

Approved

Date

*Arthur Douville* 4-787

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:09 a.m. ~~p.m.~~ on March 19, 1987 in room 526-S of the Capitol.

All members were present except:

Representatives R.D. Miller and Sifers - Excused

Committee staff present:

Jerry Ann Donaldson, Research Department  
Jim Wilson, Revisor of Statutes' Office  
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Chairman Douville asked Jim Wilson to review the proposed amendment, regarding vocational rehabilitation, attachment #1. The chairman went on to state that this draft goes one step farther than other rehabilitation legislation in that the purpose is to return the employee to the same wages or as near as possible to those he was earning pre-injury.

There was discussion over the terminology "comparable wage". The chairman stated that it was intended to be defined as "returned to same wages". He also stated that an effort was made to keep the language uniform with HB 2186. This is a policy change.

Another specific policy change is found in lines 25 and 26 on the first page. This gives the employer the opportunity to initiate rehabilitation through his own rehabilitation program or one that he selects. If he fails to provide such rehabilitation, then another provision will be made.

The chairman explained that in section d, page 2, the point of this section is there is a limitation on the right to order rehabilitation in that if an employee is able to return to the same employer with or without accommodation, or he is able to perform other work, then he (the employee) is not going to have a right to rehabilitation.

Representative Hensley asked for a definition of the use of "with or without". The chairman explained that it means that the employer will accommodate the employee so that he can return to work.

Chairman Douville explained that the point of section e, beginning on the bottom of page 2 and continuing on the top of page 3, is to avoid "clogging the system". The employee shouldn't be filing within 30 days for rehabilitation but the director is being allowed some latitude in ordering rehabilitation. The hope is that the director understands that just because an employee files an application within 30 days to use "as a weapon" that it will not be possible.

There was lengthy discussion on this point between the committee and the director's office regarding the intent of the bill.

There was also discussion regarding section e, (2), page 3 as to whether the meeting with the rehabilitation coordinator had to be face to face or could perhaps be a conference phone call, for example.

Representative Patrick made a motion to strike the word "meet" and substitute the word "confer" on line 33, page three. Representative O'Neal seconded and the motion passed.

Representative O'Neal had questions about the time limits mentioned at the top of page 5. It was perceived that there could be some discrepancy between some of the time limits. The decision was to leave it as it is for now and discuss this aspect later.

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

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,  
room 526-S, Statehouse, at 9:09 a.m.~~p.m.~~ on March 19, 1987.

Regarding subsection (i), pages 6 and 7, the chairman explained that if an employee has loss of a use of a limb, e.g., or any of the scheduled injuries, he is still entitled to receive disability even though he doesn't agree to rehabilitation. This gives the director some latitude in that he doesn't have to reduce the disability if the man has some work disability the director feels will qualify. This sets forth a policy which the director is to consider.

Section 2, dealing with the preliminary hearing procedure, beginning on page 8 and continuing on page 9 - The change is that if it is later found that an employer is not required to pay as much as ordered, the employer can be reimbursed from the workers' compensation fund.

Chairman Douville explained that the reason for this change is that if the employee does not file for a preliminary hearing but seeks treatment elsewhere and after a period of time, files for a hearing, the carrier and the employer cannot automatically be held responsible for treatment received prior to the filing for the hearing.

Representative Hensley pointed out that on page 5, line 3, the word "rehabilitation" is omitted following vocational. Mr. Wilson confirmed that it was an oversight.

The meeting was adjourned at 9:52 a.m.

The next meeting will be March 20, 1987, at 9:00 a.m.

HOUSE COMMITTEE  
ON  
LABOR AND INDUSTRY

GUEST LIST      DATE March 29, 1987  
City      Representing

Name	City	Representing
Jean Chappell	Chapman	RMC
Richard L Thomas	TOPEKA	RENTAL SERVICE
Bill Morrissey	Topeka	DHR/Work Camp
Bud Langston	"	" "
Mark Behears	TOPEKA	KCCI
Bob Abernethy	TOPEKA	KTAA
Marta Gelsner	Topeka	KACEH
Anne Moriarty	Topeka	KTLA
Bob Tilton	Topeka	KTLA
Carolyn Medendorp	Topeka	Consumer
Dave Johnson	Topeka	Ks In Dept
Jim Bluff	Topeka	KS AFL-CIO
<del>Angela [unclear]</del>	"	"
Henry A. Wilkes	Wichita	"

BILL NO. \_\_\_\_\_

1 AN ACT concerning workers' compensation; relating to  
 2 rehabilitation; preliminary hearings; amending K.S.A.  
 3 44-510g and 44-534a and repealing the existing sections.

4 Be it enacted by the Legislature of the State of Kansas:

5 Section 1. K.S.A. 44-510g is hereby amended to read as  
 6 follows: 44-510g. (a) A primary purpose of the ~~workmen's~~ workers  
 7 compensation act shall be to restore to the injured employee to  
 8 ~~substantial-and-gainful-employment~~ the ability to perform work in  
 9 the open labor market and to earn comparable wages. To this end,  
 10 the director shall appoint, subject to the approval of the  
 11 secretary, a specialist in medical, physical and vocational  
 12 rehabilitation, who shall be referred to as the rehabilitation  
 13 administrator. The rehabilitation administrator shall be in the  
 14 classified service under the Kansas civil service act. The  
 15 rehabilitation administrator shall: (1) Continuously study the  
 16 problems of physical and vocational rehabilitation; (2)  
 17 investigate and maintain a directory of all rehabilitation  
 18 facilities, public or private, in this state, and, where such  
 19 rehabilitation administrator determines necessary, in any other  
 20 state; and (3) be fully knowledgeable regarding the eligibility  
 21 requirements of all state, federal and other public medical,  
 22 physical and vocational rehabilitation facilities and benefits.  
 23 With respect to private facilities and agencies providing  
 24 medical, physical and vocational rehabilitation services,  
 25 including rehabilitation service programs provided directly by  
 26 employers, the director shall approve as qualified such  
 27 facilities, institutions, agencies, employer programs and  
 28 physicians as are capable of rendering competent rehabilitation  
 29 services. No such facility or, institution, agency or employer  
 30 program shall be considered qualified unless it is specifically

1 equipped to provide rehabilitation services for persons suffering  
2 from either some specialized type of disability or some general  
3 type of disability within the field of occupational injury or  
4 disease, and is staffed with trained and qualified personnel and,  
5 with respect to medical and physical rehabilitation, unless it is  
6 supervised by a physician qualified to render such service. No  
7 physician shall be considered qualified unless such physician has  
8 had such experience and training as the director may deem  
9 necessary.

10 (b) Under the direction of the director, and subject to the  
11 director's final approval, the rehabilitation administrator shall  
12 have the duties of directing and auditing medical, physical and  
13 vocational rehabilitation of employees in accordance with the  
14 provisions of this section.

15 (c) An employee who has suffered an injury shall be  
16 entitled to prompt medical and physical rehabilitation services;  
17 as may be reasonably necessary to restore to such employee to  
18 substantial-and-gainful-employment the ability to perform work in  
19 the open labor market and to earn comparable wages and as  
20 provided in this section.

21 (d) When as a result of an injury or occupational disease  
22 which is compensable under the ~~workmen's~~ workers compensation  
23 act, the employee is unable to perform work for the same employer  
24 with or without accommodation or for which such employee has  
25 previous training, education, qualifications or experience, ~~or~~  
26 ~~when-such-employee-is-unable-to--perform--other--substantial--and~~  
27 ~~gainful--employment;~~ such employee shall be entitled to such  
28 vocational rehabilitation services, including retraining and job  
29 placement, as may be reasonably necessary to restore to such  
30 employee to-substantial-and-gainful--employment the ability to  
31 perform work in the open labor market and to earn comparable  
32 wages and as provided in this section.

33 (e) (1) If the employee has remained off work for 90 days  
34 or if it is apparent to the director that the employee requires  
35 vocational rehabilitation services and, in either case, if  
36 approved rehabilitation services are not voluntarily furnished to

1 the employee by the employer, the director, on such director's  
2 own motion or upon application of the-employee-or--employer,--and  
3 after--affording--the--parties--an--opportunity--to--be--heard--and--to  
4 present-evidence any party, may refer the employee to a qualified  
5 physician-or qualified public or private agency or facility, or  
6 the employer's rehabilitation service program, if qualified, for  
7 evaluation and for a report of the practicability of, need for,  
8 and kind of service, treatment, training or rehabilitation which  
9 is or may be necessary and appropriate to render such employee  
10 fit--for--substantial-and-gainful-employment able to perform work  
11 in the open labor market and to earn comparable wages. The costs  
12 of such evaluation and report shall be at the expense of the  
13 employer. Each report shall contain a rehabilitation plan which  
14 shall adhere to the following priority listing of rehabilitation  
15 goals:

16 (A) The first priority is to return the employee to the  
17 same work for the same employer;

18 (B) the second priority is to return the employee to the  
19 same work, with accommodation, for the same employer;

20 (C) the third priority is to return the employee to other  
21 work, with or without accommodation, for the same employer;

22 (D) the fourth priority is to return the employee to the  
23 same work for another employer;

24 (E) the fifth priority is to return the employee to other  
25 work for another employer; and

26 (F) the sixth priority is to provide vocational  
27 rehabilitation, reeducation and training.

28 (2) Within 30 days after such referral, the report shall be  
29 submitted to the rehabilitation administrator. Within 10 days  
30 after receipt by the rehabilitation administrator, the  
31 rehabilitation administrator shall assign a rehabilitation  
32 coordinator to review the report. If all parties do not agree  
33 with the report, the rehabilitation coordinator shall meet with  
34 the rehabilitation service provider, the employee and the  
35 employer to review the evaluation and the proposed rehabilitation  
36 plan in the report. The rehabilitation coordinator shall ensure

1 that the evaluation and the rehabilitation plan are objective and  
 2 reasonable and that the rehabilitation goal is reasonably  
 3 obtainable. Within 10 days after such review and approval of the  
 4 report, the rehabilitation coordinator shall deliver copies of  
 5 the approved report, including any revisions of the  
 6 rehabilitation plan, to each party, to the rehabilitation  
 7 administrator and to the assigned administrative law judge, if  
 8 there is one. Upon receipt of such report, and after affording  
 9 the parties an opportunity to be heard and present evidence, the  
 10 director:

11       ~~{1}~~ (A) May order that any treatment, or medical and  
 12 physical rehabilitation, as recommended in the report or as the  
 13 director may deem necessary, be provided at the expense of the  
 14 employer;

15       ~~{2}~~ (B) ~~where the employee is unable to engage in any type~~  
 16 ~~of substantial and gainful employment, and~~ vocational  
 17 rehabilitation, reeducation or training is recommended in the  
 18 report, or is deemed necessary by the director to restore to the  
 19 ~~employee to some type of substantial and gainful employment, the~~  
 20 ~~director~~ the ability to perform work in the open labor market and  
 21 to earn comparable wages, may direct the employee to the  
 22 appropriate federal, state or other public facility or agency  
 23 where such services will or may be provided at no cost to the  
 24 employer, except as hereinafter otherwise provided in this  
 25 section , or, upon the request of the employer, to a qualified  
 26 rehabilitation service program provided directly by the employer;  
 27 and ,

28       ~~{3}~~ (C) if the employee is not eligible for such vocational  
 29 rehabilitation, reeducation or training through any such state,  
 30 federal or other public facility or agency, or where such  
 31 services through such facilities or agencies are not available to  
 32 the employee within a reasonable period of time, ~~the director~~ may  
 33 order that such services be provided at the expense of the  
 34 employer at by any qualified private agency or facility in this  
 35 state or any state contiguous to this state or by a qualified  
 36 rehabilitation service program provided directly by the employer.

1       (3) Except as otherwise provided by this section, the  
2 employer shall pay temporary total disability compensation during  
3 the period of vocational evaluation and continuing until the  
4 rehabilitation plan is approved as provided in subsection (e)(2).  
5 Temporary total compensation paid solely because of involvement  
6 in the vocational rehabilitation evaluation process shall not be  
7 payable for more than 120 days from the date of referral by the  
8 rehabilitation administrator, except that such temporary total  
9 compensation may be continued by the rehabilitation administrator  
10 for an additional period of not more than 30 days if  
11 circumstances outside the control of the employee prevents  
12 completion of the evaluation or the formulation or approval of  
13 the rehabilitation plan. The first 10 weeks during which  
14 temporary total disability compensation is paid during vocational  
15 rehabilitation evaluation shall be deducted from the maximum  
16 number of weeks available for the payment of disability  
17 compensation under the schedule provided in K.S.A. 44-510d and  
18 amendments thereto.

19       (4) Any such---services vocational rehabilitation,  
20 reeducation or training to be provided at the expense of the  
21 employer under this-paragraph-(3), subsection (e)(2) shall not  
22 extend for a period of more than 26 weeks, except that in  
23 extremely unusual cases, after a hearing and the presentation of  
24 evidence, the director, by special order, may extend the period  
25 for not more than an additional 26 weeks. The employer shall have  
26 a right to appeal to the district court any such special order by  
27 the director for any extension of the initial twenty-six-week  
28 period, within the time and in the manner provided in K.S.A.  
29 44-556, and amendments thereto, and any such special order shall  
30 be stayed until the district court has determined the appeal.  
31 There shall be no right of appeal to the Kansas supreme court or  
32 court of appeals from a judgment of the district court sustaining  
33 or overruling any such special order of the director.

34       (f) Where vocational rehabilitation, reeducation or  
35 training is to be furnished at the expense of the employer under  
36 this section, and such services require that the employee reside



1 at or near a facility or institution, away from the employee's  
2 customary county of residence, either in or out of the state of  
3 Kansas, the reasonable costs of the employee's board, lodging and  
4 travel, not to exceed a maximum total of ~~\$2,000~~ \$3,500 for any  
5 twenty-six-week period, shall be paid by the employer, except  
6 that, in unusual cases where, after a hearing and the  
7 presentation of evidence the director finds that the costs are  
8 clearly reasonable and necessary, the director may require by  
9 special order that the employer pay an additional amount for the  
10 costs of the employee's board, lodging and travel, of not more  
11 than ~~\$1,000~~ \$2,000.

12 (g) The employer shall pay temporary total disability  
13 compensation during any period of vocational rehabilitation,  
14 reeducation or training, computed as provided in K.S.A. 44-510c  
15 and amendments thereto, but the employer shall receive credit for  
16 any weekly, monthly or other monetary payments made to the  
17 employee or such employee's family by any state, federal or other  
18 public agency during any such period, exclusive of any such  
19 payments for the board, lodging and travel expenses of the  
20 employee.

21 (h) The director shall cooperate with federal, state and  
22 other public or private agencies for vocational rehabilitation,  
23 reeducation or training, or medical or physical rehabilitation.  
24 The employer shall not be required to pay the reasonable costs of  
25 the employee's board, lodging and travel where such costs are  
26 borne by any federal, state or other public agency, nor shall any  
27 costs for vocational rehabilitation, reeducation or training be  
28 assessed to the employer if such vocational rehabilitation,  
29 reeducation or training is in fact furnished by and at the  
30 expense of any federal, state or other public agency.

31 (i) Whenever the director determines that there is a  
32 reasonable probability that with appropriate medical, physical or  
33 vocational rehabilitation or, reeducation or training, a person,  
34 who is entitled to compensation for permanent total disability,  
35 partial disability, or any other disability under the workmen's  
36 workers compensation act, may be rehabilitated to the extent that

1 such person can become ~~substantially-and-gainfully-employed-or~~  
2 ~~increase--such-person's-earning-capacity~~, able to perform work in  
3 the open labor market and to earn comparable wages and that it is  
4 for the best interests of such person to undertake such  
5 rehabilitation ~~or~~, reeducation or training, if the injured  
6 employee without good cause refuses to undertake the  
7 rehabilitation, educational or training program determined by the  
8 director to be suitable for such employee, or refuses to be  
9 evaluated under the provisions of subsection (e), and the refusal  
10 is not due to the employee's physical or mental ability to do so,  
11 the employee shall be considered as having elected not to  
12 participate in such rehabilitation, reeducation or training and  
13 the director shall ~~may~~ suspend the payment of any disability  
14 compensation until the employee consents to undertake such  
15 program or to be so evaluated, ~~and~~. The director shall ~~cancel~~ may  
16 reduce the disability compensation otherwise payable if any such  
17 refusal persists for a period in excess of 90 days, except that  
18 disability compensation shall not be reduced to less than that  
19 payable for permanent partial disability in accordance with  
20 K.S.A. 44-510d and amendments thereto, less any weeks of  
21 compensation deducted as provided in subsection (e)(3), or for  
22 permanent partial general disability for functional impairment in  
23 accordance with K.S.A. 44-510e and amendments thereto.

24 (j) At such time as any medical, physical or vocational  
25 rehabilitation ~~or~~, reeducation or training has been completed  
26 under this section, the employer shall have the right, by the  
27 filing of an application with the director, to seek a  
28 modification of any award which has been rendered granting any  
29 compensation to the employee for any disability. Upon at least  
30 20 days' notice by registered mail to all parties, the director  
31 shall set the application for hearing and the parties shall  
32 present all material and relevant evidence. In the event that  
33 the director determines that the employee is rehabilitated  
34 ~~medically, physically or vocationally~~, so that such employee is  
35 able to engage-in-substantial-and-gainful-employment perform work  
36 in the open labor market and to earn comparable wages, the

1 director shall ~~cancel~~ modify any award of compensation for  
 2 ~~temporary--total-or-permanent-total-disability,-subject-to-review~~  
 3 ~~and--modification--pursuant--to--K.S.A.--44-528--and--amendments~~  
 4 ~~thereto,--and--shall--modify--any--existing--award--of--partial~~  
 5 ~~disability,~~ or, if no such award has been made, the director  
 6 shall make an award ~~of-partial-disability,~~ to reflect only such  
 7 ~~partial~~ disability, if any, as exists at the conclusion of such  
 8 ~~rehabilitation,-reeducation-or-training.~~ Any award of partial  
 9 ~~disability,~~ or modification of an existing award, made pursuant  
 10 to this subsection (j) shall be subject to the provisions of  
 11 K.S.A. 44-510d and 44-510e, and amendments thereto.

12 ~~(k)--If-an-incumbent-rehabilitation-administrator-has-served~~  
 13 ~~in-such-office-for-one-year-or-more-on-the-effective-date-of-this~~  
 14 ~~act,-such-rehabilitation-administrator--shall--be--considered--as~~  
 15 ~~having---attained---permanent---status---as---a---rehabilitation~~  
 16 ~~administrator.~~

17 Sec. 2. K.S.A. 44-534a is hereby amended to read as  
 18 follows: 44-534a. (a) After filing an application for a hearing  
 19 pursuant to K.S.A. 44-534 and amendments thereto, the employee  
 20 may make application for a preliminary hearing, in such form as  
 21 the director may require by rules and regulations, on the issues  
 22 of the furnishing of medical treatment and the payment of  
 23 temporary total disability compensation under the workers  
 24 compensation act. At least seven days prior to filing an  
 25 application for a preliminary hearing, the employee shall notify  
 26 the employer of the employee's intent to file such an application  
 27 and shall confirm such notice by letter. Upon receipt of an  
 28 application for such a preliminary hearing, the director shall  
 29 give seven days' written notice by mail to the employer of the  
 30 date set for such hearing. Such preliminary hearing shall be  
 31 summary in nature and shall be held by the director or an  
 32 administrative law judge in any county designated by the director  
 33 or administrative law judge, and the director or administrative  
 34 law judge shall exercise such powers as are provided for the  
 35 conduct of full hearings on claims under the workmen's  
 36 compensation act. Upon a preliminary finding that the injury to

1 the employee is compensable and in accordance with the facts  
2 presented at such preliminary hearing, the director or  
3 administrative law judge may make a preliminary award of medical  
4 compensation and temporary total disability compensation to be in  
5 effect pending the conclusion of a full hearing on the claim. The  
6 decision in such preliminary hearing shall be rendered within  
7 five days of the conclusion of such hearing. A preliminary award  
8 under this section may be retroactive only to the date of the  
9 application for a preliminary hearing under this section. No such  
10 preliminary findings or preliminary awards shall be appealable by  
11 any party to the proceedings, and the same shall not be binding  
12 in a full hearing on the claim, but shall be subject to a full  
13 presentation of the facts.

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

31 Sec. 3. K.S.A. 44-510g and 44-534a are hereby repealed.

32 Sec. 4. This act shall take effect and be in force from and  
33 after its publication in the statute book.