

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 14, 1996 in Room 526-S of the Capitol.

All members were present except: Rep. Vaughn Flora - excused
Rep. Broderick Henderson - excused
Rep. Sabrina Standifer - excused

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

Conferees appearing before the committee: Terry Leatherman, KCCI
Brad Smoot, American Insurance Association
Phil Harness, KDHR
Rep. Nancy Kirk
Kathi Slusser, National Assn. of Social Workers

Others attending: See attached list

Minutes for 2/23 (at the rail), 3/5, 3/6, 3/7, and 3/8 were passed out to the committee. They will be approved at the next meeting.

Continued hearing on:
SB 649 - Omnibus workers compensation act

Terry Leatherman, Executive Director of the Kansas Industrial Council, Kansas Chamber of Commerce and Industry (KCCI), and also a member of the Kansas Workers Compensation Advisory Council, appeared before the committee to review some of the provisions of the bill. The KCCI would like the workers comp process to be continually reviewed and refined in order to avoid the need for another massive overhaul of the system. They support the passage of the bill. (see Attachment 1)

Brad Smoot, Legislative Counsel, the American Insurance Association, appeared before the committee to support the adoption of the bill. They like and support the changes like the repeal of the two year ban on lump sum settlements, the five year limit on inactive claims pending in the Second Injury Fund and the overpayment credit against awards. The main reason he is testifying today is to support the issue of the AMA guides. He feels that there will be more uniformity and less litigation if the AMA guides (4th edition) are used. (see Attachment 2) He concluded his testimony by answering questions from the committee.

Phil Harness, Director of Workers Compensation, Kansas Department of Human Resources, answered a question about the wording in the section about emergency workers.

Rep. Nancy Kirk had a request for an amendment to add to the definition of "Health care provider" on page 7, line 11, after the word "psychology, add "social work." She answered questions from the committee about her request.

Kathi Slusser, Kansas Chapter of the National Association of Social Workers (K-NASW), appeared before the committee to further explain the amendment offered by Rep. Kirk. She explained the training that is required of Licensed Specialist Clinical Social Workers and Licensed Master Level Social Workers. She feels that they can handle many of the cases that are now handled by psychiatrists and psychologists, and handle them for lower fees, saving money for the State. There is also a larger number of these workers available throughout the state. She prefers to have the amendment read "*Licensed Specialist Clinical Social Workers and Licensed Master Level Social Workers*" instead of social work. (see Attachment 3) She ended her testimony by answering questions from the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:10 a.m. on March 14, 1996.

Chairman Lane asked for others from the audience who wanted to testify for or against the bill. No others were present and he closed the hearing on SB 649.

Committee action on:

SB 649 - Omnibus workers compensation act

Rep. Packer made a motion to recommended SB 649 favorably for passage and to place it on the Consent Calendar. It was seconded by Rep. Pauls. The motion carried.

Chairman Lane adjourned the meeting at 9:47 a.m.

The next meeting is scheduled for March 15, 1996.

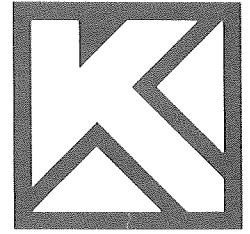
HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE March 14, 1996

| NAME | REPRESENTING |
|-------------------|-----------------------------|
| RICHARD L THOMAS | KDHR WORK COMP |
| David Shufelt | KDHR Work Comp |
| Phil Harvers | KDHR - Workers Comp |
| Harry Born | DofA - S&L |
| Ray T. Artman | DofA IRS |
| Linda Furd | DofA |
| STEVE KEAHEY | KNASW |
| Kelli Slusser | KNASW |
| Pat Morris | K.A.I.A. |
| Melissa Wangemann | Hein Ebert & Weir |
| Meggen Griss | KNASW |
| BRAD SMOOT | AIA |
| KEVIN ROBERTSON | KS SELE-INSURERS ASSN. |
| J.A. Jockel | KS77A |
| JERRY MARLATT | KSCFF |
| Art Brown | min. - m. Lumberman's |
| Jane M. Trubel | KTUA |
| Tom Wilder | Kansas Insurance Department |
| DONALD SNOODERASS | KANSAS FOOD DEALERS ASSN. |

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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SB 649

March 12, 1996

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. It is also my privilege to serve as one on the Kansas Workers Compensation Advisory Council, which recommended many of the initiatives in SB 649.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 46% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

I plan to spend my time before you today reviewing some of the specific provisions in SB 649 which KCCI feels would have the most impact on the Kansas workers compensation system.

*House Business, Commerce
& Labor Committee
3/14/96
Attachment 1*

E **FIT REVIEW CONFERENCE** - All references to the current Benefit Review Conference process is stricken. The current process is then replaced with a new mediation system on page 30 of the bill.

Benefit Review was conceived in 1993 as a system to mediate, rather than litigate, workers compensation cases. It has not worked. There have been two major reasons for its failure. First, Benefit Review Conferences have been held very early in the process, before the issues in a case have fully developed. Second, the mandatory aspect of Benefit Review seems to violate a principle of mediation in that you can't resolve issues between parties who are being forced to participate. These problems are addressed by making the mediation system voluntary and permitting either party to request mediation at any point in the process of their claim. Hopefully, these changes will make mediation an alternate road which many workers compensation cases will travel, rather than today's system where Benefit Review is nothing more than a speed bump towards litigation.

Other problems in the process which SB 649 attempts to resolve is mandating attendance by parties with authority to resolve a case and to have the mediation sessions held in person, rather than by teleconference.

AMERICAN MEDICAL ASSOCIATION GUIDES - On pages 16 and 17 of the bill, and again on page 18, references to the "third edition" of the American Medical Association Guidelines for the Evaluation of Physical Impairment are changed to the "fourth edition." The Workers Compensation Advisory Council, on a 9 to 1 vote, had instead recommended striking the reference to the AMA Guides and using "competent medical evidence" as the standard. In that 9 to 1 vote, KCCI was the "no" vote.

Here is the peanut of the AMA Guides issue. Current law must be changed. The current reference to the AMA Guides in the law was incorrectly written, which raises legal challenges. In addition, the third edition is dated. The American Medical Association recognizes the fourth edition as the Guidelines to use. The core decision before this Committee is how should we measure an

injured worker's physical injury. The two choices you will have are endorsing the fourth edition of the Guides (as SB 649 currently does) or embracing "competent medical evidence" as the test (as a majority of the Workers Compensation Advisory Council recommended). When the Senate Commerce Committee considered this issue, they supported the fourth edition of the AMA Guides. KCCI would urge this Committee to do the same.

The major complaint with the AMA Guides has been the qualifications of contrasting health care evaluators bears little weight when both are required to use the Guides. However, KCCI contends that abandoning the Guides will do little to reverse the decisions rendered by Administrative Law Judges on these matters, and will return Kansas to having no standard to determine the degree of an employee's workers compensation injury.

INDEPENDENT MEDICAL EXAMINERS - On page 18, the use of independent medical examiners (IME) is changed to become optional for an Administrative Law Judge. In addition, an IME could not be assigned unless both sides of a workers compensation case have demonstrated disagreement over an impairment rating. KCCI supports these changes to address operational problems that have arisen since the 1993 introduction of IMEs into the process. However, it should be made clear that this issue was discussed, but not approved, by the Workers Compensation Advisory Council.

BENEFIT OVERPAYMENT - As with IMEs, the benefit overpayment issue (on page 20) was discussed, but not approved by the Workers Compensation Advisory Council. KCCI does support this change to credit employers for temporary total benefit overpayments by reducing future awards, rather than requiring employers to seek reimbursement from the Workers Compensation Fund.

LUMP SUM SETTLEMENTS - On page 20, beginning on line 22, is compromise language developed by the Workers Compensation Advisory Council. KCCI has consistently maintained that lump sum settlement prohibitions were unnecessary. However, the Kansas Chamber does support the SB 649 proposal which addresses the problem by reducing the prohibition to nine months and eliminates the prohibition in cases where the employee changes employers.

WORKERS COMPENSATION BOARD PRELIMINARY APPEALS On page 26 of the bill is an administrative reform permitting one Workers Compensation Board member to hear and decide preliminary hearing appeals. Concern over the backlog of cases before the Board prompted Advisory Council support of this attempt to streamline the appeal process.

ADMINISTRATIVE LAW JUDGE SELECTION PROCESS - KCCI supports adopting a selection process similar to the Workers Compensation Board for Administrative Law Judges, where a Nominating Committee representing business and labor recommends and reviews appointments made by the Secretary of Human Resources. At its February 9 meeting, the Advisory Council unanimously approved recommending this change to the Legislature. KCCI would urge language developed by the Council to be included in this bill.

Many members of this Committee participated in the massive reform of the workers compensation system in 1993. During that debate, one idea all parties agreed on was to continually review and refine the workers compensation process, in order to avoid the need for another massive overhaul of the system. SB 649 does that by making several structural changes to pursue the goal of providing fair and appropriate care and compensation to an injured worker. As a result, KCCI would urge this Committee to favorably recommend adoption of SB 649.

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

BRAD SMOOT

ATTORNEY AT LAW

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**Statement of Brad Smoot, Legislative Counsel
The American Insurance Association
Before the House Business, Commerce and Labor Committee
Regarding 1996 Senate Bill 649
March 14, 1996**

The American Insurance Association (AIA) is a trade group of more than 270 property and casualty insurers whose members provide various lines of insurance including workers compensation in Kansas and across the nation. We are pleased to have an opportunity to comment on 1996 Senate Bill 649.

We commend the Kansas Legislature for the worker's compensation system reforms enacted in 1993 and its continued willingness to study and decide these difficult issues. In our view, the 1993 changes are responsible for the reduced premiums most employers are now experiencing. In particular, our claims representatives tell us that the medical fee schedule, a change in the definition of work disability, elimination of mandatory vocational rehabilitation and less attorney involvement are principally responsible for the recent trend.

AIA generally supports the changes proposed in S 649. In particular we like the repeal of the two year ban on lump sum settlements (Section 6), the two year limit on inactive claims pending in the Second Injury Fund (Section 11) and the overpayment credit against awards (Section 5). We are also comfortable with the volunteer firefighter amendment (Section 1), increased penalties for fraud (Section 14) and failure to insure for workers compensation (Section 7), and the elect-in option for officers and directors of nonprofit corporations (Section 9).

AIA strongly supports the use of the AMA Guides in the determination of disability and concur in the comments of the Kansas Medical Society submitted yesterday. These guides are widely used throughout the country, and if properly considered by the ALJ, should add a degree of certainty to disability ratings. A return to the presentation of "competent evidence" adds more evidentiary uncertainty, subjectivity and litigation to the system. While I can understand that lawyers on both sides may be more comfortable with the evidentiary process, litigation was one of the costs that the 1993 reformers sought to reduce. We urge the Committee to adopt the Senate position referencing the Fourth Edition of the AMA Guides.

In conclusion, S 649 contains several worthy provisions and I would encourage the Committee to adopt the bill. Thank you for consideration of our views and I would be pleased to respond to your questions.

*House Business, Commerce
& Labor Committee*

3/14/96

Attachment 2



DATE: March 14, 1996

TO: Chairman Lane and Members of the House Business, Commerce and Labor Committee

FROM: Kathi Slusser, LSCSW, Chair, Professional Action Committee, K-NASW

RE: Senate Bill #649

The Kansas Chapter of the National Association of Social Workers (K-NASW) requests amending K.S.A. 44-508(i) so as to include within the definition of "health care provider" Licensed Specialist Clinical Social Workers (LSCSW) and Licensed Master Level Social Workers (LMSW).

A LSCSW or a LMSW is a person who has attained a Masters Degree from an accredited university, has at least two years of supervised clinical experience and has passed a state examination. A LSCSW has completed an additional two years of post graduate supervised clinical experience. Thus, a LSCSW has not only training but experience in providing clinical therapy. We feel this inclusion is desirable because such an amendment will prove to be more economical for the State of Kansas as well as business organizations throughout the state.

Social Workers fees are considerably lower on average than those of psychologists and psychiatrists. For example, the fee scale for social workers is \$60-\$90 per hour compared to \$90-\$185 per hour. All three professions provide psycho-social therapy to assist people in adjusting to problems arising from an injury or illness. Many social workers are currently providing services to injured workers in agencies but often leaving the client responsible for the expense of this portion of his/her care. This suggested amendment would be a cost-effective alternative, and represent a sound financial move for the State of Kansas due to the fact that licensed specialist clinical social workers and licensed master social workers provide more than half of the clinical therapy hours currently being given in the state.

For example, there are:

- * 1229 Licensed Specialist Clinical Social Workers
- * 1444 Licensed Master Level Social Workers
- * approximately 350 Licensed Clinical Psychologists
- * approximately 400 psychiatrists actively practicing in Kansas

As you can see, not only are social workers fees lower than psychologists and psychiatrists, but the public has increased access to receive services due to the greater number of social workers in the state.

*House Business, Commerce
& Labor Committee
3/14/96
Attachment 3*

Most psychiatrists are associated with medical facilities and practice in urban areas, generally allowing only limited access through satellite offices in rural communities. On the other hand, social workers are evenly distributed throughout the state and are able to provide services in remote rural areas.

HMO's and other health insurance providers include LMSW's or LCSW's as authorized providers on the same basis as a psychiatrist or psychologist. There is no logical distinction for workers' compensation approved health care providers not to include LMSW's or LCSW's along with psychologists. In terms of cost and availability of similar services, inclusion of appropriately licensed social workers makes good sense.

Attached to this testimony is the balloon amendment being requested.

1 by the employer.

2 (g) "Burden of proof" means the burden of a party to persuade the
3 trier of facts by a preponderance of the credible evidence that such party's
4 position on an issue is more probably true than not true on the basis of
5 the whole record.

6 (h) "Director" means the director of workers compensation as pro-
7 vided for in K.S.A. 75-5708 and amendments thereto.

8 (i) "Health care provider" means any person licensed, by the proper
9 licensing authority of this state, another state or the District of Columbia,
10 to practice medicine and surgery, osteopathy, chiropractic, dentistry, op-
11 tometry, podiatry or psychology.

12 (j) "Secretary" means the secretary of human resources.

13 (k) "Construction design professional" means any person who is an
14 architect, professional engineer, landscape architect or land surveyor who
15 has been issued a license by the state board of technical professions to
16 practice such technical profession in Kansas or any corporation organized
17 to render professional services through the practice of one or more of
18 such technical professions in Kansas under the professional corporation
19 law of Kansas or any corporation issued a certificate of authorization un-
20 der K.S.A. 74-7036 and amendments thereto to practice one or more of
21 such technical professions in Kansas.

22 (l) "Community service work" means: (1) Public or community serv-
23 ice performed as a result of a contract of diversion or of assignment to a
24 community corrections program or conservation camp or suspension of
25 sentence or as a condition of probation or in lieu of a fine imposed by
26 court order; or (2) public or community service or other work performed
27 as a requirement for receipt of any kind of public assistance in accordance
28 with any program administered by the secretary of social and rehabilita-
29 tion services.

30 (m) "Utilization review" means the initial evaluation of appropriate-
31 ness in terms of both the level and the quality of health care and health
32 services provided a patient, based on accepted standards of the health
33 care profession involved. Such evaluation is accomplished by means of a
34 system which identifies the utilization of health care services above the
35 usual range of utilization for such services, which is based on accepted
36 standards of the health care profession involved, and which refers in-
37 stances of possible inappropriate utilization to the director for referral to
38 a peer review committee.

39 (n) "Peer review" means an evaluation by a peer review committee
40 of the appropriateness, quality and cost of health care and health services
41 provided a patient, which is based on accepted standards of the health
42 care profession involved and which is conducted in conjunction with util-
43 ization review.

-----, psychology, Licensed
Master Social Worker or
Licensed Clinical Social
Worker.

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