

Approved March 29, 1989  
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY & SMALL BUSINESS

The meeting was called to order by Senator Alicia L. Salisbury at  
Chairperson

1:35 ~~xxx~~/p.m. on March 15, 1989 in room 527-S of the Capitol.

All members were present except:

Senator Norma Daniels - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Mary Allen, Committee Secretary

Conferees appearing before the committee:

Brandon Meyers, Kansas Commission on Civil Rights  
Robert Anderson, Division of Workers' Compensation  
Rob Hodges, Kansas Chamber of Commerce and Industry

The meeting was called to order by the Chairman, Senator Alicia L. Salisbury.

Senator Morris moved that the minutes of the February 22, 1989, February 23, 1989, March 1, 1989, and March 2, 1989, meetings of the Committee be approved. Senator Sallee seconded the motion. The motion carried.

Senate Bill 329 - An Act concerning the Kansas age discrimination in employment act; authorizing the adoption of certain rules and regulations.

Brandon Meyers, Attorney for the Kansas Commission on Civil Rights, appeared before the Committee to explain SB 329, which, he said, would give the Commission the authority to promulgate rules and regulations in its administration of the Kansas Age Discrimination in Employment Act.

Senator Petty moved that SB 329 be recommended favorably for passage. Senator Martin seconded the motion. The motion carried.

Senate Bill 354 - An act concerning workers compensation; relating to rehabilitation benefits; procedures for hearings and awards.

Chairman Salisbury called on Robert Anderson, Director of the Division of Workers' Compensation in the Department of Human Resources, to explain the provisions of SB 354. Mr. Anderson called the attention of the Committee to the proposed changes contained in the bill which would amend K.S.A. 44-510g and distributed a chart (Attachment I) which describes the language currently in the Workers' Compensation Act concerning the purpose of the Act, work disability and vocational rehabilitation services. Mr. Anderson said that this section of SB 354 provides that when, as a result of an injury or occupation disease which is compensable under the Workers' Compensation Act, an employee is unable to perform work for the same employer at a comparable wage with or without accomodation or to enter the open labor market to perform work for which the employee has previous training, education, qualifications or experience and earn comparable wage, the employee will be entitled to such vocational rehabilitation services as may be reasonably necessary to restore to the employee the ability to perform work in the open labor market and to earn comparable wage.

Senator Morris observed that some employers are concerned that if this proposed change becomes law, and if an employee returns to work at a lesser wage and also receives work disability, that employee might, at a later date, decide to have vocational rehabilitation training and the employer would not only have to pay work disability but would also pay for the training. Mr. Anderson answered that if all the thresholds were made for a person who eventually entered vocational rehabilitation, the employer, if there is a running award and there has not been a work disability settlement, should be able, under K.S.A. 44-528, Review and modification, to state that as a result of vocational rehabilitation the employee no longer has the previous

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY & SMALL BUSINESS

room 527-S, Statehouse, at 1:35 ~~xxx~~ p.m. on March 15, 1989.

work disability and the work disability should be lessened.

Mr. Anderson discussed the proposed amendment to SB 354 to K.S.A. 44-534 and noted that it would give the Workers' Compensation Director the discretion to assign a case to a special administrative law judge instead of to an assistant director in instances when an award is not entered in thirty days.

Rob Hodges, Kansas Chamber of Commerce and Industry, told the Committee that he has had some concerns expressed to him from Beech Aircraft over the proposed amendment to K.S.A. 44-510g(d) in SB 354 where the comparable wage language is inserted in lines 69 and 70 as to whether or not returning to work for the same employer at a comparable wage precludes someone from returning to work at some lesser wage and leaving them open, if anything less than that, to return at a lesser wage and also receive vocational rehabilitation. He stated that he does not believe it is the intention of the Committee or the Legislature that claimants be placed in the position where a return to work is also an avenue for vocational rehabilitation.

Mr. Anderson observed that one complication in this whole issue is that "comparable wage" has not been defined in any appellate court or in the Director's Office.

Senator Morris moved that SB 354 be amended by inserting the provisions of Substitute for HB 2506, as the substitute bill was originally drafted before the House Committee of the Whole amendments were passed. (Attachment II) Senator Thiessen seconded the motion.

The Chairman asked the Workers' Compensation Director to provide an explanation of Substitute for HB 2506 as it was recommended by the House Labor and Industry Committee. Mr. Anderson explained that the amendments to K.S.A. 44-534 and K.S.A. 44-556 would apply if a party has paid medical compensation or temporary total compensation to a claimant and it is later determined, by a full presentation of the facts, that the accident was not compensable or that the claimant was given more compensation than was ultimately awarded. The party could, by certification through the Director's Office, recover that additional payment from the Workers' Compensation Fund. Mr. Anderson said that this provision would encourage employers to voluntarily provide vocational rehabilitation benefits.

Senator Martin offered a substitute motion that SB 354 be amended by inserting Substitute for HB 2506 as passed by the House of Representatives. Senator Petty seconded the substitute motion. The substitute motion failed.

A vote was taken on the original motion offered by Senator Morris. The original motion carried. Senators Feleciano, Martin and Petty asked to be recorded as voting no.

Senator Morris moved that SB 354 as amended be recommended favorably for passage. Senator Sallee seconded the motion. The motion carried. Senator Martin asked to be recorded as voting no.

The meeting was adjourned by the Chairman at 2:15 p.m.

GUEST LIST

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<u>NAME</u>	<u>REPRESENTING</u>
Bob Hofer	KCCI
David Longton	NRCC
Brandon L. Myers	KCCR
RICHARD LITTONS	DHR DIV OF WORKERS COMP.
Robert A. Anderson	DHR/ Div. of Work Comp -
Mike Germain	Boeing Military airplanes

Q

VOCATIONAL REHABILITATION

PRIMARY PURPOSE 44-510g(a)	WORK DISABILITY (GENERAL BODY INJURIES) 44-510e(a)	THRESHOLD FOR REHAB 44-510g(d)	VOCATIONAL REHABILITATION SERVICES 44-510g(d)
<p>A primary purpose of the Workers Compensation Act shall be to restore to the injured employee the <u>ability to perform work in the open labor market and to earn comparable wages.</u></p>	<p>The extent of <u>permanent general disability</u> shall be the extent, expressed as a percentage, to which the ability of the employee to <u>perform work in the open labor market and to earn comparable wages</u> has been reduced.</p>	<p>Employee is unable to perform work for the same employer with or without accommodation or for which such employee has previous training, education, qualification or experience.</p> <p><u>RECOMMENDATION</u></p> <ol style="list-style-type: none"> <li>1. Same employer at a <u>comparable wage.</u></li> <li>2. Previous training, education, qualification or experience <u>to enter open labor market and to earn comparable wage.</u></li> </ol>	<p>Including re-training and job placement as may be reasonably necessary to restore to such employee the ability to <u>perform work in the open labor market and to earn comparable wages.</u></p>

*Kenneth Taha, Industrial & Small Business  
 3-15-89  
 Attachment I*

SENATE BILL No. 354

By Committee on Ways and Means

3-2

PROPOSED AMENDMENTS TO S.B. NO. 354

For Consideration by Senate Committee on Labor, Industry and Small Business

3-14-89

securing payment of compensation;

payments made pending appeal and review; requiring reimbursement in certain cases

and 44-532

AN ACT concerning workers compensation; relating to rehabilitation benefits; procedures for hearings and awards; amending K.S.A. 44-523, and K.S.A. 1988 Supp. 44-510g, 44-534a and 44-556 and repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 44-510g is hereby amended to read as follows: 44-510g. (a) A primary purpose of the workers compensation act shall be to restore to the injured employee the ability to perform work in the open labor market and to earn comparable wages, as determined pursuant to subsection (a) of K.S.A. 44-510e and amendments thereto. To this end, the director shall appoint, subject to the approval of the secretary, a specialist in medical, physical and vocational rehabilitation, who shall be referred to as the rehabilitation administrator. The director shall appoint, subject to the approval of the secretary, four assistant rehabilitation administrators. The rehabilitation administrator and the assistant rehabilitation administrators shall be in the classified service under the Kansas civil service act. The rehabilitation administrator and the assistant rehabilitation administrators, subject to the direction of the rehabilitation administrator, shall: (1) Continuously study the problems of physical and vocational rehabilitation; (2) investigate and maintain a directory of all rehabilitation facilities, public or private, in this state, and, where such rehabilitation administrator determines necessary, in any other state; and (3) be fully knowledgeable regarding the eligibility requirements of all state, federal and other public medical, physical and vocational rehabilitation facilities and benefits. With respect to private facilities and agencies providing medical, physical and vocational rehabilitation services, including rehabilitation service programs provided directly by employers, the

Senate Labor, Industry & Small Business  
3-15-89

Attachment II

44 director shall approve as qualified such facilities, institutions, agen-  
45 cies, employer programs and physicians as are capable of rendering  
46 competent rehabilitation services. No such facility, institution, agency  
47 or employer program shall be considered qualified unless it is spe-  
48 cifically equipped to provide rehabilitation services for persons suf-  
49 fering from either some specialized type of disability or some general  
50 type of disability within the field of occupational injury or disease,  
51 and is staffed with trained and qualified personnel and, with respect  
52 to medical and physical rehabilitation, unless it is supervised by a  
53 physician qualified to render such service. No physician shall be  
54 considered qualified unless such physician has had such experience  
55 and training as the director may deem necessary.

56 (b) Under the direction of the director, and subject to the di-  
57 rector's final approval, the rehabilitation administrator shall have the  
58 duties of directing and auditing medical, physical and vocational  
59 rehabilitation of employees in accordance with the provisions of this  
60 section.

61 (c) An employee who has suffered an injury shall be entitled to  
62 prompt medical and physical rehabilitation services as may be rea-  
63 sonably necessary to restore to such employee the ability to perform  
64 work in the open labor market and to earn comparable wages, as  
65 determined pursuant to subsection (a) of K.S.A. 44-510e and amend-  
66 ments thereto, and as provided in this section.

67 (d) When as a result of an injury or occupational disease which  
68 is compensable under the workers compensation act, the employee  
69 is unable (1) to perform work for the same employer *at a comparable*  
70 *wage* with or without accommodation or (2) *to enter the open labor*  
71 *market to perform work* for which such employee has previous train-  
72 ing, education, qualifications or experience *and earn a comparable*  
73 *wage*, such employee shall be entitled to such vocational rehabili-  
74 tation services, including retraining and job placement, as may be  
75 reasonably necessary to restore to such employee the ability to per-  
76 form work in the open labor market and to earn comparable wages,  
77 as determined pursuant to subsection (a) of K.S.A. 44-510e and  
78 amendments thereto, and as provided in this section.

79 (e) (1) If the employee has remained off work for 90 days or if  
80 it is apparent to the director the employee requires vocational re-

81 habilitation services and, in either case, if approved rehabilitation  
82 services are not voluntarily furnished to the employee by the em-  
83 ployer, the director, on such director's own motion or upon appli-  
84 cation of any party, may refer the employee to a qualified public  
85 agency, if the employee is eligible, or private agency or facility, or  
86 the employer's rehabilitation service program, if qualified, for eval-  
87 uation and for a report of the practicability of, need for, and kind  
88 of service, treatment, training or rehabilitation which is or may be  
89 necessary and appropriate to render such employee able to perform  
90 work in the open labor market and to earn comparable wages, as  
91 determined pursuant to subsection (a) of K.S.A. 44-510e and amend-  
92 ments thereto. The costs of such evaluation and report shall be at  
93 the expense of the employer. Each report shall contain a rehabili-  
94 tation plan which shall adhere to the following priority listing of  
95 rehabilitation goals:

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

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

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

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

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

106 (F) the sixth priority is to provide vocational rehabilitation, reed-  
107 ucation and training.

108 (2) Within 50 days after such referral, the report shall be sub-  
109 mitted to and reviewed by the rehabilitation administrator and copies  
110 shall be furnished to each party. If all parties do not agree with the  
111 report, the rehabilitation administrator shall confer with the reha-  
112 bilitation service provider, the employee and the employer to review  
113 the evaluation and the proposed rehabilitation plan in the report.  
114 The rehabilitation administrator shall ensure the evaluation and the  
115 rehabilitation plan are objective and reasonable and the rehabilitation  
116 goal is reasonably obtainable. Within 20 days after the initial review  
117 of the report, the rehabilitation administrator shall deliver copies of

118 the report, together with the rehabilitation administrator's recom-  
119 mendations and any revisions of or objections to the rehabilitation  
120 plan, to each party, to the director and to the assigned administrative  
121 law judge, if there is one. Within 10 days after receipt of such  
122 report, any party may request a hearing before the director on any  
123 matter contained in the report or any such recommendations or  
124 revisions. After affording the parties an opportunity to be heard and  
125 present evidence, the director:

126 (A) May order any treatment, or medical and physical rehabili-  
127 tation, as recommended in the report or as the director may deem  
128 necessary, be provided at the expense of the employer;

129 (B) may order the employer to pay temporary total disability  
130 compensation, computed as provided in K.S.A. 44-510c and amend-  
131 ments thereto, or temporary partial disability compensation, com-  
132 puted as provided in K.S.A. 44-510e and amendments thereto,  
133 during the period of rehabilitation evaluation and continuing through  
134 the date the rehabilitation plan is delivered to the director as pro-  
135 vided in subsection (e)(2). Temporary total or temporary partial dis-  
136 ability compensation paid solely because of involvement in the  
137 rehabilitation evaluation process shall not be payable for more than  
138 70 days from the date of the evaluation, except such temporary total  
139 or temporary partial disability compensation may be continued by  
140 the director for an additional period of not more than 30 days if  
141 circumstances outside the control of the employee prevents com-  
142 pletion of the evaluation or the formulation of the rehabilitation plan;

143 (C) where vocational rehabilitation, reeducation or training is rec-  
144 ommended in the report, or is deemed necessary by the director  
145 to restore to the employee the ability to perform work in the open  
146 labor market and to earn comparable wages, as determined pursuant  
147 to subsection (a) of K.S.A. 44-510e and amendments thereto, may  
148 direct the employee to the appropriate federal, state or other public  
149 facility or agency where such services will or may be provided at  
150 no cost to the employer, except as otherwise provided in this section,  
151 or, upon the request of the employer, to a qualified rehabilitation  
152 service program provided directly by the employer; and

153 (D) if the employee is not eligible for such vocational rehabili-  
154 tation, reeducation or training through any such state, federal or



155 other public facility or agency, or where such services through such  
156 facilities or agencies are not available to the employee within a  
157 reasonable period of time, may order such services be provided at  
158 the expense of the employer by any qualified private agency or  
159 facility in this state or any state contiguous to this state or by a  
160 qualified rehabilitation service program provided directly by the  
161 employer.

162 (3) Any vocational rehabilitation, reeducation or training to be  
163 provided at the expense of the employer under subsection (e)(2) shall  
164 not extend for a period of more than 36 weeks, except, in extremely  
165 unusual cases, after a hearing and the presentation of evidence, the  
166 director, by special order, may extend the period for not more than  
167 an additional 36 weeks. The employer shall have a right to appeal  
168 to the district court any such special order by the director for any  
169 extension of the initial thirty-six-week period, within the time and  
170 in the manner provided in K.S.A. 44-556 and amendments thereto  
171 and any such special order shall be stayed until the district court  
172 has determined the appeal. There shall be no right of appeal to the  
173 Kansas supreme court or court of appeals from a judgment of the  
174 district court sustaining or overruling any such special order of the  
175 director.

176 (f) Where vocational rehabilitation, reeducation or training is to  
177 be furnished at the expense of the employer under this section, and  
178 such services require that the employee reside at or near a facility  
179 or institution, away from the employee's customary county of resi-  
180 dence, either in or out of the state of Kansas, the reasonable costs  
181 of the employee's board, lodging and travel, not to exceed a max-  
182 imum total of \$3,500 for any thirty-six-week period, shall be paid  
183 by the employer, except, in unusual cases where, after a hearing  
184 and the presentation of evidence the director finds the costs are  
185 clearly reasonable and necessary, the director may require by special  
186 order that the employer pay an additional amount for the costs of  
187 the employee's board, lodging and travel of not more than \$2,000.

188 (g) The employer shall pay temporary total disability compen-  
189 sation during any period of vocational rehabilitation, reeducation or  
190 training, computed as provided in K.S.A. 44-510c and amendments  
191 thereto, but the employer shall receive credit for any weekly,

192 monthly or other monetary payments made to the employee or such  
193 employee's family by any state, federal or other public agency during  
194 any such period, exclusive of any such payments for the board,  
195 lodging and travel expenses of the employee. Subject to a maximum  
196 of 26 weeks, the number of weeks during which temporary total  
197 disability compensation is paid during vocational rehabilitation, reed-  
198 ucation or training shall not be deducted from the maximum number  
199 of weeks available for the payment of disability compensation under  
200 the schedule provided in K.S.A. 44-510d and amendments thereto.

201 (h) The director shall cooperate with federal, state and other  
202 public or private agencies for vocational rehabilitation, reeducation  
203 or training, or medical or physical rehabilitation. The employer shall  
204 not be required to pay the reasonable costs of the employee's board,  
205 lodging and travel where such costs are borne by any federal, state  
206 or other public agency, nor shall any costs for vocational rehabili-  
207 tation, reeducation or training be assessed to the employer if such  
208 vocational rehabilitation, reeducation or training is in fact furnished  
209 by and at the expense of any federal, state or other public agency.

210 (i) Whenever the director determines there is a reasonable prob-  
211 ability that with appropriate medical, physical or vocational reha-  
212 bilitation, reeducation or training, a person, who is entitled to  
213 compensation for permanent total disability, partial disability or any  
214 other disability under the workers compensation act, may be re-  
215 habilitated to the extent such person can become able to perform  
216 work in the open labor market and to earn comparable wages, as  
217 determined pursuant to subsection (a) of K.S.A. 44-510e and amend-  
218 ments thereto, and it is for the best interests of such person to  
219 undertake such rehabilitation, reeducation or training, if the injured  
220 employee without good cause refuses to undertake the rehabilitation,  
221 educational or training program determined by the director to be  
222 suitable for such employee or refuses to be evaluated under the  
223 provisions of subsection (e) and the refusal is not due to the em-  
224 ployee's physical or mental ability to do so, the employee shall be  
225 considered as having elected not to participate in such rehabilitation,  
226 reeducation or training and the director may suspend the payment  
227 of any disability compensation until the employee consents to un-  
228 dertake such program or to be so evaluated. The director may reduce

229 the disability compensation otherwise payable if any such refusal  
230 persists for a period in excess of 90 days, except disability compen-  
231 sation shall not be reduced to less than that payable for permanent  
232 partial disability in accordance with K.S.A. 44-510d and amendments  
233 thereto or for permanent partial general disability for functional im-  
234 pairment in accordance with K.S.A. 44-510e and amendments  
235 thereto.

236 (j) At such time as any medical, physical or vocational rehabili-  
237 tation, reeducation or training has been completed under this section,  
238 the employer shall have the right, by the filing of an application  
239 with the director, to seek a modification of any award which has  
240 been rendered granting any compensation to the employee for any  
241 disability. Upon at least 20 days' notice by registered mail to all  
242 parties, the director shall set the application for hearing and the  
243 parties shall present all material and relevant evidence. In the event  
244 the director determines the employee is rehabilitated so such em-  
245 ployee is able to perform work in the open labor market and to earn  
246 comparable wages, as determined pursuant to subsection (a) of K.S.A.  
247 44-510e and amendments thereto, the director shall modify any  
248 award of compensation or, if no such award has been made, the  
249 director shall make an award to reflect only such disability, if any,  
250 as exists at the conclusion of such rehabilitation. Any award of partial  
251 disability, or modification of an existing award, made pursuant to  
252 this subsection (j) shall be subject to the provisions of K.S.A. 44-  
253 510d and 44-510e and amendments thereto.

254 Sec. 2. K.S.A. 44-523 is hereby amended to read as follows: 44-  
255 523. (a) The director, administrative law judge or court shall not be  
256 bound by technical rules of procedure, but shall give the parties  
257 reasonable opportunity to be heard and to present evidence, insure  
258 an employee an expeditious hearing and act reasonably without  
259 partiality.

260 (b) Whenever a party files an application for hearing pursuant to  
261 K.S.A. 44-534 and amendments thereto, the matter shall be assigned  
262 to an administrative law judge for hearing and the administrative  
263 law judge shall set a terminal date to require the claimant to submit  
264 all evidence in support of the claimant's claim no later than ~~thirty~~  
265 ~~(30)~~ 30 days after the first full hearing before the administrative law

266 judge and to require the respondent to submit all evidence in support  
 267 of the respondent's position no later than ~~thirty (30)~~ 30 days there-  
 268 after. An extension of the foregoing time limits may be granted:

- 269 (1) If all parties agree;  
 270 (2) if the employee is being paid temporary or permanent total  
 271 disability compensation;  
 272 (3) for medical examination of the claimant if the party requesting  
 273 the extension explains in writing to the administrative law judge facts  
 274 showing that the party made a diligent effort but was unable to have  
 275 a medical examination conducted prior to the submission of the case  
 276 by the claimant but then only if the examination appointment was  
 277 set and notice of the appointment sent prior to submission by the  
 278 claimant; or

279 (4) on application to the director for good cause shown.

280 (c) When all parties have submitted the case to an administrative  
 281 law judge for an award, the administrative law judge shall issue an  
 282 award within ~~thirty (30)~~ 30 days. When the award is not entered  
 283 in ~~thirty (30)~~ 30 days, any party to the action may notify the director  
 284 that an award is not entered and the director shall assign the matter  
 285 to an assistant director *or to a special administrative law judge* who  
 286 shall enter an award forthwith based on the evidence in the record,  
 287 or the director, on the director's own motion, may remove the case  
 288 from the administrative law judge who has not entered an award  
 289 within ~~thirty (30)~~ 30 days following submission by the party and  
 290 assign it to an assistant director *or to a special administrative law*  
 291 *judge* for immediate decision based on the evidence in the record.

292 Sec. 3. K.S.A. 1988 Supp. 44-534a is hereby amended to read  
 293 as follows: 44-534a. (a) After filing an application for a hearing pur-  
 294 suant to K.S.A. 44-534 and amendments thereto, the employee may  
 295 make application for a preliminary hearing, in such form as the  
 296 director may require by rules and regulations, on the issues of the  
 297 furnishing of medical treatment and the payment of temporary total  
 298 disability compensation and for any matter relative to the furnishing  
 299 of vocational rehabilitation in accordance with and subject to the  
 300 provisions of K.S.A. 44-510g and amendments thereto. At least seven  
 301 days prior to filing an application for a preliminary hearing, the  
 302 employee shall notify the employer of the employee's intent to file

INSERT Sec. 3 amending K.S.A. 44-532 Attached

And by renumbering sections accordingly

303 such an application and shall confirm such notice by letter. Upon  
304 receipt of an application for such a preliminary hearing, the director  
305 shall give seven days' written notice by mail to the employer of the  
306 date set for such hearing. Such preliminary hearing shall be summary  
307 in nature and shall be held by the director or an administrative law  
308 judge in any county designated by the director or administrative law  
309 judge, and the director or administrative law judge shall exercise  
310 such powers as are provided for the conduct of full hearings on  
311 claims under the workers compensation act. Upon a preliminary  
312 finding that the injury to the employee is compensable and in ac-  
313 cordance with the facts presented at such preliminary hearing, the  
314 director or administrative law judge may make a preliminary award  
315 of medical compensation and temporary total disability compensation  
316 to be in effect pending the conclusion of a full hearing on the claim.  
317 The decision in such preliminary hearing shall be rendered within  
318 five days of the conclusion of such hearing. No such preliminary  
319 findings or preliminary awards shall be appealable by any party to  
320 the proceedings, and the same shall not be binding in a full hearing  
321 on the claim, but shall be subject to a full presentation of the facts.

322 (b) If compensation in the form of medical benefits or, temporary  
323 total disability benefits or *vocational rehabilitation benefits* has been  
324 paid by the employer or the employer's insurance carrier either  
325 voluntarily or pursuant to a preliminary award entered under this  
326 section and, upon a full hearing on the claim, the amount of com-  
327 pensation to which the employee is entitled is found to be less than  
328 the amount of compensation paid or is totally disallowed, the em-  
329 ployer and the employer's insurance carrier shall be reimbursed from  
330 the workers compensation fund established in K.S.A. 44-566a and  
331 amendments thereto, for all amounts of compensation so paid which  
332 are in excess of the amount of compensation the employee is entitled  
333 to as determined in the full hearing on the claim. The director shall  
334 determine the amount of compensation paid by the employer or  
335 insurance carrier which is to be reimbursed under this subsection,  
336 and the director shall certify to the commissioner of insurance the  
337 amount so determined. Upon receipt of such certification, the com-  
338 missioner of insurance shall cause payment to be made to the em-  
339 ployer or the employer's insurance carrier in accordance therewith.

340 Sec. 4. K.S.A. 1988 Supp. 44-556 is hereby amended to read as  
341 follows: 44-556. (a) Any action of the director pursuant to the work-  
342 men's workers compensation act shall be subject to review in ac-  
343 cordance with the act for judicial review and civil enforcement of  
344 agency actions. Such review shall be upon questions of law and fact  
345 as presented and shown by a transcript of the evidence and pro-  
346 ceedings as presented, had and introduced before the director. The  
347 venue of the action shall be the county where the cause of action  
348 arose or the county mutually agreed upon by all of the parties. Any  
349 such action shall have precedence over all other hearings except  
350 those of like character, and shall be heard not later than the first  
351 term of the district court after the appeal has been perfected, and  
352 the court shall decide all such cases within 60 days after submission.  
353 The appealing party shall notify the director when judgment is issued  
354 by the court. If judgment is not issued within 60 days of submission,  
355 the appealing party shall notify the director to that effect. The di-  
356 rector will advise the judge to whom the case was submitted that  
357 60 days has elapsed since submission of the case and request that  
358 a decision be rendered. If no decision is forthcoming within 30 days  
359 of such request by the director, the director will advise the supreme  
360 court justice having jurisdiction over such judge of all of the facts  
361 in regard to the review and the failure of the judge to render a  
362 decision as required by this section.

363 (b) On any such review the district court shall have jurisdiction  
364 to grant or refuse compensation, or to increase or diminish any award  
365 of the director as justice may require. No compensation shall be  
366 due or payable until the expiration of the time for commencing an  
367 action for review and then the payment of past due compensation  
368 awarded by the director shall not be payable if, within such time  
369 notice of appeal to the district court a petition for review, has  
370 been filed in accordance with the act for judicial review and civil  
371 enforcement of agency actions. The right of review shall include the  
372 right to make no payments of such compensation until the review  
373 has been decided by the district court if the employer is insured  
374 for workmen's workers compensation liability with an insurance  
375 company authorized to do business in this state, if the employer is  
376 maintaining membership in a qualified group-funded workers com-

377 pension pool under K.S.A. 44-581 through 44-591 and amendments  
 378 thereto, for if the employer is currently approved by the director as  
 379 a self-insurer and has filed a bond with the district court in accord-  
 380 ance with K.S.A. 44-530 and amendments thereto. Commencement  
 381 of an action for review shall not stay the payment of compensation  
 382 due for the ten-week period next preceding the director's decision  
 383 and for the period of time after the director's decision and prior to  
 384 the decision of the district court on review.

385 (c) If review of the decision of the district court is sought pursuant  
 386 to K.S.A. 77-623 and amendments thereto, the compensation payable  
 387 under the decision of the district court shall not be stayed pending  
 388 such review. Review of the decision of the district court shall take  
 389 precedence over other cases except cases of the same character.

390 (d) If compensation, *including medical benefits, temporary total*  
 391 *disability benefits or vocational rehabilitation benefits*, has been paid  
 392 to the worker by the employer or the employer's insurance carrier  
 393 during the pendency of review by the district court or by appellate  
 394 courts and the amount of compensation awarded by the director or  
 395 the district court is reduced or totally disallowed by the decision on  
 396 the appeal or review, the employer and the employer's insurance  
 397 carrier, except as otherwise provided in this section, shall be reim-  
 398 bursed from the workers compensation fund established in K.S.A.  
 399 44-566a and amendments thereto for all amounts of compensation  
 400 so paid which are in excess of the amount of compensation that the  
 401 worker is entitled to as determined by the final decision on review.  
 402 The director shall determine the amount of compensation paid by  
 403 the employer or insurance carrier which is to be reimbursed under  
 404 this subsection, and the director shall certify to the commissioner  
 405 of insurance the amount so determined. Upon receipt of such cert-  
 406 ification, the commissioner of insurance shall cause payment to be  
 407 made to the employer or the employer's insurance carrier in ac-  
 408 cordance therewith.

409 Sec. 5. K.S.A. 44-523 and K.S.A. 1988 Supp. 44-510g, 44-534a  
 410 and 44-556 are hereby repealed.

411 Sec. 6. This act shall take effect and be in force from and after  
 412 its publication in the statute book.

if the employer is maintaining membership in a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act

Subsections (e) & (f) attached insert (2)

and 44-532

8-11

INSERTS TO S.B. NO. 354

INSERT ①

Sec. 3. K.S.A. 44-532 is hereby amended to read as follows:  
44-532. (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workmen's workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501 and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways: (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas; (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; or (3) by maintaining a membership in a qualified group-funded workers compensation pool ~~as provided by K.S.A. 44-581 to 44-591, inclusive, and amendments thereto.~~ The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section is a class C misdemeanor.

(d) (1) Every insurance carrier writing workers' compensation insurance for any employment covered under the workmen's workers compensation act shall file, with the director, written notice of the issuance, nonrenewal or cancellation of a policy or contract of insurance, or any endorsement, providing



workers compensation coverage, within 10 days after such issuance, nonrenewal or cancellation. Every such insurance carrier shall file, with the director, written notice of all such policies, contracts and endorsements in force on the effective date of this act.

(2) Every employer covered by the workmen's workers compensation act who is a qualified self-insurer shall give written notice to the director if such employer changes from a self-insurer status to insuring through an insurance carrier or by maintaining a membership in a qualified group-funded workers compensation pool, such notice to be given within 10 days after the effective date of such change. Every self-insurer shall file with the director annually a report verifying the employer's continuing ability to pay compensation to the employer's employees.

(3) Every employer covered by the workmen's workers compensation act who is a member of a qualified group-funded workers compensation pool shall give written notice to the director if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.

(4) The mailing of any written notice or report required by this subsection (d) in a stamped envelope within the prescribed time shall comply with the requirements of this subsection.

(5) The director shall provide by regulation for the forms of written notices and reports required by this subsection (d).

(e) As used in this section, "qualified group-funded workers compensation pool" means any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or any group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

INSERT ②

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review by the district court or by appellate courts, and the employer, the employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the director or the district court, is held not liable by the final decision on the appeal or review for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such appeal or review to pay the amount of compensation to the worker that was erroneously ordered paid by the director or district court. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

(f) As used in subsections (d) and (e), "employers' insurance carrier" includes any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Labor, Industry and Small Business

Recommends that Senate Bill No. 329

"AN ACT concerning the Kansas age discrimination in employment act; authorizing the adoption of certain rules and regulations."

Be passed.

\_\_\_\_\_  
Chairperson

## REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Labor, Industry and Small Business

Recommends that Senate Bill No. 354

"AN ACT concerning workers compensation; relating to rehabilitation benefits; procedures for hearings and awards; amending K.S.A. 44-523 and K.S.A. 1988 Supp. 44-510g, 44-534a and 44-556 and repealing the existing sections."

Be amended:

On page 8, preceding line 292, by inserting the following section to read as follows:

"Sec. 3. K.S.A. 44-532 is hereby amended to read as follows:  
44-532. (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the ~~workmen's~~ workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501 and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways: (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas; (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; or (3) by maintaining a membership in a qualified group-funded workers compensation pool ~~as provided by K.S.A. 44-581 to 44-591, inclusive, and amendments thereto.~~ The cost of carrying such insurance or risk shall be paid by the employer and

not the employee.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section is a class C misdemeanor.

(d) (1) Every insurance carrier writing workers' compensation insurance for any employment covered under the workmen's workers compensation act shall file, with the director, written notice of the issuance, nonrenewal or cancellation of a policy or contract of insurance, or any endorsement, providing workers compensation coverage, within 10 days after such issuance, nonrenewal or cancellation. Every such insurance carrier shall file, with the director, written notice of all such policies, contracts and endorsements in force on the effective date of this act.

(2) Every employer covered by the workmen's workers compensation act who is a qualified self-insurer shall give written notice to the director if such employer changes from a self-insurer status to insuring through an insurance carrier or by maintaining a membership in a qualified group-funded workers compensation pool, such notice to be given within 10 days after the effective date of such change. Every self-insurer shall file with the director annually a report verifying the employer's continuing ability to pay compensation to the employer's employees.

(3) Every employer covered by the workmen's workers compensation act who is a member of a qualified group-funded workers compensation pool shall give written notice to the director if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.

(4) The mailing of any written notice or report required by this subsection (d) in a stamped envelope within the prescribed time shall comply with the requirements of this subsection.

(5) The director shall provide by regulation for the forms of written notices and reports required by this subsection (d).

(e) As used in this section, "qualified group-funded workers compensation pool" means any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or any group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act."

And by renumbering sections accordingly;

On page 11, in line 378, preceding "or" by inserting the following: "if the employer is maintaining membership in a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act,"; preceding line 409, by inserting the following subsections to read as follows:

"(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review by the district court or by appellate courts, and the employer, the employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the director or the district court, is held not liable by the final decision on the appeal or review for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such appeal or review to pay the amount of compensation to the worker that was erroneously ordered paid by the director or district court. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final

decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

(f) As used in subsections (d) and (e), "employers' insurance carrier" includes any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.";

Also on page 11, in line 409, after "44-523" by inserting "and 44-532";

On page 1, in the title, in line 16, after the first semicolon, by inserting "securing payment of compensation;"; also in line 16, after the last semicolon, by inserting "payments made pending appeal and review; requiring reimbursement in certain cases;"; in line 17, after "44-523" by inserting "and 44-532";

And the bill be passed as amended.

\_\_\_\_\_  
Chairperson