could receive that amount per week. Under present law this could not be done because of that Court of Appeals decision.

We would submit that this great policy decision requires study as can be seen from problems set forth above.

Substitute for House Bill 2980 should be considered no further by the 1984 session of the Legislature until all possible ramifications have been determined.

Respectfully,



George E. McCullough
Kansas State AFL-CIO