

Approved May 1, 1992

Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley
Chairperson

1:45 a.m./p.m. on April 1 1992 in room Old Supreme Court Room of the Capitol

All members were present except:

Committee staff present:

Jim Wilson, Revisor

Jerry Donaldson, Principal Analyst

Conferees appearing before the committee:

Don Bruner, Director, Div. of Labor Management Relations & Employment Standards,
Kansas Department of Human Resources

Duane Guy, Industrial Safety & Health Section, Ks. Department of Human Resources

Bill Morrissey, acting Director, Div. of Workers' Compensation

The meeting was called to order at 1:45 p.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley announced that the committee would return to a discussion and final action on section 6 of Substitute for House Bill No. 3039.

Rep. Arthur Douville moved that the committee not adopt the subcommittee's recommendation in section 6. The motion was seconded by Rep. Darrel Webb. Motion carried.

The chairman stated that committee would temporarily suspend its discussion on section 6 until acting Director Morrissey returns to the meeting. He called the committee's attention to two proposed amendments by Rep. George Gomez regarding the issue of attorney fees. He recognized Rep. Gomez to explain his proposed amendments.

Rep. Gomez said the intent of his first amendment (k1144-512b) is to limit claimant attorney fees to 50% of the amount of compensation recovered in excess of the amount offered by an employer prior to litigation, but in no event exceeding 25% of the total compensation recovered as required under current law. Rep. Gomez moved to amend the bill by adding a new section to read, "With regard to any claim where the amount to be paid for compensation does exceed the offer made prior to representation, fees for services rendered by an attorney shall not exceed the lesser of (1) a reasonable amount for such services or (2) the amount equal to 50% of the amount of compensation recovered and paid which is in excess of the amount of compensation offered to the employee by the employer prior to the attorney's entry of appearance in the claim, but in no event exceeding 25% of the total compensation as specified in K.S.A. 1991 Supp. 44-536 (a)." The motion was seconded by Rep. Don Smith. (The entire text of k1144-512b may be obtained in the revisor's office.)

Rep. Smith made a substitute motion to delete "50%", and insert in lieu thereof, "25%". The motion was seconded by Rep. Jack Sluiter. Motion carried.

Rep. Jan Pauls moved to amend the previous motion to delete "25%", and insert in lieu thereof, "40%". The motion was seconded by Rep. Bob Grant. Motion failed.

Rep. Gomez said the intent of his second amendment (k1144-567) is to limit attorney fees in representing the workers' compensation fund. Rep. Gomez moved to amend the bill by adding new language to K.S.A. 44-567 (a) (2) to read, "The proportion of the cost of the award which is attributable to the employee's preexisting physical or mental impairment or death shall be 0%, 25%, 33%, 50%, 66%, 75% or 100%. If the credible evidence establishes that the preexisting condition contributed between 0% and 10%, then the workers compensation fund liability shall be 0%. If the credible evidence establishes that the preexisting condition contributed 90% or more, then the workers compensation fund liability shall be 100%." Further, that the bill be amended by adding a new subsection to K.S.A. 44-567 (d) to read, "(5) If the employer and the commissioner of insurance reach an agreement in regard to the percentage of workers compensation fund liability, then from the point of the agreement onward the employer's attorney alone shall defend the claim if the fund's liability is 50% or less. In the event the liability of the workers compensation fund exceeds 50%, then the workers compensation fund alone shall defend the claim." The motion was seconded by Rep. Smith. Motion carried. (The entire text of k1144-567 may be obtained in the revisor's office.)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industryroom old Supreme Court, Statehouse, at 1:45 ~~am~~ p.m. on April 1, 1992

Chairman Hensley then requested the committee to consider the subcommittee's recommendation on safety in the workplace. He referred members to a proposed amendment (k11wcsec) establishing a voluntary program for employers to submit to state inspection of the employer's workplace and to receive insurance premium discounts if certified for workplace safety. He noted that the proposed amendment was similar to an Oklahoma statute creating the "Safety and Health Achievement Recognition Program" (SHARP). The chairman then asked Don W. Bruner, Director, Division of Labor Management Relations and Employment Standards, Kansas Department of Human Resources, to provide further information regarding SHARP.

Mr. Bruner introduced Duane Guy, Industrial Safety and Health Section, who described the Oklahoma program and provided a fiscal note estimating the cost of establishing a similar program in Kansas (attachment #1). Mr. Guy answered questions from several members of the committee.

Rep. Webb moved to adopt the subcommittee's recommendation on workplace safety (revisor's amendment k11wcsec). The motion was seconded by Rep. Grant. Motion carried. (The entire text of k11wcsec may be obtained in the revisor's office.)

Rep. Eloise Lynch moved that having voted on the prevailing side, the committee reconsider its action on Rep. Smith's substitute motion to amend the first Gomez amendment (k1144- 512b). The motion was seconded by Rep. Dick Edlund. Motion carried.

The chair put the question on Rep. Smith's substitute motion to amend the first Gomez amendment. Motion failed.

Rep. Gomez renewed his motion to amend the bill by adding a new section to limit claimant attorney fees. Motion carried.

The chairman asked the committee to return to section 6 of the bill. He referred members to a proposed amendment to K.S.A. 44-510 (a). He recognized acting Director Morrissey to explain the proposed amendment.

Mr. Morrissey stated that the amendment is intended to address the issue of preexisting conditions. He explained that the new language would reduce functional impairment compensation by the percentage caused by a "traumatic event" suffered by the injured worker prior to accepting employment with an employer.

Rep. Tim Carmody moved to amend the bill on page 22, beginning on line 21, by adding, " (b) The percentage of permanent partial disability shall be reduced by the percentage of functional impairment the cause of which was of traumatic origin and for which medical treatment was sought prior to the claimant applying for employment with the employer by whom the claimant was employed at the time of the injury. (c) If a claim is subject to a credit under both subsections (a) (1) and (b) of this section the employer shall be entitled to only the greater credit." The motion was seconded by Rep. Denise Everhart. Motion carried.

Chairman Hensley announced that the committee would continue its discussion on Substitute for House Bill No. 3039 tomorrow at 12:00 noon or on first adjournment of the House, in Room 527-South.

The meeting was adjourned at 3:00 p.m.



Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Division of Labor-Management Relations & Employment Standards

Industrial Safety and Health Section

512 S.W. Sixth, Topeka, Kansas 66603-3150

913-296-4386 - 913-296-4789 (Fax)

March 2, 1992

The Honorable Anthony Hensley
Chairman, House Labor and Industry Committee
Statehouse
Room 278-W
Topeka, KS 66612

RE: Further follow-up on previous testimony

Dear Mr. Hensley:

The following is respectfully submitted in response to request of Mr. Duane Guy during his testimony before the Committee. Mr. Guy has received some limited information regarding the Oklahoma Safety and Health Recognition Program (SHARP). Such provides incentive to employers to develop and follow an acceptable industrial safety program to gain worker's compensation insurance rate reductions.

The State of Oklahoma initiated the Safety and Health Recognition Program (SHARP) to encourage employers to participate in a program that would give them an incentive to develop and implement an effective safety and health program. Satisfactory completion of this program can significantly reduce an employers Worker's Compensation Costs as well as other costs. Since the inception of the program there have been 314 employers request participation. Of those there are currently seventy-six (76) employers actively involved in the program. Two-Hundred twenty-eight (228) employers have withdrawn because they chose not to complete all the requirements necessary, or had more than one company on their Worker's Compensation Insurance policy. If an employer has more than one company listed on a policy, all must agree to participate in the SHARP program, and some chose not to which caused some of those already signed up for the program to withdraw their request.

The current premium costs of the seventy-six (76) companies participating is \$2,717,065.60. If they all complete the requirements satisfactorily they will receive a credit toward their premiums of \$326,539.73, or approximately 12%. This is a significant decrease in the direct cost. The indirect costs could be many times that; i.e. lost time, uninsured costs, training of replacements, damaged equipment, etc. The potential for this program is tremendous and employees of the Oklahoma Department of Labor that administer it are very optimistic, as are many employers.

Sincerely,

Don W. Bruner, Director
Division of Labor Management Relations and Employment Standards

DWBdct

*Labor & Industry
4-1-92
Attachment #1*

SAFETY AND HEALTH ACHIEVEMENT RECOGNITION PROGRAM

With S.H.A.R.P. Oklahoma employers may earn a reduction in their workers' compensation insurance premium upon successful completion of the occupational safety and health consultation services program. To qualify for participation in the program, a company must meet the following criteria at this time:

1. The company must be listed as high hazard according to the most current OSHA listing;
2. They must have an employee range of 50 to 250;
3. They must have an experience modification above 1.25

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JAN 27 1992

EMPLOYERS SHOULD:

- § Request Oklahoma Department of Labor's S.H.A.R.P. consultation services
- § Implement an effective safety and health program;
- § Correct all identified hazards;
- § Reduce the lost workday incidence rate by one-third the extent it exceeds the national average for that industry;
- § Record a 10% reduction in severity of claims, or have no claims;
- § Obtain certification of successful completion of the S.H.A.R.P. program from the Oklahoma Department of Labor.

KANSAS DEPARTMENT
OF HUMAN RESOURCES

ALL YOU MUST DO IS REQUEST THE SERVICE, AND WE WILL PROVIDE IT TO YOU AT NO COST.

Comprehensive consultation services include the following:

- * Appraisal of all mechanical and environmental hazards and physical work practices;
- * Appraisal of the present job safety and health program or the establishment of one;
- * A conference with management on the findings;
- * A written report of recommendations and agreements;
- * Training and assistance with implementing recommendations;
- * Follow-up to assure that any required corrections are made.

FOR FURTHER INFORMATION,
WRITE OR CALL
THE OSHA CONSULTATION DIVISION:

OKLAHOMA DEPARTMENT OF LABOR
4001 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
405/528-1500.....Ext. 276

WORKERS' COMPENSATION INSURANCE PREMIUM REDUCTION SCHEDULE

| Premium | Potential Reduction |
|-----------------------|------------------------|
| Up to \$5,000 | 15% |
| \$5,001 to \$29,000 | 14% |
| \$29,001 to \$53,000 | 13% |
| \$53,001 to \$77,000 | 12% |
| \$77,001 to \$101,000 | 11% |
| \$101,001 and Up | 10% |

O.S. Supp. 1990

E. Each participant shall successfully complete an approved course each two (2) years to continue to be eligible for the discount on insurance.

Added by Laws 1985, c. 122, § 1, eff. Jan. 1, 1986.
Amended by Laws 1990, c. 297, § 1, eff. Sept. 1, 1990.

Section 5 of Laws 1990, c. 297 provides for an effective date.
Section 2 of Laws 1985, c. 122 provides for an effective date.

Title of Act

An Act relating to insurance; requiring certain provisions in automobile liability insurance rate schedules or rating plans; providing exceptions; requiring certain insurance companies to allow premium reductions for eligible persons; specifying approved instructors; providing for certain certificates; limiting eligibility; providing for codification; and providing an effective date. Laws 1985, c. 122.

§ 924.2. Rating plans for workers' compensation self-insureds—Reduced premium charges for successful participation in occupational safety and health programs—Qualification—Certificate—Records—Review of premium credit program

A. Any rate, schedule of rates or rating plan for workers' compensation insurance submitted to or filed with the State Board for Property and Casualty Rates, or fixed by the Board of Managers of the State Insurance Fund, and premiums, by whatever name, for workers' compensation for self-insureds except for group self-insured associations shall provide for an appropriate reduction in premium charges, by whatever name, for those eligible insured employers who have successfully participated in the occupational safety and health consultation, education and training program administered by the Commissioner of the Department of Labor pursuant to Section 414 of Title 40 of the Oklahoma Statutes.

B. All insurance companies writing workers' compensation insurance in this state, including the State Insurance Fund, and all self-insureds providing workers' compensation insurance except for group self-insured associations, shall allow an appropriate reduction in premium charges to all eligible employers who qualify for the reduction pursuant to the provisions of this section.

C. Eligible employers shall be those employers:

1. Who are insured by an insurance company writing workers' compensation insurance in this state;
2. Who are self-insured; or
3. Who are insured by the State Insurance Fund.

D. In order to qualify for the reduction in workers' compensation insurance premium, an employer shall successfully participate annually in the occupational safety and health consultation, education and training program administered by the Department of Labor. Successful participation shall be defined as:

1. Undergoing a safety and health hazard survey of the workplace, including an evaluation of the employer's safety and health program and onsite

interviews with employees by the Department's consultant;

2. Correcting all hazards identified during the onsite visit within a reasonable period of time as established by the Department;

3. Establishing an effective workplace safety and health program and implementing program provisions within a reasonable period of time as established by the Department. The program shall include:

- a. demonstration of management commitment to worker safety and health,
- b. procedures for identifying and controlling workplace hazards,
- c. development and communication of safety plans, rules and work procedures, and
- d. training for supervisors and employees in safe and healthful work practices;

4. Reducing by one-third (1/3) or more the extent to which the lost workday case rate, as measured by the Department of Labor, was above the national average for the industry at the time the employer elected to participate in the occupational safety and health consultation, education and training program, or maintaining a rate at or below the national average for the industry; and

5. Documenting a reduction in workers' compensation claims for the preceding year by showing one of the following:

- a. a ten percent (10%) reduction in the dollar amount of claims,
- b. a ten percent (10%) reduction in the severity of claims, or
- c. no reported claims,

as a result of attending the occupational safety and health consultation, education and training program administered by the Department of Labor.

E. Upon successful participation in the occupational safety and health consultation, education and training program as defined in subsection D of this section, an employer shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers' compensation insurance premium, by whatever name. The certificate shall qualify the employer for a premium reduction for a one-year period.

F. The Insurance Commissioner, the Administrator of the Workers' Compensation Court and the State Insurance Fund Commissioner shall maintain records documenting reductions in workers' compensation insurance premiums granted pursuant to this section and shall make an annual report of such reductions to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by January 1 of each year. Insurers shall

report such premium reductions in their annual statement.

G. The State Insurance Fund shall instruct its actuary to continually review the insurance premium credit program, developed and implemented pursuant to Section 142a of Title 85 of the Oklahoma Statutes, to determine if the program is detrimental to the financial stability of the Fund. If the actuary determines that the program contributes detrimentally to the financial stability of the Fund, the actuary shall immediately recommend to the State Insurance Fund Commissioner that the safety premium reduction cease for a one-year period.

Added by Laws 1988, c. 317, § 1, eff. Nov. 1, 1988. Amended by Laws 1990, c. 2, § 1, eff. Sept. 1, 1990.

Section 2 of Laws 1990, c. 2, provides for an effective date. Section 6 of Laws 1988, c. 317, provides for an effective date.

§ 924.3. Appeals of rating classifications

The State Board for Property and Casualty Rates shall adopt rules and regulations creating a procedure for an employer to appeal its rating classification for workers' compensation insurance to the Board. Any hearings pursuant to this procedure shall be subject to the Administrative Procedures Act.¹

Added by Laws 1990, c. 283, § 21, eff. Sept. 1, 1990.

¹ Sections 250 et seq. and 301 et seq. of title 75.

§§ 925 to 927. Repealed by Laws 1987, c. 210, § 38, eff. July 1, 1987.

§ 928. Rating organizations

A. Every group, corporation, unincorporated association, organization of insurers, partnership or individual, whether located within or outside this state, may make application to the Board for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file: (1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this state upon whom notices or orders of the Board or process affecting such rating organization may be served, and (4) a statement of its qualifications as a rating organization. If the Board finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association, or certificate of incorporation and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, it may issue a license specifying the kinds of insurance, or subdivision or class of risk, or part or combination thereof, for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the Board within

ninety (90) days of the date of its filing with it. Licenses pursuant to this section shall remain in effect for one (1) year until suspended or revoked by the Board. The fee for said license shall be Five Hundred Dollars (\$500.00).

B. Licenses issued pursuant to this section may be suspended or revoked by the Board, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section. The Board shall not revoke or suspend the license of any rating organization until it has given not less than thirty (30) days' notice of the proposed revocation or suspension and of the grounds alleged therefor. In lieu of revoking or suspending a license, the Board may impose a penalty of not more than One Hundred Dollars (\$100.00) for each violation. Each day such violation continues shall constitute a separate offense.

C. Every rating organization shall notify and file promptly with the Board every change in: (1) its constitution, its articles of agreement or association, or its certificate of incorporation and its bylaws, rules and regulations governing the conduct of its business, (2) its list of members and subscribers, and (3) the name and address of the resident of this state designated by it upon whom notices or orders of the Board or process affecting such rating organization may be served.

D. Subject to rules and regulations which have been approved by the Board as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision or class of risk, or a part or combination thereof, for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber shall, at the request of any subscriber or any such insurer, be reviewed by the Board at a hearing held upon at least ten (10) days' written notice to such rating organization and to such subscriber or insurer. If the Board finds that such rule or regulation is unreasonable in its application to subscribers, it shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty (30) days after it was made, the insurer may request a review by the Board as if the application had been rejected. If the Board finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, it shall order the rating organization to admit the insurer as a subscriber. If it finds that the action of the rating organization



National
Council on
Compensation
Insurance

Southern Region
Government, Consumer and Industry Affairs

Roy O. Wood
Director

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KANSAS DEPARTMENT
OF HUMAN RESOURCES

August 27, 1990

State Board for Property and
Casualty Rates
State of Oklahoma
P.O. Box 53066
Oklahoma City, OK 73105

Re: Safety and Health Achievement Recognition Program (SHARP)

Dear Board Members:

In accordance with the applicable statutes in the State of Oklahoma and at the direction of the Oklahoma Classification and Rating Committee, it is proposed that a premium reduction schedule be adopted to reflect the provisions of SB 272 for insureds who successfully complete the Oklahoma Department of Labor Employers Safety Program (SHARP).

Attached are filing exhibits reflecting the purpose, background, proposal and impact of this filing.

This filing is proposed to be applicable to new and renewal business effective 12:01 AM, September 1, 1990.

This filing is made on behalf of the members and subscribers of the National Council on Compensation Insurance writing workers compensation insurance in the State of Oklahoma.

Respectfully submitted,

NATIONAL COUNCIL ON COMPENSATION

ROY O. WOOD

ROW\tb

Enclosure

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AUG 29 1990

Oklahoma Insurance Department
Property & Casualty Division

SAFETY AND HEALTH ACHIEVEMENT RECOGNITION PROGRAM (SHARP)

(To be effective 12:01 AM, September 1, 1990, applicable to new and renewal business only.)

PURPOSE

The purpose of this program is to provide a schedule of premium reductions to employers who are certified through the Oklahoma Department of Labor Employer Safety Program (SHARP) in accordance with the provisions of SB 272.

BACKGROUND

In 1988, the Oklahoma Legislature passed SB 485 making provisions for premium reductions for a band of insureds from the maximum minimum premium to the experience rating threshold who successfully completed, and were certified in, the DOL Employer Safety Program. The Oklahoma Board for Property and Casualty Rates ultimately approved an up front premium reduction of 15% for qualified insureds to be applicable to the first renewal policy after certification and each subsequent policy as long as certification was maintained.

* (In 1990, the Oklahoma Legislature expanded the eligibility for premium reductions to all employers certified in the program through the enactment of SB 272.)

The details of the certification process are found in SB 272 (Exhibit I).

PROPOSAL

It is proposed that the following premium reduction schedule be applicable to the first new or renewal policy subsequent to employers certification through SHARP and to each subsequent renewal policy as long as certification is maintained.

| <u>PREMIUM</u> | <u>REDUCTION</u> |
|-------------------|------------------|
| Up to \$5,000 | 15% |
| 5,000 to 29,000 | 14% |
| 29,001 to 53,000 | 13% |
| 53,001 to 77,000 | 12% |
| 77,001 to 101,000 | 11% |
| 101,000 and up | 10% |

SHARP (continued)

Premium reductions apply to standard premium and are adjusted on audit. Standard premium is defined as manual premium adjusted by experience rating, but prior to premium discount and expense constant. An example is found in Exhibit II.

Certification in the program requires a documented ten percent reduction in the dollar amount of claims "as a result of attending the (program)". Participation in the program probably will not coincide with an employer's workers' compensation policy. There is also a concern over whether "as a result of attending" should be a measurement during the DOL program or after. The latter of these two options would tend only to allow application of the premium reduction at least one year later than the former.

In the interest of allowing the employer to realize the premium reduction at the earliest possible point in time, we propose that the one-year period of time that an employer is participating in the program be used as the base period. The base period would then be compared to the preceding twelve-month period in order to measure whether or not the ten percent reduction in dollar amount of claims was achieved. The source of this information would be the Unit Statistical Plan (Unit) reports submitted by the employer's insurer. Please refer to Exhibit III for graphic representation.

* Since participation in the program would not necessarily coincide with the employer's workers' compensation policy, we propose the following steps be taken.

Unit reports that would encompass the two consecutive periods of time, would be provided to the DOL directly from NCCI. There is a possibility that a third report would be required, depending upon where the base period fell relative to the policy period. The unit report gives the date of accident; therefore, the DOL would be able to determine how many claims occurred and what the value is in order to measure whether or not the employer had achieved this requirement. Please refer to Exhibit IV.

The unit reports provided would be on a first report for the base period and for the comparison year, unless the comparison year contained any open claims. If open claims did exist in the comparison year, a second report (updated evaluation) would be required. This is normal to the unit reporting process.

Although the certification process would involve the DOL, employer, insurer and NCCI, a risk would not be eligible for a premium reduction until the DOL notifies the insuring carrier. The employer would be eligible for the premium reduction as of the next new or renewal policy subsequent to certification.

The role of the insurer and NCCI should not be overlooked in the

SHARP (continued)

DOL program. With this in mind, we propose that, when an employer is enrolled in the DOL program, the insurer, agent and NCCI be notified immediately regarding the employer's participation. Relative to the insurer and agent, this would prevent the "shock" that might occur (otherwise) if the insurer were unaware that a premium reduction would be required on their policyholder, at some future date.

In addition to the notification to the insurer, the NCCI field office would be notified in order that it could prepare its files for sending unit reports to the DOL when required. To this end, it would be important for DOL to obtain and provide NCCI certain information relative to the insured's prior policy. That information would include the carrier's name, policy effective date and policy number. This would be applicable to both the policy effective at the beginning of the base period (current) and the comparison year (expired) policy.

Finally, NCCI will be preparing an endorsement that would be attached to an insured's policy for which a premium reduction would be applicable as a result of certification in the Employer Safety Program. It would be expected that the endorsement would notify the insured of applicability of the premium reduction, a premium reduction table, and the method of calculation.

IMPACT

Since its inception, no employer has been certified or received premium reduction through the DOL program. Due to the certification process, no insureds are expected to qualify until late 1991 or early 1992. As a result, no adjustments to rate level has been made. To the extent that an adjustment is necessary, SB 272 makes a provision for reflection of the impact in future rate filings.

IMPLEMENTATION

SHARP will be implemented by a change in the Basic Manual state special page. Effective September 1, language pertaining to the Workplace Safety Program will be replaced by language relative to the Safety and Health Achievement Recognition Program (Exhibit V).

Premium reductions will continue to be reported under Statistical Code 9880 as previously approved.

An Act

ENROLLED SENATE
BILL NO. 272

BY: SHEDRICK, BROWN,
MILES-LAGRANGE, TAYLOR,
HERBERT and CAIN of the
SENATE

and

STEIDLEY of the HOUSE

AN ACT RELATING TO INSURANCE; AMENDING SECTION 1, CHAPTER 317, O.S.L. 1988 (36 O.S. SUPP. 1989, SECTION 924.2), WHICH RELATES TO WORKERS' COMPENSATION PREMIUM REDUCTION FOR SAFETY PROGRAM PARTICIPATION; MODIFYING LANGUAGE RELATING TO ELIGIBILITY OF EMPLOYERS; DELETING LANGUAGE WHICH RESTRICTS ELIGIBILITY TO CERTAIN PREMIUM RANGE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 317, O.S.L. 1988 (36 O.S. Supp. 1989, Section 924.2), is amended to read as follows:

Section 924.2 A. Any rate, schedule of rates or rating plan for workers' compensation insurance submitted to or filed with the State Board for Property and Casualty Rates, or fixed by the Board of Managers of the State Insurance Fund, and premiums, by whatever name, for workers' compensation for self-insureds except for group self-insured associations shall provide for an appropriate reduction in premium charges, by whatever name, for those eligible insured employers who have successfully participated in the occupational safety and health consultation, education and training program administered by the Commissioner of the Department of Labor pursuant to Section 414 of Title 40 of the Oklahoma Statutes.

B. All insurance companies writing workers' compensation insurance in this state, including the State Insurance Fund, and all self-insureds providing workers' compensation insurance except for group self-insured associations, shall allow an appropriate reduction in premium charges to all eligible employers who qualify for the reduction pursuant to the provisions of this section.

C. Eligible employers shall be those employers:

1. ~~Whose premiums are less than that required to be eligible for experience rating but greater than the maximum minimum premium as determined by the rating plan filed by a licensed rating organization whose members represent at least fifty percent (50%) of the workers'~~

compensation insurers licensed in this state who are insured by an insurance company writing workers' compensation insurance in this state;

2. Who are self-insured; or
3. Who are insured by the State Insurance Fund.

7 D. In order to qualify for the reduction in workers' compensation insurance premium, an employer shall successfully participate annually in the occupational safety and health consultation, education and training program administered by the Department of Labor. Successful participation shall be defined as:

1. Undergoing a safety and health hazard survey of the workplace, including an evaluation of the employer's safety and health program and onsite interviews with employees by the Department's consultant;
 2. Correcting all hazards identified during the onsite visit within a reasonable period of time as established by the Department;
 3. Establishing an effective workplace safety and health program and implementing program provisions within a reasonable period of time as established by the Department. The program shall include:
 - a. demonstration of management commitment to worker safety and health,
 - b. procedures for identifying and controlling workplace hazards,
 - c. development and communication of safety plans, rules and work procedures, and
 - d. training for supervisors and employees in safe and healthful work practices;
 4. Reducing by one-third (1/3) or more the extent to which the lost workday case rate, as measured by the Department of Labor, was above the national average for the industry at the time the employer elected to participate in the occupational safety and health consultation, education and training program, or maintaining a rate at or below the national average for the industry; and
 5. Documenting a reduction in workers' compensation claims for the preceding year by showing one of the following:
 - a. a ten percent (10%) reduction in the dollar amount of claims,
 - b. a ten percent (10%) reduction in the severity of claims, or
 - c. no reported claims,
- a. a result of attending the occupational safety and health consultation, education and training program administered by the Department of Labor.

E. Upon successful participation in the occupational safety and health consultation, education and training program as defined in subsection D of this section, an employer shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers'

compensation insurance premium, by whatever name. The certificate shall qualify the employer for a premium reduction for a one-year period.

F. The Insurance Commissioner, the Administrator of the Workers' Compensation Court and the State Insurance Fund Commissioner shall maintain records documenting reductions in workers' compensation insurance premiums granted pursuant to this section and shall make an annual report of such reductions to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by January 1 of each year. Insurers shall report such premium reductions in their annual statement.

G. The State Insurance Fund shall instruct its actuary to continually review the insurance premium credit program, developed and implemented pursuant to Section 2 of this act 142a of Title 85 of the Oklahoma Statutes, to determine if the program is detrimental to the financial stability of the Fund. If the actuary determines that the program contributes detrimentally to the financial stability of the Fund, the actuary shall immediately recommend to the State Insurance Fund Commissioner that the safety premium reduction cease for a one-year period.

SECTION 2. This act shall become effective September 1, 1990.

Passed the Senate the 5th day of March, 1990.

President of the Senate

Passed the House of Representatives the 8th day of March, 1990.

Speaker of the House of Representatives

EXHIBIT II

PREMIUM IMPACT ESTIMATED VS. EARNED
(FOR ILLUSTRATION ONLY)

Assume a risk named Ace Pipe Company has been certified in the DOL Employer Safety Program. Their current experience modification is .85. Their standard estimated premium would be calculated as follows:

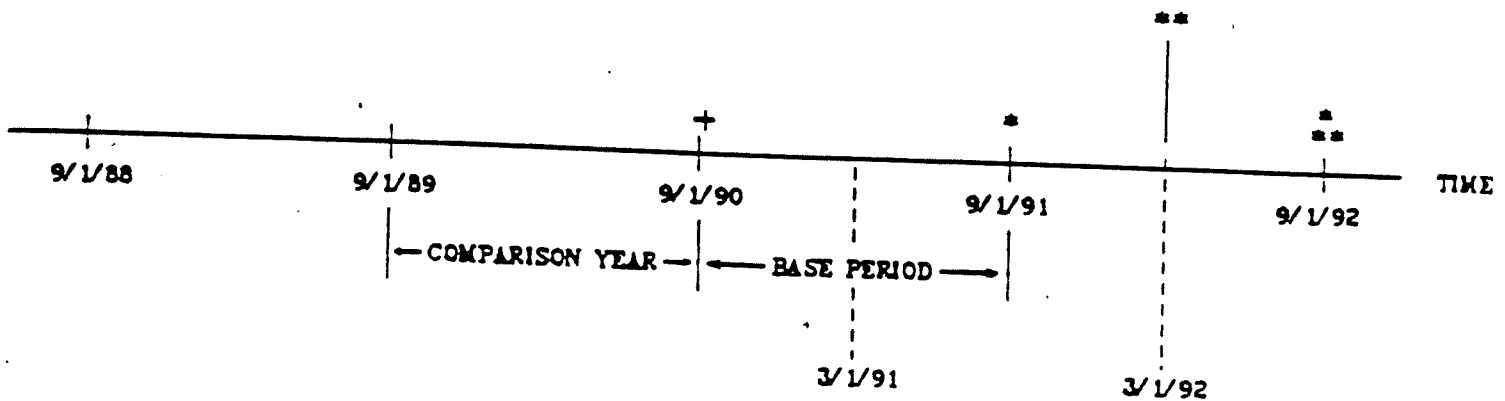
| <u>Code</u> | <u>Description</u> | <u>Payroll</u> | <u>Rate \$100 payroll</u> | <u>Premium</u> |
|-------------|---|----------------|---------------------------|----------------|
| 3028 | Pipe or tube mfg. Iron or steel & drivers | 500,000 | 7.43 | 37,150 |
| 8742 | Outside Sales | 100,000 | .83 | 830 |
| 8810 | Clerical | 75,000 | .39 | <u>293</u> |
| | Manual Premium | | | 38,273 |
| | Experience Modification | | | <u>X .85</u> |
| | Standard Premium | | | 32,532 |
| 9880 | Employer Safety Program Credit (32,532 x 13%) | | | <u>-4,229</u> |
| | Revised Standard Premium * | | | 28,303 |

Assume after audit the payrolls for each classification were revised causing the final premium and credit to be somewhat different.

| | | | | |
|------|---|---------|------|---------------|
| 3028 | | 575,000 | 7.43 | 42,723 |
| 8742 | | 121,000 | .83 | 1,004 |
| 8810 | | 96,000 | .39 | <u>374</u> |
| | Manual Premium | | | 44,101 |
| | Experience Modification | | | <u>X .85</u> |
| | Standard Premium | | | 37,406 |
| 9880 | Employer Safety Program Credit (37,486 x 13%) | | | <u>-4,863</u> |
| | Revised Standard Premium * | | | 32,543 |

* Prior to premium discount and expense constant

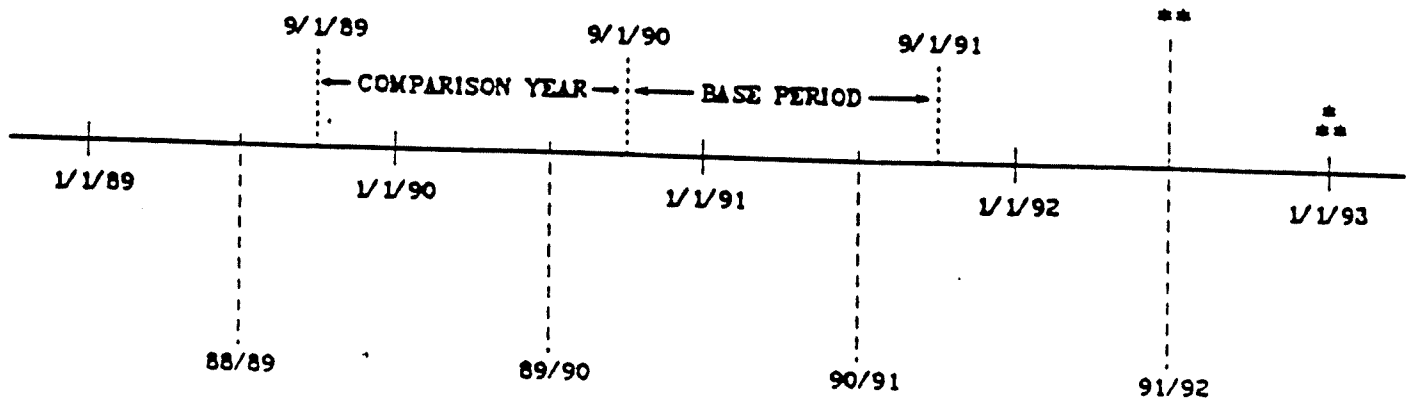
BASE PERIOD DETERMINATION
(Coinciding w/Policy Anniversary Date)



- + - entry into DOL Employer Safety Program - beginning of base period
- * - conclusion of training by DOL - end of base period (12 months)
- ** - USP valuation date. Report submitted to NCCI - employer eligible for certification
- *** - application of premium reduction for 92-93 policy

Unit statistical reporting is based upon valuation of a policy 18 months after its inception and reporting to NCCI no later than 20 months. Therefore, assuming an employer enters the Program at a date coinciding with its policy anniversary date of Sept 1, the first unit report on the policy would be available on March 1 (18 months later).

BASE PERIOD DETERMINATION
 (Not Coinciding W/Policy Anniversary Date)



- ** - valuation date of 91/92 policy. Employer eligible for certification
- *** - application of premium reduction to 93/94 policy

Assume the employer has a 1/1 policy anniversary date and enters the DOL Program on 9/1/90. To enable DOL to establish comparative 12-month periods, unit reports would be required from the 89/90, 90/91 and 91/92 policy periods. DOL would then only use claims occurring between 9/1/90 and 9/1/91 for the base period and 9/1/89 and 9/1/90 for the comparison year.

BASIC MANUAL OF WORKERS COMPENSATION AND EMPLOYERS LIABILITY

PRESENT LANGUAGE:

WORKPLACE SAFETY PROGRAM

Upon successful completion of the Oklahoma Department of Labor's Occupational Safety and Health Consultation and Training Program, and upon insurer receipt of certification, eligible employers shall receive premium credit, as of policy effective date, effective on new and renewal policies as of November 1, 1988 and subsequent. Employer participation in this program is voluntary and available premium credit is limited to qualifying employers.

Eligible employers shall be those whose premiums are less than that required to qualify for experience rating but greater than the maximum minimum premium for the state.

Verification of insured loss history in connection with final certification in accordance with the Occupational Safety and Health Consultation and Training Program shall be made available from the National Council on Compensation Insurance from past insurer records as filed in accordance with the Unit Statistical Plan Manual.

Certification by the Department of Labor will entitle the insured to a premium credit of 15% for a one-year period beginning with the first policy effective subsequent to receipt of certification. Annual renewal of the Department of Labor certificates in accordance with the requirements of the Occupational Safety and Health Consultation and Training Program will entitle the insured to the 15% premium credit.

PROPOSED LANGUAGE:

SAFETY AND HEALTH ACHIEVEMENT RECOGNITION PROGRAM (SHARP)

Upon successful completion of the Oklahoma Department of Labor's Occupational Safety and Health Consultation and Training Program, and upon insurer receipt of certification, eligible employers shall receive premium reduction as of policy effective date, effective on new and renewal policies as of September 1, 1990 and subsequent. Employer participation in this program is voluntary and available premium reduction is limited to qualifying employers.

Verification of insured loss history in connection with final certification in accordance with the Occupational Safety and Health Consultation and Training Program shall be made available from the National Council on Compensation Insurance from past insurer records as filed in accordance with the Unit Statistical Plan Manual.

Certification by the Department of Labor will entitle the insured to a premium reduction of:

| <u>PREMIUM</u> | <u>REDUCTION</u> |
|-------------------|------------------|
| Up to \$ 5,000 | 15% |
| 5,000 to 29,000 | 14% |
| 29,001 to 53,000 | 13% |
| 53,001 to 77,000 | 12% |
| 77,001 to 101,000 | 11% |
| 101,001 and up | 10% |

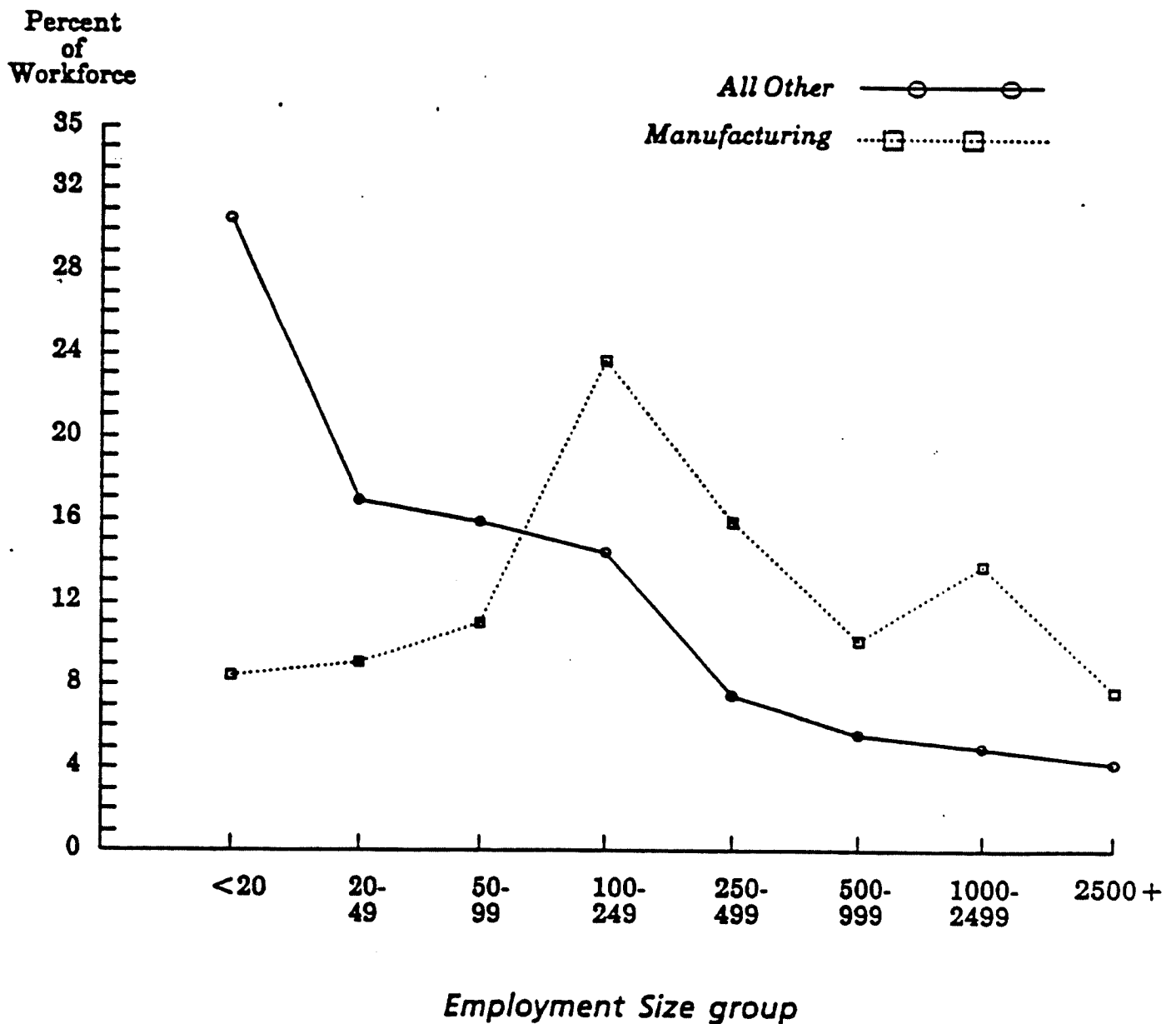
Premium reductions are for a one-year period beginning with the first policy effective subsequent to

(Exhibit V continues on next page)

EXHIBIT V
(Continued)

receipt of certification. Annual
renewal of the Department of Labor
certificates in accordance with the
requirements of the Occupational
Safety and Health Consultation and
Training Program will entitle the
insured to the premium reduction in
accordance with the schedule.

Manufacturing Employment Size and All Other, Private Sector Industry, Oklahoma, 1988



SOURCE: Oklahoma Department of Labor, Information Services Division

OKLAHOMA MANUFACTURING
INJURY & ILLNESS RATE AND EMPLOYMENT
BY EMPLOYMENT SIZE

| SIZE | EMPLOYMENT | <u>TOTAL CASES</u> 100 | <u>LWD CASES</u> 100 |
|-----------|------------|---------------------------|-------------------------|
| 1-3 | 1,780 | 1.5 | 1.5 |
| 4-10 | 7,197 | 4.4 | 2.4 |
| 11-19 | 5,068 | 12.3 | 5.1 |
| 20-49 | 14,954 | 15.5 | 7.6 |
| 50-99 | 18,116 | 21.6 | 10.3 |
| 100-249 | 38,801 | 18.9 | 8.5 |
| 250-499 | 25,945 | 14.6 | 6.8 |
| 500-999 | 16,589 | 11.9 | 5.7 |
| 1000-2499 | 22,333 | 14.7 | 5.9 |
| 2500-OVER | 12,646 | 22.5 | 7.8 |

DRAFT

K 'SAS DEPARTMENT OF HUMAN RESOURCES
K R

K.S.A. 44-636

DON BRUNER
Director
Division of Labor Management
Relations & Employment Standards

Telephone
(913) 296-2539

512 S.W. 6th
Topeka, Kansas 66603-

Section 1. K.S.A. ~~1977~~ 1978 Supp. 44-636 is hereby amended to read as follows:

44-636. (a) The Secretary of Human Resources shall have power to enter any factory, ~~or~~ mill, workshop, ~~private works~~ quasi governmental entity, institution or where any public works ~~or~~ of a state agency or institution, subdivision thereof ~~mercantile establishment, laundry or any other place of business~~ where labor is or is intended to be performed for any public purpose, when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this act, and to examine into the methods of protection from danger to employees ~~and the sanitary conditions~~ safety and health in and around such buildings and places and to keep a record thereof of such inspection.

~~If it shall be found upon such investigation that the heating, lighting, ventilation, occupant capacity or sanitary arrangement of any such establishment or place is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery, in any such establishment or place are so located or are in a condition so as to be dangerous, or are not sufficiently guarded, or that the vats, pans or any other structures filled with molten metal, hot liquid or hazardous materials or substances are not surrounded with proper safeguards for preventing accidents, injury or illness to those persons in, or near them, or that the construction or condition of any building or buildings, or any boiler, machinery or other appurtenances in or about any place as described in this section is such as to be dangerous or injurious to the persons employed or~~

~~residing therein, or that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein, or that any other condition which is within the control of the owner, proprietor, agent, administrator or lessee of any such building, establishment or place to be found to be dangerous or injurious to any persons employed therein or to any other person or persons, the Secretary or the authorized agent of the Secretary after making such inspection shall notify in writing the owner, proprietor, agent, administrator or lessee of such building, establishment, or place. The Secretary or authorized agent of the Secretary shall issue an initial order if it is found by such investigation that any condition exists which is dangerous or injurious to any person employed, residing or to any other person found therein when such condition is not in compliance with any occupational safety and health standard promulgated by the Secretary under provisions of this act. All such orders shall be in writing and shall indicate the citation and description of regulation and the location of the alleged unsafe condition. Such notification may also include an order that requires the provisions of such safeguards or safety devices or the making of such alterations or other measures the Secretary may deem appropriate and necessary for the safety and protection of the employees or other persons endangered by such conditions and the amount of time granted by the Secretary for making any such alterations, additions, changes or taking such other methods as required. Such amount of time shall not exceed sixty (60) days after service of the notice and the order unless an extension thereof is requested for good cause shown by the person named in the order, and such extension is granted by the Secretary.~~

(b) The notification required by subsection (a) shall include notice of the right to a hearing concerning any order included therein. Any such order shall

become final unless within thirty (30) days after service of the notice and order, the person or persons named therein shall request in writing a hearing by the Secretary. If a request is made for a hearing the Secretary shall notify the person or persons involved of the date of the hearing which shall not be more than thirty (30) days after such request is made. If, after hearing, or if a hearing is not requested within thirty (30) days after service of the notice and order, the Secretary finds that actions specified in the order may be deemed reasonable and appropriate, the Secretary shall affirm the original order as a *final order*. If the Secretary finds such actions not to be appropriate, the Secretary shall notify or rescind the original order. If the Secretary affirms, modifies or rescinds the original order, the Secretary shall notify the person named therein of such *final action in writing*.

(c) No person, firm or corporation, nor any officer, agent or employee thereof, shall remove or require to be removed, or made ineffective any practical safeguard around or safety attachment to any machinery, vats, pan, or other apparatus or device mentioned in this section while the same is in use, except for the purpose of immediately making repairs thereto, and all safeguards or safety attachments so removed shall be promptly replaced before the said dangerous machine, apparatus or device is returned to normal use or operation. Except as otherwise provided, no person shall require or permit the operation of, or operate, the dangerous machine, apparatus or device without the required safeguards or safety attachments.

(d) If the Secretary of Human Resources determines that conditions or products in any place of employment are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, or before such

danger can be eliminated through the enforcement provisions otherwise provided by law, the Secretary may order the immediate taking of any steps necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to prevent any avoidable loss of production facilities or product.

(e) Upon issuance of the order authorized by subsection (d) of this section and upon the request of any party who is adversely affected thereby, the Secretary shall fix a place and time for a hearing to be held on such order. Such hearing shall be held not more than twenty-four (24) hours after the request for the hearing. Not later than twenty-four (24) hours after the commencement of such hearing, the Secretary shall reaffirm, modify or rescind such order on the basis of information and testimony presented at the hearing. The Secretary shall notify the person named in the order of the decision of the Secretary.

(f) No person shall discharge or in any manner discriminate against any employee because such employee has filed a complaint with, or furnished information to, the Secretary of Human Resources concerning conditions or situations alleged to be unsafe or hazardous or otherwise covered by the provisions of this act.

(g) Any person who willfully violates any provision of this section or any lawful order issued pursuant to this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). Each day that said violation exists shall constitute a separate offense.

(h) An action brought pursuant to this section shall not constitute a bar to enforcement of the provisions of this section by injunction or other appropriate remedy, and upon request of the Secretary of Human Resources, the Attorney General shall have the power to institute and maintain in the name of the state any and all appropriate enforcement procedures.

(i) The Secretary may adopt such rules and regulations as deemed necessary for the purposes of administering and enforcing the provisions of this act.

(j) The Secretary shall provide occupational safety and health education, training and assistance to employers, employees and employee representative organizations. Each employer shall develop and follow a plant safety plan as defined by rule and regulation.

Section 2. K.S.A. 1977 Supp. 44-637 is hereby amended to read as follows:

44-637. As used in this act: (a) "Person" means an individual, corporation, partnership, company, agency, institution or association. (b) "Children" means minor persons under the age of fourteen (14) years. (c) "Minor" means a person under the age of eighteen (18) years. (d) "Factory" means any premises where steam, water or other mechanical power is used in aid of any manufacturing process. (e) "Workshop" means any premises, room, or place, not being a factory as above defined, wherein any manual labor is being performed, and to which or over which premises, room or place the employer of the person or persons working therein has the right of access or control. (f) "Public works" means any agency of state government and its political subdivisions and municipalities including schools, counties, and cities. The exercise of manual labor in a private house, or a private room, by the family dwelling therein, or by any of them, or in case

a majority of persons therein employed are members of such family, shall not of itself constitute such house or room a workshop within this definition.



Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Division of Labor-Management Relations & Employment Standards

Industrial Safety and Health Section

512 S.W. Sixth, Topeka, Kansas 66603-3150

913-296-4386 -- 913-296-4789 (Fax)

April 1, 1992

The Honorable Anthony Hensley, Chairman
House Labor and Industry Committee
Statehouse
Room 278W
Topeka, KS 66612

RE: Estimated fiscal requirements of administration of a Kansas S.H.A.R.P.'s Program

Dear Mr. Hensley:

This estimate is respectfully submitted in response to your March 31, 1992 request. It is only an estimate as final statutory language has not been developed on which a formal fiscal note could be admitted.

In view of the confusion that seems to exist related to the relationship of the Kansas Department of Human Resources and the OSHA 7(c)(1) Consultation Agreement affecting private sector and the enforcement of KSA 44-636 relating to public sector industrial safety, I will for purposes of this document set aside public sector KSA 44-636 until later.

OSHA 7(c)(1) Consultation Agreement in Kansas:

We will furnish to the Committee copies of the current agreement and modifications attached thereto.

First and most importantly the OSHA 7(c)(1) Consultation Agreement does not cover or apply to public agencies in Kansas as OSHA does not cover public agencies.

The 7(c)(1) Consultation Agreement will not change except for a modification reflecting increased use of state monies as deemed necessary and appropriated for that purpose. Any future increase in federal funding could be used to reduce the state share to the extent it exceeds ten percent (10%) of the total federal contribution.

Estimated State Cost and Comparison:

| Oklahoma Staffing Is | <u>Funding Is</u> |
|-------------------------|------------------------|
| 10 Field Safety | |
| 7 Field Health | Federal \$688,000 |
| 3 Clerical | State <u>\$480,000</u> |
| <u>1</u> Administrative | \$1,168,000 |
| 21 TOTAL | |

Note is made that Oklahoma only operates the OSHA 7(c)(1) Program.

| <u>Current Kansas Staffing</u> | <u>Funding Is</u> |
|--------------------------------------|-------------------|
| OSHA 7(c)(1) 6 FTE's | \$290,498 |
| State 44-636 (Public) <u>6 FTE's</u> | <u>\$245,155</u> |
| TOTAL 12 FTE's | \$535,653 |

Federal region advises no additional federal funds would be available.

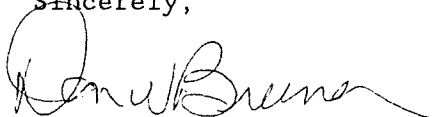
The estimated additional staff required in the consultation effort would be eight (8) FTE's plus necessary non-personal expenses which would be \$439,742.

Additional staffing would be for four (4) Industrial Hygienist II's, two (2) Industrial Safety Inspector III's, one (1) Administrative Officer II, and one (1) Office Assistant III. This would equalize staffing between the health and safety units as both will be required on each comprehensive inspection under Kansas S.H.A.R.P.

Additionally the remainder will be required for support i.e. travel, equipment, supplies, printing, rent and other miscellaneous.

Total is estimated in the area of \$500,000 for the first year start up.

Sincerely,



Don W. Bruner, Director
Labor Management Relations and Employment Standards

DWBdct