Approved April 12, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business.

The meeting was called to order by Senator Alicia L. Salisbury at
Chairperson

1:00 ~~xxx~~/p.m. on April 3, 1991 in room 527-S of the Capitol.

All members were present except:

Senator Feleciano

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Denise Everhart
Senator Don Sallee
Representative Diane Gjerstad
Pamela J. Neugebauer, Lawrence
Rudolph C. Neugebauer, II, Lawrence
Arthur Solis, Chairman, American GI Forum of Kansas, Olathe
John Ostrowski, Kansas, AFL-CIO, Topeka
Wanda Roehl, Safety and Workers Compensation Administrator, Coleman Company, Inc., Wichita
Terry Leatherman, KCCI, Topeka
Vaughan Burkholder of Foulston and Siefkin, Wichita
Lori Callahan, American Insurance Association, Topeka
Larry Magill, Jr., Independent Insurance Agents of Kansas, Topeka
Ray Hummert, Kansas Employers Coalition on Health, Lawrence

Hearing on HB 2313 Workers compensation, insurance premium discounts

Representative Denise Everhart testified this bill is an attempt to insure fairness in liability insurance policies under the Workers Compensation Act. Presently, discounts are given to some businesses based on their experience rating for claims. Under HB 2313 small businesses in the lower premium groups will be afforded this experience rating discount, see Attachment I.

Hearing on SB 425 Workers compensation, qualification as self-insurer for new owners

Senator Don Sallee informed the Committee SB 425 amends KSA 44-532 to allow consideration of provisions that would permit a company which has been in existence in Kansas for 10 years or more, at the time of new ownership, to continue to be self-insured, see Attachment II.

Hearing on HB 2207 Workers compensation, repetitive use conditions occurring in opposite upper extremities

Representative Diane Gjerstad testified HB 2007 is known as the Carpal Tunnel bill. The bill would remove repetitive use conditions occurring in opposite upper extremities from the scheduled injury category to allow for recovery of bilateral carpal tunnel injury as a general body injury. She said employers should be given credit for re-employing a worker or given the incentive for rehabilitation, see Attachment III.

Pamela J. Neugebauer, Lawrence, testified she has been unemployed since September 1988 because of bilateral carpal tunnel syndrome. Medical treatment has not corrected her condition and she has not received vocational rehabilitation, see Attachment IV.

Rudolph C. Nuegebauer, II, Lawrence, testified in support of HB 2207. He stated bilateral carpal tunnel syndrome is definitely a whole body injury and should be treated as such. He also feels re-education is being held back because, with a scheduled injury, you do not get the chance to return to a comparable wage, see Attachment V.

Arthur Solis, Chairman, American GI Forum of Kansas, Olathe, testified members of the Kansas GI Forum of Kansas have received requests for assistance from Hispanic and other minority workers who are disabled from carpal tunnel syndrome. The complaints have generally been from workers in the counties of Finney, Ford and Seward where meat packing plants are located. He supported the passage of HB 2207, see Attachment VI.

John Ostrowski, Kansas AFL-CIO, Topeka, testified carpal tunnel syndrome presently represents special legislation. It is the only place in the Workers Compensation Act where it matters how the worker is injured. Some workers afflicted with carpal tunnel syndrome suffer a dramatic loss of employability; yet there is no incentive for the employer to re-employ the individual or to voluntarily participate in having the worker rehabilitated. Carpal tunnel syndrome is preventable in multiple ways, but ergonomics are not being employed statewide because there is a lack of incentive for industry. He strongly urged the Committee to pass HB 2007 favorably. The legislation passed in 1987 which placed carpal tunnel syndrome as a scheduled injury is unfair and must be corrected, see Attachment VII.

Wanda Roehl, Safety and Workers Compensation Administrator, Coleman Company, Inc., Wichita, urged the Committee to vote against HB 2007. She stated HB 2207 could be extremely detrimental to both employers and employees; promotes the perception of large disabilities; does not encourage those who have bilateral carpal tunnel syndrome to return to work; and in many cases makes it almost impossible for men and women to resume careers for which they are otherwise trained and capable. Under the present law, if employees are unable to return to work for their employers, those employers, at their expense, must refer the employees to outside experts for vocational rehabilitation. Prior to 1987, bilateral carpal tunnel syndrome was not a scheduled injury, it was classified as a general body disability. The tradition was to pay a disability settlement to the employee, with no vocational rehabilitation being done.

Ms. Roehl said of the 31 repetitive motion injuries during 1990 and through February 1991, 29 are currently still working for Coleman Company, Inc. One employee was placed through vocational rehabilitation with another company and one employee is still going through the process of vocational rehabilitation, see Attachment VIII.

Terry Leatherman, KCCI, Topeka, testified as a result of a Supreme Court decision in Hughes vs. Inland Containers in October of 1990, if HB 2007 is approved, every repetitive use injury case could receive huge work disability awards, regardless of an employer's attempts to return a worker with a repetitive use injury to work at a comparable wage. He said the current system regarding repetitive use injuries encourages early detection and care and provides incentives for employers to re-employ injured workers, see Attachment IX.

Vaughan Burkholder of Foulston and Siefkin testified on behalf of The Boeing Company, Wichita, as well as other employers he represents. He informed the Committee since the passage of the 1987 amendments to the Kansas Workers Compensation Act the primary goal of the Act was to return injured employees to work at a wage comparable to that which they were earning at the time of their injury through benefits generally known as vocational rehabilitation. Under the current Act, these benefits are available for both scheduled injuries and general body disabilities. Therefore, it makes no difference whether carpal tunnel syndrome and other bilateral upper extremity conditions are classified as scheduled or general body disabilities. He said HB 2207 would increase the dollar amount of awards being paid in large work disability awards, even where the employee is back at work making the same or higher wages at the time of the injury. This would spur the increasing upward spiral of workers compensation premiums, and many employers may choose to relocate outside the state with the resulting loss of employment opportunity and continuing economic downturn across the state, see Attachment X.

Lori Callahan, American Insurance Association, Topeka, testified in opposition to HB 2207. She stated under current law, all work related injuries in the Workers Compensation system are entitled to vocational rehabilitation services if they meet the standards for such services whether the injury is a scheduled injury or an injury to the body of the whole. The effect of HB 2207 is to take carpal tunnel syndrome out of scheduled injuries and apply the standards for injuries to the body of the whole, which is in opposition to the intent of the Legislature in passing the vocational rehabilitation amendments in 1987. She stated if the Committee considers passing HB 2207, she has an amendment for the Committee to consider to address the problem with regard to work disability and vocational rehabilitation, see Attachment XI.

Larry Magill, Jr., Independent Insurance Agents of Kansas, Topeka, opposed HB 2207 and expressed concern about the rising cost of workers compensation insurance. He urged the Committee to refer HB 2207 to an interim study where the actual dollar impact can be adequately determined, see Attachment XII.

Ray Hummert, Kansas Employers Coalition on Health, Lawrence, testified in opposition to HB 2207. He said anytime an employee is injured on the job, there is cost to the employer such as medical cost, cost for the time the employee is compensated for when not working, and the cost of productivity. Under a scheduled injury, a value is placed on the loss of the use of the hands. However, the body of the whole injury is open-ended.

Senator Sallee moved and Senator Morris seconded to rerefer SB 425. The motion passed.

Senator Martin moved and Senator Petty seconded to rerefer HB 2207. The motion passed.

Senator Martin moved and Senator Petty seconded to rerefer HB 2313. The motion passed.

The Committee meeting adjourned at 2:30 p.m.

GUEST LIST

COMMITTEE: LABOR, INDUSTRY & SMALL BUSINESS DATE: 4/3/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
M. Hannen	Topeka	Cap-Journal
Bill Smith	Wichita	Liberty Mutual
Jeff Montague		Budget
Arthur W. Solt	Olathe	American GI Forum of KS
Kelly Kultala	KCKS	NOW
Vaughn Burkholder	Wichita	Foulston & Siefkin
Art Brown	Keono	KS. Lumber dealers
Terry Leatherman	Topeka	KCCI
Lori Callahan	Topeka	AIA
Jim Yonally	Overland Park	NFIB
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Glenn Cogswell	Topeka	Alliance of Am. Insurers
Larry Magill	"	I.I.A.K.
Robert A. Anderson	Topeka	KDHR/ Director Div. of Work Comp
Ray Lagraew	Wichita	Beechcraft, Corp.

STATE OF KANSAS

DENISE L. EVERHART
REPRESENTATIVE, FIFTY-THIRD DISTRICT
TECUMSEH, KANSAS 66542
(913) 379-0541

LEGISLATIVE ADDRESS
ROOM 281-W
(913) 296-7654
STATE CAPITOL
TOPEKA, KS 66612

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: JUDICIARY
MEMBER: LABOR AND INDUSTRY
TRANSPORTATION
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

(1)

Madam Chairperson and members of the committee:

Thank you for this opportunity to appear before you today in support of HB 2313.

This bill is an attempt to insure fairness in liability insurance policies under the workers compensation act.

Presently, discounts are given to some businesses based on their experience ratings for claims. But, small businesses in the lower premium groups are not afforded this experience rating discount. Discounts of this sort encourage safety in the workplace by rewarding those businesses with fewer or no claims.

Small businesses need to reduce costs too!

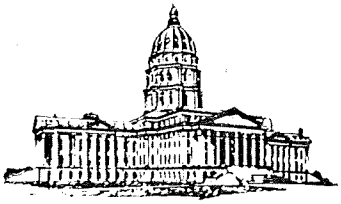
I urge your support for HB 2313.

L. & I. B.
4/3/91

1-1 Attachment I

STATE OF KANSAS

DON SALLEE
SENATOR, FIRST DISTRICT
ATCHISON, BROWN, DONIPHAN, JACKSON
AND JEFFERSON COUNTIES
R.R. 2
TROY, KANSAS 66087



TOPEKA

COMMITTEE ASSIGNMENTS
CHAIRMAN: ELECTIONS
VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES
MEMBER: AGRICULTURE
LABOR, INDUSTRY AND SMALL BUSINESS
TRANSPORTATION AND UTILITIES

SENATE CHAMBER
APRIL 3, 1991

TESTIMONY ON SENATE BILL 425

THANK YOU MR. CHAIRMAN AND COMMITTEE MEMBERS FOR ALLOWING ME TO APPEAR ON SENATE BILL 425. MY NAME IS DON SALLEE, STATE SENATOR, FIRST DISTRICT.

SENATE BILL 425 AMENDS KSA-44-532 TO ALLOW CONSIDERATION OF PROVISIONS THAT WOULD PERMIT A COMPANY WHICH HAS BEEN IN EXISTENCE IN KANSAS FOR OVER 10 YEARS OR MORE, AT THE TIME OF NEW OWNERSHIP, TO CONTINUE TO BE SELF-INSURED.

PRESENTLY, THE ONLY THING IN PLACE IS A POLICY THAT ANY BUSINESS CHANGING OWNERSHIP MUST BE PLACED UNDER A PRIVATE INSURANCE FIRM'S COVERAGE AND WOULD COST THIS COMPANY OVER $1,200,000 EACH YEAR. ROCKWELL PRESENTLY FINANCES THEIR OWN COVERAGE FOR APPROXIMATELY $220,000 A YEAR. THIS EXPENSE WOULD BE INCURRED FOR A FIVE YEAR PERIOD UNLESS SOME EXCEPTION TO PRESENT POLICY IS MADE. THE DEPARTMENT WILL NOT CONSIDER ANY EXCEPTIONS WHATSOEVER TO THE POLICY OF BEING IN BUSINESS FOR FIVE YEARS.

SENATE BILL 425 PROPOSES TO CHANGE THE PRESENT POLICY BY ESTABLISHING SOME VERY STRICT GUIDELINES THAT THE DEPARTMENT SHALL CONSIDER.

L.&A.B.
4/3/91

 Attachment II

(1) THE PRECEDING SELF-INSURED EMPLOYER HAS BEEN IN CONTINUAL OPERATION FOR A PERIOD OF NOT LESS THAN 10 YEARS;

(2) THE PRECEDING SELF-INSURED EMPLOYER HAD AN AFTER-TAX-PROFIT OF NOT LESS THAN $1,000,000 ANNUALLY FOR THE THREE PREVIOUS CONSECTUTIVE YEARS;

(3) THE PRECEDING SELF-INSURED EMPLOYER HAS A FIVE YEAR HISTORY OF WORKERS COMPENSATION CLAIMS LOWER THAN THE INDUSTRIAL AVERAGE;

(4) THE NEW OWNER HAS A DEBT TO EQUITY RATIO OF NOT MORE THAN 4 TO 1;

(5) THE NEW OWNER WILL CONTINUE THE SAME BUSINESS OPERATION WITH THE SAME MANAGEMENT AT THE SAME LOCATION;

(6) THE NEW OWNER DEMONSTRATES THE FINANCIAL ABILITY TO MAINTAIN A MONTHLY RESERVE BASED UPON A THREE-YEAR AVERAGE OF PRIOR WORKERS COMPENSATION CLAIMS;

(7) THE NEW OWNER POSTS A SURETY BOND OF AN AMOUNT OF NOT LESS THAN THREE TIMES THE THREE-YEAR AVERAGE OF WORKERS COMPENSATION CLAIMS BY A SURETY COMPANY ADMITTED TO THE STATE, AND AUTHORIZED BY THE KANSAS INSURANCE DEPARTMENT TO WRITE SURETY BONDS;

(8) THE NEW OWNER PROVIDES PROOF OF EXCESS WORKERS COMPENSATION INSURANCE.

PLEASE BE REMINDED THAT SUCH A TREMENDOUS AMOUNT OF UNCESSARY EXPENSE CAN ONLY SLOW EXPANSION PLANS AND MEAN FEWER JOBS IN THE STATE OF KANSAS.

4/3/91
Att II

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STATE OF KANSAS

DIANE A. GJERSTAD
REPRESENTATIVE, NINETY-EIGHTH DISTRICT
SEDGWICK COUNTY
2701 LULU
WICHITA, KANSAS 67216-1237

TOPEKA

COMMITTEE ASSIGNMENTS
CHAIR: ECONOMIC DEVELOPMENT
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
MEMBER: FEDERAL AND STATE AFFAIRS
LABOR AND INDUSTRY
SPECIAL CLAIMS AGAINST THE STATE

HOUSE OF REPRESENTATIVES

T E S T I M O N Y

H.B. 2207

Chairperson Salisbury and members of Senate Labor, Industry and Small Business Committee:

H.B. 2207 is known as the carpal tunnel bill. Very simply, this bill would remove repetitive use conditions occurring in opposite upper extremities from this scheduled injury category to allow for recovery of bi-lateral carpal tunnel injury as a general body injury.

I believe that it is important to take a little time to back up and review with you the history of this issue. Before 1987, under the old workers' comp act, an injury like carpal tunnel was evaluated under the jobs theory--and was job specific. For example, if you were injured and couldn't do 60% of the job, the worker received a 60% work disability; without regard to retraining or ability to do part of a modified job. This was compounded when a business rehired the worker--paid them a similar wage and was still hit for a large settlement. The pre '87 law was not fair, workers included. Then during the 1987 session a carefully re-written workers' comp act was passed--I say carefully because the 1987 act was a result of the major players working together and compromising. Business and labor came to the table together--with one notable exception: The treatment of bi-lateral carpal

S.J. & L.B.
4/3/91

Attachment III

tunnel. The 1987 act deviates from past practices by carving out an exception for carpal tunnel by making it a scheduled injury. For the first time, how a worker became injured is part of the determination. Worker's with identical wages and identical injuries can now be compensated differently under the current law. Additionally, with the current law, there is a disincentive to get the employee back to work or involved in vocational rehabilitation, simply because we treat it as a scheduled injury. The employee gets the same award if she goes back to work or not. The employer then lacks incentive to re-employ or rehabilitate (ironically, rehabilitation was the thrust of the 1987 act). I would like to stress that this bill would not return us to the practice prior to 1987. It does not return us to the era of large, lump sum awards as a rule. What this bill does is to make carpal tunnel a general body injury. The reason this bill works and is not unfair to the employer is due to another change we made in 1987 in the definition of permanent partial general disability - how the injured worker can get a "work disability" which takes into account the effect the injury has had on the ability to earn a comparable wage.

I believe you will find that the results of the 1987 change have carved out a special exception which is contrary to the philosophy underpinning workers compensation in Kansas. The committee should note that this is an especially debilitating injury. Bi-lateral carpal tunnel dramatically changes people's lives and destroys their marketability. The harsh reality is that many who are victims to bi-lateral carpal tunnel are high school graduates with little additional training, which severely limits the jobs they can perform without the use of their hands.

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Att III
3-2

I am a proponent of this bill because of the dramatic shift in the workforce we are seeing. Very simply put--demographics. The dramatic increase in female workers in the workforce, coupled with a shortage in skilled workers dictate that our attitudes must change. There are no disposable workers left -- especially skilled workers. The theory underpinning this bill is sound: employers should be given credit for re-employing a worker or given the incentive for rehabilitation.

Current law results in a zero-sum game: the employer loses a person in whom the company has invested substantial resources in time and training and developed a relationship with. The employee loses -- who wants to hire a person who effectively has both hands in their pocket? The state loses -- we have lost a productive worker and not given that person the rehabilitation to become re-employed.

Madam Chair, thank you for the opportunity to testify on H.B. 2207. I would urge your favorable consideration.

Respectfully submitted,

Diane A. Gjerstad
State Representative
98th District

4/3/91
Att III
3-3

Testimony In Favor Of House Bill 2207

April 3, 1991

My name is Pamela J. Neugebauer. I am supporting House Bill 2207. I have been unemployed since September of 1988 because of my bilateral carpal tunnel syndrome. The current law for bilateral carpal tunnel syndrome hasn't and isn't helping me. In the process of this being a scheduled injury, I do not feel I am given proper medical treatment or sufficient vocational rehabilitation.

I am now being offered no re-education or training. I am also told by Dan Fisher, of Professional Rehabilitation Management, Inc., he has never in his four years of being a counselor, recommended any re-education or training. His reasons being after an up to two year program, he cannot see comparable wage. I am told by a Worker's Compensation Representative they do try to get claiments as close to a comparable wage as possible. This is not being done in my case. Dan Fisher has never recommended a bilateral carpal tunnel syndrome patient for re-education or training. I feel he led me on, had me stressing my brains out searching for an up to two-year program for re-education or training, when everything we came up with he would find an excuse for not being a feasable goal. He has given me false hope, causing more stress, frustration, and depression. I honestly believe his job is to get patients back on their feet. Assist them in becoming, once again, the productive, tax paying citizen they once were before this unforseen injury.

The current law for carpal tunnel syndrome, bilaterally, doesn't allow for total recovery and compensation of wages. I feel this is totally unfair.

I do not have a third hand, nor can my hands be replaced. My two hands were everything productive that I could offer to support myself my family, be productive, in society, and just do everyday living tasks that one may take for granted.

Not one part of my body can take the place of these damaged hands that I am now permanently stuck with. My opportunities in the labor force are now severely limited. My whole body can never do what my hands once could. This affects my whole general body. It's as if my whole body died, and while still grieving, I find there is no hope for a secure future without re-education, and I, under the current law, am not being offered this. I am being offered assistance for job placement, at a minimum wage, less than 50% of my former wages at the time of injury. This effects my whole body. My only other offer I have to give the labor market are my brain and my back. The foundation of my livlihood and my job security, has been crumbled.

My hands go numb. Parts of my left hand are permanently numb. This is a very painful condition. My hands too often hurt severely, if I use them past the point of what they can now handle. These are called spasms in which I am getting better at controlling by doing as little as possible with my left hand, and reducing whatever I am doing, housework, cooking, laundry, etc. for my right. I am always behind in these general tasks, not to mention any hobbies I have that now cause pain and stress. This takes some getting used to. These shooting pains, this sick shock-like sting inside my wrists, this burning and general ache is enough to handle. I must supplement, modify my efforts, do without, and learn to live with my now disibility.

4/3/91 SB

4-1 Attachment IV

The frustration, anxiety, distress, sorrow, anguish, anger, stress and limitations of the very hands that once did so much, are devasdating. I cannot do the things I used to do. My hands cannot perform the skills I once had. I cannot return to my previous type of employment.

Carpal tunnel syndrome is a condition I didn't know about, nor did my supervisor. This happened in a hand assembling company. I don't understand why there was no warning, no job rotation.

The current law lessoned the realiy of the seriousness and value of my hands, resulting in foot-dragging which led to further complicate the management of my medical condition, resulting in complications due to continued compression, causing permanent nerve damage.

In my opinion, this could have been prevented if the law were changed from a scheduled injury to a whole body injury. I feel there is no justice in Kansas for the insured worker for bilateral carpal tunnel syndrome. There is no hope for me except in that of education.

If this law goes into effect, it may be too late for justice for me, but this shouldn't be allowed to happen again.

Re-education is the best option to return the bilateral carpal tunnel syndrome worker back to their full earnings capacity, return-them into, once again productive citizens.

Yours Truly,
Pamela J. Neugebauer

Pamela J. Neugebauer

4/3/91
Att IV
4-2

Testimony In Favor of House Bill 2207

April 3,1991

My name is Rudolph C.Neugebauer II.I am for House Bill 2207 because my personal experience living with my wife has had Bilateral Carpal Tunnel syndrome. The affect is most definately that of the Whole Body!

For example the main components of her working ability have been worn out due to Bilateral Carpal Tunnel Syndrome. Which not only makes any kind of task difficult, but also painful. This difficulty and pain carries oninto the household, such housekeeping, child rearing, driving, any task that requires the use of your hands. The list of everyday needs of ones hands is endless. Some of the needs she has taken over. Some of her personal skills are now lost to our family. Such as sewing, photography, gardening, gourmet cooking etc.

Almost all of her employment skills have now been lost due to Bilateral Carpal Tunnel Syndrome. Her skills were with using her hands. Bilateral Carpal Tunnel Syndrome needs to be treated as a whole body injury to allow time for healing and reeducation to return a person back to comparable wage with dignity.

The Labor Market does not have room for a laborer who can not use their hands. With the whole body coverage the message would be sent out, that yes, your hands are worth more than a few dollars. Just as your back, safety messages are posted to help save your back.Safety seminars are held across the United States to lift correctly to save your back. A person cannot work with a bad back, and I say to you that a person cannot work without the use of their hands.

The State of Kansas must realize a person's hands are an important part of ones total life. An injury as Bilateral Carpal Tunnel Syndrome can ruin even the smallest dream...

The result of Bilateral Carpal Tunnel Syndrome as a scheduled injury has left my wife with no reeducation and Vocational Rehabilitation wants to return to work at a 60% cut in wages. Furthermore it is doubtful this work can be obtained within her restrictions.

The future must also be examined. If I was to die or become disabled myself, would my wife be able to support our fam family, or become a burden of the State Welfare System?

These are human beings that have been hurt doing their jobs,using their hands as tools. Tolls that can't have their parts replaced. In many cases there is damage leaving lifelong proclems.

In summary, people are doing their best to make a living with what they have to offer, theie hands, becoming injured and finding hands are not covered for what they are worth.

Reeducation is being held back because with a scheduled injury with restrictions you do not get the chance to return to a comparable wage.

R.C.N.II.B.
4/3/91

Yours Truly,
Rudolph C. Neugebauer II

Attachment V
5-1

American G I Forum Of Kansas
NATIONAL VETERANS FAMILY ORGANIZATION

"Education Is Our Freedom, and Freedom Should Be Everybody's Business"

Arthur W. Solis
Kansas State Chairman

215 NORTH NORMANDY
OLATHE, KANSAS 66061
[913] 782-1613

W R I T T E N S T A T E M E N T

April 3, 1991

TO: Senate Committee on Labor, Industry and Small Business

FROM: Arthur W. Solis, State Chairman
AMERICAN GI FORUM OF KANSAS

RE: House Bill No. 2207
An Act concerning workers compensation; relating to compensation for repetitive use conditions occurring in opposite upper extremities

The **AMERICAN GI FORUM OF KANSAS** is a State chapter of the American GI Forum of the United States, a national Hispanic veterans family organization. The American GI Forum is one of the oldest and largest Hispanic organizations in the United States. The Kansas GI Forum consists of various local forums, including Kansas City, Kansas; Topeka; Wichita; Hutchinson; Dodge City; Garden City; and Ulysses. In accordance with its national and state constitutions, the American G I Forum is non-partisan in its activities.

The founding principles of the American G I Forum include equality of opportunity and advocacy of the rights of others. Members of the Kansas GI Forum have received requests for assistance from Hispanic and other minority workers who are disabled from carpal tunnel syndrome. These complaints have generally been from workers in Finney County, Ford County and Seward County.

It is our understanding that the Census Bureau reported the 1990 racial and ethnic minority population for Finney County, Ford County and Seward County has significantly increased.

1990 CENSUS FOR SELECTED KANSAS COUNTIES

	Total	Hispanic Origin	% Hispanic
Finney	33,070	8,353	25.3
Ford	27,463	4,083	14.9
Seward	18,743	3,660	19.5

L. G. & S. B.
4/3/91

Attachment VI
6-1

Senate Committee on Labor, Industry and Small Business
RE: House Bill No. 2207
April 3, 1991

The Census Bureau reported Kansas' 1990 population includes a Hispanic population of 3.8 percent of the state's population, a percent change of 47.9 percent from 1980. With respect to Finney County, Ford County and Seward County, the demographical changes has occurred in part because of the meat packing plants located in these counties. Even though H.B. 2207 addresses only one aspect of the problems relating to Hispanics with work-related injuries, the American GI Forum of Kansas supports H.B. No. 2207, an act relating to compensation for repetitive use conditions (carpal tunnel syndrome) occurring in opposite upper extremities.

4/3/91
att VI

TESTIMONY OF KANSAS AFL-CIO
Relative to HB 2207
Senate Committee on Labor, Industry and
Small Business

April 3, 1991
John M. Ostrowski

The Kansas AFL-CIO is *strongly* committed to the passage of HB 2207. There are three basic reasons the Kansas AFL-CIO supports this legislation:

1. In its present form, carpal tunnel (and similar injuries) represents special legislation. It is the only place in the Workers' Compensation Act where it matters how the worker was injured.

2. Some workers afflicted with carpal tunnel syndrome suffer a dramatic loss of employability; yet there is no incentive for the employer to reemploy the individual or voluntarily participate in having the worker rehabilitated.

3. Most everyone agrees that carpal tunnel is preventable in multiple ways; but ergonomics are not being employed statewide because there is a lack of incentive for industry.

As such, passage of this bill is important for the integrity of the workers' compensation system as a whole, and also important for injured workers of this State.

1. Special Legislation

As I have stated, the scheduling of workers' compensation in 1987 represented special legislation because it is the only place in the Workers' Compensation Act where the amount of money paid depends on *how the accident happened*. Nowhere else in the Act, which is supposed to represent a "no fault" type system, and a tradeoff of rights, does compensation depend on how the injury occurred.

Assume two workers with an average weekly wage of $300, both lose their legs through an accidental injury occurring at work. Because of the tradeoff in workers' compensation, these workers will receive identical amounts of money no matter how each lost their leg. If worker A lost his leg because the employer had removed a safeguard, he would get $200 per week for 200 weeks. If worker B lost his leg because he was careless in the performance of his job, he would get $200 per week for 200 weeks. It simply would not matter because each suffered a compensable accident, suffered the same injury, and had the same wage.

L.J. & A.B.
4/3/91

7-1 Attachment VII

For every injury occurring in workers' compensation, the rules are the same, with the exception of the so-called carpal tunnel bill.

In order to qualify as a scheduled injury under the 1987 amendments, we use the strained language of "...compensation for repetitive use conditions occurring in opposite upper extremities, whether occurring simultaneously or otherwise, the compensation shall be computed as separate scheduled injuries to each such extremity..." Now, with two workers sitting in the doctor's office with the same work-related injuries to their upper extremities, the question has to be asked **how the accident occurred** in order to determine their compensation. For the first time, and only placed in our law, two workers similarly situated can be treated differently.

When other legislation was introduced this year that increased compensation to the worker if the employer violated safety standards, there was a huge protest from employers, the KCCI, and others. The argument was very clear that such legislation was inappropriate because "it would matter how the injury occurred; thus upsetting the entire no fault and tradeoff concept". Why is it unfair in that instance, but perfectly acceptable in the area of carpal tunnel? The answer is that it is patently unfair. Compensation should not be based on how the injury occurred. It is unjust to workers and the system. A mother who received her carpal tunnel typing should not be treated differently than someone who tripped and jammed their wrists.

2. Reemployment/Vocational Rehabilitation

In "scheduled injury cases", there is no incentive for the employer to return the worker to employment with or without accommodations. Again, in scheduled injury cases, the worker will receive the same amount of money whether they go right back to employment or can never work again for the rest of their life. Because of this fact, employers do not make the special efforts necessary to get the bilateral capral tunnel victim working again and vocational rehabilitation becomes a contested matter.

This is purely an economic decision. If a worker suffers a serious back injury, it is in the employer's best interest to do everything possible to have that worker return to work at comparable wage. The employer or the employer's insurance carrier understands that mathematically a worker without rehabilitation may receive a significant workers' compensation award, let's say in excess of $50,000. By taking the worker back to work, or investing in rehabilitation, that "work disability" will be dramatically reduced. If the rehabilitated worker now receives $20,000, and vocational rehabilitation costs $5,000, the employer/insurance carrier **saved $25,000.** If the employer had to pay the same $50,000, with or without accommodation, and with or without

4/3/91
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vocational rehabilitation (as in carpal tunnel cases), why do anything to return the worker to work?

Scheduled injuries have been traditionally thought of as less serious injuries. The concept is that workers who suffer a scheduled injury will make an economic recovery over time by adapting to their injury. This is not true in bilateral carpal tunnel. Those afflicted with this disease are told: **"Stick both hands in your pockets, now go find a job."**

3. Ergonomics

Carpal tunnel is preventable. However, preventing carpal tunnel in the workplace often requires a slowing of production. For the meat cutter, it may mean a slower chain speed. For the machinist, it may mean specially crafted nonvibratory tools. For the typist, it may mean a special keyboard with typing breaks of ten minutes per two hours.

As an economic choice, and as the law currently is, it is cheaper to injure the worker and pay the set amount under the Act. Without an economic/marketplace incentive, education and ergonomics will not occur, and we will continue to unnecessarily inflict this disease on the workers of this State.

After carpal tunnel became a scheduled injury, the law of "work disability" was changed. Without the change in the law, carpal tunnel used to represent a 100% disability and almost universally represented a $75,000 award. That is no longer true, and this is not simply a money issue where workers will automatically receive more money if the law is returned to its prior state. Some workers will receive more money, and some workers less. It will depend on their ultimate ability to return to work in the open labor market and earn comparable wage.

It should finally be pointed out that carpal tunnel in its present form represents sexist legislation. Statistically, women suffer the disease more than men, due to smaller wrists and smaller carpal canals. Some statistics place this ratio as high as 4 to 1.

In conclusion, we strongly urge this Committee to pass the bill out favorably.

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COLEMAN OUTDOOR PRODUCTS, INC.

April 1, 1991

Testimony opposing House Bill 2207 before the Senate Committee on Labor, Industry and Small Business, Senator Alicia Salisbury, Chairwoman.

Thank you for this opportunity to testify and to urge you to vote against House Bill 2207, which could be extremely detrimental to both employers and employeees in the State of Kansas. This legislation promotes the perception of large disabilities, does not encourage those who have bilateral carpal tunnel syndrome to return to work, and in many cases makes it almost impossible for men and women to resume careers for which they are otherwise trained and capable.

I am Wanda Roehl, safety and workers compensation administrator for The Coleman Company, Inc., whose outdoor recreation products are known and used throughout the world. Our 1,300 Kansas employees received a payroll in excess of $42 million in 1990.

During 1990 and through February 1991, Coleman had 31 repetitive motion injuries, in spite of ergonomic changes in our workplace to prevent these disorders. Some were more serious than others and required surgical intervention. Twenty nine of the thirty one are currently still working for Coleman. Of the other two, one was placed through vocational rehabilitation into a job with another company and is a productive asset to society. The other claimant did not have surgery, is still going through the process of vocational rehabilitation and has yet to return to work.

The beauty of the law as it now exists is that if an employee is unable to return to work for their employer, that employer, at their expense, must refer the employee to an outside expert for vocational rehabilitation. This keeps people productive and enables them to return to work. Under previous law, the tradition was to pay a disability settlement to the employee, with no vocational rehabilitation being done, which was obviously detrimental to the injured individual.

Prior to 1987, bilateral carpal tunnel syndrome was not a scheduled injury; it was classified as a general bodily disability. Because of the high volume of these injuries, the law was re-evaluated in July, 1987 and changed to make it a scheduled injury.

What was happening (that caused lawmakers to change the law) will happen again if the law changes back. People who were afflicted with carpal tunnel syndrome "held out" for a disability settlement and stiff restrictions on the type of job they could perform when they returned to the workforce. The

H.L. & S.B.
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P.O. Box 2931 Wichita, Kansas 67201-2931 316-261-3211

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1) The large settlements they were seeking in our cases represented less than 2 or 3 years' wages for most of our production personnel. The "stiff" restrictions that were imposed to justify the disability settlement precluded them from returning to work for Coleman or from getting another job at a different employer if they were truthful about their condition.

2) The result was the perception by the injured employee that they were totally disabled, when in fact they were not. I know for a fact that some Coleman claimants applied for Social Security Disability at age 40, which to our knowledge was almost always denied.

Another reason we oppose the bill is that we value our human resources at Coleman and want to retain them as employees as long as possible. They are our greatest asset. Prior to July, 1987 less than 10 percent were able to return to our employment because of restrictions that were placed upon them in anticipation of a large disability settlement.

Carpal tunnel syndrome is a painful disorder. The Coleman Company is doing everything we can to keep these injuries at an absolute minimum, with an objective to eliminate them completely.

If surgery is necessary, it is usually an out-patient procedure that takes approximately one hour. Our past experience has proved that those who return to work early do better than those who do not. We place that philosophy into practice and, upon medical release by the treating physician, the employee returns to work at a light duty job as soon as possible.

I urge you to vote against HB 2207, making carpal tunnel syndrome a general body disability. By doing so, you will continue to insure that injured employees are paid the appropriate scheduled impairment amount as a settlement, referred to vocational rehabilitation, if appopriate, and afforded an opportunity to be an employable member of the workforce, which is in the best interest of all concerned.

I would be happy to answer any questions you may have. Thank you.

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727 North Waco
Suite 280
Wichita, Kansas 67203
Telephone: (316) 263-1512

LIBERTY MUTUAL.

March 28, 1991

MRS WANDA ROEHL
THE COLEMAN COMPANY
PO BOX 2931
WICHITA KS 67201

RE: HB 2207

Dear Mrs. Roehl:

Next week during your presentation to the Senate Labor, Industry and Small Business, I would suggest you point out how the law operated before the 1987 amendment.

Generally, the employee would return a work release to the employer advising that he should not return to the "same job", or he would not be able to return to "production work".

The restrictions usually resulted in large work disability awards. The claimants had difficulty finding another job when being truthful during the employment process. If they did find other employment, often it was because they had not made full disclosure of their prior carpal tunnel. This has resulted in improper placements by the hiring employer as well as subjecting the claimant to additional injury unnecessarily.

The amendment in 1987 did not take away any rights of the injured employee. It is in my opinion, more effective in returning an injured individual to work.

Please let me know if there is further information I might provide or if I can be of additional assistance.

Sincerely yours,

Bill Smith
Claims Manager

BS:jw

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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

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HB 2207

April 3, 1991

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Committee on Labor, Industry and Small Business
by

Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson 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 to today express the Kansas Chamber's opposition to HB 2207. There are many reasons why the Kansas Chamber feels

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.

H. B. & S. B.
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passage of HB 2207 would work to the detriment of both the Kansas employer and the injured worker.

1. Passage of HB 2207 will lower the functional disability compensation in workers' compensation cases involving repetitive use injuries. The following example was developed by the Kansas Division of Workers' Compensation, and demonstrates how that will occur.

SCHEDULED INJURY (current system)	GENERAL BODY INJURY (HB 2207)
$417 weekly wage	$417 weekly wage
15% functional impairment to wrists	17% general body disability
Weekly Wage ($417) x .6667 = $278	Weekly Wage ($417) x .6667 = $278
200 weeks x 15% = 30 weeks	$278 x 17% = $47.26
30 x $278 = $8,340	415 x $47.26 = $19,612.90
Bilateral x 20% = $20,016	
Vocational rehabilitation available	Vocational rehabilitation available
No work disability	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 supporters of this legislation supporting a bill 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 at a comparable wage is rebuttable. In other words, Hughes opens the door for an employee to receive up to a six-figure work disability award, even if the employee returns to work at a comparable wage.

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The door to work disability remains closed if HB 2207 is rejected, since scheduled injury cases are open to work disability, but only functional disability. If HB 2207 is approved, then the door is kicked wide open for every repetitive use injury case to receive huge work disability awards, regardless of an employer's attempts to return a worker with a repetitive use injury to work at a comparable wage.

In a nutshell, here are the net results of the Hughes decision, coupled with passage of HB 2207.

FOR EMPLOYERS: No incentive will exist to re-employ individuals with repetitive use injuries. In most cases, the injured worker will be paid their disability award and not be returned to work.

FOR INJURED WORKERS: They will receive larger workers' compensation disability awards, however their ability to remain employed will be greatly diminished.

FOR CLAIMANT ATTORNEYS: Since scheduled injury cases are seldom litigated, claimants attorneys currently do very little workers' compensation work regarding repetitive use injury. If HB 2207 is approved, claimants attorneys will pursue work disability awards in these cases and retain 25% of the awards on a contingency fee.

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 are 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

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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.

5. The members of this Committee do not need to be told that workers' compensation insurance costs are currently skyrocketing in Kansas. Ample evidence of this fact can be found when you consider the National Council on Compensation Insurance has a pending request before Kansas Insurance Commissioner Ron Todd to increase workers' compensation insurance premiums in our state an average of 30.9%.

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Passage of HB 2207 will begin to build NCCI's case for another massive insurance rate hike request for next year. In a letter to the Kansas Insurance Department on the economic impact of HB 2207, NCCI's Government, Consumer and Industry Affairs Director, Michael Taylor writes, "This may have a significant cost impact. First, some of these claims will be permanent total cases, others will end up as non-schedule permanent partial cases....In light of the above, we believe enactment of HB 2207 will add significantly to costs, however, until information is received from the Kansas Division of Workers' Compensation, we cannot determine what the ultimate cost may be."

In conclusion, the Kansas Chamber feels the current system regarding repetitive use injuries encourages early detection and care, and provides incentives for employers to re-employ injured workers. HB 2207 destroys those incentives. We urge you to allow the system so carefully constructed by the legislature to work.

Thank you for considering the position of the Kansas Chamber on this matter. I would be happy to attempt to answer any questions.

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HB 2207 April 3, 1991

Testimony Before the

Senate Committee on Labor, Industry, and Small Business

by

Vaughn Burkholder, Esq.
Foulston & Siefkin

Madam Chairperson and members of the Committee:

I am an attorney primarily specializing in the defense of workers compensation claims. I handle several hundred cases per year, representing dozens of employers. I am appearing today on behalf of The Boeing Company - Wichita, as well as other employers I represent. We appreciate this opportunity to express our opposition to HB 2207.

The proponents of HB 2207 argue that its passage will provide benefits other than larger cash awards to injured employees. This is simply not correct.

Since the passage of the 1987 amendments to the Kansas Workers Compensation Act, the primary goal of the Act is to return injured employees to work at a wage comparable to that which they were earning at the time of their injury. Whether this involves returning to work for the same employer at the same job or different job, or returning to work for another employer through job placement, reeducation or retraining, these benefits are generally known as "vocational rehabilitation". Under the current Act, these benefits are available for both scheduled injuries and general body disabilities. Therefore, it makes no difference whether carpal tunnel syndrome and other bilateral upper extremity conditions are classified as scheduled or general body disabilities.

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Under the present law, employers have the same obligation to return an injured worker to full employment after an injury, no matter how the injury is classified under the Act. Therefore, passage of HB 2207 will not assist the injured worker in this regard, as it will not provide any further vocational rehabilitation benefits than are already available to every worker who receives an injury under the Act.

Then what is the reason why the passage of HB 2207 is being urged by some? As just explained, it is not to increase the vocational rehabilitation benefits or employment opportunities available to injured workers. The real reason is simply to increase the dollar amount of awards being paid.

The claimants' bar is increasingly heard to argue that injured workers should receive large "work disability" awards, even where the employee is back at work making the same or higher wages as at the time of injury. Of course, this was neither the spirit nor the intent of the 1987 amendments. However, as the claimants' bar continues its assault upon the progress which had been begun by the passage of the 1987 amendments, attempts are once again being made to increase the dollar award (upon which contingency fees are paid) without any long-lasting benefit to the injured employee.

Finally, it is important to remember that the 1987 amendments to the Kansas Workers Compensation Act were the result of compromise between labor and industry. It was hoped that labor would benefit by refocusing on continued gainful employment, while industry would benefit by lower awards resulting in lower insurance premiums. It was further hoped that, by so doing, employers would be encouraged to locate their places of employment within our state, making continued gainful employment available to the citizens of this state. If the claimants' bar is successful in passing HB 2207, in conjunction with their position that return to work at comparable wages does not limit their awards, then this will predictably result in excessive

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disability awards such as were seen in the pre-amendment cases. In turn, this will spur the increasingly upward spiral of workers compensation premiums. In today's economy, many employers may well choose to relocate outside the state with the resulting loss of employment opportunity and continuing economic downturn across the state.

On behalf of the many employers I represent, I would like to thank you very much for your attention to these comments. We strongly oppose the passage of HB 2207.

I would be happy to respond to any questions or concerns you may have.

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FAX (913) 267-2652

TO: Senate Labor, Industry and Small Business Committee

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

SUBJECT: H.B. 2207

DATE: April 3, 1991

The American Insurance Association is a trade organization of over 280 property and casualty insurance companies providing insurance in all lines of property and casualty insurance nationwide.

The American Insurance Association opposes H.B. 2207.

Under current law, all work-related injuries in the workers' compensation system are entitled to vocational rehabilitation services if they meet the standards for such services. This entitlement applies regardless of whether an injury is a scheduled injury or an injury to the body of the whole. The goal of such vocational rehabilitation is to return the employee to work at a comparable wage. If after the conclusion of vocational rehabilitation in a workers' compensation case a claimant has not returned to work at a comparable wage, the employee may be entitled to an award for work disability, in addition to their functional disability. This work disability is not applicable

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unless the employee has a body of the whole injury. The affect of H.B. 2207, therefore, is to take these scheduled injuries out of the standard set for scheduled injuries and to apply the standards for injuries to the body of the whole. To the extent that such an effect would increase costs by further the award of compensation for work disability, which is in opposition to the intent of the Legislature in passing the vocational rehabilitation amendments in 1987, AIA is opposed to such action.

H.B. 2207, however, also points out the confusion with regard to work disability and vocational rehabilitation, which has arisen since 1987. In the recent case of Hughes v. Inland Container Corporation, the claimant argued he was entitled to a grant of work disability after the failure of vocational rehabilitation to place him in a position at comparable wage. In attempting to determine how to calculate such entitlement to work disability and the amount of the work disability, claimant and respondent both propose two separate standards. Additionally, filing amicus curie briefs in the case and proposing three completely different calculations were the Kansas Association of Defense Counsel, the Kansas Trial Lawyers Association, and the AFL/CIO. After looking at these five separate theories, the Court adopted a completely separate and distinct theory which allowed a grant of work disability if the employee either did not earn comparable wage or if they had loss of ability to return to

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the labor market. This two prong test was not contemplated by the Legislature in 1987. Accordingly, attached you will find a balloon amendment to K.S.A. 44-510(e) which the American Insurance Association would propose be amended into H.B. 2207 in order to address the problem with regard to work disability and vocational rehabilitation as identified by the proponents of H.B. 2207.

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Testimony on HB 2207
Before the Senate Labor, Industry and Small Business Committee
April 2, 1991
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you, Madam Chairwoman, and members of the committee for the opportunity to appear today in opposition to HB 2207 removing repetitive use syndrome as a scheduled injury under workers compensation.

Our association is extremely concerned about the rising cost of workers compensation insurance. We feel that without a detailed study of exactly what the cost impact would be of this change in the law, that the legislature should not remove repetitive use as a scheduled injury.

Repetitive use was made a scheduled injury as part of the compromise struck in 1987 with the significant workers compensation reform passed that year. We are concerned that the 1987 act, as it stands, has raised costs significantly for workers compensation. Scheduling repetitive use was one of the cost saving trade-offs in the 1987 law. To remove it now would increase costs from that act even further.

We urge the committee to refer this bill to an interim study where the actual dollar impact can be adequately determined. We would be happy to answer questions or provide any additional information.

L. J. & S. B.
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