

Approved: 1/18/96 ALA
Date

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

The meeting was called to order by Chairman Al Lane at 9:10 a.m. on January 11, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Barbara Ballard - excused
Rep. Jill Grant - excused
Rep. Broderick Henderson - excused
Rep. Shari Weber - excused

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

Conferees appearing before the committee: Ron Hein,
Mary Turkington, Kansas Motor Carriers Assn.
Kirk Lowry, Secretary, Kansas Trial Lawyers Assn.
Wayne Maichel, Kansas AFL/CIO

Others attending: See attached list

Chairman Lane welcomed the committee back for the first meeting of the session. He introduced the two new members who were present, John Toplikar and Terry Presta, and asked them to tell a little bit about themselves. Chairman Lane also told a little bit about the third new member, Rich Becker.

Chairman Lane then asked for introduction of new bills.

Ron Hein, Legislative Counsel for Heart of America Staffing Services Association, asked the committee to introduce a bill about deregulating employment agencies. This matter was studied and discussed by the 1995 Special Interim Committee on Labor and Industry. A motion was made by Rep. Merritt to introduce the bill as a committee bill. It was seconded by Rep. Ruff. The motion carried.

No other bills were offered for introduction.

Hearing on SB 326 - Workers compensation coverage for motor vehicle owner-operators

Mary Turkington appeared before the committee representing the Kansas Motor Carriers Association. She explained the bill's function to the committee. They support the bill, but request two amendments. The bill has a very narrow focus, only involving owner/operators who drive their own trucks, who contract to lease their equipment to a licensed motor carrier under a long-term lease to transport freight. The bill would allow these operators to compete with other jurisdictions by not requiring them to have workers compensation coverage of the firm to which they are leasing their vehicle. The amendments include deleting the amendments added by the Senate Committee of the Whole and a reference to the alternate insurance coverage identified on line 43 of page 2, that needs to be identified as "an occupational accident insurance policy." (see Attachment 1) Ms. Turkington concluded by answering questions from the committee.

Kirk Lowry testified on behalf of the Kansas Trial Lawyers Association. They do not oppose Section I of SB 326. Their objections were to the AMA Guides in Section 2. He agreed with the Interim Committee report that it be amended out. (see Attachment 2)

Wayne Maichel testified for the Kansas AFL/CIO. They had no position on the original bill but are against the amendment by the Senate Committee of the Whole, especially the revised 4th ed. AMA guidelines. They support the two amendments suggested by Mary Turkington. They also support the Interim Committee's recommendations that will come before the committee later this session that the AMA guidelines be deleted from Workers Comp entirely.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S Statehouse, at 9:10 a.m. on January 11, 1996.

Chairman Lane asked if there were others in the audience who wanted to testify on **SB 326**. Seeing none, he closed the hearing on the bill.

Chairman Lane introduced Rep. Rich Becker, the Vice-Chairman Greg Packer, Ranking Minority Rep. Jan Pauls and the other staff.

Two handouts were passed out to the committee, one referring to the AMA guidelines (see Attachment 3), and the other containing the amendments to **SB 326** (see Attachment 4). A motion was made by Rep. Pauls to adopt the amendments. It was seconded by Rep Packer. There was no discussion. The motion carried. A motion was made by Rep. Packer to pass out the bill as amended. It was seconded by Rep. Pauls. There was no discussion. The motion carried.

Chairman Lane adjourned the meeting at 9:50 a.m.

The next meeting is scheduled for January 17, 1996.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE January 11, 1996

NAME	REPRESENTING
Arthur Holmes	Division of the Budget
JASON PITTSBERGER	BRAD SMOOT
Tommy Kuyper	KTLA
Rick W. Lowry	KTLA
Ellen Metala	KTLA
Dorothy Taylor	KALFA
Venesa Johnson	State Farm
Gina Crenfeller	Intern
Duke Cook	KS Ins. Dept.
Bill Wenge	KS Ins Dept
Terry Leatherman	KCCI
Wayne Maichel	AFL-CIO
Tom Whitaker	KS Motor Carriers Assn
Alan E. Tunington	KS Motor Carriers Assn-

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Supporting Senate Bill 326 which would permit certain owner-operators options on Workers Compensation insurance coverages.

Presented to the House Business, Commerce and Labor Committee, Rep. Al Lane, Chairman; Statehouse, Topeka, Thursday, Jan. 11, 1996.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I appear here on behalf of our members and the highway transportation industry along with Tom Whitaker, our Governmental Relations Director. Mr. Jeff Chanay, attorney-at-law with offices in Topeka, has outlined the basic provisions of Senate Bill 326.

We strongly support this measure with certain revisions which will be addressed through two amendments, we understand.

We deeply appreciate the Committee's consideration of this measure early in the session. The driver shortage which our industry is experiencing has become even more critical from the time this legislation first was introduced. We urge your consideration of this legislation to assist Kansas carriers in meeting shipper demands for transportation services.

*House Business Commerce
& Labor Committee
1/11/96
Attachment 1*

Senate Bill 326 - House Business, Commerce & Labor Committee

Our industry has relied on quality, independent owner-operators for many years. Those independent owner-operators are NOT employees. They are independent businessmen who have invested substantially in over-the-road equipment to earn a better living leasing that equipment to a licensed motor carrier under a long-term lease to transport freight.

Such owner-operators are NOT paid a salary. They establish contracts with the licensed motor carrier for a percentage of the freight revenue on the loads they haul. Such owner-operators also participate in costs of insurance, fuel, license fees, federal highway use taxes and related operating costs incurred by the operation of their individually-owned over-the-road equipment.

These owner-operators must be skilled drivers, must be good operators in caring for their equipment, and must be good businessmen in choosing a lease arrangement that will generate a good return on their investment. Lease costs often dictate the motor carrier for which such an independent businessman chooses to operate.

Companies simply cannot find enough qualified drivers to operate company-owned equipment. The owner-operator is the best alternative carriers can utilize to provide service to customers and deliver the nation's freight.

Kansas carriers have a distinct disadvantage in recruiting such owner-operators because of the workers compensation requirements outlined by Mr. Chanay.

Thirteen states - Alabama, Florida, Georgia, Indiana, Iowa, Maryland, Missouri, Oklahoma, Oregon, Texas, Tennessee, Washington, and Wyoming -- have adopted statutes which specifically address issues that establish the owner-operator as an independent contractor for workers compensation purposes and provide that the motor carrier with whom the owner-operator contracts need not provide the workers compensation coverage for such a non-employee.

Kansas carriers who have loads to move for Kansas shippers need to be able to compete with other jurisdictions on leasing owner-operator lessors. Kansas jobs and Kansas businesses are what this bill is all about.

Senate Bill 326 has been narrowly drafted to apply ONLY to the owner-operator who owns a motor vehicle that is driven only by the owner. Such an owner-operator would not be REQUIRED to have workers compensation coverage. Alternate occupational accident policies can be purchased to meet the health or injury needs of that owner-operator. The cost of such alternative insurance has been documented to be at least one-half as costly as the current workers compensation coverages. Missouri and Oklahoma, for example, both offer the alternative insurance coverages and make it increasingly difficult for a Kansas carrier to attract an owner-operator for a long-term lease.

Included with my testimony is a copy of a letter a small trucking firm in Hugoton, Kansas, directed to then Rep. David J. Heinemann in November, 1994. I have included the letter to give you specific information from a small Kansas trucking firm.

Let me emphasize again that the proposed legislation applies ONLY to the owner-operator who owns a motor vehicle that is driven exclusively by that owner. Any owner-operator who may have any additional equipment -- or additional drivers -- would be required to continue to have workers compensation coverages for affected operations.

Our carriers urgently need this legislation to provide jobs and transportation services in this state.

This proposal, as originally introduced, did not include the provisions included on pages 3, 4 and 5 of the "Senate Committee of the Whole" version of the bill. We respectfully support deletion of this provision.

We further understand that the reference to the alternate insurance coverage identified on line 43 of page 2 of this same version of Senate Bill 326, needs to be identified as "an occupational accident insurance policy." We would support an amendment that properly identifies these alternative types of insurance policies.

With these revisions, Mr. Chairman and members of the committee, we urgently ask that you favorably consider Senate Bill 326. Our industry will be extremely grateful to you.

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MARTIN TRUCKING, INC.

NOV 28 1994

RONALD MARTIN, PRES.
DOUG MARTIN, V. PRES.

316-544-4920
FAX 316-544-4990

JIM MARTIN, SEC.
WILL MARTIN, TREAS.

1411 INDUSTRIAL

P.O. Box M

HUGOTON, KS 67951

NOVEMBER 22, 1994

REPRESENTATIVE DAVID J. HEINEMANN
505 N. SIXTH STREET
GARDEN CITY, KS. 67846

DEAR MR. HEINEMANN:

MARTIN TRUCKING INC. IS A MODERATE SIZE TRUCKING FIRM, LOCATED IN THE SOUTHWEST CORNER OF KANSAS AT HUGOTON. OUR OPERATION RELIES HEAVILY ON LEASE OPERATORS, SOME ARE KANSAS RESIDENTS; HOWEVER, MOST ARE NON-RESIDENTS. DUE TO OUR LOCATION MOST OF OUR BUSINESS IS DONE OUTSIDE OF KANSAS.

THE ISSUE MARTIN TRUCKING WANTS TO ADDRESS IS THE EMPLOYER/EMPLOYEE RELATIONSHIP OF LEASE OPERATORS REGARDING WORKERS COMPENSATION INSURANCE REQUIREMENTS IN THE STATE OF KANSAS.

LAST YEAR THE SENATE PASSED SENATE BILL #767. BACKED BY THE KMCA ONLY TO HAVE THE HOUSE REVISE IT BEFORE BEING INTRODUCED AND THEN REPEAL ITS VERSION. IF CHANGES IN THE MANDATED WORKERS COMPENSATION LAW ARE NOT MADE IN 1995, MARTIN TRUCKING AND SEVERAL OTHER TRUCKING FIRMS IN THE AREA AS WELL AS NUMEROUS OTHER SMALL BUSINESSES MAY BE FORCED TO CLOSE THEIR DOORS.

MARTIN TRUCKING IS CONTINUALLY LOSING OWNER-OPERATORS TO NEIGHBORING STATES NOT REQUIRING WORKER COMPENSATION COVERAGE. PREMIUM INCREASES FOR 1995 RENEWAL HAVE INCREASED APPROXIMATELY \$500.00, BRINGING THE PREMIUM TO \$3800.00 ANNUALLY. THIS DOES NOT TAKE INTO ACCOUNT THE INCREASE IN LIABILITY AND CARGO INSURANCE, ADVALORUM TAXES, FUEL TAX, HIGHWAY USE TAX AND TAG PACKAGES. FEW, IF ANY OTHER EMPLOYER OR BUSINESS HAVE TO PAY A \$10,000.00 UP FRONT FEE ANNUALLY FOR THE PRIVILEGE OF DOING BUSINESS. THE INCREASED COST OF WORKER COMPENSATION IN THE STATE OF KANSAS IS CAUSING MANY OWNER-OPERATORS TO RELOCATE IN THE STATES NOT REQUIRING WORKER COMPENSATION.

WITH DEREGULATION IN THE NEAR FUTURE MANY NEW FIRMS WILL SPRING UP, MOST OF WHICH IN ALL PROBABILITY WILL OPERATE WITHOUT WORKER COMPENSATION. IT IS IMPOSSIBLE TO COMPETE IN THE TRANSPORTATION INDUSTRY WHEN THE PLAYING FIELD IS NOT LEVEL.

1-5

ANY INFORMATION OR HELP YOU CAN GIVE ON THIS ISSUE TO
BRING RELIEF TO THE LESSOR AND THE INDEPENDENT CONTRACTOR
WILL BE APPRECIATED. HOPEFULLY YOU WILL MAKE THIS A PRIORITY
ISSUE IN THE UP COMING LEGISLATIVE SESSION. WE WILL BE
LOOKING FORWARD TO HEARING FROM YOU ON THIS MATTER.

SINCERELY YOURS,

Doug Martin

DOUG MARTIN, V-PRESIDENT
MARTIN TRUCKING INC.

DM:kk

CC: GEORGE GOMEZ
600 MERCHANTS BANK TOWER
800 S.W. JACKSON-SIXTH FLOOR
TOPEKA, KS. 66612

K M C A
ATTN: MARY TURKINGTON
P.O. BOX 1673
TOPEKA, KS 66601-1673

ALICIA SALISBERRY
1455 S.W. LAKESIDE DR.
TOPEKA, KS. 66601-1673

BILL GRAVES
300 S.W. 10TH AVE.
2ND FLOOR. ST CAPITAL
TOPEKA, KS 66612

SEN. STEVE MORRIS
600 S. TRINDLE
HUGOTON, KS 67951

MEMORANDUM

To: House Labor and Industry
From: Jeffrey A. Chanay, Entz & Chanay
Date: January 11, 1996
Subject: Senate Bill 326

Mr. Chairman and Members of the Committee:

My name is Jeff Chanay and I am an attorney in private practice with the Topeka law firm of Entz & Chanay. I also serve as General Counsel for the Kansas Motor Carriers Association. Although I am unable to appear today, I wish to offer my written comments in support of Senate Bill 326, as amended by the Senate Committee of the Whole.

Senate Bill 326 is designed to remove licensed motor carriers that utilize the services of solo owner-operators from the subcontracting provision of the Kansas Workers Compensation Act as found in K.S.A. 44-503. Although there are many competitive reasons for this bill, my comments are directed specifically to certain practical aspects of Senate Bill 326.

K.S.A. 44-503 provides that a "principal" who contracts out any part of the principal's trade or business to a "contractor" is liable to pay workers compensation benefits to any employee of the contractor who is injured while performing the contracted work. This, in essence, creates a system of double workers compensation coverage for the employees of a "contractor." Under the provisions of K.S.A. 44-503, an injured employee of a contractor has the choice of bringing a workers compensation claim against either his direct employer (the contractor) or the principal. If the employee chooses to bring the action against the principal, the principal will either be wholly responsible for the loss, or may bring a subrogation action against the direct employer.

Certain fairness problems arising under K.S.A. 44-503 were addressed in 1994 by the legislature in Senate Bill 767, which passed both houses and was signed into law. 1994 Senate Bill 767, as amended, created a new subsection (g) in K.S.A. 44-503 and declared that a "principal" is not liable to an employee of a "contractor" for workers compensation benefits if the contractor has secured workers compensation coverage for its direct employees. If, however, the contractor has not secured the requisite workers compensation coverage, the principal remains liable under K.S.A. 44-503(a).

Unfortunately, 1994 Senate Bill 767, as amended, did not take care of a persistent problem experienced by Kansas licensed motor carriers and independent owner-operators. Under K.S.A. 44-503(a) and (g), licensed motor carriers must either provide direct workers compensation coverage for its independent owner-operators or ensure that the independent owner-operator has its own workers compensation coverage. The

specific problem is that owner-operators are not required to carry workers compensation coverage in Missouri and Oklahoma and other neighboring states. Thus, it is less expensive for owner-operators to operate in our neighboring states than in Kansas. Consequently, Kansas licensed motor carriers are at a competitive disadvantage in securing owner-operators to haul Kansas goods to customers or markets.

Senate Bill 326 applies only to owner-operators who own a single motor vehicle that is driven exclusively by the owner. Senate Bill 326 also applies only to bona fide owner-operators and not to drivers that are statutory or common law employees. It should be made clear that if not for K.S.A. 44-503, these solo owner-operators would not be required to have workers compensation coverage. Senate Bill 326 simply puts Kansas owner-operators and licensed motor carriers on a competitive par with owner-operators and licensed motor carriers in our neighboring states. Certainly, some owner-operators will choose to purchase traditional workers compensation coverage. However, Senate Bill 326 provides an exclusion from the dictates of K.S.A. 44-503 where the owner-operator is covered by an occupational accident policy. Quality occupational accident policies are currently available on the open market and will provide adequate protection for those owner-operators who choose to purchase such a policy.

Senate Bill 326 is narrowly tailored to provide relief to Kansas licensed motor carriers and solo owner-operators. Passage of Senate Bill 326 will allow Kansas motor carriers to compete on a more favorable basis with states such as Missouri and Oklahoma that have laws that clearly provide that licensed motor carriers are not responsible for the workers compensation claims of solo owner-operators.

Thank you for your consideration of this matter, and I respectfully request that the Committee recommend Senate Bill 326 favorably for passage.

TESTIMONY OF THE KANSAS TRIAL LAWYERS ASSOCIATION

Kirk W. Lowry
PALMER & LOWRY
112 West Sixth, Suite 102
Topeka, KS 66603
913-233-1836

**Testimony Regarding Senate Bill 326
January 11, 1996**

I am the Secretary of the Kansas Trial Lawyers Association. I have practiced law for nine years. A substantial portion of my practice includes workers' compensation cases for claimants. I have represented respondents in workers' compensation cases.

The Kansas Trial Lawyers Association does not oppose Section 1 of Senate Bill 326 which is the "truckers bill."

Section 2 of Senate Bill 326 requires functional impairments to be based on the 4th Edition of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association. The Workers' Compensation Advisory Committee, to date, has not taken a position on whether to continue to require that functional impairments be based on AMA Guides, nor has it decided whether to update the statute to require that the 4th Edition be used. There have been substantial changes between the 3rd and 4th Editions. There has been substantial criticism of the use of the AMA Guides. Dr. Alan L. Engelberg, the editor of the 3rd Edition of the AMA Guides has stated that the numerical values in the Guides are not based on any objective standards. There have been no

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Att. 2

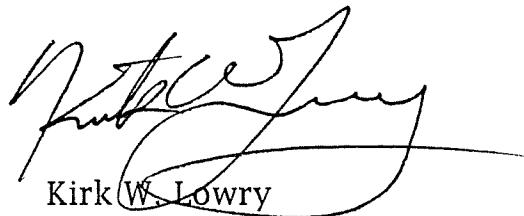
broad tests on what is "normal."

Several jurisdictions have held that mandatory use of the Guides is unconstitutional.

The 4th Edition of the Guides itself says, "It must be emphasized and clearly understood that impairment percentages derived according to Guides' criteria should not be used to make direct financial awards or direct estimates of disability." (AMA Guides 4th Edition 1993, at p. 5)

The Committee should hold off on deciding whether to continue to require the use of the AMA Guides in functional impairment ratings or which edition to use until after the Workers' Compensation Advisory Committee has made a recommendation on the issue.

Respectfully Submitted,



Kirk W. Lowry

Repetitive Motion Injury Claims

The Committee concluded that the question of classifying repetitive motion injuries as an occupational disease is a matter for review by the National Council on Compensation Insurance. The Council should determine whether such a change would benefit claimants.

Unauthorized Medical

The Committee wishes to emphasize that in 1993, the amount of unauthorized medical was increased from \$350 to \$500, which could be used for examination, diagnosis, or treatment, but could not be used to obtain a functional impairment rating. The Committee expressed a belief that any abuses in this area should be handled administratively.

Motor Vehicle Owner-Operators

The Committee realizes that S.B. 326 has passed the Senate and is currently in the House Business, Labor, and Industry Committee. A representative of the Insurance Commissioner testified that, should the provisions of the bill become law, occupational disability insurance will become available. The Committee recommended passage of S.B. 326 so that occupational disability insurance may be available in this state.

American Medical Association (AMA) Guidelines

The Committee discussed replacing the reference to the *AMA Guides*, fourth edition, with reference to "competent medical evidence," as recommended by the WCAC. In addition, the Committee discussed giving the Division of Workers Compensation the authority to adopt rules and regulations on this issue in the event that the recommendation of the WCAC to use "competent medical evidence" is not adopted by statute.

Issues Considered with No Action

Several issues that were before the Committee resulted in no recommendation. These issues include the following: The ombudsman program; 24-hour health care coverage; fraud investigation as contained in S.B. 210; abolition of the WCAC as addressed in S.B. 245; elimination of written claims; the part-time employee requirement that employment must be the same or similar in calculating an average weekly wage; lifetime limits on benefits; choice of physicians; workplace safety; pre-existing conditions; and post-injury wage.

MINORITY REPORT

As an exclusive remedy for injured workers who are hurt on the job, workers compensation benefits should be provided in a relatively quick and speedy manner. A backlog of 12 months at the Board of Appeals level is not only inexcusable, but does not foster the goal of self-sufficiency. It rather lends credence to the adage that "Justice delayed is justice denied." Secondly, such a delay can have a devastating emotional effect not only on the injured worker but the injured worker's family as well. Although I recognize there are some issues within the workers compensation system, such as a definition of work disability, that will not be universally agreed upon, helping to keep an injured worker self-sufficient and off the welfare rolls is a goal that I see as meritorious and worthy of a united effort.

For these reasons, I recommend establishing a reasonable statutory time limit for the Workers Compensation Board of Appeals to hear and dispose of cases.

Respectfully submitted,
Representative Don Smith

Business, Commerce & Labor

1/11/96

Att. 3

1 cipal's control or management, or on, in or about the execution of such
2 work under the principal's control or management.

3 (e) A principal contractor, when sued by a worker of a subcontractor,
4 shall have the right to implead the subcontractor.

5 (f) The principal contractor who pays compensation to a worker of a
6 subcontractor shall have the right to recover over against the subcontractor
7 in the action under the workers compensation act if the subcontractor
8 has been impleaded.

9 (g) Notwithstanding any other provision of this section, in any case
10 where the contractor (1) is an employer who employs employees in an
11 employment to which the act is applicable, or has filed a written statement
12 of election with the director to accept the provisions of the workers com-
13 pensation act pursuant to subsection (b) of K.S.A. 44-505, and amend-
14 ments thereto, to the extent of such election, and (2) has secured the
15 payment of compensation as required by K.S.A. 44-532, and amendments
16 thereto, for all persons for whom the contractor is required to or elects
17 to secure such compensation, as evidenced by a current certificate of
18 workers compensation insurance, by a certification from the director that
19 the contractor is currently qualified as a self-insurer under that statute,
20 or by a certification from the commissioner of insurance that the con-
21 tractor is maintaining a membership in a qualified group-funded workers
22 compensation pool, then, the principal shall not be liable for any com-
23 pensation under this or any other section of the workers compensation
24 act for any person for which the contractor has secured the payment of
25 compensation which the principal would otherwise be liable for under
26 this section and such person shall have no right to file a claim against or
27 otherwise proceed against the principal for compensation under this or
28 any other section of the workers compensation act. In the event that the
29 payment of compensation is not secured or is otherwise unavailable or in
30 effect, then the principal shall be liable for the payment of compensation.
31 No insurance company shall charge a principal a premium for workers
32 compensation insurance for any liability for which the contractor has se-
33 cured the payment of compensation.

34 (h) (1) For purposes of this section, any individual who is an owner-
35 operator and the exclusive driver of a motor vehicle that is leased or
36 contracted to a licensed motor carrier shall not be considered to be a
37 contractor within the meaning of this section or an employee of the li-
38 censed motor carrier within the meaning of subsection (b) of K.S.A. 44-
39 508, and amendments thereto, and the licensed motor carrier shall not be
40 considered to be a principal within the meaning of this section or an
41 employer of the owner-operator within the meaning of subsection (a) of
42 K.S.A. 44-508, and amendments thereto, if the owner-operator is covered
43 by an occupational insurance policy and is not treated under the terms

1. STRIKE ALL OF SECTION 2

2. "ACCIDENT"

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Att. 4
4-1