

Approved: 1-18-95 *ha*  
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairperson Al Lane at 9:00 a.m. on January 12, 1995 in Room 526-S of the Capitol.

All members were present except: Barbara Ballard - excused  
Broderick Henderson - excused

Committee staff present: Jerry Donaldson, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Jerry Donaldson, Legislative Research Department

Others attending: See attached list

The first meeting of the committee was called for the purpose of orientation. Chairman Lane started the meeting by introducing himself and telling a little about his history in the Legislature. He then introduced Greg Packer, the Vice-Chairman; Janice Pauls, the Ranking Minority Member; and the committee staff. Other members then introduced themselves and shared a little about their background.

Chairman Lane then asked the several guests of the committee to introduce themselves. (see guest list)

Jerry Donaldson gave an overview of the Legislative Research Department and related some of its purposes. She passed out excerpts from the Report of Selected Joint Committees, "The Report of the Joint Committee on Workers Compensation Fund to the 1995 Kansas Legislature". (See Attachment 1) She gave some of the history of the fund and its purposes over the years.

Chairman Lane continued the meeting by talking about plans and scheduling of upcoming meetings.

The meeting adjourned at 9:44 a.m.

The next meeting is scheduled for January 18, 1995.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE  
GUEST LIST

DATE January 12, 1995

NAME	REPRESENTING
Wayne Maiches	Ks. AFL - CIO
Terry Leatherman	KCCI
J.A. Ladd	KS77A
Henry D. Miller	Ks. AFL - CIO
Jim De Hoff	KCCI
John Peterson	

*Yellow*

Report of the  
Joint Committee on Workers  
Compensation Fund  
to the  
1995 Kansas Legislature

**Chairperson**  
Mr. Leon Lungwitz

**Vice Chairperson**  
Ms. Diane Gjerstad

**LEGISLATIVE MEMBERS**

Senator Anthony Hensley  
Senator Alicia Salisbury

Representative David Heinemann  
Representative Janice Pauls

**NONLEGISLATIVE MEMBERS**

Ms. Christie Chambers  
Mr. George Gomez

Ms. Jill Grant  
Mr. Mike Vilander

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*House Business, Commerce & Labor  
Committee  
1/12/95*

December, 1994

*Attachment 1*

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# WORKERS COMPENSATION FUND OVERSIGHT COMMITTEE

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## COMMITTEE MEETINGS

During 1994, the Workers Compensation Fund Oversight Committee (WCFOC) held a series of one-day meetings in Topeka in February, March, April, May, August, October, and November.

Minutes and material provided to the Committee are available for inspection in the office of the Division of Legislative Administrative Services.

## BACKGROUND

The WCFOC was created as a result of the 1993 legislation that enacted major changes in the Workers Compensation Act and can be found at K.S.A. 46-2401. The 11-member Committee is charged to make an annual report by September 1 of each year to the Legislative Coordinating Council (LCC). Such report shall contain legislative recommendations about whether to advise the continuation of the termination of the Workers Compensation Fund or the reinstatement of the Fund, an analysis of the federal Americans With Disabilities Act (ADA) and its effect on the Fund, and recommendations on ways to reduce claim and operations costs of the Fund (if reinstated). In addition, the Committee will have legislation drafted, if needed, to implement its recommendations.

## COMMITTEE ACTIVITIES

The WCFOC held the first three meetings during the 1994 Legislative Session. The history of the Fund was explored through an examination of the Post Audit report entitled *History of the Workers Compensation Fund*. Another Post Audit report, entitled *Examining Increases in Expenditures from the State Workers Compensation Fund*, was presented to the WCFOC. At the conclusion of the meeting in March, the WCFOC voted to extend the phase-out of the Fund from the original date of July 1, 1994 (as drafted in the 1993 legislation) to April 1, 1995. As a result, 1994 S.B. 830 was drafted with the date change. During the legislative process, S.B. 830 was further amended and then ultimately vetoed by the Governor which meant the beginning of the phase-out of the Fund became effective on July 1, 1994.

During the course of hearings the WCFOC heard from an expert in the area of ADA and its impact on second injury funds, a commonly used descriptive name for the Workers Compensation Fund in Kansas and other states. The expert concluded that ADA and second injury funds serve separate, but similar purposes with each retaining uniqueness in their operation. According to this expert, the full certainty of the impact of ADA lies in the future and the certainty of the interrelationship with second injury funds remains unclear. The official stated that most states have a second or subsequent injury type fund but data is lacking that linked the impact of ADA on these funds. Other factors such as tax incentives may be an incentive in hiring disabled workers.

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Minnesota officials presented material to the WCFOC regarding their experience in doing away with their second injury fund. According to the Minnesota officials, the repeal of the Minnesota Fund in 1992, due in part to the passage of ADA, seems to be working well in their state. Minnesota, it was revealed, was vastly different from Kansas, especially in the elaborate bureaucratic mechanism that controlled the operation of their second injury fund. Another workers compensation expert from the State of Maine provided information to the WCFOC about the recent trend of some states to eliminate the second injury fund. In his remarks, the expert reemphasized the unknown factor concerning the full impact of ADA. The Maine official concluded that Kansas, based on the information he had, probably has little reason to retain the Fund.

The Committee also heard from various individuals, including Kansas attorneys who work in the Workers Compensation area, as well as representatives from the Kansas Chamber of Commerce and Industry, Wichita Independent Business Association, Stryker Company, Independent Insurance Agents of Kansas, American Insurance Association, Whelan's, Kansas AFL-CIO, Beechcraft, an orthopedic surgeon, and the Kansas Association of School Boards regarding the advisability of renewing the Fund. Recommendations covered a spectrum of suggestions including the following:

1. No position yet.
2. Do not reinstate the Fund. The reasons included such things as there is no need for the Fund since small businesses do not benefit from the Fund.
3. Do reinstate the Fund. The reasons included such things as small businesses do benefit from the Fund and public policy reasons.
4. Reinstate the Fund with modification of the administration of the Fund.
5. If the Fund is reinstated, tighten up on the availability of the Fund.
6. If reinstatement of the Fund is not possible, the costs to schools will increase.

Other suggestions offered to the WCFOC, if the Fund were continued, included recommendations for an enhanced educational effort to alert more small businesses as to the availability of the Fund; to require a Form 88 type document for all compensable injuries; to eliminate category 17 regarding the application of the Workers Compensation Act; and to institute some form of experience rating for small businesses.

A preliminary report was sent to the LCC on September 1, 1994. In the report, the Committee determined to explore dual recommendations which are addressed in the final report. The preparation of these dual options involve exploring:

1. a continued phase-out of the Workers Compensation Fund, which began on July 1, 1994, with recommendations as to how to best accomplish this purpose; and
2. a recommendation to reinstate the Workers Compensation Fund with further suggestions on how to institute changes aimed at "reducing claim and operational costs" of the Fund.

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Investigative efforts of the latter option can include a look at the possibility of using in-house agency counsel, instead of outside counsel to defend the Fund. Subsequently, information was presented to the WCFOC regarding the significant cost of hiring in-house counsel to defend the Fund, during the phase out of the Fund. Further, discussion of this topic can be found in the section on Conclusions and Recommendations.

### **The Americans With Disabilities Act and the Kansas Act Against Discrimination**

Title I of ADA and the Kansas Act Against Discrimination (KAAD) share many similarities, as well as distinctions. Both acts cover other issues beyond the scope of this review. For example, KAAD affords protection in the areas of public housing and accommodations as well as to persons on the basis of familial status. KAAD is administered by the Kansas Human Rights Commission, whereas, ADA is administered by the federal Equal Employment Opportunity Commission (EEOC). Coverage of ADA affects employers with 15 or more employees since July 26, 1994. Originally, ADA applied to employers with 25 or more employees.

ADA is civil rights legislation that, in the area of employment is geared toward counteracting discriminatory employment practices, including hiring, toward individuals with disabilities. Other federal acts which preceded ADA include provisions of the 1973 Rehabilitation Act and Title VI of the 1964 Civil Rights Act as well as Title IX of the Education Amendments of 1972.

Specifically, ADA makes it unlawful to discriminate in all employment practices such as: recruitment, hiring, promotion, training, layoff, pay, firing, job assignments, leave, benefit, and all other employment related activities.

KAAD covers employers with four or more employees. Regarding employment issues, KAAD makes it illegal for employers and others to discriminate against persons with disabilities. Examples of specific prohibited acts include:

1. classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability;
2. participating in a contract or other arrangement providing fringe benefits or in an organization providing training and apprenticeship programs that have the effect of discriminating against a person with a disability;
3. utilizing standards criteria, or methods of administration that have the effect of discriminating on the basis of disability; and
4. refusing to make reasonable accommodations for qualified persons with a known physical or mental disability, unless the employer can demonstrate that the accommodation would impose an undue hardship.

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Reasonable accommodation is defined as making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices;

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appropriate adjustment or modifications of examinations, training materials, or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

ADA and KAAD both provide for restitution of lost wages, benefits, etc., when discrimination is proven. Since the passage of the 1991 amendments, ADA has provided for damage awards of up to \$2,000 for pain, suffering, and humiliation, as well as punitive damages. KAAD has no provision for punitive damages. In addition, attorney fees under ADA are awarded to the prevailing party but not, for these purposes, under KAAD. Kansas Administrative Rules (K.A.R.) and Regulations in this area are basically the same as adopted by the EEOC. The pertinent K.A.R., among other things, provides for clarification of terminology, such as "disability," "under hardship," and the like.

## **CONCLUSIONS AND RECOMMENDATIONS**

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The WCFOC rejected the concept of recommending a bill draft aimed at clarifying the phase out of the Workers Compensation Fund's second injury liability. The WCFOC concluded that such legislation would not be necessary since the WCFOC believes the 1993 legislation (S.B. 307) clearly dictated the Workers Compensation Fund's liability for all injuries to handicapped workers no longer exists from and after July 1, 1994. The WCFOC further concludes that any additional statutory language to clarify the Act at this point in time could give the erroneous impression that an employer's right to receive a Workers Compensation Fund reimbursement was not extinguished in certain cases for an injury occurring on and after July 1, 1994.

In addition, the WCFOC concluded that there is insufficient data to enable the WCFOC to determine whether the original intent of the Fund (to hire disabled workers) is still being fostered. As a result, the WCFOC concludes that it cannot recommend a reinstatement of the Fund.

Although the Fund will continue to cover those cases already in the system, the WCFOC concluded, based on preliminary actuarial results, that the cost of hiring in-house counsel to defend the Fund in these instances would be cost prohibitive. As the Fund continues in operation during the phase-out period, it will remain funded as it is currently. Additionally, although significant cost amounts will be involved throughout the phase-out period, for a number of years, the WCFOC will continue to monitor the Fund during this period of time. At future meetings the WCFOC will focus on other components, such as insolvent employers, of the Fund. Throughout the process there will be a need for counsel to defend the Fund albeit on a diminishing basis as the Fund winds down. Consequently, the WCFOC concludes there is no need for in-house counsel.