

MINUTES OF THE House COMMITTEE ON Labor and IndustryThe meeting was called to order by Representative Anthony Hensley
Chairperson9:05 a.m./~~pm~~ on January 22, 1992 in room 526-S of the Capitol

All members were present except:

Committee staff present:

Jim Wilson, Revisor of Statutes' Office
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Charles Dodson, Exec. Director, Kansas Assn. of Public Employees
Terry Leatherman, Exec. Director, Kansas Industrial Council, Kansas Chamber of
Commerce and Industry.

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

Chairman Hensley introduced and welcomed to the committee two new members: Rep. Jan Pauls of Hutchinson, who replaced former Rep. Theo Cribbs, and Rep. Bob Grant of Cherokee, who replaced former Rep. Sam Roper. The chairman also introduced Rep. Arthur Douville, who is returning to the committee after his absence last session. Rep. Douville replaces Rep. Gene Amos.

The chairman stated that the purpose of the meeting was to consider requests for introduction of legislation by the committee from various persons. He then introduced Charles Dodson, Executive Director, Kansas Association of Public Employees, for such a request.

Mr. Dodson stated that under current law the State Employee Health Care Commission is comprised of three (3) members and that he would like the committee to introduce a bill to increase that number to five (5). He said the intent of the bill would be to add a presently-employed classified state employee and a person who is retired from state civil service to be members of the commission.

Rep. Don Smith moved to introduce a bill as per Mr. Dodson's request. The motion was seconded by Rep. Dick Edlund. Motion carried.

The chairman introduced Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry (KCCI). Mr. Leatherman explained that over the past several months the KCCI Task Force on Workers' Compensation had been meeting to discuss various issues and make recommendations relative to the Kansas workers' compensation system. He presented those recommendations to the committee (attachment #1).

Chairman Hensley suggested that the KCCI Task Force recommendations be contained in four (4) separate bills as follows: recommendation #1 in one bill, recommendations #2 and #9 in a second bill, recommendations #3, #6, #7 and #8 in a third bill, and recommendations #4 and #5 in a fourth bill. The chairman entertained motions on the KCCI recommendations.

Rep. Jack Sluiter moved to introduce a bill to enact a workers' compensation "fraud" statute (KCCI recommendation #1). The motion was seconded by Rep. Darrel Webb. Motion carried.

Rep. Darlene Cornfield moved to introduce a bill to establish a Workers' Compensation Commission and to change the process for selecting the director to serve at the pleasure of the Secretary of Human Resources (KCCI recommendations #2 and #9). The motion was seconded by Rep. Al Lane. Motion carried.

Rep. Edlund moved to introduce a bill to permit appeals of preliminary hearing decisions, to amend the definition of "work disability", to provide an "offset" for compensation paid to persons who qualify for retirement programs, and to disallow the use of "unauthorized medical" for an impairment rating report (KCCI recommendations #3, #6, #7 and #8). The motion was seconded by Rep. Eloise Lynch. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,

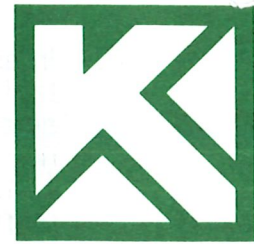
room 526-S, Statehouse, at 9:05 a.m. ~~pm~~ on January 22, 1922.

Rep. Webb moved to introduce a bill to establish attorney fee limitations and to require attorneys who advertise their legal services to disclose that workers' compensation is a right for all injured workers, regardless of whether they are represented by an attorney (KCCI recommendations #4 and #5). The motion was seconded by Rep. Dorothy Flottman. Motion carried.

The chairman then introduced Wayne Maichel, Executive Vice-President, Kansas AFL-CIO. Mr. Maichel requested that the committee introduce legislation to establish procedures under Kansas law whereby workers' compensation "disputes" could be resolved through labor-management collective bargaining agreements (attachment #2).

Rep. George Gomez moved to introduce a bill as per Mr. Maichel's request. The motion was seconded by Rep. Denise Everhart. Motion carried.

The meeting was adjourned at 9:45 a.m.



**Kansas
Chamber of
Commerce
and Industry**

January 21, 1992

TO: The Honorable Anthony Hensley, Chairman, House Labor & Industry Committee

FROM: Terry Leatherman
Executive Director, Kansas Industrial Council

RE: A Request from the Kansas Chamber of Commerce and Industry for Introduction of Legislation Concerning the Kansas Workers' Compensation System

During the summer of 1991, the Kansas Chamber of Commerce and Industry assembled a Task Force on Workers' Compensation. The Task Force consisted of 42 KCCI members concerned about the condition of the workers' compensation system in Kansas. At its final meeting in October, the Task Force adopted a final report which includes a series of reforms to the Kansas workers' compensation system.

The Task Force recommendations were reviewed and approved by the KCCI Human Resources Committee in November and the KCCI Board of Directors in December. In addition, the Board of Directors for the Kansas Industrial Council, a division of the Kansas Chamber, adopted the workers' compensation reforms developed by the Task Force as their major legislative objective in Kansas in 1992.

The Task Force recommendations which call for change in Kansas law are listed below.

1. Kansas should enact a workers' compensation "fraud" statute, which exposes persons who intentionally make false statements or knowingly fail to disclose material fact in a workers' compensation case to civil and criminal penalties.
2. To bring greater judicial consistency and streamline the system's legal process, Kansas should eliminate appeals to the Kansas Workers' Compensation Director and to district courts in Kansas and establish a Workers' Compensation Commission as the system's appeals arm. A critically important element in this recommendation is developing a selection process for members of the Commission which leads to the selection of qualified judges who are free of political influence.
3. Kansas should permit appeals of preliminary hearing decisions in the same fashion as appeals are permitted from regular hearings, to provide all parties an avenue to appeal improper preliminary orders.

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4. In an effort to reduce workers' compensation litigation, Kansas should establish attorney fee limitations, by not permitting the undisputed portion of an award to be included in determining an attorney's fee. By basing attorney fees on the increase an attorney can gain for a claimant in a workers' compensation courtroom, employers would be encouraged to make responsible settlement offers.
5. In addition to developing attorney fee limits, Kansas should promote dispute resolution by requiring attorneys who promote their workers' compensation legal services through advertisements to disclose that workers' compensation is a right afforded to all employees injured on the job, regardless of whether they are represented by an attorney. This information should also be required to be included on standard attorney contracts.
6. Kansas should amend the "work disability" provision in the law to make it absolutely clear that work disability does not exist if an employee engages in any work for wages comparable to the average gross weekly wage the employee was earning at the time of their injury.
7. Since permanent total disability compensation is intended to replace income a worker can no longer earn following an injury, Kansas should adopt an offset provision for compensation paid to individuals who have reached retirement age and/or qualify for retirement income programs.
8. To promote the use of "unauthorized medical" for its intended purpose, Kansas should disallow the use of unauthorized medical for the sole purpose of receiving an impairment rating report.
9. In addition to removing the Kansas Workers' Compensation Director's responsibility as a judicial officer in the legal process (recommendation #2), Kansas should abandon the current process of appointing a Director to a four-year term for the process used in selecting other unclassified government positions of serving at the pleasure of the appointing Secretary.

Besides recommending these changes in the Kansas Workers' Compensation Act, the KCCI Task Force also had several other suggestions regarding the Kansas workers' compensation system. They are detailed in the Kansas Industrial Council publication The Kansas Workers' Compensation System...A Business Perspective. The publication went to the printer today. I look forward to presenting a copy to the members of the Kansas House Labor and Industry Committee, as soon as the report is available.

In all candor, skyrocketing costs prompted KCCI forming a Task Force on Workers' Compensation. However, the Task Force began its work by accepting a basic principle; the Kansas workers' compensation system should ensure workers injured on the job prompt and effective medical care and fair compensation. The Task Force was then charged with reviewing all elements of the system and developing reform recommendations to return the system to achieving this important goal.

Kansas business has no intention to abandon its pledge to care for and compensate employees for job-related injuries and illnesses. Hopefully, these KCCI proposals reform the workers' compensation system to permit employers to achieve this important promise.

K.S.A. 44-505(d)(1) Subject to the limitations stated in subsection (2), it shall be recognized as valid and binding provisions in a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative which establish any of the following:

(a) An agreed upon list of physicians for examination, diagnosis, and treatment of injured workers, including the procedure for utilization of said physicians and the handling of disputes that may arise thereunder. In the event said provisions are contained in a collective bargaining agreement, the provisions of K.S.A. 44-510(c) are void for all covered employees.

(b) The use of a preferred provider system for medical treatment. In the event a preferred provider system is contained in a collective bargaining agreement, the provisions of K.S.A. 44-510(a) which are in conflict with this section by establishing jurisdiction with the Director over medical fee disputes and utilization review are void.

(c) Programs for returning injured workers to employment including but not limited to light duty, modified work, return to work programs, and/or retraining including the procedure for said return to work and the handling of disputes that may arise. In the event that said return to work programs are included in a collective bargaining agreement, the provisions of K.S.A. 44-510g that may be in conflict with this provision are void.

(2) Nothing in this section shall allow any agreement that diminishes an employee's entitlement to benefits as otherwise set forth in this chapter. Any such agreement in violation of this provision shall be null and void.

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