Approved A. Douville 4-7-87
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./~~p.m.~~ on February 19, 1987 in room 526-S of the Capitol.

All members were present except:

Representatives Holmes and Webb - Excused

Committee staff present:

Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Rob Hodges, Kansas Chamber of Commerce and Industry
Jean Chappell, Rehabilitation Management Consultants
Dee Likes, Kansas Livestock Association
Bill Morrissey, Department of Human Resources, Division of Workers' Compensation

Chairman Douville called the meeting to order and recognized Rob Hodges of the Kansas Chamber of Commerce. Mr. Hodges stated that he had a copy of a book published by the U.S. Chamber of Commerce Analysis of Workers' Compensation Laws which he offered to the committee to review among the members. He proceeded to address the committee, attachment #1. Following his testimony, Mr. Hodges asked that a letter from Richard Griffiths, Vice President Industrial Relations of Beechcraft, be distributed to the committee, attachment #2. He explained that it contains views similar to those expressed on behalf of The Chamber. There were no questions from the committee.

Jean Chappell, Rehabilitation Management Consultants, addressed the committee on rehabilitation from the perspective of the private sector, attachment #3. The chairman asked to whom she reported and the answer was that she obtained permission from the insurance companies first and then disseminated information to all of the interested parties.

Chairman Douville asked how Ms. Chappell worked out the relationship the claimant's (employee's) attorney and the response was that very few of her cases have attorneys. She further stated that often if the employee has an attorney that she is removed from the case by the attorney.

The chairman asked if there were specific qualifications regarding private rehabilitation consultants thus preventing Kansas from facing the same sort of difficulties encountered by the state of Washington. Ms. Chappell answered that Bud Langston (Department of Workers' Compensation) had some ideas on limiting the field to those with a vocational background, further stating that she has a masters' degree in vocational rehabilitation. She also said that most private counselors in vocational rehabilitation are certified as a rehabilitation specialist and certified insurance rehabilitation specialist.

Chairman Douville asked Ms. Chappell about her experience with litigated cases whether her termination arose immediately or after a period of time. She reiterated that most of her cases are unlitigated but almost always when an attorney is brought in, her services are terminated because she is viewed as a threat to the settlement or an investigator.

Representative Buehler asked Ms. Chappell who initiates termination of her services when an attorney is brought into a case, the attorney or the insurance company. The answer was the attorney for the claimant, many times over the objection of the claimant.

Dee Likes, Kansas Livestock Association, was recognized and addressed the committee, attachment #4.

Representative Patrick asked Mr. Likes if he could obtain statistics from counterpart organizations in other states regarding repetitive use syndrome on a per worker basis.

Representative Gjerstad stated that the committee had heard testimony recently regarding the use of ergonomics in the auto industry. She asked if Mr. Likes was aware of any plants in the meat industry implementing the use of ergonomics or attempting to do so. He answered that he was not aware of any but likewise did not feel qualified to answer as there were experts in the field who would have more knowledge on the subject. He further stated that he was aware of changes constantly being made in the industry.

Chairman Douville stated that Bill Morrissey, Department of Human Resources, Division of Workers' Compensation would answer questions that the committee might have regarding recommendations for changes to certain sections of H.B. 2186, attachment #5.

Mr. Morrissey explained that these recommendations were basically the rehabilitation provisions from the previous year's S.B. 365 and removed language dealing with how employees are compensated. The approach is to make rehabilitation an elective rather than a mandatory system based on expert opinion.

The chairman asked why, on page one, the language regarding fraud and serious misconduct was stricken. The answer was that those are always subject to change - anything obtained through misconduct or fraud can be changed.

Chairman Douville remarked that the courts say anytime that language already in a law is eliminated from the law then there must be a reason and asked if the wouldn't create a problem with the courts' interpretation of fraud or undue influence. Mr. Morrissey didn't think so and said it could be left in.

The chairman also questioned removal of language on page one regarding returning the employee to work with the same employer and being capable of earning the same or similar wages or capable of gaining wages equal to or greater than what he had been earning. He asked if that wasn't the idea of rehabilitation. The answer was that the paragraph above the one referred to added impairment or work disability as a basis for changing an award and that it was covered under 510-g so this was viewed as redundant language.

Chairman Douville could foresee a problem with the courts saying that now that this particular language is removed, it is no longer applicable. Mr. Morrissey cited Ploutz and several other cases that do not take language into consideration even though it is in the language of the law now.

The chairman cited page three and the changes regarding comparable gainful employment. He stated that the language as it now reads has to do with employment and the ability to perform or is concerned with whether the employee could get a job in the same area as before. He stated that the word attainable was new to the language and wanted to know what it would do to the law. Mr. Morrissey answered that the idea of attainable was to train someone for a skill that is available or current in the job market.

Chairman Douville asked Mr. Morrissey to explain the "Odd Lot Factor". Mr. Morrissey stated that this dealt with work disability rather than rehabilitation but basically said that if there is no work the man can do then he is classified as disabled.

Mr. Morrissey also explained that there is another premise that the Division of Workers' Compensation has written it stating that if it appears that the employee is going to need to be referred for evaluation, possibly rehabilitation client training, that the agency doing the evaluation, etc. be chosen by the employer from a list of qualified agencies. The Division of Workers' Compensation, the employer or the employee would see that a need exists and ask for a referral not in a hearing setting.

He went on to explain that the Division is still working on qualifications as it appears that there are three specialist groups:

1. placement specialists
2. evaluation specialists
3. counselors who devise the plan of rehabilitation

All of these are paid from a fund administered by the Division of Workers' Compensation.

Chairman Douville asked if there were any limiations with respect to the evaluation process. Mr. Morrissey answered that yes, there are 60 days for the evaluation process and it would appear that 90 days would be sufficient for the formulation of a plan of rehabilitation.

MINUTES OF THE House COMMITTEE ON Labor and Industry,

room 526-S, Statehouse, at 9:00 a.m. on February 19, 1987.

The chairman asked if there should or should not be a limitation regarding medical evaluation. Mr. Morrissey responded that he does not work closely enough with that area to speak to the problem.

Chairman Douville asked Mr. Morrissey to review lump sum settlements versus rehabilitation. He referred to page two of the proposal saying that the idea is to have it scrutinized to be sure that the claimant truly wants to settle rather than accept rehabilitation.

Mr. Morrissey was asked by the chairman to address the cost factor to the employer to best of his knowledge. He responded that the actual cost of evaluation itself to the employer should not be any greater because it would come from this fund made of monies contributed by the employees' insurance companies. It is a pooled risk idea and removes individual conflict between employer and employee. The estimate was less that $250,000 for the operation and administration of the fund in the first year. If there are monies left in the fund at the end of the year, it would roll over into the fund for the following year.

The meeting was adjourned at 9:57 a.m.

The next meeting will be February 24, 1987, at 9:00 a.m.

HOUSE COMMITTEE
ON
LABOR AND INDUSTRY

GUEST LIST DATE February 19, 1987

Name	City	Representing
Bill Morrissey	Topeka	DHR/Work Comp
Mark Beshears	Topeka	KCCI
Rob Hodges	Topeka	KCCI
Ron Gaches	Wichita	BMAC
[illegible]	Wichita	Wichita Chamber
Lee Leber	Topeka	KLA
Jim Villamaria	Topeka	KS Ins Dept
Jean Chappell	Chapman	Rehab. Mgmt. Consultants
Laurie Hartman	Topeka	Ks. Bar Association
Harry Diehlen	Wichita	Ks. AFL-CIO
Jim Wolff	Lawrence	" " "
Jan Wesley	Hutchinson	
Marty Kennedy	Topeka	Budget
Robert Lyon	Topeka	KSNA
Prudence Spain	Lawrence	KSNA
~~Charles Stone~~	~~Topeka~~	

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

February 19, 1987

Testimony Before the

House Committee on Labor and Industry

by

Rob Hodges

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear today to provide the Chamber's input regarding HB 2186, which would make several changes in the state's workers' compensation law. In general terms, our membership has indicated support for the provisions of HB 2186, but I appear today to raise questions on behalf of our members and, in some cases, to make suggestions for changes in the bill.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Attachment #1
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The first change I would like to address appears on page 3 of the bill, on lines 0089 through 0106. Input from members indicates support for what we believe to be the intention of the new language -- specifying equal application of the statutes to both claimant and employer. Some members have pointed out, however, that making such an addition to the law may require relitigation of already established principles of workers' compensation to determine how the law is to be construed equally rather than liberally in favor of the claimant. We acknowledge that almost any change in the law will require litigation to determine how the courts view its application, but wholesale relitigation may not be in the best interests of the parties.

On pages 5 and 6, lines 0193 through 0198, an addition would be made to the definition of "wholly dependent child or children" and we have no comment on the change.

Lines 0202 through 0205 on page 6 specify the date of the accident in repetitive use syndrome to be the date of the onset of the symptoms. Our members do not oppose the concept, but would suggest substituting the word "condition" for the word "syndrome" in line 0204. Employers would prefer the language regarding repetitive use conditions remain clear throughout the bill and the law. Enactment of this change would provide employers with early notice of a potential problem and permit them to respond accordingly.

On page 8, lines 0282 through 0291, claimants would be relieved of potential harassment during litigation of a comp claim through enactment of the proposed change. KCCI has no policy position, but does not oppose the change.

Beginning on page 8 and continuing on page 9, lines 0302 through 0303, the change appears to codify current practice. We suggest that the committee delete from lines 0304 and 0305 "obtaining the opinion of such physician or for examination," which would allow claimants to seek diagnosis or treatment from a second physician but not permit a shopping expedition in search of the highest disability rating for an injury.

Skipping to page 11, in line 0415, the maximum death benefit would be raised from the current $100,000 up to $200,000. Our members have been split in their reaction to the proposal. Some members have questioned a doubling of the maximum in one step, while others have indicated less resistance to the change. As in so many of these matters, this appears to be a judgement call. On behalf of our members, KCCI would recommend an increase of less than 100%.

On page 13, in line 0486, the ceiling for weekly benefits in cases of temporary total disability would be raised from the current 75% of the state's average weekly wage up to 125% of the state's average weekly wage. This proposal appears to be a positive change, when viewed in conjunction with the change proposed on page 18, line 0675, which would reduce the weekly maximum for permanent partial general disability from the current 75% down to 50% of the state's average weekly wage. Our members interpret the proposals to be intended to refocus the expenditure of comp dollars from awards for permanent partial disability to temporary total disability. This would pay more to claimants when they are completely unable to work and reduce the amount received when they are able to return to work. It has been pointed out by some of our members that the initial point of contention for many cases would become whether or not a claimant should be released to return to work. KCCI members believe that the sooner an injured worker is able to safely return to the workforce, the better. Therefore, it appears counterproductive to create an incentive to prolong the period of temporary total disability. We recommend that both the figures for temporary total and permanent partial disability remain where they are.

Page 17, lines 0609 through 0613, addresses the controversial topic of repetitive use conditions. The Chamber's position, adopted by Board of Directors' policy, is to compensate repetitive use condition injuries as scheduled injuries and to restrict the possibility for such injuries to become "whole body" cases. We support the change.

On page 18, in lines 0655 through 0666, a new definition of permanent partial general disability is proposed. For the most part, our members support the change as

proposed, although there remains some question about what all the words mean. In the final sentence of the new language we have three suggestions for clarity. On line 0664, we suggest the words "returns to" be changed to "is engaged in" because such a change would mean that the individual would have to be retained in the employment, not merely taken back for the purpose of eliminating the potential for a work disability. On line 0666, we suggest replacing the words "prior to" with the words "at the time of" because it is more specific as to what wages are to be used in making the determination. Finally, it appears that the change proposed in the last sentence is incomplete. We believe the proposal is to recognize a work disability when there is a loss of earnings for the worker, and to make up at least part of the difference. Yet, as written, if a worker earns one dollar less than the average gross weekly wage earned prior to the injury, there could be a 100% work disability. We suggest more specific language should be added.

On page 20, in line 0730, the maximum benefit for permanent total disability would be doubled to $200,000. Our members' input on this change is the same as for the proposed increase in the death benefit.

On pages 21 and 22, in lines 0784 through 0787, social security taxes paid by an employer would not be made part of the computation of weekly benefits. KCCI supports the change as a return to appropriate compensation determination.

On page 27, in lines 0055 through 0058, written demand for compensation owed would only be required once. For cases when the late payment is not inadvertent, we support the change -- injured workers have enough to worry about without chasing down their compensation checks. But, the proposal fails to provide for old fashioned error, whether made by a human or a computer. When it can be demonstrated that no malice was intended, or when a short telephone call solves the problem, creating another cause of action seems unnecessary. We recommend a change to the proposal to permit some administrative latitude.

The changes proposed in Section 11 of the bill, on lines 0074 through 0100 of pages 27 and 28, brought no objection from our members.

On page 29, lines 0131 and 0132, contain a change supported by our members. We believe the director should be able to reduce, as well as cancel, an award.

The limitation of attorney's fees suggested on page 31, lines 0203 through 0207, while appealing to some members, also appears to be addressable through administrative procedures. As we understand the process, such fees are approved by the director's office now. Perhaps a better review process should be substituted for the statutory change proposed here.

The final changes on page 34, lines 0314 through 0316 and 0321 through 0324, would ease employer access to the workers' compensation fund and are supported by KCCI.

Mr. Chairman and members of the Committee, the Kansas Chamber of Commerce and Industry also wholeheartedly supports the inclusion of a meaningful vocational rehabilitation mechanism for workers' compensation cases. Many of our members have expressed support for Representative Patrick's suggestion of establishing a program to encourage private companies to deliver vocational rehabilitation, as opposed to creating or adding to a state agency. That decision aside, we strongly recommend that vocational rehabilitation be made an integral part of the Kansas workers' compensation system.

Thank you for your time. I'll attempt to answer your questions.

Richard R Griffiths
Vice President
Industrial Relations

ch Aircraft Corporation
Box 85
Wichita KS 67201-0085

316 681 7696

Beechcraft
A Raytheon Company

February 18, 1987

The Honorable Arthur W. Douville, Chairperson
House Committee on Labor & Industry
State Capitol Building
Topeka, Kansas 66612

Dear Representative Douville:

Beech Aircraft Corporation is supportive of House Bill 2186. HB2186 appears to eliminate many of the inequities found in the current Workers' Compensation law. Beech is specifically pleased with the bill's language to have Workers' Compensation cases decided on their merits. The move away from favoring one side over the other will hopefully result in more reasonable awards.

There are several areas of concern which will be cited below that also include Beech's suggestions for language changes to modify what is perceived to be potential problem areas in the bill.

1. K.S.A. 44-508(d) uses the term "repetitive use syndrome" and 44-510d (23) uses the term "repetitive use conditions". These terms should be defined specifically to avoid having the court define what it considers to be a "repetitive use syndrome or condition". Suggested language could be:

   > "repetitive use conditions such as carpal tunnel syndrome, tendonitis and tenosynovitis but not limited to these conditions. . ."

2. There seems to be conflicting language between 44-510d (23) and 44-510e which limits settlements for "repetitive use conditions". The bill then states that "no work disability exists if an employee returns to any work for wages equal to or more than the average gross weekly wage that the employee was earning prior to the injury". It is our concern that a special class of people are being created outside of 44-510e because of the language in 44-510d (23). Beech returns to work the vast majority of it's employees who experience a carpal tunnel injury. The language as proposed would require companies to pay settlements which include work disability percentages for repetitive use conditions, yet it limits all other types of injuries to only the functional impairment rating.

   It is also necessary to define work disability so that the courts aren't forced to define it for us. Suggested language could be inserted to reflect that: "when an employee returns to any work for wages equal to or more than. . . there shall be a conclusive presumption that the employee will be limited to only that which is his/her percentage of functional impairment as outlined in the

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"AMA Guides to the Evaluation of Permanent Impairment" or "as determined by the treating physician."

3. 44-510c (b) (1): Changing the cap on temporary total disability from 75% to 125% of the state's average weekly wage would substantially increase our costs. It also lessens an employee's incentive to mininize their medical recuperation periods or in starting a rehabilitation program. We would recommend no change here.

4. 44-510b (h) and 44-510f (1) raises the maximum on death benefits and permanent total disability to $200,000. The concern is how the amount of $200,000 was developed. Doubling the amount in these case requires justification. We are wondering what background facts resulted in the suggested figure.

5. 44-512a(b) as proposed is designed to impact the few companies who refuse to pay each and every bill until a written demand is served. What it creates is a situation where an inadvertent error on the part of an honest carrier could cost them a fine and payment of the plaintiffs attorney fee's when they might not even be aware of a medical bill or a missed compensation payment. Our suggestion would be that this language be removed and replaced with more cooperative language.

Finally, it is our suggestion that HB2186 and any bills submitted to develop vocational rehabilitation for Workers' Compensation be closely coordinated. It would be advantageous to have any legislation of this nature combined with HB2186 to avoid potentially contradictory developments. We also feel that if a vocational rehabilitation component is added to this bill that it be placed under the control of the State Workers' Compensation office with strict criteria such as requiring employees of private vendors to have CRC and CIRS certifications. It is felt that securing rehabilition services from private vendors would be much more responsive to our needs and the needs of our employees.

I thank you and your committee, in advance, for reviewing Beech's concerns about HB2186.

Sincerely,

BEECH AIRCRAFT CORPORATION

Richard R. Griffiths
Vice President
Industrial Relations

RRG:ij

ROLE OF PRIVATE REHABILITATION IN WORKERS' COMPENSATION

A. Definitions of Private and Public Rehabilitation Sectors
   1. Caseloads
   2. Location
   3. Time Frames
   4. Eligibility for Services
   5. Training vs Placement/OJT historically
   6. Paperwork requirements

B. Opinion re cooperation between Private and Public counselors for client's benefit

C. Nebraska Firm's Experience with Bill with Fund Involved

D. Opinion re How Private Rehabilitation Could Fit in with Proposed Changes
   1. Let insurance carrier decide if Private Rehabilitation should be brought in
   2. Bud Langston's work with us in the past/currently
   3. Quality of current firms in Kansas
   4. Need for watchdog on any new firms coming in to make sure system is not taken advantage of
   5. Hopefully Private Rehabilitation will already be on bad cases for medical management so vocational can be worked on simultaneously
   6. Cooperate with State Rehabilitation if that seems helpful
      a. client receives timely services, State's skills are used, as well as Private Sector's.
      b. client benefits, employer benefits, insurance company benefits
   7. Costs drawn from Fund for rehabilitation plans will probably be less under Private Sector than Public, given historical use of training by Public, placement/OJT by Private
      a. Private counselor can get out/mobile to develop leads
      b. Fewer cases, less paperwork, more time with client and employer/rehabilitation team/job prospects

E. Why a Need for Change?
   1. Too many clients, under current interpretation of the law, getting rating/settlement but no vocational assistance
   2. Settlement funds spent in average of 16 months in this state
   3. Some injured workers never re-enter work force; some end up on welfare/family losses, etc.
   4. Teaching injured Kansas workers to use compensation system rather than work to make money
   5. Case example of why insurance companies currently do not actively offer job placement to clients

F. Future of Private Rehabilitation if No Changes in Workers' Compensation

Attachment #3
House Labor & Industry
2/19/87

Rehabilitation Management Consultants — P.O. Box 395 — Chapman, KS 67431

Kansas Livestock Association

2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358

Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT

OF THE

KANSAS LIVESTOCK ASSOCIATION

TO THE

HOUSE COMMITTEE ON LABOR AND INDUSTRY

REPRESENTATIVE ARTHUR DOUVILLE, CHAIRMAN

REGARDING HB2186

PRESENTED BY

DEE LIKES

EXECUTIVE VICE PRESIDENT

KANSAS LIVESTOCK ASSOCIATION

FEBRUARY 19, 1987

Mr. Chairman and members of the committee, as most of you know, the Kansas Livestock Association represents approximately 9,500 members from all across Kansas who are involved in literally every phase of red meat production.

The past year or so we have heard a lot of talk about economic development and what the legislature can do to bolster the state's economy. We believe that taking care of some of the good productive industries that are already located in Kansas is a good place to start and, in fact, may even prove to be the single most important and fertile area for economic

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development. The cattle feeding and meat packing/processing industries have been one of the few economic bright spots in Kansas. More specifically, southwestern Kansas and several of its communities have benefited greatly from the economic activity generated by these businesses. The real encouragement comes when you realize there is still a lot of innovation, improved technology and convenience processing on the horizon for the meat packing and processing industry. For example, consumer demands for quick, easy to prepare convenience foods and the need to constantly improve the efficiency of the merchandising chain is leading the industry towards further processing of beef carcasses. Instead of simply breaking down (i.e. disassembling) a beef carcass into loins, chucks, rounds, etc. and shipping those from the cattle feeding/slaughter/processing area of southwestern Kansas to the retail centers it is now more apparent than ever that in the future the packers, will process these carcasses completely down to retail sized, individually packaged portions. This could mean thousands of new jobs in these Kansas plants which are already the largest and most technology advanced of any in the world.

The Kansas Livestock Association believes that modifications to the workmen's compensation laws of this state similar to those contained in this bill - and especially those relating to repetitive use conditions - are long over due and will be of great benefit in helping to encourage the further advancement of the meat processing industry providing economic benefits to the Kansas red meat industry and the entire Kansas economy.

44-528. (a) Any award or modification thereof agreed upon by the parties, except lump-sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it does not, may be reviewed by the director for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. In connection with such review the director may appoint one ~~(1)~~ or two ~~(2)~~ physicians to examine the employee and report to the director. The director shall hear all competent evidence offered and if the director finds that the ~~award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the incapacity or disability~~ impairment or work disability of the employee has increased or diminished, the director may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workmen's compensation act.

(b) If the director shall find ~~that the employee has returned to work for the same employer in whose employ the employee was injured or for another employer and is capable of earning the same or higher wages than the employee did at the time of the accident, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages the employee was earning at the time of the accident, or shall find~~ that the employee as absented and continues to absent so that a reasonable examination cannot be made of the employee by a physician selected by the employer, or has departed beyond the boundaries of the United States, the director may cancel or suspend payments under the award and end the compensation.

(c) The number of reviews under this section shall be limited pursuant to rules and regulations adopted by the director to avoid abuse.

(d) An award modified under this section shall be modified as of the date that the change actually occurred.

44-531. (a) Where all parties agree to the payment of all or any part of compensation due under the workmen's compensation act or under any award or judgment, and where it has been determined at a hearing before the director or an assistant director that it is for the best interest of the injured employee or the dependents of a deceased employee, or that it will avoid undue expense, litigation or hardship to any party or parties, the director may permit the employer to redeem all or any part of ~~his~~ such employer's liability under the workmen's compensation act by the payment of compensation in a lump sum. The employer shall be entitled to an ~~eight percent (8%)~~ 8% discount on the amount of any such lump-sum payment, exclusive of any compensation due as of the date of such lump-sum payment. Upon paying such lump sum

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the employer shall be released and discharged of and from all liability under the workmen's compensation act for that portion of the employer's liability redeemed under this section.

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

(c) No lump-sum awards shall be rendered with respect to accidents occurring after October 1, 1987, unless:

(1) It has been determined by the rehabilitation administrator that the employee is not in need of vocational rehabilitation;

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

(3) the employee has elected not to take part in a rehabilitation program.

44-534a. (a) After filing an application for a hearing pursuant to K.S.A. 44-534 or 44-528 and amendments thereto, the employee may make application for a preliminary hearing, in such form as the director may require by rules and regulations, on the issues of: (1) The furnishing of medical treatment ~~and~~; (2) the payment of temporary total disability compensation; (3) the payment of temporary total compensation during vocational rehabilitation evaluation or training; or (4) the advisability of the vocational rehabilitation plan as approved by the rehabilitation administrator. At lease seven days prior to filing an application for a preliminary hearing, the employee shall notify the employer of the employee's intent to file such an application and shall confirm such notice by letter. Upon receipt of an application for such a preliminary hearing, the director shall give seven days' written notice by mail to the employer of the date set for such hearing. Such preliminary hearing shall be summary in nature and shall be held by the director or an administrative law judge in any county designated by the director or administrative law judge, and the director or administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workmen's compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the director or administrative law judge may make a preliminary award of medical and temporary total disability compensation against the respondent, or, in proper cases, the workers' compensation fund to be in effect pending the

conclusion of a full hearing on the claim. Temporary total compensation so ordered under this section shall be paid on a weekly basis. If such payments are made by the workers' compensation fund and later determined to be the responsibility of the respondent, the workers' compensation fund shall be reimbursed by the respondent. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. No such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

(b) If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier pursuant to a preliminary award entered under this section and the amount of compensation so awarded is reduced or totally disallowed upon a full hearing on the claim, the employer and the employer's insurance carrier shall be reimbursed from the workers' compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation that the employee is entitled to as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

New Sec. (a) A primary purpose of the workmen's compensation act shall be to restore the injured employee to comparable gainful employment.

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

(1) "Comparable gainful employment" means employment which is reasonably attainable, which the employee can reasonably perform, and which returns the employee as close as is feasible to preinjury earnings.

(2) "Vocational education" means a regiment of formal instruction in a training setting with an established curriculum designed to enable a successful pupil to acquire a new marketable skill in comparable gainful employment.

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

(4) "Job placement" means placing a person in comparable gainful employment which is consistant with the person's physical and mental capabilities and which is expected to be a permanent placement in a permanent job but which does not necessarily enable the person to acquire a new marketable skill.

(c) The director shall appoint a specialist in vocational rehabilitation who shall be referred to as the rehabilitation administrator. The rehabilitation administrator shall be in the classified service, and if the administrator has served in this capacity for a period of one year prior to the passage of this act, the administrator shall be considered permanent in the classified service.

(d) The rehabilitation administrator shall study the problems of vocational rehabilitation education, on-the-job training and job placement; investigate and maintain a directory of all rehabilitation facilities, public and private; and be fully knowledgeable regarding the eligibility requirements of all state, federal and other public vocational rehabilitation facilities nad the benefits offered by each.

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

(e) An employee who has suffered an injury or occupational disease which prevents the employee from returning to comparable gainful employment shall be referred to the rehabilitation administrator. Such employee shall be entitled to prompt vocational rehabilitation services as may be reasonably necessary to restore the employee to comparable gainful employment.

(f) On the rehabilitation administor's own instance or upon application of the employee or employer, the rehabilitation administrator may refer the employee for vocational evaluation and for a report of the practicability of, need for, and kind of service, training or rehabilitation which is or may be necessary and appropriate to render such employee fit for comparable gainful employment. The employer shall have the right, within 10 days and subject to the approval of the rehabilitation administrator, to select the rehabilitation provider to perform such evaluation, from a list maintained by the rehabilitation administrator.

Evaluation shall be completed within 60 days. If the evaluation cannot be completed by a provider within 60 days, the rehabilitation administrator may refer the person to another provider. The cost, if any, of such evaluation and report shall be paid from the workers' compensation rehabilitation fund. If the employer chooses to refer the employee to a private evaluation provider, such provider shall not be controlled by or connected with the employer or insurance carrier.

(g) Upon completion of evaluation, the provider assigned to the case shall submit a rehabilitation plan to the rehabilitation administrator and the parties within 30 days of completion of the evaluation. The rehabilitation administrator shall approve or disapprove the plant with 10 days. If disapproved, the rehabilitation administrator shall give reasons for such disapproval and may make suggestions for modification of the plan. The report, together with the

rehabilitation administrator's recommendation, shall be provided to the parties. A plan recommending job placement shall be disapproved unless the employee is maintained in comparable gainful employment.

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

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

(i) Where vocational education or training is recommended or is deemed necessary to restore the employee to comparable gainful employment, the employee may be directed to an appropriate private or public training facility. If there is a cost for services, the cost will be paid from the workers' compensation rehabilitation fund.

(j) Where vocational evaluation, education or training requires that the employee reside at or near a facility or institution away from the employee's customary residence, either in or out of the state of Kansas, the reasonable costs of the employee's board, lodging and travel shall be paid from the workers' compensation rehabilitation fund pursuant to guidelines adopted by the rehabilitation administrator.

(k) The employer shall pay temporary total disability compensation during the period of vocational evaluation, and continuing until the plan is approved by the rehabilitation administrator. Temporary total compensation paid solely because of involvement in the vocational rehabilitation evaulation process shall not exceed 120 days from the date of referral by the rehabilitation administrator. However, additional time may be granted by the rehabilitation administrator if circumstances outside the control of the employee prevents completion of the evaluation, plan formulation or approval of a plan.

If the approved plan undertakes vocational education, temporary total compensation shall be paid until the completion of the education.

A completed rehabilitation plan shall remain open for review and further recommendation for a period of six months. Thereafter, a party may apply for further modification of the plan on the ground that the employee is unable to perform the work established by the plan because of disability due to the accident.

If the injured employee refuses to complete the evaluation process, refuses to undertake the rehabilitation plan determined to be suitable or fails to complete the

rehabilitation plan determined to be suitable, and the refusal or failure is not due to the employee's physical or mental inability to do so, the employee shall be considered as having elected to not participate in the rehabilitation process and compensation shall be paid for disability equal to the percent of impairment of function suffered as a result of the accident.

New Sec. (a) There is hereby created in the state treasury the workers' compensation rehabilitation fund. The expense of workers' compensation vocational rehabilitation evaluation, testing and training pursuant to section 7 shall be paid from such fund. The director of workers' compensation shall be responsible for administering the workers' compensation rehabilitation fund, and all payments from the workers' compensation rehabilitation fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of workers' compensation or a person or persons designated by the director.

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

(b) On or before May 15 of each year, the director of workers' compensation shall impose an assessment against all insurance carriers, self-insurers and group-funded workers' compensation pools insuring the payment of compensation under the workmen's compensation act, the proceeds of which shall be credited to the workers' compensation rehabilitation fund. The total amount of each such assessment shall be equal to an amount sufficient, in the opinion of the director of workers' compensation, to pay all amounts which may be required to be paid from such fund during the current fiscal year, less the balance remaining in the fund from prior fiscal years. The total amount of each such assessment shall be apportioned among those upon whom it is imposed, such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workers' compensation claims by such insurance carrier, self-insurer or group-funded workers' compensation pool in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year. The maximum amount which shall be collected from any carrier, self-insurer or group-funded workers' compensation pool shall be ½ of 1% of the workers' compensation benefits paid or payable by such carrier, self-insurer or group-funded workers' compensation pool. Not later than May 15 of each year, the director of workers' compensation shall notify all such insurance carriers, self-insurers and group-funded workers'

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

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