

Approved: February 20, 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 February 15, 1996 in Room 123-S of the Capitol.

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

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

Conferees appearing before the committee:
Terry Leatherman, Kansas Chamber of Commerce and Industry
Tom Wilder, Director of Government and Public Affairs, Kansas Insurance
Department
Brad Smoot, Legislative Counsel, The American Insurance Association
Mary Ellen Conlee, Via Christi Regional Medical Center, Wichita
Philip Harness, Director, Workers Compensation Division

Others attending: See attached list

SB 648: Excluding group-funded workers compensation pools from workers compensation and surcharge

Terry Leatherman, stated he is the staff person at the Kansas Chamber responsible for all aspects of the KCCI Workers Compensation Corporation, a group-funded pool. Mr. Leatherman advised SB 648 should be amended on Page 1, line 31, by changing the month "June" to "July". SB 649 proposes to relieve group-funded pools of the burden of paying assessments to the Workers Compensation Fund since the pool was created after the date when it could implead the Fund for second injuries. If the KCCI Workers Compensation Corporation continues to grow they will pay hundreds of thousands of dollars to fund the Workers Compensation Fund with no hope of ever recouping a fraction of its assessment costs. Attachment 1

Tom Wilder, Director of Government and Public Affairs, Kansas Insurance Department, testified in opposition to SB 648. Mr. Wilder, stated SB 648 exempts group-funded workers compensation pools formed after July 1, 1994, from assessments for the Second Injury Fund. The Insurance Department has licensed 20 group-funded pools. Seven of these groups would be exempted from Second Injury Fund assessments by this bill. Mr. Wilder advised the Committee SB 648 is unfair and discriminatory to those groups which received their license as a group-funded pool prior to July 1, 1994. The Insurance Department questions the constitutionality of SB 648 due to its treatment of group-funded pools based on the date they received their license. The Second Injury Fund also provides payments for cases where there is an insolvent or uninsured employer. Mr. Wilder stated any change in the law exempting self-funded pools from assessments for the fund will have serious consequences. Attachment 2

Brad Smoot, Legislative Counsel, The American Insurance Association (AIA), testified in opposition to SB 648. Mr. Smoot stated the Workers Compensation Fund was created for the benefit of handicapped workers, all employers and the general public. The Fund is funded through an assessment system based on claims and not an actuarial basis. Mr. Smoot questioned why a Kansas business that has operated in the state for years and received the advantages of the Workers Compensation Fund should be able to escape its obligations by joining a newly formed group funded pool. Mr. Smoot stated Kansas businesses should shoulder their faire share of the obligation whether they are insured, self-insured or a member of a group funded pool. SB 648 creates market advantages for newly formed group funded pools. The rates for the new pools would be reduced and the assessments not paid by the pools is shifted to other businesses, pools and insurers who must continue to pay the obligations of the Workers Compensation Fund. Mr. Smoot testified the Workers Compensation Fund has other purposes than paying second injury claims; these are 1) claims

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 15, 1996.

made against uninsured and insolvent employers; and 2) employer refunds for overpayments of benefits. Mr. Smoot stated, AIA is of the belief that all should share the burden for employers who fail to provide workers compensation benefits for their employees. SB 648 gives new pools the continuing benefits of the Workers Compensation Fund for free. Attachment 3

SB 650: Eligibility of merging companies for self-insured status

Mary Ellen Conlee, Via Christi Regional Medical Center, Wichita, appeared before the Committee in support of SB 650. Ms. Conlee stated both St. Joseph Medical Center and St. Francis Regional Medical Center had a self-insured workers compensation plan prior to their consolidation into Via Christi Regional Medical Center, Inc., in October 1, 1995. Kansas law does not provide a private firm eligible for self-insured workers compensation until it has been in existence for 5 years. Via Christi Regional Medical Center, Inc., qualifies for a self-insured workers compensation plan in all respects, except for the fact it is the product of merging firms. SB 650 allows qualified businesses which consolidate to continue a self-insurance program. Via Christi requests passage of SB 650. The passage of this legislation allows a savings of \$26,000 a month. Ms. Conlee requested the enacting clause be changed to publication in the Kansas Register rather than the statute book. Attachment 4.

Senator Feleciano moved, seconded by Senator Steffes, that SB 650 be amended on Page 3, Line 10, by striking the words "statute book" and inserting in lieu thereof the words: "Kansas Register". The voice vote was unanimous in favor of the motion.

Senator Feleciano moved, seconded by Senator Downey, that SB 650 be recommended favorable for passage as amended. The recorded vote was in favor of the motion.

Upon motion by Senator Hensley, seconded by Senator Steffes, the Minutes of the February 14, 1996 meeting were approved as corrected.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for February 20, 1996.

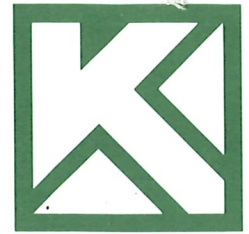
SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 15, 1996

NAME	REPRESENTING
Jane Stubbs	KBIA
Kerry Leatherman	KCCI
BUD GRANT	KCCI
Koza France	KGC
Patrick a. Lee	Cerebral Palsy Assoc. Fed
Bread Sweet	AIA
Phil Harless	Workers Emp. Div.
Mary Ellen Conlee	Via Christi Health System
Shirley Young	Via Christi Reg. Med. Center
Tom Wilder	Kansas Insurance Dept
Gene M. Edelred	KTRN
Quik Smoker	DBR, Div. of Worker Comp.
Darin Shilt	IDHR Div of Worker Comp
Wesley McKenney	State Farm
Tom Slattery	Associated General Contractors of Ks
Karin A. Garland	Ks. Assoc. of Homes & Services for Aging
Rich McKee	KS Livestock Assoc.
Mark Barwell	KDOGTH
D. WAYNE ZIMMERMAN	KBIWCF

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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SB 648

February 15, 1996

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Committee on Commerce

by
Terry Leatherman
KCCI Workers Compensation Corporation

Madam Chairperson and members of the Committee:

My name is Terry Leatherman. I am the staff person at the Kansas Chamber responsible for all aspects of the KCCI Workers Compensation Corporation. It is on behalf of the members of the Workers Compensation Corporation that I appear before you today in support of SB 648.

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.

Before pointing out the merits of the legislation, permit me to point out a drafting error in SB 648. On page 1, line 31 of the bill, group-funded pools created after June 1, 1994 are relieved from assessments to the Kansas Workers Compensation Fund. Instead, that date should be July 1,

*Senate Commerce Committee
February 15, 1996*

Attachment 1 thru 1-

14. The mistake in SB 648 is totally my fault and I apologize for submitting an incorrect data request for legislation.

The reason why July 1, 1994 is important is that was the day a critical change took place in the 50 year operation of the Kansas Workers Compensation Fund. As directed by the Kansas Legislature's massive reform of the workers compensation system, as of July 1, 1994, the Workers Compensation Fund stopped being responsible for payment of awards to handicapped employees. As shown below, this was a major change because "2nd injury" cases dwarfs all other claims to the Workers Compensation Fund.

WORKERS COMPENSATION FUND CLAIMS
Fiscal Years 1988 through 1992

YEAR	TOTAL NEW CLAIMS	2ND INJURY CLAIMS	PERCENTAGE OF 2ND INJURY CLAIMS
1988	1,862	1,778	95%
1989	1,933	1,853	93%
1990	2,181	2,090	96%
1991	2,772	2,641	95%
1992	3,081	2,977	97%

Since 2nd injury claims reflect such a large percentage of the claim activity, the July 1, 1994 elimination of involvement in prior injury claims has reduced an elephant-sized Fund to a mouse. However, as this Committee certainly knows, that mouse has a phenomenally long tail. According to an actuarial review of the Workers Compensation Fund, commissioned by the Kansas Insurance Department, the total unpaid liability to pay those claims against the Fund range between \$265 million and \$313 million.

Please remember that the Workers Compensation Fund operates, to a high extent, as a "pay as you go" Fund. In other words, the Fund collects assessments against insurance companies, self insuring employers, and group-funded pools each year to pay the claims they anticipate resolving during that year. For instance, the \$48 million collected in assessments for 1996 is expected to be

irely spent during 1996. When you consider the total Fund liability, it is reasonable to expect significant annual assessments to be levied well into the next century.

The Kansas Chamber of Commerce and Industry Workers Compensation Corporation received a certificate of authority to operate a group-funded self insurance pool beginning September 1, 1994. Our program provides workers compensation coverage to around 30 Kansas employers with a total annual premium of around \$1 million. Like all workers compensation insurance entities, the KCCI program pays an annual assessment to the Workers Compensation Fund. At last year's assessment rate of 17% of total losses during a calendar year, our Corporation's assessment totaled over \$4,600. If the assessment rate remains the same for 1996, KCCI's assessment will approach \$40,000, since this year's assessment will reflect our first full year in operation.

While the KCCI program is assessed like every other insurance entity to finance the Workers Compensation Fund, there is one major difference. Since our program began operating after July 1, 1994, we can never implead the Workers Compensation Fund for a 2nd injury claim. If we achieve our goal of continued growth, the KCCI Workers Compensation Corporation will pay hundreds of thousands of dollars to fund the tail of the Workers Compensation Fund with no hope of ever recouping a fraction of our assessment costs.

SB 648 proposes to relieve group-funded pools of the burden of paying assessments to a Fund in which they cannot participate. On behalf of the Kansas Chamber of Commerce and Industry Workers Compensation Corporation, I would urge your approval of SB 648.

Thank you for considering our position on this matter. I would be happy to attempt to answer any questions.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Commerce Committee

From: Tom Wilder, Director of
Government and Public Affairs

Re: S.B. 648 (Group Workers Compensation Pools)

Date: February 15, 1996

The Kansas Department of Insurance appears today in opposition to Senate Bill 648. This legislation exempts group-funded workers compensation pools which were formed after June 1, 1994 from assessments for the "Second Injury Fund." The Insurance Department has licensed 20 group-funded workers compensation pools under the provisions of K.S.A. 44-581 *et seq.* Seven of these groups would be exempted from Second Injury Fund assessments by S.B. 648. A list of those group pools is attached to my testimony. In addition, any group-funded pool formed in the future would be exempt from paying into the fund.

This legislation is unfair and discriminatory to those groups which received their license as a group-funded pool prior to June 1, 1994. The Department has serious concerns about the impact of this legislation on the operation of the Second Injury Fund. There is also legitimate doubt about the constitutionality of S.B. 648 due to its treatment of group-funded pools based on the date they received their license.

In 1993 the Kansas Legislature approved legislation which ended the liability of the fund for pre-existing injury cases for accidents which occurred after July 1, 1994. However, the Second Injury Fund still provides payments for cases where there is an insolvent or uninsured employer. There have been 440 cases in this area since 1990. In

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Attachment 2 thru 23*

addition, the fund is responsible for reimbursements to a respondent for moneys expended during a workers compensation case that should not have been paid.

A report prepared for the Kansas Insurance Department by Casualty Actuaries, Inc. in June, 1994 indicated the Second Injury Fund liability for pre-existing injury cases will continue until the year 2014. This does not include continuing need for the fund to pay for insolvent/uninsured employers and for reimbursements. Any change in the law which would exempt self-funded pools from assessments for the fund will have serious consequences. The Insurance Department asks the Committee to reject S.B. 648.

**Self-Funded Workers Compensation Pools
Formed After 6/1/94**

- (1.) Wichita Chamber Workers Compensation Fund
Formed August 1, 1994
Membership: Members of Wichita Chamber of Commerce

- (2.) Kansas Chamber of Commerce and Industry Workers Compensation Corporation
Formed September 1, 1994
Membership: Members of KCCI

- (3.) Western Association Self Insured Workers Compensation Trust-Kansas
Formed November 1, 1994 (now dormant)
Membership: Retail implement and hardware dealers

- (4.) Kansas Truckers Risk Management Group, Inc. Trust
Formed January 1, 1995
Membership: Truckers

- (5.) Kansas Transportation & Industry Self Insurers Fund
Formed April 1, 1995
Membership: Members of National Business Owners Association

- (6.) Associated Builders and Contractors Self-Insurers Fund, Inc.
Formed November 1, 1995
Membership: Contractors

- (7.) Wichita Auto Dealers Self-Insurance Fund
Formed February 1, 1996
Membership: Wichita area automobile dealers

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Statement of Brad Smoot, Legislative Counsel
The American Insurance Association
Before the Senate Commerce Subcommittee
Regarding S 648
February 15, 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 worker's compensation in Kansas and across the nation.

AIA opposes the enactment of S 648. We understand the proponents desire to avoid payment of Workers Compensation Fund assessments. We also understand that group-funded pools developed after abolition of the Fund are not eligible to make second injury claims on the Fund. However, there are public policy reasons, as well as questions of fundamental fairness, which we believe override the proponents' arguments.

To begin with, the Fund was created for the benefit of handicapped workers, all employers and the general public. While the Legislature recognized that such benefits need no longer be provided through a state second injury fund mechanism, the obligations of the Fund continue. This obligation has an 18 year payout. (The Fund was not funded on an actuarial basis but rather through an assessment system based on claims.) Why should a Kansas business that has operated in this state for years and received the advantages of the Workers Compensation Fund suddenly be able to escape its obligations by joining a newly formed group funded pool? Existing Kansas businesses should shoulder their fair share of this obligation whether they are insured, self-insured or a member of a group funded pool.

Secondly, if we are to exempt new group-funded pools from their obligation to the Workers Compensation Fund, why should we not also exempt new insurance carriers entering the state for the first time after the termination date for the Fund? Why not exempt any new premium (assessments are based on a percentage of premium) of previously admitted carriers or any premium written on new businesses?

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Attachment 2 thru 3-2

Third, S 648 would create substantial market advantages for newly formed group funded pools. These fledgling pools are competing for insurance business with existing pools and commercial insurance carriers who must pay the substantial Fund assessments each year. Not only would rates for the new pools be reduced but the assessments not paid by such pools would be shifted to other businesses, pools and insurers who must continue to pay the obligations of the Fund.

Finally, while claims for second injuries do represent the bulk of the demand made on the Workers Compensation Fund, the Fund has two other purposes: Claims made against uninsured and insolvent employers (K.S.A. 44-532a) are paid by the Fund as are employer refunds for overpayments of benefits (K.S.A. 44-534a). As a matter of public policy all of us should share the burden for employers who fail to provide workers compensation benefits for their employees and we see nothing in this bill which waives the rights of employers in new group funded pools to collect against the Fund for benefit overpayments. In short, S 648 would give new pools the continuing benefits of the Workers Compensation Fund for free.

S 648 is ill-conceived, unfair and bad public policy. A similar bill, H 2768, has been introduced in the House by another group-funded pool and is only slight more objectionable since it attempts to exempt new pools after January 1, 1993. AIA intends to oppose that measure as well.

Thank you for this opportunity to appear before the Subcommittee. I would be pleased to respond to your questions.



Via Christi
Regional Medical Center
St. Francis Campus

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**VIA CHRISTI REGIONAL MEDICAL CENTER, INC.
WORKERS COMPENSATION SELF-INSURANCE**

On October 1, 1995, St. Joseph Medical Center (St. Joseph) and St. Francis Regional Medical Center (St. Francis) consolidated into Via Christi Regional Medical Center, Inc. (Via Christi). Prior to the consolidation St. Joseph and St. Francis, each had a self-insured workers compensation plan and, of course, there was a desire to continue with a self-insured plan after consolidation. Unfortunately, under Kansas law a private firm is not eligible for self-insured workers compensation until it has been in existence for five (5) years. Although St. Francis and St. Joseph had each been in business in Kansas for over 100 years with an outstanding record of employment practices, the consolidated corporation could not avail itself of the advantages of a self-insured workers compensation plan.

If St. Joseph and St. Francis had merged or if one of the corporations had acquired the other, Kansas law would have allowed the successor to be self-insured. Although the Via Christi situation is probably the result of an oversight in the statute, we have been required to obtain commercial insurance for workers compensation coverage. At present, Via Christi continues its workers compensation program under a \$1 million deductible commercial insurance policy at a cost of approximately \$277,000. This is a substantial cost, especially for two "old line" organizations which have consolidated into an even stronger more viable health care provider.

Additional conditions have been amended into KSA ~~44~~-532(f) for situations where one firm has purchased another. In brief, a purchased firm can continue as a self insurer under existing statutes if it meets the following conditions:

- 1) Be in operation for ten (10) years
- 2) Have after tax profits of \$1 million annually for three (3) years, and
- 3) A debt to equity ratio not greater than 3.5 to 1.

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Attachment 4 thru 4-2

The pre-consolidated firms of Via Christi meet all of these requirements as well, but Via Christi Regional Medical Center, Inc. became a totally new consolidated firm. Therefore, these alternative conditions do not apply. As a totally new firm, Via Christi cannot meet the underlying five (5) year continuous operation condition. It is certainly understandable to require a new organization to establish a satisfactory performance record before allowing self-insurance, but this apparent oversight in the statute also precludes qualified businesses which consolidate from continuing a self-insurance program merely because of the consolidation.

Via Christi Regional Medical Center asks for your support of Senate Bill #~~650~~⁶⁵⁰, drawn up by the Workers Compensation Division, to remedy this situation and others that have come to their attention. The amended language would allow us to continue our well established, proven Workers Compensation Self-Insurance program without the unnecessary \$277,000 expense for a \$1 million deductible workers compensation policy.