

Approved: February 22, 1996
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MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 21, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Hensley, Jordan, Petty, 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:
Philip S. Harness, Director, Workers Compensation Division

Others attending: See attached list

SB 664: **Exempting direct sellers from employment security taxes**

Senator Burke moved, seconded by Senator Jordan, that **SB 664** be recommended favorable for passage. The recorded vote was in favor of the motion.

SB 649: **Omnibus workers compensation act**

Senator Harris, Subcommittee Chair, stated SB 649 is the product of recommendations of the Workers Compensation Advisory Council and the Interim Committee on Labor and Industry. The subcommittee submits the following proposed amendments:

Section 3, line 41 is amended by striking the word "firefighter" and insert in lieu thereof the words "emergency personnel", strike the word "a" and insert "an", line 42, strike the word "fire"

Section 3, Page 14 and Section 4, Page 15 adding the language, "including, but not limited to the 4th edition of the AMA guidelines for the Evaluation of Physical Impairment";

Section 5, Page 17, line 3, following the word "overpaid" insert the words "temporary total disability"; and further Section 6, line 24, strike the following sentence: ~~Such prohibition against lump sum settlements shall not apply to an employee who has returned to work at a comparable wage.~~ as language is superfluous.

Section 7, Line 18, line 17, change the misdemeanor from a C to A; strike the language "~~and the employer may be subject to a penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater.~~"; insert new language creating an administrative procedure to collect and assess the fine originally provided for in the bill as follows:

"(d) In addition, whenever the director has reason to believe that any employer has engaged or is engaging in the knowing and intentional failure to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section, the director shall issue and serve upon such employer a statement of the charges with respect thereto and shall conduct a hearing in accordance with the Kansas administrative procedure act, wherein the employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or twenty-five thousand dollars, whichever amount is greater.

"(e) Any civil penalty imposed or final action taken under this section shall be subject to review in accordance with the act for judicial review of agency actions in the district court of Shawnee county.

"(f) All moneys received under this section for costs assessed or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fund."

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 21, 1996.

Section 8, Page 21, Line 8, following the word "to", insert: "less any amount deducted from additional benefits due the employee pursuant to subsection (c) of K.S.A. 44-525, aat." This language is required for conformity with Section 5.

Section 10, Page 22, line 34, following the word "board." insert: "Members of the board shall hear such preliminary appeals on a rotating basis and the individual board member which decides the appeal shall sign each such decision. This provides for preliminary appeals hearings by individual members of the board on a rotating basis and the individual member must sign any opinion the member authors.

Section 11, Page 25, Line 6, following the word "impleaded," insert: "if the liability of the fund has not been established within five years of the date of the employee filing a written notice of claim, the commissioner of insurance may cause to be filed with an administrative law judge a motion to dismiss the fund from the case. The Administrative law judge shall notify counsel of record not less than 10 days prior to issuing any order dismissing the fund from a case. The administrative law judge shall dismiss the fund from any such case absent a showing by one of the parties that the case should be left open due to medical necessity or other just case." This creates a five year threshold after which the workers compensation fund may move to dismiss a case in which it is impleaded for lack of prosecution.

A New Section 14. which includes the provisions of **SB 694** reversing Boucher v. Peerless Attachment 1.

The Committee discussed the use of "competent medical evidence" versus evidence based upon the 4th edition, AMA Guidelines found on Page 14, Lines 1,2,3 and 4; and Page 5, lines 3,4,5 and 6. The subcommittee proposed amendment broadens the medical evidence component by "including, but not limited to the 4th edition of AMA Guidelines". The Director of Workers Compensation commented it would be advisable to identify in law which edition was to apply rather than identifying the edition through administrative rules and regulations, as such a procedure might be an illegal delegation of legislative authority.

Senator Ranson moved, seconded by Senator Jordan, that SB 649 be amended on Page 14, Lines 2,3, and 4 by striking the use of "competent medical evidence" and substituting the fourth edition, of the American Medical Association Guidelines for the Evaluation of Physical Impairment, if the impairment is contained therein.; and on Page 15, Line 3 by reinserting the following language: "and based on the fourth edition of the American Medical Association Guidelines for the Evaluation of Physical Impairment, if the impairment is contained therein." The motion carried on a voice vote.

Senator Hensley moved, seconded by Senator Ranson, that SB 649 be amended on Page 26, line 35, by inserting a new subsection (e) "The director of workers compensation shall widely disseminate information about the medication program. The motion carried on a voice vote.

Senator Hensley moved, seconded by Senator Feleciano, that SB 649 be amended on Page 17, line 7 following the word "thereto" by inserting the following: "comma (,) unless the administrative law judge finds that neither the claimant nor the claimants representative had any reason to believe such payments were inappropriate." The amendment failed on a voice vote.

The Chair stated the Committee would continue its deliberations on SB 649 at its next scheduled meeting.

Upon motion by Senator Burke, seconded by Senator Jordan, the Minutes of the February 20, 1996 meeting were approved.

The meeting adjourned at 9:15 a.m.

The next meeting is scheduled for February 22, 1996

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 21, 1996

NAME	REPRESENTING
BUD GRANT	KCCI
Bill Jance	Boeing
Tom Wilder	Kansas Insurance Dept
David Shufelt	Kansa Dept. Human Resources Dir. Adm. Serv.

SENATE BILL No. _____

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. K.S.A. 44-501 is hereby amended to read as follows: 44-501. (a) If in any
11 employment to which the workers compensation act applies, personal injury by accident
12 arising out of and in the course of employment is caused to an employee, the employer
13 shall be liable to pay compensation to the employee in accordance with the provisions of
14 the workers compensation act. In proceedings under the workers compensation act, the
15 burden of proof shall be on the claimant to establish the claimant's right to an award of
16 compensation and to prove the various conditions on which the claimant's right depends.
17 In determining whether the claimant has satisfied this burden of proof, the trier of fact shall
18 consider the whole record.

19 (b) Except as provided in the workers compensation act, no employer, or other employee
20 of such employer, shall be liable for any injury for which compensation is recoverable
21 under the workers compensation act nor shall an employer be liable to any third party for
22 any injury or death of an employee which was caused under circumstances creating a legal
23 liability against a third party and for which workers compensation is payable by such
24 employer.

25 ~~(c) Except for liability for medical compensation, as provided for in K.S.A. 44-510 and~~
26 ~~amendments thereto, the employer shall not be liable under the workers compensation act~~
27 ~~in respect of any injury which does not disable the employee for a period of at least one~~
28 ~~week from earning full wages at the work at which the employee is employed. The~~
29 ~~employee shall not be entitled to recover for the aggravation of a preexisting condition,~~
30 ~~except to the extent that the work-related injury causes increased disability. Any award~~
31 ~~of compensation shall be reduced by the amount of functional impairment determined to~~
32 ~~be preexisting.~~

33 (d) (1) If the injury to the employee results from the employee's deliberate intention to
34 cause such injury; or from the employee's willful failure to use a guard or protection against
35 accident required pursuant to any statute and provided for the employee, or a reasonable
36 and proper guard and protection voluntarily furnished the employee by the employer, any
37 compensation in respect to that injury shall be disallowed.

1 (2) The employer shall not be liable under the workers compensation act where the
2 injury, disability or death was contributed to by the employee's use or consumption of
3 alcohol or any drugs, chemicals or any other compounds or substances, including but not
4 limited to, any drugs or medications which are available to the public without a prescription
5 from a health care provider, prescription drugs or medications, any form or type of narcotic
6 drugs, marijuana, stimulants, depressants or hallucinogens. In the case of drugs or
7 medications which are available to the public without a prescription from a health care
8 provider and prescription drugs or medications, compensation shall not be denied if the
9 employee can show that such drugs or medications were being taken or used in
10 therapeutic doses and there have been no prior incidences of the employee's impairment
11 on the job as the result of the use of such drugs or medications within the previous 24
12 months. It shall be conclusively presumed that the employee was impaired due to alcohol

*Senate Commerce Committee
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Attachment 1 thru 1-3*

1 if it is shown that at the time of the injury that the employee had an alcohol concentration
2 of .04 or more. An employee's refusal to submit to a chemical test shall not be admissible
3 evidence to prove impairment unless there was probable cause to believe that the
4 employee used, possessed or was impaired by a drug or alcohol while working. The
5 results of a chemical test shall not be admissible evidence to prove impairment unless the
6 following conditions were met:

7 (A) There was probable cause to believe that the employee used, had possession of, or
8 was impaired by the drug or alcohol while working;

9 (B) the test sample was collected at a time contemporaneous with the events establishing
10 probable cause;

11 (C) the collecting and labeling of the test sample was performed by a licensed health care
12 professional;

13 (D) the test was performed by a laboratory approved by the United States department of
14 health and human services or licensed by the department of health and environment,
15 except that a blood sample may be tested for alcohol content by a laboratory commonly
16 used for that purpose by state law enforcement agencies;

17 (E) the test was confirmed by gas chromatography, gas chromatography-mass
18 spectroscopy or other comparably reliable analytical method, except that no such
19 confirmation is required for a blood alcohol sample; and

20 (F) the foundation evidence must establish beyond a reasonable doubt, that the test
21 results were from the sample taken from the employee.

22 (e) Compensation shall not be paid in case of coronary or coronary artery disease or
23 cerebrovascular injury unless it is shown that the exertion of the work necessary to
24 precipitate the disability was more than the employee's usual work in the course of the
25 employee's regular employment.

26 (f) Except as provided in the workers compensation act, no construction design
27 professional who is retained to perform professional services on a construction project or
28 any employee of a construction design professional who is assisting or representing the
29 construction design professional in the performance of professional services on the site
30 of the construction project, shall be liable for any injury resulting from the employer's failure
31 to comply with safety standards on the construction project for which compensation is
32 recoverable under the workers compensation act, unless responsibility for safety practices
33 is specifically assumed by contract. The immunity provided by this subsection to any
34 construction design professional shall not apply to the negligent preparation of design
35 plans or specifications.

36 (g) It is the intent of the legislature that the workers compensation act shall be liberally
37 construed for the purpose of bringing employers and employees within the provisions of
38 the act to provide the protections of the workers compensation act to both. The provisions
39 of the workers compensation act shall be applied impartially to both employers and
40 employees in cases arising thereunder.

41 (h) If the employee is receiving retirement benefits under the federal social security act
42 or retirement benefits from any other retirement system, program or plan which is provided
43 by the employer against which the claim is being made, any compensation benefit
44 payments which the employee is eligible to receive under the workers compensation act
45 for such claim shall be reduced by the weekly equivalent amount of the total amount of all

1 such retirement benefits, less any portion of any such retirement benefit, other than
2 retirement benefits under the federal social security act, that is attributable to payments
3 or contributions made by the employee, but in no event shall the workers compensation
4 benefit be less than the workers compensation benefit payable for the employee's
5 percentage of functional impairment.

6 Section 2. The provisions of K.S.A. 44-501, as amended by Section 1 of this act, shall
7 apply to any claim brought under the Kansas Workers Compensation Act for an injury
8 which occurred prior to the effective date of this act, unless the claim has been fully
9 adjudicated.

10 Section 3. K.S.A. 44-501 is hereby repealed.

11 Section 4. This act shall take effect and be in force from and after its publication in the
12 Kansas register.

Here's the new Section on
retroactivity!