

Approved April 1, 1992
Date

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

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

1:30 ~~xx~~/p.m. on March 26, 1992 in room 254-E of the Capitol.

All members were present except:

Members present were: Senators Daniels, Ehrlich, Feleciano, Martin, Morris,
Petty, Salisbury, Sallee, Strick and Thiessen

Committee staff present:

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

Conferees appearing before the committee:

**SB 666 - Workers compensation, accidental injuries, defenses, limits,
exclusions procedures, impairment and administrative appeal panels**

Gordon Self, Revisor of Statutes, reviewed amendments to **SB 666** proposed by KCCI; Builders Association Self Insurers Fund of Kansas; Don Stehley, Medical Personnel Pool; AFL-CIO; Kansas Chiropractic Association; and Michael Russell, a Vocational Counselor, see Attachment 1.

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

GUEST LIST

COMMITTEE: LABOR, INDUSTRY & SMALL BUSINESS

DATE: 3/26/92

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---------------------|--|-----------------------------|
| J.T. Symons | 3204 Trail Rd. | Alvamar Golf Course |
| Aaron Otto | 3401 East Ave. ⁶⁶⁵⁰² Manhattan KS | MTM |
| D. WAYNE ZIMMERMAN | OLATHE | P.R.M. INC. |
| MARY E. TURKINGTON | Topeka | Ks. Motor Carriers Assn. |
| Greg A. Packer | Topeka | Packer Cartage Agency, Inc. |
| Rick Reust | Topeka | Topeka Travel Plaza |
| Steve Dickson | Topeka | Ks. Chiro. Assn. |
| Bill Curtis | Topeka | Ks. Assoc. of School Bds |
| KG WARNER | TOPEKA | |
| DICK THOMAS | TOPEKA | DHR/WORK COMP |
| Terry Leatherman | Topeka | KCCT |
| John M. Ostrowski | TOPEKA | AFL-CIO |
| BRAD SMOOT | Topeka | AIA |
| Art Broom | KC | KS UBR Dealer Assn |
| Rick Liby | Topeka | Gehrt & Roberts |
| Tom Slattery | Topeka | AG C. of Ks |
| Dick Carter | Topeka | Pete McGill & Associates |
| E.M. Davidson, DC | Russell | K.C.A. |
| Joe Fawcett | Topeka | KCA |
| George Welch | Topeka | St. J. Hosp. Fund |
| Gary Anderson | Topeka | AIA Kansas |
| Bill Morrissey | Topeka | DHR/Work Comp |
| LM CORVISH | " | NAAI |
| George Ricketts | Wichita/TOPEKA | KRHA |
| RG Frey | TOPEKA | Ks. TRIAL LAWYER ASSN. |

To: Senate Committee on Labor, Industry and Small Business

From: Gordon Self, Assistant Revisor of Statutes

Date: March 25, 1992

Re: Proposed Amendments to Senate Bill No. 666

Suggested amendments to S.B. No. 666 include the following:

(1) S.B. No. 666 contains a provision that would disallow benefits due to an employee's willful failure to follow the employer's policy relating to proper method of performing a task. Suggested amendment would require in order for this provision to take effect that the employer had instructed the employee on how certain actions on the part of the employee could lead to an injury and the employee nonetheless failed to follow the instructions given by the employer. (KCCI-p.2, ln 10-12).

(2) The provision relating to disallowance of benefits because an accident was caused due to an impairment from alcohol or drugs should be amended to include the procedures employers are required to follow pursuant to an employee being disqualified for benefits for misconduct relating to impairment from alcohol or drugs under the employment security law, K.S.A. 44-706(b)(2). (KCCI-p.2 and 3).

(3) The bill provides that if the director finds, upon application of an injured employee, that services of health care provider provided by the employer are not satisfactory, the director may authorize appointment of some other health care provider. The employer would offer the names of three health care providers and the employee would select one who shall be the authorized treating health care provider. Suggested amendment would delete this change in procedure and retain the current approach to selection of health care providers. (KCCI and Kansas Chiropractic Association, p. 17, ln 29-38).

(4) The bill creates a disability impairment panel to render impartial and binding opinions relating to disability determination disagreements between the employee and employer. It is suggested that the bill be amended to provide that employers and employees take a prominent role in the selection of health care providers to serve on the disability impairment panel.

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(KCCI, p. 21, ln 1-5).

(5) The bill contains a provision relating to employee fraud in seeking or obtaining benefits under the act whereby the employee would, if fraud is found by the director, have benefits cancelled and be ordered to repay any benefits fraudulently obtained. Suggested amendment would replace this provision with the employee fraud provision contained in 1992 H.B. No. 2872 which provides that employee fraud in obtaining benefits constitutes theft and such person shall be punished in accordance with the criminal theft statute (K.S.A. 21-3701); repayment of fraudulently obtained amounts with interest in the amount of 1.5% per month; and a cause of action for the employer against any employee for the fraudulently obtained amounts. (KCCI, p. 45, ln 29-38).

(6) The bill creates an administrative appeals panel to review all appeals from orders of the administrative law judges. Suggested amendment would provide the administrative appeals panel would be the final authority on the matter rather than providing review of the director's decisions in accordance with the act for judicial review and civil enforcement of agency actions; and provide the selection process for the judges on the panel should significantly involve employers and employees. (KCCI, p. 51 and 52).

(7) Amendment which would provide for an increase in benefits for an injured employee who is permanently and totally disabled from the current maximum of \$125,000 to lifetime benefits, if the employee is irrefutably permanently as well as totally lifetime disabled. (Builders' Association Self-Insurers Fund of Kansas).

(8) Amendment which would provide for an increase in benefits to dependents as a result of a work-related death from the current maximum of \$200,000 to lifetime benefits. (Builders' Association Self-Insurers Fund of Kansas).

(9) Amendment to make collection of claims more difficult. (Don Stehley-Medical Personnel Pool).

(10) Amendment requiring insurance company adjustors to actively pursue any questionable claims. (Don Stehley-Medical Personnel Pool).

(11) Mandate that if employee wants workers compensation insurance coverage, the employee must pay a portion of the premium. (Don Stehley-Medical Personnel Pool).

(12) Require that the employee pay a small annual deductible (\$150-\$200). (Don Stehley-Medical Personnel Pool).

(13) Creation of a state safety director with broad powers

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for the purposes of education and enforcement of safety in the workplace. (Mitchell Wulfekoetter-Kansas AFL-CIO).

(14) Utilization of a statewide system of approved providers who would agree to charges fixed by the director. The injured worker would be permitted to go to any of the approved providers. (Mitchell Wulfekoetter-Kansas AFL-CIO).

(15) Legislation should be adopted which would tie private workers compensation insurance rates to the average cost increases of self-insureds around the state. (Mitchell Wulfekoetter-Kansas AFL-CIO).

(16) Current law provides for the responsibilities of the employer relating to the provision of medical services for the employee. The bill changes the standard relating to this employer responsibility from as may be reasonably necessary to "cure and relieve" the employee from the effects of the injury to as may be reasonably necessary to "treat" the employee for the effects of the injury. Amendment would restore current language. (Kansas Chiropractic Association).

(17) Retain current vocational rehabilitation provisions. (Michael Russel, vocational counselor).

(18) The bill provides that services of an attorney subsequent to the initial and original claim that do not involve an additional award of compensation shall be fixed by the director and paid by the workers compensation fund rather than the employer. An additional technical amendment is necessary that would amend K.S.A. 44-566a(e) to make the fund liable for such payments; and resolve the conflict created between K.S.A. 44-566a and 44-566b.

(19) Vocational rehabilitation changes.

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favorable to the individual than those prevailing for similar work in the locality; or

(C) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

(4) For the purposes of subsection (b)(1)(B), an individual shall be treated as actively engaged in seeking work during any week if:

(A) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(B) the individual furnishes tangible evidence that the individual has engaged in such effort during such week.

(5) The employment service shall refer any individual entitled to extended benefits under this act to any suitable work which meets the criteria prescribed in subsection (b)(2).

History: L. 1981, ch. 204, § 3; L. 1982, ch. 214, § 2; L. 1987, ch. 191, § 3; July 1.

44-705. Benefit eligibility conditions. Except as provided by K.S.A. 1988 Supp. 44-757, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a) The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, except that, subject to the provisions of subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary may adopt rules and regulations which waive or alter either or both of the requirements of this subsection (a).

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974.

(d) The claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in subsection (k)(4) of K.S.A. 1988 Supp. 44-757, which period of one week, in either case, occurs within the benefit year which includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection (d):

(1) If benefits have been paid for such week;

(2) if the individual fails to meet with the other eligibility requirements of this section; or

(3) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subsection (d)(3) shall not apply.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

History: L. 1937, ch. 255, § 5; L. 1941, ch. 264, § 3; L. 1943, ch. 190, § 2; L. 1945, ch. 220, § 3; L. 1949, ch. 288, § 4; L. 1955, ch. 251, § 3; L. 1959, ch. 223, § 2; L. 1961, ch. 245, § 1; L. 1970, ch. 191, § 3; L. 1971, ch. 180, § 3; L. 1971, ch. 181, § 1; L. 1973, ch. 205, § 4; L. 1976, ch. 226, § 3; L. 1976, ch. 370, § 59; L. 1977, ch. 181, § 3; L. 1979, ch. 159, § 2; L. 1982, ch. 214, § 3; L. 1988, ch. 172, § 2; July 1.

44-706. Disqualification for benefits. An individual shall be disqualified for benefits:

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(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the individual left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph (5), "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a

consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the federal trade act of 1974), and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating; or

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification.

(b) If the individual has been discharged for misconduct connected with the individual's

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work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection (b), "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must show: (A) Willful and intentional action which is substantially adverse to the employer's interests, or (B) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. The term "gross misconduct" as used in this subsection (b) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (b).

(2) For the purposes of this subsection (b), the use of, possession of, or impairment caused by a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which was substantially adverse to the employer's interests. Controlled substance shall be defined as provided in K.S.A. 65-4101 and amendments thereto of the uniform controlled substances act. An individual's refusal to submit to a chemical test shall not be admissible evidence to prove misconduct unless there was probable cause to believe that the individual used, possessed or was impaired by a controlled substance while working. The results of a chemical test shall not be admissible evidence to prove misconduct unless the following conditions were met:

(A) There was probable cause to believe that the individual used, had possession of, or was impaired by the controlled substance while working;

(B) the test sample was collected at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of the test sample was performed by an independent health care professional;

(D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

(F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including lateness, from scheduled work if the facts show:

(A) The individual was absent without good cause;

(B) the absence was substantially adverse to the employer's interests;

(C) the employer gave written notice to the individual that future absence may result in discharge; and

(D) the individual continued the pattern of absence without good cause.

(4) An individual shall not be disqualified under this subsection (b) if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when

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HOUSE BILL No. 2872

By Committee on Labor and Industry

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8 AN ACT concerning workers compensation; prescribing penalties for
9 certain false statements and representations; requiring repayment
10 of certain amounts relating to such statements and representations.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Any person who makes a false statement or rep-
14 resentation knowing it to be false or knowingly fails to disclose a
15 material fact, to obtain or increase or prevent any reduction in any
16 benefit or other payment under the workers compensation act, either
17 for such person or for any other person, shall be guilty of theft and
18 shall be punished in accordance with the provisions of K.S.A. 21-
19 3701 and amendments thereto.

20 (b) Any person who has received any amount of money as benefits
21 or other payment under the workers compensation act as a result
22 of a violation of subsection (a) shall be liable to repay an amount
23 equal to the amount so received by such person, with interest
24 thereon. Any such amount, plus any accrued interest thereon, shall
25 bear interest at the rate of 1.5% per month or fraction of a month
26 until repayment of such amount, plus any accrued interest thereon.
27 The interest shall accrue from the date of overpayment or erroneous
28 payment of any such amount.

29 (c) The employer shall have a cause of action against any such
30 person to recover any amounts of money erroneously paid as benefits
31 or other payments under the workers compensation act for which
32 liability has accrued under this section. Nothing in this section shall
33 prohibit an employer from exercising a right to reimbursement under
34 K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

35 (d) This section shall be part of and supplemental to the workers
36 compensation act.

37 Sec. 2. This act shall take effect and be in force from and after
38 its publication in the statute book.

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21-3612. Contributing to a child's misconduct or deprivation. (1) Contributing to a child's misconduct or deprivation is:

(a) Causing or encouraging a child under 18 years of age to become or remain a traffic offender, child in need of care as defined by the Kansas code for care of children or a juvenile offender as defined by the Kansas juvenile offenders code;

(b) causing or encouraging a child under 18 years of age not to attend school as required by law;

(c) causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a misdemeanor;

(d) failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in the performance of such officer's duty, any information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension;

(e) causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony; or

(f) sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers.

Contributing to a child's misconduct or deprivation as described in subsection (1)(a), (b), (c) or (d) is a class A misdemeanor. Contributing to a child's misconduct or deprivation as described in subsection (1)(e) or (f) is a class E felony.

(2) A person may be found guilty of contributing to a child's misconduct or deprivation even though no prosecution of the child whose misconduct or deprivation the defendant caused or encouraged has been commenced pursuant to the Kansas code for care of children, Kansas juvenile offenders code or Kansas criminal code.

(3) As used in this section, "runaway" means a child under 18 years of age who is willfully and voluntarily absent from:

(a) The child's home without the consent of the child's parent or other custodian; or

(b) a court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee.

(4) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1978, ch. 123, § 1; L. 1982,

ch. 182, § 148; L. 1984, ch. 120, § 1; L. 1986, ch. 158, § 1; L. 1987, ch. 246, § 3; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392 (1979).

CASE ANNOTATIONS

1. Conviction reversed; evidence not sufficient to sustain conviction. State v. Chance, 4 K.A.2d 283, 286, 604 P.2d 756.

Article 37.—CRIMES AGAINST PROPERTY

21-3701. Theft. Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(a) Obtaining or exerting unauthorized control over property; or

(b) Obtaining by deception control over property; or

(c) Obtaining by threat control over property; or

(d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of \$50,000 or more is a class D felony. Theft of property of the value of at least \$500 but less than \$50,000 is a class E felony. Theft of property of the value of less than \$500 is a class A misdemeanor, except that theft of property of the value of less than \$500 is a class E felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of theft two or more times.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

History: L. 1969, ch. 180, § 21-3701; L. 1972, ch. 116, § 1; L. 1978, ch. 120, § 29; L. 1984, ch. 119, § 2; L. 1988, ch. 113, § 2; July 1.

Source or prior law:

21-103, 21-529, 21-532, 21-533, 21-534, 21-535, 21-535a, 21-536, 21-537, 21-539, 21-540, 21-541, 21-542, 21-543, 21-544, 21-545, 21-546, 21-547, 21-548, 21-549, 21-550.

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K.S.A. 44-507. An amendment to the Kansas Workers' Compensation Act creating a safety director and deputies, and bestowing upon said safety director and deputies broad powers for the purposes of education and enforcement of safety in the workplace.

K.S.A. 44-507. Workers' compensation safety director; powers of safety director; creation of deputies; duties and obligations of safety director and deputies; employer's right to hearing and procedure therefor. (a) A primary purpose of the workers' compensation act shall be to promote safety within the workplace; it being specifically understood that prevention of injuries accrues to the benefit of employees, employers, insurance carriers, self-insureds, and the workers' compensation fund. Pursuant to this end, there is hereby created a safety director and deputies pursuant to K.S.A. 75-5708 as amended. The safety director and his deputies shall:

(1) Continuously study all issues of safety in the workplace with particular emphasis on the prevention of injuries and the practice of ergonomics. Said director shall be familiar with OSHA regulations and EPA regulations; although the director shall not be limited to those regulations in enforcement of safety for the state.

(2) The safety director and his deputies shall have broad police powers in the enforcement of actual safety violations. The safety director is hereby granted authority to enter onto any employer's premises, announced or unannounced, for the purposes of observing actual safety violations, and upon the observation of the same, shall have authority to issue warnings, levy fines, or prohibit said employer from continued operations pending correction of the safety violation. Whether or not a safety violation is occurring shall be determined within the sole discretion of the safety director or the deputies. In the event a warning is issued, a time certain shall be determined for correction of the violation. In the event a fine is levied, said fine shall not exceed one hundred thousand dollars (\$100,000.00) for each occurrence. In the event the employer is ordered to cease doing business, a violation of said order shall constitute an irrebuttable presumption that said employer is in contempt of court in Shawnee County unless directed otherwise by the safety director. The safety director shall implement rules and regulations governing the provisions of this section with the intent that the provisions of this section be applied uniformly to employers. Said rules and regulations shall be approved by the secretary of human resources. Nothing herein shall be construed to prevent the assessment of multiple fines for repeated occurrences.

(3) In the event the safety director issues a warning, levies a fine, or orders an employer to cease doing business, said employer shall comply with the safety director's directions. The employer shall have the right to appeal said order to the district court of Shawnee County unless directed otherwise by the safety

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director. In the event said employer does not comply, the employer shall lose the right to appeal. The district court shall, within three (3) days of the safety director's action, set the matter for a summary hearing to determine whether the order of the safety director should stand, be modified, or be reversed. By request of either party, following the district court's order, the matter shall be set for a full evidentiary hearing. Further appeals shall be taken pursuant to the code of civil procedure to the appellate courts of Kansas.

(4) The safety director shall have broad authority to implement ergonomics and job modifications for the prevention of injuries in the workplace. In each such instance, the safety director shall consider the cost of the job modification or ergonomic implementation against the harm being caused, or likely to be caused, to the employee. If it is determined, within the sole discretion of the safety director, that the safety recommendation should be implemented, it shall be ordered to be complied with in a reasonable amount of time, but not more than thirty (30) days except for highly unusual circumstances. If the employer disputes said determination, the employer shall have the right to appeal to the district court of Shawnee County unless directed otherwise by the safety director. The employer shall have the right to stay the recommendation of the safety director by the posting of a bond in an amount determined by the district court.

(5) The safety director shall respond to and investigate complaints made by employees of the State of Kansas as to safety violations or safety concerns of any nature. Said complaints shall be treated with the utmost confidentiality by the safety director. No employer shall retaliate in any way against an employee for filing a complaint with the safety director. Nothing stated herein shall be construed as limiting the safety director's jurisdiction to responding to complaints by employees.

(6) It shall be the duty of the safety director to educate employers and workers as to safety matters. The safety director shall implement mandatory annual educational programs for all employers. The safety director shall establish by rules and regulations the minimum requirements which after July of 1993 shall be a prerequisite for the employer obtaining insurance under the Kansas workers' compensation act.

(7) Any employer within the State of Kansas who is subject to the jurisdiction of the Kansas Workers' Compensation Act is subject to the jurisdiction of the workers' compensation safety director and deputies.

(8) The authority vested in the safety director is specifically vested to the deputies created pursuant to K.S.A. 75-5708.

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to offer deductible policies; provisions not applicable to self-insurers and group-funded pools. (a) Each insurer issuing a policy to assure the payment of compensation under the workers compensation act may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under the workers compensation act.

(b) The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers compensation in the same manner as payment or nonpayment of premiums. The insurer may require adequate security to provide for reimbursement of the paid deductible from the insured. An employer's failure to reimburse deductible amounts to the insurer shall not cause the deductible amount to be paid from the workers compensation fund under K.S.A. 44-532a, and amendments thereto, or any other statute. The insurer shall have the right to offset unpaid deductible amounts against unearned premium, if any, in the event of cancellation.

(c) Such deductible shall provide premium credits as approved by the commissioner of insurance, and losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification.

(d) The commissioner of insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or be passed on to the worker.

(e) The deductible amounts paid by an employer shall be subject to reimbursement as provided for under K.S.A. 44-567, and amendments thereto, when applicable. All compensation benefits paid by the insurer including the deductible amounts shall be subject to assessments under K.S.A. 40-566a and 74-713, and amendments thereto. The Kansas workers compensation plan under K.S.A. 40-2109, and amendments thereto, shall not require deductibles under policies issued by the plan.

(f) This section shall not apply to employers who self-insure against liability for workers compensation, group-funded workers compen-

sation pools established pursuant to K.S.A. 44-581 *et seq.*, and amendments thereto, or municipal group-funded pools established pursuant to K.S.A. 12-2616 *et seq.*, and amendments thereto.

(g) The provisions of this section shall be effective on or after July 1, 1991.

History: L. 1991, ch. 144, § 1; May 23.

44-566.

CASE ANNOTATIONS

22. Fund not liable for postjudgment interest on payments made to employer or insurance carrier as reimbursement. *Wrex v. T.C.&Y.*, 13 K.A.2d 241, 243, 766 P.2d 1294 (1989).

23. Liability of workers compensation fund (44-567) to electing self-employed handicapped worker determined. *Miller v. Miller*, 13 K.A.2d 262, 265, 768 P.2d 308 (1989).

44-566a. Workers compensation fund; annual assessment; state general fund entitlement and demand transfer; administration; actions against fund, parties and settlements; liabilities of fund. [See Revisor's Note] (a) There is hereby created in the state treasury the workers compensation fund. The commissioner of insurance shall be responsible for administering the workers compensation fund, and all payments from the workers compensation fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner. The commissioner of insurance annually shall report to the governor and the legislature the receipts and disbursements from the workers compensation fund during the preceding fiscal year.

(b) (1) Each September the commissioner of insurance shall certify, with the commissioner's annual budget request, the amount of state general fund entitlement of the workers compensation fund for the ensuing fiscal year. Such entitlement shall be equal to the sum of the amounts paid from the workers compensation fund during the preceding fiscal year in payment of awards made to handicapped employees in accordance with the provisions of K.S.A. 44-569 and amendments thereto, including attorney fees, less the sum of the amounts deposited during the preceding fiscal year to the credit of the workers compensation fund in accordance with the provisions of K.S.A. 44-570 and amendments thereto, except that (A) no state general fund entitlement for a fiscal year shall be more than \$4,000,000, and (B) the state general fund entitlement for the state fiscal year 1991 shall be reduced by

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1.75%. For the purpose of providing funds to meet and pay awards made to handicapped employees, within appropriations therefor, there shall be transferred not later than July 1 each year, or more frequently by appropriation acts of the legislature, from the state general fund to the workers compensation fund, the amount certified by the commissioner of insurance to be the entitlement of the workers compensation fund from the state general fund, or a part thereof followed by supplemental certifications to complete the entitlement for each such fiscal year, subject to the limitation of a total amount of \$4,000,000 for any such fiscal year and to the reduction of 1.75% for the state fiscal year 1991. Such transfer shall be considered to be a demand transfer from the state general fund.

(2) On July 1 each year, the commissioner of insurance shall impose an assessment against all insurance carriers, self-insurers and group-funded workers compensation pools insuring the payment of compensation under the workers compensation act, the proceeds of which shall be credited to the workers compensation fund. The total amount of each such assessment shall be equal to an amount sufficient, in the opinion of the commissioner of insurance, to pay all amounts, including attorney fees and costs, which may be required to be paid from such fund during the current fiscal year, less amounts required to be transferred from the state general fund to the workers compensation fund. The total amount of each such assessment shall be apportioned among those upon whom it is imposed, such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workers compensation claims by such insurance carrier, self-insurer or group-funded workers compensation pool in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year. Not later than September 1 each year, the commissioner of insurance shall notify all such insurance carriers, self-insurers and group-funded workers compensation pools of the amount of each assessment imposed under this subsection on such carrier, self-insurer or group-funded workers compensation pool, and the same shall be due and payable on the October 1 following.

(3) The commissioner of insurance shall remit all moneys received by or for such commissioner under this subsection to the state treasurer. Upon receipt of any such remittance

the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the workers compensation fund.

(c) (1) Whenever the workers compensation fund may be made liable for the payment of any amounts in proceedings under the workers compensation act, the commissioner of insurance, in the capacity of administrator of such fund, shall be impleaded in such proceedings and shall represent and defend the workers compensation fund. The commissioner of insurance shall be deemed impleaded in any such proceedings whenever written notice of the proceedings setting forth the nature of the liability asserted against the workers compensation fund, is given to the commissioner of insurance. The commissioner of insurance may be made a party in this manner by any party to the proceedings. A copy of the written notice shall be given to the director and to all other parties to the proceedings.

(2) The director or administrative law judge shall dismiss the workers compensation fund from any proceeding where the director has determined that there is insufficient evidence to indicate involvement by the workers compensation fund.

(d) The commissioner of insurance, in the capacity of administrator of the workers compensation fund, may make settlements of any amounts which may be payable from the workers compensation fund with regard to any claim under the workers compensation act, subject to the approval of the director.

(e) The workers compensation fund shall be liable for:

(1) Payment of awards to handicapped employees in accordance with the provisions of K.S.A. 44-569 and amendments thereto;

(2) payment of workers compensation benefits to an employee who is unable to receive such benefits from such employee's employer under the conditions prescribed by K.S.A. 44-532a and amendments thereto;

(3) reimbursement of an employer or insurance carrier pursuant to the provisions of K.S.A. 44-534a and amendments thereto, subsection (d) of K.S.A. 44-556 and amendments thereto, subsection (c) of K.S.A. 44-569 and amendments thereto and K.S.A. 44-569a and amendments thereto;

(4) payment of the actual expenses of the commissioner of insurance which are incurred for administering the workers compensation fund, subject to the provisions of appropriations acts; and

(5) any other payments or disbursements provided by law.

(f) If it is determined that the workers compensation fund is not liable as described in subsection (e), attorney fees incurred by the workers compensation fund may be assessed against the party who has impleaded the workers compensation fund other than impleadings pursuant to K.S.A. 44-532a and amendments thereto.

(g) The legislature shall provide for the implementation of the workers compensation fund as provided in this section and shall be responsible for ensuring the fund's adequacy to meet and pay claims awarded against it.

History: L. 1974, ch. 203, § 46; L. 1975, ch. 260, § 3; L. 1977, ch. 179, § 1; L. 1979, ch. 156, § 14; L. 1980, ch. 146, § 14; L. 1982, ch. 213, § 6; L. 1983, ch. 166, § 15; L. 1984, ch. 182, § 1; L. 1988, ch. 380, § 1; L. 1990, ch. 28, § 16; July 1.

Revisor's Note:

Section was amended twice in 1990 session, see also 44-566b.

Law Review and Bar Journal References:

"Worker Compensation; Attorney's Fees Under K.S.A. 44-536," Gary L. Jordan, Vol. 6, No. 6, J.K.T.L.A. 21 (1983).

44-566b. Workers compensation fund; annual assessment; state general fund entitlement and demand transfers; reduction; administration; actions against fund, parties and settlements; liabilities of fund. [See Revisor's Note] (a) There is hereby created in the state treasury the workers compensation fund. The commissioner of insurance shall be responsible for administering the workers compensation fund, and all payments from the workers compensation fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner. The commissioner of insurance annually shall report to the governor and the legislature the receipts and disbursements from the workers compensation fund during the preceding fiscal year.

(b) (1) Each September the commissioner of insurance shall certify, with the commissioner's annual budget request, the amount of state general fund entitlement of the workers compensation fund for the ensuing fiscal year. Such entitlement shall be equal to the sum of the amounts paid from the workers compensation fund during the preceding fiscal year in payment of awards made to handicapped em-

ployees in accordance with the provisions of K.S.A. 44-569 and amendments thereto, including attorney fees, less the sum of the amounts deposited during the preceding fiscal year to the credit of the workers compensation fund in accordance with the provisions of K.S.A. 44-570 and amendments thereto, except that (A) no state general fund entitlement for a fiscal year shall be more than \$4,000,000, and (B) each such state general fund entitlement is subject to reduction under K.S.A. 1991 Supp. 75-6704. For the purpose of providing funds to meet and pay awards made to handicapped employees, within appropriations therefor, there shall be transferred not later than July 1 each year, or more frequently by appropriation acts of the legislature, from the state general fund to the workers compensation fund, the amount certified by the commissioner of insurance to be the entitlement of the workers compensation fund from the state general fund, or a part thereof followed by supplemental certifications to complete the entitlement for each such fiscal year, subject to the limitation of a total amount of \$4,000,000 for any such fiscal year and to reduction under K.S.A. 1991 Supp. 75-6704. Such transfer shall be considered to be a demand transfer from the state general fund.

(2) On July 1 each year, the commissioner of insurance shall impose an assessment against all insurance carriers, self-insurers and group-funded workers compensation pools insuring the payment of compensation under the workers compensation act, the proceeds of which shall be credited to the workers compensation fund. The total amount of each such assessment shall be equal to an amount sufficient, in the opinion of the commissioner of insurance, to pay all amounts, including attorney fees and costs, which may be required to be paid from such fund during the current fiscal year, less amounts required to be transferred from the state general fund to the workers compensation fund. The total amount of each such assessment shall be apportioned among those upon whom it is imposed, such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workers compensation claims by such insurance carrier, self-insurer or group-funded workers compensation pool in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year. Not later than September 1 each year, the commissioner of insurance shall notify

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all such insurance carriers, self-insurers and group-funded workers compensation pools of the amount of each assessment imposed under this subsection on such carrier, self-insurer or group-funded workers compensation pool, and the same shall be due and payable on the October 1 following.

(3) The commissioner of insurance shall remit all moneys received by or for such commissioner under this subsection to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the workers compensation fund.

(c) (1) Whenever the workers compensation fund may be made liable for the payment of any amounts in proceedings under the workers compensation act, the commissioner of insurance, in the capacity of administrator of such fund, shall be impleaded in such proceedings and shall represent and defend the workers compensation fund. The commissioner of insurance shall be deemed impleaded in any such proceedings whenever written notice of the proceedings setting forth the nature of the liability asserted against the workers compensation fund, is given to the commissioner of insurance. The commissioner of insurance may be made a party in this manner by any party to the proceedings. A copy of the written notice shall be given to the director and to all other parties to the proceedings.

(2) The director or administrative law judge shall dismiss the workers compensation fund from any proceeding where the director has determined that there is insufficient evidence to indicate involvement by the workers compensation fund.

(d) The commissioner of insurance, in the capacity of administrator of the workers compensation fund, may make settlements of any amounts which may be payable from the workers compensation fund with regard to any claim under the workers compensation act, subject to the approval of the director.

(e) The workers compensation fund shall be liable for:

(1) Payment of awards to handicapped employees in accordance with the provisions of K.S.A. 44-569 and amendments thereto;

(2) payment of workers compensation benefits to an employee who is unable to receive such benefits from such employee's employer under the conditions prescribed by K.S.A. 44-532a and amendments thereto;

(3) reimbursement of an employer or insurance carrier pursuant to the provisions of K.S.A. 44-534a and amendments thereto, subsection (d) of K.S.A. 44-556 and amendments thereto, subsection (c) of K.S.A. 44-569 and amendments thereto and K.S.A. 44-569a and amendments thereto;

(4) payment of the actual expenses of the commissioner of insurance which are incurred for administering the workers compensation fund, subject to the provisions of appropriations acts; and

(5) any other payments or disbursements provided by law.

(f) If it is determined that the workers compensation fund is not liable as described in subsection (e), attorney fees incurred by the workers compensation fund may be assessed against the party who has impleaded the workers compensation fund other than impleadings pursuant to K.S.A. 44-532a and amendments thereto.

(g) The legislature shall provide for the implementation of the workers compensation fund as provided in this section and shall be responsible for ensuring the fund's adequacy to meet and pay claims awarded against it.

History: L. 1974, ch. 203, § 46; L. 1975, ch. 260, § 3; L. 1977, ch. 179, § 1; L. 1979, ch. 156, § 14; L. 1980, ch. 146, § 14; L. 1982, ch. 213, § 6; L. 1983, ch. 166, § 15; L. 1984, ch. 182, § 1; L. 1988, ch. 380, § 1; L. 1990, ch. 28, § 16; L. 1990, ch. 350, § 6; July 1, 1991.

Revisor's Note:

Section was amended twice in 1990 session, see also 44-566a.

44-567. Workers' compensation fund; employment or retention of handicapped workers; relief from or apportionment of liability for subsequent injuries; proof of knowledge of impairment; presumptions; commissioner of insurance to be impleaded. (a) An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the director awards compensation therefor and finds the injury, disability or the

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