

Approved: January 11, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 10, 1996, in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Jordon, Petty, Ranson, Reynolds, Steffes and Vidricksen.

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

Conferees appearing before the committee:
Philip Harness, Director, Workers Compensation

Others attending: See attached list

Upon motion by Senator Burke, seconded by Senator Reynolds, the Minutes of the January 9, 1996 meeting were unanimously approved.

Jerry Donaldson, briefed the committee on workers compensation issues considered by the Interim Special Committee on Labor and Industry.

Ms. Donaldson reviewed the Committee's activities; the recommendations the Workers Compensation Advisory Council and other interested parties; the conclusions and recommendations. The Interim Committee recognized problems with the current definition of work disability; however, no clear solutions were presented. Ms. Donaldson advised the Interim Committee did recommend legislation in the following areas: Lump sum settlement prohibition; use of an Independent Medical Examiner; Benefit Overpayment; and a two-year statutory limitation on cases that might implead the Workers Compensation Fund. Attachment 1

Philip S. Harness, Director, Workers Compensation, presented additional issues which have been agreed upon by the Workers Compensation Advisory Council.

* References to AMA Guides should be discarded in favor of "competent medical evidence" test as an evidentiary test for determination of impairment.

* The requirement that a benefit review conference must be held within 15 days after receipt of application for preliminary hearing should be eliminated and the conference made discretionary.

* To address the backlog of undecided cases at the Workers Compensation Appeals Board level, any board member should be empowered to hear and decide an appeal from a preliminary hearing, randomly assigned, and the author of all decisions should be listed.

* Non-compensated officers and directors of non-profit organizations should come under the protection of the Workers Compensation Act, but may elect out if those officers and directors do not desire to be covered.

Attachment 2.

The Chair advised that a Committee Bill will be prepared to include the following areas : (1) Lump sum settlements; (2) Independent Medical Examiner; (3) Benefit Overpayment; (4) Statutory limitation on Workers Compensation Fund impleadings; (5) Benefit Review Conference; (6) On Member of Appeals Board to hear and decide an appeal and (7) Inclusion of officers and directors of non-profit organization under the Workers Compensation Act if they so desire; (8) Competent medical evidence. Further recommendations which may be made by the Advisory Council January 17 meeting also will be included in the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m.
on January 10, 1996

Mr. Harness advised the Committee ten Administrative Law Judges have been selected and performance standards are in the embryonic stage.

The next meeting is scheduled for January 11, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

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NAME	REPRESENTING
TERRY LEATHERMAN	KCCI
Rich Pittman	Health Midwest
BOB GRANT	KCCI
Wayne Madsen	76. AFL-CIO
Annala Kamin	KDHR
Philip Harkness	KDHR - Workers Comp
David Shufelt	KDHR - Workers Comp
RICHARD THOMAS	KDHR WORK CAMP
Roger Aschliman	KDHR
Bill Laves	KDHR
PAUL BICKNELL	KDHR
BOB LIERZ	KDHR
VP Small	Leasjet, Inc
JASON PITSEMBERGER	BRAD SMOOT
Doreen Taylor	KAIA
Pat Morris	KAIA
Tom Whitaker	KS MOTOR CARRIERS ASSN
Mark Barcellona	KDOCH
Joe Furjanic	KCA

Proposal No. 46

STUDY TOPIC: *Comprehensive review of workers compensation and unemployment compensation issues. The topic of private employment agencies was also examined.*

BACKGROUND

COMMITTEE MEETINGS

The 1995 Special Committee on Labor and Industry conducted a comprehensive review of workers compensation and unemployment compensation issues and regulation of private employment agencies. A three-day meeting was held on August 28, 29, and 30 on the workers compensation topic. September 25 and 26 were the dates for hearings on unemployment compensation matters as well as private employment agencies. November 15 was devoted to further hearings on the private employment agency topic. Minutes and written testimony of conferees, as well as memoranda provided by staff, are available in the office of Legislative Administrative Services in Room 511-S of the Statehouse.

COMMITTEE ACTIVITIES

Workers Compensation. On the first day, the Committee heard from various conferees, including the Insurance Commissioner, the Director of Workers Compensation, a representative from the Attorney General's office, conferees representing the National Council on Compensation Insurance, the Kansas Chamber of Commerce and Industry, the Kansas Trial Lawyers Association, the Alliance of American Insurance, the Kansas Association of Insurance Agents, the American Insurance Association, the Kansas Self Insurance Association, the Kansas AFL-CIO, voluntary firefighters, Wichita employers, an attorney who practices in the

workers compensation area, individuals who addressed the Committee from the perspective of an arbitrator in employment matters, and a nursing home administrator.

The Insurance Commissioner addressed the issue of voluntary firefighters and the question of coverage of voluntary firefighters as a result of 1993 legislation which inserted statutory language in K.S.A. 44-511 which states: "Volunteer employment shall not be presumed to be full time employment." Kansas Insurance Department Bulletin 1995-10 was issued to all insurers and group-funded pools writing workers compensation in Kansas on June 21, 1995 to reaffirm that voluntary firefighters were covered.

The Commissioner also addressed the recently approved reduced rate reduction, using a loss cost basis. Discussion also centered on the Workers Compensation Fund or the Second Injury Fund and the state of affairs since the 1993 change that phases out Fund coverage as of July 1, 1994 for certain workers compensation cases but, arguably, not others. The Commissioner recommended statutory clarification in this area. Administrative matters regarding the number of outstanding cases within the Department were discussed, followed by a recommendation that a two-year statute of limitations be placed on cases impleading against the Fund.

Speaking on behalf of the Workers Compensation Advisory Council (WCAC), the Director of the Division of Workers Compensation submitted a list of issues reviewed and agreed on by the members of the Council. Items of agreement include the following:

1. K.S.A. 44-531 should be amended to eliminate the current two-year prohibition against lump sum settlements in favor of a nine-month limitation, and the prohibition should be eliminated entirely if the employee returned to work for another employer.
2. The WCAC is opposed to S.B. 245, which would abolish the WCAC.

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3. There should be guidelines as to the qualifications of expert testimony.
4. There should be a standardized system to deal with overpayment of benefits.
5. The benefit review conferences should be discretionary, as opposed to being mandatory.
6. References to the AMA Guide should be discarded in favor of the test "competent medical evidence" when the administrative law judge determines disability.
7. To address the Workers Compensation Appeals Board backlog, any board member should be empowered to hear and decide an appeal from a preliminary hearing as long as there is random assignment, and that the author of all decisions, whether they are appeals from preliminary hearings or otherwise, should be listed.
8. The Workers Compensation Fund should be revitalized for previously abolished areas regarding handicapped employees.

The representatives from the Attorney General's office spoke about the status of fraud investigation duties enacted as a part of the 1993 workers compensation legislation. Recommendations included the ability to assess increased fines and harsher penalties for fraudulent acts.

A representative of the National Council on Compensation Insurance advised the Committee that the Kansas system is essentially healthy, that reforms are in place, and premiums are coming down. The recommendation was made not to expect too much too soon.

A state senator and several firefighters expressed concern over the perception that voluntary firefighters may not be covered for workers compensation benefits. Recommendations included statutory clarification of workers compensation coverage for voluntary firefighters and clarification as to when such coverage begins for firefighters.

Other conferees submitted a range of recommendations, including a revisit of the definition of work disability, the issue of lump sum settlements, the selection of administrative law judges, benefit review conferences and mediation, the ombudsman program, independent medical examiners, benefit overpayments, the Workers Compensation Fund, and abolition of the Workers Compensation Advisory Council, among others. A more complete examination of issues raised is covered in the conclusions and recommendations section.

The second day of hearings was devoted to hearings on the 1995 workers compensation holdover bills. The bills that were heard include the following:

S.B. 117 – Employer release from liability claims.

S.B. 210 – Attorney General review of claims filed by elected officials and attorneys who, within the last five years, have been involved in workers compensation cases.

S.B. 242 – Workers Compensation procedural changes. Issues include work disability; independent medical examiners, lump sum settlement prohibition, benefit overpayment credit, and ombudsman and benefit review conference programs. - ~~admin. - mediation~~

S.B. 243 – Abolition of the statutory position of Administrative Law Judge in classified positions; creation of workers compensation judges in unclassified positions to be appointed by the Governor with approval of the Senate.

S.B. 244 – Definitional change of work disability, from the current provisions that allow a claim to be based on a percentage of functional impairment or the percentage of lost ability to accomplish work tasks to a percentage of general body functional impairment.

S.B. 245 – Abolition of the Workers Compensation Advisory Council.

S.B. 246 – Transference of the administration of the Workers Compensation Fund from the Insurance Department to the Kansas Department of Human Resources (KDHR), Division of Workers Compensation.

S.B. 247 – Transference from the Insurance Department to the Director of Workers Compensation the responsibility for investigating, monitoring, and reporting suspected workers compensation fraud on the part of insurance companies or insurance agents.

S.B. 326 – Amendments to the Workers Compensation Act to exclude those individuals who are owner-operator truck drivers who contract with licensed motor carriers. Provision for adopting the AMA Guide, 4th Edition.

S.B. 327 – Work disability definitional changes and procedural changes to the Act.

H.B. 2366 – Provisions that an employer cannot require an injured worker to exhaust accumulated leave before paying workers compensation benefits.

Comments received from the conferees, as well as copies of written testimony, can be found in the minutes, which are available in Legislative Administrative Services.

Information and materials presented during the hearings form the basis for the conclusions and recommendations section.

CONCLUSIONS AND RECOMMENDATIONS

Work Disability

The Committee recognizes there are problems with the current definition of work disability. No clear solutions were presented at this time for the Committee's consideration. Materials that contain statutory language from Texas, New Mexico, and Oregon were supplied to the Committee from the delegate representing the Alliance of American Insurance. The Committee is requesting advice on this matter in the form of specific statutory language from the Workers Compensation Advisory Council and from other interested parties by January, 1996.

Lump Sum Settlement

Testimony received from conferees over the course of the hearings favors the elimination of the prohibition against lump sum settlements. The Committee recommends a change in the prohibition on lump sum settlements from the current two-year limitation to a nine-month limitation from the date of return to work. The Committee further recommends the lump sum settlement limitation be eliminated entirely if the employee goes to work for another employer. *

Selection of Administrative Law Judges

The Committee is aware of a problem with certain administrative law judges who have carried out their duties in an unsatisfactory manner. New standards have been instituted by the Division of Workers Compensation, as well as aggressive tracking by the Division. While there is no statutory recommendation at this time, the Committee concludes there has been a problem that should not be allowed to continue. Interest was expressed by the Committee regarding the new standards. There is no desire to make the selection process more political by instituting a gubernatorial appointment system in place; however, the Committee concludes that if the new standards and monitoring methods are not effective, new approaches need to be taken.

Benefit Review Conference

The Committee is aware of the importance of mediation in the workers compensation process and encourages the Director of the Division of Workers Compensation to set up an administrative procedure involving mediation. Such a solution should encompass setting up a pilot project throughout the state in which the benefit review conferences would be conducted on a personal basis. If the program does not work, it could be deleted in the future. The Committee recommends the promulgation of rules and regulations, whereby a benefit review conference could be waived. No statutory changes are recommended at this time; however, the Committee awaits advice from the Workers Compensation Advisory Council in this area and especially,

statutory suggestions pertaining to preliminary hearings.

★ Independent Medical Examiner

The Committee reviewed the role of the independent medical examiners and concluded that there is a potential for abuse in this area, but recommends that two courses of action be developed as follows:

1. the Director of Workers Compensation should develop a list of medical experts; and
2. the use of an independent medical examiner should arise when two medical opinions are in substantial conflict.

The Committee recommends an amendment to require two conflicting ratings before using an IME and to make the use of an IME discretionary by changing "shall" to "may."

Benefit Overpayment

★ The consensus of the Committee is to recommend overpaid benefits be credited against the final weeks of an award, with medical overpayments excluded from this provision.

Voluntary Firefighters

At this time, the Committee makes no statutory or administrative recommendation due to the issuance of the Insurance Department Bulletin 1995-10, which reaffirms that voluntary firefighters are covered. The Committee believes no change is needed to require coverage. The Committee believes that the time of coverage begins upon the call to duty and continues until completion of the emergency assignment.

Workers Compensation Fund

Discussion of the phase-out of Fund coverage included the 1994 Workers Compensation Fund

Oversight Committee's (WCFOC) recon- struction that no further statutory amendment is necessary, since the 1993 amendments to the Workers Compensation Act clearly were intended to cut off coverage as of July 1, 1994, not only in the "but for" injuries, but also the "contribution" injuries. WCFOC fears that if an additional amendment were enacted, additional problems might be created regarding those injuries that occurred during the time frame between the July 1, 1994 effective date and the effective date of a new amendment.

The Committee endorsed the suggestions of the Insurance Commissioner to enact a two-year statutory limitation on cases that might implead the Fund if there is no Fund activity in that time frame. The two-year limit would be from the date of the impleading or the date of settlement, whichever is longer. The Committee recommends such legislation be enacted by the 1996 Legislature.

Board of Appeals Backlog

The Committee addressed the issue of the Appeals Board backlog and noted that one of the reasons for the creation of the Board was to provide consistency. Recognizing the significant problems such a backlog can cause, the Committee concludes that further input and recommendations are needed from the Workers Compensation Advisory Board about eliminating the current requirement for reviewing preliminary hearings.

Notice of Injury

Documentation of claims denied for failure to give notice was requested by the Committee. Further, the Committee requested the WCAC review the notice issue.

Certified Mailings

The Committee concluded that the use of certified mailings transmitted by facsimile is worth exploring as long as such an implementation does not become counterproductive. The WCAC is urged

to follow up with a recommendation on this issue.

Review and Modification

The Committee recommended the WCAC investigate the issues surrounding review and modification of workers compensation awards.

Repetitive Motion Injury Claims

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

Unauthorized Medical

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

Motor Vehicle Owner-Operators

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

American Medical Association (AMA) Guidelines

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

No Recommendations for Change

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

MINORITY REPORT (Representative Don Smith)

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

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and off the welfare rolls is a goal that I see as meritorious and worthy of a united effort.

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

COMMITTEE ACTIVITIES

Unemployment Compensation and Private Employment Agencies

At the September meeting, the Committee received testimony from the Director of the Division of Employment Security for the Kansas Department of Human Resources (KDHR); the Chief of Labor Market Information Services (LMIS) in KDHR; the Chief of Unemployment Benefits at KDHR; the Chief of Contributions with KDHR; Chief Legal Counsel with KDHR; the Deputy Secretary at KDHR; and conferees representing Roto Mix Manufacturing Company, Employers Unity, Inc.; Fourth Financial Corporation; Manpower Temporary Services; Cattleman's Employment Search; Key Temporary Personnel; Kaplan and Associates; and Heart of America Staffing Services Association.

The Director of the Division of Employment Security addressed the Committee not only as Director but also as spokesperson for the Employment Security Advisory Council (ESAC). On H.B. 2309, which is one of the bills before the Special Committee, the ESAC is of the opinion that certain in-home health care workers, which the bill exempts, should be eligible for unemployment benefits. On H.B. 2540, which would change the experience rating system, the ESAC believes the bill has merit but does not believe there is a compelling reason to change from the current reserve ratio system to the proposed benefit ratio system at this time. The ESAC will revisit this issue before the 1996 Session. In addition, the ESAC recommends passage of legislation to deal with a conformity issue implementing the federal withholding provision. Discussion of the issue follows in the section presented by the Chief of Benefits.

The Chief of LMIS related to the Special Committee the status of the two-year moratorium on unemployment compensation taxes as enacted during the 1995 Session. The Employment Security Trust Fund is larger than projected due to factors such as: (1) benefit payments are 20 percent lower than projected due to a stronger economy than anticipated; and (2) several (150) negative balance employers brought their accounts current in order to take advantage of the moratorium.

The Chief of Benefits spoke on the topic of conformity with federal requirements. The Federal Unemployment Tax Act (FUTA) imposes a tax of 6.2 percent on employer payrolls and a 5.4 percent credit is extended to Kansas employers as long as the Kansas Employment Security Law remains in conformity with all 18 provisions of federal legislation. One item of concern for the 1996 Legislature is amendments to Public Law 103-465 (commonly known as GATT) which, on December 8, 1994, mandated that all states must withhold and deduct federal income tax from unemployment benefits if the individual so elects. In addition, states will have the option of withholding state and local income taxes if the individual so elects. The U.S. Department of Labor has provided states with draft legislation to implement a voluntary withholding plan. Such a law needs to be ready for benefit payments made on or after January 1, 1997. As mentioned earlier, the ESAC recommends passage of the required legislation during the 1996 Session.

The Chief of Contributions addressed the Committee regarding other states efforts in utilizing trust fund interest for job training programs. There are two states currently doing this; namely, Nebraska and Oregon. The Nebraska plan was described as legislation that allows for the establishment of a State Unemployment Insurance Trust Fund (UITF) whereby 20 percent of moneys collected is deposited in the UITF and 80 percent goes to the Federal Unemployment Trust Fund. Interest earned on the 20 percent that stays with the state is then allocated to the Nebraska Training and Support Trust Fund, to be used for job training.

The Committee reviewed the 1995 legislation dealing with employment matters, primarily in 1995 S.B. 106. The issue of misconduct as it

relates to a refusal to submit to a chemical test in S.B. 106, arguably, provided amendatory language to cure the effect of the Court of Appeals case *City of Arkansas City, Kansas v. the Kansas Department of Human Resources, Kansas Employment Security Board of Review, and Kevin C. Vanderpool*, No. 72,516 decided on July 14, 1995. The opinion held that a refusal to submit to a chemical test is not misconduct unless the test was required by law and the test constituted a required condition of employment. In the *Vanderpool* opinion the court stated that the Legislature could have chosen to employ the word "or" instead of "and" to the section of the law in question. In that case, according to the court, the *Vanderpool* decision would have been different. During the review of S.B. 106 a question arose about whether the provisions in S.B. 106 adequately addressed the holding in the *Vanderpool* case.

Conferees presented the Committee with a variety of recommendations. The conferee with Roto Mix proposed that recipients of unemployment benefits should be required to spend a certain amount of time, such as four-hour shifts, learning job skills, and performing community services. The conferee cited examples of abuse of the system. He also presented the Committee with a *Wall Street Journal* article entitled "The Poor? I Hire Them" on untried workers, identified as poor, unskilled, adult individuals who possess the character to become a productive worker. The untried worker is further described as a worker who is willing to temporarily relinquish some of her employee rights in exchange for an opportunity to prove herself to an employer.

Representatives from Employers Unity, Inc., addressed the Committee with several concerns. One of the major problems for this company is the inequities in unemployment case decisions made by referees in differing locations throughout the state. A manual containing procedures to handle identical or similar facts in unemployment cases was suggested as a way to produce more consistent decisions. Other suggestions include:

1. a change is requested to K.S.A. 44-710 (c)(2)(A), by adding the underscored language, which states that benefits paid . . . "shall not be charged to the account of a

contributing employer or rated governmental employer . . . if the examiner finds that claimant is unemployed or was separated from the claimant's most recent employment . . ." for misconduct, gross misconduct, or leaving work voluntarily without good cause.

2. disqualification from benefits for nonwork related misconduct which directly affects the individual's ability to perform the work (there is no provision under current law)
3. disqualification for benefits for absence, including lateness, which would be *prima facie* evidence of misconduct (the employee would be required to establish, by a preponderance of the evidence, good cause for the absence or lateness); and
4. deletion of the list of circumstances under which an employee, who was discharged, may not be disqualified from unemployment benefits. The statutory list of circumstances recommended to be deleted include inefficiency; unsatisfactory performance due to inability, incapacity, or lack of training or experience; isolated instances of ordinary negligence; or inadvertence, good faith errors in judgment or discretion.

Employers Unity, Inc. also expressed opposition to a benefit ratio system for calculating employer contribution rates to the Employment Security Trust Fund as contained in H.B. 2540.

The Committee received testimony on two 1995 unemployment compensation bills. The bills are as follows:

H.B. 2540 – Establishment of a new method (benefit ratio system) for calculating employer contribution rates to the Employment Security Trust Fund. The bill also provides for an increase in the taxable wage base.

H.B. 2309 – Exemption of in-home nursing services performed by nurses, nurses aides, licensed practical nurses, and others similarly

employed by a permanently and totally disabled individual from the definition of employment.

Private Employment Agencies

The issue before the Committee regarding private employment agencies was whether the state should be in the business of regulating private employment agencies. If the determination is that the state should regulate private employment agencies, then the question is to what extent should these agencies be regulated.

The conferee from Cattleman's Employment Search recommended deregulation of private employment agencies even though his company was granted an exemption from the law by 1995 S.B. 106. If private employment agencies are to continue to be regulated, the conferee suggested revision along the lines of the Oklahoma law which allows prospective employees to be charged a fee. Other conferees from Key Temporary Personnel and Kaplan and Associates testified in opposition to charging a fee to an applicant. The question of consumer abuse was raised by the Committee and by legal counsel for KDHR and the Heart of America Staffing Services Association (HASSA).

The issue of deregulation of private employment agencies was explored further and the conferees from HASSA provided information on selected other states' regulation of the personnel industry. HASSA conferees emphasized the trend toward deregulation and stated that the issue of applicant-paid fees and potential abuse in this area could be handled and protection provided under the Kansas Consumer Protection Act.

Legal counsel for KDHR stated the agency has no position on this issue, but KDHR would not oppose deregulation.

Comments received from the conferees, as well as written testimony, can be found in the minutes which are available in Legislative Administrative Services.

Information and materials presented during the hearings form the basis for the conclusion and recommendation section.

CONCLUSIONS AND RECOMMENDATIONS

Misconduct

The Committee recommended the 1996 Legislature amend K.S.A. 44-706(b)(2) to clarify the issue raised by the *Vanderpool* case, cited earlier, so that an individual could be discharged for misconduct upon refusal to submit to a chemical test if the test were required by law or the test constituted a required condition of employment as part of an aftercare program.

Federal Withholding – Conformity Issue

The Committee concluded that legislation be presented to the 1996 Legislature to implement the federal withholding provision for unemployment benefits of recipients, upon the election of the claimant.

The Committee does not recommend legislation on the state and local withholding option at this time.

Employment Security Trust Fund – Interest

On the issue of utilizing Trust Fund interest money for job training efforts, the Committee recommends this issue be referred to the ESAC for review of the state laws in both Nebraska and Oregon in order to make recommendations and comments to the 1996 Legislature.

Two-Year Moratorium

Since the Employment Security Trust Fund balance is healthier than anticipated, the Committee recommends a continual review of the balance with the possibility of extending the moratorium. The Committee also recommended that consideration be given to phasing in the contribution rates at the conclusion of the moratorium. Further, it was the consensus of the Committee to request information from employer organizations on how the savings from the moratorium is being used.

Employers Unity, Inc.

The Committee considered the issues enumerated by Employers Unity, Inc. (cited earlier in the report) and determined that the complaint involving disparity of decisions by referees needs to be reviewed by the Employment Security Division so the Division may consider administrative remedies. The Committee acknowledges that both the claimant and employers may be jeopardized by the disparity of the decisions made by the referees.

The Committee recommends the ESAC review the issues cited by Employers Unity, Inc., and make recommendations to the 1996 Legislature.

H.B. 2540

On H.B. 2540, which would change the experience rating method formula, the Committee requested the ESAC review the material provided to the Committee on the impact of the two formulas. In addition, the Committee requests additional information on the impact of the increase in the contribution rate up to a maximum of 7.5 percent be provided to ESAC. The Committee then requests recommendations from ESAC regarding the possible change from the current

reserve ratio formula to the proposed benefit ratio formula for calculations of employer contributions to the Trust Fund. The Committee also requests recommendations from ESAC regarding H.B. 2540 with the increased contribution rate.

H.B. 2309

H.B. 2309, which would exempt certain health care workers from the Employment Security Law was carefully scrutinized by the Committee. It was the consensus of the Committee to not exempt nurses, nurses aides, and others cited in H.B. 2309 from state unemployment tax since the exemption at the state level would not provide for a reduction or exemption of unemployment tax unless there were a federal exemption.

Private Employment Agencies

The Committee discussed the issues surrounding private employment agencies and reviewed the adequacy of the Kansas Consumer Protection Law (CPA) to protect individuals who could be at risk if the personnel industry were deregulated. The Committee believes the CPA is adequate and requested a bill be introduced that would deregulate private employment agencies.

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REPORT TO SENATE COMMERCE COMMITTEE

BY PHILIP S. HARNESS, WORKERS COMPENSATION DIRECTOR
AND CHAIRMAN OF WORKERS COMPENSATION ADVISORY COUNCIL

January 10, 1996

The Workers Compensation Advisory Council was established by the 1993 reform legislation and was enacted as K.S.A. 44-596. The members are:

*Philip S. Harness, Director of Workers Compensation
Ray Lagpacan, Beech Aircraft
Terry Leatherman, Kansas Chamber of Commerce & Industry
Wayne Maichel, Kansas AFL-CIO
William Moore, Teamsters Local Union #696
John Ostrowski, McCullough, Wareheim & Labunker
Bill Knox, United Rubber Workers #307
*Daniel Messelt, Charleson-Wilson Agency
Jim DeHoff, Kansas AFL-CIO
Christine Davis, PKM Steel Service, Inc.
Stephen Richards, Yellow Corporation
Kip A. Kubin, Payne & Jones, Chartered

*The representative from the insurance industry and the Director of Workers Compensation are non-voting members.

While many issues have been reviewed, and are still undergoing review, those issues which have been agreed upon and passed, the Advisory Council are as follows:

1. K.S.A. 44-531 should be amended to eliminate the current two (2) year prohibition against lump sum settlements in favor of a nine (9) month limitation; and the prohibition should be eliminated entirely if the employee returns to work for another employer.
2. References to the AMA Guides should be discarded in favor the "competent medical evidence" test as an evidentiary test for the administrative law judges who determine impairment.
- *3. K.S.A. 44-534a should be amended to delete the requirement that a benefit review conference must be held within fifteen (15) days after receipt of the application for preliminary hearing, in favor of making the benefit review conferences discretionary. *44-511a - discretionary v. mandatory*
- *4. In order to address the backlog of undecided cases at the Workers Compensation Appeals Board level, any board member should be empowered to hear and decide an appeal from a preliminary hearing, randomly assigned, and the author of all

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decisions, whether they are appeals from preliminary hearings, awards or otherwise, should be listed.

5. K.S.A. 44-508 and/or 44-543 should be amended so that non-compensated officers and directors of non-profit organizations would come under the protection of the Workers Compensation Act, but may elect out if those officers and directors do not wish to be covered.

The next meeting of the Advisory Council is set for January 17, 1996.