

Approved: February 23, 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 22, 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:
Paul Bicknell, Chief of Contributions, Department of Human Resources

Others attending: See attached list

Upon motion by Senator Reynolds, seconded by Senator Vidricksen, the Minutes of the February 21, 1996 meeting were approved.

HB 2650: **Extension of employment security tax moratorium for an additional year**

Paul Bicknell, Chief of Contributions, Department of Human Resources, proposed an amendment to HB 2650 to address a concern expressed by the U.S. Department of Labor that the range of rates among employers affected by the moratorium who are eligible for experience rating is too extreme and does not contain a sufficient rate differential. Mr. Bicknell advised the amendment is being proposed in response to a possible conflict in the Kansas statutory language regarding the moratorium and federal certification requirements for state unemployment insurance programs. . The Department of Human Resources has received confirmation in writing that adjusting negative balance tax rates provided in this amendment, will satisfy federal certification requirements. The proposed amendment lowers negative balance employer rates from 5.5 - 6.4 to 1.1 - 6.0 per cent. for the years 1996 and 1997. There will be a 42 rate differential between the 1.1. rate and the standard rate of 5.4 percent. Attachment 1

Senator Steffes moved, seconded by Senator Reynolds, that **HB 2650** be amended on Page 2, line 32, by inserting a new schedule for rate years 1996 and 1997 for all negative account balance eligible employers (reference Attachment 2); Page 4, line 41, following the "comma (,)" insert "except for rate years 1996 and 1997,"; Page 9, line 4, add the following: "For rate year 1996 and 1997, the rates in schedule IIA shall apply unless the reserve fund ratio in column A of schedule III as determined by this section is less than 2%."; Page 11, line 22, strike the words "statute book" and insert in lieu thereof the words "Kansas Register". The voice vote was in favor of the motion.

Senator Feleciano moved, seconded by Senator Reynolds, that **HB 2650** be recommended favorable for passage as amended. The recorded vote was in favor of the motion.

SB 649: **Omnibus workers compensation act**

The Committee continued its deliberations on SB 649. Bob Nugent, Revisor of Statutes, reviewed the subcommittee report on SB 649 amended on February 21. Attachment 3.

Senator Harris moved, seconded by Senator Reynolds, that **SB 649** be amended as reflected in Attachment 3; on Page 20, Line 43 by striking "or pursuant to an interlocutory order entered by a benefit"; and on Page 21, Line 1, striking "review officer under K.S.A. 44-5,114". The voice vote was in favor of the motion.

Senator Harris moved, seconded by Senator Ranson, that **SB 649** be recommended favorable for passage as amended. The recorded vote was Aye 10, Nay 2, Pass 1, the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m.
on February 22, 1996.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for February 23, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 22, 1996

| NAME | REPRESENTING |
|-------------------------|--------------------------------|
| <i>Tom Hough</i> | <i>KTLA</i> |
| <i>Bud Grant</i> | <i>KCCI</i> |
| <i>Terry Leatheman</i> | <i>KCCI</i> |
| <i>Art Ryan</i> | <i>com - by lumbermen</i> |
| <i>Rich McKee</i> | <i>KLA</i> |
| <i>Bill Curtis</i> | <i>Ks Assoc of School Bds</i> |
| <i>Kevin Robertson</i> | <i>Ks SELF-INSURERS Assoc.</i> |
| <i>Phil Harless</i> | <i>KDHR-Workers Shop</i> |
| <i>David Shufelt</i> | <i>KDHR - IDW Workers Comp</i> |
| <i>Ronald Thomas</i> | <i>KDHR - WORKERS COMP</i> |
| <i>Bill Hayes</i> | <i>KDHR</i> |
| <i>Paul Bicknell</i> | <i>KDHR</i> |
| <i>Roger Aeschliman</i> | <i>KDHR</i> |
| <i>Wayn Mathis</i> | <i>K, AFL-CIO</i> |
| <i>Gene M Israel</i> | |
| | |
| | |
| | |

House Bill 2650
February 22, 1996

Good morning Madame Chairwoman and members of the committee. My name is Paul Bicknell and I am the Chief of Contributions with the Kansas Department of Human Resources. This morning I appear before you to propose an amendment to HB 2650 by adding new language to K.S.A. 44-710a(a)(2). The amendment would lower contribution rates for negative balance employers effective calendar years 1996 and 1997. This amendment does not change any existing provisions of HB 2650 which would extend the moratorium on unemployment insurance taxes a third year, or through 1997.

This amendment is being proposed in response to correspondence received from the U.S. Department of Labor which pointed out a possible conflict in the Kansas statutory language regarding the moratorium and federal certification requirements for state unemployment insurance programs. The concern expressed by the national office was that the range of rates among employers affected by the moratorium who are eligible for experience rating is too extreme and did not contain a sufficient rate differential. The Department of Human Resources has received confirmation in writing that adjusting negative balance tax rates as provided by the proposed amendment will satisfy federal certification requirements.

*Senate Commerce Committee
February 22, 1996*

Attachment 1 thru 1-3

Range of Rates
Negative Balance Employers
Rate Years 1996 and 1997

Current Law

HB 2650

5.5 - ~~6.5~~^{6.4} %

1.1 - 6.0 %

Under current statute, negative balance tax rates depend on the extent to which benefit payments exceed the amount of contributions the employer has paid into the trust fund.

This amendment would effectively meet the federal requirement concerning rate differentials between positive balance employer rates of 0.0 per cent by lowering negative balance employer rates from 5.5 - ~~6.5~~^{6.4} to 1.1 - 6.0 per cent. There will a 42 rate differential between the 1.1 rate and the standard rate of 5.4 per cent.

Madame Chairwoman, that concludes my testimony. I will answer any questions you may have.

Moratorium
HB 2650

1-3

| <u>Category</u> | <u>Number of Accounts</u> | <u>Range of Rates</u> | |
|--------------------------------|---------------------------|---------------------------|----------------|
| | | <u>Current Moratorium</u> | <u>HB 2650</u> |
| 1. New Employers | 11,000 | 1.0% (all) | 1.0% (all) |
| 2. Positive Eligible | 45,000 | "0%" | "0%" |
| 3. Negative Balance | 3,000 | 5.5%-6.4% | 1.1%-6.0% |

Kansas Department of Human Resources
Division of Staff Services
Labor Market Information Services
February 19, 1996

1 instance shall any such assigned rate be less than 2%. Employers engaged
 2 in more than one type of industrial activity shall be classified by principal
 3 activity. All rates assigned will remain in effect for a complete calendar
 4 year. If the sale or acquisition of a new establishment would require re-
 5 classification of the employer to a different industry division, the em-
 6 ployer would be promptly notified, and the contribution rate applicable
 7 to the new industry division would become effective the following January
 8 1. For rate year 1995 and 1996 years 1995, 1996 and 1997, all employers
 9 who are not eligible for rate computation shall pay contributions at the
 10 rate of 1%. However, for rate year 1996 and 1997, the 1% contribution
 11 rate for all employers who are not eligible for a rate computation shall
 12 not be effective if the reserve fund ratio in column A of schedule III as
 13 determined by this section is less than 2%.

14 (ii) For purposes of this subsection (a), employers shall be classified
 15 by industrial activity in accordance with standard procedures as set forth
 16 in rules and regulations adopted by the secretary.

17 (C) "Computation date" means June 30 of each calendar year with
 18 respect to rates of contribution applicable to the calendar year beginning
 19 with the following January 1. In arriving at contribution rates for each
 20 calendar year, contributions paid on or before July 31 following the com-
 21 putation date for employment occurring on or prior to the computation
 22 date shall be considered for each contributing employer who has been
 23 subject to this act for a sufficient period of time to have such employer's
 24 rate computed under this subsection (a).

25 (2) *Eligible employers.* (A) A reserve ratio shall be computed for each
 26 eligible employer by the following method: Total benefits charged to the
 27 employer's account for all past years shall be deducted from all contri-
 28 butions paid by such employer for all such years. The balance, positive
 29 or negative, shall be divided by the employer's average annual payroll,
 30 and the result shall constitute the employer reserve ratio.

31 (B) Negative account balance employers as defined in subsection (d)
 32 shall pay contributions at the rate of 5.4% for each calendar year.

33 (C) Eligible employers, other than negative account balance employ-
 34 ers, who do not meet the average annual payroll requirements as stated
 35 in subsection (a)(2) of K.S.A. 44-703 and amendments thereto, will be
 36 issued the maximum rate indicated in subsection (a)(3)(C) of this section
 37 until such employer establishes a new period of 24 consecutive calendar
 38 months immediately preceding the computation date throughout which
 39 benefits could have been charged against such employer's account by
 40 resuming the payment of wages. Contribution rates effective for each
 41 calendar year thereafter shall be determined as prescribed below.

42 (D) As of each computation date, the total of the taxable wages paid
 43 during the twelve-month period prior to the computation date by all em-

Provided, that for rate years 1996 and 1997 all
 negative account balance eligible employers will be
 assigned rates and pay contributions in accordance
 with the following schedule.

SCHEDULE III

| Rate Group | Reserve Ratio | Effective Rates |
|------------|-----------------------------------|-----------------|
| | <u>Negative Eligible Accounts</u> | |
| 1 | Less than 0.00 but greater than | -0.40 1.1 |
| 2 | 0.40 but greater than | -0.80 1.2 |
| 3 | 0.80 but greater than | -1.20 1.3 |
| 4 | 1.20 but greater than | -1.60 1.4 |
| 5 | 1.60 but greater than | -2.00 1.5 |
| 6 | 2.00 but greater than | -2.40 1.6 |
| 7 | 2.40 but greater than | -2.80 1.7 |
| 8 | 2.80 but greater than | -3.20 1.8 |
| 9 | 3.20 but greater than | -3.60 1.9 |
| 10 | 3.60 but greater than | -4.00 2.0 |
| 11 | 4.00 but greater than | -4.40 2.1 |
| 12 | 4.40 but greater than | -4.80 2.2 |
| 13 | 4.80 but greater than | -5.20 2.3 |
| 14 | 5.20 but greater than | -5.60 2.4 |
| 15 | 5.60 but greater than | -6.00 2.5 |
| 16 | 6.00 but greater than | -6.40 2.6 |
| 17 | 6.40 but greater than | -6.80 2.7 |
| 18 | 6.80 but greater than | -7.20 2.8 |
| 19 | 7.20 but greater than | -7.60 2.9 |
| 20 | 7.60 but greater than | -8.00 3.0 |
| 21 | 8.00 but greater than | -8.40 3.1 |
| 22 | 8.40 but greater than | -8.80 3.2 |
| 23 | 8.80 but greater than | -9.20 3.3 |
| 24 | 9.20 but greater than | -9.60 3.4 |
| 25 | 9.60 but greater than | -10.00 3.5 |
| 26 | 10.00 but greater than | -10.40 3.6 |
| 27 | 10.40 but greater than | -10.80 3.7 |
| 28 | 10.80 but greater than | -11.20 3.8 |
| 29 | 11.20 but greater than | -11.60 3.9 |
| 30 | 11.60 but greater than | -12.00 4.0 |
| 31 | 12.00 but greater than | -12.40 4.1 |
| 32 | 12.40 but greater than | -12.80 4.2 |
| 33 | 12.80 but greater than | -13.20 4.3 |
| 34 | 13.20 but greater than | -13.60 4.4 |
| 35 | 13.60 but greater than | -14.00 4.5 |
| 36 | 14.00 but greater than | -14.40 4.6 |
| 37 | 14.40 but greater than | -14.80 4.7 |
| 38 | 14.80 but greater than | -15.20 4.8 |
| 39 | 15.20 but greater than | -15.60 4.9 |
| 40 | 15.60 but greater than | -16.00 5.0 |
| 41 | 16.00 but greater than | -16.40 5.1 |
| 42 | 16.40 but greater than | -16.80 5.2 |
| 43 | 16.80 but greater than | -17.20 5.3 |
| 44 | 17.20 but greater than | -17.60 5.4 |
| 45 | 17.60 but greater than | -18.00 5.5 |
| 46 | 18.00 but greater than | -18.40 5.6 |
| 47 | 18.40 but greater than | -18.80 5.7 |
| 48 | 18.80 but greater than | -19.20 5.8 |
| 49 | 19.20 but greater than | -19.60 5.9 |
| 50 | 19.60 and less | 6.0 |

Senate Commerce Committee
 February 27, 1996
 Attachment 2

THUMBNAIL OUTLINE OF SB 649

Sec. 1: (Advisory Council) P. 3, L. 40 This section clarifies the status of emergency services personnel. Emergency services personnel would not be excluded from coverage, under the "coming and going" rule when responding to an emergency. The interim committee had no recommendation on this issue.

Sec. 2: (Advisory Council) P. 10, L. 32 This section eliminates the benefit review conference (BRC) entirely. The interim committee recommended only that the BRC be discretionary. Later sections of the bill replace the BRC with a mediation procedure.

Sec. 3: (Interim Committee) P. 14, L. 4 This section abolishes a reference to the third edition of the AMA guides and replaces it with the 4th edition.

Sec. 4: (Interim Committee) P. 15, L. 6 & L. 12 This section changes the prerequisites for obtaining an independent medical examination. The IME is made discretionary and can only be ordered if two medical opinions differ as to the percentage of impairment. Reference to the AMA guides is updated.

Sec. 5: (Interim Committee) P. 17, L. ~~22~~³ This section allows overpaid TTD to be credited against the final weeks of an award rather than against the workers compensation fund.

Sec. 6: (Interim Committee) P. 17, 22 This section reduces the waiting period before lump sum settlements may be reached from 2 years to 9 months.

Sec. 7: (Advisory Council) P. 18, L. 20 This section increases the criminal penalty for failure to provide workers compensation coverage from a C misdemeanor to an A misdemeanor and creates an administrative penalty. The interim committee did not study this issue.

Sec. 8: (Advisory Council) P. 21, L. 8 Abolishes a cross reference to BRCs. (See, Sec. 2)

Sec. 9: (Advisory Council) P. 21, L. 42 Excludes uncompensated officers and directors of nonprofit corporations from coverage unless they notify the director that they desire coverage. (New)

Sec. 10: (Advisory Council) P. 22, L. 33 Authorizes individual members of the Workers Compensation Board to hear appeals from preliminary hearings. (Interim Committee had no recommendation)

Sec. 11: (Interim Committee) P. 25, L. 5 Allows an administrative law judge to dismiss an action against the workers compensation fund for lack of prosecution.

Sec. 12: (Advisory Council) P. 26, L. 5 Creates a mediation conference procedure to replace the abolished BRC. The conference is discretionary and may be only be ordered if both parties consent to the mediation conference. The ultimate decision maker must be personally present at the meeting.

Sec. 13: (Advisory Council) P. 26, L. ~~18~~ Additional steps toward creating the mediation procedure. Requires broad distribution of information concerning mediation

Sec. 14: (Advisory Council) P. 27, L. 9 Increases criminal penalty for fraudulent and abusive practices under the act from a C to an A misdemeanor.

Sec. 15: (SB 694) (attached) Legislatively reverses Boucher v. Peerless. (Reversing the requirement that an injured worker must be absent from work for a week before recovering benefits for permanent disability.

Sec. 16: (Sub Comm.) (attached) The change in Sec. 15 is applied retroactively.

Sec. 17: (Advisory Council) P. 27, L. 37 All references to BRCs are repealed.

*Senate Commerce Committee
February 22, 1996
Attachment 3 thru 3 -*

2-2

1 the employee's death.

2 (3) "Wholly dependent child or children" means:

3 (A) A birth child or adopted child of the employee except such a child
4 whose relationship to the employee has been severed by adoption;

5 (B) a stepchild of the employee who lives in the employee's house-
6 hold;

7 (C) any other child who is actually dependent in whole or in part on
8 the employee and who is related to the employee by marriage or consan-
9 guinity; or

10 (D) any child as defined in subsections (3)(A), (3)(B) or (3)(C) who
11 is less than 23 years of age and who is not physically or mentally capable
12 of earning wages in any type of substantial and gainful employment or
13 who is a full-time student attending an accredited institution of higher
14 education or vocational education.

15 (d) "Accident" means an undesigned, sudden and unexpected event
16 or events, usually of an afflictive or unfortunate nature and often, but not
17 necessarily, accompanied by a manifestation of force. The elements of an
18 accident, as stated herein, are not to be construed in a strict and literal
19 sense, but in a manner designed to effectuate the purpose of the workers
20 compensation act that the employer bear the expense of accidental injury
21 to a worker caused by the employment.

22 (e) "Personal injury" and "injury" mean any lesion or change in the
23 physical structure of the body, causing damage or harm thereto, so that
24 it gives way under the stress of the worker's usual labor. It is not essential
25 that such lesion or change be of such character as to present external or
26 visible signs of its existence. An injury shall not be deemed to have been
27 directly caused by the employment where it is shown that the employee
28 suffers disability as a result of the natural aging process or by the normal
29 activities of day-to-day living.

30 (f) The words "arising out of and in the course of employment" as
31 used in the workers compensation act shall not be construed to include
32 injuries to the employee occurring while the employee is on the way to
33 assume the duties of employment or after leaving such duties, the prox-
34 imate cause of which injury is not the employer's negligence. An em-
35 ployee shall not be construed as being on the way to assume the duties
36 of employment or having left such duties at a time when the worker is
37 on the premises of the employer or on the only available route to or from
38 work which is a route involving a special risk or hazard and which is a
39 route not used by the public except in dealings with the employer. An
40 *employee shall not be construed as being on the way to assume the duties*
41 *of employment, if the employee is a [volunteer firefighter] responding to a*
42 *fire alarm.*

provider of emergency services

43 The words, "arising out of and in the course of employment" as used

an emergency

2-3

1 impairment of function to the scheduled member as determined using
 2 ~~the third edition, revised, of the American Medical Association Guidelines~~
 3 ~~for the Evaluation of Physical Impairment, if the impairment is contained~~
 4 ~~therein [competent medical evidence]~~

the fourth edition of the American Medical Association Guides to the
 Evaluation of Permanent Impairment, if the impairment is contained
 therein

5 (b) Whenever the employee is entitled to compensation for a specific
 6 injury under the foregoing schedule, the same shall be exclusive of all
 7 other compensation except the benefits provided in K.S.A. 44-510 and
 8 amendments thereto, and no additional compensation shall be allowable
 9 or payable for any temporary or permanent, partial or total disability,
 10 except that the director, in proper cases, may allow additional compen-
 11 sation during the actual healing period, following amputation. The healing
 12 period shall not be more than 10% of the total period allowed for the
 13 scheduled injury in question nor in any event for longer than 15 weeks.
 14 The return of the employee to the employee's usual occupation shall
 15 terminate the healing period.

16 Sec. 4. K.S.A. 44-510e is hereby amended to read as follows: 44-
 17 510e. (a) If the employer and the employee are unable to agree upon the
 18 amount of compensation to be paid in the case of injury not covered by
 19 the schedule in K.S.A. 44-510d and amendments thereto, the amount of
 20 compensation shall be settled according to the provisions of the workers
 21 compensation act as in other cases of disagreement, except that in case
 22 of temporary or permanent partial general disability not covered by such
 23 schedule, the employee shall receive weekly compensation as determined
 24 in this subsection during such period of temporary or permanent partial
 25 general disability not exceeding a maximum of 415 weeks. Weekly com-
 26 pensation for temporary partial general disability shall be 66 $\frac{2}{3}$ % of the
 27 difference between the average gross weekly wage that the employee was
 28 earning prior to such injury as provided in the workers compensation act
 29 and the amount the employee is actually earning after such injury in any
 30 type of employment, except that in no case shall such weekly compen-
 31 sation exceed the maximum as provided for in K.S.A. 44-510c and amend-
 32 ments thereto. Permanent partial general disability exists when the em-
 33 ployee is disabled in a manner which is partial in character and permanent
 34 in quality and which is not covered by the schedule in K.S.A. 44-510d
 35 and amendments thereto. The extent of permanent partial general disa-
 36 bility shall be the extent, expressed as a percentage, to which the em-
 37 ployee, in the opinion of the physician, has lost the ability to perform the
 38 work tasks that the employee performed in any substantial gainful em-
 39 ployment during the fifteen-year period preceding the accident, averaged
 40 together with the difference between the average weekly wage the worker
 41 was earning at the time of the injury and the average weekly wage the
 42 worker is earning after the injury. In any event, the extent of permanent
 43 partial general disability shall not be less than the percentage of functional

1 impairment. Functional impairment means the extent, expressed as a per-
 2 centage, of the loss of a portion of the total physiological capabilities of
 3 the human body as established by competent medical evidence ~~and based~~
 4 ~~on the third edition, revised, of the American Medical Association Guide-~~
 5 ~~lines for the Evaluation of Physical Impairment, if the impairment is con-~~
 6 ~~tained therein.~~ An employee shall not be entitled to receive permanent
 7 partial general disability compensation in excess of the percentage of
 8 functional impairment as long as the employee is engaging in any work
 9 for wages equal to 90% or more of the average gross weekly wage that
 10 the employee was earning at the time of the injury. If the employer and
 11 the employee are unable to agree upon the employee's functional im-
 12 pairment *and if at least two medical opinions based on competent medical*
 13 *evidence disagree as to the percentage of functional impairment*, such
 14 matter shall *may* be referred by the administrative law judge to an in-
 15 dependent health care provider who shall be selected by the administra-
 16 tive law judge from a list of health care providers maintained by the
 17 director. The health care provider selected by the director pursuant to
 18 this section shall issue an opinion regarding the employee's functional
 19 impairment which shall be considered by the administrative law judge in
 20 making the final determination. The amount of weekly compensation for
 21 permanent partial general disability shall be determined as follows:

22 (1) Find the payment rate which shall be the lesser of (A) the amount
 23 determined by multiplying the average gross weekly wage of the worker
 24 prior to such injury by 66 $\frac{2}{3}$ % or (B) the maximum provided in K.S.A. 44-
 25 510c and amendments thereto;

26 (2) find the number of disability weeks payable by subtracting from
 27 415 weeks the total number of weeks of temporary total disability com-
 28 pensation was paid, excluding the first 15 weeks of temporary total disa-
 29 bility compensation that was paid, and multiplying the remainder by the
 30 percentage of permanent partial general disability as determined under
 31 this subsection (a); and

32 (3) multiply the number of disability weeks determined in paragraph
 33 (2) of this subsection (a) by the payment rate determined in paragraph
 34 (1) of this subsection (a).

35 The resulting award shall be paid for the number of disability weeks at
 36 the full payment rate until fully paid or modified. If there is an award of
 37 permanent disability as a result of the compensable injury, there shall be
 38 a presumption that disability existed immediately after such injury. In any
 39 case of permanent partial disability under this section, the employee shall
 40 be paid compensation for not to exceed 415 weeks following the date of
 41 such injury, subject to review and modification as provided in K.S.A. 44-
 42 528 and amendments thereto.

43 (b) If an employee has received an injury for which compensation is

and based on the fourth edition of the American Medical Association
 Guides to the Evaluation of Permanent Impairment, if the impairment
 is contained therein

temporary total disability

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1 employer in such award for any amount or amounts paid by the employer
2 to the employee as compensation prior to the date of the award.

3 (c) *In the event the claimant has been overpaid benefits as described*
4 *in subsection (b) of K.S.A. 44-534a, and amendments thereto, and the*
5 *claimant is entitled to additional benefits, the administrative law judge*
6 *shall provide for the application of a credit against such benefits as de-*
7 *scribed in subsection (b) of K.S.A. 44-534a, and amendments thereto.*

8 Sec. 6. K.S.A. 44-531 is hereby amended to read as follows: 44-531.

9 (a) Where all parties agree to the payment of all or any part of compen-
10 sation due under the workers compensation act or under any award or
11 judgment, and where it has been determined at a hearing before the
12 administrative law judge that it is for the best interest of the injured
13 employee or the dependents of a deceased employee, or that it will avoid
14 undue expense, litigation or hardship to any party or parties, the admin-
15 istrative law judge may permit the employer to redeem all or any part of
16 the employer's liability under the workers compensation act by the pay-
17 ment of compensation in a lump sum, except that no agreement for pay-
18 ment of compensation in a lump sum shall be approved for ~~two years~~
19 *nine months* after an employee has returned to work in cases in which
20 the employee, who would otherwise be entitled to compensation for work
21 disability, is not entitled to work disability compensation because of being
22 returned to work at a comparable wage by ~~any employer~~ *the employer*
23 *who employed the worker at the time of the injury giving rise to the claim*
24 *being settled. (Such prohibition against lump-sum settlements shall not*
25 *apply to an employee who has returned to work at a comparable wage.)*

strike

26 The employer shall be entitled to an 8% discount on the amount of any
27 such lump-sum payment that is not yet due at the time of the award.
28 Upon paying such lump sum the employer shall be released and dis-
29 charged of and from all liability under the workers compensation act for
30 that portion of the employer's liability redeemed under this section.

31 (b) No lump-sum awards, unless agreed to by the parties, shall be
32 rendered under the workers compensation act except: (1) As provided in
33 subsection (a) of this section, (2) in cases of remarriage of a surviving
34 spouse as provided in K.S.A. 44-510b and amendments thereto, (3) in
35 cases involving compensation due the employee at the time the award is
36 rendered as provided in K.S.A. 44-525 and amendments thereto and in
37 cases of past due compensation as provided in K.S.A. 44-529 and amend-
38 ments thereto.

39 Sec. 7. K.S.A. 44-532 is hereby amended to read as follows: 44-532.

40 (a) Where the payment of compensation of the employee or the employ-
41 ee's dependents is insured by a policy or policies, at the expense of the
42 employer, or the employer is a member of a qualified group-funded work-
43 ers compensation pool, the insurer or the qualified group-funded workers

1 compensation pool shall be subrogated to the rights and duties under the
2 workers compensation act of the employer so far as appropriate, including
3 the immunities provided by K.S.A. 44-501 and amendments thereto.

4 (b) Every employer shall secure the payment of compensation to the
5 employer's employees by insuring in one of the following ways: (1) By
6 insuring and keeping insured the payment of such compensation with an
7 insurance carrier authorized to transact the business of workers compen-
8 sation insurance in the state of Kansas; (2) by showing to the director that
9 the employer carries such employer's own risk and is what is known as a
10 self-insurer and by furnishing proof to the director of the employer's
11 financial ability to pay such compensation for the employer's self; (3) by
12 maintaining a membership in a qualified group-funded workers compen-
13 sation pool. The cost of carrying such insurance or risk shall be paid by
14 the employer and not the employee.

15 (c) The knowing and intentional failure of an employer to secure the
16 payment of workers compensation to the employer's employees as re-
17 quired in subsection (b) of this section is a class C misdemeanor ~~and~~
18 ~~the employer may be subject to a penalty in an amount equal to twice the~~
19 ~~annual premium the employer would have paid had such employer been~~
20 ~~insured or \$25,000, whichever amount is greater.~~

strike

21 (d) (1) Every insurance carrier writing workers compensation insur-
22 ance for any employment covered under the workers compensation act
23 shall file, with the director, written notice of the issuance, nonrenewal or
24 cancellation of a policy or contract of insurance, or any endorsement,
25 providing workers compensation coverage, within 10 days after such is-
26 suance, nonrenewal or cancellation. Every such insurance carrier shall
27 file, with the director, written notice of all such policies, contracts and
28 endorsements in force on the effective date of this act.

29 (2) Every employer covered by the workers compensation act who is
30 a qualified self-insurer shall give written notice to the director if such
31 employer changes from a self-insurer status to insuring through an in-
32 surance carrier or by maintaining a membership in a qualified group-
33 funded workers compensation pool, such notice to be given within 10
34 days after the effective date of such change. Every self-insurer shall file
35 with the director annually a report verifying the employer's continuing
36 ability to pay compensation to the employer's employees.

37 (3) Every employer covered by the workers compensation act who is
38 a member of a qualified group-funded workers compensation pool shall
39 give written notice to the director if such employer changes from a group-
40 funded workers compensation pool to insuring through an insurance car-
41 rier or becoming a self-insurer, such notice to be given within 10 days
42 after the effective date of such change.

43 (4) The mailing of any written notice or report required by this sub-

(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.

1 review officer under K.S.A. 44-5,114 and amendments thereto and, upon
 2 a full hearing on the claim, the amount of compensation to which the
 3 employee is entitled is found to be less than the amount of compensation
 4 paid or is totally disallowed, the employer and the employer's insurance
 5 carrier shall be reimbursed from the workers compensation fund estab-
 6 lished in K.S.A. 44-566a and amendments thereto, for all amounts of
 7 compensation so paid which are in excess of the amount of compensation
 8 the employee is entitled to as determined in the full hearing on the claim.
 9 The director shall determine the amount of compensation paid by the
 10 employer or insurance carrier which is to be reimbursed under this sub-
 11 section, and the director shall certify to the commissioner of insurance
 12 the amount so determined. Upon receipt of such certification, the com-
 13 missioner of insurance shall cause payment to be made to the employer
 14 or the employer's insurance carrier in accordance therewith.

15 Sec. 9. K.S.A. 44-543 is hereby amended to read as follows: 44-543.

16 (a) As used in this section:

17 (1) "Nonprofit organization" means those nonprofit organizations ex-
 18 empt from federal income tax pursuant to section 501(c) of the internal
 19 revenue code of 1986, as in effect on the effective date of this act.

20 (2) "Compensation" does not include actual and necessary expenses
 21 that are incurred by a volunteer officer, director or trustee in connection
 22 with the services that the volunteer performs for a nonprofit organization
 23 and that are reimbursed to the volunteer or otherwise paid.

24 (3) "Volunteer officer, director or trustee" means an officer, director
 25 or trustee who performs services for a nonprofit organization but does
 26 not receive compensation, either directly or indirectly, for those services.

27 (b) Any employee of a corporate employer who owns ~~ten percent~~
 28 ~~(10%)~~ 10% or more of the outstanding stock of such employer, may file
 29 with the director, prior to injury, a written declaration that ~~he~~ the em-
 30 ployee elects not to accept the provisions of the ~~workmen's~~ workers com-
 31 pensation act, and at the same time, ~~he~~ the employee shall file a duplicate
 32 of such election with the employer. Such election shall be valid only dur-
 33 ing ~~his~~ the employee's term of employment with such employer. Any em-
 34 ployee so electing and thereafter desiring to change ~~his~~ the employee's
 35 election may do so by filing a written declaration to that effect with the
 36 director and a duplicate of such election with the employer. Any contract
 37 in which an employer requires of an employee as a condition of employ-
 38 ment that ~~he~~ the employee elect not to come within the provisions of the
 39 ~~workmen's~~ workers compensation act, shall be void. Any written decla-
 40 rations filed pursuant to this section shall be in such form as may be
 41 required by regulation of the director.

42 (c) Any noncompensated volunteer officer, director or trustee of a
 43 nonprofit corporation as defined in clause 3 of subsection (a) may elect

less any amount deducted from additional benefits due the employee
 pursuant to subsection (c) of K S A 44-525. aat.

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1 to be covered by the provisions of the workers compensation act by filing
 2 with the director, prior to injury, a written declaration that the officer,
 3 director or trustee elects to accept the provisions of the workers compen-
 4 sation act, and at the same time, the person shall file a duplicate of such
 5 election with the employer and the employer's insurance company or qual-
 6 ified group-funded workers compensation pool.

7 Sec. 10. K.S.A. 1995 Supp. 44-551 is hereby amended to read as
 8 follows: 44-551. (a) The duties of the assistant directors of workers com-
 9 pensation shall include but not be limited to acting in the capacity of an
 10 administrative law judge.

11 (b) (1) Administrative law judges shall have power to administer
 12 oaths, certify official acts, take depositions, issue subpoenas, compel the
 13 attendance of witnesses and the production of books, accounts, papers,
 14 documents and records to the same extent as is conferred on the district
 15 courts of this state, and may conduct an investigation, inquiry or hearing
 16 on all matters before the administrative law judges. All acts, findings,
 17 awards, decisions, rulings or modifications of findings or awards made by
 18 an administrative law judge shall be subject to review by the board upon
 19 written request of any interested party within 10 days, ~~and if no such~~
 20 ~~request is made, then the board shall approve such actions, findings,~~
 21 ~~awards, decisions, rulings or modifications of findings or awards of the~~
 22 ~~administrative law judge.~~ Review by the board shall be a prerequisite to
 23 judicial review as provided for in K.S.A. 44-556 and amendments thereto.
 24 On any such review, the board shall have authority to grant or refuse
 25 compensation, or to increase or diminish any award of compensation or
 26 to remand any matter to the administrative law judge for further pro-
 27 ceedings.

28 (2) (A) If an administrative law judge has entered a preliminary
 29 award under K.S.A. 44-534a and amendments thereto, a review by the
 30 board shall not be conducted under this section unless it is alleged that
 31 the administrative law judge exceeded the administrative law judge's ju-
 32 risdiction in granting or denying the relief requested at the preliminary
 33 hearing. *Such an appeal from a preliminary award may be heard and*
 34 *decided by a single member of the board.* ~~The orders of the board on any~~
 35 ~~acts, findings, awards, decisions, rulings or modifications of findings or~~
 36 ~~awards shall be issued within 30 days from the date arguments were~~
 37 ~~presented by the parties.~~

38 (B) If an order on review is not issued by the board within the ap-
 39 plicable time period prescribed by subsection (b)(2)(A), medical com-
 40 pensation and any disability compensation as provided in the award of
 41 the administrative law judge shall be paid commencing with the first day
 42 after such time period and shall continue to be paid until the order of
 43 the board is issued, except that no payments shall be made under this

strike

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.

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1 (2) The administrative law judge shall dismiss the workers compen-
 2 sation fund from any proceeding where the administrative law judge has
 3 determined that there is insufficient evidence to indicate involvement by
 4 the workers compensation fund.

5 (3) *In any case in which the workers compensation fund has been*
 6 *impleaded, [the fund shall not be liable for any payments unless an ad-*
 7 *ministrative law judge makes a determination that the fund is liable for*
 8 *such payments within two years of the last hearing held in the case.]*

9 (d) The commissioner of insurance, in the capacity of administrator
 10 of the workers compensation fund, may make settlements of any amounts
 11 which may be payable from the workers compensation fund with regard
 12 to any claim under the workers compensation act, subject to the approval
 13 of the director.

14 (e) The workers compensation fund shall be liable for:

15 (1) Payment of awards to handicapped employees in accordance with
 16 the provisions of K.S.A. 44-569 and amendments thereto for claims aris-
 17 ing prior to July 1, 1994;

18 (2) payment of workers compensation benefits to an employee who
 19 is unable to receive such benefits from such employee's employer under
 20 the conditions prescribed by K.S.A. 44-532a and amendments thereto;

21 (3) reimbursement of an employer or insurance carrier pursuant to
 22 the provisions of K.S.A. 44-534a and amendments thereto, subsection (d)
 23 of K.S.A. 44-556 and amendments thereto, subsection (c) of K.S.A. 44-
 24 569 and amendments thereto and K.S.A. 44-569a and amendments
 25 thereto;

26 (4) payment of the actual expenses of the commissioner of insurance
 27 which are incurred for administering the workers compensation fund,
 28 subject to the provisions of appropriations acts; and

29 (5) any other payments or disbursements provided by law.

30 (f) If it is determined that the workers compensation fund is not liable
 31 as described in subsection (e), attorney fees incurred by the workers com-
 32 pensation fund may be assessed against the party who has impleaded the
 33 workers compensation fund other than impleadings pursuant to K.S.A.
 34 44-532a and amendments thereto.

35 (g) The commissioner of insurance shall provide for the implemen-
 36 tation of the workers compensation fund as provided in this section and
 37 shall be responsible for ensuring the fund's adequacy to meet and pay
 38 claims awarded against it.

39 Sec. 12. K.S.A. 44-5,110 is hereby amended to read as follows: 44-
 40 5,110. (a) The director of workers compensation shall establish an om-
 41 budsman program within the division of workers compensation to assist
 42 injured employees and persons claiming death benefits in obtaining ben-
 43 efits under the workers compensation act. The director shall employ qual-

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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 cause

2-10

1 ified persons as ombudsmen for the program.

2 (b) Each ombudsman shall meet with or otherwise provide infor-
3 mation to injured employees, shall investigate complaints and shall com-
4 municate with employers, insurance carriers and health care providers.
5 An ombudsman may assist claimants in ~~benefit review~~ mediation confer-
6 ences and otherwise assist unrepresented claimants, employers and other
7 parties to protect the rights of such parties under the workers compen-
8 sation act.

9 (c) In cases of emergency, on a case-by-case basis, the director may
10 enter into contracts with trained mediators or other qualified persons to
11 perform services under the ombudsman program as special ombudsmen.
12 Each special ombudsman shall receive a fee commensurate with the serv-
13 ices rendered in accordance with the contracts for services. The fee for
14 a special ombudsman shall be taxed as costs in the claim to which the
15 special ombudsman is assigned against the respondent.

16 (d) The director of workers compensation shall widely disseminate
17 information about the ombudsman program.

18 New Sec. 13. (a) Upon the request of any party to a workers com-
19 pensation claim and the acceptance of the other party, the director of
20 workers compensation shall schedule the parties for a mediation confer-
21 ence. The purpose of the mediation shall be to assist the parties in reach-
22 ing agreement on any disputed issues in a workers compensation claim.
23 If the director is advised that one party does not wish to participate in
24 the mediation, the director is authorized to encourage that party to par-
25 ticipate.

26 (b) Mediation conferences shall be conducted by mediators ap-
27 pointed by the director. Such mediators shall be qualified as mediators
28 pursuant to the dispute resolution act, K.S.A. 5-501 *et seq.*, and amend-
29 ments thereto, and any relevant rules of the Kansas supreme court as
30 authorized pursuant to K.S.A. 5-510, and amendments thereto.

31 (c) Persons with final settlement authority for each party shall be
32 present, in person, at the mediation conference.

33 (d) All mediation conferences shall be conducted by a mediator in
34 accordance with the dispute resolution act, K.S.A. 5-501, and amend-
35 ments thereto.

36 Sec. 14. K.S.A. 1995 Supp. 44-5,125 is hereby amended to read as
37 follows: 44-5,125. (a) (1) Any person who obtains or attempts to obtain
38 any payment of compensation under the workers compensation act for
39 such person or who denies or attempts to deny the obligation to make
40 any payment of workers compensation benefits; who obtains or attempts
41 to obtain a more favorable workers compensation benefit rate or insur-
42 ance premium rate than that to which such person is otherwise entitled;
43 who prevents, reduces, avoids or attempts to prevent, reduce or avoid the

(e) The director shall widely disseminate information about the mediation conference procedure.

SENATE BILL No. ____

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

10 Section 15 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

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~~¹⁶ 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 2
retroactively!