

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S, Statehouse, at 9:06 a.m./~~pm~~ on February 25, 1991

Robert Stacks, representing a consortium of vocational rehabilitation vendors, also provided written testimony on House Bills No. 2157 and 2154 (attachment #3).

The chairman declared the public hearings on House Bills No. 2155 and 2157 to be closed. He announced that the committee would hear additional testimony on House Bill No. 2156, and he introduced proponents of the bill:

Bonnie J. Meudt, Atchison, Kansas, described an accident she suffered on her job when her employer removed a safety device from the machine she was operating. She stated that she hoped House Bill No. 2156 would motivate employers to be more safety minded. She went on to explain how her injury has affected her life physically, mentally and financially (attachment #4). Ms. Meudt answered questions from committee members.

Jim Dodge, Denton, Kansas, described an incident on his job when the anchor bolts on the scaffolding he was on were removed by his employer. His employer's negligence resulted in the scaffolding collapsing to the ground and breaking both of his ankles. He said the accident never was investigated by OSHA. He answered questions.

The chairman declared the hearing on House Bill No. 2156 to be closed.

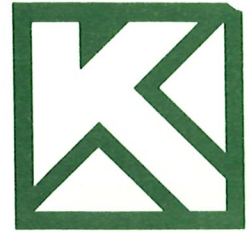
Chairman Hensley recognized Rep. Darrel Webb for a motion to introduce a committee bill: Rep. Webb moved to introduce a bill creating a competitive, non-profit state workers' compensation liability insurance fund to facilitate availability and affordability of workers' compensation insurance and prompt benefits to injured workers. Rep. Don Smith seconded the motion. Motion carried.

The meeting was adjourned at 9:38 a.m.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV 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 2155, 2157

February 13, 1991

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:

I am Terry Leatherman with the Kansas Chamber of Commerce and Industry.

Thank you for the opportunity to appear before you today to present KCCI's views concerning HB 2155 and HB 2157.

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.

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attachment #1
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KCCI is prepared to support HB 2155, if an amendment to the bill receives favorable consideration by this Committee. The suggested amendment is included on the final page of my testimony. The amendment attempts to accomplish two goals. First, it would clarify the intention of providing an unauthorized medical allowance to injured workers. Second, it would provide for a reasonable increase in the total amount an employer is liable to pay towards unauthorized medical.

The Kansas workers' compensation system permits employers to select the initial health care provider, when a workplace injury occurs. The employer's social obligation to care for the injured worker and incentives contained in the workers' compensation law directs the employer to provide prompt and effective medical care for the employee. However, it is inevitable that cases will arise where an employee feels they are not receiving the medical care they deserve. Kansas law has provisions to deal with these situations. An employee is permitted to appeal for a change in their health care provider. If the appeal for change is granted, which it almost always is, then it becomes the employer's responsibility to pay for the care provided by the new health care provider.

While there is an avenue for an employee to follow if they feel they are not receiving proper medical care, any legal avenue takes time to complete. However, Kansas has another provision in its law to insure the injured worker is not without the medical care they desire, prior to their appeal to change health care provider being decided. Unauthorized medical permits the employee to consult with a health care provider of their choice and without the prior approval of their employer or the workers' compensation legal process, with the employer responsible for paying up to \$350 of the cost.

However, in the 'real world' of workers' compensation in Kansas, unauthorized medical is seldom a tool for providing medical care for an injured worker. Instead, unauthorized medical has become an opportunity for the employee to receive a disability impairment rating, at their employer's expense. The impairment rating is then used to

increase the disability compensation the employee receives through the workers' compensation legal process. The sad irony is that instead of providing funds for an employee to pursue medical care, the employer's contributions through unauthorized medical is used against the employer before an administrative law judge.

KCCI's suggested amendment would require unauthorized medical be used to provide medical care, and deny the payment of unauthorized medical if used to gain an impairment rating. KCCI would be pleased to support a reasonable increase in the unauthorized medical allowance for injured workers. Our suggested amendment calls for an increase to \$450, a 29% increase over current levels. However, support of a reasonable unauthorized medical increase hinges on the money from the pockets of Kansas employers going to provide medical care to injured workers, not to provide a larger pot for others to dip into.

While KCCI has attempted to find an acceptable compromise regarding HB 2155, the Kansas Chamber could develop no such path to take regarding HB 2157. The bill would create a vehicle for employees to pursue a second opinion of their vocational rehabilitation assessment, similar to the unauthorized medical provisions in the law, with the employer's liability capped at \$500. Because of the efforts of the Kansas Legislature last year, KCCI can find no reason for this new system of unauthorized medical.

In passing HB 3028 in 1990, the Kansas Legislature granted employers the right to select the initial vocational rehabilitation vendor in a workers' compensation case where vocational rehabilitation is deemed necessary. While the law grants the initial right to vendor selection to employers, it permits either party to request a new vendor be selected, if they can demonstrate good cause. If the request for a new vendor is granted, the employee chooses the new vocational rehabilitation vendor from a list of three vendors provided by the employer. This selection arrangement was recommended to the Legislature by the Kansas Workers' Compensation Joint Advisory Council, which is comprised of representatives of employers, employees, claimant attorneys, medical

providers and the Legislature. It was the effort of the Council to devise a process which protected the rights of employers and employees. Since this vendor selection process has been law less than a year, KCCI would urge this Committee to give the process a chance to work.

Thank you for the opportunity to present KCCI's views on these two bills involving the Kansas workers' compensation system. If you have any questions, I would be happy to attempt to answer them.

NFIB Kansas

National Federation of
Independent Business

TESTIMONY

House Committee on Labor and Industry

Mister Chairman, and members of the committee, my name is Jim Yonally, Director of the Kansas chapter of the National Federation of Independent Business. I am pleased to speak on behalf of over 7,500 small businesses in Kansas who are members of our organization, and express our opposition to House Bills 2153 through 2157.

Our objections basically fall into two categories. First, we object to what I have called before the "one size fits all" type of benefit. That is, the state mandates the same benefit for all employees. We still believe that employers and employees are best served when individual negotiation takes place, as it does in most small businesses, between the two, and benefits are determined by the wishes of the employees and the ability of the employer to provide them.

Our second objection is to the cost. Each of the provisions of this series of bills has some cost attached for the employer. Some of these costs may be immediate, some may be delayed, but there is a cost, nonetheless, assigned. I'm sure you have, or will have, cost estimates predicted by the opponents, and proponents. However, the legislature doesn't approve an appropriation bill (spending state money) without a fiscal note prepared by the Legislative Research Department, or other state agency. I would hope you would not approve these measures without a similar "independent" fiscal study.

Furthermore, we believe that the timing for measures of this type is particularly bad. We are clearly in a recession (the magnitude of which depends on who you listen to), many small businesses in Kansas are still reeling from the devastating effects of reappraisal and classification. This is, clearly, not the time to hit them with another cost of doing business, which these measures would do.

I thank you for your time and consideration.

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attachment #2*

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(913) 888-2235



The Guardian of
Small Business

Presented to House, Labor, and Industry Committee

Date: February 25, 1991

Chairman: Rep. Anthony Hensley

Vice Chairman: Rep. Daryl Webb

This written testimony on House Bill 2154 and House Bill 2157 is being presented on behalf of the Consortium of Rehabilitation Vendors of Kansas. This Consortium consists of the majority of the vendors qualified by the Director's office of Workers Compensation to provide vocational rehabilitation services to industrially injured Kansans.

House Bill 2154 - Consortium position: neutral

House Bill 2154 addresses removing the cap on permanent total disability benefits. The Consortium is not supporting or opposing such an action. However, we do have some concerns. If this bill is passed favorably out of the Committee, we would request that the guidelines for determining permanent total disability not be a medical determination. Our recommendations would be that the doctor, while qualified to provide impairment and restrictions of the individual, is lacking in the knowledge of the world of work and how these impairments and restrictions might fit into certain employment settings. Therefore, the Consortium would draw the Committee's attention to Statute 44-510c(II) wherein it says that 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. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, shall, in the absence of proof to the contrary, constitute a permanent total disability. It is the feeling of the Consortium that the proof to the contrary should be provided by a person versed in the vocational field. The determination of permanent total disability should be a joint effort of the medical expert and the vocational expert. The impairment rating and restrictions should be provided to the vocational expert so that an assessment for application of residual functional capacity to the existing world of work be provided and then a determination as to the person's degree of disability can be rendered. We would further state that substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all other causes, should not constitute permanent and total disability. We feel that to automatically render that person permanently and totally disabled is a disservice to all parties involved. We would submit that if permanent total disability benefits are allowed, it would be following the vocational assessment so all facts are presented.

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attachment #3*

House Bill 2157

House Bill 2157 modifies the existing statute to include, the following language. (p) without application or approval, an employee may consult with a medical, physical or vocational rehabilitation expert of the employee's choice for the purpose of assessment of the need of such employee for medical, physical or vocational rehabilitation services or for development of a suitable rehabilitation plan for such employee, but the employer shall only be liable for the fees and charges of such expert up to a total amount of \$500.00. Under the current statutory language, an employer's required, when circumstances dictate, to provide an injured employee a vocational assessment, and if necessary, a vocational rehabilitation plan that would address an objective and reasonable return to the open labor market at comparable wage. This plan is submitted to the Rehabilitation Administrator's office so the objectiveness and reasonableness of this plan can be reviewed and verified prior to approval. Upon approval by the Rehabilitation Administrator, mediation can be requested by either party if they take exception to the approved plan. If after mediation, either party feels aggrieved by the results, it can then be taken to a hearing and the facts presented to an Administrative Law Judge to determine the appropriateness of the plan. Therefore, opportunities exist for parties involved to have their concerns heard.

While this new language could very well serve to increase business for vendors, the Consortium is concerned about possible problems.

1. The language does not address who would be qualified to perform these unauthorized plans.
2. If the Rehabilitation Administrator has approved the authorized plan, who approves the unauthorized plan?
3. If the authorized plan is subsequently approved and an enrollment date in a training program has passed, the employee could be without benefits until such time that he could enroll. Maybe a year later.
4. All costs would increase and while this should not be a determining factor on passage, it should be considered against the outcome.
5. The employer is currently restricted to one referral without approval of the Division. With this section (p) added the employer could "shop" for a favorable plan.
6. Delays, due to increased dockets, could occur in Administrative Law Judges.

The provision of timely and appropriate services is the goal of the rehabilitation professional. When rehabilitation is introduced into a litigious arena it becomes difficult to achieve. The Consortium feels that with the introduction of the Advisory Committee's Code of Ethics and peer review, along with greater control by the Division of Workers Compensation, that section (p) of 44-510g should not be necessary.

(21)

February 23, 1991

Bonnie J. Meudt
1305 Santa Fe
Atchison, Kansas 66002
(913)367-4932

To Whom it may Concern:

I am addressing the 1991 House Bill 2156 being introduced in the Kansas Legislature that would add 25% to the workers compensation benefit amount any time the employer removed or failed to use a required protective guard. I am strongly in favor of this bill. On May 2, 1989, I was hurt at my place of employment due to a safety device being removed from the machine that I was operating. I feel that if this bill is passed and it helps even one person not to go through what I and countless others have it will be well worth passing. I would hope that it will motivate employers to be more safety minded and protect their employees.

On the morning of my accident I had my machine down repairing the cutter blades and rethreading the needles. To do this I turned off the power and had the plastic shield down, that protects your fingers and hand from being taken in with the material as the machine runs. When you bring down the plastic shield it is suppose to disconnect the safety switch and throw off all power to the machine. This safety switch is what was removed from the machine and never put back on. In rethreading the needles I had my hand under the needle bar around the back of the needles to thread them, the machine came on. By the time I got my hand out it had taken my hand down and into the machine twice. I went to the floor and yelled for help. I was taken to the Atchison Hospital and was treated for crush and broken bones in my hand.

Minutes after I was taken to the hospital an electrical contractor was called in to put the safety switch back on the machine. When I left my machine that morning the machine was still down and my tools were still on it. When I returned that afternoon from the hospital to get my purse and coat, the electrician was still working on the machine. I said to him "Oh, now they fix it." and his reply was, "Yes and its too bad that it takes someone getting hurt before they fix them." In my opinion this shows that management knowingly knew the safety device was left off after they rebuilt this machine, and quickly replaced after my accident happened.

Upon receiving a copy of the accident report sent in by my employer, it read, "I had put my hand under the needle bar to grab for the yarn while the machine was still running." When I confronted the plant manager about this report he said he would have it changed, but he said it really makes no difference in whose fault it was because he carries workmans compensation and it gives him no fault protection. What protection

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was left for me, NONE, my rights under this law the way it stands now takes away my rights and protects the employers, when fault is justly theirs.

In my opinion Insurance Companies don't want to pay out claims that this bill (2156) could cause and in turn could raise premiums. I believe it should be up to these insurance companies too, making sure safety guards and devices are on, and that safety at the work place is carried out. Have regular and unannounced checks, this would help keep the premiums and accidents down. O.H.S.A. was mentioned in the last session, O.H.S.A. is not usually involved until after an accident has already happened. For an employee to call O.H.S.A. in on known problems before accidents happen, would cause an employee to lose their job. In my opinion no City, State, and-or Federal agency should announce a upcoming check at any place of employment. For example (the fire department will call and announce days before coming to do their check which allows the company to make the needed adjustments for that day.)

Due to this accident it has changed my life, not only physically but mentally and financially. Physically being, limited use of fingers, and hand, it has also damaged arm, shoulder and upper back. I am working very hard to restore use in these. Mentally being, the stress of long term pain and trying to get my life back as close to normal as soon as possible. Financially being my checks not being steady, going months with out a check. Before my accident my wages were alot higher and then to drop down to what I receive now, and at times not knowing when I will receive a check. This has completely ruined my credit. We are in very bad financial trouble. I am having my state income tax taken by a set-off program, due to a medical bill at Kansas University that has not been paid through workers compensation, that was made back in march of 1990, this appointment was set up by workers compensation. I also have medical bills in collection agencies. Under this bill as it reads now I am not entitled to any pain, suffering, or thing I can no longer do. This accident was not my doing or fault but, it comes down to I am the one paying for my employers negligence. My disabilities are not going to go away within the 415 weeks, but will go on for the rest of my life. What happens to me when workmans compensation is over! I believe they should be more responsible for what has happened to me and many others like me.

I support this bill and any that would protect us as the employees from this happening. After my accident there has been others in the same plant, one a woman had to have double needles surgically removed from her finger, the gaurd was also taken off of this machine. Another, a man had fingers cut off due to negligence. Protect employers yes, I understand that, but also protect us the employees too. Please help others not to go through this pain and anxiety. The 25% is the issue but you know even that 25% wont help you injurys or mental state when you've been hurt in this way. Employers have to start putting their employees safety up there as well as getting out

the finished product. And yes, I being an employee that this has happened to believe they should be open for civil suits, when the employer is at fault. Thank-you for your time in letting me present this and I hope this will help others.

Sincerely,

Bonnie Meudt

Bonnie Meudt

BJM:CKB