

Approved: March 13, 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 March 12, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Gooch, 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:  
Philips S. Harness, Director, Workers Compensation Division

Others attending: See attached list

Upon motion by Senator Steineger, seconded by Senator Barone, the Minutes of the March 10 and March 11, 1997 Meetings were unanimously approved.

The Chair informed the Committee a letter addressed to the Chair over the signature of Carol Marinovich, Mayor, City of Kansas City, Kansas, is distributed to the Committee and is a part of the Minutes. Attachment 1

Philip S. Harness, Director, Workers Compensation Division, reported the Workers Compensation Advisory Council met on March 10, 1997 and considered the three items the Committee requested it to consider: Attachment 2

1. The selection of administrative law judges. The Advisory Council was undecided as to the changes contained in **SB 289, Page 19, subsection 3**, and how the differences are intertwined with the issue of whether the Advisory Council should recommend a change in the pay scale for administrative law judges to the Legislature. The Advisory Council made no recommendation.

2. Definition of work disability. The Advisory Council was unable to reach an agreement on the definition of work disability.

3. Open records in workers compensation (**SB 321**) The Advisory Council has suggested alternative language for **SB 321**.

**SB 321 - Conforming workers compensation act to provisions of the Americans with Disabilities Act**

Mr. Harness stated the Advisory Council vote on the recommendation was unanimous, there being four out of five on each side in attendance. Mr. Harness stated the Advisory Council recommended a substitute bill amending KSA 44-550b to provide that medical records, form 88's and accident reports shall not be disclosed except under the following circumstances: 1) order of a court of competent jurisdiction, 2) the employer, its insurance carrier or its representative, from whom a worker seeks workers compensation benefits; 3) the division of workers compensation; 4) federal or state governmental agencies for purposes of fraud and abuse investigations; 5) an employer in connection with any application for employment to an employer, its insurance carrier or representatives providing (a) an offer of employment has been made and (b) the request for records includes a signed release by the individual, identifies the job conditionally offered by the employer and is submitted in writing, either by mail or electronic means.

Mr. Harness stated further that the amendment includes a provision which provides a record be maintained of individuals requesting information under this section.

Mr. Harness submitted additional exceptions for the Committee to consider:(1) to the worker upon

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 12, 1997.

written release by the worker, (2) to the workers compensation fund for its own purposes, and (3) on Line 7, following the word "except" by inserting "to the health care provider and".

Mr. Harness stated the difference between the substitute bill recommended by the Advisory Council and **SB 321** is that **SB 321** closes all records with the exception of those used in the pursuit of fraud and abuse cases, eliminates access to a claimant to his or her own records, eliminates access to the Divisions own records, eliminates access to opinions issued by the Workers Compensation Board. The alternate bill provides that records are open only in specific instances which are set out above.

Senator Barone moved, seconded by Senator Ranson, to adopt the amendments recommended by the Advisory Council. Attachment 3 ; and be further amended on Line 7, following the word "except" by inserting the words "to the health care provider and"; Subsection (5) (a) by striking the word "an" and inserting "a conditionally"; insert a new Subsection "to the worker upon written release by the worker" and inserts a new Subsection " to the workers compensation fund for its own purposes." The voice vote was unanimous in favor of the motion.

Senator Brownlee moved, seconded by Senator Barone, that **Substitute for SB 321** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

The Chair informed the Committee hearings on Workers Compensation legislation was concluded.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for March 13, 1997.

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 12, 1997

NAME	REPRESENTING
Bill Curtis	Ks Assoc of School Bds
JANET STUBBS	Ks. Bldg. IND ASSN.
<del>BOB GRANT</del>	KCC
Roger Trauzle	KGC
Callie Hill Denton	Bottenberg's Associates
Jeresa S. Senaw	State Farm
Ray T. Dretmer	Dept. of Admin.
Harry Bossu	" " "
Linda Ford	" " "
Anula Sheathouse	KID
Jim Wettoff	KS AFL-CIO
Brenda Sank	J. Small
Bob Mikesic	Independence, Inc.
Rudolf Malone	DIA / we
Lou Davis	Top. Ind Living Res. Center
Susan Baker	Hein + Weir
Jean P. Bencor	BRAD SMITH



Executive Chamber  
One McDowell Plaza

# City of Kansas City, Kansas

Carol Marinovich, Mayor



Kansas City, Kansas 66101  
Phone (913) 573-5010

March 3, 1997

Senator Alicia L. Salisbury, Chairman  
Senate Commerce Committee  
State Capitol  
Topeka, Kansas 66612-1594

RE: Senate Bill 280

Dear Senator Salisbury:

The City has reviewed the proposed amendment to the STAR Bond legislation contained in Senate Bill 280 which would allow STAR bond proceeds to fund construction of privately owned buildings and other structures. City Bond Counsel and the City Attorney are of the opinion that this amendment changes the statutory authority under which the City negotiated Section 1.1(c)(i) of the Development Agreement between the City and Oz Entertainment Company. That provision states as follows:

"The parties agree that:

(i) The STAR Bonds shall be in the maximum principal amount that is both consistent with the policies of the City described in (ii) below and legally permissible and financeable based upon a reasonable projection of sales, use and transient guest taxes for the Stage being approved;..."

To date, the City of Kansas City, Kansas, has not determined as a matter of policy whether it supports the issuance of STAR Bonds for either privately owned buildings or structures or for facilities leased from the City by the Developer. It is possible that after full review of the Developer's concept plan, financing plan and first stage development plan the City would be supportive of the use of STAR Bonds proceeds for such purposes. That decision, however, is premature at this time.

The City of Kansas City, Kansas, will not object to Senate Bill 280, but will exercise its rights under Section 12.16 to renegotiate the Development Agreement.

Please accept this letter as notice of the intent of the City of Kansas City, Kansas, to renegotiate Section 1.1(c)(i) of the Development Agreement governing the City's obligation to issue STAR Bonds. The exact change to this provision will be determined after submission to the City of the Developer's concept plan, first stage development plan and financing plan.

*Senate Commerce  
Committee  
March 12, 1997*

*Attachment 1-1 thru 1-2*

Sincerely,

*Carol Marinovich*

Carol Marinovich

cc: City Council Members  
Senator Chris Steineger  
Senator Ben E. Vidricksen

TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE  
WEDNESDAY, MARCH 12, 1997

BY PHILIP S. HARNESS, WORKERS COMPENSATION DIRECTOR

RE: SENATE BILL 321 AND THE WORKERS COMPENSATION ADVISORY  
COUNCIL SUGGESTIONS OF MARCH 10, 1997

The Committee had requested the Workers Compensation Advisory Council to look at three (3) different items at its meeting held Monday, March 10, 1997:

1. Open records in workers compensation (Senate Bill 321);
2. The definition of work disability (Senate Bill 289);
3. The selection of administrative law judges (Senate Bill 289).

Taking those in reverse order, that is, as to the selection of administrative law judges, the council is undecided as to the elements of the changes contained in the last paragraph of Senate Bill 289, and those differences are intertwined with the issue as to whether the council should recommend to the Legislature to statutorily change the pay scale for administrative law judges. As a result of not being able to solve that difference, the council has no recommendation to the Legislature on the last paragraph of Senate Bill 289 dealing with an alternative selection method for administrative law judges.

As to the second item, that is, the definition of work disability, the advisory council likewise could not reach an agreement as to a recommendation to be made to the Legislature.

As to the item dealing with open records (Senate Bill 321), the advisory council has suggested alternative language as a substitute for Senate Bill 321. That alternative language is attached hereto.

Also, the advisory council recommends to the Legislature that in view of the decision of the Court of Appeals in *Beisel v. The Boeing Company*, Case No. 75,335, that K.S.A. 44-534a(b) be amended to deal with the issue that the recovery of overpayments due to excessive health care provider fees or charges or unjustified treatment shall be brought under the utilization and peer review provisions.

The last recommendation by the advisory council to the Legislature would be to amend K.S.A. 44-532 to allow information regarding cancellations or non-renewals to be received by a designee of the Director. Currently, there is at least one (1) bill in the Legislature which would seek to eliminate NCCI as the exclusive rating organization and change it to any approved rating organization. Currently, the Division of Workers Compensation relies upon NCCI to furnish it a list of cancellations and non-renewals.

Senate Commerce  
Committee  
March 12, 1997

Attachment 2-1 thru 2-6

**44-532. Subrogation of insurer or group-funded pool to rights and duties of employer; methods of securing payment of compensation; failure to secure; notice to director by insurers; change of status notice by self-insurers and group-funded pool members; eligibility to self-insure.** (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501 and amendments thereto.

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

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section is a class A misdemeanor.

(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 \$25,000, 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.

(g)(1) Every insurance carrier writing workers' compensation insurance for any employment covered under the workers compensation act shall file, with the director *or his designee*, written notice of the issuance, nonrenewal or cancellation of a policy or contract of insurance, or any endorsement, providing workers compensation coverage, within 10 days after such issuance, nonrenewal or cancellation. Every such insurance carrier shall file, with the director, written notice of all such policies, contracts and endorsements in force on the effective date of this act.

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

(3) Every employer covered by the workers compensation act who is a member of a

qualified group-funded workers compensation pool shall give written notice to the director *or his designee*, if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.

(4) The mailing of any written notice or report required by this subsection (d) in a stamped envelope within the prescribed time shall comply with the requirements of this subsection.

(5) The director shall provide by regulation for the forms of written notices and reports required by this subsection (d).

(h) As used in this section, 'qualified group-funded workers compensation pool' means any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or any group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

(i) A private firm shall not be eligible to apply to become a self-insurer unless it has been in continuous operation for at least five years or is purchasing an existing self-insured Kansas firm, plant or facility and the operation of the purchased firm, plant or facility: (1) Has been in continuous operation in Kansas for at least 10 years; (2) has generated an after-tax profit of at least \$1,000,000 annually for the preceding three consecutive years; and (3) has a ratio of debt to equity of not greater than 3.5 to 1. As used in this subsection, 'debt' means the sum of long-term borrowing maturing in excess of one year plus the current portion of long-term borrowing plus short-term financial institution borrowing plus commercial paper borrowing, and 'equity' means the sum of the book value of stock plus paid-in capital plus retained earnings.



**44-534a. Preliminary hearings; orders for medical treatment and temporary total disability benefits; benefit review conference; review of preliminary findings and orders; reimbursement from workers compensation fund.** (a) (1) After an application for a hearing has been filed pursuant to K.S.A. 44-534 and amendments thereto, the employee or the employer may make application for a preliminary hearing, in such form as the director may require, on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation. At least seven days prior to filing an application for a preliminary hearing, the applicant shall give written notice to the adverse party of the intent to file such an application. Such notice of intent shall contain a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If the parties do not agree to the change of benefits within the seven-day period, the party seeking a change in benefits may file an application for preliminary hearing which shall be accompanied by a copy of the notice of intent and the applicant's certification that the notice of intent was served on the adverse party or that party's attorney and that the request for a benefit change has either been denied or was not answered within seven days after service. Copies of medical reports or other evidence which the party intends to produce as exhibits supporting the change of benefits shall be included with the application. The director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and shall give at least seven days' written notice by mail to the parties of the date set for such hearing.

(2) Such preliminary hearing shall be summary in nature and shall be held by an administrative law judge in any county designated by the administrative law judge, and the administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workers compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues. A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award. If temporary total compensation is awarded, such compensation may be ordered paid from the date of filing the application, except that if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. The decision in such preliminary hearing shall be rendered within five days of the conclusion of such hearing. Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

(b) If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to

an award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to less any amount deducted from additional disability benefits due the employee pursuant to subsection (c) of K.S.A. 44-525, and amendments thereto, as determined in the full hearing on the claim, *except the determination and recovery of overpayments due to excessive health care provider fees or charges or unjustified treatment shall be brought under the utilization and peer review provisions promulgated pursuant to K.S.A. 44-510, and amendments thereto.* The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

A handwritten signature or set of initials, possibly "2-8", located in the bottom right corner of the page.

**44-550b. Records open to public inspection, exceptions.** (a) All records provided to be maintained under K.S.A. 44-550 and amendments thereto *and notwithstanding the provisions of K.S.A. 45-215, et. seq. and amendments thereto*, shall be open to public inspection, except ~~that~~ records as provided in subsection (b); records relating to financial information submitted by an employer to qualify as a self-insurer pursuant to K.S.A. 44-532 and amendments thereto; ~~and~~ records which relate to utilization review or peer review conducted pursuant to K.S.A. 44-510 and amendments thereto, *and records relating to private premises safety inspections* shall not be disclosed except as otherwise specifically provided by the workers compensation act.

(b) ~~This section shall be part of and supplemental to the workers compensation act. Medical records, form 88's and accident reports maintained under K.S.A. 44-550 pertaining to an individual shall not be disclosed except:~~

- (1) upon order of a court of competent jurisdiction;
- (2) to the employer, its insurance carrier or its representative, from whom a worker seeks workers compensation benefits;
- (3) to the division of workers compensation for its own records for its purposes;
- (4) federal or state governmental agencies for purposes of fraud and abuse investigations;
- (5) to an employer in connection with any application for employment to an employer, its insurance carrier or representatives providing (a) an offer of employment has been made and (b) the request for records includes a signed release by the individual, identifies the job conditionally offered by the employer and is submitted in writing, either by mail or electronic means. Requests relating to an individual under this subsection shall be considered a record to be maintained and open to public inspection under K.S.A. 44-550.

(c) This section shall be part of and supplemental to the workers compensation act.

Senate Commerce  
March 12, 1997  
Attachment 3

2-6