

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 March 12, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Gary Merritt - excused
Rep. Terry Presta - excused

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

Conferees appearing before the committee: Bob Nugent, Revisor
Phil Harness, Director, Workers Comp
Brian Moline, General Counsel, KS Insurance Dept.
Alan Hill, Lawrence Paper Co.
Tom Caby, Kansas Self Insurers Assn.

Others attending: See attached list

Minutes for 2/20, 2/21, 2/22, and 2/23 were passed out to the committee members. They will be approved at our next meeting.

Hearing on:
SB 649 - Omnibus workers compensation act

Bob Nugent, Revisor, explained **SB 649** (version as amended by the Senate Committee of the Whole, SCOW). He had a prepared handout that listed the bill section by section with a note by each section explaining who had made the change. (see Attachment 1) He concluded his briefing by answering questions from the committee.

Phil Harness, Director, Workers Compensation, went through the bill section by section. The issues that were addressed by the Workers Compensation Advisory Council were noted. In addition, the Workers Compensation Advisory Council recommended the bill be amended so that all administrative law judges appointed after July 1, 1996, be appointed in accordance with the procedure for the selection of the Workers Compensation Board. (see Attachment 2) He ended his appearance before the committee by answering questions.

Brian Moline, General Counsel, Kansas Insurance Department, appeared as a proponent of the bill. The department wanted to add language to the act concerning dismissal of the fund from a case where the liability of the fund has not been established within five years of the date of the employee filing a written notion of claim. (see Attachment 3) He finished his testimony by answering questions.

Alan Hill, Lawrence Paper Company, appeared before the committee to request an amendment to the bill that would allow a frivolous Workers' Compensation claim to be able to be dropped by either a claimant or a judge. (see Attachment 4)

Tom Caby, past president of the Kansas Self Insurers Association, appeared before the committee in general support of the bill. They support the use of "AMA Guides", but are uneasy about the part of the bill that removes the "one-week waiting period." He suggested that new language is needed to clarify that work related-accidents described in statute are compensable regardless of lost work time. (see Attachment 5) He finished by answering questions from the committee.

The hearing on **SB 649** will be continued on March 13 and 14.

The meeting was adjourned by Chairman Lane at 9:55 a.m.

The next meeting is scheduled for March 13, 1996.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE March 12, 1996

NAME	REPRESENTING
SRIMAN MOLINE	Yanson Ins Dept
RICHARD THOMAS	DHR/work comp
David Shufelt	KDHR / work comp
Phil Harbers	KDHR - Workers Comp.
Wendy Clark	Ko-Insurance Dept
Alan Hill	Lawrence Paper Co
Brie Juell	BOEING
JASON PITSEMBERGER	KGL
Joe Furjanic	KCA
Herr, Bob	DOA
J. A. Ladd	KS77A
Ray T. Dumas	DOFA
Linda Fund	DOA
Bernie Koch	Wichita Area Chamber of Commerce
Janice Young	Pittsburg State Univ.
KEVIN ROBERTSON	Ko. Sec. Insurers Assn.
DET STOUN	MID - Jan Unions
Terry Leatherman	KCCI
Rich McKee	KLA

THUMBNAIL OUTLINE OF SB 649 AS AMENDED BY THE SCOW

(3-5-96)

Sec. 1: (SB 694) P. 1, L. 39-43 Legislatively reverses Boucher v. Peerless. (Reversing the requirement that an injured worker must be absent from work for a week before recovering benefits for permanent disability.

Sec. 2: (Sen. Comm.) P. 4, L. 7-11 The change in Sec. 1 is applied retroactively. (New)

Sec. 3: (Advisory Council) P. 6, L. 35-37 This section clarifies the status of emergency services personnel. Emergency services personnel would not be excluded from coverage, under the "coming and going" rule when responding to an emergency. The interim committee had no recommendation on this issue.

Sec. 4: (Advisory Council) P. 13, L. 25-37 This section eliminates the benefit review conference (BRC) entirely. The interim committee recommended only that the BRC be discretionary. Later sections of the bill replace the BRC with a mediation procedure.

Sec. 5: (Senate Comm.) P. 16, L. 40-43 This section abolishes a reference to the third edition of the AMA guides and replaces it with the 4th edition.

Sec. 6: (Interim Committee) P. 18, L. 1-13 This section changes the prerequisites for obtaining an independent medical examination. The IME is made discretionary and can only be ordered if two medical opinions differ as to the percentage of impairment. Reference to the AMA guides conforms.

Sec. 7: (Interim Committee) P. 20, L. 3-11 This section allows overpaid TTD to be credited against the final weeks of an award rather than against the workers compensation fund. (Conforming language appears on P. 24, L. 31-33)

Sec. 8: (Interim Committee) P. 20, L. 22-29 This section reduces the waiting period before lump sum settlements may be reached from 2 years to 9 months.

Sec. 9: (Advisory Council) P. 21, L. 22-43 This section increases the criminal penalty for failure to provide workers compensation coverage from a C misdemeanor to an A misdemeanor and creates an administrative penalty. The interim committee did not study this issue.

Sec. 10: (Advisory Council) P. 23, L. 22-25 Abolishes a cross reference to BRCs.

Sec. 11: (Advisory Council) P. 24, L.41 through P. 25, L. 32 Excludes uncompensated officers and directors of nonprofit corporations from coverage unless they notify the director to the contrary

Sec. 12: (Advisory Council) P. 26, L. 16-20 Authorizes individual members of the Workers Compensation Board to hear appeals from preliminary hearings. (Interim Committee had no recommendation)

Sec. 13: (Interim Committee) P. 28, L. 33 through P. 29, L. 2 Allows an administrative law judge to dismiss an action against the workers compensation fund for lack of prosecution.

Sec. 14: (Advisory Council) P. 29, L. 42 Creates a mediation conference procedure to replace the abolished BRC. The conference is discretionary and may only be ordered if both parties consent to the mediation conference. The ultimate decision maker must be personally present at the meeting.

Sec. 15: (Advisory Council) P. 30, L. 12-31 Additional steps toward creating the mediation procedure. Requires broad distribution of information concerning mediation

Sec. 16: (Advisory Council) P. 31, L. 5 Increases criminal penalty for fraudulent and abusive practices under the act from a C to an A misdemeanor.

Sec. 17: (Advisory Council) P. 31, L. 33-36 All references to BRCs are repealed.

Sec. 18 (Advisory Council) P. 31, L. 37-38 Effective date is Kansas Register

*House Business,
Commerce & Labor
Committee
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Attachment 1*

versible error examined. *State v. Hunt*, 257 K. 388, 399, 894 P.2d 178 (1995).

21-4501a. Application of certain penalties; review and reduction of previous sentences; crimes committed prior to July 1, 1993. (a) The minimum term of imprisonment established by subsection (e) of K.S.A. 21-4501 and amendments thereto shall apply retrospectively to individuals sentenced on or after May 17, 1984, for a class E felony.

(b) If an individual has been sentenced to a minimum term of imprisonment of more than one year for a class E felony and the sentence was imposed on or after May 17, 1984, such minimum sentence is hereby reduced to one year.

(c) If an individual's minimum term of imprisonment is reduced by this section, the individual shall be eligible for parole as provided by K.S.A. 22-3717 and amendments thereto, based upon the individual's reduced minimum term of imprisonment.

(d) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

History: L. 1984, ch. 119, § 10; L. 1988, ch. 115, § 11; L. 1992, ch. 239, § 232; July 1, 1993.

Attorney General's Opinions:

Classification of crimes and penalties; effect of legislation providing for reduction of sentences. 84-57.

CASE ANNOTATIONS

1. Cited; where one convicted of crime has never been legally sentenced, proper sentence may be imposed later. *State v. Osbey*, 238 K. 280, 286, 288, 710 P.2d 676 (1985).

21-4502. Classification of misdemeanors and terms of confinement; possible disposition. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year;

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months;

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month;

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for

which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503 and amendments thereto, instead of or in addition to confinement, as provided in this section.

(3) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(4) Except as provided in subsection (5), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under the uniform controlled substances act (K.S.A. 65-4101 *et seq.* and amendments thereto) or K.S.A. 41-719, 41-727, 41-804[*], 41-2719[*], 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

(5) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (4) are permissive and not mandatory.

History: L. 1969, ch. 180, § 21-4502; L. 1977, ch. 117, § 2; L. 1979, ch. 90, § 4; L. 1989, ch. 95, § 4; July 1.

[*] 41-2719 amended into 41-804 in 1994 and transferred to 8-1599.

Law Review and Bar Journal References:

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

Attorney General's Opinions:

Omnibus appropriation act; sentencing guidelines act; un-constitutional delegation of authority. 93-114.

Driving under the influence; place of incarceration for third or subsequent offense; penalties. 94-43.

CASE ANNOTATIONS

1. Sentence under 21-4501 (e) reversed with directions to resentence hereunder; criminal damage to property. *State v. Smith*, 215 K. 865, 868, 528 P.2d 1195.

2. Resentence for lesser offense where failure to instruct on value in prosecution under 21-3701. *State v. Piland*, 217 K. 689, 693, 538 P.2d 666.

3. Erroneous original sentence vacated; defendant must be present at time of imposing new sentence. *State v. Coy*, 234 K. 414, 420, 672 P.2d 599 (1983).

4. Cited; guidance in construing sentencing statutes (21-4601), criteria to consider in sentencing (21-4606) examined. *State v. McClothlin*, 242 K. 437, 438, 747 P.2d 1335 (1988).

5. Cited; 21-3808 as inapplicable without underlying felony, misdemeanor or civil case as basis for penalty classifications examined. *State v. Hagen*, 242 K. 707, 708, 750 P.2d 403 (1988).

6. Cited; presumption in favor of probation (21-4606a) examined where first convictions are Class E felonies. *State v. Knabe*, 243 K. 538, 539, 757 P.2d 308 (1988).

7. Limitations on conditions of probation and parole (21-4602) determined. *State v. Mosburg*, 13 K.A.2d 257, 261, 768 P.2d 313 (1989).

8. Offenses charged under Kansas securities act (17-1252 et seq.) determined to be felonies. *State v. Kershner*, 15 K.A.2d 17, 22, 801 P.2d 68 (1990).

9. Court lacks authority to require defendant to serve time in county jail as condition of probation. *State v. Walbridge*, 248 K. 65, 67, 805 P.2d 15 (1991).

10. Cited in holding trial court permitted to consider maximum penalties applicable for all convictions when committing to state mental institution (22-3430). *State v. Finley*, 18 K.A.2d 419, 420, 854 P.2d 315 (1993).

11. Cited; whether house arrest constitutes imprisonment under 21-3405b(2) examined. *State v. Scherzer*, 254 K. 926, 933, 869 P.2d 729 (1994).

12. Whether 65-2803 requires proof of criminal intent to show violation examined on question reserved by prosecution. *State v. Mountjoy*, 257 K. 163, 177, 891 P.2d 376 (1995).

21-4503. Fines; crimes committed prior to July 1, 1993. (a) Except as provided in subsection (b), a person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class B or C felony, a sum not exceeding \$15,000.

(2) For a class D or E felony, a sum not exceeding \$10,000.

(b) A person who has been convicted of a felony violation of or any attempt or conspiracy to commit a felony violation of any provision of the uniform controlled substances act may, in addition to or instead of the imprisonment authorized by

law, be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class A felony, a sum not exceeding \$500,000.

(2) For a class B or C felony, a sum not exceeding \$300,000.

(3) For a class D or E felony, a sum not exceeding \$100,000.

(c) A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class A misdemeanor, a sum not exceeding \$2,500.

(2) For a class B misdemeanor, a sum not exceeding \$1,000.

(3) For a class C misdemeanor, a sum not exceeding \$500.

(4) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor.

(d) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(e) A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court not exceeding \$500.

(f) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

History: L. 1969, ch. 180, § 21-4503; L. 1979, ch. 90, § 5; L. 1983, ch. 135, § 3; L. 1984, ch. 39, § 34; L. 1990, ch. 100, § 3; L. 1992, ch. 239, § 233; July 1, 1993.

Cross References to Related Sections:

Criteria for setting fines, see 21-4607.

Law Review and Bar Journal References:

"Constitutional Law—Imprisonment of Convicted Indigent for Nonpayment of Fine," John Terry Moore, 10 W.L.J. 120, 127 (1970).

"Decisions, Decisions, Decisions," Terry L. Bullock, 17 W.L.J. 26, 27 (1977).

"Survey of Kansas Law: Family Law," Camilla Klein Haviland, 27 K.L.R. 241, 250 (1979).

"The Admissibility of Child Victim Hearsay in Kansas: A Defense Perspective," Christopher B. McNeil, 23 W.L.J. 265, 268 (1984).

"Nonsupport of Children: Criminal Prosecution as an Alternative," Michael W. Laster, J.K.T.L.A. Vol. XV, No. 5, 27, 28 (1992).

"Corporate Criminal Liability for Injuries and Death," Patrick Hamilton, 40 K.L.R. 1091, 1104 (1992).

Attorney General's Opinions:
Size, weight, and load limitations. 81-44.

CASE A

1. Mentioned in holding: convicted of a crime.

2. Court cannot, when instead of minimum sentence.

3. Cited; specific finding.

4. Consequences of the fine with suspended license.

5. Noted in holding the minimum mandatory amount with 21-4607. *State v. Sh* (1992).

21-4503a. Fines or after July 1, 1993: convicted of a felony sentence authorized by which shall be fixed:

(1) For any offense ranked in severity level provided in K.S.A. 21-47 a sum not exceeding

(2) For any felony through 5 of the n K.S.A. 21-4704 and a severity levels 2 or 3 of K.S.A. 21-4705 and not exceeding \$300,0

(3) For any felony through 10 of the n K.S.A. 21-4704 and a severity level 4 of the d 21-4705 and amendi ceeding \$100,000.

(b) A person who misdemeanor, in addition onment authorized pay a fine which shall follow:

(1) For a class A ceeding \$2,500.

(2) For a class E ceeding \$1,000.

(3) For a class C ceeding \$500.

(4) For an unsum authorized by crime. If no penalty

REPORT TO HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE

By Philip S. Harness, Workers Compensation Director
and Chairman of the Workers Compensation Advisory Council

March 12, 1996

Senate Bill 649 (As Amended by Senate Committee of the Whole) contains numerous amendments to existing statutes as well as creation of a new section. The proposed legislation will be addressed by section and those issues that have been addressed by the Workers Compensation Advisory Council will be noted.

1) The proposed legislation provides that a work related injury which does not disable the employee for a period of at least one (1) week from earning full wages would entitle the employee to disability as well as medical compensation. The Court of Appeals, in an opinion filed February 2, 1996, ruled that K.S.A. 44-501(c) currently provides that the employer is only liable for medical compensation if the work related injury does not disable the employee for a period of at least one (1) week from earning full wages. Boucher v. Peerless Products, Inc., Docket No. 74,158.

2) The proposed change in Section 1 is made retroactive except for cases already fully adjudicated.

3) An injury occurring while the employee is on the way to assume the duties of employment or after leaving such duties is generally not covered under the Workers Compensation Act. The proposed legislation would insert language in K.S.A. 44-508 (f) that is intended to exempt a provider of emergency services from the foregoing rule so that the provider of emergency services would be covered by the workers compensation act when responding to an emergency.

The Workers Compensation Advisory Council agreed that the statute should be amended to clarify that volunteer firefighters would be covered by the Workers Compensation Act when responding to a fire alarm. The Senate Commerce Committee changed that language to include any provider of emergency services.

4) This section of the proposed legislation strikes from K.S.A. 44-510(c)(1) the language that permitted an employee to apply for a benefit review conference for the purpose of obtaining satisfactory health care services if the employee is unable to obtain satisfactory services from any of the three health care providers submitted by the employer under this subsection. Deletion of this language is required because this bill proposes the elimination of the benefit review conferences.

The Workers Compensation Advisory Council agreed that the benefit review conference process should be replaced by a voluntary mediation procedure and adopted the language proposed in new Section 15 of the bill.

5) The percentage of permanent impairment of function to a scheduled member is currently determined using the Third Edition, revised, of the American Medical Association Guidelines for the Evaluation of Physical Impairment, if the impairment is contained therein. This section of the proposed legislation would change the criterion to the Fourth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

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The Workers Compensation Advisory Council agreed that references to the AMA guides should be discarded in favor of the "competent medical evidence" test for the basis to determine the percentage of functional impairment. The Senate Commerce Committee rejected the council recommendation and changed the criterion to the Fourth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

6) Functional impairment is currently established by competent medical evidence and based on the Third Edition, revised, of the American Medical Association Guidelines for the Evaluation of Physical Impairment, if the impairment is contained therein. This section of the proposed legislation would change the reference to the Fourth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

The Senate Commerce Committee rejected the council recommendation and changed the criterion to the Fourth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

This section would also add language to provide that if the employee and employer are unable to agree upon the employee's functional impairment and at least two (2) medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, the administrative law judge may refer the employee to an independent health care provider for an opinion regarding the employee's functional impairment. The statute now provides that if the employer and employee are unable to agree upon the functional impairment, the administrative law judge shall refer the employee to an independent health care provider for an opinion regarding the employee's functional impairment.

The Workers Compensation Advisory Council did not reach consensus on the second part of this section of the proposed legislation.

7) This section of the proposed legislation provides that if a claimant receives temporary total disability benefits either voluntarily or as the result of a preliminary order and, upon full hearing, the compensation the claimant is entitled to is found to be less or totally disallowed, but the claimant is entitled to additional benefits, the administrative law judge shall provide for the application of a credit against the additional benefits. The statute currently provides that, under the foregoing circumstances, the overpayment is recovered from the Workers Compensation Fund.

The Workers Compensation Advisory Council did not reach consensus on this section of the proposed legislation.

8) This section of the proposed legislation changes the current two-year prohibition against lump sum settlements to 9 months.

The Workers Compensation Advisory Council recommended that the current two (2) year prohibition against lump sum settlements should be amended in favor of a 9-month limitation if the employee returns to work for the same employer.

9) This section of the proposed legislation would make the knowing and intentional failure to secure workers compensation insurance a Class A misdemeanor and the employer could be subject to a penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater.

The Workers Compensation Advisory Council recommended this section be adopted.

10) This section of the proposed legislation deletes references to benefit review conferences.

As previously noted, the Workers Compensation Advisory Council recommends replacement of the current benefit review procedure by a voluntary mediation procedure.

11) This section inserts definitions of "nonprofit organization," "compensation" and "volunteer officer, director or trustee" in K.S.A. 44-543. This section further provides that any noncompensated volunteer officer, director or trustee of a nonprofit corporation may elect to be covered by the provisions of the Workers Compensation Act by filing such election with the Director, the employer and the employer's insurance company or qualified group-funded workers compensation pool.

The Workers Compensation Advisory Council recommends this section of the proposed legislation.

12) This section of the proposed legislation provides that an appeal from a preliminary award may be heard and decided by a single member of the Workers Compensation Board. The members of the board would be assigned such preliminary appeals on a rotating basis and the individual member who decides the appeal shall sign each such decision.

The Workers Compensation Advisory Council recommended this statutory change in order to assist the Workers Compensation Board with elimination of the backlog of undecided cases.

13) This section of the proposed legislation would add language to provide that in any case in which the Workers Compensation Fund has been impleaded if the liability of the fund has not been established within five (5) years of the date written claim is filed, a motion may be filed to dismiss the Fund, and after notice, the administrative law judge shall dismiss the Fund absent a showing the case should be left open due to medical necessity or other just cause.

14) This section of the proposed legislation would delete a reference to benefit review conferences and insert mediation so that an ombudsman may assist claimants in mediation conferences.

The Workers Compensation Advisory Council recommended this proposed change.

15) This section of the proposed bill adds a new procedure to the Workers Compensation Act. Upon the agreement of the parties to a workers compensation claim, the Director shall schedule the parties for a mediation conference. The new section provides that the mediation conferences shall be conducted by mediators appointed by the Director. The mediators must be qualified pursuant to the dispute resolution act and rules of the Kansas Supreme Court. The Director shall widely disseminate information about the mediation conference procedure.

The Workers Compensation Advisory Council recommended this proposed change.

16) This section of the proposed legislation changes from a Class C to a Class A nonperson misdemeanor the violation of the provisions of K.S.A. 1995 Supp. 44-5,125.

The Workers Compensation Advisory Council recommended this proposed change.

17) This section of the proposed legislation repeals the statutes creating benefit review conferences and providing for the appointment of benefit review officers.

As previously noted, the Workers Compensation Advisory Council recommended that the benefit review procedure be replaced by a voluntary mediation procedure.

18) This section of the proposed legislation provides that the proposed legislation would take effect and be in force from and after its publication in the Kansas Register.

In addition to the recommendations contained in Senate Bill 469, the Workers Compensation Advisory Council also recommended that all administrative law judges appointed after July 1, 1996, be appointed in accordance with the procedure prescribed for the selection of the Workers Compensation Board. A copy of the proposed statutory language is attached as Exhibit A.

K.S.A. 75-5708 is amended as follows:

. . . .

(b) The director of workers compensation may appoint two assistant directors of workers compensation and also may appoint not to exceed 10 administrative law judges. Such assistant directors and administrative law judges shall be in the classified service. The assistant directors shall act for and exercise the powers of the director of workers compensation to the extent authority to do so is delegated by the director. The assistant directors and administrative law judges shall be attorneys admitted to practice law in the state of Kansas, and shall have such powers, duties, functions as are assigned to them by the director or are prescribed by law. The assistant directors and administrative law judges shall devote full time to the duties of their offices and shall not engage in the private practice of law during their terms of office.

Assistant directors and administrative law judges shall be selected by the director of workers compensation with the approval of the secretary of human resources, except that any administrative law judge appointed after July 1, 1996, shall be appointed in accordance with procedure prescribed for the selection of the workers compensation board and shall be appointed for a four year term. Any administrative law judge so appointed shall agree, prior to appointment to adhere to the specifications for the position designated by the director. Failure to adhere to said specifications may serve as grounds for suspension without pay or termination, pursuant to the provisions of K.S.A. 75-2949.

All administrative law judges appointed prior to July 1, 1996, shall continue in their present classified positions. When said seated administrative law judges vacate their current positions, such position shall be filled under K.S.A. 75-5708 as amended.

EXHIBIT A

*Brian Moline
KS Insurance rpt.*

House Business, Commerce and Labor Committee

Senate Bill 649

March 11-15, 1996

Kathleen G. Sebelius

Commissioner of Insurance

The Kansas Insurance Department Kansas Worker's Compensation Fund

The Kansas Insurance Department would like to testify in favor of Senate Bill 649 which proposes to add the following language to the Kansas Worker's Compensation Act:

In any case in which the workers compensation fund has been impleaded, if the liability of the fund has not been established within five years of the date of the employee filing a written notice of claim, the commissioner of insurance may cause to be filed with an administrative law judge a motion to dismiss the fund from the case. The administrative law judge shall notify counsel of record not less than 10 days prior to issuing any order dismissing the fund from a case. The administrative law judge shall dismiss the fund from any such case absent a showing by one of the parties that the case should be left open due to medical necessity or other just cause.

This language would allow the Kansas Worker's Compensation Fund to be dismissed from a case that has been docketed but has had little or no activity for the preceding five years. This particular language is important to the Kansas Workers Compensation Fund because of the sunset legislation enacted in July of 1993. In July, 1993, the legislature determined that the Kansas Workers Compensation Fund would have no liability for second injury type cases after July 1, 1994. This has required the Commissioner of Insurance, Kathleen G. Sebelius, to consider the importance of eliminating and evaluating the continued liability of the Fund. This would allow the Fund to clean up and eliminate old cases that were never litigated in preparing for the eventual close down of this area of the Fund. This would in no way effect cases that are currently being litigated.

*House Business, Commerce
& Labor Committee
3/12/96
Attachment 3*

Kathleen G. Sebelius
Commissioner of Insurance

THE KANSAS WORKERS COMPENSATION FUND
K.S.A. 44-566(a)

Year End Report
1995

THE KANSAS WORKERS COMPENSATION FUND

K.S.A. 44-566(a)

Year End Report
1995

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- EXHIBIT 3 -- Actuarial Report Addendum

THE KANSAS WORKERS' COMPENSATION FUND
K.S.A. 44-566(a)

I. The First Year

Kathleen G. Sebelius, the 23rd Insurance Commissioner of Kansas, took office January 9, 1995. In her role as the Administrator of the Kansas Workers' Compensation Fund, the Commissioner inherited a bureaucracy that had seen little change since it was transferred to the Department of Insurance in the 1970s. The Kansas Workers' Compensation Fund, which administered approximately \$48 million in 1995, had a working staff of one attorney, one paralegal, one secretary, one half-time secretary, three accountants, and one half-time law clerk.

In January 1995, at the time of transfer, the Fund was up to six months behind in payments to claimants and respondents. Much of this was caused by the lack of available personnel. The Fund attorney assigned to oversee the everyday activities of the Fund was on leave without pay from mid-September through mid-November, 1994, prior to her resignation in December 1994. Both the paralegal and the secretary terminated their positions in January, further adding to the difficult transition.

Immediately upon taking office, the Commissioner implemented several stop-gap measures. Brian Moline, the new General Counsel, took on the responsibility of oversight of the Fund while interviewing attorneys and handling his other numerous duties. Two temporary accountants were hired to catch up on the six month backlog of payments due the claimants and respondents. The Fund was brought current on payments in April of 1995.

Mr. Moline also requested status reports on all open cases, and asked the approximately 100 Fund attorneys to verify our computer records on cases referred to them. The review of all

open files (approximately 9,300) continued until December of 1995. The information was updated in the master computer files and a current status was obtained on each file. Changes were made in over ten percent of the files. Attorney fee audits were conducted on all attorneys, and those which showed inconsistencies were and are being audited internally. To date, five internal audits have been completed. Those audits which showed additional problems were and are being referred to an independent legal audit firm pursuant to a bid Request For Proposal process. Approximately five attorneys have been fired for excessive billing practices or ethical considerations. In addition, an external review of Fund procedures is being conducted pursuant to a second Request For Proposal bid process.

II. General Information

A. *Nature & Purpose*

The purpose of the workers' compensation fund is to encourage the employment of persons handicapped as a result of specific impairments by relieving employers, wholly or partially, of workers' compensation liability resulting from compensable accidents suffered by these employees. K.S.A. 44-567(a). *Morgan v. Inter-Collegiate Press*, 4 Kan.App.2d 319, 606 P.2d 479 (1980).

Responsibility for payments from and administration of the fund lies with the commissioner of insurance. K.S.A. 44-566a(b).

B. *Coverage*

There are three basic areas of coverage for employers and employees under the Kansas Workers' Compensation Fund. The first is second injury coverage, the second is insolvent/uninsured employers, and the third is reimbursement to employers on an overpayment of benefits.

1. Second Injury

In order for an employer to be relieved of liability by the Kansas Workers' Compensation Fund, either in whole or in part, the employer must establish that it hired or retained a handicapped employee after acquiring knowledge of the preexisting handicap or that the employee intentionally misrepresented the existence of the handicap.

Handicap is broadly construed by the statutes and case law. Second injury cases are broken down into "but for" and contribution cases.

a) "But For" Cases

K.S.A. 44-567(a)(1) provides:

Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers compensation fund; and

Assuming the employer has the requisite knowledge of the employee's handicap, recovery from the workers' compensation fund is 100% pursuant to this section. This test is whether the injury or resulting disability, not the accident, probably or most likely would not have occurred "but for" the preexisting impairment. *Barke v. Archer Daniels Midland Co.*, 223 Kan. 313, 573 P.2d 1025 (1978). Medical evidence is not required to establish a "but for" case against the fund.

b) Contribution Cases

K.S.A. 44-567(a)(2) provides:

subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner

which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

If the handicapped employee's impairment contributes casually to the injury or disability, the workers' compensation fund may be liable for a portion of the compensation and benefits awarded to the claimant. The apportionment of the award is based on the amount of disability attributable solely to the second injury and the extent that the preexisting impairment contributed to the second injury.

2. Insolvent/Uninsured Employers

K.S.A. 44-532a states:

(a) If an employer has no insurance to secure the payment of compensation as provided in subsection (b)(1) of K.S.A. 44-532 and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workmen's compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits including medical compensation, to which such injured worker is entitled, to be paid from the workers' compensation fund. If the director is satisfied as to the existence of the conditions prescribed by this section, the director may make an award, or modify an existing award, and prescribe the payments to be made from the workers' compensation fund as provided in K.S.A. 44-569 and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payments to be made to the employee in accordance therewith.

The workers' compensation fund may be required to pay benefits to injured workers where the employer has no insurance and is financially unable to pay compensation to the injured worker or in situations where the employer cannot be located to pay such compensation. The Fund currently has approximately 327 open insolvent employer cases. There have been 440 cases in this area since 1990.

3. Reimbursement

Reimbursement pursuant to K.S.A. 44-556(d), K.S.A. 44-534a(b), and K.S.A. 44-569(c) all encompass paying a respondent for monies expended during

a workers' compensation case that should not have been paid for a variety of reasons.

These amounts are certified to the Director of Workers' Compensation and then paid by the Fund with no litigation or involvement by the Workers' Compensation Fund before being ordered to pay.

C. Future Liability

Pursuant to legislation enacted July 1, 1993, the Kansas Workers' Compensation Fund has no liability for any dates of accident after July 1, 1994, in the second injury category of coverage, but this area is currently under litigation. Please refer to page six under Legislative Issues, Post-July 1, 1994 cases. The Fund remains liable for uninsured/insolvent employers and reimbursement cases. Please refer to page three.

III. Financial

A. Financial Overview

The workers' compensation fund was created and exists pursuant to K.S.A. 44-566a and receives its monies from essentially two sources: (1) assessments against insurance carriers and self-insurers, K.S.A. 44-566a(b); and (2) payments by employers where an employee is killed in an otherwise compensable accident, but in which there are no eligible dependents, K.S.A. 44-570 (non-dependent death).

Receipt Analysis

FY1996 thru 11/30/95	
Assessment Receipts	\$21,541,357.55
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	55,500.00
Misc. Reimbursements	<u>66,053.53</u>
TOTAL RECEIPTS	\$21,662,911.08
Previous Year Carryover	31,469,560.82
Canceled Checks	<u>239,422.15</u>
TOTAL FUNDS AVAILABLE	\$53,371,894.05
FY1995	
Assessment Receipts	\$42,352,785.43
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	0.00
Misc. Reimbursements	<u>154,600.63</u>
TOTAL RECEIPTS	\$42,507,386.06
Previous Year Carryover	37,515,761.63
Canceled Checks	<u>193,152.69</u>
TOTAL FUNDS AVAILABLE	\$80,216,300.38

Disbursement of Expenditures

FY1996 thru 11/30/95	
Administrative Costs	9.22%
Compensation Costs	64.71%
Vocational Rehabilitation	1.01%
Medical Costs	24.43%
Other Operating Expenses	<u>0.63%</u>
	100.00%
Outside Counsel	\$1,411,131.02
FY1995	
Administrative Costs	9.62%
Compensation Costs	62.93%
Vocational Rehabilitation	1.12%
Medical Costs	25.79%
Other Operating Expenses	<u>0.54%</u>
	100.00%
Outside Counsel	\$4,241,869.88

FY1994

Assessment Receipts	\$63,951,643.95
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	92,500.00
Misc. Reimbursements	<u>207,845.97</u>
TOTAL RECEIPTS	\$64,251,989.92
Previous Year Carryover	16,716,488.98
Canceled Checks	<u>0.00</u>
TOTAL FUNDS AVAILABLE	\$80,968,478.90

FY1993

Assessment Receipts	\$47,987,400.35
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	64,750.00
Misc. Reimbursements	<u>139,334.49</u>
TOTAL RECEIPTS	\$48,191,484.84
Previous Year Carryover	1,587,744.72
Canceled Checks	<u>42,541.31</u>
TOTAL FUNDS AVAILABLE	\$49,821,770.87

FY1992

Assessment Receipts	\$35,961,471.11
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	166,500.00
Misc. Reimbursements	<u>162,906.20</u>
TOTAL RECEIPTS	\$36,290,877.31
Previous Year Carryover	14,390.64
Canceled Checks	<u>20,392.62</u>
TOTAL FUNDS AVAILABLE	\$36,325,660.57

FY1991

Assessment Receipts	\$17,030,545.83
Gen. Fund Entitlement	3,930,000.00
Non-Dependent Death Receipts	129,500.00
Misc. Reimbursements	<u>94,490.41</u>
TOTAL RECEIPTS	\$21,184,536.24
Previous Year Carryover	3,758,996.78
Canceled Checks	<u>22,563.44</u>
TOTAL FUNDS AVAILABLE	\$24,966,096.46

FY1990

Assessment Receipts	\$17,137,820.37
Gen. Fund Entitlement	4,000,000.00
Non-Dependent Death Receipts	55,500.00
Misc. Reimbursements	<u>177,766.44</u>
TOTAL RECEIPTS	\$21,371,086.81
Previous Year Carryover	3,767,063.29
Canceled Checks	<u>2,485.56</u>
TOTAL FUNDS AVAILABLE	\$25,140,635.66

FY1994

Administrative Costs	11.01%
Compensation Costs	63.58%
Vocational Rehabilitation	1.28%
Medical Costs	23.51%
Other Operating Expenses	<u>0.62%</u>
	100.00%

Outside Counsel \$4,343,495.23

FY1993

Administrative Costs	12.36%
Compensation Costs and Vocational Rehabilitation	65.26%
Medical Costs	21.62%
Other Operating Expenses	0.76%
Refunds	<u>0.00%</u>
	100.00%

Outside Counsel \$3,837,959.67

FY1992

Administrative Costs	10.96%
Compensation Costs	68.36%
Medical Costs	19.98%
Other Operating Expenses	0.70%
Refunds	<u>0.00%</u>
	100.00%

Outside Counsel \$3,579,980.88

FY1991

Administrative Costs	11.45%
Compensation Costs	69.49%
Medical Costs	18.10%
Other Operating Expenses	0.96%
Refunds	<u>0.00%</u>
	100.00%

Outside Counsel \$2,645,923.33

FY1990

Administrative Costs	12.15%
Compensation Costs	66.93%
Medical Costs	19.91%
Other Operating Expenses	0.97%
Refunds	<u>0.04%</u>
	100.00%

Outside Counsel \$2,402,730.45

Included in Administrative Costs are attorneys fees, deposition costs, court costs, investigation fees, medical reports, funeral costs and Insurance Department administrative costs, including salaries.

IV. Tail Liability/Actuarial Report

A. *Estimate of Kansas Workers' Compensation Fund's Liability*

Because of the nature of workers' compensation cases, it is impossible to be certain as to the specific dollar amount of tail liability. For litigated cases that have left future medical open, liability on behalf of the Fund would continue until the claimant's death. In addition, liability for insolvent/uninsured employers remains active even after July 1, 1994. The reimbursement statutes also remain in effect.

Finally, we have had a significant number of impleadings (over 300) that are post-July 1, 1994. The issue of Fund liability after that date has not been settled and will continue to drain resources from the Fund until such time as it is decided. We are currently awaiting a decision from the Board of Appeals filed August 23, 1995 and argued on October 11, 1995.

B. *Actuarial Report of 6/30/94*

Commissioner Ron Todd requested that Casualty Actuaries, Inc., complete an estimate of the Kansas Workers' Compensation Fund unfunded liability last summer. The report was received in December of 1994.

The president of the actuarial company summarized the findings of the report in a 5/18/95 letter which is attached as exhibit 1. His findings were that over the remaining life of the Fund, the best estimate of liability was:

1. Implead Claims	\$174,808,000
2. Offset for Date Purge	50,787,000
3. Potential Claims	<u>64,304,000</u>
Total Unpaid Liability	\$289,899,000

This figure is a "best estimate" and is on the low end of a medium liability range from \$264,842,000 to \$313,258,000. Our liability for this upcoming year will be over \$40 million. Anticipated payout would be through the year 2014.

There were two problems with the information provided by the Insurance Department used by Casualty Actuaries, Inc., to come to these conclusions. The first was that there were

several purges of the computer information on Workers' Compensation without a hard copy being kept anywhere. This made it impossible to determine what the liability had been during those years, thus creating a gap in the information used to determine future liability. The second problem was that the company was provided incorrect information from the Insurance Department's database when the computer started adding columns instead of printing separately. This was discovered and was compensated for early in the process.

V. Legislative Issues

A. *Status of Post-July 1, 1994 Cases*

As of 1/1/96, the Kansas Workers' Compensation Fund has had over 300 post-July 1, 1994 impleadings. This is a rough estimate based on the impleadings which have included a date of accident. The general argument from those respondents still impleading the Fund centers on the language of K.S.A. 44-567.

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 which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability, or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability, or death shall be paid from the workers compensation fund; and

(2) subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

Respondents still impleading the Fund argue that because the date July 1, 1994 was left out of K.S.A. 44-567a(2), contribution cases are still open in terms of Fund liability.

The Workers' Compensation Fund's position has always been that the clear intent of the legislature was to limit Fund liability to accidents occurring prior to July 1, 1994.

The Fund's argument has been and will be, for accidents after July 1, 1994, the Fund is liable only in cases involving insolvent or absent employers, cases where the respondent has paid contribution in excess of that to which the claimant is entitled, or cases where the respondent is forced to pay compensation owed by the Fund during a period when the Fund is temporarily insolvent. The post-July 1, 1994 issue is currently being litigated. Arguments before the Board of Appeals were scheduled for September 21, 1995. After that decision is rendered, the case will be appealed to the Court of Appeals and then to the Supreme Court. This case could potentially take anywhere from a year on a fast track to two years on a more reasonable time schedule. The Insurance Department is currently litigating over 200 cases on this issue.

Legislative clarification on this issue would be helpful.

B. Fund Dismissal

There is currently no statutory authority to dismiss the Kansas Workers' Compensation Fund from a case in which they have been impled without the approval of the parties involved. There are four recognized ways to settle Fund liability in a case. The first is an award pursuant to K.S.A. 44-569. Second is a joint petition and stipulation pursuant to K.A.R. 51-3-16. Third is a settlement hearing. Finally is a blanket dismissal by the parties. The Fund would suggest implementing a time limit for prosecuting a case against the Fund. If no action has been taken against the Fund by the other parties within a given time period, the Administrative Law Judge would have the authority to dismiss the Fund with prejudice upon motion by the Fund. This would significantly improve the Fund's ability to close out some of the over 9,300 open cases.

VI. Conclusion

The Commissioner of Insurance is committed to improving the administration of the Kansas Workers' Compensation Fund as the policies implemented during the past year have demonstrated.

May 18, 1995

Honorable Kathleen Sebelius
 Commissioner of Insurance
 420 SW 9th Street
 Topeka, KS 66612-1678

Re: Workers Compensation Fund Actuarial Report - Summary

Dear Commissioner,

Paula Greathouse requested that I prepare and send to you a summary of the major points covered in the Casualty Actuaries, Inc. report of the unpaid liabilities of the Kansas Worker Compensation Fund, herein referred to as "the Fund."

For actuarial analysis purposes, it is convenient to consider the liabilities of the Fund in three segments, defined by the data available from state files. Together the three segments cover all of the Fund liabilities. The analysis indicates the following unpaid amounts:

Indicated Fund Unpaid Liability (in thousands of dollars)
 as of June 30, 1994

Implead claims	\$-174,808
Offset of data purges	— 50,787
Accidents for which the Fund has not yet been implead	64,304
Total Fund unpaid liability	\$ 289,899

CAI also recommends that:

- a) the Fund improve upon the data captured on computer files so that date of accident is added, in addition to implead date and dates of transactions, and
- b) the Fund establish procedures so that data purges do not lose valuable historical data. The procedures should specify that purges take place only on the Fund's fiscal anniversary, and that archive copies of the file be made both before and after the purge, and that no other transactions take place between the before and after archive copies are made.

Reserves are intended to cover the cost of future payments for claims that have already occurred, whether the Fund has yet been implead or not. As in all predictions of the future, the estimate of future payments comes with a range of estimate. We have calculated the most likely range of total unpaid liability as falling between \$264,842,000 and \$313,258,000. All figures in the report are given prior to discount to present value. That is, the estimates do not anticipate income from investment of Fund assets.

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The first reserve figure is the estimate of the unpaid portion of "implead claims" currently on record in the Fund's computers. These estimates carry the least amount of uncertainty of any of the three reserve categories. The second reserve figure, "offset of data purges," is CAI's estimate of the amount by which our estimate of implead claims are understated because of the purges from the Fund's computer files. Because of the actuarial assumptions required to bridge the missing data, the estimate for this incremental portion has less statistical reliability than the reserve for cases remaining on the Fund's computers. The third figure is the estimate of the Fund's liability for accidents that have occurred prior to July 1, 1994 and for which the Fund has not yet been implead. This portion of the reserve is based on a 600 claim sample of past Fund cases.

The uncertainties underlying the estimates arise from, but are not limited to:

- ① fortuitous nature of the circumstances leading to impleading the Fund;
- ② statistical uncertainty in extrapolating past trends and emergence patterns;
- ③ incomplete information on Fund data files, such as accident dates; and
- ④ purges of closed claims from Fund data files.

CAI found the data summaries to be consistent between valuation dates within two constraints:

1. the Fund reported that the data files were purged of some closed claims on two occasions. At both occasions, the Fund did not make a backup copy of the file prior to and immediately after the purge, thus making the amount and summaries of purged data impossible to obtain; and
2. the summary report as of June 30, 1994 contained large amounts of expenses paid, which remain unexplained, and which differ from the comparable summaries contained in the detailed claim report. This problem was overcome by using alternative data sources, and has no effect on the conclusions.

In addition, CAI found that date of accident was not recorded on Fund data files. With this data item missing, liabilities can only be determined for those claims for which the Fund has been implead. The liabilities accruing during the period between accident and implead date was derived from the patterns observed from a sample of 500 open and 100 closed claims.

The estimated ultimate costs and corresponding indicated reserves are summarized on Exhibit 1 for the different types of Fund payments: payments to claimants, expenses, and the offsetting reimbursements recovered from claimants or insurance companies.

Sincerely,



Robert F. Lowe

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KANSAS WORKERS COMPENSATION FUND
SUMMARY OF INDICATED RESERVES
 Valued as of June 30, 1994

Exhibit 1
 Page 1

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	(1) Paid thru June 1994 (Exh 2, cols 2,3,4)	(2) <u>Estimated Ultimate Cost</u> Fund Pattern (Exh 2, cols 7, 8)	(3) <u>Smoothed</u> (Exh 2, cols 15, 16)	(4) <u>Indicated Reserves</u> Fund Pattern (Exh 2, cols 10, 11)	(5) <u>Smoothed</u> (Exh 2, cols 18, 19)
Compensation	105,517,360	223,441,992	228,344,183	117,924,632	122,826,823
Medical	34,162,831	75,369,965	77,274,203	41,207,134	43,111,372
Other Compensation	21,654	21,654	21,654	0	0
Vocational Rehabilitation Expenses	1,640,154	3,469,322	3,540,679	1,829,168	1,900,525
	19,736,368	28,472,837	28,513,058	8,736,469	8,776,690
Subtotal Gross Reserves	161,078,367	330,775,770	337,693,777	169,697,403	176,615,410
Reimbursements	(1,653,606)	(3,390,099)	(3,460,649)	(1,736,493)	(1,807,043)
A. Net reserves	159,424,761	327,385,671	334,233,128	167,960,910	174,808,367
B. Reserves mis-estimated due to data purges					50,786,849
C. Reserves for accident-implead gap					64,303,733
D. Expected unpaid reserves (A) plus (B) plus (C)					289,898,949
<u>Probable Range</u>				Lower <u>Bound</u>	Upper <u>Bound</u>
A. Net reserves from above				166,680,290	174,808,367
D. Reserves mis-estimated due to data purges				33,857,900	67,715,799
E. Reserves for accident-implead gap ((B) plus 10%)				64,303,733	70,734,106
F. Expected Upper Range (Sum of (A), (D), and (E))				264,841,923	313,258,272

KANSAS WORKERS COMPENSATION FUND
 Recap of Reserves by Case Type and Payment Type
 June 30, 1994

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Payment Type	Case Type (Section of Kansas Statute)							Total All Case Types
	Insolvent Insurance Companies	Non Dependent Death	Insolvent Employer	Regular Second Injury (Monthly)	Reimbmt to Insurance Company	Regular Second Injury Claims	Insolvent Employer (Monthly)	
	A	D	I	M	R	S	Y	
Comp Paid	1,211,875	127,356	1,597,732	25,555,530	2,160,010	168,487,706	4,553,512	203,693,722
Other Comp	0	0	0	0	0	0	0	0
Medical Paid	154,651	35,159	624,788	9,561,523	696,290	56,492,718	3,929,970	71,495,099
Voc'l Rehab	53,087	11,230	2,241	569,092	53,257	2,343,308	119,581	3,151,795
Expense	7,215	20,995	327,492	956,747	3,459	12,889,149	350,043	14,555,100
Subtotal	1,426,828	194,739	2,552,253	36,642,891	2,913,016	240,212,882	8,953,106	292,895,716
Reimbursmt	0	(1,825,025)	(171,380)	(18,840)	(52,249)	(489,815)	(339,457)	(2,996,767)
All Payment Types	1,426,828	(1,630,285)	2,380,873	36,524,051	2,860,767	239,723,067	8,613,648	289,898,949

CASE REPORT

Claimant

Docket No. _____

Respondent

Claimant's Attorney: _____

Respondent's Attorney: _____

Y N

Settlement between claimant and respondent? (If yes, attach Form 12.)

Y N

Award? (If yes, attach copy of award.)

TTD paid: \$ _____
Medical paid: \$ _____
PPD paid: \$ _____
Other paid: \$ _____
TOTAL PAID \$ _____

If not settled, status of settlement discussions:

Synopsis/Status of Case:

Can file be closed: Y N

Estimated time to conclude case: _____

Estimated attorney fees to close case: _____

Estimate of Fund's Liability (if not already established): _____



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

February 7, 1995

Wichita, Kansas 67206

Dear

I am writing to all the attorneys appointed to represent the Worker's Compensation Fund through the Insurance Commissioner's Office to request information regarding the cases which have been referred. Enclosed is a form which you can use to provide information on the status of each open case you have. I would appreciate receiving these reports by the end of February. You may use your own form or format for these reports so long as they provide the information in a clear manner. Also enclosed is a print out of the cases which our records indicate are assigned to your office.

Our office is committed to bringing to bear the best management oversight possible to maximize the dollars spent by the fund. In addition to the case information, I am also interested in any comments or suggestions you might have about procedures or lines of communication which could help in the management of fund cases.

With over 100 attorneys or firms handling the over 9000 open fund cases, we have found there to be a considerable variation in how attorneys handle their cases. As we analyze the status of fund cases and determine appropriate procedures and standards for more consistent management of the fund cases we will be in further contact with you.

I appreciate your assistance with this request.

Sincerely,

A handwritten signature in black ink that reads "Brian Moline".

Brian Moline
Chief Counsel

420 SW 9th Street
Topeka, Kansas 66612-1678
913 296-3071
Fax 913 296-2283

Consumer Assistance
Toll Free
1 800 432-2484

KANSAS STATE FUND.

Cash Flow Analysis

Casualty Actuaries, Inc. was requested to estimate the cash payments during future fiscal years for the reserves recommended in our report dated December 13, 1994 to the Insurance Commissioner of the Kansas State Fund. The following schedule is based on the claims development patterns contained in the report. The estimates are made as if looking from June 30, 1994, and ignore the fact that as of this writing the entire fiscal year ending June 30, 1995, and part of the next fiscal year have passed.

Estimated Future Cash Payments on Claims Not Closed as of June 30, 1994

Paid During Fiscal Year Ending June 30:	"Formula" Cash Flow	Anticipated Reimburse- ments	Estimated to Replace Data Purges	Not Yet Implead Claims	Total Cash Flow
1995	35,833,843	(346,652)	10,304,242	0	45,791,433
1996	23,847,853	(252,585)	6,857,597	11,663,758	42,116,624
1997	16,501,193	(165,372)	4,745,020	9,145,322	30,226,163
1998	13,310,392	(141,997)	3,827,485	6,291,436	23,287,316
1999	10,914,993	(113,821)	3,138,673	4,969,312	18,909,157
2000	10,100,213	(113,320)	2,904,378	4,066,476	16,957,747
2001	8,969,150	(96,454)	2,579,134	3,708,822	15,160,652
2002	8,786,179	(92,170)	2,526,520	3,309,221	14,529,749
2003	8,426,472	(84,647)	2,423,084	3,206,013	13,970,922
2004	7,924,353	(81,826)	2,278,696	3,081,868	13,203,091
2005	7,260,037	(74,036)	2,087,668	2,904,548	12,178,217
2006	6,738,295	(68,896)	1,937,638	2,668,938	11,275,974
2007	6,188,955	(56,099)	1,779,672	2,473,475	10,386,003
2008	5,067,349	(47,677)	1,457,147	2,274,531	8,751,351
2009	3,716,318	(35,329)	1,068,650	1,888,253	6,637,892
2010	2,173,845	(26,639)	625,102	1,405,211	4,177,520
2011	573,518	(5,568)	164,919	851,002	1,583,872
2012	282,454	(3,955)	81,221	270,574	630,294
2013	-	-	-	114,072	114,072
2014	-	-	-	10,901	10,901
Totals	176,615,410	(1,807,043)	50,786,849	64,303,733	289,898,949

The term "claims not closed" refers to a) those claims in the files of the Kansas State Fund on which future claims are expected, and b) those accidents for which the Fund will be implead in the future, and are therefore not yet in the files of the Fund.

The term "formula cash flow" refers to unpaid amounts calculated from data in the files of the Fund as of June 30, 1994 which, as explained in the December 1994 report, is understated due to data purged from Fund files. The understatement is estimated and added to the total cash flow in the column titled "estimated to replace data purges."

The above numbers are presented without discounting for potential investment income. Any estimate of the effect of investments of funds must assume that the entire amount of the present value of the above anticipated payments is placed in high quality, reliable investments.

Currently there is no way for a Claimant or a Judge to drop a frivolous Workers' Compensation claim.

This amendment would allow a frivolous Workers' Compensation claim to be able to be dropped by either a claimant or a judge.

Alan Hill

*House Business, Commerce
& Labor Committee*

3/12/96

Attachment 4

PROPOSED AMENDMENT TO K.S.A. 44-523

(e) If a Regular Hearing has not been scheduled within one year of the date of filing the Application for Hearing, the A.L.J. shall dismiss the claim with prejudice unless compelling good cause is shown as to why the claim should not be dismissed. Continuing payments of temporary total and continuing furnishing of medical treatment or the mental incapacity of the injured worker to testify shall constitute compelling good cause. The A.L.J. shall dismiss a claim with prejudice if all parties stipulate in writing to such dismissal.

ss1655

Kansas Self-Insurers Association

Date: March 12, 1996

To: House Committee in Business, Commerce, and Labor

From: Tom Caby, Past President

RE: Testimony on SB 649

I am Tom Caby, Director of Occupational Health at Stormont-Vail Regional Medical Center, and Immediate Past President of the Kansas Self-Insurers Association. KSIA is an association of approximately 60 self-insurers of workers compensation insurance in Kansas. Today I am here to testify in general support of SB 649. There are two specific provisions in the bill the members of KSIA would like to bring to your attention.

First, KSIA supports Senate amendments to continue the use of "AMA Guides" when making an impairment rating. The medical community representing employees and employers often differ when assigning an impairment rating to an injured worker. This is currently true with doctors using the same criteria as prescribed in the "AMA Guides," KSIA believes the non-use of these guides will create larger disparities, fewer agreements, and more litigation between employers and employees.

Second, KSIA is uneasy with Senate amendments on page 1, lines 39-43 of the bill that remove the "one-week waiting period." KSIA understands concerns regarding persons who may be injured by losing a finger, toe, etc. and miss less than one week. KSIA proposes that language be inserted into existing law to clarify that work related accidents described in KSA 44-510d are compensable regardless of lost work time. We believe this can be accomplished with the following amendment:

Insert the following language on page 1, line 39 after the (c):

Except for liability for medical compensation, as provided for in KSA 44-510 **and 44-510d** and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

Thank you for your time and consideration to KSIA's concerns.

*House Business, Commerce
& Labor Committee
3/12/96
Attachment 5*