

Approved

*AWP*

Date

3-6-90

MINUTES OF THE HOUSE COMMITTEE ON LABOR & INDUSTRY

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

9:05 a.m./~~p.m.~~ on February 21, 1990 in room 526-S of the Capitol.

All members were present except:  
Representative Debara Schauf - Excused

Committee staff present:  
Jerry Donaldson - Legislative Research Department  
Cindy Wulfkuhle - Committee Secretary

Conferees appearing before the committee:  
Terry Leatherman - Executive Director, Kansas Industrial Council  
Bill Curtis - Assistant Executive Director, Kansas Association of School Boards  
Vern McKinzie - Chairman, Governmental Affairs Committee, Emporia Chamber of Commerce  
Marty Snyder - Kansas Trial Lawyers Association  
Robert Anderson - Director, Division of Workers' Compensation

The meeting was called to order at 9:05 a.m. by Chairman Douville.

HB 2759: Workers Compensation, time period, notice of occupational disease

Terry Leatherman, Kansas Industrial Council, addressed the committee as an opponent to the bill, as well as, HB 2760 and HB 2761. The testimony is outlined in Attachment #1. Mr. Leatherman called attention to the fact that the reform package of workers' compensation laws passed in 1987 embraced the concept of rehabilitation and being able to return to work - an approach that all endorse. To return to the old days would simply mean an increase in litigation and an increase in the combative relationship between employer and employee.

Bill Curtis, Kansas Association of School Boards, addressed the committee as an opponent of the bill and distributed a handout, Attachment #2. He stated that the notice of claims should be filed in a short time to allow the calculation and payment of benefits in a timely manner and limit the dollar amount of the claim. The increase from 90 to 200 days will have a detrimental impact on the timely and orderly processing of the claim.

Representative Webb stated that his concern was with workers safety and increasing benefits to workers' compensation. If the rates go higher it gives an incentive to the employers to increase their safety efforts and in the long run it reduces their rates.

Vern McKinzie, Emporia Chamber of Commerce, addressed the committee as an opponent of the bill and distributed a handout, Attachment #3. He said that while workers' compensation issues are often characterized as big business issues, it is of prime importance to our small and medium sized businesses which are becoming subject to financial pressures from numerous and various governmental intrusions into the work place.

HB 2760: Workers compensation, judicial review, compensation pending review

Bill Curtis, Kansas Association of School Boards, stated that they oppose the changes in HB 2760 because it may extend the time required to reach a final determination of the benefits due to an injured employee, Attachment #4.

Vern McKinzie, Emporia Chamber of Commerce, said that while there would be an increased cost to the employer, we would also see a reduction in benefits to the employee due to the delay in the payment of benefits to the employee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LABOR & INDUSTRY,

room 526-S, Statehouse, at 9:05 a.m. ~~XXXX~~ on February 21, 1990.

Robert Anderson, Division of Workers Compensation, spoke against HB 2760. He stated that the bill's approach is to set 30 day limits on preliminary awards and 90 days for the Directors review.

Representative Whiteman stated that an incentive for getting the cases to a hearing in a timely manner would be that we impose a penalty on the Directors office of a fine, in order to keep the cases moving.

HB 2761: Workers compensation, removing limitation on amounts payable by employer for permanent total disability

Bill Curtis addressed the committee and distributed a handout, Attachment #5. He stated that to remove the limit increases the potential for increased cost of benefits.

Vern McKinzie addressed the committee and stated that no other normal disability plan, insurance, or social security benefits provides this type of relief.

Marty Snyder, Kansas Trial Lawyers Association, spoke in favor of the bill.

Director Anderson spoke again concerning the problems of the total permanent situation. The definition of one totally and permanently disabled is a judicial decision, not a medical decision. Today through real rehabilitation methods, modification of equipment, and attendant care we are seeing quadraplegics getting prepared to be involved, going to college and becoming useful citizens.

The meeting was adjourned at 9:55 a.m. The next meeting of the committee is scheduled for Thursday, February 22, 1990 at 9:00 a.m. in room 526-S.

GUEST LIST

COMMITTEE: LABOR & INDUSTRY

DATE: FEBRUARY 21, 1990

NAME	ADDRESS	COMPANY/ORGANIZATION
Robert A. Anderson	DIRECTOR, DIVISION	OF WORKERS COMP/TOP.
S. B. SIFERS	MISSION HILLS KS.	
Marty Snyder	PO Box 2842 66601	(Washburn University)
Harry D. Helmer	Topeka Ks	Ks AFL-CIO
Jim Mc Hoff	" "	" "
Vernon McKinzie	Emtonia, KS	Emtonia Chapter of Com
Terry Leatherman	Topeka	KCCI
James A. Zack	Wichita	KS FFA
Bill Curtis	Topeka	KASB
Tom Slattery	Topeka	AGCO of Ks
Mike Germain	Wichita	Boeing Commercial Airplane Group - Wichita Division
John Peterson	Threl	Beck Aircraft
Larry Haggood	Topeka	City of Topeka
Tom Trause	Wichita	The Coleman Co.
Richard Cox	Topeka	DPS
Guy Smith	Topeka	DPS.
Diana Burkhardt	Topeka	KS Ans. Dept.
RG Frey	TOPEKA	KTLA
W. Wilson	"	"
John W. Johnson	Wich. Ia	FTLA

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

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



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

HB 2759, 2760, 2761

February 21, 1990

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Committee on Labor and Industry

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am Executive Director of the Kansas Industrial Council, an arm of the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to express the Chamber's concern over this series of legislation, which would significantly alter the Kansas Workers' Compensation system.

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

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

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

House Labor & Industry  
Attachment #1  
02-21-90

In presenting their case for these bills, the Kansas Trial Lawyers Association suggested this legislation would make needed reforms in the system. I would also like to review the bills before you today, and point out what KCCI feels would be the ultimate result if these bills were passed.

HB 2761 would make disability payments in permanent total disability cases payable for life, by removing existing caps. Arguments in favor of this bill are emotional and appealing, because permanent total disability cases represent the worst case scenario in the workers' compensation system. However, there are several reasons why the current system should not be abandoned.

First, it is important to note that, while there is a cap on disability awards, medical benefits in permanent total disability cases are already paid for the life of the permanently disabled worker. Because these workers need extensive doctor, nursing, hospital or institutional care, providing lifetime medical care is desperately needed, and currently provided. In short, it is incorrect to assume the employer's responsibility ends when a permanently totally disabled worker receives the final disability payment. They will pay towards the medical well-being of that injured worker for as long as the worker lives.

Second, please remember the workers' compensation system is essentially a no-fault system. Kansas workers are not asked to make any contribution to an insurance system which protects them. The employee will receive medical care and compensation, with a few exceptions, regardless of the cause of the accident. In fact, the system is structured to give the injured worker the benefit of the doubt. In exchange for providing, and financing the system, the employer deserves some protection from unmanageable costs. Removing permanent total disability caps would make the weight of the system too heavy on the backs of the employer.

Third, it was only three years ago that the Kansas Legislature, and specifically this Committee, examined the issue of the appropriate cap for permanent total disability cases. At that time, the Legislature approved a hefty increase in the cap, raising it to the current level of \$125,000.

Finally, making permanent total disability payable for life would greatly separate that designation from general disability classifications. The higher compensation will no doubt spawn an increase in litigation and attempts to expand the definition of permanent total disability to include more and more injured workers.

In proposing HB 2760, the Trial Lawyers Association claims employees are being starved into accepting less than fair lump sum settlements and alleges slow decisions at the director's level is bogging down the workers' compensation judicial system. To solve these alleged ills, HB 2760 would permit appeals to a district court 45 days after an administrative law judge's decision and, upon appeal, award the employee compensation payments for the 10 weeks preceding the administrative law judge's decision. However, KCCI contends the alleged problems and proposed solutions do not mesh.

First of all, if a problem does exist with the timeliness of the director's decisions, doesn't it make more sense to impose time limits for those decisions in the law, instead of usurping the director from the system's judicial process? Time limits for the director seem appropriate, since they are in the law for other judicial decisions. Also, the idea has the support of the workers' compensation director.

The argument that workers are being financially forced into accepting lump sum settlements is also faulty. Since the 1987 workers' compensation reforms, large numbers of employers are returning injured employees to work. As a result, many of the workers awaiting district court decisions are receiving paychecks for work performed. That salary from work keeps them from being starved into lump sum settlements. In the case of medically stable workers who have not been accommodated by employers, they qualify to undergo vocational rehabilitation. Because they qualify to receive temporary total disability payments while in the vocational rehabilitation process, they also are protected from being starved into lump sum settlements.

There is one more point regarding the 10-week disability payment award which must be noted. If HB 2760 is adopted, the employee will never be required to return a penny of overpayment, even if it is determined at the district court level the payment amount was unjustified. The only relief employers can receive is from reimbursement from the

workers' compensation fund, a fund financed by employer contributions. For the employee, it amounts to a 'win-win' situation. For the employer, a district court victory only means reimbursement to their right pocket with money from their left pocket.

HB 2759 would extend from 90 to 200 days the time an employee has to notify the employer of disablement from an occupational disease. In making their case for this bill, the KTLA suggests this will level the playing field by allowing workers the same time to file an occupational disease claim as permitted in accidental injury cases.

If occupational disease and accidental injury cases represented an apples to apples comparison, then the argument might stand. However, there are major differences. In the case of accidental injury, a definite date can be established when an accident happened. Because no actual date can be set in occupational disease cases, notice is set at the date of disablement, meaning the occupational disease has reached the stage where the worker is unable to perform their job. Because of that difference, it is appropriate to limit the employee to 90 days to initiate a claim against the employer for workers' compensation.

KCCI feels there are ample reasons to reject each of these proposals. In addition, we feel compelled to add that these bills, when considered as a package, promote a dangerous trend which we advise this Committee to guard against.

In passing the workers' compensation reforms of 1987, the Legislature embraced the concept of rehabilitating injured workers and returning them to productivity in the workplace. Since then, employers have worked hard to promote workplace safety, and provide medical care and accommodations when a worker is injured on the job.

Now, this package of bills attempts to abandon that concept, and replace it with a return to the old days of big disability awards, a litany of litigation and an increase in the combative relationship between employer and employee. The 1987 reforms did not make the workers' compensation system perfect. However, the concept behind the reforms are responsible and sound, and should not be abandoned by adopting this package of bills.

Once again, thank you for permitting KCCI to present its concerns on this matter. I would be happy to attempt to answer any questions.



**Testimony on HB 2759  
before the  
House Committee on Labor and Industry**

**by**

**Bill Curtis, Assistant Executive Director  
Kansas Association of School Boards**

**February 7, 1990**

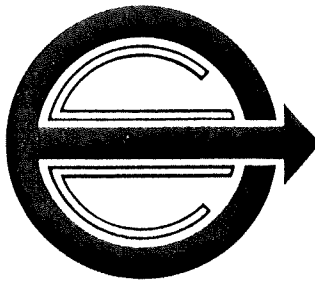
Mr. Chairman and members of the Committee, we appreciate the opportunity to testify today on HB 2759.

We are in opposition to HB 2759. The notice of claim should be filed in a reasonably short time to allow the calculation and payment of benefits in a timely manner and to limit the dollar amount of the claim, if possible. The increase from 90 to 200 days will have a detrimental impact on the timely and orderly processing of a claim.

We further oppose the change in Section (b) because it may cause increased controversy and litigation over what may reasonably cause a claimant to believe the notice has been waived. In a system designed to compensate injured workers without a determination of fault, the claimant should provide the employer with a timely notice or claim.

We thank the Committee for its time and attention.





EMPORIA CHAMBER OF COMMERCE • P.O. BOX 417 • EMPORIA, KANSAS 66801 • PHONE (316) 342-1600

**MEMORANDUM TO:**  
House Labor and Industry Committee  
February 21, 1990

**FROM:**  
Vern McKenzie, Chairman  
Governmental Affairs Committee  
Emporia Area Chamber of Commerce

**RE:**  
House Bills 2759, 2760, and 2761

In 1987, as a result of significant compromises made by representatives of both labor and industry groups, legislative changes were made to the Kansas Worker's Compensation Code. Since that time, there have been literally no appellate court decisions construing the impact of the 1987 legislation and controversy remains as to whether or not its true purposes have been fulfilled. Unfortunately, controversy also remains as to whether the rights of the injured worker are truly protected under our present legislation and you are thus faced periodically with various attempts to again modify the Worker's Compensation Code.

I appear today on behalf of the Emporia Area Chamber of Commerce to oppose passage of House Bills 2759, 2760 and 2761 which are now pending before you. I could go on at great length as to the reasons for opposition to the passage of these bills but I believe the most important reasons include the following:

1. The determination of the cost impact of various changes to Worker's Compensation statutes is often not fully known for quite some period of time after implementation. This problem is often compounded by the length of time it takes to obtain judicial review of the statutes in order to give guidance to our administrative agencies on their interpretation. In the interests of trying to establish some stability to our Worker's Compensation System, I urge you to allow the changes made in 1987 to remain unmodified for some additional period of time in order that their true impact may be ascertained. Undoubtedly various groups will contend that the interests of the injured worker have been forgotten by the Legislature, but until such time as our judicial system has had an opportunity to fully interpret the code provisions now in effect, that statement may not be made with any degree of accuracy.

House Labor & Industry  
Attachment #3  
02-21-90

2. The bills presently before you will undoubtedly cause an increase in Worker's Compensation rates in Kansas. For instance, House Bill 2761 allows a payment of total disability payments for the life of the injured worker. No other normal disability plan, insurance, or social security benefit provides this type of relief. Although the incidents of permanent total disability are relatively few, until the fiscal consequences of this proposal can be fully ascertained and compared to any other existing system of compensation, it would be unwise to consider passage at this time.

3. The obvious impact of these three additional bills will be to re-introduce the adversary posture of the injured workmen and the employer back into a system that was designed to avoid those adversarial roles. As an example, under House Bill 2760, normal administrative processes are allowed to be by-passed, thereby automatically insuring that there will be an increased cost in court litigation to both the employer and the employee. While there would certainly be some increased cost to the employer incident to this automatic litigation, most likely we would also see a reduction in benefits to the employee due to delay in the payment of benefits to the employee which are incident to the cost of adversarial litigation and the sheer passage of time in order to have matters litigated in our Court system.

4. While Worker's Compensation issues are often characterized as big business issues, the matter of the cost of Worker's Compensation is, like property taxes, not strictly a big business issue. Rather, it is of prime importance now to our small and medium sized businesses which are becoming increasingly subject to financial pressures from numerous and various governmental intrusions into the work place. We consider that small business is the backbone of the state of Kansas and if the interests of this committee lie in creating an atmosphere conducive to the preservation of our small businesses in Kansas, then we respectfully suggest that these three bills should be considered adverse to those interests.

RESPECTFULLY SUBMITTED.

  
Vern McKenzie

**KANSAS  
ASSOCIATION**



**OF  
SCHOOL  
BOARDS**



5401 S. W. 7th Avenue Topeka, Kansas 66606  
913-273-3600

**Testimony on HB 2760  
before the  
House Committee on Labor and Industry**

by

**Bill Curtis, Assistant Executive Director  
Kansas Association of School Boards**

**February 7, 1990**

Mr. Chairman and members of the Committee, we appreciate the opportunity to testify today on HB 2760.

We oppose the change proposed in HB 2760 because it may extend the time required to reach a final determination of the benefits due an injured employee. The current law provides for an orderly and proper method of appeal.

We thank the Committee for its time and attention.



Testimony on HB 2761  
before the  
House Committee on Labor and Industry

by

Bill Curtis, Assistant Executive Director  
Kansas Association of School Boards

February 7, 1990

Mr. Chairman and members of the Committee, we appreciate the opportunity to testify today on HB 2761.

We oppose the elimination of a statutory limit for permanent total disability. The removal of a limit certainly increases the potential for increased cost of benefits. In addition, it may adversely affect the incentive of the injured employee to pursue rehabilitation or other improvement in his or her condition.

We thank the Committee for its time and attention.