

Approved: January 28, 1997  
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on January 24, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Feleciano, Gooch, Harris, Jordan, Ranson, and Steineger.

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

Conferees appearing before the committee:  
Phillip Harness, Director, Workers Compensation Division

Others attending: See attached list

Upon motion by Senator Steineger, seconded by Senator Gooch, the Minutes of the January 23, 1997 Meeting were approved.

Phillip Harness, Director, Workers Compensation Division, introduced David Shufelt, Assistant Director. Mr. Harness submitted a copy of Workers Compensation Annual Report. A copy is on file in the Office of Legislative Research.

Mr. Harness stated the Division is continuing its emphasis on improving responsiveness to customers. The Division continues to explore the use of cost-effective technological equipment in its effort to streamline the processing of claims. Mr. Harness stated that due to customer input and the work of the Hospital Reimbursement Task Force established to discuss issues related to appropriate methods for reimbursing hospitals for workers compensation hospitalization, a new and more cost-effective method will be utilized in the 1997 Maximum Medical Fee Schedule. Mr. Harness reported that as a result of legislation passed in 1996 setting forth a new penalty for failure to secure workers compensation insurance, the newly created Compliance Unit brought 180 more employers into statutory compliance, generating approximately \$480,000 in additional premiums. Attachment 1

Mr. Harness stated the major cost factor is the number of occupational injuries and illnesses. Since 1993, the number of lost-time cases, (worker missing seven or more work days) has decreased from 40,000 in 1993 to 20,200 in 1996. This dramatic decrease may be the result of the new definition of "lower back injury". Pursuant to 1996 legislation, the Division is engaged in a pilot mediation program. On-the-spot settlements occur less frequently, however, it is encouraging to note that after mediation, only approximately 1/4 of those cases go on for trial. Mr. Harness stated the Board is caught up with all claims filed in 1994 and 1995; however, there is a significant backlog that still exists of those cases exceeding the statutory 30-day time period within which the Board must make a decision after presentation of argument by the parties. Workers Compensation Board statistics indicate that slightly more than 50% of all appeals being taken result in some modification of the Administrative Law Judges' initial order. These appeals are not on legal issues, but fact issues.

Mr. Harness reported the Workers Compensation Advisory Board met on January 23, 1997, and made recommendations for changes and additions to the Workers Compensation statute. Mr. Harness explained it was necessary each recommendation be approved by four of the five Board members. The Board has a representative of the AFL-CIO and the KCCI. Mr. Harness reviewed the recommendations and asked they be introduced as Commerce Committee bills.

Upon motion by Senator Steineger, seconded by Senator Ranson, Workers Compensation Advisory Board proposals be introduced as a Commerce Committee bill. The proposals amend the following: K.S.A. 44-505 (a)(2); 44-508 (b); 44-510b(f); 44-523(c); 44-523; 44-551(b)(1) and (3); 44-555c(i); 44-5,120(e); 44-5,121(a); and 44-5,125(c). The motion carried. Attachment 2

Mr. Harness stated the Board would meet on February 10, 1997, and anticipates additional

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on January 24, 1997.

recommendations.

Terry Leatherman, Executive Director, Kansas Industrial Council, Kansas Chamber of Commerce and Industry requested bills be introduced changing the workers compensation law as follows: definition of work disability; shorten the time to request review and modification of an award; eliminate the current practice of requiring an employer to pay attorney fees in unsuccessful attempts to receive additional compensation through review and modification; eliminate the inclusion of fringe benefits in the calculation of a disability award; direct medical care in dispute cases; change the selection process for Administrative Law Judges.

Upon motion by Senator Brownlee, seconded by Senator Barone, the Kansas Chamber of Commerce and Industry proposed changes to the Workers Compensation law be introduced as a Commerce Committee bill. The motion carried. Attachment 3.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for January 28, 1997.

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: January 24, 1997

NAME	REPRESENTING
<i>Art Brown</i>	<i>Com. on. Int. Security</i>
<i>Bud Smoot</i>	<i>AIA</i>
<i>Terry Leatherman</i>	<i>KCCI</i>
<i>Dennis Jackson</i>	<i>Disability Rights Advocate</i>
<i>Susan M. Baker</i>	<i>Hein + Weir</i>
<i>Martha Gabehart</i>	<i>Com. on. Disability Concerns</i>
<i>Lucius Ford</i>	<i>Dept. of Justice</i>
<i>Harry Boss</i>	<i>Dept of A. (Med)</i>
<i>JASON PITTSBERGER</i>	<i>KGC</i>
<i>Mark Barcello</i>	<i>KDOCAH</i>
<i>Rich Guthrie</i>	<i>Health Midwest</i>
<i>Roger Traudt</i>	<i>KGC</i>
<i>Wayne Marchus</i>	<i>Is. AFL - CIO</i>
<i>David Shufelt</i>	<i>Dept Human Resources - Div Work Camp</i>
<i>Glenn H. Grabel</i>	<i>KTLA</i>

COMMENTS BY PHILIP S. HARNESS  
DIRECTOR OF DIVISION OF WORKERS COMPENSATION  
KANSAS DEPARTMENT OF HUMAN RESOURCES

TO THE SENATE COMMITTEE ON BUSINESS, LABOR & COMMERCE  
JANUARY 24, 1997

Throughout the past year, the Division of Workers Compensation has continued its emphasis on improving responsiveness to customers in all aspects of our operations.

For example, a traditional workers compensation case begins with the filing of the employer's report of accident. The Division traditionally receives approximately 100,000 of these reports per year. Any enhancement to the receipt, transmission, and sharing of the information on the accident reports has hinged on the increased utilization of electronic data interchange (EDI). The Division is currently still in a pilot program accepting accident reports by EDI from one (1) insurance carrier (Kemper), which accounts for approximately 4% of the total accident report filings. In another area of electronic data interchange, the Division is currently negotiating with the Secretary of Health and Environment to join the State's health care data base, under the auspices of the Kansas Insurance Commissioner, for the receipt of detailed medical information. In the next calendar year, the Division will also be considering the purchase of an optical scanner for paper documents, thereby eliminating some labor-intensive data input by the technical staff while improving the timeliness of document availability. I intend to pursue further process streamlining and cost reduction through a continued emphasis on the cost-effective use of technological equipment.

Customer input, whether from external or internal customers, has long been, and still is, requested and considered by the Division. During the past year, a Hospital Reimbursement Task Force was established as a forum for discussion of issues related to appropriate methods for reimbursing hospitals for workers compensation hospitalization. With the assistance of representatives from both sides of the issue and various interest groups, the task force was able to educate employees of the Division as to the special considerations and external circumstances surrounding reimbursement questions, reached some conclusions, and were able to put various alternative reimbursement methods on the table. As a result, a new and more cost-effective method will be utilized in the 1997 Maximum Medical Fee Schedule.

The 1996 Legislature passed amendments to the law setting forth a new penalty for failure to secure workers compensation insurance, i.e. double the amount of what the premium would have been or \$25,000, whichever is greater. Through vigilant monitoring and enforcement of this new provision, the newly created Compliance Unit brought 180 more employers into statutory compliance with workers compensation insurance coverage requirements, thereby generating approximately \$480,000 in additional premiums (which should, of course, distribute the costs of the system more equitably). Most importantly, the extended

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*Attachment 1-1 thru 1-4*

coverage added protection to a number of employees in the event of work-related injury or illness.

The on-going education of employees, employers, representatives of the insurance industry, medical providers, etc., is still a priority within the Division. The Kansas Department of Human Resources sponsors employer institutes, in both the fall and spring, in several cities located throughout the State and the Division of Workers Compensation always shares in the program. In addition, the Division sponsors an Annual Safety & Health Conference and two (2) Workers Compensation Seminars with the same program being offered in both Sedgwick and Johnson Counties, for convenience of attendees. In 1996, approximately 400 people attended the Safety & Health Conference and approximately 900 people attended the Workers Compensation Seminars. The Workers Compensation Seminars offer continuing education credit for attorneys, nurses, and emergency medical technicians at a reasonable cost.

The major cost driver behind workers compensation is still, of course, the occurrence of occupational injuries and illnesses. Since 1993, the number of lost-time cases in Kansas - i.e., injured workers missing seven (7) or more work days as the result of an occupational injury or illness - are as follows (Chart found on Page 22 of the annual report):

<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>
40,000	40,500	40,000	20,200

Provided to you today is the newly released Annual Report of Fiscal Year 95-96, including the statistical tables which begin with a summary on pp. 24-25, with the tables following all the way to p. 52. There is a bar graph on p. 22 showing frequency of injuries to specific body parts, which is a visual chart of Table III located at pp. 30-31. Outside of miscellaneous, one would note that the back is still the body member injured most frequently, followed by the fingers. Table IV, found at p. 32 of the statistical report, shows the accident severity by nature, and outside of a miscellaneous category, sprains and strains is still the leader, followed by cuts, lacerations, and puncture wounds.

The Division is engaged in a pilot mediation program, pursuant to 1996 Legislation, which I am happy to announce has met with at least some success. While we have tried hard to promote the mediation program through ombudsman contacts, seminar promotions, etc., most of the scheduled mediations still occur as a result of "cold calling" by the Division, i.e. a clerical worker contacts parties as soon as an application for hearing is filed to see if both parties would submit to mediation. While on-the-spot settlements still occur less frequently than not, it is encouraging to note that after mediation, only approximately one-fourth (1/4) of those cases go on for trial. Apparently, although a settlement may not be reached at mediation, the parties agree at a later date upon some sort of settlement, thereby obviating the necessity of a hearing.

The Ombudsman Section, mandated by the 1993 reforms, show 40,641 contacts, on p. 17 of the annual report. Half of those contacts are with employees, the other half are apportioned

between insurance agents, health care providers, insurance carriers, attorneys, employers, and others.

The Workers Compensation Board, the body set up to review decisions appealed from Administrative Law Judges in workers compensation matters, have instituted changes to help alleviate the current backlog. As applications for review for preliminary orders (concerning only medical payments and temporary total disability), the Board is currently caught up, assisted by the 1996 Legislation which allows for a decision on a preliminary order to be heard by, decided, and signed by one board member only. As to final awards, a significant backlog still exists, which are cases exceeding the statutory 30-day time period which the Board must make a decision after presentation of argument by the parties. We attempted to address the problem by increasing the number of legal assistants, secretaries, and appointing an office manager. The Board plans to implement a summary calendar which would not require the attorneys to be present for oral argument, set up a standard briefing schedule, thereby eliminating the current problems associated with last minute briefs being filed with the Board.

Generally, it was felt by some that, after an initial peak in appeals being filed shortly after the 1993 statutory reforms, the number of appeals would diminish or at least "flatten out." However, certain months in calendar 1996 did not reinforce that theory; rather, it showed perhaps the opposite was true. For example, in one month in the summer of 1996, a record number (approximately 100) motions for review were filed with the Board, a number greatly in excess of the number of decisions that the Board averages per month. That particular month reflected that almost three-fourths (3/4) of all the decisions by the Administrative Law Judges were appealed. Although this is higher than normal, still a significant number of appeals are being taken. Also, the Board's statistics indicate that slightly more than fifty percent (50%) of all appeals being taken result in some modification of the Administrative Law Judges' initial order, whether that be a slight change in the figure, or even a remand back to the Administrative Law Judge based upon different findings by the Board.

On the other hand, at the trial level, the Administrative Law Judges are virtually caught up, with a few exceptions. The Division has implemented a uniform policy of scheduling and holding preliminary or motion hearings within 21 days of the request for hearing; scheduling and holding prehearing settlement conferences within 45 days of the request for hearing; and scheduling and holding regular hearings within 30 days of the request. While the number of preliminary hearings held decreased from the prior fiscal year, the total number of all hearings held increased, even though there were numerous judicial vacancies during the past fiscal year with Assistant Directors and Special Administrative Law Judges holding hearings during the time of those vacancies.

Pursuant to statutory change in 1993, vocational rehabilitation became discretionary with the employer. As a result, the Division notes that there has been an approximate 80% decrease in vocational rehabilitation utilization.

I have attached a copy of the workers compensation insurance carriers presently doing business within the State, along with a copy of those 273 employers who have been approved to be self-insured. There are also 23 group pools active in the State.

**44-505. Application of act.** (a) Subject to the provisions of K.S.A. 44-506 and amendments thereto, the workers compensation act shall apply to all employments wherein employers employ employees within this state except that such act shall not apply to:

(1) Agricultural pursuits and employments incident thereto, other than those employments in which the employer is the state, or any department, agency or authority of the state;

(2) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer had a total gross annual payroll for the preceding calendar year of not more than \$20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than \$20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as part of the total gross annual payroll of such employer for purposes of this subsection; *except where the employer is a self-employed subcontractor under circumstances wherein K.S.A. 44-503 would otherwise apply;*

(3) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer has not had a payroll for a calendar year and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than \$20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as a part of the total gross annual payroll of such employer for purposes of this subsection;

(4) the employment of any firefighters who are members of a firemen's relief association for whom a valid statement of election to except such members from the provisions of the workers compensation act has been filed with the director by the governing body of such firemen's relief association as provided in K.S.A. 44-505d and amendments thereto; or

(5) services performed by a qualified real estate agent as an independent contractor. For the purposes of this act a qualified real estate agent shall be deemed to be an independent contractor if such qualified real estate agent is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom: (A) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and (B) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes.

(b) Each employer who employs employees in employments which are excepted from the provisions of the workers compensation act as provided in subsection (a) of this section, shall be entitled to come within the provisions of such act by: (1) Becoming a member in and by maintaining a membership in a qualified group-funded workers' compensation pool, as provided by K.S.A. 44-581 to 44-591, inclusive, and amendments thereto; or (2) filing with the director a written statement of election to accept thereunder. Such written statement of election shall be effective from the date of filing until such time as the employer files a written statement withdrawing such election with the director. All written statements of election or of withdrawal of election filed pursuant to this subsection shall be in such form as may be required by the director by rules and regulations.

(c) This act shall not apply in any case where the accident occurred prior to the effective date

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*Attachment 2-1 thru 2-22*



of this act. All rights which accrued by reason of any such accident shall be governed by the laws in effect at that time.

**44-508. Definitions.** As used in the workers compensation act:

(a) "Employer" includes (1) any person or body of persons, corporate or unincorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the director to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work, "governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, ambulance attendants, mobile intensive care technicians, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 1993 Supp. 48-3302 and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a and amendments thereto, such terms shall not include individual employers, limited or general partners or self-employed persons, *except a self-employed subcontractor performing work for a contractor.*

(c) (1) "Dependents" means such members of the employee's family as were wholly or in part dependent upon the employee at the time of the accident.

(2) "Members of a family" means only surviving legal spouse and children; or if no

surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section, parents include stepparents, children include stepchildren, grandchildren include stepgrandchildren, brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section, a surviving spouse shall not be regarded as a dependent of a deceased employee or as a member of the family, if the surviving spouse shall have for more than six months willfully or voluntarily deserted or abandoned the employee prior to the date of the employee's death.

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

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

(B) a stepchild of the employee who lives in the employee's household;

(C) any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity; or

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

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

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

(f) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency. The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

(g) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true

than not true on the basis of the whole record.

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

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

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

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

(l) "Community service work" means (1) public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or conservation camp or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary of social and rehabilitation services.

(m) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on accepted standards of the health care profession involved. Such evaluation is accomplished by means of a system which identifies the utilization of health care services above the usual range of utilization for such services, which is based on accepted standards of the health care profession involved, and which refers instances of possible inappropriate utilization to the director for referral to a peer review committee.

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

(o) "Peer review committee" means a committee composed of health care providers licensed to practice the same health care profession as the health care provider who rendered the health care services being reviewed.

(p) "Group-funded self-insurance plan" includes each group-funded workers compensation pool, which is authorized to operate in this state under K.S.A. 44-581 through 44-592 and amendments thereto, each municipal group-funded pool under the Kansas municipal group-funded pool act which is covering liabilities under the workers compensation act, and any other similar group-funded or pooled plan or arrangement that provides coverage for employer liabilities under the workers compensation act and is authorized by law.

(q) "Workers compensation board" or "board" means the workers compensation board established under K.S.A. 44-555b and amendments thereto.

**44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.** Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510 and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee's earnings at the time of the accident, all compensation benefits under this section shall be paid to such dependent persons. Such dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all such dependents, equal to 662/3% of the average gross weekly wage of the employee at the time of the accident, computed as provided in K.S.A. 44-511 and amendments thereto, but in no event shall such weekly benefits exceed, nor be less than, the maximum and minimum weekly benefits provided in K.S.A. 44-510c and amendments thereto, subject to the following:

(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.

(2) A surviving legal spouse shall be paid compensation benefits for life or until remarriage, except as otherwise provided in this section.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age, except that any such dependent child who is not physically or mentally capable of earning wages in any type of substantial and gainful employment, or who is enrolled as a full-time student in an accredited institution of higher education or vocational education shall be paid compensation until such dependent child becomes 23 years of age.

(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.

(b) Upon the remarriage of a surviving legal spouse receiving compensation under this section, the benefits being paid to such spouse shall terminate, except that upon such remarriage 100 weeks of benefits at the highest rate paid to such spouse under this section shall be paid to such spouse in one lump sum, except that such lump-sum payment shall be subject to the maximum amount of compensation payable under this section as prescribed by subsection (h).

(c) Where the employee leaves a surviving legal spouse and dependent children who were wholly dependent upon the employee's earnings and are eligible for benefits under this section 1/2 of the maximum weekly benefits payable shall be apportioned to such spouse and 1/2 to such dependent children.

(d) If an employee does not leave any dependents who were wholly dependent upon the employee's earnings at the time of the accident but leaves dependents, other than a spouse or children, in part dependent on the employee's earnings, such percentage of a sum equal to three times the employee's average yearly earnings but not exceeding \$18,500 but not less than \$2,500, as such employee's average annual contributions which the employee made to the support of such

dependents during the two years preceding the date of the accident, bears to the employee's average yearly earnings during the contemporaneous two-year period, shall be paid in compensation to such dependents, in weekly payments as provided in subsection (a), not to exceed \$18,500 to all such dependents.

(e) The administrative law judge, except as otherwise provided in this section, shall have the power and authority to apportion and reapportion the compensation allowed under this section, either to wholly dependent persons or partially dependent persons, in accordance with the degree of dependency as of the date of the accident, except that the weekly payment of compensation to any and all dependents shall not exceed the maximum weekly benefits provided in subsection (a).

(f) In all cases of death compensable under this section, the employer shall pay the reasonable expense of burial not exceeding ~~\$3,300~~ \$4,300.

(g) The marriage or death of any dependent shall terminate all compensation, under this section, to such dependent, but shall not increase or decrease the compensation allowed to any other dependents except that, upon the marriage or death of the surviving legal spouse or a dependent child, the compensation payable to such spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.

(h) Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section to any and all dependents by the employer shall not exceed a total amount of \$200,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

(i) A surviving spouse shall submit an annual statement to the employer and to the director, in such form and containing such information relating to eligibility for compensation under this section as may be required by rules and regulations of the director. If such spouse fails to submit such an annual statement, the employer may notify the director of such failure and the director shall notify such spouse of such failure by certified mail with return receipt. If such spouse fails to submit the annual statement or fails to reasonably provide the required information within 30 days after receipt of the notice from the director, all compensation benefits paid under this section to such spouse shall be suspended until such statement is submitted in proper form to the employer and the director.

**44-523. Hearing procedure; time limitations on evidence and entry of award; prehearing settlement conference.** (a) The director, administrative law judge or board shall not be bound by technical rules of procedure , but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534 and amendments thereto, the matter shall be assigned to an administrative law judge for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in support of the claimant's claim no later than 30 days after the first full hearing before the administrative law judge and to require the respondent to submit all evidence in support of the respondent's position no later than 30 days thereafter. An extension of the foregoing time limits may be granted:

- (1) If all parties agree;
- (2) if the employee is being paid temporary or permanent total disability compensation;
- (3) for medical examination of the claimant if the party requesting the extension explains in writing to the administrative law judge facts showing that the party made a diligent effort but was unable to have a medical examination conducted prior to the submission of the case by the claimant but then only if the examination appointment was set and notice of the appointment sent prior to submission by the claimant; or
- (4) on application for good cause shown.

(c) When all parties have submitted the case to an administrative law judge for an award, the administrative law judge shall issue an award within 30 days. *The administrative law judge shall not stay a decision due to the absence of a submission letter.* When the award is not entered in 30 days, any party to the action may notify the director that an award is not entered and the director shall assign the matter to an assistant director or to a special administrative law judge who shall enter an award forthwith based on the evidence in the record, or the director, on the director's own motion, may remove the case from the administrative law judge who has not entered an award within 30 days following submission by the party and assign it to an assistant director or to a special administrative law judge for immediate decision based on the evidence in the record.

(d) Not less than 10 days prior to the first full hearing before an administrative law judge, the administrative law judge shall conduct a prehearing settlement conference for the purpose of obtaining stipulations from the parties, determining the issues and exploring the possibility that the parties may resolve those issues and reach a settlement prior to the first full hearing.

ADD TO K.S.A. 44-532:

The method for calculating the amount of security required of self insureds shall be reviewed by an actuary every five years, beginning in fiscal year 1997. The costs for these actuarial studies shall be paid from the workers compensation fee fund.



**44-551. Assistant directors, administrative law judges and special local administrative law judges; powers and duties, compensation, fees and expenses; review of findings and awards by board; delayed order on board review, effect; payment of medical compensation pending review.** (a) The duties of the assistant directors of workers compensation shall include but not be limited to acting in the capacity of an administrative law judge.

(b) (1) Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. *Intermediate Saturdays, Sundays, and legal holidays shall be excluded in the time computation.* Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings.

(2) (A) If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. Such an appeal from a preliminary award may be heard and decided by a single member of the board. Members of the board shall hear such preliminary appeals on a rotating basis and the individual board member

who decides the appeal shall sign each such decision. The orders of the board on any acts, findings, awards, decisions, rulings or modifications of findings or awards shall be issued within 30 days from the date arguments were presented by the parties.

(B) If an order on review is not issued by the board within the applicable time period prescribed by subsection (b)(2)(A), medical compensation and any disability compensation as provided in the award of the administrative law judge shall be paid commencing with the first day after such time period and shall continue to be paid until the order of the board is issued, except that no payments shall be made under this provision for any period before the first day after such time period. Nothing in this section shall be construed to limit or restrict any other remedies available to any party to a claim under any other statute.

(C) In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review. The employee may proceed under K.S.A. 44-534a and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

(c) Each assistant director and each administrative law judge or special administrative law judge shall be allowed all reasonable and necessary expenses actually incurred while in the actual discharge of official duties in administering the workers compensation act, but such expenses shall be sworn to by the person incurring the same and be approved by the secretary.

(d) In case of emergency the director may appoint special local administrative law judges and assign to them the examination and hearing of any designated case or cases. Such special local administrative law judges shall be attorneys and admitted to practice law in the state of Kansas and

shall, as to all cases assigned to them, exercise the same powers as provided by this section for the regular administrative law judges. Special local administrative law judges shall receive a fee commensurate with the services rendered as fixed by rules and regulations adopted by the director. The fees prescribed by this section prior to the effective date of this act shall be effective until different fees are fixed by such rules and regulations.

(e) All special local administrative law judge's fees and expenses, *with the exception of settlement hearings, shall be paid from the workers compensation administration fee fund, as provided in K.S.A. 74-712, as amended. Where there are no available funds or where the special local administrative law judge conducted a settlement hearing, the fees shall be taxed as cost in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.*

(f) Except as provided for judicial review under K.S.A. 44-556 and amendments thereto, the decisions and awards of the board shall be final.

**44-555c. Workers compensation board; establishment; jurisdiction; nature of review by board; composition of board; terms of office, qualifications, appointment and compensation of members; chairperson; pro tem members; offices; facilities, equipment and personnel; hearings; decisions, reviews and determinations; final orders.**

(a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The board shall be within the division of workers compensation of the department of human resources and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of human resources. The board shall consist of five members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of four years, except as provided for the first members appointed to the board under subsection (f).

(b) Each board member shall be an attorney regularly admitted to practice law in Kansas for a period of at least seven years and shall have engaged in the active practice of law during such period as a lawyer, judge of a court of record or any court in Kansas or a full-time teacher of law in an accredited law school, or any combination of such types of practice.

(c) Each board member shall receive an annual salary in an amount equal to the salary prescribed by law for a district judge, except that the member who is the chairperson of the workers compensation board shall receive an annual salary in an amount equal to the salary prescribed for a district judge designated as administrative judge of a district court of Kansas. The board members shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No board member may receive additional compensation for official services performed by the board member. Each board member shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as judges of the district court are reimbursed for such expenses.

(d) Applications for membership on the board shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for membership on the board prescribed in subsection (b). Qualified applicants for the board will be submitted by the director to the workers compensation board nominating committee for consideration.

(e) There is hereby established the workers compensation board nominating committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation board nominating committee and shall give written notice of the selection to the secretary who shall appoint such representatives to the committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of human resources within 30 days of such vacancy.

(f) (1) Upon being notified of any vacancy on the board or of the need to appoint a member pro tem under subsection (i), the nominating committee shall consider all qualified applicants submitted by the director for the vacant position on the board or the member pro tem position

and nominate a person qualified therefor. The nominating committee shall be required to reach unanimous agreement on any nomination to the board. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the nominating committee to the position on the board for which the nomination was made or shall reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner.

(2) The first members of the board established by this section are hereby appointed as follows: Each person who was a member of the workers compensation board which was in existence on January 12, 1995, is hereby appointed, effective January 13, 1995, as a member of the board established by this section. The term of office of each person so appointed as a member of the board established by this section is for the period equal to the remainder of the term of office such person had as of January 12, 1995, as a member of the workers compensation board which was in existence on January 12, 1995.

(3) Each member of the board shall hold office for the term of the appointment and until the successor shall have been appointed. Successors to such members shall be appointed for terms of four years.

(4) If a vacancy should occur on the board during the term of a member, the nominating committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term. With respect to each person so nominated, the secretary either shall accept and appoint the person nominated to the board or shall reject the nomination and request the nominating committee to nominate another person for the position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for the position in the same manner.

(g) Following the completion of a term, board members who wish to be considered for reappointment to the board shall be deemed to have met the qualification requirements for selection to the board and shall be considered for renomination by the workers compensation board nominating committee.

(h) The members of the board shall annually elect one member to serve as chairperson.

(i) If illness or other temporary disability of a member of the board will not permit the member to serve during a case or in any case in which a member of the board must be excused from serving because of a conflict or is otherwise disqualified with regard to such case, the director shall notify the workers compensation nominating committee of the need to appoint a member pro tem. Upon receipt of such notice, the committee shall act as soon as possible and nominate a qualified person to serve as member pro tem in such case in accordance with subsection (f). Each member pro tem shall receive compensation at the same rate as a member of the board receives, prorated for the ~~days~~ hours of actual service as a member pro tem and shall receive expenses under the same circumstances and to the same extent as a member of the board receives. Each member pro tem shall have all the powers, duties and functions of a member of the board with regard to the case.

(j) The board shall maintain principal offices in Topeka, Kansas, and the board may conduct hearings at a courthouse of any county in Kansas or at another location specified by the board. The secretary of human resources shall provide a courtroom and other suitable quarters in Topeka, Kansas, for the use of the board and its staff. When the board conducts hearings at any location other than in Topeka, Kansas, the director shall make suitable arrangements for such

hearings. Subject to the provisions of appropriation acts, the director shall provide such supplies and equipment and shall appoint such support personnel as may be necessary for the board to fulfill the duties imposed by this act, subject to approval by the secretary.

(k) For purposes of hearing cases, the board may sit together or in panels of two members or more, designated by the chairperson of the board, except that an appeal from a preliminary award entered under K.S.A. 44-534a and amendments thereto may be heard by a panel of one member designated by the chairperson. All members of the board shall determine each matter before the board. All decisions, reviews and determinations by the board shall be approved in writing by at least three board members. Whenever the board enters a final order in any proceeding, the board shall make written findings of fact and conclusions of law forming the basis of the board's determination and final order. The findings of fact and conclusions of law of the board shall be made a part of the final order. The board shall mail a copy of the final order of the board to all parties to the proceeding within three days following the issuance of the final order.

History: L. 1995, ch. 1, 1; January 26.

**44-5,121. Same; cause of action to recover economic losses.** (a) Any person who has suffered economic loss by a fraudulent or abusive act or practice shall have a cause of action against any other person to recover such loss which was paid as benefits or other amounts of money which were paid under the workers compensation act and to seek relief for other monetary damages from such other person based on a fraudulent or abusive act or practice, except that such other monetary damages shall not include damages for nonpecuniary loss. *Relief under this section is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-5,120 and amendments thereto.*

(b) Nothing in this section or K.S.A. 44-5,120 and amendments thereto shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

44-5,120. Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner of insurance; application of section; administrative investigation and enforcement; hearings; costs; cease and desist orders; civil penalties; repayments, interest; review. (a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

- (1) Persons claiming benefits under the workers compensation act;
- (2) employers subject to the requirements of the workers compensation act;
- (3) insurance companies including group-funded self-insurance plans covering Kansas employers and employees;
- (4) any person, corporation, business, health care facility that is organized either for profit or not-for-profit and that renders medical care, treatment or services in accordance with the provisions of the workers compensation act to an injured employee who is covered thereunder; and
- (5) attorneys and other representatives of employers, employees, insurers or other entities that are subject to the workers compensation act.

(c) The commissioner of insurance may examine the workers compensation records of insurance companies or self-insurers as necessary to ensure compliance with the workers compensation act. Each insurance company providing workers compensation insurance in Kansas, the company's agents, and those entities that the company has contracted to provide review services or to monitor services and practices under the workers compensation act shall cooperate with the commissioner of insurance, and shall make available to the commissioner any records or other necessary information requested by the commissioner. The commissioner of insurance shall conduct an examination authorized by this subsection in accordance with the provisions of K.S.A. 40-222 and 40-223 and amendments thereto.

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, but are not limited to, willfully or intentionally:

- (1) Collecting from an employee, through a deduction from wages or a subsequent fee, any premium or other fee paid by the employer to obtain workers compensation insurance coverage;
- (2) misrepresenting to an insurance company or the insurance department, the classification of employees of an employer, or the location, number of employees, or true identity of the employer with the intent to lessen or reduce the premium otherwise chargeable for workers compensation insurance coverage;
- (3) lending money to the claimant during the pendency of the workers



compensation claim by an attorney representing the claimant, but this provision shall not prohibit the attorney from assisting the claimant in obtaining financial assistance from another source, except that (A) the attorney shall not have a financial interest, directly or indirectly, in the source from which the loan or other financial assistance is secured and (B) the attorney shall not be personally liable in any way for the credit extended to the claimant;

(4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:

(A) Making a false or misleading statement;

(B) misrepresenting or concealing a material fact;

(C) fabricating, altering, concealing or destroying a document; or

(D) conspiring to commit an act specified by clauses (A), (B) or (C) of this subsection (d)(4);

(5) bringing, prosecuting or defending an action for compensation under the workers compensation act or requesting initiation of an administrative violation proceeding that, in either case, has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

(6) breaching a provision of an agreement approved by the director;

(7) withholding amounts not authorized by the director from the employee's or legal beneficiary's weekly compensation payment or from advances from any such payment;

(8) entering into a settlement or agreement without the knowledge and consent of the employee or legal beneficiary;

(9) taking a fee or withholding expenses in excess of the amounts authorized by the director;

(10) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order or award;

(11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;

(12) instructing employers not to file required documents with the director;

(13) instructing or encouraging employers to violate the employee's right to medical benefits under the workers compensation act;

(14) failing to tender promptly full death benefits if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;

(16) failing to initiate or reinstate compensation when due if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(17) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

- (18) refusing to pay compensation as and when the compensation is due;
- (19) refusing to pay any order awarding compensation; and
- (20) refusing to timely file required reports or records under the workers compensation act.

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421 and amendments thereto by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. *Complaints filed with the director or the commissioner of insurance may be dismissed by the director or the commissioner of insurance on their own initiative, and shall be dismissed upon the written request of the complainant, if the director or commissioner of insurance has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the director or commissioner of insurance which shall be deemed to exhaust all administrative remedies under K.S.A. 44-5,120 and amendments thereto for the purpose of allowing subsequent filing of the matter in court by the complainant. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review.*

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, "costs" include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

- (1) Payment of a monetary penalty of not more than \$1,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate

penalty of \$2,500 for any six-month period;

(2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;

(3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than \$10,000 for each and every act or violation, but not exceeding an aggregate penalty of \$50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workmen's compensation fee fund.

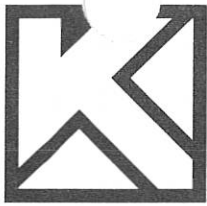
**44-5,125. Workers compensation fraud and other acts or practices constituting crimes; penalties; repayment of certain amounts, interest; cause of action, certain monetary damages.** (a) (1) Any person who obtains or attempts to obtain any payment of compensation under the workers compensation act for such person or who denies or attempts to deny the obligation to make any payment of workers compensation benefits; who obtains or attempts to obtain a more favorable workers compensation benefit rate or insurance premium rate than that to which such person is otherwise entitled; who prevents, reduces, avoids or attempts to prevent, reduce or avoid the payment of any compensation under the workers compensation act; or who fails to communicate a settlement offer or similar information to a claimant under the workers compensation act, by, in any such case, knowingly or intentionally: (A) Making a false or misleading statement, (B) misrepresenting or concealing a material fact, or (C) fabricating, altering, concealing or destroying a document; and (2) any person who conspires with another person to commit any act described by clause (1) of this subsection (a), shall be guilty of a class A nonperson misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result of such act or the amount that the person otherwise benefited monetarily as a result of a violation of this subsection (a) is \$500 or less, and shall be guilty of a severity level nine, nonperson felony, if such amount is more than \$500.

(b) Any person who has received any amount of money as a benefit or other payment under the workers compensation act as a result of a violation of subsection (a) and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) shall be liable to repay an amount equal to the amount so received by such person or the amount by which such person has benefited monetarily, with interest

thereon. Any such amount, plus any accrued interest thereon, shall bear interest at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment of such amount, plus any accrued interest thereon. The interest shall accrue from the date of overpayment or erroneous payment of any such amount or the date such person benefited monetarily.

(c) Any person aggrieved by a violation of subsection (a) shall have a cause of action against any other person to recover any amounts of money erroneously paid as benefits or any other amounts of money paid under the workers compensation act, and to seek relief for other monetary damages, for which liability has accrued under this section against such other person. *Relief under this section is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-5,120 and amendments thereto.*

(d) Nothing in this section shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.



**KCCI**

# Kansas Chamber of Commerce and Industry

*A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council*

835 SW Topeka Blvd.  
Topeka, KS 66612-1671  
(913) 357-6321  
Fax (913) 357-4732

January 24, 1997

TO: Members of the Senate Commerce Committee

RE: Introduction of Legislation Concerning Workers Compensation

The Kansas Chamber of Commerce and Industry respectfully request the introduction of legislation proposing several changes to Kansas law governing workers compensation. Elements to the bill request include:

- ⇒ The Definition of Work Disability - Delete the current work disability formula and replace it with a "supplemental compensation" system.
- ⇒ Review and Modification - Shorten the window to request the review and modification of an award to conclude when all compensation has been paid.
- ⇒ Review and Modification Attorney Fees - Eliminate the current practice of requiring an employer to pay the attorney fees in unsuccessful attempts to receive additional compensation through review and modification.
- ⇒ Wage Calculation for Benefits - Eliminate the inclusion of fringe benefits in the calculation of a disability award.
- ⇒ Directing Medical in Dispute Cases - Recognize an employer's right to direct medical care by permitting an employer to assign a health care provider in cases where responsibility is disputed, without admitting responsibility for a claim.
- ⇒ Selection of Administrative Law Judges - Change the selection process for Administrative Law Judges to employ the process currently used to select members of the Workers Compensation Appeals Board, by utilizing a Nominating Committee that represents business and labor.

Thank you for considering this request from the Kansas Chamber for the introduction of legislation in the important area of workers compensation.

Sincerely,

TERRY LEATHERMAN  
Executive Director  
Kansas Industrial Council

njd

*Senate Commerce Committee*  
*January 24, 1997*

*Attachment 3*