

Approved: February 20, 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 February 19, 1997 in Room 123-S of the Capitol.

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

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:
Phil Harness, Director, Workers Compensation Division
Sharon Huffman, Kansas Commission on Disability Concerns

Others attending: See attached list

Upon motion by Senator Steineger, seconded by Senator Umbarger, the Minutes of the February 18, 1997 meeting were unanimously approved.

Confirmation of Thomas A. Page, Kansas Development Finance Authority appointment expires January 15, 2001.

Senator Steffes moved, seconded by Senator Gooch, that **Thomas A. Page** be recommended favorable for confirmation to the Kansas Development Finance Authority. The recorded vote was unanimous in favor of the motion.

Phil Harness, Director, Workers Compensation Division, briefed the Committee on the proposed changes to the Workers Compensation Act contained in **SB 346**.

Bob Nugent, Revisor, presented a review of the proposed changes to the Workers Compensation Act contained in **SB 285, SB 289, SB 321, and SB 347**, and amendments to KSA 20-2620 (Kansas public employees retirement system) contained in **SB 347**.

SB 321 - Conforming workers compensation act to provision of the American's with Disabilities Act

Phil Harness, Director, Workers Compensation Division, stated the Workers Compensation Advisory Council is troubled by the language contained in **SB 321**. Presently all records are open which is easy to administer; however, the bill restricts access to specific purposes which will hamper the Division's ability to obtain statistical information. The Council has discussed this matter and has appointed a subcommittee to make a recommendation at its March 10 meeting.

Sharon Huffman, Kansas Commission on Disability Concerns, testified in support of **SB 321**. Ms. Huffman stated the Kansas Division of Workers Compensation presently is required to release information contained within a claimant's file to the public without prior authorization from the claimant. The Americans with Disabilities Act (ADA) of 1990 prohibits employers from making medical inquiries prior to an offer of employment. Any inquiry about previous workers compensation claims or on-the-job injuries is considered to be a medical inquiry. Ms. Huffman stated denying employment opportunities based on an individual's records or history of workers compensation claims could be a violation of the ADA and could assist employers to discriminate on the basis of a perceived disability by allowing indiscriminate access to the case records.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 19, 1997.

Ms. Huffman stated **SB 321**, takes away an employer's ability to check a potential employee's history of claims and, therefore, significantly reduces the discrimination against individuals with previous on-the-job injuries. She believes employees are being denied employment opportunities because they have been injured on the job at some time in their lives. Restricting access to workers compensation records to those on a need to know basis is in the best interest of all employers and job-seekers. Attachment 1

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 20, 1997.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 19, 1997

NAME	REPRESENTING
BOB GRANT	KCL
Bernie Koch	Wichita Area Chamber
Bill Curtis	Ks Assoc of School Bds
JANET STUBBS	Ks. Bldg. IND. ASSN.
ART BROWN	mid-Am FarmSecomd ASSN
Sharon Huffman	KCDC
Shelley Krestin	KCOD
BILL JARRELL	BOEING
Rich Guthrie	Health Midwest
Hal Hudson	NFIB/KS
Susan Baker	Hill + Weir
Wenosa Blenau	State Farm
TOM WHITAKER	Ks MOTOR CARRIERS ASSN
Shannon Jones	SILCK
Ann Worsch	Dept of Adm - ADA
Wayne Mairns	KS AFL-CIO
John M. Ostrowski	Ks AFL-CIO
Jim Mc Huff	Kansas AFL-CIO
KEVIN ROBERTSON	Ks SECC-INSURERS ASSN

Jim Huff
 Glenn Seibel
 Jerry Leatherman

Workers Compensation
 Kansas Trial Lawyers Assn
 KCCI

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Tom Boracciano	CSIA / USD #497
Ron Smelser	DoA / OPS / HRM/D
Harry Bossi	" " / SSIF
Roy T. Artman	" " "
Linda Furd	DoA
George Schrempf	Investigation Div. Wkr Comp.

*Kansas Commission on Disability Concerns
Sharon Huffman 296-6527*

SENATE COMMERCE COMMITTEE

SB 321

February 20, 1997

Madam Chair, members of the Committee, thank you for this opportunity to testify in support of SB 321.

I represent the Kansas Commission on Disability Concerns, a state commission established by law to carry on a continuing program to promote a higher quality of life for people with disabilities. One of our responsibilities is to submit recommendations to the legislature believed necessary to promote the independence of people with disabilities.

Our Commission began studying the issue of workers compensation records being open to the public after receiving numerous phone calls from individuals questioning the legality of potential employers making inquiries about their prior workers compensation claims. The study revealed several things which I will outline below.

FACT:

The Kansas Division of Workers Compensation is required under K.S.A. 44-550b(a) to release the information contained within a claimant's file to the public without any prior authorization from the claimant.

PROBLEM:

The Americans with Disabilities Act of 1990 (ADA) prohibits employers from making medical inquiries prior to a conditional offer of employment (29 CFR Section 1630.13(a)). This includes using a third party, such as a previous employer, insurance company or the state workers compensation division to obtain the information. An inquiry about previous workers compensation claims or on-the-job injuries is considered to be a medical inquiry. Denying employment opportunities based on an individual's records or history of workers compensation claims could be a violation of the ADA, as is denying employment opportunities based on the perception of disability.

FACT:

The State of Kansas, through the Division of Workers Compensation is providing significant assistance to employers that discriminate on the basis of a perceived disability by allowing indiscriminate access to the workers compensation cased records.

*Senate Commerce Committee
February 19, 1997*

Attachment 1-1 thru 1-2

PROBLEM:

By administering a program that provides access to workers compensation records without the signed consent of the claimant, being a party to the claim or having a court order, the Kansas Division of Workers Compensation is quite possibly violating 28 CFR Section 35-130(b)(1)(v). This section of the ADA states that aiding or perpetuating discrimination against a qualified individual with a disability is prohibited.

SOLUTION:

Restrict access to workers compensation records as proposed in SB 321. This would take away the temptation for employers to check out a potential employee's history of claims and therefore significantly reduce the discrimination against individuals with previous on-the-job injuries. It would also make a statement that the State of Kansas believes it is good public policy to avoid anything that even gives the appearance of aiding employers who deny employment opportunities based on a person's history or record of disability.

CONCLUSION:

As you are all aware, an income is one of the requirements for survival in this world for all people, not just people with disabilities. Employment is generally the means of obtaining an income unless a person is totally disabled and unable to work, at which time their income is derived from taxes collected from employed citizens. People with disabilities traditionally have had a tougher time finding a job than those without disabilities even after the implementation of Title I of the Americans with Disabilities Act of 1990. Many fully qualified individuals are being denied employment opportunities simply because they have been injured on the job at some time in their life. It would be in the best interest of all employers, job-seekers and the State of Kansas to pass SB 321 and begin restricting access to workers compensation records to those who truly have a need to know.

Thank you for allowing me to speak before you today. I will gladly attempt to answer any questions you might have at this time.