

Approved

Date

2-9-90

MINUTES OF THE House COMMITTEE ON Labor & IndustryThe meeting was called to order by Representative Arthur Douville at
Chairperson9:10 a.m./~~p.m.~~ on February 1, 19⁹⁰ in room 526-S of the Capitol.

All members were present except:
 Representative Gomez - Excused
 Representative Schauf - Excused

Committee staff present:
 Jerry Donaldson - Legislative Research Department
 Kay Johnson - Committee Secretary

Conferees appearing before the committee:
 Robert Anderson - Director, Division of Workers Compensation

The meeting was called to order at 9:10 a.m. by the Chairman, Representative Arthur Douville.

Robert Anderson addressed the committee regarding legislation proposed by the Workers Compensation Joint Advisory Committee and distributed handouts, attachment #1 - letter to Chairman Douville, attachment #2 - list of Workers Compensation Joint Advisory Committee members and attachment #3 - proposed legislation concerning K.S.A. 44-510g. The major change in the statute takes away the 100 day maximum temporary total during the rehabilitation process. For cases where a vendor is not providing timely service the proposed legislation allows for a change of vendor. Director Anderson has been ruling that temporary total is due from the date of referral and this legislation puts it in statute form.

Representative Whiteman questioned page 4, section B of attachment #3. Director Anderson clarified that it deals with the remedy for an injured worker who has not been receiving temporary total from the beginning and should have been. Representative O'Neal stated he thought the language in that section should be moved to page 3, section (e)(1), so there is no mistake that temporary total should start at the point of assessment. Director Anderson agreed.

Representative O'Neal said it was his recollection that the Joint Advisory Committee agreed that the "shall" language would be changed to "may", page 4, attachment #3, to correspond with language already in the statute and to show the judge has an option. Director Anderson said he would check with Jim Wilson as it may have been an oversight.

Chairman Douville questioned the language change from "evaluation" to "assessment". Director Anderson stated there had been some ambiguity over the word "evaluation" and that "assessment" would cover from the initial referral to the vocational rehabilitation counselor.

Representative Patrick discussed drafting legislation to include small business representatives on the various advisory committees. Secretary Ray Siehndel explained that the Workers Compensation Advisory Committee was just formed last year and he doesn't know if it will be used next year, but has no objections to including small business representatives. The Employment Security Advisory Council has statutorily mandated terms yet to expire. Representative Hensley suggested that 1 or 2 slots could be statutorily earmarked for small business.

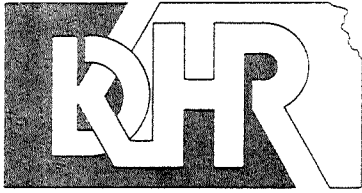
Representative Patrick made a motion for Jim Wilson to draft legislation that would statutorily include small business representatives on the Employment Security Advisory Council. Representative Hensley seconded the motion. The motion carried.

Representative O'Neal made a motion to introduce as a committee bill the proposed legislation concerning K.S.A. 44-510g as will be amended by Jim Wilson. Representative Webb seconded the motion. The motion carried.

The meeting adjourned at 9:31 a.m. The next meeting of the committee is scheduled for Tuesday, February 6, 1990 at 9:00 a.m. in room 526-S.

KANSAS

DEPARTMENT OF HUMAN RESOURCES



DIVISION OF WORKERS COMPENSATION
600 Merchants Bank Tower, 800 SW Jackson
Topeka, Kansas 66612-1227
(General Information: 913-296-3441)

Mike Hayden, Governor

Ray D. Siehndel, Secretary

February 1, 1990

The Honorable Arthur Douville
Chairman - Labor & Industry Committee
Statehouse, Room 115-S
Topeka, Kansas 66612

296-4000 Director's Office
296-2050 Rehabilitation
296-2996 Claims Advisory
296-3606 Self Insurance
296-7012 Law Judges

Re: Workers Compensation Joint
Advisory Committee

Dear Chairman Douville:

Thank you for allowing me to appear before the House Labor & Industry Committee on Thursday, February 1, 1990, at 9:00 a.m. on behalf of the Workers Compensation Joint Advisory Committee to introduce the proposed amendment to K.S.A. 44-510g. The Joint Advisory Committee has presented this bill to Secretary Ray Siehndel with the recommendation that the proposed amendment be forwarded to your committee for consideration this legislative session.

Enclosed please find a copy of the proposed bill, which was drafted by Jim Wilson of the Revisor of Statutes Office. The bill is a compromise between labor, industry and insurance concerns and was unanimously approved by all 16 committee members. Also enclosed is another list of the Joint Advisory Committee membership for your purview.

During my presentation, I hope to answer any questions your committee members may have. This bill, if adopted, will help ease the cost of litigation and vocational rehabilitation issues while protecting injured workers from being arbitrarily cut off from receiving benefits, a situation that can and does occur under the current statutory time frames.

Once again, thank you for allowing me to appear before your committee.

Yours truly,

Robert A. Anderson
Workers Compensation Director

HOUSE LABOR & INDUSTRY
Attachment #1
02-01-90

The Honorable Arthur Douville
February 1, 1990
Page 2

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Enclosure

Copies to:

Ray D. Siehndel, Secretary of Human Resources
All Member of Workers Compensation Joint Advisory Committee

WORKERS COMPENSATION JOINT ADVISORY COMMITTEE MEMBERS

October, 1989

	<u>Name/Address</u>	<u>Organization/Occupation</u>	<u>Representing</u>
1.	Wayne Maichel P.O. Box 1455 Topeka, Kansas 66601 (913) 357-0396	Kansas AFL/CIO	Labor
2.	John Ostrowski P.O. Box 1453 Topeka, Kansas 66601 (913) 233-2323	Attorney/Lobbyist	Labor
3.	Terry Leatherman 500 Bank IV Tower One Townsite Plaza Topeka, Kansas 66603-3460 (913) 357-6321	KCCI	Industry
4.	Rob Hodges 700 S.W. Jackson, Suite 704 Topeka, Kansas 66603 (913) 234-0307	Ks. Telecommunications Asso.	Industry
5.	Ken Jones P.O. Box 1739 Wichita, Kansas 67201 (316) 685-5471	Employers Mutual Ins.	Insurance
6.	Jack Stewart P.O. Box 2954 Overland Park, Kansas 66201 (913) 451-1570	St. Paul Ins. Cos.	Insurance
7.	J. Richard Amend P.O. Box 206 Wichita, Kansas 67201 (316) 263-3211	Dulaney, Johnston & Priest	At-Large
8.	Chris Allen P.O. Box 7600 Overland Park, Kansas 66207 (913) 345-1776	Royal Insurance Co.	At-Large
9.	Norman Cooley 608 North Broadway Wichita, Kansas 67214 (316) 265-2978	Attorney	Claimant's Atty.

- | | | |
|--|---|--------------------|
| 10. Randall Palmer
P.O. Box 1101
Pittsburg, Kansas 66762
(316) 231-9890 | Attorney | Respondent's Atty. |
| 11. Chris Cowger
420 S.W. 9th Street
Topeka, Kansas 66612
(913) 296-2188 | Ks. Insurance Department | Fund Attorney |
| 12. Bruce Smith
7070 W. 107th Street, Ste. 160
Overland Park, Kansas 66212
(913) 381-0081 | Prof. Rehab. Consul. | Rehab. Vendor |
| 13. S. M. Kiegerl
P.O. Box 847
Olathe, Kansas 66061
(913) 782-6697 | Prof. Rehab. Management | Rehab. Vendor |
| 14. Terry Bernatis
900 S.W. Jackson, Rm. 951-S
Topeka, Kansas 66612
(913) 296-4278 | Bnfts. Analysis Manager
(State Self-Ins. Fund) | Self-Insureds |
| 15. Mike Cavell
220 East 6th Street, Rm. 515
Topeka, Kansas 66603
(913) 276-8413 | Southwestern Bell | Self-Insureds |
| 16. Charles White, M.D.
818 North Emporia, Ste. 107
Wichita, Kansas 67214-3725
(316) 291-7246 | Mid-West Pain Mgmt. Ctr. | Physician |
| 17. Richard Thomas
900 S.W. Jackson, Rm. 651-S
Topeka, Kansas 66612
(913) 296-3441 | Rehab. Administrator
(Div. of Workers Comp.) | Ex Officio |
| 18. Robert Anderson
900 S.W. Jackson, Rm. 651-S
Topeka, Kansas 66612
(913) 296-3441 | Director
(Div. of Workers Comp.) | Ex Officio |

WORKERS COMPENSATION REHABILITATION
ADVISORY COMMITTEE
JUNE 1989

NAME/ADDRESS	ORGANIZATION
Richard L. Thomas 900 SW Jackson, Room 651-S Landon State Office Building Topeka, Kansas 66612 (913) 296-3441	Rehabilitation Administrator Workers Compensation
Ken Ogren 700 Jackson, 9th Floor Topeka, Kansas 66603 (913) 233-2051	Menninger Foundation
Cyrilla Petracek 201 East Santa Fe Olathe, Kansas 66061 (913) 782-6697	Professional Rehab Mgmt.
Susan Matich-Pederson 3406 Broadway Kansas City, Missouri 64111 (816) 753-2863	Crawford Health & Rehabilitation
Bud Langston 2909 Plass Court Topeka, Kansas 66611 (913) 266-0210	Kansas Rehabilitation and Clinical Consultants
Judy Shorman 8400 W. 110th St. Suite 220 Overland Park, Kansas 66210 (913) 469-0712	Fortis Corporation
Ard Allison 6301 Waterford Blvd. PO Box 26647 Oklahoma City, OK 73126-0647 (405) 841-8072	Fleming Companies, Inc
Vaughn Burkholder 700 4th Financial Center Wichita, Kansas 67202 (316) 267-6371	Attorney Foulston, Siefkin, Powers & Everhardt

David Allegria
1507 Topeka Blvd.
Topeka, Kansas 66601
(913) 233-2323

Attorney
McCullough, Wareheim &
LaBunker

Steve Howard
8417 Santa Fe, Room 206
Overland Park, KS 66212-2749
(913) 642-7650

Administrative Law Judge

William Morrissey
900 SW Jackson, Room 651-S
Landon State Office Building
Topeka, Kansas 66612
(913) 296-3441

Assistant Director
Workers Compensation

BILL NO. _____

AN ACT concerning the workers compensation act; relating to medical, physical and vocational rehabilitation; amending K.S.A. 1989 Supp. 44-510g and repealing the existing section.

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

Section 1. K.S.A. 1989 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 director shall approve as qualified such facilities, institutions, agencies, employer programs and physicians as are capable of rendering competent rehabilitation services. No such facility, institution, agency or employer program shall be considered qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury or disease, and is staffed with trained and qualified personnel and, with respect to medical and physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless such physician has had such experience and training as the director may deem necessary.

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

(c) An employee who has suffered an injury shall be entitled to prompt medical and physical rehabilitation services as may be reasonably necessary to restore to such 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, and as provided in this section.

(d) When as a result of an injury or occupational disease which is compensable under the workers compensation act, the employee is unable (1) to perform work for the same employer at a comparable wage with or without accommodation or (2) to enter the open labor market to perform work for which such employee has previous training, education, qualifications or experience and earn a comparable wage, such employee shall be entitled to such vocational rehabilitation services, including retraining and job

placement, as may be reasonably necessary to restore to such 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, and as provided in this section.

(e) (1) If the employee has remained off work for 90 days or if it is apparent to the director the employee requires vocational rehabilitation services and, in either case, if approved rehabilitation services are not voluntarily furnished to the employee by the employer, the director, on such director's own motion or upon application of any party, may refer the employee to a qualified public agency, if the employee is eligible, or private agency or facility, or the employer's rehabilitation service program, if qualified, for evaluation assessment and for a report of the practicability of, need for, and kind of service, treatment, training or rehabilitation which is or may be necessary and appropriate to render such employee able 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. Such referral for assessment by a qualified agency or facility shall be subject to the employer's right to select the qualified agency or facility under subsection (k). The costs of such evaluation assessment and report shall be at the expense of the employer. Each report shall contain a determination as to whether a rehabilitation plan is needed. If it is determined that a rehabilitation plan is needed, the report shall contain a rehabilitation plan which shall adhere to the following priority listing of rehabilitation goals:

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

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

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

(D) the fourth priority is to return the employee to the

same work for another employer;

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

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

(2) Within 50 days after such referral, the report shall be submitted to and reviewed by the rehabilitation administrator and copies shall be furnished to each party. If all parties do not agree with the report, the rehabilitation administrator shall confer with the rehabilitation service provider, the employee and the employer to review the evaluation assessment and the proposed rehabilitation plan in the report. The rehabilitation administrator shall ensure the evaluation assessment and the rehabilitation plan are objective and reasonable and the rehabilitation goal is reasonably obtainable. Within 20 days after the initial review of the report, the rehabilitation administrator shall deliver copies of the report, together with the rehabilitation administrator's recommendations and any revisions of or objections to the rehabilitation plan, to each party, to the director and to the assigned administrative law judge, if there is one. Within 10 days after receipt of such report, any party may request a hearing before the director on any matter contained in the report or any such recommendations or revisions. After affording the parties an opportunity to be heard and present evidence, the director:

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

(B) may order the employer to pay temporary total disability compensation, computed as provided in K.S.A. 44-510c and amendments thereto, or temporary partial disability compensation, computed as provided in K.S.A. 44-510e and amendments thereto, to the employee which shall be payable commencing on the date that the evaluation is determined to be necessary and which shall continue to be paid during the period of rehabilitation

evaluation ~~and continuing~~ through the date the assessment and the rehabilitation plan, if needed, is delivered by the rehabilitation administrator to the director as provided in subsection (e)(2). ~~---Temporary---total---or---temporary---partial disability compensation paid solely because of involvement in the rehabilitation evaluation process shall not be payable for more than 70 days from the date of the evaluation, except such temporary total or temporary partial disability compensation may be continued by the director for an additional period of not more than 30 days if circumstances outside the control of the employee prevents completion of the evaluation or the formulation of the rehabilitation plan, except that such temporary total disability compensation or temporary partial disability compensation shall cease to be payable if the assessment and plan development or completion are delayed and the delay is the fault of the employee; the date of the order by the administrative law judge or the written notification by the rehabilitation administrator, regarding the assessment, shall be the date that the assessment is determined to be necessary;~~

(C) where vocational rehabilitation, reeducation or training is recommended in the report, or is deemed necessary by the director to restore to the 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, may direct the employee to the appropriate federal, state or other public facility or agency where such services will or may be provided at no cost to the employer, except as otherwise provided in this section, or, upon the request of the employer, to a qualified rehabilitation service program provided directly by the employer; and

(D) if the employee is not eligible for such vocational rehabilitation, reeducation or training through any such state, federal or other public facility or agency, or where such services through such facilities or agencies are not available to the employee within a reasonable period of time, may order such

services be provided at the expense of the employer by any qualified private agency or facility in this state or any state contiguous to this state or by a qualified rehabilitation service program provided directly by the employer, subject to the right of the employer to select the qualified agency or facility under subsection (k).

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

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

(g) The employer shall pay temporary total disability

compensation during any period of vocational assessment, rehabilitation, reeducation or training, computed as provided in K.S.A. 44-510c and amendments thereto, but the employer shall receive credit for any weekly, monthly or other monetary payments made to the employee or such employee's family by any state, federal or other public agency during any such period, exclusive of any such payments for the board, lodging and travel expenses of the employee. Subject to a maximum of 26 weeks, the number of weeks during which temporary total disability compensation is paid during vocational assessment, rehabilitation, reeducation or training shall not be deducted from the maximum number of weeks available for the payment of disability compensation under the schedule provided in K.S.A. 44-510d and amendments thereto.

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

(i) Whenever the director determines there is a reasonable probability that with appropriate medical, physical or vocational rehabilitation, reeducation or training, a person, who is entitled to compensation for permanent total disability, partial disability or any other disability under the workers compensation act, may be rehabilitated to the extent such person can become able 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, and it is for the best interests of such person to undertake such rehabilitation, reeducation or training, if the injured employee without good

cause refuses to undertake the rehabilitation, educational or training program determined by the director to be suitable for such employee or refuses to be evaluated under the provisions of subsection (e) and the refusal is not due to the employee's physical or mental ability to do so, the employee shall be considered as having elected not to participate in such rehabilitation, reeducation or training and the director may suspend the payment of any disability compensation until the employee consents to undertake such program or to be so evaluated. The director may reduce the disability compensation otherwise payable if any such refusal persists for a period in excess of 90 days, except disability compensation shall not be reduced to less than that payable for permanent partial disability in accordance with K.S.A. 44-510d and amendments thereto or for permanent partial general disability for functional impairment in accordance with K.S.A. 44-510e and amendments thereto.

(j) At such time as any medical, physical or vocational rehabilitation, reeducation or training has been completed under this section, the employer shall have the right, by the filing of an application with the director, to seek a modification of any award which has been rendered granting any compensation to the employee for any disability. Upon at least 20 days' notice by registered mail to all parties, the director shall set the application for hearing and the parties shall present all material and relevant evidence. In the event the director determines the employee is rehabilitated so such employee is able 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, the director shall modify any award of compensation or, if no such award has been made, the director shall make an award to reflect only such disability, if any, as exists at the conclusion of such rehabilitation. Any award of partial disability, or modification of an existing award, made pursuant to this subsection (j) shall be subject to the

provisions of K.S.A. 44-510d and 44-510e and amendments thereto.

(k) The employer has the right to select the qualified agency or facility to provide vocational assessment, rehabilitation, reeducation or training for an employee under this section if the selection is made by the employer within 15 days after receipt of an order issued by an administrative law judge or a notification by the rehabilitation administrator that the vocational assessment, rehabilitation, reeducation or training is needed for the employee.

(l) Upon proper application by either party, after a review for good cause shown by substantial evidence, a qualified agency or facility providing vocational assessment, rehabilitation, reeducation or training under this section may be replaced if the administrative law judge, in litigated cases, or the rehabilitation administrator, in nonlitigated cases, concur that there is adequate cause for a change of such qualified agency or facility. If an application made under this subsection is approved, the employer shall provide the employee a list of at least three qualified agencies or facilities to provide the vocational assessment, rehabilitation, reeducation or training under this section and the employee shall select a replacement from such list.

(m) Any qualified agency or facility providing vocational assessment, rehabilitation, reeducation or training under this section may be replaced by another such qualified agency or facility upon written notice by all parties, including the rehabilitation administrator, if there is an agreement by all parties to make such replacement.

Sec. 2. K.S.A. 1989 Supp. 44-510g is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.