

Approved Althea Pulte
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Dorothy Nichols at
Vice-Chairperson

9:00 a.m./~~p.m.~~ on January 30, 1986, 19 in room 526-S of the Capitol.

All members were present except:
Representative Patrick

Committee staff present:

All Present

Conferees appearing before the committee:

Mr. Bill Morrissey, Asst. Dir. Workers' Comp.
Mr. Julian Efird, Principal Analyst, Research Dept.

Vice-Chairperson Nichols called the meeting to order. The agenda for the day was a general overview of S.B. 365. The overview was given by Julian Efird, who specifically went over the 11 important points in the bill.

The committee members received 3 handouts (see attachments). Questions by committee members were answered by Bill Morrissey. Because of the time factor S.B. 365 will be scheduled again for continued committee discussion. The meeting was adjourned at 10:00 a.m.

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2

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date 1-30-86

Name	City	Representing
Ron Geches	Wichita	BMAC
DAN MORGAN	Topeka	AGC of KS
Tom Slatten	Top.	" " "
Rob Holpen	Topeka	KCCI
TAD Dower ^{standing in} for Bill Sneed	Topeka	KADC
H. Kent Pellegrino	Topeka	NECA
Valerie Smith, OTR	Topeka	Intracorp
Ann Smith	Topeka	
R.E. Liberts	Topeka	KTHA
Judy Shannon, OTR	Shannon Mission	Intracorp
MARK Beshears	Topeka	IBP, inc.
Harry D. Welver	"	IG-AFL-CIO
Wayne W. Maichel	"	"
Ralph McGee	"	"
WALT DARLING	TOPEKA	DIV. OF BUDGET
Bill Morrissey	"	DHR/W/C
Jerry Wolgast	"	DHR
Bob Stacks	Topeka	DHR
DICK THOMAS	TOPEKA	REHAB SERVICES / SRS
mike Dreiling	Topeka	meninger Fd.
Bruce Wanner	Topeka	Governor's Office
Lusie Gebert-Lehman, OTR	Kansas City	Kansas Occupational The Rehabilitation Inst.
Therese M. Marsal ^{CO. TH}	K.C.M.O.	" "
Tracy Chapman, OTR.	K.C.M.O.	" "
Aula Woolworth, Occupational Therapist	Olathe, KS	Intracorp
PAT SCHAFER	TOPEKA	DIVISION OF BUDGET

STATE LEGISLATIVE REPORT



PHI #1
130-86

ISSUES IN WORKERS' COMPENSATION 1985

Workers' compensation has been the subject of important legislative activity in the last ten years and continues to be a topic of serious study in state legislatures. In 1985, for example, 49 state legislatures considered over 1,000 workers' compensation bills. As of July 1, 144 of these bills were enacted, addressing issues such as coverage, benefits and rehabilitation services.¹ Current legislative debate centers on appropriate funding mechanisms, rising insurance rates, occupational diseases, benefit levels and the effectiveness of rehabilitation programs. The dilemma facing legislatures is the need to protect the victims of work-related accidents and disease without overburdening employers with high insurance rates to pay for this protection. Given the complexities of the issues involved, the task of enacting legislation which strikes a proper balance between safeguarding employees' rights and promoting the economic interests of a state's employers is not an easy one.

During the last six months, the National Conference of State Legislatures' State Government Issues and Organization Committee has conducted hearings in Lexington, Kentucky and Seattle, Washington. The panel in Kentucky was comprised of John Lewis, an attorney specializing in workers' compensation; Senator Ed O'Daniel, Chairman of the Kentucky Senate Judiciary Committee; Commissioner Steve Keefe, Minnesota Department of Labor and Industry; Jim Ellenburger, insurance specialist; and Keith Bateman, Alliance of American Insurers. The Washington panel included Lewis; Keefe; Chuck Helget, staff coordinator of the Washington Joint Select Committee on Workers' Compensation; and William P. Molmen, vice president of the American Insurance Association. The purpose of this State Legislative Report is to highlight the issues discussed by both panels and inform legislators and their staff of recommendations made by these individuals.

HISTORICAL PERSPECTIVE

The workers' compensation insurance system originally evolved as a "no fault" system to protect the employer from liability arising from common-law negligence suits and to protect the employee by providing immediate financial and medical assistance.

Today nearly 90 per cent of American workers are covered under either federal or state legislation. Standards and benefits for injured workers vary among the 50 states. The Analysis of Workers' Compensation Laws, 1985, published by the U.S. Chamber of Commerce, identifies six general objectives underlying all workers' compensation legislation:

- To provide immediate and sufficient income to work-accident victims and their families.
- To provide a remedy other than personal injury suits.
- To protect the solvency of public assistance programs and private charities which would have to support uncompensated individuals.
- To reduce legal fees and avoid the time-consuming legal process.

- To encourage maximum employer interest in safety and rehabilitation through an appropriate experience-rating mechanism.
- To promote open study of causes of accidents which would be difficult if court cases were pending.²

STRUCTURE OF WORKERS' COMPENSATION INSURANCE

The management of injury reports and claims, types of injuries compensated, determination of benefit awards, and general rules and regulations vary from state to state. However, legislative concern over workers' compensation centers on the administrative structure, claims procedures, benefits and funding mechanisms.

Workers' compensation insurance programs are administered either by a state department, an appointed board of commissioners, or a state court which rules on the initial and appellate decisions on claims.

The efficiency of the claims management procedures is critical to a sound workers' compensation program (see Appendix A). It assures the worker's right to prompt payment of compensation in legitimate claims and protects the employer's rights by providing early and thorough investigations and rulings in questionable cases.

Because timeliness and accuracy are essential to the system, the initial processing of claims can greatly enhance or impede the system. One example of a highly specialized system is New York State's system which processes 180,000 cases each year (see Appendix B).³

Workers' compensation insurance provides medical, cash, and rehabilitation benefits to injured workers and death benefits to the spouse and children of a fatally injured worker. All states require physical rehabilitation, and 43 states have provisions for vocational rehabilitation.⁴

Depending upon state laws, an employer may obtain workers' compensation coverage from private insurance carriers, state funds, or through self-insurance.

Where state funds are established, the employer tax is transferred to the state fund and used to finance the workers' compensation benefits. State funds are either exclusive or competitive. An exclusive state fund system does not permit private carriers to provide coverage for workers' compensation cases; competitive funds compete with private carriers for employers' business.

Special funds have evolved to supplement the normal funding mechanism or to provide an independent source of money to deal with specialized problems relating to workers' compensation cases. All 50 states and the federal government have established at least one type of special fund.⁵ Rising costs of workers' compensation programs have resulted in the establishment of special funds in ten states since 1983.⁶

Special funds can be used to encourage the hiring or reemployment of handicapped workers, as well as to guarantee payment of benefits to workers

whose employers had no coverage, had inadequate coverage or became insolvent. Special funds recently have been used to provide money for rehabilitation services and to provide benefits for workers who suffer from long-latent occupational disease cases. Lloyd W. Larson and John F. Burton, Jr., authors of the study "Special Funds in Workers' Compensation," submitted in 1981 to the Employment Standards Administration of the U.S. Department of Labor, have identified 13 special funds currently in use (see Appendix C).

CURRENT ISSUES

Because workers' compensation insurance programs have been in existence for a number of years, state legislatures may need to reevaluate their current system by first reevaluating the public policy goals underlying it. Answering the question "What is the system intended to do?" is critical to the development of a cohesive, fair and equitable program. By clearly establishing or reestablishing the goals and objectives of the system, the legislature will establish a point of reference to use as each section of the workers' compensation insurance program is studied. Answers to basic questions such as "Is the system intended to provide income loss replacement or is it intended to provide restitution to the injured worker?" will impact the decision-making process throughout the review of the system and provide the framework necessary for the development of consistent policy.

Experts cite the need, once policy is established, for continuing legislative oversight to ensure that new legislation is in line with established policy. The nature of the system is such that change is an integral factor and must be dealt with in a timely and consistent manner to preclude the eruption of crises. Legislative oversight has the added benefit of allowing legislators and staff to develop expertise and to gain experience in managing this complex issue.

Litigation. Workers' compensation insurance was created in order to reduce the litigation arising from employee liability suits against employers. Experts cite the existence of high litigation rates as an indication of an inefficient, unjust system. Some experts attribute the excess litigation to a misunderstanding of the system by those involved; the lack of objective guidelines to determine settlements; litigation of non-issues which are capable of being settled through administrative procedures; and a general lack of communication between the parties. According to Lewis, "excess litigation arises in systems in which the law is written or administered in such a way that people need to litigate in order to get their proper benefits or when the worker feels that benefits have unjustly been denied."

The problem of excess litigation is a serious one, not only because it results in higher administrative costs, but also because it results in smaller settlements for the injured worker. The delays in payment of benefits for long periods of time due to litigation also create a situation in which the injured worker may have no source of income for years. Instead of encouraging the worker to recover quickly and return to the workplace, the litigation process encourages, indeed requires, the continuing disability of the worker until the case is settled, according to Keefe. In the final analysis, everyone would benefit from prompt resolution of the case.

Occupational Disease Claims. During 1983-84, 15 states enacted legislation related to occupational disease.⁶ Claims based on occupational diseases are increasing and difficult to assess for a variety of reasons. As Worrall and Appel, editors of Workers' Compensation Benefits: Adequacy, Equity, and Efficiency, point out, "These claims are controverted because of a lack of knowledge of the etiology of disease and the role that work plays in the process, an inability to distinguish between fraudulent and legitimate claims, and the effects of lack of knowledge on the expected value of claims."⁵ Claims based on exposure to asbestos and black lung disease are just two examples of the increasingly important area of long latency illnesses. Specific issues of concern to legislatures include:

- Length of the statute of limitations on long latency diseases.
- Expanded coverage for such claims.
- Necessity to create special funds to handle claims arising years after initial exposure, and the solvency of such funds.
- Definition of compensable injury.
- Policy decisions related to the shift of the burden of liability from the employer to the special fund.

Vocational Rehabilitation Programs. Testimony provided during the hearings highlighted legislative concerns over whether or not vocational rehabilitation programs should be mandatory and what the objectives of the programs should be. A key point in the discussion centered on public policy objectives of the program. Should the objective of the program be to ensure the injured worker's return to work (employment), or should the objective of the program be to ensure that the worker is able to work (employable)?

Regardless of whether the program is mandatory or discretionary, experts agree that tight administrative controls are essential to its success. Several recommendations were made to strengthen the program. These include the following:

- Early identification of who will benefit and timely referral for appropriate treatment.
- The use of objective criteria in establishing who will benefit from rehabilitation (type of injury, age, education, etc.).
- Referral of injured workers to counselors who have established a creditable performance record (performance referral).
- Employer incentives to support rehabilitation efforts.
- Employer incentives to re-hire or find a new position for the worker and incentives for the employee to accept work.
- Prohibition of lump sum settlements.

The importance of early contact with the injured worker and close monitoring of the rehabilitation process is critical to successful implementation of the program. Without these elements of effective management, the program can be extremely costly and unproductive.

Elements of a Well-Administered System. While one state may have special needs that another state does not, there are certain mechanisms which will strengthen any system, including a clear statement of public policy objectives, enhanced program administration, return to work incentives, and program oversight.

Statement of Public Policy Objectives. Panelists recognized the need for reaffirmation of the idea that the system should be controlled by employers and employees working for their benefit. Too often, a system is excessively influenced by special interest groups to the detriment of both employer and employee. Reassertion of the proper priorities (employer, employee interest), as well as emphasis on medical and vocational rehabilitation and de-emphasis on the legal process, would encourage the creation of a fair and equitable system.

Enhanced Program Administration. There are three considerations in strengthening program administration: increased funding, increased authority and improved data processing.

Lewis contends that increased funding is necessary in order to hire sufficient personnel to assure that the system reacts promptly and efficiently in the management of claims. By spending money on personnel, states will see long-term savings through prompt settlement of claims, more effective rehabilitation programs, and less litigation.

Increased administrative authority could include the power to impose fines on employers for failure to make prompt payment of claims, institution of tighter control of entry into the litigation process, mandatory mediation in specified cases, and the establishment of objective guidelines for use in the analysis of a claim. Finally, an important goal of increased administrative authority would be stringent monitoring of where the money is going. If the bulk of expenditures is not used in payment of valid claims, then an assessment of the system is necessary.

The last consideration in enhanced program administration is an effective data processing system to ensure prompt payment of claims and to facilitate the collection and analysis of data on a regular basis so that the system's effectiveness can be closely monitored. Reliable statistical data can be the basis for developing objective standards to formulate disability schedules.

Twenty-seven states currently administer their workers' compensation programs with on-line computers. Automating the administration of the program benefits states by:

- Monitoring individual cases and providing for easily accessed information on current case status.
- Tracking the workload of the administrative agency.
- Monitoring the promptness of insurers' benefit payments to claimants, thus easing the difficulty states have in enforcing prompt benefit payments.
- Providing the agency commissioner or director with accurate information on how claims are being managed.

Return to Work Incentives. According to Minnesota Commissioner Keefe, studies conducted in Minnesota between 1979 and 1982 found that the longer an injured worker waits to receive insurance benefits, the longer it takes to get that worker well. A study recently completed by the Washington State Legislature concurs in this theory.

There is a decisive link between early intervention in a case by the insurer and medical and rehabilitation professionals, and a worker's prompt return to work. Workers' compensation and rehabilitation professionals confirm the negative effect that delayed or denied benefits have on the attitude of the injured worker. If a workers' compensation system is structured in a way that requires a worker to prove the existence of an injury over an extended period of time in order to be compensated, then the worker develops a mental attitude which discourages recovery once compensation is paid, according to Keefe. Keefe also points out that medical studies conducted in the area of athletic injuries show that the faster an individual returns to activity, even limited activity, the more rapid and complete the recovery.

Oversight of the Program. Due to the complexity of the workers' compensation system, experts recommend continued oversight to avoid serious problems. Thirty-nine states have addressed this issue by establishing at least one ongoing workers' compensation advisory committee or study commission. Members of these commissions are appointed by the governor, by the legislature, by an executive agency director, an industrial commission, or the state bar association, either exclusively or in combination.

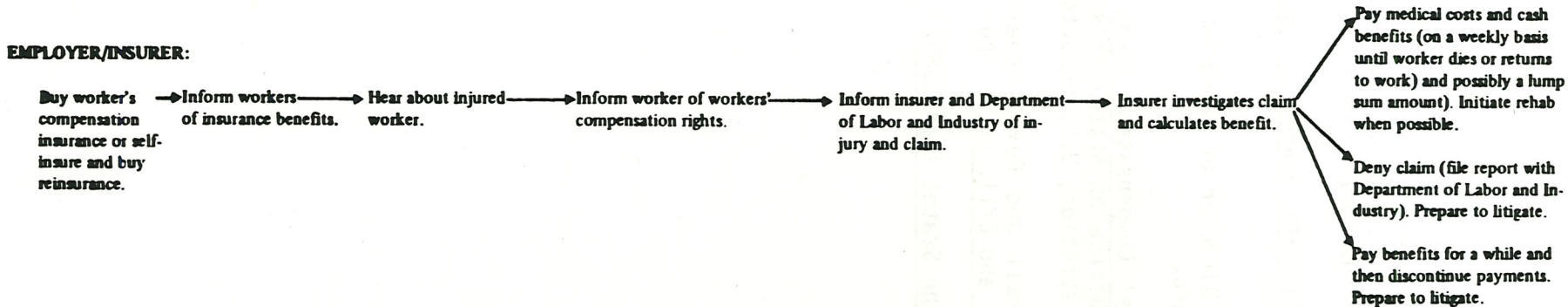
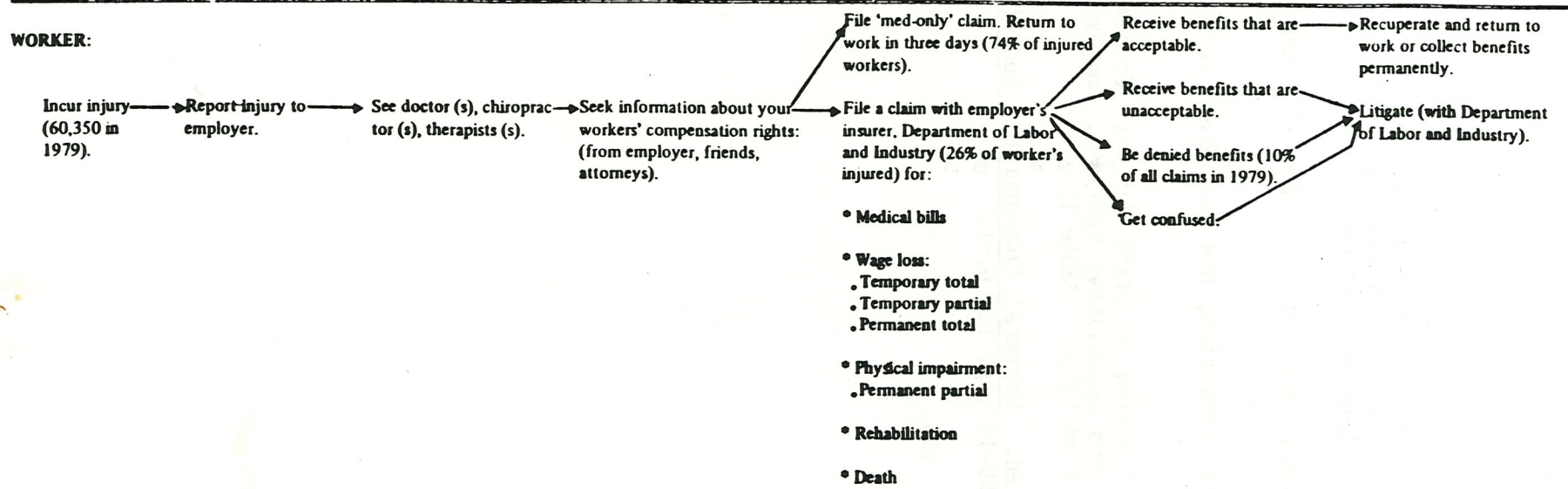
The existence of permanent advisory councils creates a body with expertise and experience and a long-range view of the system. Advisory councils are beneficial to the states in several ways. They make recommendations for both statutory and administrative changes. They gather representatives from major employer and employee groups to encourage a cooperative and non-adversarial relationship between groups. They provide a forum for an open exchange of opinions, concerns and priorities. And, finally, they allow representatives from employee and employer groups, the insurance industry, and medical and legal professions to compromise on controversial issues within an organized framework of representation.

CONCLUSION

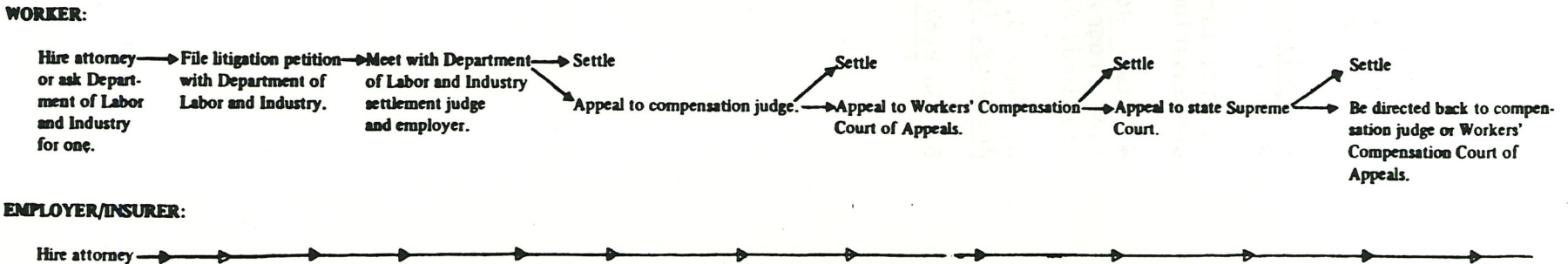
Workers' compensation programs exist in all 50 states. The cost of these programs continues to rise. In 1972, the total spent for workers' compensation programs was \$5.8 billion. In 1982, the cost was \$22.5 billion.⁵ With increasing expenditures and debate over issues such as coverage, benefits and rehabilitation services, state legislatures will be required to closely monitor their systems. This State Legislative Report provides information on several aspects of an immense subject. Additional information and a bibliography can be obtained by contacting Brenda Trolin, NCSL, workers' compensation staff person.

Appendix A

THE CLAIMS PROCESS FOR WORKERS AND EMPLOYERS



LITIGATION PROCESS



Source: Minnesota Workers' Compensation Study (1982) - Steve Keefe, Chairman

--State Legislative Report--8

REFERENCES

- 1) LaVerne C. Tinsley, State Standards Adviser, Division of State Workers' Compensation Programs, Office of State Liaison and Legislative Analysis, Employment Standards Administration, U.S. Department of Labor.
- 2) Analysis of Workers' Compensation Laws, 1985. U.S. Chamber of Commerce. p. vii.
- 3) Rita Israel, Director of Research and Statistics, New York State Workers' Compensation Board.
- 4) State Workers' Compensation Laws. Division of State Workers' Compensation Programs, Office of State Liaison and Legislative Analysis, Employment Standards Administration, U.S. Department of Labor. Table 15.
- 5) John D. Worrall and David Appel, ed. Workers' Compensation Benefits: Adequacy, Equity and Efficiency. pp. 150-151; p. 11; p. 1.
- 6) CSG Book of the States 1984-1985. p. 490.

APPENDIX B

New York State Workers' Compensation Program

The Claims Service Division is composed of a mail unit, index unit, coverage unit, new case unit, and a statistical unit. The Mail Unit sorts and classifies incoming mail and determines whether there are existing files on incoming claims. The Index Unit assures proper processing through identification of existing case numbers on incoming documents. New cases are referred to the Coverage Unit to determine which insurance carrier is responsible for the claim. The Coverage Unit also identifies the relevant data for input into the computer system. Statistical tabulations prepared by the Statistical Unit are issued on a monthly and biannual basis.

The important task of determining the validity of claims is handled by the Investigation Division. Investigation procedures can be as simple as telephone interviews or as detailed as casework involving interviews with policyholders, claimants, witnesses, co-workers, police or fire officials and doctors. The collection of relevant data may assure the proper disposition of a claim, resulting in avoidance of needless litigation and limiting liability.

The Medical Division conducts medical reviews of cases involving questions of the severity of a claimant's conditions or extent of disability or necessity and frequency of treatment for the claimant. These in-house physicians are assisted in special cases by a panel of outside consultants.

The Hearings Division is comprised of hearing representatives who represent the State Fund in hearings before the Workers' Compensation Board. Cases may involve a disagreement over the amount of compensation being paid, or a disagreement on a permanent damage claim. Hearings before the board resemble court proceedings, but do not necessarily mean winning or losing but rather establishing the fairness of the liability award.

APPENDIX C

Special Funds Currently in Use

This section is from Chapter 7, "Special Funds in Workers' Compensation", pages 121-122, Lloyd F. Larson and John F. Burton, Jr., of Workers' Compensation Benefits: Adequacy, Equity, and Efficiency, John D. Worrall and David Appel, Editors (ILR Press, New York State School of Industrial and Labor Relations, Cornell University, 1985). It is reprinted with their permission.

The principal types of special funds may be classified as follows:

1. Second- or subsequent-injury funds--to remove the perceived disincentive to the hiring or reemployment of handicapped workers (54 funds).
2. Benefit payment guarantee funds--to ensure that benefits due are actually paid even if the employer is not insured (21 funds), or if the insurer (44 funds) or self-insurer (11 funds) becomes insolvent.
3. Benefit adjustment funds for long-term beneficiaries--to keep compensation benefits at least partly updated in long-term disability and survivorship cases so as to minimize the erosion brought about by rising living costs (18 funds).
4. Rehabilitation funds--to help provide funding of rehabilitation services and thereby restore injured workers to productive and gainful employment (17 funds).
5. Funds for continuation of payments in long-term cases--to pay cash benefits (4 funds) or medical benefits (4 funds) in long-term disability or death cases while limiting the liability of the individual employer to a fixed, maximum amount.
6. Occupational disease funds--to provide compensation to workers disabled by chronic diseases resulting from the employment, especially in long-latency cases where the responsible employer is difficult or impossible to locate or identify (7 funds).

In addition to the above, which are found in a considerable number of states, the following miscellaneous funds have been established in only a few jurisdictions:

1. Reopened cases funds--to make it possible to reopen old cases without requiring the individual carrier or employer to defend against claims where proof may be difficult to secure.
2. State funds for public employees--to centralize financing of claims against state and local government employers.
3. Reimbursement funds--to reimburse employers for payments if it later develops that the claims were not valid.

4. Funds providing additional health benefits for children--to increase the amount of benefits made to dependent surviving children.
5. Independent medical examination funds--to pay for independent medical examination of claimants in certain contested cases.
6. Funds providing legal assistance to claimants--to provide information and assistance to claimants about the act and claims procedures.
7. Catastrophe funds--to provide for limitation of employer liability in cases where several employees of the same employer are killed or permanently and totally disabled in one accident.



OFFICE OF THE SECRETARY
401 S.W. Topeka Avenue, Topeka, Kansas 66603
913-296-7474

John Carlin, Governor

Larry E. Wolgast, Secretary

December 11, 1985

Att. #2
1-30-86

Mr. Julian Efird
Principal Analyst
The Legislative Research Department
Room 545-North, Statehouse
Topeka, Kansas 66612

Re: Fiscal Impact of
Senate Bill 365

Dear Mr. Efird:

This will acknowledge your letter dated November 19, 1985, concerning the captioned reference.

Indicated below is the revised fiscal impact if Senate Bill 365 is passed:

Reclassify current Rehabilitation Administrator from Range 24-2 to Range 28-2

New Positions:

Rehabilitation Section:

1. Rehabilitation Coordinators (2 positions), Range 24
2. Rehabilitation Service Representatives (2 positions), Range 19
3. Clerk V, Range 18
4. Clerk IV, Range 14

Administrative Section:

1. Account Clerk II, Range 13 (Accounting Unit)
2. Clerk III (2 positions), Range 10 (Mail and Research area)

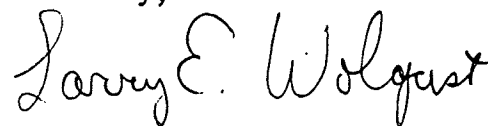
Expenses for Reclassification and New Positions:

Salaries and wages	\$185,171
Furniture, equipment and Supplies	23,464
Office space	9,900
Mileage and Subsistence	11,760
Phones, postage and duplicating	11,000
Computer usage	5,000
TOTAL FISCAL IMPACT	\$246,295

Mr. Julian Efird
December 11, 1985
Page 2

If we can be of further assistance, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Larry E. Wolgast". The signature is written in dark ink and is positioned above the typed name.

Larry E. Wolgast, Ed.D
Secretary of Human Resources

LEW:JBR:lre

DEPARTMENT OF HUMAN RESOURCES



OFFICE OF THE SECRETARY
401 Topeka Ave.
Topeka, Kansas 66603
(913) 296-7474

March 29, 1985

Mr. Alden K. Shields
Director of the Budget
Department of Administration
Division of the Budget
Room 152-East, State Capitol Building
Topeka, Kansas 66612

Re: Fiscal Note on Senate Bill
No. 365

Dear Mr. Shields:

Senate Bill No. 365 is a combination of Senate Bills 323 and 324 with some additions.

The first amendment contained in Senate Bill No. 365 is to K.S.A. 44-510d and changes the maximum healing period which is allowed in scheduled injury cases in that it increases the limit from 15 to 21. Also 44-510d is amended to provide that temporary total compensation weeks of vocational rehabilitation, on a scheduled injury, are not deducted in computing permanent disability.

K.S.A. 44-510e is amended to provide a new definition for permanent partial general disability.

K.S.A. 44-528 is amended to allow changing an award as of the date of the factual change of impairment or work disability rather than the date of the new award.

K.S.A. 44-531 is amended to provide that cases may not be closed by lump sum settlement unless the Rehabilitation Administrator concludes that the claim is not one in which the individual will be involved in vocational rehabilitation.

K.S.A. 44-534a is amended to provide that the Workers' Compensation Fund, which is administered by the Insurance Commissioner and was formerly known as the Second Injury Fund, shall be subject to preliminary hearing and shall pay such compensation weekly.

Mr. Alden K. Shields

March 29, 1985

Page 2

That section is further amended to provide that payments by the Workers' Compensation Fund following preliminary hearing shall be reimbursed by the employer if found to be the employer's responsibility.

Further amendment to K.S.A. 44-534a provides that the reimbursement by the Workers' Compensation Fund to an employer in a claim in which the payments made by the respondent exceed the amount provided in the award is amended to provide that voluntary payments, as well as payments pursuant to the preliminary award, shall be reimbursed by the Fund.

K.S.A. 44-567 is amended to provide that knowledge of a pre-existing condition will be imputed to the employer if knowledge of the pre-existing condition is in the hands of a physician who examined or treated the employee on behalf of the employer.

Further amendment to that section provides that, if an employer knows about a pre-existing condition, that knowledge will constitute a reservation in the mind, such to enable them to make claim against the Workers' Compensation Fund.

New section 7 establishes a different method of approaching vocational rehabilitation and compensating individuals for injuries depending on the type of vocational rehabilitation plan utilized.

New section 8 provides for the creation of a fund in the State Treasury from which the cost of workers' compensation vocational rehabilitation training and evaluation would be paid. The fund would be created by an assessment on insurance carriers, self-insureds and group-funded workers' compensation pools, not to exceed one-half of one percent of benefits paid in the preceding year.

The amendments to K.S.A. 44-531, new section 7 and new section 8, if adopted into law, would have fiscal impact on the Division of Workers' Compensation. (See Attachment.) K.S.A. 44-531 amendments would cause a need for additional personnel in our Rehabilitation Section in that the Vocational Rehabilitation Administrator will be reclassified to Range 30 and will be required to review each proposed lump sum settlement and determine whether that lump sum settlement could take place. There are some 3,200 to 3,500 lump sum settlement cases to which this would apply each year. Reviewing the files on those claims, in order to make such a determination, would occupy two rehabilitation coordinators at Range 25 and one Clerk V, Range 18, full-time. The Clerk V would also supervise the clerical persons in the Rehabilitation Section. The persons reviewing the files to determine whether a lump sum could be paid would need to be responsible persons with ability to learn the intricacies of entitlement to vocational rehabilitation and the Workers' Compensation Law.

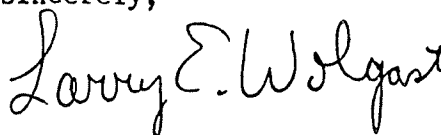
New section 7 would require a considerable amount of work of the same two rehabilitation coordinators which are referred to with respect to the amendments in K.S.A. 44-531. New section 7 creates a great deal of new work for this Division in that all injury cases would have to be screened and

Mr. Alden K. Shields
March 29, 1985
Page 3

several thousand additional cases per year would require detailed record-gathering, vocational evaluation and possibly training. The two rehabilitation coordinators mentioned in reference to K.S.A. 44-531 would have many job responsibilities within the requirements of new section 7. It would be necessary to have two rehabilitation service representatives at Range 19 and one Clerk IV, Range 14, to handle paperwork with respect to those new responsibilities. The number of new cases screened into vocational rehabilitation would cause a great deal of additional pleadings and correspondence which would necessitate adding two Clerk III positions for records research to receive the incoming mail and match that mail with existing files.

New section 8 would add clerical duties to the existing assessment program and handling payments to evaluation and training facilities and could be accomplished with the addition of one Account Clerk II, Range 13.

Sincerely,



Larry E. Wolgast, Ed.D.
Secretary of Human Resources

Attachment

ATTACHMENT

Reclassify

Rehabilitation Administrator, Range 25-3 to Range 30-A - 1

New Positions

Rehabilitation Coordinator, 2 positions, Range 25 - 2

Clerk V, Range 18 - 1

Rehabilitation Service Representative, 2 positions, Range 19 - 2

Clerk IV, Range 14 - 1

Account Clerk II, Range 13 - 1

Clerk III, 2 positions, Range 10 - 2

Total Expenses for reclassification and new positions:

\$184,246	Salaries and wages	9.0 new
21,115	Furniture, equipment, supplies	
6,600	Office space	
11,760	Mileage, subsistence	
11,000	Telephone, postage, duplicating	
5,000	Computer usage	
500	Moving expense	
<u>\$240,221</u>	Total fiscal impact	

Att. #3
1-30-86

SENATE BILL No. 365

By Committee on Ways and Means

3-22

0017 AN ACT concerning workers' compensation; relating to voca-
0018 tional rehabilitation; relating to the workers' compensation
0019 fund; concerning temporary total disability compensation and
0020 knowledge of impairment by employer; amending K.S.A. 44-
0021 510d, 44-510e, 44-528 and 44-531 and K.S.A. 1984 Supp.
0022 44-534a and 44-567 and repealing the existing sections; also
0023 repealing K.S.A. 44-510g.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. On and after October 1, 1985, K.S.A. 44-510d is
0026 hereby amended to read as follows: 44-510d. (a) Where disabil-
0027 ity, partial in character but permanent in quality, results from the
0028 injury, the injured employee shall be entitled to the compensa-
0029 tion provided in K.S.A. 44-510 and amendments thereto, but
0030 shall not be entitled to any other or further compensation for or
0031 during the first week following the injury unless such disability
0032 exists for three (3) consecutive weeks, in which event compen-
0033 sation shall be paid for the first week. Thereafter compensation
0034 shall be paid for temporary total loss of use and as provided in
0035 the following schedule, ~~sixty six and two thirds percent (66 2/3%)~~
0036 ~~66 2/3%~~ 66 2/3% of the average gross weekly wages to be computed as
0037 provided in K.S.A. 44-511 and amendments thereto, and the
0038 weekly compensation in no case to be more than the maximum as
0039 provided for in K.S.A. 44-510c and amendments thereto. If there
0040 is an award of permanent disability as a result of the injury there
0041 shall be a presumption that disability existed immediately after
0042 the injury and compensation is to be paid for not to exceed the
0043 number of weeks allowed in the following schedule:

- 0044 (1) For loss of a thumb, ~~sixty (60)~~ 60 weeks.
- 0045 (2) For the loss of a first finger, commonly called the index
0046 finger, ~~thirty seven (37)~~ 37 weeks.

- 0047 (3) For the loss of a second finger, ~~thirty (30)~~ 30 weeks.
- 0048 (4) For the loss of a third finger, ~~twenty (20)~~ 20 weeks.
- 0049 (5) For the loss of a fourth finger, commonly called the little
0050 finger, ~~fifteen (15)~~ 15 weeks.
- 0051 (6) Loss of the first phalange of the thumb or of any finger
0052 shall be considered to be equal to the loss of ~~one-half (1/2)~~ 1/2 of
0053 such thumb or finger, and the compensation shall be ~~one-half (1/2)~~
0054 1/2 of the amount specified above. The loss of the first phalange
0055 and any part of the second phalange of any finger, which in-
0056 cludes the loss of any part of the bone of such second phalange,
0057 shall be considered to be equal to the loss of ~~two-thirds (2/3)~~ 2/3 of
0058 such finger and the compensation shall be ~~two-thirds (2/3)~~ 2/3 of
0059 the amount specified above. The loss of the first phalange and
0060 any part of the second phalange of a thumb, which includes the
0061 loss of any part of the bone of such second phalange, shall be
0062 considered to be equal to the loss of the entire thumb. The loss of
0063 the first and second phalanges and any part of the third proximal
0064 phalange of any finger, shall be considered as the loss of the
0065 entire finger. Amputation through the joint shall be considered a
0066 loss to the next higher schedule.
- 0067 (7) For the loss of a great toe, ~~thirty (30)~~ 30 weeks.
- 0068 (8) For the loss of any toe other than the great toe, ~~ten (10)~~ 10
0069 weeks.
- 0070 (9) The loss of the first phalange of any toe shall be consid-
0071 ered to be equal to the loss of ~~one-half (1/2)~~ 1/2 of such toe and whe
0072 compensation shall be ~~one-half (1/2)~~ 1/2 of the amount above
0073 specified.
- 0074 (10) The loss of more than one phalange of a toe shall be
0075 considered to be equal to the loss of the entire toe.
- 0076 (11) For the loss of a hand, ~~one hundred fifty (150)~~ 150 weeks.
- 0077 (12) For the loss of a forearm, ~~two hundred (200)~~ 200 weeks.
- 0078 (13) For the loss of an arm, ~~two hundred ten (210)~~ 210 weeks.
- 0079 (14) For the loss of a foot, ~~one hundred twenty five (125)~~ 125
0080 weeks.
- 0081 (15) For the loss of a lower leg, ~~one hundred ninety (190)~~ 190
0082 weeks.
- 0083 (16) For the loss of a leg, ~~two hundred (200)~~ 200 weeks.

- 0084 (17) For the loss of an eye, or the complete loss of the sight
0085 thereof, ~~one hundred twenty (120)~~ 120 weeks.
- 0086 (18) Amputation or severance below the wrist shall be con-
0087 sidered as the loss of a hand. Amputation at the wrist and below
0088 the elbow shall be considered as the loss of the forearm. Ampu-
0089 tation at or above the elbow shall be considered loss of the arm.
0090 Amputation below the ankle shall be considered loss of the foot.
0091 Amputation at the ankle and below the knee shall be considered
0092 as loss of the lower leg. Amputation at or above the knee shall be
0093 considered as loss of the leg.
- 0094 (19) For the complete loss of hearing of both ears, ~~one hun-~~
0095 ~~dered ten (110)~~ 110 weeks.
- 0096 (20) For the complete loss of hearing of one ear, ~~thirty (30)~~ 30
0097 weeks.
- 0098 (21) Permanent loss of the use of a finger, thumb, hand, arm,
0099 forearm, toe, foot, leg or lower leg or the permanent loss of the
0100 sight of an eye or the hearing of an ear, shall be equivalent to the
0101 loss thereof. For the permanent partial loss of the use of a finger,
0102 thumb, hand, arm, toe, foot or leg, or the sight of an eye or the
0103 hearing of an ear, compensation shall be paid as provided for in
0104 K.S.A. 44-510c and amendments thereto, per week during that
0105 proportion of the number of weeks in the foregoing schedule
0106 provided for the loss of such finger, thumb, hand, arm, toe, foot or
0107 leg, or the sight of an eye or the hearing of an ear, which partial
0108 loss thereof bears to the total loss of a finger, thumb, hand, arm,
0109 toe, foot or leg, or the sight of an eye or the hearing of an ear; but
0110 in no event shall the compensation payable hereunder for such
0111 partial loss exceed the compensation payable under the schedule
0112 for the total loss of such finger, thumb, hand, arm, toe, foot or leg,
0113 or the sight of an eye or the hearing of an ear, exclusive of the
0114 healing period.
- 0115 (22) For traumatic hernia, compensation shall be limited to
0116 the compensation under K.S.A. 44-510 and amendments thereto,
0117 compensation for temporary total disability during such period of
0118 time as such employee is actually unable to work on account of
0119 such hernia, and, in the event such hernia is inoperable, weekly
0120 compensation during ~~twelve (12)~~ 12 weeks, except that, in the

0121 event that such hernia is operable, the unreasonable refusal of
0122 the employee to submit to an operation for surgical repair of such
0123 hernia shall deprive such employee of any benefits under the
0124 workmen's compensation act.

0125 (b) Whenever the employee is entitled to compensation for a
0126 specific injury under the foregoing schedule, the same shall be
0127 exclusive of all other compensation except the benefits provided
0128 in K.S.A. 44-510 and amendments thereto, and no additional
0129 compensation shall be allowable or payable for either temporary
0130 or permanent disability, except that: (1) *Weeks of temporary*
0131 *total disability compensation paid during vocational rehabili-*
0132 *tation evaluation or training shall not be deducted from the*
0133 *schedule of weeks for the injury, and (2) the director may, in*
0134 ~~proper cases,~~ allow additional compensation during the actual
0135 healing period, such period not to be more than ~~ten percent~~
0136 ~~(10%)~~ 10% of the total period allowed for the scheduled injury in
0137 question nor in any event for longer than ~~fifteen (15)~~ 21 weeks.
0138 The return of the employee to ~~his or her~~ such employee's usual
0139 occupation shall terminate the healing period.

Would allow additional time for vocational rehabilitation in scheduled injury cases.

The maximum number of weeks of healing period is increased to 21 weeks which is 10% of the largest schedule.

0140 Sec. 2. On and after October 1, 1985, K.S.A. 44-510e is
0141 hereby amended to read as follows: 44-510e. (a) Should the
0142 employer and the employee be unable to agree upon the amount
0143 of compensation to be paid in the case of injury not covered by
0144 the schedule in K.S.A. ~~510d, as amended, 44-510d and amend-~~
0145 ~~ments thereto~~ the amount of compensation shall be settled
0146 according to the provisions of the workmen's compensation act
0147 as in other cases of disagreement: ~~Provided, That.~~ In case of
0148 temporary or permanent partial general disability not covered by
0149 such schedule, the ~~workman~~ worker shall receive weekly com-
0150 pensation as determined in this subsection (a) during such
0151 period of temporary or permanent partial general disability not
0152 exceeding a maximum of ~~four hundred fifteen (415)~~ 415 weeks.
0153 Weekly compensation for temporary partial general disability
0154 shall be ~~sixty-six and two-thirds percent (66 2/3%)~~ 66 2/3% of the
0155 difference between the average gross weekly wage that the
0156 ~~workman~~ worker was earning prior to such injury as provided in
0157 the workmen's compensation act and the amount ~~he~~ such worker

0158 is actually earning after such injury in any type of employment,
 0159 such weekly compensation in no case to exceed the maximum as
 0160 provided for in K.S.A. 44-510c, ~~as amended and amendments~~
 0161 ~~thereto~~. Permanent partial general disability exists when the
 0162 ~~workman~~ worker is disabled in a manner which is partial in
 0163 character and permanent in quality and which is not covered by
 0164 the schedule in K.S.A. 44-510d, ~~as amended and amendments~~
 0165 ~~thereto~~. The extent of permanent partial general disability shall
 0166 be the extent, expressed as a percentage, to which the ability of
 0167 the workman to engage in work of the same type and character
 0168 that he was performing at the time of his injury, has been
 0169 ~~reduced~~. The extent of permanent partial general work disabili-
 0170 ty shall be the extent, expressed as a percentage, by which the
 0171 ability of a worker has been reduced from obtaining or per-
 0172 forming work of a type and character that the worker was
 0173 reasonably able to obtain or perform, considering the worker's
 0174 age, education, training, previous work experience and physical
 0175 abilities. Postinjury earnings are not determinative of such
 0176 percentages. The extent of permanent partial general work
 0177 disability shall in no event be less than the extent of permanent
 0178 partial impairment of function. The amount of weekly compen-
 0179 sation for permanent partial general disability, except for loss of
 0180 wage earning capacity provided by section 7, shall be deter-
 0181 mined: (1) By multiplying the average gross weekly wage of the
 0182 ~~workman~~ worker prior to such injury by the percentage of per-
 0183 manent partial general disability as determined under this sub-
 0184 section (a); and (2) by then multiplying the result so obtained by
 0185 ~~sixty-six and two-thirds percent (66 2/3%)~~ 66 2/3%. The amount of
 0186 weekly compensation for permanent partial general disability so
 0187 determined shall in no case exceed the maximum as provided for
 0188 in K.S.A. 44-510c, ~~as amended and amendments thereto~~. If there
 0189 is an award of permanent disability as a result of the compensa-
 0190 ble injury, there shall be a presumption that disability existed
 0191 immediately after such injury. In any case of permanent partial
 0192 disability under this section, the ~~workman~~ worker shall be paid
 0193 compensation for not to exceed ~~four hundred fifteen (415)~~ 415
 0194 weeks following the date of such injury, subject to review and

Changes definition of permanent partial disability. Key parts of changes are that it allows consideration of the inability to obtain as well as perform work that the worker was equipped to perform before being injured.

In determining the inability to obtain or perform factors such as age, education, training, etc., may be weighed.

Functional (anatomical) impairment is the lowest percentage to be used as the disability.

0195 modification as provided in K.S.A. 44-528, ~~as amended and~~
0196 ~~amendments thereto.~~

0197 (b) If a ~~workman~~ worker has received an injury for which
0198 compensation is being paid ~~him~~, and ~~his~~ such worker's death is
0199 caused by other and independent causes, any payment of com-
0200 pensation already due ~~him~~ such worker at the time of ~~his~~ death
0201 and then unpaid shall be paid to ~~his~~ such worker's dependents
0202 directly or to ~~his~~ such worker's legal representatives if ~~he~~ such
0203 worker left no dependent, but the liability of the employer for
0204 the payments of compensation not yet due at the time of the
0205 death of such ~~workman~~ worker shall cease and be abrogated by
0206 ~~his~~ such worker's death.

0207 (c) The total amount of compensation that may be allowed or
0208 awarded an injured ~~workman~~ worker for all injuries received in
0209 any one accident shall in no event exceed the compensation
0210 which would be payable under the workmen's compensation act
0211 for permanent total disability resulting from such accident.

0212 (d) Where a minor or ~~his~~ such minor's dependents are en-
0213 titled to compensation under the workmen's compensation act,
0214 such compensation shall be exclusive of all other remedies or
0215 causes of action for such injury or death, and no claim or cause of
0216 action against ~~said~~ such employer shall inure or accrue to or exist
0217 in favor of the parent or parents of such minor employee on
0218 account of any damage resulting to such parent or parents on
0219 account of the loss of earnings or loss of service of such minor
0220 employee.

0221 (e) In any case of injury to or death of a female employee,
0222 where the ~~said~~ female employee or her dependents are entitled
0223 to compensation under the workmen's compensation act, such
0224 compensation shall be exclusive of all other remedies or causes
0225 of action for such injury or death, and no claim or action shall
0226 inure, accrue to or exist in favor of the surviving husband or any
0227 relative or next of kin of such female employee against such
0228 employer on account of any damage resulting to such surviving
0229 husband or any relative or next of kin on account of the loss of
0230 earnings, services, or society of such female employee or on any
0231 other account resulting from or growing out of the injury or death

0232 of such female employee.

0233 Sec. 3. On and after October 1, 1985, K.S.A. 44-528 is hereby
 0234 amended to read as follows: 44-528. (a) Any award or modifica-
 0235 tion thereof agreed upon by the parties, except lump-sum settle-
 0236 ments approved by the director or administrative law judge,
 0237 whether the award provides for compensation into the future or
 0238 whether it does not, may be reviewed by the director for good
 0239 cause shown upon the application of the employee, employer,
 0240 dependent, insurance carrier or any other interested party. In
 0241 connection with such review the director may appoint one (1) or
 0242 two (2) physicians to examine the employee and report to the
 0243 director. The director shall hear all competent evidence offered
 0244 and if the director finds that the award has been obtained by
 0245 ~~fraud or undue influence, that the award was made without~~
 0246 ~~authority or as a result of serious misconduct, that the award is~~
 0247 ~~excessive or inadequate or that the incapacity or disability im-~~
 0248 ~~pairment or work disability~~ of the employee has increased or
 0249 diminished, the director may modify such award, or reinstate a
 0250 prior award, upon such terms as may be just, by increasing or
 0251 diminishing the compensation subject to the limitations pro-
 0252 vided in the workmen's compensation act.

Clarifies that existing award may be modified if the impairment or disability changes.

0253 (b) If the director shall find ~~that the employee has returned to~~
 0254 ~~work for the same employer in whose employ the employee was~~
 0255 ~~injured or for another employer and is capable of earning the~~
 0256 ~~same or higher wages than the employee did at the time of the~~
 0257 ~~accident, or is capable of gaining an income from any trade or~~
 0258 ~~employment which is equal to or greater than the wages the~~
 0259 ~~employee was earning at the time of the accident, or shall find~~
 0260 that the employee has absented and continues to absent so that a
 0261 reasonable examination cannot be made of the employee by a
 0262 physician selected by the employer, or has departed beyond the
 0263 boundaries of the United States, the director may cancel *or*
 0264 *suspend payments under* the award and end the compensation.
 0265 (c) The number of reviews under this section shall be limited
 0266 pursuant to rules and regulations adopted by the director to
 0267 avoid abuse.

Provision conflicts with new language.

0268 (d) *An award modified under this section shall be modified*

0269 *as of the date that the change actually occurred. Any increase in*
 0270 *weekly payment shall be paid to the employee by the employer*
 0271 *in an amount which would equal the difference between the*
 0272 *new rate and the rate actually paid to the date the award is*
 0273 *made. Payments under the modified award shall then be made*
 0274 *at the new rate; if the award is reduced the reduction shall*
 0275 *revert back to the date the change actually occurred and any*
 0276 *payments made that exceed the amount allowed on the modified*
 0277 *award shall be reimbursed to the employer by the workers'*
 0278 *compensation fund.*

Allows the effective date of a modified award to reflect the date the facts changed.

0279 Sec. 4. On and after October 1, 1985, K.S.A. 44-531 is hereby
 0280 amended to read as follows: 44-531. (a) Where all parties agree to
 0281 the payment of all or any part of compensation due under the
 0282 workmen's compensation act or under any award or judgment,
 0283 and where it has been determined at a hearing before the
 0284 director or an assistant director that it is for the best interest of
 0285 the injured employee or the dependents of a deceased em-
 0286 ployee, or that it will avoid undue expense, litigation or hardship
 0287 to any party or parties, the director may permit the employer to
 0288 redeem all or any part of ~~his~~ *such employer's* liability under the
 0289 workmen's compensation act by the payment of compensation in
 0290 a lump sum. The employer shall be entitled to an ~~eight percent~~
 0291 ~~(8%)~~ 8% discount on the amount of any such lump-sum payment,
 0292 exclusive of any compensation due as of the date of such lump-
 0293 sum payment. Upon paying such lump sum the employer shall
 0294 be released and discharged of and from all liability under the
 0295 workmen's compensation act for that portion of the employer's
 0296 liability redeemed under this section.

0297 (b) No lump-sum awards shall be rendered under the work-
 0298 men's compensation act except as provided in subsection (a) of
 0299 this section, in cases of remarriage of a surviving spouse as
 0300 provided in K.S.A. 44-510b, ~~as amended and amendments~~
 0301 ~~thereto~~, in cases involving compensation due the ~~workman~~
 0302 ~~worker~~ at the time the award is rendered as provided in K.S.A.
 0303 ~~44-525, as amended, and amendments thereto~~ and in cases of
 0304 past due compensation as provided in K.S.A. 44-529 ~~and~~
 0305 ~~amendments thereto.~~

0306 (c) No lump-sum awards shall be rendered with respect to
 0307 accidents occurring after October 1, 1985, unless:

0308 (1) It has been determined by the rehabilitation administra-
 0309 tor that the employee is not in need of vocational rehabilitation;

0310 (2) the employee has completed a rehabilitation program
 0311 approved by the rehabilitation administrator; or

0312 (3) the employee has elected not to take part in a rehabilita-
 0313 tion program.

0314 Sec. 5. On and after October 1, 1985, K.S.A. 1984 Supp.
 0315 44-534a is hereby amended to read as follows: 44-534a. (a) After
 0316 filing an application for a hearing pursuant to K.S.A. 44-534 or
 0317 44-528 and amendments thereto, the employee may make appli-
 0318 cation for a preliminary hearing, in such form as the director may
 0319 require by rules and regulations, on the issues of: (1) The
 0320 furnishing of medical treatment and; (2) the payment of tempo-
 0321 rary total disability compensation; (3) the payment of temporary
 0322 total compensation during vocational rehabilitation evaluation
 0323 or training; or (4) the advisability of the vocational rehabilita-
 0324 tion plan as approved by the rehabilitation administrator. At

0325 least seven days prior to filing an application for a preliminary
 0326 hearing, the employee shall notify the employer of the em-
 0327 ployee's intent to file such an application and shall confirm such
 0328 notice by letter. Upon receipt of an application for such a pre-
 0329 liminary hearing, the director shall give seven days' written
 0330 notice by mail to the employer of the date set for such hearing.
 0331 Such preliminary hearing shall be summary in nature and shall
 0332 be held by the director or an administrative law judge in any
 0333 county designated by the director or administrative law judge,
 0334 and the director or administrative law judge shall exercise such
 0335 powers as are provided for the conduct of full hearings on claims
 0336 under the workmen's compensation act. Upon a preliminary
 0337 finding that the injury to the employee is compensable and in
 0338 accordance with the facts presented at such preliminary hearing,
 0339 the director or administrative law judge may make a preliminary
 0340 award of medical and temporary total disability compensation
 0341 against the respondent or, in proper cases, the workers' com-
 0342 pensation fund to be in effect pending the conclusion of a full

Prohibits lump sum settlements unless one of the conditions is met.

Enlarges the subjects that may be dealt with in preliminary hearing.

Allows preliminary awards against the Workers' Compensation Fund.

0343 hearing on the claim. *Temporary total compensation so ordered*
 0344 *under this section shall be paid on a weekly basis. If such*
 0345 *payments are made by the workers' compensation fund and*
 0346 *later determined to be the responsibility of the respondent, the*
 0347 *workers' compensation fund shall be reimbursed by the respon-*
 0348 *dent.* The decision in such preliminary hearing shall be ren-
 0349 dered within five days of the conclusion of such hearing. No such
 0350 preliminary findings or preliminary awards shall be appealable
 0351 by any party to the proceedings, and the same shall not be
 0352 binding in a full hearing on the claim, but shall be subject to a
 0353 full presentation of the facts.

Specifies that compensation shall be paid weekly and allows the Workers' Compensation Fund to be reimbursed by an employer if compensation is found to be the responsibility of the employer.

0354 (b) If compensation in the form of medical benefits or tem-
 0355 porary total disability benefits has been paid by the employer or
 0356 the employer's insurance carrier *either voluntarily or pursuant*
 0357 *to a preliminary award entered under this section and the*
 0358 ~~amount of compensation so awarded is reduced or to which the~~
 0359 *employee is entitled is found upon full hearing of the claim to be*
 0360 *less than the compensation paid or if compensation is totally*
 0361 *disallowed upon a full hearing on the claim, the employer and*
 0362 *the employer's insurance carrier shall be reimbursed from the*
 0363 *workers' compensation fund established in K.S.A. 44-566a and*
 0364 *amendments thereto, for all amounts of compensation so paid*
 0365 *which are in excess of the amount of compensation that the*
 0366 *employee is entitled to as determined in the full hearing on the*
 0367 *claim. The director shall determine the amount of compensation*
 0368 *paid by the employer or insurance carrier which is to be reim-*
 0369 *bursed under this subsection, and the director shall certify to the*
 0370 *commissioner of insurance the amount so determined. Upon*
 0371 *receipt of such certification, the commissioner of insurance shall*
 0372 *cause payment to be made to the employer or the employer's*
 0373 *insurance carrier in accordance therewith.*

Makes voluntary as well as preliminary awarded compensation reimbursable by the Workers' Compensation Fund to the employer.

0374 Sec. 6. On and after October 1, 1985, K.S.A. 1984 Supp.
 0375 44-567 is hereby amended to read as follows: 44-567. (a) An
 0376 employer (1) who operates within the provisions of the work-
 0377 men's compensation act (2) who knowingly employs or retains a
 0378 handicapped employee, as defined in K.S.A. 44-566 and amend-
 0379 ments thereto, shall be relieved of liability for compensation

0380 awarded or be entitled to an apportionment of the costs thereof
0381 as follows:

0382 (A) Whenever a handicapped employee is injured or is dis-
0383 abled or dies as a result of an injury and the director awards
0384 compensation therefor and finds that the injury, disability or the
0385 death resulting therefrom probably or most likely would not
0386 have occurred but for the preexisting physical or mental impair-
0387 ment of the handicapped employee, all compensation and ben-
0388 efits payable because of the injury, disability or death shall be
0389 paid from the workers' compensation fund.

0390 (B) Subject to the provisions of the workmen's compensation
0391 act, whenever a handicapped employee is injured or is disabled
0392 or dies as a result of an injury and the director finds that the
0393 injury probably or most likely would have been sustained or
0394 suffered without regard to the employee's preexisting physical or
0395 mental impairment but the resulting disability or death was
0396 contributed to by the preexisting impairment, the director shall
0397 determine in a manner which is equitable and reasonable ~~and~~
0398 ~~based upon medical evidence~~ the amount of disability and pro-
0399 portion of the cost of award which is attributable to the em-
0400 ployee's preexisting physical or mental impairment, and the
0401 amount so found shall be paid from the workers' compensation
0402 fund.

Removes requirement that medical evidence be the basis for finding that part of the compensation is the responsibility of the Workers' Compensation Fund.

0403 (b) In order to be relieved of liability under this section, the
0404 employer must prove either that the employer had knowledge of
0405 the preexisting impairment at the time the employer employed
0406 the handicapped employee or that the employer retained the
0407 handicapped employee in employment after acquiring such
0408 knowledge. The employer's knowledge of the preexisting im-
0409 pairment may be established by any evidence sufficient to
0410 maintain the employer's burden of proof with regard thereto.
0411 *The employer's knowledge of the preexisting impairment shall*
0412 *constitute a reservation in the mind of the employer as to*
0413 *whether to hire or retain the employee. Knowledge of an im-*
0414 *pairment by a physician who examined or treated the employee*
0415 *on behalf of the employer shall be imputed to the employer. If*
0416 the employer, prior to the occurrence of a subsequent injury to a

Reservation as to hiring a handicapped is presumed if the employer knows of a pre-existing condition.
If a doctor who examined or treated an employee for an employer knows of a condition, the employer then is presumed to have that knowledge.

0417 handicapped employee, files with the director a notice of the
0418 employment or retention of such employee, together with a
0419 description of the handicap claimed, such notice and description
0420 of handicap shall create a presumption that the employer had
0421 knowledge of the preexisting impairment.

0422 (c) Knowledge of the employee's preexisting impairment or
0423 handicap at the time the employer employs or retains the em-
0424 ployee in employment shall be presumed conclusively if the
0425 employee, in connection with an application for employment or
0426 an employment medical examination or otherwise in connection
0427 with obtaining or retaining employment with the employer,
0428 knowingly: (1) Misrepresents that such employee does not have
0429 such an impairment or handicap; (2) misrepresents that such
0430 employee has not had any previous accidents; (3) misrepresents
0431 that such employee has not previously been disabled or com-
0432 pensated in damages or otherwise because of any prior accident,
0433 injury or disease; (4) misrepresents that such employee has not
0434 had any employment terminated or suspended because of any
0435 prior accident, injury or disease; (5) misrepresents that such
0436 employee does not have any mental, emotional or physical
0437 impairment, disability, condition, disease or infirmity; or (6)
0438 misrepresents or conceals any facts or information which are
0439 reasonably related to the employee's claim for compensation.

0440 (d) An employer shall not be relieved of liability for com-
0441 pensation awarded nor shall an employer be entitled to an
0442 apportionment of the costs thereof as provided in this section,
0443 unless the employer shall cause the commissioner of insurance,
0444 in the capacity of administrator of the workers' compensation
0445 fund, to be impleaded, as provided in K.S.A. 44-566a and
0446 amendments thereto, in any proceedings to determine the com-
0447 pensation to be awarded a handicapped employee who is injured
0448 or disabled or has died, by giving written notice of the em-
0449 ployee's claim to the commissioner of insurance prior to the first
0450 full hearing where any evidence is presented on the claim.

0451 (e) Amendments to this section shall apply only to cases
0452 where a handicapped employee, or the employee's dependents,
0453 claims compensation as a result of an injury occurring after the

0454 effective date of such amendments.

0455 (f) The total amount of compensation due the employee shall
0456 be the amount for disability computed as provided in *section 7*
0457 *and* K.S.A. 44-503a, 44-510 to ~~44-510g~~ 44-510f, inclusive, and
0458 44-511, and amendments thereto, and in no case shall the pay-
0459 ments be less nor more than the amounts provided in K.S.A.
0460 44-510c and amendments thereto.

0461 New Sec. 7. (a) A primary purpose of the workmen's com-
0462 pensation act shall be to restore the injured employee to compa-
0463 rable gainful employment.

0464 (b) As used in the workmen's compensation act:

0465 (1) "Comparable gainful employment" means employment
0466 which is reasonably attainable, which the employee can reason-
0467 ably perform, and which returns the employee as close as is
0468 feasible to preinjury economic status.

0469 (2) "Vocational education" means a regimen of formal in-
0470 struction in a classroom setting with an established curriculum
0471 designed to enable a successful pupil to acquire a new market-
0472 able skill in comparable gainful employment.

0473 (3) "On-the-job training" means a regimen of formal and
0474 informal instruction in a workplace setting designed to enable a
0475 successful pupil to acquire a new marketable skill in comparable
0476 gainful employment.

0477 (4) "Job placement" means placing a person in comparable
0478 gainful employment which is expected to be a permanent place-
0479 ment in a permanent job but which does not necessarily enable
0480 the person to acquire a new marketable skill.

0481 (c) The director shall appoint a specialist in vocational reha-
0482 bilitation who shall be referred to as the rehabilitation adminis-
0483 trator. The rehabilitation administrator shall be in the classified
0484 service, and if the administrator has served in this capacity for a
0485 period of one year prior to the passage of this act, the adminis-
0486 trator shall be considered permanent in the classified service.

0487 (d) The rehabilitation administrator shall study the problems
0488 of vocational rehabilitation education, on-the-job training and
0489 job placement; investigate and maintain a directory of all reha-
0490 bilitation facilities, public or private; and be fully knowledge-

New Rehabilitation Section.
Section 7 and Section 8.

From Line 465 through Line 480 defines new terms used in
Act.

0491 able regarding the eligibility requirements of all state, federal
0492 and other public vocational rehabilitation facilities and the ben-
0493 efits offered by each.

0494 The rehabilitation administrator shall have the duties of
0495 directing and approving vocational rehabilitation of employees
0496 in accordance with this act.

0497 (e) An employee who has suffered an injury or occupational
0498 disease which prevents the employee from returning to compa-
0499 rable gainful employment which the employee was performing
0500 at the time of the injury or occupational disease shall be referred
0501 to the rehabilitation administrator. Such employee shall be en-
0502 titled to prompt vocational rehabilitation services as may be
0503 reasonably necessary to restore the employee to comparable
0504 gainful employment.

Sets standards for determining who is entitled to vocational rehabilitation from unable to perform substantial gainful employment which is comparable to that he was performing.

0505 (f) On the rehabilitation administrator's own instance or upon
0506 application of the employee or employer, the rehabilitation ad-
0507 ministrator may refer the employee to a facility for evaluation
0508 and for a report of the practicability of, need for, and kind of
0509 service, training or rehabilitation which is or may be necessary
0510 and appropriate to render such employee fit for comparable
0511 gainful employment. Referral by the rehabilitation administrator
0512 shall be to the Kansas division of rehabilitation programs if such
0513 services are available within 60 days, otherwise such referral
0514 may be to private evaluation facilities. If the evaluation is done
0515 through a private facility, the cost, if any, of such evaluation and
0516 report shall be paid from the workers' compensation rehabilita-
0517 tion fund. If the employer chooses to refer the employee to a
0518 private evaluation facility, such referral must be approved by the
0519 rehabilitation administrator.

Rehabilitation Administrator may make the referral for evaluation without a hearing, pay for the referral or the employer may with the approval of the Rehabilitation Administrator.

0520 (g) Upon completion of evaluation, the rehabilitation coun-
0521 selor assigned to the case shall submit a rehabilitation plan to the
0522 rehabilitation administrator and the parties. The rehabilitation
0523 administrator shall approve or disapprove the plan within 30
0524 days. If disapproved, the rehabilitation administrator shall give
0525 reasons for such disapproval and may make suggestions for
0526 modification of the plan. The report, together with the rehabili-
0527 tation administrator's recommendation, shall be provided to the

Recommended rehabilitation plan must be submitted to and approved by the Rehabilitation Administrator. If job placement is the plan, the placement must be comparable employment in permanent work.

0528 parties. A plan recommending job placement shall be disap-
0529 proved unless the employee is maintained in comparable gainful
0530 employment.

0531 If a party does not agree with the approval or disapproval of the
0532 plan by the rehabilitation administrator, such party may apply to
0533 the director for hearing on the plan within 20 days of the date
0534 such approval or disapproval was sent to the parties.

Any party may have a hearing on whether the plan is appropriate.

0535 (h) After affording the parties an opportunity to be heard and
0536 present evidence, the director may (1) approve the vocational
0537 rehabilitation plan; (2) refer the claim back to the rehabilitation
0538 administrator for further recommendation; (3) order a different
0539 plan; or (4) disallow vocational rehabilitation.

0540 (i) Where vocational education or training is recommended
0541 in the report, or is deemed necessary by the director to restore
0542 the employee to comparable gainful employment, the director
0543 may direct the employee to an appropriate private or public
0544 training facility. If there is a cost for services, the cost will be
0545 paid from the workers' compensation rehabilitation fund.

The cost of training, travel and lodging is paid by the Division of Workers' Compensation.

0546 (j) Where vocational evaluation, education or training re-
0547 quires that the employee reside at or near a facility or institution
0548 away from the employee's customary residence, either in or out
0549 of the state of Kansas, the reasonable costs of the employee's
0550 board, lodging and travel shall be paid from the workers' com-
0551 pensation rehabilitation fund pursuant to guidelines adopted by
0552 the rehabilitation administrator.

0553 (k) The employer shall pay temporary total disability com-
0554 pensation during the period of vocational evaluation, and con-
0555 tinuing until the employee completes the plan as approved by
0556 the rehabilitation administrator.

Temporary total compensation is paid by employer during evaluation and through the completion of the plan.

0557 If the approved plan undertakes on-the-job training, compen-
0558 sation shall be paid, if for general bodily injury, at the greater of
0559 permanent partial impairment of function or 80% of the differ-
0560 ence between preinjury wage and postinjury wage earning ca-
0561 pability.

Permanent partial compensation is set at 80% of wage earning capacity difference or functional impairment percentage for on-the-job training and vocational education.

0562 If the approved plan undertakes vocational education, tempo-
0563 rary total compensation shall be paid until the completion of the
0564 education. Thereafter, compensation shall be paid, if for general

Permanent partial compensation is set at 80% of wage earning capacity difference or functional impairment percentage for on-the-job training and vocational education.

0565 bodily injury, at the greater of permanent partial impairment of
0566 function or 80% of the difference between preinjury wage and
0567 postinjury wage earning capability.

0568 If a worker is maintained in job placement in comparable
0569 gainful employment, then compensation shall be paid only for
0570 permanent partial impairment of function.

Permanent partial compensation is set at functional impairment for job placement.

0571 If an injured employee is determined to be physically or
0572 mentally incapable of rehabilitation, compensation, following
0573 temporary total disability compensation, if for general bodily
0574 injury, shall be on the basis of permanent partial general work
0575 disability, but not less than permanent partial impairment of
0576 function.

If vocational rehabilitation not practical, then permanent partial work disability under 44-510e.

0577 Compensation for scheduled injuries, following rehabilitation,
0578 shall be as provided by K.S.A. 44-510d and amendments thereto.

Permanent partial for scheduled injuries still under 44-510d.

0579 A completed rehabilitation plan shall remain open for review
0580 and further recommendation for a period of six months. There-
0581 after, a party may apply for further modification of the plan on the
0582 ground that the employee is unable to perform the work estab-
0583 lished by the plan because of disability due to the accident.

Plan remains actively reviewed for 6 months, then on application.

0584 If the injured employee refuses to complete the evaluation
0585 process, refuses to undertake the rehabilitation plan determined
0586 to be suitable or fails to complete the rehabilitation plan deter-
0587 mined to be suitable, and the refusal or failure is not due to the
0588 employee's physical or mental inability to do so, the employee
0589 shall be considered as having elected to not participate in the
0590 rehabilitation process and compensation shall be paid for dis-
0591 ability equal to the percent of impairment of function suffered as
0592 a result of the accident.

Worker who does not cooperate with rehabilitation program is paid functional impairment.

0593 Compensation provided pursuant to this section or otherwise
0594 shall be subject to the provisions of K.S.A. 44-510f and amend-
0595 ments thereto.

Maximum dollar amounts still controlled by 44-510f.

0596 (l) The provisions of this section shall be effective on and
0597 after October 1, 1985.

0598 New Sec. 8. (a) There is hereby created in the state treasury
0599 the workers' compensation rehabilitation fund. The expense of
0600 workers' compensation vocational rehabilitation evaluation,
0601 testing and training pursuant to section 7 shall be paid from such

Creates the Workers' Compensation Rehabilitation Fund which pays costs of evaluation and training.

0602 fund. The director of workers' compensation shall be responsible
0603 for administering the workers' compensation rehabilitation fund,
0604 and all payments from the workers' compensation rehabilitation
0605 fund shall be upon warrants of the director of accounts and
0606 reports issued pursuant to vouchers approved by the director of
0607 workers' compensation or a person or persons designated by the
0608 director.

0609 The director of workers' compensation shall estimate as soon
0610 as practicable after January 1 of each year the expenses necessary
0611 for workers' compensation vocational rehabilitation testing and
0612 training pursuant to section 7 for the fiscal year beginning on
0613 July 1 thereafter.

0614 (b) On or before May 15 of each year, the director of workers'
0615 compensation shall impose an assessment against all insurance
0616 carriers, self-insurers and group-funded workers' compensation
0617 pools insuring the payment of compensation under the work-
0618 men's compensation act, the proceeds of which shall be credited
0619 to the workers' compensation rehabilitation fund. The total
0620 amount of each such assessment shall be equal to an amount
0621 sufficient, in the opinion of the director of workers' compensa-
0622 tion, to pay all amounts which may be required to be paid from
0623 such fund during the current fiscal year, less the balance re-
0624 maining in the fund from prior fiscal years. The total amount of
0625 each such assessment shall be apportioned among those upon
0626 whom it is imposed, such that each is assessed an amount that
0627 bears the same relation to such total assessment as the amount of
0628 money paid or payable in workers' compensation claims by such
0629 insurance carrier, self-insurer or group-funded workers' com-
0630 pensation pool in the immediately preceding calendar year bears
0631 to all such claims paid or payable during such calendar year. The
0632 maximum amount which shall be collected from any carrier,
0633 self-insurer or group-funded workers' compensation pool shall
0634 be $\frac{1}{2}$ of 1% of the workers' compensation benefits paid or
0635 payable by such carrier, self-insurer or group-funded workers'
0636 compensation pool. Not later than May 15 of each year, the
0637 director of workers' compensation shall notify all such insurance
0638 carriers, self-insurers and group-funded workers' compensation

Establishes method of funding the Workers' Compensation
Rehabilitation Fund.

0639 pools of the amount of each assessment imposed under this
0640 subsection on such carrier, self-insurer or group-funded workers'
0641 compensation pool, and the same shall be due and payable on
0642 the July 1 following.

0643 (c) The director of workers' compensation shall remit all
0644 moneys received by or for such director under this subsection to
0645 the state treasurer. Upon receipt of any such remittance the state
0646 treasurer shall deposit the entire amount thereof in the state
0647 treasury to the credit of the workers' compensation rehabilitation
0648 fund.

0649 Sec. 9. On and after October 1, 1985, K.S.A. 44-510d, 44-
0650 510e, 44-510g, 44-528 and 44-531 and K.S.A. 1984 Supp. 44-534a
0651 and 44-567 are hereby repealed.

0652 Sec. 10. This act shall take effect and be in force from and
0653 after its publication in the Kansas register.