

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

The meeting was called to order by Chairman Al Lane at 9:06 a.m. on March 13, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Jill Grant - excused
Rep. Gary Merritt - excused

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

Conferees appearing before the committee: Wanda Roehl, Coleman Companies
Alan Weldon, Wichita Public Schools, USD 259
Julie Bachman, Koch Industries
Patrick R. Collins, Riley County Public Works Dept.
Timothy J. King, KS Trial Lawyers Assn.
Wayne Maichel, Kansas AFL/CIO

Others attending: See attached list

A motion was made by Rep. Beggs to approve the minutes of 2/20, 2/21, 2/22, and 2/23. It was seconded by Rep. Ballard. The motion passed and the minutes were approved as read.

Continued Hearing on:
SB 649 - Omnibus workers compensation act

Wanda Roehl, director of safety and workers compensation for the Coleman Company, Inc., testified as a proponent of the bill. Two issues she was concerned with are the Benefit Review Conferences (BRC) and the concept of the Appeals Board. She feels that the BRC's have increased litigation costs. Although initially they resisted the concept of the Appeals Board, they now feel that it provides for some consistency in decisions. (see Attachment 1) She concluded by answering questions from the committee.

Alan Weldon, the Workers Compensation supervisor for Unified School District 259, appeared as a proponent of the bill. They participate in the Workers Compensation Task Force. The Task Force opposes dropping the reference to the AMA Guides in favor of a nebulous statement like "competent medical evidence," as some have proposed. They will go along with the most recent edition of the AMA Guides. They also support the change of time for lump sum settlements from two years to nine months. (see Attachment 2)

Julie Bachman, Assistant Manager, Workers Compensation Claims for Koch Industries, Inc., is also a member of the Wichita Employers' Workers Compensation Task Force and a proponent of the bill. She was concerned with pre-existing conditions and offered an amendment to that part of the bill. She also talked about lifetime limits. (see Attachment 3)

Patrick R. Collins, Riley County Fire Chief, appeared as a proponent of the bill. He represents volunteer emergency workers and supports the provisions of **SB 649** that relate to the definition of the time they become an employee. He feels that workers comp should cover them from the time they first respond to the emergency call, whether at home, work, or wherever they happen to be. (see Attachment 4) He ended his testimony by answering questions from the committee.

Timothy J. King, Kansas Trial Lawyers Association, appeared before the committee as an opponent of proposed amendments to the bill. These amendments includes removing civil service protection for Administrative Law Judges. In his testimony he listed seven proposals contained in the bill and the analysis by the Kansas Trial Lawyers Association of each of the proposals. (see Attachment 5) He answered several questions from the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:06 a.m. on March 13, 1996.

Wayne Maichel, Kansas AFL/CIO, appeared before the committee as a member of the Workers Comp Advisory Council (WCAC). In the thumbnail outline of **SB 649** (as amended by the Senate Committee of the Whole) handed out by Bob Nugent (Attachment 1, March 12, 1996), it lists by each section who made the changes. Many of the changes were made and approved by the WCAC. The WCAC were opposed to several of the changes but liked many of the others. If the bill stays in its present form they will support **SB 649**.

Written testimony from Jerry Slaughter, Executive Director of the Kansas Medical Society, was passed out to the committee. (see Attachment 6)

The hearing on **SB 649** will be continued on March 14, 1996.

The meeting was adjourned by Chairman Lane at 9:50 a.m.

The next meeting is scheduled for March 14, 1996.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE March 13, 1996

NAME	REPRESENTING
David Shufelt	KDHR Div Work Comp
RICHARD THOMAS	KONA WORK COMP
Phil Harness	KDHR-Workers Comp
Wanda Roethli	Coleman Co
Julie Bachman	Koch Industries, Inc.
Mike Germann	The Boeing Company
Bill Tanne	"
J. P. Small	Koch Industries ; Learjet, Inc
Ray T. Dietman	DoFA DPS
Linda J. Fund	DoFA
Sondra Clark	Ko Insurance Dept
L. A. Lodal	KS 77A
Patrick R. Collins	Riley Co. FA #1
JASON PITSEUBERGER	BRAD SMOOT
JERRY MARLATT	KSCFF
PAT MORRIS	K.A.I.A.
Denise Suterbauer	State Farm
Melissa Wengemann	Hein Ebert & Weir
Jim Appenfeller	Intern



The COLEMAN COMPANY, INC.

TESTIMONY TO HOUSE COMMITTEE ON BUSINESS & LABOR
By Wanda Roehl, Director of Safety and Workers' Comp, Coleman Company
March 13, 1996

Chair and members of the Committee:

Thank you for this opportunity to testify regarding some portions of Senate Bill 649. Other Wichita employer representatives will be testifying about our position on other portions of this bill.

I am Wanda Roehl, director of safety and workers compensation for The Coleman Company, Inc. whose outdoor recreation products are known and used throughout the world. Our 1500 Kansas employees received a payroll in excess of \$51 million in 1995.

The first issue I'd like to address is Benefit Review Conferences. Although the legislature's intent was to reduce litigation and increase communication between the employer and the claimant, the BRC has not been useful in doing those things. In fact, the BRC has actually increased litigation costs because it is mandatory to do a BRC before a Preliminary Hearing; therefore incurring costs for this step of litigation that has not proved to be useful in resolving issues related to a claim.

The other issue I'd like to address is in Section 12 (b) (2) (A).

Although initially some of our group resisted the concept of the Appeals Board, we are now in concert in feeling that it provides for some consistency in decisions and we do not want to lose that consistency. We feel that as decisions continue to be made by the appeal board, that the number of cases will decrease and the "overload" they are feeling now will not continue.

Thank you. If you have any questions, I would be happy to answer them.

*House Business, Commerce
& Labor Committee
3/13/96
Attachment 1*

March 12, 1996

SB 649 Omnibus Workers Compensation Bill
House Committee Hearing - Room 526 South

Good morning, I am Alan Weldon, the Workers Compensation supervisor for Unified School District 259. This school district is self-insured and self-administered for workers compensation. As one of the major employers in the Sedgwick County area, we participate in the Workers Compensation Task Force.

As a member of this Task Force, my assignment is to address two proposed changes to our current law. The first can be found in section 5 (a) (23), the bottom of page 16 (lines 42 and 43), and in section 6 (a) at the top of page 18 (lines 3 thru 5) of SB 649. The current law states that a rating for functional impairment, or the loss of physiological capabilities of the human body resulting from a work-related injury, should be based on the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, Third Edition (Revised). SB 649 proposes to substitute the Fourth Edition for the Third Edition (revised).

The Work Comp Task Force does support this change. The assigning of an impairment rating is subjective enough even when different physicians have the same starting point. To do away with a guideline can only lead to a greater disparity or range of opinions of those physicians willing to give a rating to the injured employee. Thus, complicating the settlement of the claim. We oppose dropping the reference to the AMA Guides in favor of a nebulous statement like "competent medical evidence," as some have proposed.

We are willing to go along with the most recent edition of the AMA Guides, but have been advised such general wording has legislative problems. Therefore, we recommend just changing the Third Edition (Revised) to the Fourth Edition. We have some physicians who already use this edition. When asked why they use the 4th rather than the 3rd edition, they tell me that good medical practice will take advantage of more recent information rather than relying on an edition that is out-of-date. So, changing to the 4th Edition, is really just a matter of a housekeeping change.

*House Business, Commerce
& Labor Committee
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Attachment 2*

My second proposed change is in section 8 (a) found on page 20, lines 26 through 29 of SB 049. This section affects those injured employees who return to work at a comparable wage, but might have been eligible for a work disability had they not returned to work. In other words, they collect functional impairment rather than negotiate over a disability settlement. In the current act, these employees must wait two years after returning to work before they can settle their claim for a lump sum, which means waiting two years to receive their checks for their lump sum settlements.

Before July 1, 1993, there was no such prohibition in the law, and some of our members would prefer to return to the pre-7/1/93 language of KSA 44-531. However, we were told the reason for this change was to discourage an employer from bringing an employee back to work just to settle his work comp claim, then terminating him or her. If this is still a concern, we can live with the proposed change. It reduces the two years to nine months, and does not apply to the employee who returns to work with a different employer. This change enables us to close our file 15 months earlier, and it allows the employee to collect his lump sum settlement check this much sooner.

In the time this prohibition has been in effect, it has been my experience that the employee has the stronger motivation to settle as soon as he or she receives the impairment rating. The school district has been in existence since 1877, and we aren't planning to go anywhere. If the school district can hang on to its money for an extra two years, it's not going to bother me. While the change may be convenient for me in closing my claims, I feel it's the employee who really benefits by receiving his settlement earlier.

I appreciate your giving me the time this morning to speak to this bill.



LEGAL DEPARTMENT
CLAIMS SECTION

JULIE BACHMAN
ASSISTANT MANAGER
WORKERS COMPENSATION CLAIMS

**RE: TESTIMONY ON SB 649 BEFORE THE HOUSE COMMITTEE ON
BUSINESS, COMMERCE AND LABOR
3/12/96**

Mr. Chairman and Members of the Committee:

Hello, my name is Julie Bachman. I am the Assistant Manager, Workers Compensation Claims for Koch Industries, Inc., a qualified self-insurer under Kansas law. I am also a member of the Wichita Employers' Workers Compensation Task Force represented here today.

I have been asked to comment about Section 44-501(c) which pertains to pre-existing conditions.

PRE-EXISTING CONDITION: One of the issues we would like to see addressed in SB 649 is the aggravation of a pre-existing condition. We think that changes to K.S.A. 44-501(c) in 1993 were intended to reduce the economic impact of employees' pre-existing conditions to employers.

The 1993 language does not fulfill the intended objective in that it does not reduce the impact of a pre-existing condition on the employer's financial exposure in a case of work disability. It has been our experience that work disability, not functional impairment, is the cost driver on permanent partial disability awards. Now, particularly with the

*House Business, Commerce
& Labor Committee
3/13/96
Attachment 3*

abolition of the Second Injury Fund, employers are compelled to absorb 100% of the cost of the employee's pre-existing work disability.

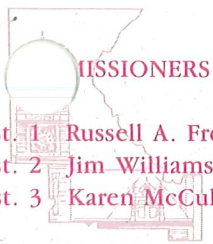
For example, we currently have a case in which our employee had a 10% pre-existing impairment with restrictions which we accommodated. He then had a second back injury which increased his impairment to 15% and resulted in stricter work restrictions. Now we, as the employer, face a 100% work disability exposure.

To alleviate this inequity, we propose that the proportionate credit for pre-existing functional impairment extend and apply to work disability as well. We propose the following language be added to K.S.A. 44-501(c):

“In any claim where there is a work disability, such work disability shall be decreased based upon a percentage. The percentage shall be determined by dividing the pre-existing impairment of function by the current impairment of function.”

LIFETIME LIMITS: We also would like to see SB649 address lifetime limits so that injured employees would not receive more than 100% Permanent Partial Disability over a lifetime. Currently an employee can receive successive awards that may, over time, exceed 100% Permanent Partial Disability. Without a Second Injury Fund, employers may pay more than once for an employee's pre-existing work disability.

Thank you for this opportunity to comment on SB 649. I would be happy to answer any questions that you may have.



Dist. 1 - Russell A. Frey
 Dist. 2 - Jim Williams
 Dist. 3 - Karen McCulloh

RILEY COUNTY PUBLIC WORKS DEPARTMENT

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DAN R. HARDEN
 COUNTY ENGINEER
 & DIRECTOR OF
 PUBLIC WORKS
 Registered Professional
 Engineer No. 7412

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13 March, 1996

Chairperson Lane and Committee Members
 House Business, Commerce and Labor Committee

Chairperson Lane and members of this committee, my name is Patrick R. Collins. I am the Riley County Fire Chief. I support the provisions of Senate Bill 649 that relate to defining the time a volunteer emergency worker becomes an employee.

The volunteer firefighters of this state perform a multitude of tasks. The majority of the communities in this state cannot afford full-time paid employees to provide the protection and services needed. These necessary tasks range from providing twenty-four hours a day fire protection to providing emergency medical care for our neighbors, friends, and family members. These valiant individuals respond from wherever they happen to be; whether they are in bed asleep, just arriving home from work or even responding from their jobs that provides their livelihood.

During possibly the most dangerous weather and road conditions these unpaid professionals are there to save lives and property. These same volunteers could travel several miles before even reaching the fire station, fire or emergency scene. Upon arrival, coverage of workers compensation benefits would begin. In actuality their response began when the volunteers left their work, home or family.

The future of volunteer fire departments and other volunteer emergency responders rests in your hands. These individuals who are protecting their communities should receive rightful coverage in the event of an accident during their entire response. I support the revisions of the committee and request speedy passage of this bill.

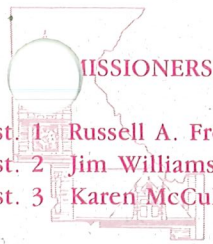
Sincerely,

Patrick R. Collins, CEM
 Riley County Fire Chief

*House, Business, Commerce
 & Labor Committee*

3/13/96

Attachment 4



Dist. 1 Russell A. Frey
 Dist. 2 Jim Williams
 Dist. 3 Karen McCulloh

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13 February, 1996

Honorable Senator Salisbury, Chair
 Senate Commerce Committee
 Statehouse Room 123

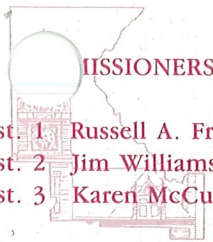
Chairperson Salisbury and the members of this committee, my name is Pat Collins. I am the Riley County Rural Fire Chief. I support the provisions of Senate Bill 553 that has been included with the legislation in front of you today.

The volunteer firefighters of this state are the backbone of fire protection systems in any of the communities where we live. The volunteers we count on to be there twenty-four hours a day are our neighbors, friends, and family members. At a moments notice on the bleakest of stormy night, these heroic individuals travel to and return from emergencies just like paid firefighters. The big difference between the two is a paid on duty firefighter travels from there sleeping area or work assignment to the apparatus and to the fire being fully covered by workers compensation benefits. The volunteer may have to leave work, play, or family outing and travel several miles before even reaching the fire station or fire scene. Then coverage of workers compensation benefits would begin.

On July 10, 1995 while responding from his home to the Zeandale fire station for a grass fire which he had been paged to, Riley County Volunteer Firefighter Gary Soupene died in a fatal car wreck about 100 yards from his home. He had arrived home from work and according to friends had no plans to travel down the road to town again that night. Gary Soupene's dedication to help his friends in the community led him down that path to pay the ultimate price.

According to current legislation as interpreted by the Riley County Councilor Mr. Soupene was not an employee because he had not reached his place of employment. Mr. Soupene did not have any direct dependents and there are no workers compensation claims filed. The question of would Mr. Soupene have been covered may never be answered. So this question still haunts the other 275 firefighters in Riley County every time their pagers go off.

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 COUNTY ENGINEER
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 Engineer No. 7412

The future of almost 700 volunteer fire departments in the state rests in your hands. Please protect our greatest fire protection resources (volunteers) by passing the provisions of Senate Bill 553 with my support and the support of Riley County.

Sincerely,

Patrick R. Collins, Fire Chief
 Riley County Fire Dist. #1

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4-3

LEGISLATIVE TESTIMONY

IN OPPOSITION TO AMENDMENTS TO K.S.A. 75-5708

**Presented by Timothy J. King of
Kansas Trial Lawyers Association**

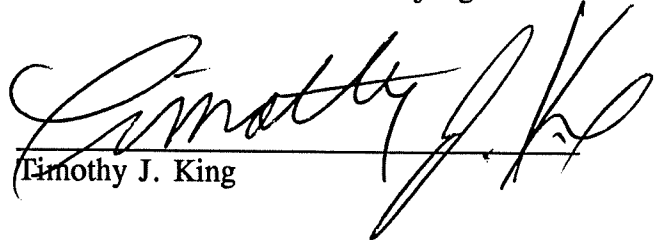
The Kansas Trial Lawyers represents the interests of thousands of middle-class Kansans, consumers of a variety of legal services including representation in Workers' Compensation cases. Traditionally, KTLA has encouraged legislation to further the interests of those consumers who in turn represent a significant portion of the electorate.

The proposed amendments to K.S.A. 75-5708 would remove civil service protection for Administrative Law Judges and would allow them to be replaced every four (4) years. The existing civil service protection prevents frequent turnover in the ALJ positions thus avoiding a "learning curve" while each new Judge tries to master the idiosyncrasies of the Act, its procedures, and the litigants. It further attracts more qualified individuals to the job without fear of leaving private practice only to lose their position in four years. The removal from civil service protection would inject partisan political power struggles into an agency whose purpose is judicial. It would be unwise to inject politics into the selection of agency fact-finders above and beyond that which is required even for other Kansas Judges.

While KTLA does not oppose the provision of the bill which provides for administrative law judges to be selected from nominees proposed by the KCCI and AFL-CIO, neither are we unhappy with the current system. Presently, the Director of Workers Compensation selects the administrative law judges, with the approval of the secretary of human resources. The judges

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are then placed in the classified service. We have every confidence in the administration to continue an excellent job of executing that responsibility. Further, we encourage the administration to aggressively utilize all the statutory remedies currently available to them to handle any concerns which arise over performance of administrative law judges.



Timothy J. King

SENATE BILL 649
LEGISLATIVE TESTIMONY

PRESENTED BY TIMOTHY J. KING
KANSAS TRIAL LAWYERS' ASSOCIATION
MARCH 13, 1996

The Kansas Trial Lawyers' Association represents the interest of thousands of middle class Kansans, consumers of a variety of legal services including representation in Workers' Compensation cases. Traditionally, KTLA has encouraged legislation to further the interests of these consumers who in turn represent a significant portion of the electorate.

Item by item, the analysis of our organization as to some of the various proposals in the bill is as follow:

1. **Court Ordered Functional Ratings**

The current status requires an ALJ to get an opinion from a doctor not retained by either party. This slows down the progress of the case and costs the respondent money. KTLA supports this amendment in that it makes this independent medical exam discretionary with the ALJ.

2. **Elimination of AMA Guidelines**

The Third Edition (Revised) of the Guides to the Evaluation of Permanent Impairment is inherently unreliable and invalid. Furthermore, this text is out of print and unavailable to the public. KTLA supports its elimination.

3. **Elimination of All Benefit Review Conferences**

Benefit Review Conferences have proven to be entirely ineffective in resolving issues in a claim.

Additionally, they are costly and greatly slow down the process. KTLA heartily endorses the abolition of Benefit Review Conferences.

4. **Shortening and/or Elimination of Prohibition Against Lump Sum Settlements**

In the event the parties to a litigated compensation claim are able to reach an agreement to its settlement, it only makes sense that they should be able to carry out this agreement within a reasonable period time. Shortening the prohibition against lump sum settlements to nine (9) months accomplishes this goal while still protecting workers.

5. **Penalty For Failure to Secure Compensation Insurance**

It is simply good government to do all possible to ensure the law regarding securing compensation insurance is followed. Furthermore, this puts all employers on a level playing field.

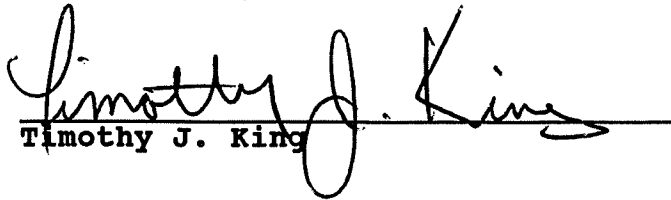
6. **Review of Preliminary Hearing Awards By a Single Member of the Board of Appeals**

KTLA heartily supports this amendment. Anything that can be done to streamline and lessen the work load of the Board is encouraged. This will ensure a prompter resolution of appeals arising out of preliminary hearing awards.

7. **The Kansas Court of Appeals in Boucher vs. Peerless Products, Inc.** Appeal No. 74,158 ruled that no injured worker may receive anything, other than medical benefits,

under the Workers' Compensation Act unless they are disabled for a period of at least one week. KTLA strongly supports a legislative overruling of this case. Under the current state of the law in Boucher, a worker would be penalized for attempting to return to work and fulfill his/her duties to an employer. It is unsound public policy to ever discourage a worker from attempting to return to employment as soon as possible following an injury.

Additionally, the Boucher decision conflicts with several other specific portions of the Workers' Compensation Act which provides that a worker may nonetheless receive compensation despite missing less than one week of work. For example, 44-510d provides when an employee sustains a permanent disability he/she shall be entitled to permanent partial compensation. This without regard for the length of time he/she is disabled from employment. KTLA supports this bill and strongly encourages a return to status quo to avoid additional litigation which will no doubt occur in light of the Boucher decision.


Timothy J. King

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KANSAS MEDICAL SOCIETY

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WATS 800-332-0156 FAX 913-235-5114

March 12, 1996

TO: House Committee on Business, Commerce and Labor

FROM: Jerry Slaughter
Executive Director

SUBJECT: SB 649; concerning workers compensation

We have had some questions about the issue of using the *AMA Guides to the Evaluation of Permanent Impairment* for rating loss of function in workers compensation cases. The current version of the bill (as amended by the Senate) includes the use of the *AMA Guides*.

The overwhelming majority of physicians who have experience in workers compensation cases agree there is no better, more consistent and objective method for rating loss of function than the *AMA Guides*. The publication is constantly reviewed and revised to keep it current, and it represents the consensus opinion of experts in the field.

Should you have any questions, please do not hesitate to call us. Thank you.

House Business, Commerce
& Labor Committee
3/13/96
Attachment 4