

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:06 a.m./~~p.m.~~ on February 17, 1992 in room 526-S of the Capitol.

All members were present except:

- Rep. Smith - excused
- Rep. Wagle - excused

Committee staff present:

- Jerry Donaldson, Principal Analyst
- Jim Wilson, Revisor of Statutes
- Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

- Katherine Fischer, President, Capital City Distribution, Inc., Topeka
- Larry W. Magill, Jr., Independent Insurance Agents of Kansas
- Bill Morrissey, acting Director, Kansas Div. of Workers' Compensation

The meeting was call to order at 9:06 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley called to committee members' attention the following items: A letter from Mark Russell, owner of LaSiesta Foods, Inc., Topeka, in opposition to Senate Bill No. 275 (attachment #1), and letters in support of House Bills no. 2872 and 2873 from James W. Parmelee, chief financial officer, Taylor Forge Engineering Systems, Inc., Paola; Martha Howard, plant manager, PMI Food Equipment Group, Kansas City; and W.O. Barnes, plant manager, Modine Manufacturing, Emporia (attachments #2, #3 and #4).

The chairman then announced the continuation of the hearings on House Bills no. 2872 and 2873, and introduced proponents of these bills:

Katherine Fischer, President, Capital City Distribution, Inc., Topeka, spoke in favor of the bills and described the problems she has encountered with the workers' compensation system (attachment #5). She then answered questions from several committee members.

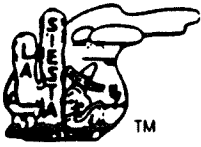
Larry W. Magill, Jr., representing the Independent Insurance Agents of Kansas, also appeared in support of the bills. He announced that the National Council on Compensation Insurance (NCCI) will request a 30-40% increase in workers' compensation insurance rates. He provided the committee with information showing the insurance industry's "historical loss ratio" in Kansas (attachment #6). Mr. Magill answered questions.

The chairman then introduced Bill Morrissey, acting Director, Kansas Division of Workers' Compensation, to respond to the proposed changes in the law contained in the two bills.

Mr. Morrissey stated that it is his belief House Bill No. 2872 is not needed because Kansas law already provides for protection from fraud in workers' compensation claims. He said that if the Legislature intends to enact a workers' compensation "fraud" statute, it should apply to everyone involved in the system. Mr. Morrissey also made comments on House Bill No. 2873 and answered questions from several committee members.

Chairman Hensley announced that the committee would hear a staff briefing on House Bill No. 3023 during its meeting tomorrow, Tuesday, February 18, 1992.

The meeting was adjourned at 10:20 a.m.



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3139 E. 10th • Topeka, Kansas 66607
(913) 354-1449 Fax (913) 357-7369



Burritos

February 5, 1992

Representative Anthony Hensley
Statehouse
Room 278-W
Topeka, KS 66612

Re: Senate Bill 275 - Taxable Wage Base for Unemployment Insurance

Dear Representative Hensley:

I understand that you will be having hearings on Senate Bill 275, which raises the taxable wage base for unemployment taxes from the current \$8,000 to \$12,000. I will be out of town during the hearings, and will not be able to address your committee. I would like to take this opportunity to express my problems with this bill, and would appreciate it if you would share my comments with the members of the committee.

An increase of this magnitude would cause a significant increase in the taxes that my company pays for unemployment insurance. In fact, recalculating the taxes that we would have paid in 1991 indicates that the higher wage base would increase my unemployment taxes by 28.4%! With the increased taxes being paid by business through property taxes, the addition of a 28% increase in payroll taxes would be extremely detrimental to my company, and in general to economic development in the State.

As background, a recap of the wage contribution statement from the last two years is as follows:

	Contributions	Benefits Paid
Year ended 6/30/90	\$ 74,157.12	\$ 4,730.65
Year ended 6/30/91	65,645.88	14,378.98

Our contributions decreased for the year ended 6/30/91 because we began a concentrated effort to decrease employee turnover in 1990, and we began to see the benefits of that effort in 1991 in looking at the contributions that we were required to pay. However, you will note that the opposite happened regarding the benefits paid in that same period. Our turnover went down, our required contributions decreased, yet the benefits that were paid on our behalf increased almost three-fold. My experience with the Department of Human Resources is that they have become extremely liberal in granting benefits since January, 1990. I have previously sent Senator Salisbury three cases where former employees of the Company were discharged for legitimate causes relating to misconduct, only to have them awarded benefits through the appeal process. To show the depth of the problem, we had an employee who lost her job because the Department on Immigration and Naturalization revoked her work authorization. Through no fault of our own, we were required by law to terminate her employment or be subject to criminal penalties. She applied for and received unemployment benefits.

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attachment #1

Representative Anthony Hensley
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There are many problems to be addressed before you consider additional funding for this program. If the additional funding is needed to keep the fund solvent, your committee must consider why the funding is inadequate. We have paid \$139,623 into the fund in the past two years, and it has only been required to pay out \$19,110. That is a tax in excess of \$120,000 to support the fund. I think that we have been taxed enough in this area. If the intent is to create a social program to assist people who have lost their income, then fund it through general taxes (unpopular, I know, but fair to business).

It seems to me that every time a program runs short of funding, the automatic solution is to look for additional funding to keep it going. In this case, a much better place to look is how this program is being operated. How can a business be forced to terminate an employee, and then be required to pay benefits when the employee files for unemployment? The cases that I forwarded to Senator Salisbury point out clearly that benefits are being awarded where none are warranted. Instead of increasing revenues, let us look at making reasonable expenditures.

Very truly yours,

Mark B. Russell/ph

Mark B. Russell
President

MBR/pah



TAYLOR FORGE ENGINEERED SYSTEMS, INC.

First & Iron Streets • Paola, Kansas 66071
Tel: 913-294-5331 • Telex: 62192610
FAX: 913-294-5337

February 10, 1992

Kansas House Labor & Industry Committee
Kansas State House
Topeka, Kansas 66612

Dear Committee Member:

I am writing you today to express our support for two bills you will be considering shortly; HB 2872 - Workers Compensation Fraud and HB 2873 - Workers Compensation - Legal and Benefit Reform.


In our business the cost of workers compensation has gone from a miscellaneous other type cost in 1985 (\$37,000) to one of our largest expenditures in 1992 (estimate \$300,000). While some of this is due to increased employment and experience rating, I believe a \$100,000 of the increase is due to other things - I believe these two bills will help address "some" of these other things.

One of the other things that these bills don't cover is the residual market burden which has risen from 3.61% in 1984 to 22.61% in 1990. Not only is this increase criminal, the fact that only small companies that can't self insure, or join pools, have to pay this tax. You should do something to equal the playing field for the little guy.

Thank you and good luck.

Very truly yours,

TAYLOR FORGE ENGINEERED SYSTEMS, INC.



James W. Parmelee
Chief Financial Officer

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Attachment #2

Traditionally Dependable

PMI Food Equipment Group

Martha L. Howard
Plant Manager

401 Funston Road
P.O. Box 15909
Kansas City, KS 66115-0909
913 321-1600, Ext. 210
FAX: 913 321-1428

February 11, 1992

Chairman Tony Hensley
House Labor & Industry Committee
Kansas State House - Room 278 West
Topeka, Kansas 66612

**Re: HB 2872 - Worker's Compensation Fraud
HB 2873 - Worker's Compensation, Legal
and Benefit Reform**

Dear Chairman Hensley:

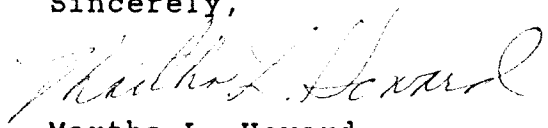
As Past President of the Kansas Industrial Council and as Plant Manager for PMI Food Equipment Group, I am seriously concerned about the need for reform in the Kansas Workman's compensation laws.

More importantly, as a human being, I am concerned that Kansas have fair and reasonable Workman's Compensation for those who work in our state. My mother lost all of her fingers on her right hand to an industrial accident. My father lost his life because of industrial chemical inhalation. My personal experience causes me to be concerned that Kansas workers are guaranteed equity.

However, it is never a benefit to those who truly suffer that our precious funds be diverted to those committing fraud or manipulating a system. Without the passage of both HB2872 and HB2873, our system is open to misuse and abuse.

I urge you and your committee to SUPPORT both of these bills.

Sincerely,



Martha L. Howard

MLH/km

NOTE: While this letter is being faxed to you so that it may be available for your hearing on February 12, I am also mailing it to your office along with twenty copies for distribution to the members of your committee.

*Labor & Industry
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Attachment #3*



MODINE

February 10, 1992

The Honorable Anthony Hensley
C/O Statehouse
Topeka, KS 66612

Dear Representative Hensley:

I am extremely encouraged by the work the business community has done to develop needed reforms to the Kansas workers' compensation system. Their efforts reflect a caring for employees yet a realism that the current system must be changed to help stem the tide of double digit premium increases. This realism is important because business must remain competitive to provide jobs Kansans need.

I strongly support the passage of both HB2872 and 2873. My plant has been fortunate in the fraud area. The one time we suspected fraud, the administrative law judge concurred and ruled in our favor. It is important this provision be passed to provide reasonable remedies if someone should knowingly misstate key facts. I am aware that other employers have not been as fortunate as my plant.

The key provision in HB2873 is to clearly define work disability. I served on a legislative task force to study workers' compensation in 1987, and the Hughes vs. Inland Container decision was not the intent of the 1987 law. I have seen how this decision has kept one employee out of the job market hoping for a large settlement when the individual is capable of working for a comparable wage. The other three provisions in this bill provide equity to the system.

The key thrust of these bills is to improve the current situation. The business community recognizes that these improvements in no way offset their obligation to provide a safe work environment. Both Modine and, specifically my plant, support a system to prevent injuries. In fact, my plant's current management plan has both goals established and monies defined to further improve the work environment. Work place injuries are costly to all parties and every step must be taken to prevent them. Even if business did not have an interest in protecting their employees, the current OSHA laws provide a strong incentive to change their thinking. The past actions taken to improve safety have resulted in a significant reduction in both lost time accidents and in lost work days at the Emporia plant.

Modine Manufacturing Company Telephone 316/343-1120
1401 Industrial Street Fax 316/343-7480
Emporia, Kansas 66801

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Attachment #4

I again encourage your committee to favorably consider these two bills and help provide more jobs for Kansans in the future.

Sincerely,



W. O. Barnes
Plant Manager

WOB:kg

CC: Representative Doug Lawrence
Representative Jim Lowther
Representative Don Rézac
Representative Elaine Wells
Representative Steve Wiard
KCCI, Topeka, KS
Emporia Area Chamber of Commerce, Emporia, KS

Members of the House Labor and Industry Committee, I am Katherine Fischer. I am the President and major stockholder of Capital City Distribution, Inc. a small business located at Forbes Industrial Park in Topeka, Kansas. I have been in business in Topeka for 31 years. Starting from scratch takes a lot of hard work, dedication and sacrifice. It has not been easy but we have survived and grown.

To be successful one must operate efficiently and above all you can not afford a major Workers Compensation claim.

Our industry is one at high risk for Workers Compensation claims particularly back injuries because our workers are lifting and carrying heavy items on a daily basis. For the past several years there has been yearly attempts to increase our basic Workers Compensation rates 20-25%. We have had major yearly increases.

Workers Compensation is expensive. Presently my company's record is good. I operate 37 trucks, tractor-trailers and smaller vehicles on which I carry liability, cargo, comprehensive and collision coverage. There is also warehouse insurance for customers goods and a \$2 million umbrella. Of the total insurance premium I pay, Workers Compensation accounts for 47% of that amount. If I had a major claim, I would continue to pay the present Workers Compensation premium plus the cost of the injury through an experience modification which could last 5-6 years. I know because I have been there and the irony of it all is that we can be an innocent party. Let me elaborate. A driver delivering product to our warehouse threw two cherry bombs at our fork lift operators as they were unloading the trailer. The explosions were so loud that one employees' ear drums were damaged, one ear was bleeding, he had to have surgery and has

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Attachment #5*

permanent hearing loss. The other employee had temporary loss of hearing but no permanent damage. This was supposed to be a prank, no one was meant to be hurt. This claim increased my experience modification for a 3 year period.

Two years ago the legislature passed a medical fee schedule for Workers Compensation and as yet no fees have been established. One would think that the schedule utilized by the health insurers such as Blue Cross/Blue Shield would prevail in the Workers Compensation arena. This is not the case. The health care providers want a higher fee schedule. This tells me that we in business are expected to pay higher medical costs than is the norm. Is this fair?

My purpose in testifying today is to let you know some of the difficulties we experience in business. Property taxes hit us very hard and we received no relief from the abolishment of the inventory tax. It seems that all costs are going up and our revenues are not there to compensate for these increases. Our customers have the same problems we have so they tighten their belts and give us less work.

Business needs your help to evaluate these Workers Compensation proposals so that they can be meaningful without creating additional road blocks.

When you members of the legislature think of business do you automatically think "large business" such as Santa Fe, Boeing, or IBP?

In reality, approximately 85% of all workers in Kansas are employed by small business. So the impact of any major legislative change does not make an immediate impact on small business employers.

HB2872 is one in which business can persue recovery of fraudlent claims.
This would be of definite benefit to us.

After an injured worker has recovered, quite often he is unable to return to the same work he was doing before being injured. If the company gave him a different job with no loss of pay should not this be adequate?
HB 2873 would be meaningful to business large and small, the four changes it proposes are worthy of your consideration.

Thank You

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Testimony Before the House Labor & Industry Committee
on House Bills 2872 and 2873

By: Larry W. Magill, Jr. for the
Independent Insurance Agents of Kansas
and
Professional Insurance Agents of Kansas

Thank you very much, Mr. Chairman, and members of the committee for the opportunity to appear today in support of these two workers compensation reform proposals.

As independent insurance agents, we represent the interests of our business clients in the issue of workers compensation reform as well as being an integral part of the insurance system.

The Kansas workers compensation system, in our view, is in a state of crisis. Insurance premium rates are seriously inadequate. Workers compensation claims costs for both medical and lost time payments are going through the roof as shown on the attached graph. The workers compensation plan, the assigned risk, has grown to 27% of the total market in Kansas and suffered a \$44 million underwriting loss in 1990 paid by a 22% assessment on insurance companies. The combination of these three major factors is drying up the voluntary market for workers compensation to the point where this state's workers compensation system is almost in a "death spiral." It appears fairly certain at this point that the National Council on Compensation Insurance will request a 30-40% rate increase to be effective June 1, 1992, on top of the 24.6% average rate increase approved last year. Last year's rate increase included increases of 35% for some classifications and that was an artificial cap negotiated by the Insurance Department and NCCI. Without that cap, some classifications last year could have increased by as much as 70%.

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attachment #6

Unfortunately as the NCSL consultants stated numerous times in their testimony on January 27, 1992, Kansas has a litigation based workers compensation system. As such, we have to rely on defense attorneys to tell us how to swing the pendulum back towards the middle in Kansas and restore balance to our system at a level businesses can afford.

We support HB 2872 creating a fraud statute under workers compensation providing a right of recovery from the fraudulent party. We would have no problem if the bill "cut both ways" and applied to all parties in a workers compensation claim. We can tell you as insurance agents that fraudulent claims are one of the biggest complaints we hear from businesses. We also know they are difficult to prove and even harder to win. We do not anticipate a lot of convictions under this proposal, but would hope it would act as a deterrent for workers who were hurt at home, at play, or simply were not hurt at all.

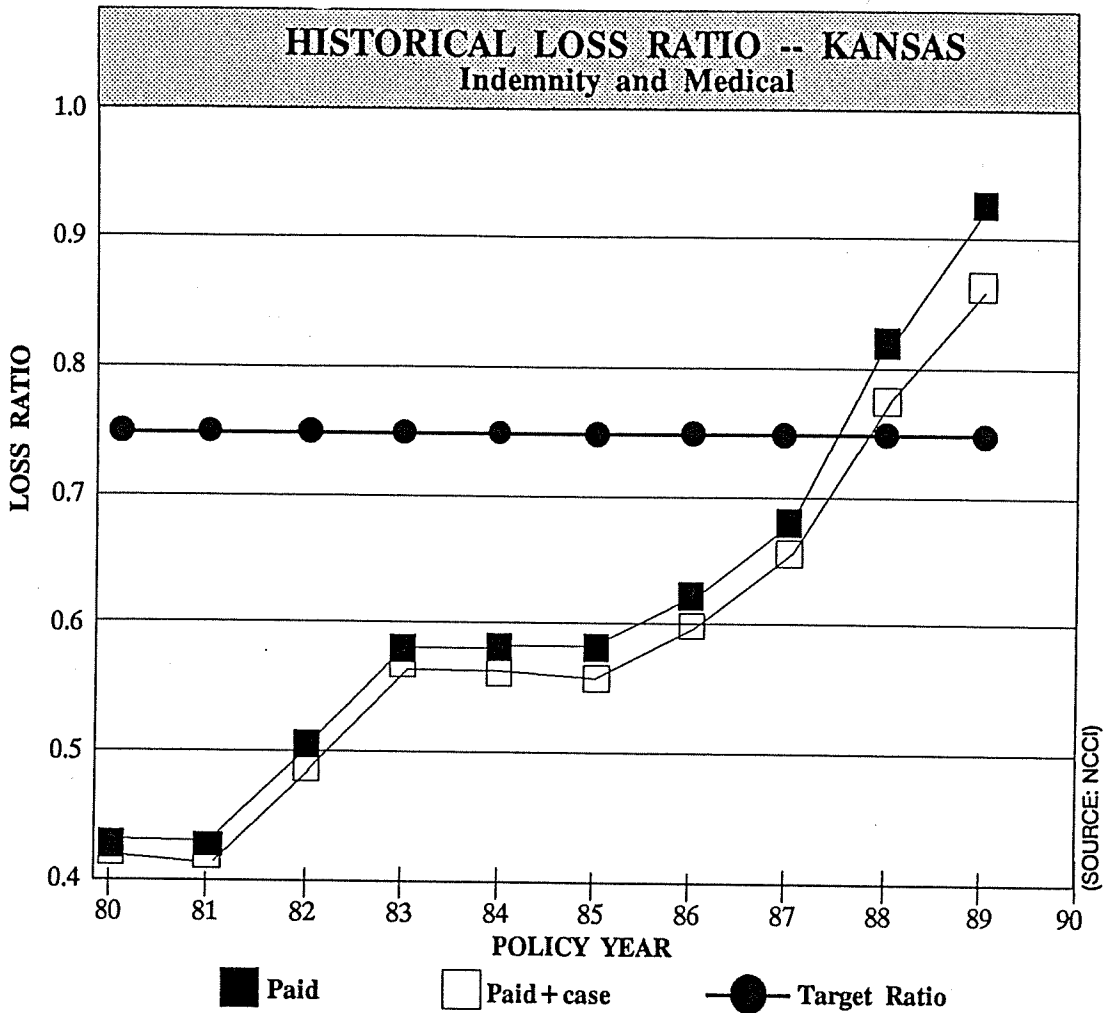
We support HB 2873 and in particular the provisions concerning work disability awards and appealing preliminary hearing decisions. You have heard the opponents state it is too early to determine what impact the 1987 changes have had on claims payments. I couldn't disagree stronger. The graph showing the trend lines for workers compensation claims clearly shows a dramatic upward shift beginning after 1987. We firmly believe that neither the legislature nor the parties to the compromise in 1987 ever intended for the court to interpret that act the way it did in the Hughes case and allow a work disability award when the worker is employed or employable at the same or higher wages. We would also point out that \$50,000 and \$100,000

awards is mentioned by some of the proponents of this measure when added to all the small claims workers compensation covers day in and day out add up to real dollars. It doesn't take many awards in that size range for work disability when a worker has been re-employed at the same or higher wages for the system to begin to buckle under the strain.

The ability to appeal preliminary awards seems only fair and logical to us. We have not heard any arguments from the opponents that would indicate why normal legal processes should not apply in this case. We would agree that benefits could be paid pending the appeal as long as there was some guarantee the appeal process would work quickly and efficiently.

The NCSL consultants referred to the problem of dueling doctors a number of times in their testimony. HB 2873 attempts to deal with that by encouraging both parties to the action to allow the treating physician, who is in the best position to analyze work disability, determine a reasonable rating. There are perhaps other ways to address the dueling doctors problem such as independent medical examiners as mentioned by the NCSL consultants. In any event, it is highly unusual for a system to require the defendant to pay for the expert witnesses of the plaintiff in advance.

The workers compensation system in Kansas is desperately in need of reform. We urge you to support these reform measures along with other ideas that will be presented this session to avert an almost certain crisis. Thank you for the opportunity to appear in support of these bills. We would be happy to answer questions or provide additional information.



KANSAS RESIDUAL MARKET BURDEN (ASSESSMENT)
Projected as of 6-30-91

