

Approved Arthur Douville 4-22-86
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:00 a.m. on March 25, 1986n room 526-S of the Capitol.

All members were present except:

Representative Acheson, excused.

Committee staff present:

All present.

Conferees appearing before the committee:

Representative Jim Lowther
Mr. Merlin G. Wheeler, Emporia Chamber of Commerce
Mr. Bill Barnes, Plant Manager of Modine Manufacturing Co.'s Emporia plant.
Mr. Robert Lincoln, Personnel Manager, Dolly Madison Cake Company, Emporia
Ms. Joan B. Watson, Commissioner, Rehab. Services, SRS
Mr. Jim Shetlar, Kansas Trial Lawyers Assoc.

Regarding H.B. 3108, the following persons testified as proponents of the bill and submitted written testimony to the committee: Representative Jim Lowther (see attachment #1), Mr. Merlin G. Wheeler (see attachment #2), Mr. Bill Barnes (see attachment #3), Mr. Robert Lincoln (see attachment #4). Ms. Joan B. Watson spoke as an opponent of the bill (see attachment #5). Mr. Jim Shetlar also spoke as an opponent of the bill. He said that he feels the bill is unconstitutional and discriminatory toward women and that H.B. 3108 will hamper efforts to keep up safety standards. Mr. Shetlar explained to the committee the difference between a work disability and a functional disability. He also talked about temporary total disability and the strain it puts on families that already live from paycheck to paycheck.

A short question and answer period followed. Representative Sifers asked Mr. Lincoln at what speed they run their wrappers at. Rep. Sifers then asked how many they run in a minute. Mr. Lincoln said that as personnel manager he had no knowledge of that. Rep. Sifers requested Mr. Lincoln to find out the answer to his question and to let him know.

The meeting was adjourned at 9:50 a.m.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date 3-25-86

Name	City	Representing
George F. Pullen	Topeka	KS AFL-CIO
Ralph McGee	Topeka	ICU
Mark R. Smith	Topeka	Am. Ins. Assn.
Jan Watson	Topeka	Rehab. Serv. / SRS
Dale Stinson	Emporia	Chamber of Commerce
Merlin G. Wheeler	Emporia	Chamber of Commerce
Robert Lincoln	Emporia	Dolly Madison Park
Rev. Jim Lovell	14 DISTRICT	
Bill BARNES	EMPORIA	MODINE
Jim Schwartz	Topeka	ks. Employer Coalition on Health
JOHN RATHMEL	"	KDHR / WC
Jim SHETLAR	Overland Park	KTLA
Kathleen Selselms	Topeka	KTLA
Bob Schubert	Topeka	KTLA
Wayne Maucher	Top	KS AFL-CIO

HB 3108

LABOR AND INDUSTRY

MARCH 25, 1986

TESTIMONY BY REP. JIM LOWTHER

I want to refresh your memory on how HB 3108 has come before you today. The Legislature and Legislative Committees often provide the forum in which issues can be addressed and solutions explored by parties on all sides of an issue.

When I noticed that Chairman Douville was to carry a bill in the House recently concerning Worker's Compensation, I thought it would be an opportunity to focus the Legislature's attention on a growing problem in Kansas by offering an amendment. This amendment is embodied in Section 1 of HB 3108 and would stipulate that repetitive use conditions occurring in opposite extremities would be compensated on the basis of scheduled injuries to each extremity. While no one asked me to offer this amendment, as a result, I was able to get the Ways and Means Committee to introduce the legislation subsequently referred here to your committee.

The objective I want to pursue is to, through compromise, effectively alter the administration of the Kansas Worker's Compensation Act, to bring Kansas nearer in line with what is the practice in other states. It is not my intention to seek changes that unduly restrict benefits or limit recovery. It is my intention to seek parity --so that in terms of increased investment, increased employment and increased economic development our Worker's Compensation Law would no longer be viewed as an impediment.

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Attachment #1

The Kansas Worker's Compensation Law should not impede economic development as I feel it may be doing. It is essential we develop labor climate to cultivate more jobs for more people. To achieve this end, HB 3108 is one place to start. In addition to the amendment, I mentioned it also contains two other provisions for your consideration that appear to be problems in Kansas.

I want it understood that I am not an expert on this subject. In this case, I would like to consider myself a catalyst for change and optimistically a work to get something moving to improve the situation. There may be other ways to accomplish improvements in the Worker's Compensation Law -- I hope you will not overlook any viable solution.

Thank you for your consideration.

MEMORANDUM
TO
MEMBERS OF THE HOUSE LABOR AND INDUSTRY COMMITTEE

RE: Testimony of Merlin G. Wheeler
-House Bill 3108 on Behalf of Emporia Chamber of Commerce

March 25, 1986

Members of the House Labor and Industry Committee:

I. Substantive Provisions of HB3108.

House Bill 3108, in addition to its various housekeeping provisions, suggests three substantive changes to the present workers' compensation law, as legislatively and judicially determined, in the State of Kansas, to-wit:

A. Adoption of an amendment to K.S.A. 44-510D(a) to clearly establish that repetitive use conditions (principally bi-lateral carpal tunnel syndrome) occurring in opposite extremities shall be compensated on the basis of an injury to the scheduled extremity rather than under the provisions dealing with general bodily disability;

B. An amendment to K.S.A. 44-510G, the effect of which is to establish a different standard for the determination of awards of permanent partial disability; and

C. Legislatively modifying the common law rule of liberal construction presently utilized by the Kansas Courts.

II. Position Statement.

It is the position of the Emporia Chamber of Commerce that the expense of providing adequate workers' compensation insurance or being a self-insurer under present Kansas law has become an undue burden upon Kansas employers and has been encountered as a significant impediment to future economic development in the State of Kansas, both to the expansion of existing industry and the development of new industry. Consequently, the Emporia Chamber of Commerce and its membership strongly supports House Bill 3108 and the substantive changes established therein.

In conducting its review for development of its legislative policy, the Emporia Chamber of Commerce has received input from a significant number of diverse groups upon the subject matter of workers' compensation reform. Almost uniformly, the failure of the State of Kansas to adopt what

is commonly called a "wage-loss concept" for determination of permanent partial disability awards and the present treatment afforded to bi-lateral repetitive use conditions have been noted as the primary factors prohibiting cost containment for Kansas employers. It was almost universally noted as well that the failure to adopt the wage-loss concept for determination of permanent partial disability has resulted in absolutely no incentive whatsoever to either the employer or the employee to undergo vocational rehabilitation or to make use of the vocational rehabilitation services now available in the State of Kansas.

Numerous industrial prospects, as well as numerous existing employers have made these comments to the Emporia Chamber while in development of its legislative policy, and consequently, the adoption of reforms as suggested by HB3108 have become an extremely high priority item for the Chamber. This is especially true when the prior history of our workers' compensation laws and the judicial decisions interpreting the same have been reviewed by Chamber members who believe that the present method of determining permanent partial disability awards has been primarily the result of judicial interpretation in cases such as Ploutz v. Ell-Kan Company, 234 Kan 953 and Antwi v. C-E Industrial Group, 5 K.A.2d 53. It is the belief of the Emporia Chamber of Commerce that decisions such as these have departed from the original intent of the Workers' Compensation Act such that the present law, as interpreted by the Kansas Courts, in some cases permits windfalls to injured employees rather than compensating them adequately for on the job injuries. Consequently, it is the belief of the Emporia Chamber of Commerce that the provisions of HB3108 do not impair the rights of injured workers as originally determined by the legislators but merely will return the state of law in Kansas to that of the original intent of the Kansas Legislature.

III. Specific Comments Regarding Section 1 of HB3108.

Section 1 of House Bill 3108 is the provision suggesting a change in the law to provide that repetitive use conditions occurring in opposite extremities should be computed on the basis of a scheduled injury to each extremity rather than as a general bodily disability. This particular provision is strongly supported by the Emporia Chamber of Commerce. The Emporia area has numerous employers who have repeatedly been the subject of large general bodily disability awards as a result of conditions such as bi-lateral carpal tunnel syndrome. Indeed, many employers have suggested to us that the cost incident to this one area of the law alone makes the cost per product much higher in Kansas than in other states in which identical products are made by the same company, consequently reducing the competitive ability of the Kansas product.

The Emporia Chamber believes that the legislature originally established injuries to scheduled portions of the body for a specific reason, i.e. to lend some certainty to the law of workers' compensation and to prevent a workers' compensation proceeding from becoming an adversarial proceeding rather than one designed for the benefit of an injured employee. The current state of the law regarding bi-lateral repetitive use conditions has in fact turned almost every situation involving repetitive use conditions into an adversarial situation to the

strong detriment of the employer. The ability to treat such a condition as a general bodily disability rather than a disability to a scheduled member of the body, when coupled with the present method of determination of permanent partial disability, has made extremely large and patently unreasonable judgments become the norm in certain industries in Kansas.

IV. Specific Comments Regarding Section 2 of HB3108.

The original intent of the Workers' Compensation Act was never to allow an injured worker to obtain a windfall recovery from an employer for an injury sustained while on the job. Rather, the original intent was to adequately compensate the employee in a non-adversarial type system for such injuries. However, the impact of the Ploutz and Antwi cases upon the original legislative act has had the impact of turning nearly every case, other than simple scheduled injuries, into an opportunity to obtain extremely large permanent partial disability awards.

This is not to say that either claimants or their attorneys are dishonest or doing anything more than taking reasonable advantage of present judicial interpretations in order to exploit the original legislative intent. Instead, the position taken by the Chamber of Commerce is merely designed to point out to the legislature that the Chamber does not believe that the judicial interpretations given to the legislative enactments represent the original legislative intent.

In recognizing that there are certainly two sides to every issue, the Chamber would like to point out to this legislative committee that the provisions of HB3108 will not result in any injured employee receiving less than what the legislature originally determined that that employee should receive. No employee will fail to receive workers' compensation benefits as a result of this proposed legislation and in fact, the probability is that employees will receive a greater percentage of the workers' compensation benefits by removing the adversary nature of the proceeding.

V. Conclusion.

In evaluating any legislation, the Chamber is mindful that legislators must evaluate its impact upon the economy of the State, its cost to parties on both sides of the issue, the cost to the State, and the impact of such legislation on the populace as a whole. In considering these factors, the Chamber would note for this committee:

1. It has been pointed out to our representatives on numerous occasions that the present workers' compensation law in effect in the State of Kansas is preventing significant economic development in various areas in the State. The failure to take advantage of opportunities for economic development at this time is extremely detrimental to the State and its population as a whole and should not be disregarded.

2. The original intent of the legislature in adopting the workers' compensation laws of this State has been subverted to a good

degree by judicial interpretations of those laws. This legislation give the legislature the opportunity to reassert its original intent without massive expenditures of any type or the creation of any additional bureaucracy.

3. The proposed legislation will not have the effect of terminating workers' compensation coverage for any employee, but will have the affect of removing the adversarial nature of workers' compensation proceedings and preventing windfall recoveries by claimants and their attorneys above and beyond an amount adequate to compensate for an injury.

4. The State of Kansas at present has one of its largest windows of opportunity available to it to promote economic development. The failure to remove impediments to economic development in the State will work only to the disadvantage of the State as a whole and the opportunity to remove a significant impediment to economic development without additional cost to the State should be a compelling consideration on your part.

TESTIMONY HOUSE LABOR and INDUSTRY COMMITTEE
March 25, 1986

Good morning, I am Bill Barnes, Plant Manager of Modine Manufacturing Company's Emporia plant. The Emporia plant produces sheet metal radiators primarily for aftermarket or replacement applications.

As background, our company is self insured. We are an international company with 15 plants located throughout the United States along with operations in Canada and overseas. The three Modine plants located in Missouri combined have twice as many employees as the Emporia plant. One of these Missouri plants also produces radiators using similiar processes to those used in Emporia. The key difference is the Emporia plant has from 1.5 to 3 times the workers' compensation costs.

Concerning repetitive use conditions occurring in opposite extremities, this type of injury has not been common. During 1985 less than 7 per cent of our lost time injuries involved repetitive use in opposite extremities. This type of injury did cause 40 per cent of our workers' compensation costs.

I am no different than other Kansas employers. I have no desire to see any employee injured. Not only does the injury prove costly in terms of lost time, medical bills, workers' compensation benefits and reduced productivity but it also involves pain and suffering to the injured worker. What has the Emporia plant done to prevent or improve this situation? Since our operations involve many manual movements, the first step was to analyze these movements. As a result of this analysis, two new pieces of equipment were either purchased or leased with an option to buy. Each piece of equipment reduced or eliminated certain repetitive motions. Our evaluations of this equipment is still continuing, but there are plans in our next budget to purchase similar equipment for other applications. In addition to equipment that involves repetitive motion, there are monies allocated for equipment to reduce the potential for back injuries and to make our presses safer.

Other steps we take with employees who experience problems with repetitive motion include working with the employee on other possible jobs and reviewing our various jobs with physicians. We do not return an injured employee to work until the attending physician so authorizes. A light duty program has been used where possible. To further assist the employee, I, as the employer, must have the ability to return this injured employee to gainful employment for which the employee can qualify through education, training, or experience. Under the existing interpretation of the law, there is no incentive for an employer to do this.

The radiators we produce for the aftermarket are very price competitive. Recently there have been new entries into this marketplace to include several foreign competitors. I am fortunate

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H.W.I

that our Emporia employees have a good work ethic. They have helped make the Emporia plant the most productive in the Modine system. I am concerned that costs such as workers' compensation will exceed the benefits of this work ethic and place the Emporia plant in a non competitive position.

Kansas can not afford further erosion to its economic base. Now is the time to make appropriate changes to the workers' compensation law and signal to industry worldwide that Kansas is ready to improve its business climate. HB 3108 provides the opportunity to not only keep but also add jobs in Kansas.

Mr. Chairman:

My name is Robert Lincoln. I am personnel manager for Dolly Madison Cake Company located in Emporia, Kansas. We currently have in excess of 1400 employees with 50% in house (manufacturing) and 50% in 17 other states directly involved in sales and distribution of our products.

The impact of workers compensation costs is very real. For us, identifying the problem in our own facility and implementing corrective action is a must.

Corrective measures taken in our facility to help contain rising costs of workers compensation during the year 1985 are as follows:

1. Staff - Safety - Training Coordinator
2. Active - Safety Committee
3. Implement return to work program
4. Identify unsafe acts and conditions by weekly safety audits.

Resulting from the safety audits (October 1985 through February 1986), 343 items were submitted; 249 have been completed for 73%.

Year-to-date incident rate has fallen from 9.27 to 8.99 by the end of February.

Monies spent directly resulting from safety audits by department:

	<u>LABOR</u>	<u>MATERIALS & EQUIPMENT</u>	
Engineering	\$6600.00	\$3280.00	\$9880.00
Sanitation	4522.00	3870.00	8392.00
Safety Supplies			<u>4566.00</u>
Total spent resulting from safety audits			\$22,838.00

for the five-month period (October-February)

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Attachment #4
H. W. I

We are committed to provide our employees a safe place to work, and will endeavor to maintain our facility to that goal.

We at Dolly Madison also need your support for this bill 3108. My opinion is that the court system has mis-interpreted your intent of the current law, and a check system needs to be made to get it back in line.

I've included in my handout an explanation of "How to Spot and Treat Carpal Tunnel Syndrome Early".

With our combined efforts, yours with statutes and mine in-house, we can slow the increasing costs in workers compensation as it affects Dolly madison.

Thank you,

Robert Pincus
Personnel Mgr
Dolly Madison Park

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony Opposed to Passage of House Bill 3108

Mr. Chairman, Members of the Committee: I am addressing you in opposition to House Bill 3108.

Kansas workers employed in an occupation with exposure to repetitive use injuries are less likely to return to employment without rehabilitation measures.

The typical worker falls in the following pattern:

1. less than high school education;
2. history of unskilled labor;
3. lack of transferable skills for other occupations; and
4. above average age.

The permanent partial disability to the general body allowed under current legislation is needed because rehabilitation measures needed with this injured worker are more extreme.

Since there are few transferable skills, new skills must be learned and these usually require a period of formalized retraining.

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Attachment # 5
H. L. I.

Testimony Regarding House Bill 3108

Historically, the state vocational rehabilitation program has served in a position of leadership and of quality assurance related to statewide rehabilitation services, whether these be private or public, facility or community-based. The state program has the benefit and resources of a 66-year nationwide history.

For these reasons, it is encouraged that Section 2 of ^{KSA 44-510 g} ~~House Bill 3108~~ be amended to state that the state Rehabilitation Services maintain its position of oversight for assuring qualified rehabilitation services and that the director of the Workers Compensation Program use the determination of the state Rehabilitation Services regarding qualifications of rehabilitation facilities, institutions, physicians and providers.

Kansas Rehabilitation Services is opposed to the passage of House Bill 3108 because it reduces the injured worker's opportunity for successful rehabilitation and subsequent return to competitive employment.

Joan B. Watson, Commissioner
Rehabilitation Services
Social and Rehabilitation Services
296-3911
for
Robert C. Harder, Secretary
Office of the Secretary
Social and Rehabilitation Services
296-3271
March 25, 1986

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding H.B. 3108

Title:

An Act Concerning Worker's Compensation; Relating to Compensation for Permanent Partial Disability; Repetitive Use Condition in Opposite Extremities.

Purpose:

This bill would change repetitive use conditions to scheduled injuries of each extremity.

Background:

Current legislation allows a worker compensation claim on opposite extremity injuries to be considered as a general body disability and permanent partial disability payments can be awarded to the claimant on that basis.

Employees who are involved in repetitive movement such as those in the meat packing industry or benchwork manufacturing are better protected by existing legislation.

Effect of Passage:

The employee who is at risk for a repetitive use injury of opposite extremities is typically less educated, less skilled, and is less equipped to use occupational skills to transfer into other types of employment. The passage of this bill could reduce their participation in a rehabilitation plan, thus reducing the long term cost benefit of higher earnings.

SRS Recommendation:

The Department of Social and Rehabilitation Services urges that passage of House Bill 3108 be defeated.

Office of the Secretary
Social and Rehabilitation Services
296-3271
March 25, 1986