Approved February 21, 1991
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

The meeting was called to order by Representative Anthony Hensley at
Chairperson

9:00 a.m./p~~x~~m. on February 13, 1991 in room 526-S of the Capitol.

All members were present except:

Representative Douville - Excused
Representative Roper - Excused
Representative Cribbs - Excused
Representative Gomez - Excused

Committee staff present:

Jim Wilson, Revisor
Jerry Donaldson, Research Assistant
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Rep. Carol Sader
Kirk Lowry
John M. Ostrowski
Bob Totten
Lori Callahan
Katherine Fischer

The meeting was called to order at 9:00 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley introduced the committee vice-chairman, Rep. Darrel Webb. He also introduced Rep. Gene Amos, who is replacing Rep. Arthur Douville until his return.

The chairman announced that the agenda for the week will be revised and that the committee will not meet the remainder of the week. He said this change is because the subcommittee on House Bill No. 2076, the Family and Medical Leave Act, will not meet again this week due to the absence of Rep. Denise Everhart, subcommittee chair. He explained that Rep. Everhart is attending to her mother who has had a stroke and is in the hospital.

The chairman announced the continuation of hearings on House Bills No. 2153, 2154, 2155, 2156 and 2157. He said the time for testimony on these bills would be divided equally between proponents and opponents with each side allotted 25 minutes.

He introduced conferees as proponents of the bills:

Rep. Carol Sader, chairperson of the House Committee on Public Health and Welfare, appeared in support of House Bill No. 2155. She stated that the current $350 amount for unauthorized medical has not been changed for 10 years since 1981 when it was increased from $150 to $350. She said the bill provides a cost-of-living adjustment by increasing the amount for unauthorized medical to $1,000. She said that unless the amount is increased in relation to the escalating cost of medical services, many injured workers are being denied the right to seek the medical treatment most appropriate for the injury they suffer (attachment #1).

Kirk Lowry, representing the Kansas Trial Lawyers Association, said that House Bill No. 2155 recognizes the right of workers to get a second opinion while being able to pay for it in times of ever-increasing medical costs. On House Bill No. 2157, he said the bill would allow injured workers to seek a second opinion on whether he or she is in need of a vocational assessment. He said this bill also proposes to add the period of vocational assessment to the 26 week credit for the employee. Under this proposal, the employee would have a credit for temporary total benefits paid during vocational assessment and rehabilitation. He pointed out that these changes are consistent with the intent of the 1987 amendments of returning the worker to the open labor market at a comparable wage (attachment #2). Mr. Lowry then answered questions from several members of the committee.

John M. Ostrowski, Kansas AFL-CIO, appeared in support of House Bills No. 2153 and 2154. He stated that House Bill No. 2153 will reduce litigation by making the filing of an occupational disease claim consistent with the filing of a claim for accidental injuries. On House Bill No. 2154, Mr. Ostrowski stated that there are few cases of permanent total disability per year. He said this is due to the fact that it is difficult to show someone unable to be employed in "any type of substantial and gainful employment." He explained that the bill would affect workers who may have no alternative source of income (attachment #3). He answered questions from Rep. Dick Edlund.

Chairman Hensley introduced conferees as opponents of the bills:

Bob Totten, Public Affairs Director of the Kansas Contractors Association, spoke in opposition to House Bills No. 2153, 2154 and 2156. He said his association was very concerned about House Bill No. 2156 since it abandoned the "no-fault" principle of workers' compensation by allowing civil court damages to be pursued. He said that House Bill No. 2154 is unneeded because the workers' compensation system provides medical benefits for life. He said that House Bill No. 2153 was also unnecessary since employees are well aware of their rights under the law (attachment #4).

Lori Callahan, Kansas Legislative Counsel for the American Insurance Association (AIA), presented testimony in opposition to all five bills. On House Bill No. 2153, she said 90 days notice is sufficient because most occupational disease cases occur soon after exposure and the link to work is usually not controversial (attachment #5). She said AIA opposes House Bill No. 2154 because removing the cap of permanent total disability benefits would be very costly since the state of Kansas is higher than the national average on these type of claims (attachment #6). On House Bill No. 2156, she said the purpose of the "no-fault" workers' compensation law is to provide benefits for work injury regardles of the fault of the employer or worker. With regard to adding 25% to benefits for failure to provide a guard or protection, Ms. Callahan said that "establishing benefit differentials" based on the conduct of employer or employee would increase litigation and increase the cost of claims since claimant attorneys would claim that every injury resulted from employers' omission (attachment #7). She explained that AIA opposes House Bills No. 2155 and 2157. She said the purpose of unauthorized medical is not to serve as a payment for medical treatment, but to allow the employee a change in physician if the employee is not satisfied with services provided by the employer's physician. She stated that if unauthorized medical is increaed to $1,000, claimants could determine their own course of treatment without advice from insurance company medical experts. On House Bill No. 2157, Ms. Callahan said the bill does not recognize the neutral position of the vocational rehabilitation vendor, current law gives employees enough control over the vendor, and every claimant attorney would need to seek another vocational assessment to protect against allegations that they had not fully represented their client (attachment #8).

Katherine Fischer, President of Capital City Distribution, In., in Topeka, appeared in opposition to all five bills. She said that her company is into the moving and storage of household goods and employs 30 permanent and 30 to 100 temporary workers. She said that the five bills as proposed would cause a great hardship on her company which is already paying high workers' compensation insurance rates (attachment #9).

The chairman announced that the hearings on House Bills No. 2155 and 2157 would be continued in the near future.

The meeting was adjourned at 10:00 a.m.

GUEST LIST

COMMITTEE: House Labor & Industry DATE: February 13, 1991

NAME	ADDRESS	COMPANY/ORGANIZATION
Kirk W. Lowry	112 W. 6th, Topeka, Ks	KTLA
KAY FISCHER	4750 S.W. Huntoon Rd Topeka	Capitol City Distr.
Terry Leatherman	Topeka	KCCI
Gary Korte	Emporia	IBP
Lou Callahan	Topeka	AIA
Lisa Getz	Wichita	KS Asso. for Small Business
Mark Skinner	Houston	AIA
Bill Morrissey	Topeka	KDHR/WC
David Shufelt	Topeka	KDHR/WC
Dick Thomas	[illegible]	KDHR/WC
John Ostrowski	Topeka	KS AFCIO
Richard Mason	Topeka	KTLA
Jim McHoff	Topeka	KS AFL-CIO
Jeff Montague		Budget
Chip Wheelen	Topeka	KS Med. Soc.
Bob Totten	Topeka	K-CA
Michelle Lyester	Topeka	(John Peterson & Associates)
Joe Furjanic	Topeka	KCA
Larry Magill	Topeka	IIAK

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRPERSON: PUBLIC HEALTH AND WELFARE
VICE-CHAIRPERSON: ECONOMIC DEVELOPMENT
VICE-CHAIRPERSON: JOINT COMMITTEE ON HEALTH CARE DECISIONS FOR THE 1990'S
RANKING DEMOCRATIC MEMBER: SRS TASK FORCE
MEMBER: PENSIONS, INVESTMENTS AND BENEFITS
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

Testimony on HB 2155
Labor and Industry Committee
February 13, 1991

Mr. Chairman and Members of the Committee:

I come before you today as a proponent of HB 2155. This bill would increase the ceiling amount for fees for unauthorized medical services to an injured worker under the worker's compensation act from $350 to $1000. Presently, without application or approval, an employee may consult a physician of the employee's choice for the purpose of examination, diagnosis or treatment but the employer is only liable for the fees and charges of such physician up to a total of $350.

Too many employees who suffer on-the-job injuries are doomed to inadequate or inappropriate treatment for their injuries as a result of the current ceiling amount in the law. This bill provides nothing more than a cost-of-living adjustment. The ceiling amount of $350 has not been changed for 10 years since 1981 when it was raised from $150 to $350.

Unless this ceiling is increased in some relation to the greatly increased costs of medical services, injured employees are effectively being denied the right to seek the type of treatment that they feel is most appropriate for the injury they suffer. The present ceiling amount is especially counterproductive in cases where experience indicates that an unauthorized treatment, such as chiropractic treatment for certain back injuries, may return the employee to the job in about half the time and at half the cost of authorized medical treatment.

When this provision was originally enacted in 1927, we made the important policy decision that injured employees should have a right to seek treatment that they feel most appropriate. All that HB 2155 does is implement this long-standing policy by updating the allowable amount of the fee so that this right remains a viable right in 1991. I urge its favorable passage.

Thank you.

Carol Sader

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attachment
#1-1

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TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
HOUSE LABOR & INDUSTRY COMMITTEE

February 13, 1991

HOUSE BILL 2155 - Unauthorized Medical

The Kansas Trial Lawyers Association supports the proposed legislation in House Bill 2155 regarding changes in the Kansas Workers Compensation Act. The changes are consistent with the legislative purpose of the 1987 amendments to the Workers Compensation Act in furthering the goal of getting the worker back to work in the open labor market at a comparable wage. In order to get the worker back to work, it is imperative that adequate and proper health care benefits be provided. The proposed changes do not affect permanent partial disability (functional or work disability) but only apply to medical and temporary total disability benefits.

HB 2155 would increase unauthorized medical from $350 to $1,000 in K.S.A. 44-510(c). The last increase went into effect in 1981 and increased unauthorized medical from $150 to $350. It goes without saying that medical costs have increased substantially over the last ten years. It is also important to retain the right of workers to get a second opinion. In order for that right to be meaningful, the worker must have some way to pay for that second opinion. What is sometimes involved are such fundamental questions as to whether to undergo a back surgery which could have life-long effects on the employee. Second opinions are oftentimes from orthopedic surgeons or neurosurgeons and quite expensive.

Employers have the right to choose the treating doctor. If a worker has a permanent partial disability, that case cannot be settled until a disability rating is given and the employee has been certified as having reached maximum medical improvement. Not all doctors are willing and/or qualified to give impairment ratings. If the treating doctor chosen by the employer will not give a rating regarding permanent impairment, then the employee is forced to go elsewhere. The second opinion is also helpful in getting workers compensation cases settled and keeping expenses down for all those involved in the system.

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attachment
2-1

The unauthorized medical limits should be raised from $350 to $1,000 in order to keep up with rising medical costs, and to preserve the employee's right to get a second opinion regarding fundamental choices about his or her health and wellbeing. The right to unauthorized medical is a long-standing and noncontroversial issue which in fact helps cases settle and keep expenses down for the entire system.

We appreciate the opportunity to present testimony on this important issue and encourage you to report it favorably for passage. Thank you.

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TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
HOUSE LABOR & INDUSTRY COMMITTEE

February 13, 1991

HOUSE BILL 2157 - Unauthorized Vocational Evaluation

The Kansas Trial Lawyers Association supports the proposed legislation in House Bill 2157 regarding changes in the Kansas Workers Compensation Act. The changes are consistent with the legislative purpose of the 1987 amendments to the workers Compensation in furthering the goal of getting the worker back to work in the open labor market at a comparable wage. In order to get the worker back to work, it is imperative that adequate and proper vocational rehabilitation benefits be provided. The proposed changes do not affect permanent partial disability (functional or work disability) but only apply to vocational rehabilitation benefits.

HB 2157 would enact an unauthorized vocational evaluation provision in K.S.A. 44-510g(p). Under existing law the employer has the right to choose the vocational rehabilitation vendor. This bill would allow the employee to seek a second opinion regarding whether he or she is in need of a vocational assessment. This proposal is consistent with the underlying purpose of the Workers Compensation Act since 1987 of getting the worker back into the open labor market at a comparable wage and thus keeping permanent partial disability benefits down. This provision is an inexpensive way of providing a check on the system and to make sure that all vocational rehabilitation possibilities have been covered. Vocational rehabilitation is a very important point in an employee's workers compensation situation because decisions made in vocational rehabilitation will affect the employee for the rest of his or her life. It is through vocational rehabilitation that the needs and limitations of the worker are assessed and plans for getting him or her back into the work-force are professionally explored. There is also the inherent problem of the employer's preference for specialists who consistently opt for less expensive, and perhaps less thorough, programs when an alternative program may be better suited to long-term rehabilitation which can impact on societal savings.

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House Bill 2157 also proposes a change in K.S.A. 44-510g(g) by adding the period of vocational assessment as part of the time allowed for the statutory 26-week credit for the employee, but only extends to the assessment period the time to which the credit applies. Under the proposal the employee would be able to have a credit for temporary total disability paid during the vocational assessment and formal vocational rehabilitation. Normally, the amount of temporary total disability paid is subtracted from the statutory number of weeks allowed for the worker's injury. When a worker undergoes vocational rehabilitation, 26 weeks are not subtracted from the number of permanent partial disability weeks. Under this proposal that 26-week credit would just be extended to temporary total disability paid during the vocational assessment. This extension is limited by the statutory constraints placed upon the vocational rehabilitation vendor in K.S.A. 44-510(e)(2). The effect of the extension will be to lessen the financial burden on the employee while he or she is unable to work, engaging in vocational assessment and rehabilitation in attempting to get back to work in the open labor market at a comparable wage.

We appreciate the opportunity to testify in support of HB 2157 and encourage you to report it favorably for passage. Thank you.

(3)

SUMMARY OF TESTIMONY TO HOUSE LABOR AND
INDUSTRY COMMITTEE
February 12, 1991
Kansas AFL-CIO
John M. Ostrowski

HB 2153

This is a purely procedural bill which should reduce litigation by making the filing of written claim or written notice of an occupational disease consistent with the filing of written claim for accidental injuries caused by trauma.

It is interesting that the claimant who suffers sudden acute trauma has a potentially longer statute of limitations under the current law than a worker who is overcome by latent type problems which impact his pulmonary or circulatory systems. The original problem which brought about this shorter statute of limitations was the worker moving from job to job and constantly exposing himself to offending agents. Consider, for example, the coal miner moving from mine to mine and contracting black lung disease. Case law has determined that it is the last exposure to which liability will affix.

As a practical matter, most claims could still be brought under current law within one year, but again, consistency would apply under HB 2153, and accordingly, we urge passage and a favorable recommendation from the Committee to the full House.

HB 2154

For several years, there has been a feeling that removing the caps on permanent total disability is "the right thing to do"; but concern has always been the expense involved.

The definition of permanent total disability is as follows:

> Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. K.S.A. 44-510c(2)

As a practical matter, there are very few cases of permanent total disability per year under the Kansas Workers' Compensation Act. This is not because there is not an effort to declare someone permanently totally disabled. For the past 12 years, there has been a $25,000 incentive in proving someone permanently totally disabled. The fact of the matter is that in a litigated system (unlike Social Security disability), it is difficult to show someone unable to be employed in "any type of substantial and gainful employment".

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The definition of substantial and gainful employment is not defined within the Workers' Compensation Act but, historically, has meant in various settings being able to work thirty hours or more per week at minimum wage. Thus, we are addressing the most severely disabled.

Furthermore, we are impacting workers who may have no alternative source of income, as not all workers qualify for Social Security disability. Typically, this would include young workers who have not paid into the system and become severely disabled, or female workers who join the work force after loss of a spouse having previously been homemakers. Finally, high wage earners by having both Social Security and workers' compensation would more nearly be compensated to their previous earning level when they become totally unemployable due to injury. (There is a formula for offset which would not affect these workers.)

It is also critical to note that our workers' compensation system does not have cost of living adjustments (COLAS). A typical worker making $5.00 per hour at 40 hours per week would receive $133.34 per week under our workers' compensation system (2/3rds of average weekly wage). If injured at the age of 45, he will reach eligibility for Social Security early retirement in 17 years. Thus, in the year 2008, he will still be receiving $133.34 per week. Comparing this with workers injured 17 years ago would show that these workers would only be receiving $50.00 or $60.00 per week.

In summary, we urge passage of HB 2154 because:

a) we are impacting very few individuals;

b) they are the most financially devastated group;

c) the benefits are fixed, and are not substantial over time;

d) there are often no alternative sources of funding.

While death benefits represent a period of adjustment for surviving individuals, those permanently totally disabled have continuous ongoing needs.

THE KANSAS CONTRACTORS ASSOCIATION, INC.

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TESTIMONY

BY THE

KANSAS CONTRACTORS ASSOCIATION

Before the House Labor and Industry Committee

Regarding House Bill 2153, 2154 and House Bill 2156

Acts Concerning Workers' Compensation

Mr. Chairman, and members of the House Labor and Industry Committee. Thank you for the opportunity to appear before you to provide some additional comments on House Bills 2153, 2154 and 2156.

My name is Bob Totten. I am the Public Affairs Director of the Kansas Contractors Association. Our Association represents over 330 heavy, highway, and municipal-utility contractor and associate member firms in the Kansas construction industry.

The Association appears before you this morning questioning the need for any of these measures. It is our position that workers' compensation is akin to "no fault" insurance. It provides a quick and simple, but fair solution to injuries suffered on the job. We oppose House Bill 2156 on Employer Negligence since it allows civil court damages to be pursued. The advantage of having workers' compensation in place allows quick solutions to problems or injuries without the need to hire attorneys to present their arguments. One of the cornerstones of the act is to assess no blame and allow remedies to be resolved quickly and the treatment to begin.

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We also oppose House Bill 2154 ... regarding Permanent Total Disability Caps. At this time, there is no need to remove the cap limits placed on disability payments. It is unfortunate for injuries to occur in the workplace, but workers' compensation provides hospital benefits for life and to remove these caps on disability compensation is not necessary.

Regarding House Bill 2153, Occupational Disease, we feel the time limit presently in place is sufficient. Increasing the notification limits is unnecessary considering employees are well aware of their rights under the law.

Thank you for the opportunity to provide these comments. This concludes my prepared remarks.

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FAX (913) 267-2652

TO: House Labor and Industry Committee

FROM: Lori M. Callahan, Kansas Legislative Counsel
American Insurance Association

SUBJECT: H.B. 2153

DATE: February 12, 1991

The American Insurance Association is a national trade organization representing more than 240 companies who write property and casualty insurance. I appreciate the opportunity to testify today.

AIA opposes opposes H.B. 2153.

H.B. 2153 would amend K.S.A. 44-5a17 to allow 200 days, rather than 90 days, after disablement for workers to give notice of occupational disease to the employer. The current statute balances the worker's opportunity to discover that an illness is work-related against an employer's need to timely investigate the cause of such illness.

Notice within 90 days after disablement is sufficient in that most occupational disease cases are little different from traumatic injuries in that they occur soon after exposure and the link to work is usually not controversial. Additionally, it

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should be noted that occupational disease cases already have an extended time for notice in that traumatic injury must be reported within ten (10) days of the incident, while occupational diseases are to be reported within 90 days of disablement from the disease. Current statutes, therefore, adequately balance the employer's need to be informed in order to investigate and the worker's opportunity to discover that a disabling disease is related to the worker's employment.

Thank you for the opportunity to present this testimony.

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TO: House Labor and Industry Committee

FROM: Lori M. Callahan, Kansas Legislative Counsel
American Insurance Association

SUBJECT: H.B. 2154

DATE: February 12, 1991

The American Insurance Association is a national trade organization representing more than 240 companies who write property and casualty insurance. I appreciate the opportunity to testify today.

AIA opposes opposes H.B. 2154.

H.B. 2154 would amend K.S.A. 44-510(f) to eliminate the $125,000.00 cap on total benefits paid in cases of permanent total disability. While AIA does not disagree in principal with lifetime permanent total disability benefits, it should be recognized that lifting the dollar limit would be costly and could only be done if employers were willing to pay the price for such a benefit. Additionally, such a proposal should be coordinated with careful control to determine a worker's capability to return to regular employment, as well as any entitlement to retirement benefits.

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At a time when a balance is being attempted between worker's rights and the ability of Kansas employers to pay for workers' compensation benefits, H.B. 2154 is a proposal that would drive up the cost of workers' compensation and should, therefore, be considered with regard to this balance.

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TO: House Labor and Industry Committee

FROM: Lori M. Callahan, Kansas Legislative Counsel
American Insurance Association

SUBJECT: H.B. 2156

DATE: February 12, 1991

The American Insurance Association is a national trade organization representing more than 240 companies who write property and casualty insurance. I appreciate the opportunity to testify today.

AIA opposes opposes H.B. 2156.

H.B. 2156 would amend K.S.A. 44-501 to remove the exclusive remedy of workers' compensation in actions where there was willful, gross or wanton conduct on behalf of the employer, and further increases benefits 25% if the injury results from an employer's failure to provide a "guard of protection".

The exclusive remedy of workers' compensation is fundamental to this no-fault system. Under the current configuration, neither the fault of the employer, nor the fault of the worker, effects the worker's entitlement to benefits. The effect of this proposal would be to abrogate the basis for workers' compensation

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and would turn such injuries over to the civil justice system. Under this proposal, employers could argue that they would be allowed to be leviated from the obligation to pay benefits if the injury was as a result of the employee's wrongful conduct. Neither proposal is acceptable in a system which is intended to be an expedited system of compensation handled by an expert agency.

With regard to the increase of benefits for failure to provide a "guard of protection", the purpose of the no-fault workers' compensation law is to provide benefits as the exclusive remedy for work injury regardless of the fault of the employer or the worker. The law should provide uniform benefits without regard to the reason for injury, as long as the injury arose out of and in the course of the employment. Establishing benefit differentials based on this conduct by the employer or employee will simply increase the litigation and undoubtedly drive up the cost of claims as claimant's counsel will have incentive to claim that every injury resulted from some employer omission.

While there are some states with similar provisions as this proposal, generally these laws are much more narrowly crafted and allow reduced awards for worker's failure to follow safety directions and require employers, not the insurance companies, to pay the increased benefits in the case of employer misconduct. This is consistent with the public policy which precludes insurance for outright misconduct.

It is the opinion of AIA that this legislation will drive up the cost of litigation without a corollary sufficient benefit to the injured employee. Rather, the increased cost goes to pay for litigation, rather than benefits.

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FAX (913) 267-2652

TO: House Labor and Industry Committee

FROM: Lori M. Callahan, Kansas Legislative Counsel
American Insurance Association

SUBJECT: H.B. 2155 and H.B. 2157

DATE: February 13, 1991

The American Insurance Association is a national trade organization representing more than 240 companies who write property and casualty insurance. I appreciate the opportunity to testify today.

AIA opposes opposes H.B. 2155.

H.B. 2155 increases unauthorized medical from the current amount of $350.00 to $1,000.00 under the Workers' Compensation Act. Unauthorized medical allows an employee to consult with any physician for a charge up to $350.00. This usually covered the cost of one examination and is often utilized for the employee to obtain an independent medical examination for disability rating purposes, in addition to the treating physician. The unauthorized medical care statute is not designed to serve as a form of payment for medical treatment. Rather, the employee may apply for a change of physician if the employee is dissatisfied with the services of the physician provided by the

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employer. Upon approval of the new physician with whom the employee is seeking treatment, all medical as ordered becomes authorized and, therefore, due and payable by the employer.

Insurance companies who provide workers' compensation insurance have claim staffs who are trained in medical management, including receiving information regarding the latest medical procedures, as well as information concerning those in the community who are providing different types and levels of care. Accordingly, it is the claim staff who has the best training and information to assist the injured employee in seeking the best possible care. Of course, the goal of both the employee and the employer and its insurance carrier is the same - prompt and satisfactory health care to alleviate the affects of the work injury as quickly as possible. If unauthorized medical was increased to $1,000.00, claimants could well determine their own course of treatment without receiving the benefit of the knowledge of the insurance company claim staff. The employee is currently protected under the law in that if the employee is merely "dissatisfied" with the care being provided by the employer and its insurance carrier, the employee can obtain a change of physician which then allows all of the medical care provided by the ordered physician to be paid as authorized medical treatment.

For this reason, AIA opposes increases the unauthorized medical care as not being in the best interests of either the employee or the employer.

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AIA also opposes H.B. 2557. This bill would provide unauthorized medical, physical or vocational rehabilitation consultations by the employee up to $500.00. Initially, despite the fact that this is contained within K.S.A. 44-510(g), the amendment does not limit the medical or physical assessment to the realm of vocational rehabilitation. In other words, this amendment appears to overlap the authority given the employee to seek unauthorized medical consultations under K.S.A. 44-510(c) in the amount of $350.00.

With regard to the vocational rehabilitation portions of H.B. 2157, this amendment ignores the neutral position of the vocational rehabilitation vendor under current law. Currently, the employer is allowed to select a vendor only if the employer makes a referral to a vocational rehabilitation vendor within 15 days after receipt of an order by an Administrative Law Judge or notification by the rehabilitation administrator that a vocational assessment is needed. Therefore, if the employer is not in agreement that a vocational assessment is needed, a vendor is named by the vocational rehabilitation section of the Workers' Compensation Division of Human Resources. The selection is made from a list of vendors who have been approved by the Division. Further, if the selection of a vendor is made by the employer, or by the Division, either party may apply for a change of vocational rehabilitation vendor pursuant to K.S.A. 44-510(g), (l) and (m).

The vendor, whether selected or appointed, is to develop a plan to render the injured worker able to perform work in the open labor market and to earn comparable wages. The plan must adhere the rehabilitation goals established by law and scrutinized by the Division of Vocational Rehabilitation. If the employee is dissatisfied with the plan, the employee may challenge the plan at which point mediation is held with the Division of Vocational Rehabilitation in order to resolve the concerns of the employee. Accordingly, current law provides the employee a substantial amount of control over the vendor. Under H.B. 2157, every attorney representing an injured worker would need to seek the additional assessment in order to protect against allegations that they had not fully developed their case. The protections in the current system make such additional assessments unnecessary, while driving up the costs in the system. Currently, workers' compensation is a delicate balance of cost to the employer with corollary benefit to the employee. If vendors are not appropriately performing their job, they should be struck from the list of vendors, and in an individual case, mediation or a change of vendor should be sought. The additional cost of H.B. 2157 does not come with a sufficient corollary benefit to the employee and should, therefore, be denied.

I am Katherine Fischer, President of Capital City Distribution, Inc. located at Forbes Industrial Park in Topeka, Kansas. We do moving and storage of household goods, commercial warehousing and reworking of product, employing 30 permanent and from 30 - 100 temporary workers.

Our business is one of those considered at "high risk" because the moving and storage industry is involved in lifting and carrying of heavy objects. We have for our employees the best handling equipment available. We also have periodic safety meetings. Even so, we can never predict the circumstances or conditions our workers will be exposed to in performing their duties in the various homes and offices each day.

This business is extremely competitive especially since the deregulation of transportation in the early 1980's. A great many companies have gone out of business, or are in bankruptcy, and those still in business are struggling to keep the doors open. Business is tough.

I mention this because the cost for workmen's compensation insurance for this industry is very high and each year there is an attempt to increase the cost 20 - 25%. Should the bills you are considering in this committee be implemented a further increase would be forth coming.

As a small business owner we struggle each and every day to create sufficient work for our employees so we can offer them a job with meaningful benefits. But to be a successful business owner you have to have an effective bottom line profit, if not benefits or jobs are sacrificed.

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HB 2156 - Employer Negligence.

I see this as an open harvest for attorneys. We see the dramatic television advertisements now seeking injury representation. Would this bill not enhance this type of promotion resulting in greater use of the legal system adding costs to the workmen's compensation program? Also, I would like to mention the other side of the coin, accidents caused by the employee in the same manner. Should not there be a corresponding remedy?

HB 2154

This bill would create a tremendous hardship for a small business involved in a circumstance where an employee would draw lifetime compensation.

Perhaps some of you are not aware that business pays all these bills, the medical treatment, the compensation while the employee is unable to work, the attorneys involved, and the insurance companies that administer the plans. It isn't the insurance company that pays the bill, it is business. Paying through the premiums established by the demand for the worker's compensation programs through legislations such as these being considered.

I ask that you evaluate the effects of each of these bills on business and remember that it is extremely important to keep Kansas business functioning on a profitable basis. We talk about how important economic development is to our state but we punish the businesses that are here providing jobs.

The economy is very fragile this is called to our attention by the employee layoffs and the increase in the unemployment numbers.

I ask you to consider legislation favorable to the business climate to enhance the economy of the entire state of Kansas.

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