

Approved March 5, 1992

Date

MINUTES OF THE House COMMITTEE ON Labor and Industr

The meeting was called to order by Representative Anthony Hensley
Chairperson

9:04 a.m./p.m. on February 28 1992 in room 526-S of the Capitol

All members were present except:

Rep. Everhart - excused
Rep. Sluiter - excused

Committee staff present:

Jerry Donaldson, Principal Analyst
Barbara Dudley, Committee Secretary

Conferees appearing before the committee:

Richard Mason, Exec. Dir., Kansas Trial Lawyers Assn.
Terry Leatherman, Exec. Dir., Kansas Industrial Council, KCCI
Bill Morrissey, acting Director, Kansas Div. of Workers' Compensation
Jerry Slaughter, Exec. Dir., Kansas Medical Society
John Ostrowski, Kansas AFL-CIO

The meeting was called to order at 9:04 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley informed the committee that he had handed out copies of a news release from Ron Todd, Kansas Insurance Commissioner, in which Mr. Todd announced that the National Council on Compensation Insurance has requested a 31.4% overall increase in Kansas workers' compensation insurance rates effective June 1 of this year (attachment #1).

The chairman stated that the purpose of the meeting was to hear testimony on House Bills no. 3023, 3039 and 3116. He introduced conferees on these bills:

Richard Mason, Executive Director, Kansas Trial Lawyers Association, distributed and read written testimony in opposition to House Bill No. 3023 (attachment #2). Mr. Mason answered questions from a committee member.

The next conferee was Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry (KCCI). Mr. Leather appeared in support of House Bill No. 3023 (attachment #3) and House Bill No. 3039 (attachment #4). He answered questions from members of the committee.

The chairman then introduced Bill Morrissey, acting Director, Kansas Division of Workers' Compensation, to comment on the workers' compensation bills the committee has heard to date. Mr. Morrissey expressed his concerns and made suggestions about several specific provisions contained in House Bill No. 3023. He suggested that "work disability" be granted an injured worker in the event he is returned to the job with the same employer and then fired. He stated his support for House Bill No. 3039, which would authorize him, as acting Director, to implement a medical fee schedule based on fees that are "usual and customary for the community in which the services are rendered." He said that he also supports the bill because it allows him to implement the medical fee schedule without the approval of the advisory panel.

Jerry Slaughter, Executive Director, Kansas Medical Society, appeared in opposition to House Bill No. 3039. He presented written testimony (attachment #5) which expressed his concern about the bill's proposed abolition of the medical fee schedule advisory panel. He stated the Society's continued commitment to work with Mr. Morrissey to address the problems of increasing health care costs.

John M. Ostrowski, representing the Kansas AFL-CIO, distributed and read written testimony in support of House Bill No. 3116 (attachment #6). He stated that this bill allows labor and management, if covered by a collective bargaining agreement, to negotiate choice of health care provider, medical treatment, and vocational rehabilitation.

Director Morrissey stated his support for House Bill No. 3116.

The chairman announced that the public hearings were closed on House Bills no, 3023, 3039 and 3116.

The chairman also announced the appointment of a subcommittee to hear further testimony and make recommendations to the full committee on changes in the Kansas workers' compensation act. The subcommittee members are: Rep. Denise Everhart, who shall be chair of the subcommittee, Rep. Tim Carmody, Rep. Arthur Douville, Rep. Jan Pauls, and Rep. Don Smith. Chairman Hensley stated that the subcommittee will use House Bill No. 3039 for the purpose of amending in its recommendations to the full committee.

The meeting was adjourned at 10:05 a.m.

.....as specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.



KANSAS INSURANCE DEPARTMENT

News Release

RON TODD
Insurance Commissioner

420 S.W. 9th Street
Topeka, Kansas 66612-167

FOR IMMEDIATE RELEASE

CONTACT: Raymond E. Rather
913-296-7845

INCREASE IN WORKERS' COMPENSATION INSURANCE RATES REQUESTED

TOPEKA, Kan., February 27, 1992 -- Ron Todd, Commissioner of Insurance, announced today that insurance companies have requested a 31.4% overall increase in Kansas workers' compensation insurance rates to be effective June 1, 1992. The request was filed by the National Council on Compensation Insurance which is a licensed rating organization that represents the approximately 260 insurance companies that write workers' compensation insurance policies in Kansas.

Todd said, "If approved, the filing would increase the total workers' compensation insurance premiums by \$105,407,445 and would result in an average increase in rates of 41.8% for manufacturing classifications, 37.3% for contracting classifications and 24.2% for "all other" classifications." Todd stated there are over 600 classifications used to compute workers' compensation insurance premiums.

Commissioner Todd said, "A similar filing was submitted in 1991 requesting an increase of 30.9%, and I approved an increase of 24% after a thorough review by my staff and an independent actuary. An independent actuarial examination will also be made on this filing and my staff has already begun their analysis of the filing." Todd stated he will later announce a date for a public conference at which time the details of the filing and questions from the public will be discussed.

"I am required by statute to approve this filing unless I find that the proposed rates are excessive, inadequate, or unfairly discriminatory" Todd said.

-more-

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Attachment #1

Todd concluded that "The scope of workers' compensation benefits are prescribed by statute and many proposals affecting such coverage are now under consideration by our legislature." Todd added, "Also, a task force that I appointed last summer to make recommendations of needed changes in the workers' compensation law has been unable to do so because of a delay in furnishing requested loss information by the National Council on Compensation Insurance; however, such information is expected by March 15, 1992 so I am hopeful the task force can reconvene and resume its work in the near future."

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KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
HOUSE LABOR AND INDUSTRY COMMITTEE
regarding
HB 3023 - Workers Compensation "Reform"
February 27, 1992

On behalf of the Kansas Trial Lawyers Association I want to thank the Chairman and members of this Committee for the opportunity to express our strong opposition to HB 3023. Our members' interest in this bill is based upon their role as legal representatives of injured workers seeking compensation for their damages.

HB 3023 regrettably brings to mind Yogi Berra's famous line, "It's deja vu all over again." From our point of view, the great compromise in 1987 has had the affect of taking monetary benefits away from claimants and replacing it with vocational rehabilitation, which everyone now seems to agree has not worked. Indeed, HB 2186 was referred to last week as "the problems we created in 1987."

You now have before you "son of 2186." Again you are being asked to pass a law which professes to lower workers compensation insurance premiums by taking away benefits from Kansans hurt on the job.

At a minimum, it is premature to act on HB 3023 unless and until you are given sufficient data to gauge its impact. John Lewis and Peter Barth, speaking before your joint hearing with the Senate January 27, cautioned Kansas not to fall into the all too familiar pattern of restructuring its workers compensation system without first knowing exactly where the premium dollar is being allocated. Having participated in the Department of Insurance's Study Commission hearings on this very question last fall, it is clear to us that we don't have such data for Kansas. Commissioner Todd's October 4, 1991 letter to the President of NCCI would indicate he agrees.

You have been told that NCCI is in the process of "pricing" the specific provisions of HB 3023. Again, these are the same "experts" who are unable to tell the Insurance Commissioner how the premium dollars taken in by insurance companies are ultimately spent. They can say with certainty in early 1991 that a 30% rate increase is needed, but six months later they just can't tell us exactly where that new money will go. We suggest this disparity be considered when the NCCI sends in the report projecting the premium impact of HB 3023.

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Attachment #2*

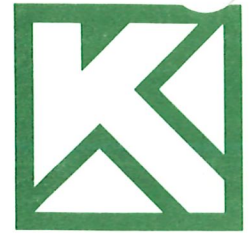
You were told quite candidly last week that HB 3023 "is a bill to cut down on payouts." You may recall nothing was said with regard to the bill's affect from the injured worker's perspective. On Thursday there was even an admission "the safety side is not addressed in this bill." The reason given was the sponsors' inability to find any good examples of safety legislation from other states. A further concession was made to the effect that Kansas historically has only given lip service to safety. HB 3023 doesn't even contain the lip service.

HB 3023 asks Kansans hurt on the job to give up some of their promised benefits so employers may be given the false expectation their insurance premiums will go down. As attorneys representing injured workers, we think that is a cruel and entirely unfair trade off. While it appears almost everyone involved in workers compensation is dissatisfied with the way it's working, any bill offered in good faith to "reform" our system should address the concerns of those most affected, the claimants. This bill does not meet that test. We encourage you to reject it.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

HB 3023

February 26, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
House Committee on Labor and Industry
by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to express our general support for HB 3023.

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.

Since several of the provisions in this bill are reforms KCCI have proposed before this Committee, and many other elements of the legislation are consistent with KCCI's

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Attachment #3*

efforts involving workers' compensation, it is appropriate for KCCI to join the list of conferees supporting HB 3023. With the injection of HB 3023 into the workers' compensation debate, the Kansas Chamber looks forward to working with the members of this Committee in developing a workers' compensation reform package.

While I would be happy to attempt to answer any questions regarding the specific issues addressed in HB 3023, I would like to speak in general terms to why workers' compensation reform is needed for the remainder of my testimony.

When the effects of last year's 24% average overall increase in workers' compensation insurance premiums are fully realized, Kansas employers will pay \$364,000,000 annually to private insurance carriers for workers' compensation insurance. In just seven years, the cost of private workers' compensation insurance has doubled. When you include self-insurance arrangements, workers' compensation insurance costs approach a half billion dollars annually in Kansas. These are today's costs. During hearings before this Committee, we have heard the potential for another wave of workers' compensation insurance increases can be anticipated very soon.

The members of this Committee know workers' compensation is expensive. The issue the committee faces is how to grapple with spiraling cost. Pursuing this answer is complicated by the fact that specific cost information is not available. The situation creates a difficult paradox. Everyone shares a desire to make workers' compensation more affordable, yet you cannot say with certainty that following a certain path will achieve that goal.

The Kansas Chamber suggests we shine the light on the workers' compensation reform measures before you differently. Rather than being concerned about the cost effectiveness of an issue, it should be judged as to whether it alters an employer's responsibility to provide effective care and fair compensation to workers who are injured on the job. If a proposal abandons this employer responsibility, even if it saves millions of dollars, it should be rejected. If a proposal indicates an excess in the system, even if it saves little in employer costs, it should be supported.

For instance, KCCI contends the "work disability" provision on page 25 of HB 3023 meets this fairness challenge, by limiting compensation to functional impairment if an injured worker is employed at comparable wages after recovering from their injury.

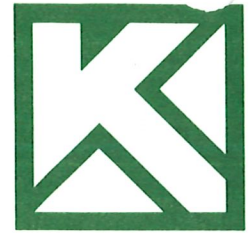
In promoting workers' compensation reform, the Kansas Chamber has not asked for the Legislature's blessing to abandon the pledge employers give employees through workers' compensation to care for and compensate workers for job-related injuries and illnesses. However, the system does have excessive provisions which the business community no longer can afford. KCCI feels curbing those provisions will create the cost containment this Committee desires, while maintaining a system that responds to the needs of injured workers.

I would be happy to attempt to answer any questions.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

HB 3039

February 27, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman

Executive Director

Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear today to express the Kansas Chamber's support for HB 3039.

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.

Two years ago, KCCI supported the passage of HB 3069, which called for the development and implementation of a medical fee schedule and utilization review process for the Kansas workers' compensation system. Now, two years later, the Kansas Chamber

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would ask this Committee to approve HB 3039, which will carry out the legislative intention expressed in 1990 to provide health care cost containment for workers' compensation.

The issue raised by HB 3039 should not be why Kansas needs a medical fee schedule and utilization review, but how Kansas should go about having the process established. The legislation passed in 1990 called for a medical fee advisory panel, representing employers, employees and the medical and insurance community, to have significant authority in establishing a medical fee schedule. HB 3039 terminates the advisory panel and charges the workers' compensation director with developing the fee schedule and utilization review process.

Elimination of the advisory panel frankly creates a concern for KCCI. During appearances before this Committee in 1990, the Kansas Chamber expressed that one of the virtues of HB 3069 was an advisory panel which is well-represented members of the medical community who would insist on a reasonable fee schedule. However, an inescapable fact is the advisory panel has not achieved its legislative charge to develop a fee schedule which "promotes health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and shall be sufficient to ensure availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury."

The reasons why a medical fee schedule and utilization review were a good idea in 1990 are certainly true today. HB 3039 presents an approach which should lead to the will expressed during the 1990 session of the Kansas Legislature finally becoming reality. As a result, the Kansas Chamber would urge this Committee support passage of HB 3039.

I would be happy to attempt any answer any questions.

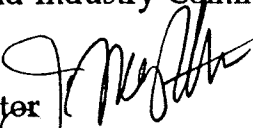


KANSAS MEDICAL SOCIETY

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February 26, 1992

TO: House Labor and Industry Committee

FROM: Jerry Slaughter 
Executive Director

SUBJECT: HB 3039; Concerning Abolishing the Advisory Panel to
the Director of Workers' Compensation

The Kansas Medical Society appreciates the opportunity to offer the following comments on HB 3039, which would abolish the advisory panel which was established in 1990 to assist the director in developing a fee schedule for workers' compensation.

First, we understand the serious problems facing the workers' compensation system, as evidenced by rising insurance costs over the last few years. A part of the problem can be attributed to rising health care costs, but we would caution the committee not to lay the entire blame for rising costs and instability in the workers' compensation system at the feet of health care providers. As the committee has seen from its hearings throughout this session there are many factors which contribute to rising workers' compensation costs.

Two years ago we urged caution in establishing a medical fee schedule system, because it had not been shown in other states to appreciably reduce health care costs. Nevertheless, when it became apparent that the fee schedule was going to be enacted, we encouraged the development of a peer review and utilization review program in conjunction with the fee schedule, because it held greater promise to get at the problem of utilization and intensity of services provided, which are key factors influencing overall costs. At that time, we strongly supported the creation of an advisory panel to assist the director in establishing the fee schedule. We felt it was important to have balance in the process, because we were concerned about the possibility of the director imposing an unreasonably low fee schedule which would discourage health care providers from participating in the program. We felt it would be counterproductive to have a fee schedule set at a level that would make it difficult for injured workers to enjoy good access to qualified health care providers. We believed an advisory panel was the best means of maintaining checks and balances in the process.

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attachment # 5*

As you have heard from the current director, the fee schedule which was recommended by the advisory panel appears to be not workable because it would set fees in many cases which would be above current reimbursements. Obviously, the fee schedule set at that level would not achieve the intended effect of containing costs. However, to simply abolish the advisory panel without further deliberation and negotiation seems to be premature to us. We would prefer that the director continue to work with the advisory panel and impress on them the importance of devising a fee schedule that provides the dual objectives of cost containment and fairness.

Finally, we have some concerns with the proposed change on page 5, lines 1-9 of the bill. This provision was placed in the bill for the specific purpose of making the reports, information and findings of peer review committees protected from discovery. This is protection that all peer review committees have, in order for them to do their job. Health care providers simply won't be frank and candid in their discussions about utilization and peer review if those discussions are not protected from disclosure. If this section is struck from the bill, it will effectively kill any meaningful peer and utilization review.

I would like to emphasize again that we understand the problems facing workers' compensation. We are committed to working with the director to address the problems of rising health care costs, but we do not believe that HB 3039 is the proper means to achieve that end. We would prefer to see the advisory panel stay in place and continue in the process of negotiation with the director to achieve a workable fee schedule. Additionally, as others have testified in front of this committee, we have concerns about the effectiveness of a fee schedule in the first place as we have previously testified. In any event, we do not support HB 3039. Thank you for the opportunity to offer these comments.

JS:ns

SUMMARY OF KANSAS AFL-CIO'S POSITION
ON HOUSE BILL 3116

By John M. Ostrowski

February 28, 1992

Thank you Mr. Chairman. My name is John M. Ostrowski, and I appear before the Committee as a proponent of HB 3116 on behalf of the Kansas AFL-CIO.

HB 3116 recognizes that items which can be negotiated and agreed to are better for everyone involved. HB 3116 allows labor and management, if covered by a collective bargaining agreement, to negotiate medical treatment and vocational rehabilitation.

While a collective bargaining agreement could cover these matters now, such an agreement would not exclude remedies provided under the Workers' Compensation Act and the jurisdiction of the Director. In other words, there would be no reason for an employer to enter into a collective bargaining agreement on these matters if the employee retains an "escape clause" to proceed as a litigant.

With regard to medical treatment, the concept is simply that a list of approved doctors and procedures could be negotiated, under any terms agreeable to labor and management. In this scenario, the claimant would forfeit his rights to unauthorized medical, again as an incentive to have the negotiation be meaningful.

With regard to vocational rehabilitation, the concept is simply that labor and management are more familiar with job duties, light duty, and should be able to effectuate appropriate return to work plans. Actually, the amendments merely strengthen the provisions in K.S.A. 44-510g(e)(1) which already exist. That is, the current statute specifically recognizes "the employer's rehabilitation service program". Again, once a procedure is negotiated and agreed to for vocational rehabilitation, the Director would lose jurisdiction, such that the collective bargaining agreement provisions would be meaningful and enforceable.

Thank you. I would be happy to respond to questions.

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Attachment # 6*