

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:05 a.m./~~p.m.~~ on February 28, 1991 in room 526-# of the Capitol

All members were present except:

Rep. Douville - excused

Rep. Cribbs - excused

Rep. Gomez - excused

Committee staff present:

Jim Wilson, Revisor

Jerry Donaldson, Research Assistant

Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Terry Leatherman, KCCI

The meeting was called to order at 9:05 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley handed out copies of a letter signed by him and Rep. Larry Turnquist, chairman of the House Insurance Committee, requesting Insurance Commissioner Ron Todd's support for House Bill No. 2523. The chairman explained that this legislation would create a non-profit state workers' compensation insurance fund. He said that he and Rep. Turnquist had discussed the possibility of holding joint hearings on the bill with the Insurance Committee and the Labor and Industry Committee.

The chairman resumed the hearing on House Bill No. 2207. He announced that testimony would be heard by the opponents of the bill.

Terry Leatherman, Executive Director of the Kansas Industrial Council, Kansas Chamber of Commerce and Industry (KCCI), stated several reasons why KCCI opposes House Bill No. 2207: (1) compensation benefits will be decreased for workers with bilateral carpal tunnel syndrome, (2) the 1990 Kansas Supreme Court case Hughes v. Inland Containers could "open the door" for an employee to receive up to a \$100,000 work disability award, even if the employee returns to work at a comparable wage, but if House Bill No. 2207 is not passed and bilateral carpal tunnel syndrome remains a scheduled injury, the impact of the Hughes decision will not apply, (3) employers already have enough incentives to re-employ workers afflicted with bilateral carpal tunnel syndrome because vocational rehabilitation is open to any injured worker, regardless of their type of injury, and (4) the current law encourages early diagnosis and treatment, and thus prevents surgery. Mr. Leatherman concluded by inviting committee members to tour the industrial facilities of KCCI members in Emporia to see their efforts in providing workplace safety (attachment #1). He then answered question from several members of the committee.

The chairman adjourned the meeting at 9:45 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 2207

February 28, 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 express the reasons why the Kansas Chamber opposes passage of HB 2207.

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.

*Labor & Industry  
2-28-91  
Attachment #1  
1-1*

1. Passage of HB 2207 will lower the disability compensation in workers' compensation cases involving repetitive use injuries. The following example illustrates how this will occur.

SCHEDULED INJURY

Worker earns \$417 a week

Worker suffers from bilateral carpal tunnel syndrome, which is diagnosed as a 15% functional impairment.

$\$417 (x) .6667 = \$278$   
(weekly compensation based on 2/3 of average weekly wage)

$200 \text{ weeks } (x) 15\% = 30 \text{ weeks}$   
(200 weeks for scheduled injury to the forearm, times the functional impairment)

$30 \text{ weeks } (x) \$278 = \$8,340$

$\$8,340 (x) 2 = \$16,680 (x) 20\% = \$20,016$   
(because the injury is bilateral, it is applied to both forearms and increased by 20%)

Functional impairment compensation = \$20,016

Vocational rehabilitation available

No work disability

PERMANENT PARTIAL GENERAL DISABILITY

Worker earns \$417 a week

Worker suffers from bilateral carpal tunnel syndrome, which is diagnosed as a 15% injury to the body, according to AMA Guides.

$\$417 (x) .6667 = \$278$   
(weekly compensation based on 2/3 of average weekly wage)

$415 \text{ weeks } (x) 15\% = 62.25 \text{ weeks}$   
(415 weeks for permanent partial general disability, times the impairment to the body)

$62.25 \text{ weeks } (x) \$278 = \$17,306$

Functional impairment compensation = \$17,306

Vocational rehabilitation available

No work disability, if the employee engages in work at a comparable wage

2. The example clearly demonstrates employees suffering from bilateral carpal tunnel syndrome will receive more compensation under current law than if HB 2207 is passed. However, supporters of HB 2207 are not promoting it as legislation to save employers money on disability compensation. Why are the supporters of this legislation supporting a concept which costs injured workers money? The answer might be found in Hughes vs. Inland Containers.

The Hughes decision was rendered by the Kansas Supreme Court in October of 1990. In Hughes, it was ruled that the presumption that the employee has no work disability if the employee engages in work for comparable wages is rebuttable. In other words,

Hughes opens the door for an employee to receive up to a \$100,000 work disability award, even if the employee returns to work at a comparable wage.

If HB 2207 is not approved and bilateral carpal tunnel syndrome is compensated as a scheduled injury, then the ramifications of the Hughes decision will not apply. If HB 2207 is approved, there will undoubtedly be legal attempts to link the Hughes decision to repetitive use injuries. If successful, Kansas employers will be forced to pay huge work disability compensation in these cases, regardless of their efforts to return the injured worker to a job with the business.

3. Supporters of HB 2207 contend the legislation is intended to provide an incentive to employers to re-employ individuals who develop repetitive use injuries in the workplace. It would be KCCI's contention there is ample incentives for employers to do exactly that under the current compensation system.

First, the vocational rehabilitation avenue is open to individuals who suffer workplace repetitive use injuries, regardless of whether the injury is a scheduled injury or a permanent partial general disability. Vocational rehabilitation is an expensive undertaking, involving the payment of temporary total disability compensation and for the services of a vocational rehabilitation vendor to assess, train and locate employment for the injured worker. From an employer's perspective, it makes economic sense to attempt to retrain and re-employ the injured worker in their business, rather than finance the vocational rehabilitation process to train an employee to work for someone else.

Second, it is clear that there is a shortage of skilled workers in Kansas today. Re-employing an injured employee, with or without accommodations, will save an employer the cost of locating and training a new worker, on top of the cost to provide vocational rehabilitation to the injured employee.

Finally, I have heard many times the Director of the Kansas Division of Workers' Compensation explain to this Committee how the 1987 reforms of the Workers' Compensation Act has created a major incentive for employers to re-employ injured workers, and

employees are taking advantage of the opportunity. Admittedly, KCCI hears the employer's perspective on this issue, but the communication the Kansas Chamber receives from its members strongly indicates carpal tunnel syndrome sufferers are being returned to meaningful employment at a comparable wage.

4. The Kansas Chamber does not wish to diminish the tragic effects which carpal tunnel syndrome can cause an injured worker. However, like many afflictions which develop over time, early diagnosis and treatment can lead to a total cure of the effects of the condition. The current Kansas workers' compensation law encourages early diagnosis and treatment, in several ways. First, if diagnosed early, carpal tunnel syndrome can be treated through conservative care, rather than surgery. In addition, early detection will reduce the functional disability compensation an employer must pay and improve the employer's ability to retrain the employee for new work, within the company.

In other words, current Kansas law encourages early detection of repetitive use injury, accomplishing a social obligation through economic incentives.

I would like to conclude my comments by responding to testimony presented at yesterday's hearing by a proponent of the legislation. Debra Schauf recalled the position of the Emporia Chamber of Commerce in support of legislation to place bilateral carpal tunnel syndrome as a scheduled injury, and said the civic leaders of Emporia should not place their desire for economic development over their responsibility for the safety of the citizens of that community.

Mr. Chairman, I realize one thing a legislator does not have is free time. However, it would be my privilege to make arrangements for the members of this Committee to tour the industrial facilities of KCCI members in Emporia, industries which supported reform legislation in 1987 and oppose HB 2207 today. Several business leaders in that town have proudly told me of the steps they have taken to insure the safety of their workplace. They would be pleased to host the members of this Committee, since each of you leave a profound impact on their businesses when you deliberate over legislation like HB 2207.

Thank you very much for your consideration of KCCI's concerns over HB 2207. I would be happy to attempt to answer any questions.