

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:02 a.m. on March 5, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused
Rep. Phyllis Gilmore - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Reggie Davis, Secretary of KDHR
Paul Bicknell, KDHR
Terry Leatherman, KCCI
Rep. Dave Gregory
Wayne Maichel, Ks AFL/CIO

Others attending: See attached list

The minutes of February 18, 19, and 20 were passed out to the committee. A motion was made by Rep. Beggs and seconded by Rep. Crow to approve the minutes as written. The motion passed

Reggie Davis, Director, Division of Employment Security, Kansas Department of Human Resources (KDHR), and Chairman of the Employment Security Advisory Council, appeared before the committee to introduce Paul Bicknell. The department provided the committee with the *Handbook for Employers, A guide to the Kansas Employment Security Law*. Copies of the handbook are available from the Department of Human Resources, Division of Employment Security, Contributions Branch, 401 SW Topeka Blvd., Topeka, Kansas 66603-3182.

Paul Bicknell, Chief of Contributions, Division of Employment Security, KDHR, appeared before the committee to provide a briefing on the actions taken by the Employment Security Advisory Council and to present their recommendations to the committee. In its December meeting, the council voted to make three changes to K.S.A. 44-717. In the January meeting, they considered seven additional possible changes to the Employment Security Law, and recommended six of the changes for legislative consideration. Other recommendations are included in his testimony. (See Attachment 1) They ask that the committee introduce these recommendations in bill form to the 1998 Legislature.

Because it is too late for the Business, Commerce, and Labor Committee to introduce a bill, Chairman Lane will request that the bill be introduced by an exempt committee.

Continued hearing on: **HB 2982 - Death benefits for independent legal heirs.**

Rep. Krehbiel's written testimony from February 24, 1998 was passed out to the committee. (See Attachment 2)

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), appeared as a opponent of the bill. The KCCI are opposed to the bill as it is currently written. He explained how the bill could be amended to remove many of their objections. He recommends that it be referred to the Workers Compensation Advisory Council for their recommendation. (See Attachment 3)

Written testimony was passed out for Art Brown, Mid-America Lumbermens Association, a supporter of the bill. (See Attachment 4)

Rep. Dave Gregory appeared before the committee to talk about a young man, Ryan Prose, who died in a fork lift accident in Star Lumber's Hutchinson store. Rep. Gregory is employed by the same employer while he is not serving in the legislature. Ryan had no life insurance or dependents. His parents were paid by Star Lumber \$4,300 for burial expenses. The State also received \$18,500. He believes that the payment to the state should be paid to people like Ryan's parents. When someone dies, there are many more expenses in addition to the burial expenses, and \$4,300 does not even cover a nice funeral service. (See Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 526-S
Statehouse, at 9:02 a.m. on March 5, 1998.

Wayne Maichel, Kansas AFL/CIO, agrees that the \$18,500 should go to the family. He had not had a chance to look at the balloon that Bob Nugent wrote, but he feels this is the minimum amount that should go to the non dependent family members of workers who die on the job.

Written testimony was submitted by Paula Greathouse, Staff Attorney for the Workers Compensation Fund, Kansas Insurance Department. (See Attachment 6)

No others were present to testify for or against the bill and Chairman Lane closed the hearing.

A motion was made by Rep. Grant to refer **HB 2982** to the Workers Compensation Advisory Council (WCAC) for their recommendation and if the WCAC could not meet in a timely manner, the bill would come back to the committee for their action before the deadline for bills to be passed out of committee. The second was made by Rep. McCreary. The motion passed.

A balloon that would amend K.S.A. 44-570 to allow a payment of \$25,000 be made to legal heirs, when an employee does not leave any dependents, was submitted to the committee by Bob Nugent, Revisor. The balloon would become a new section of **HB 2982**.

An explanation was made by Bob Nugent, Revisor of Statutes, on the problems concerning **HB 2754**. This part of statute was amended in a bill in 1978, but because of a printing error or an engrossing error, the bill passed by the legislature and the bill signed by the governor was not the same bill, thus the law was void since it was enacted. It was decided that a hearing would not be held until Mr. Nugent had a chance to correct the problems by writing a balloon or substitute bill to submit to the committee.

Chairman Lane adjourned the meeting at 9:44 a.m.

The next meeting is scheduled for March 6, 1998.

TESTIMONY

BUSINESS, COMMERCE & LABOR COMMITTEE

March 5, 1998

Good morning Mr. Chairman and members of the committee, my name is Paul Bicknell and I am the Chief of Contributions with the Department of Human Resources. I appear before you this morning to provide a briefing on the actions taken by the Employment Security Advisory Council and their recommendations.

For the new members on this legislative committee, I offer the following information. The Employment Security Advisory Council is composed of 12 members, four of whom come from the labor field, four from the employer community, and four from the public sector. The term of appointment for members is four years, and the terms are staggered. The Council recently voted Wayne L. Franklin, Secretary of Human Resources, as Council Chair and Reginald O. Davis, Director of Employment Security, as Vice-Chair. The Council meets as needed on the call of the Chair. The law states that the council "shall aid the secretary in formulating policies and discussing problems related to the administration of this act and in securing impartiality and freedom from political influence in the solution of such problems."

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Att. 1*

The Advisory Council met twice and acted on one mailing to consider legislative issues concerning the Employment Security Law raised by department staff and council members. Their recommendations are as follows and are attached to this testimony in balloon versions of the law.

1. In its December meeting, the council voted to make three changes to K.S.A. 44-717. The first change was made to provide some clarification to subsection (a) dealing with "payments in lieu of contributions." The second change was to strike out the last sentence in subsection (h). This language was added by passage of S.B. 140 during the last session and as a result the U.S. Department of Labor has informed the agency that the language presents a conformity issue dealing with the "withdrawal standard." The third change was to strike out the entire subsection (i) which is no longer applicable.

2. The council also considered seven additional possible changes to the Employment Security Law during their January meeting. These changes were proposed as a result of the passage of the Balanced Budget Act of 1997 and the Taxpayer Relief Act of 1997. The council recommended six of the changes be forwarded for legislative consideration. The council also considered a mailing regarding one additional issue and recommended the change. None of these are conformity issues; however, by adopting these amendments, employers will have the same coverage requirements for both their state and federal Unemployment Compensation Taxes.

There are two changes that amend K.S.A. 44-703(i)(4) by adding an exclusion from the definition of employment for certain "election workers" and services for "non-profit elementary or secondary schools operated primarily for religious purposes." An amendment to K.S.A. 44-703(o), which excludes "educational assistance to an employee" from the definition of wages. An amendment to K.S.A. 44-712(d), dealing with the administration of Reed Act funds. An amendment to K.S.A. 44-716a that allows interest payments to employers to be paid out of the Special Employment Security Fund. And finally,

two amendments to K.S.A. 44-718 in which subsection (c) allows for the continuous levy of an individual's benefit amount in accordance with Section 6331 of the federal internal revenue code of 1986 and subsection (d) makes a technical change in the cite of the social security act which has a definition of the legal process for purposes of intercepting child support obligations from an individual's benefit amount.

The only proposed change that presents a conformity issue with the U.S. Department of Labor is the change necessary to K.S.A. 44-717(h). Again, for the new members on this committee, federal sanctions can be levied against Kansas if state laws or agency practices are not consistent with federal requirements. Under the Federal Unemployment Tax Act, commonly known as FUTA, which is found in the Internal Revenue Code of 1986, levies federal unemployment tax of 6.2% on an employer's taxable payroll. A 5.4% offset credit is extended to Kansas employers as long as the Kansas Employment Security Law remains in conformity with federal legislation.

Federal authorizing statutes are found in FUTA and in Titles III and IX of the Social Security Act. These measures require that each state establish and operate an Unemployment Insurance program which conforms to federal statutes, rules and regulations. Conformity is ensured through the funding process and through the above mentioned offset provisions for Kansas employers. Nonconformity would result in lost employer tax credits and reduced administrative funding.

This concludes my briefing on the actions taken by the Employment Security Advisory Council. We respectfully request that the attached recommendations be introduced in bill form by this committee.

44-717. Collection of employer payments; penalties and interest, past-due reports and payments; priorities; liens, enforcement; seizure and the sale of property; procedure; refunds; cash deposit or bond; liability of officers and stockholders and members and managers of limited liability companies. (a) Penalties on past-due reports, interest on past-due contributions, payments in lieu of contributions and benefit cost payments. Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection (a) for each month or fraction of a month until the report or return is received by the secretary of human resources. The penalty for each month or fraction of a month shall be an amount equal to .05 % of the total wages paid by the employer during the quarter, except that no penalty shall be less than \$25 nor more than \$200 for each such report or return not timely filed. ~~Payments in lieu of contributions shall be filed by the last day of the month following the close of each calendar quarter to which they are related.~~ Contributions and benefit cost payments ~~not filed~~ by the last day of the month following the last calendar quarter to which they are related, shall bear interest at the rate of 1 % per month or fraction of a month until payment is received by the secretary of human resources except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of human resources that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of human resources may abate any penalty or interest or portion thereof provided for by this subsection (a). Interest amounting to less than \$1 shall be waived by the secretary of human resources and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a and amendments thereto shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. ~~A wage report, a contribution return, a contribution, a payment in lieu of contribution or a benefit cost payment is deemed filed as of the date it is placed in the United States mail.~~

unpaid

and payments in lieu of contributions unpaid
30 days after the mailing of the statement of
benefit charges

For purposes of this subsection, a

to be
or paid

1-6

lieu of contributions, benefit cost payments, interest and penalty have been paid.

(g) *Remedies cumulative.* The foregoing remedies shall be cumulative and no action taken shall be construed as an election on the part of the state or any of its officers to pursue any remedy or action under this section to the exclusion of any other remedy or action for which provision is made.

(h) *Refunds.* If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments or interest under this law and the secretary of human resources determines that such amount or any portion thereof was erroneously collected, except for amounts less than \$1, the secretary of human resources shall allow such individual or organization to make an adjustment thereof in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of human resources shall refund the amount, except for amounts less than \$1, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, benefit cost payments or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of human resources shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968 and amendments thereto shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section. ~~Such interest may be deducted from subsequent contributions or as part of a refund as described in this subsection and in subsection (i).~~

~~(i) *Refund for reimbursing employer.* Upon termination of an employer's business or termination of any election to make payments in lieu of contributions, a reimbursing employer may file for a refund of any payments made to the fund which are in excess of any regular or extended benefits which have been charged or could become chargeable to the reimbursing employer's account. No refund may be made within a twenty-four month period following termination of a reimbursing employer's~~

~~business or election for payments in lieu of contributions.~~

(4) The term "employment" shall not include:

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(aa) is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(bb) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes; and

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection.

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000.

(X) service performed for an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501(c)(3), and which is exempt from tax under section 501(a) of the federal internal revenue code of 1986.

(o) "Wages" means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died; or

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee.

the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds, but shall be maintained in separate bank accounts.

(c) *Withdrawals.* Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and warrants for the payment of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812 and amendments thereto shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) *Administrative use.* (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the

enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged.

(2) Money credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(4) Notwithstanding paragraph (1), money credited with respect to Federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

44-716a. Special employment security fund; creation; authorized expenditures and transfers. (a) There is hereby created in the state treasury a special fund to be known as the special employment security fund. All interest and penalties collected under the provisions of the Kansas employment security law shall be paid into this fund. No such moneys shall be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which in the absence of such moneys would be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent such moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Except as otherwise authorized by this section or by appropriations act, the moneys in this fund may be used by the secretary of human resources only for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants, or other funds, received for or in the employment security administration fund. In addition to the other purposes for which expenditures may be made from the special employment security fund as authorized by this section or by appropriations act, moneys from this fund may be used to finance activities as deemed necessary by the secretary of human resources for the efficient operation of activities under or the administration of the employment security law, except that (1) no moneys shall be used for such purposes unless the secretary has determined that no other funds are available or can be properly used to finance expenditures for such purposes, and (2) expenditures during any fiscal year for purposes authorized under this section shall not exceed \$110,000 except upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c and amendments thereto. No expenditures of this fund shall be made except on written authorization by the governor and the secretary of human resources.

(b) The director of accounts and reports is hereby directed to draw warrants upon the state treasurer against the money in the special employment security fund for the use and purposes authorized under this section upon vouchers, approved by the secretary of human resources, and accompanied by the written authorization of the governor and the secretary of human resources. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the federal social security act, as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the secretary of human resources for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund, except as otherwise authorized in subsection (c) or subsection (d).

(c) In addition to expenditures authorized by this section, the director of accounts and reports may transfer funds from the special employment security fund to the accounting services recovery fund as provided in K.S.A. 75-3728b and 75-6210 and amendments thereto.

(d) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the department of human resources federal indirect cost offset fund on July 1 of each year in the amount contained in appropriation bills to be expended from the federal indirect cost offset fund for that fiscal year.

(e) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the clearing account of the employment security fund to be expended in the payment of interest due employers from erroneously collected contributions or benefit cost payments as provided in K.S.A. 44-717(h).

L. 1976, ch. 227, § 1;
L. 1981, ch. 205, § 3;
L. 1984, ch. 147, § 11;
L. 1992, ch. 74, § 4;
Amended 1997 S.B. 140, July 1

L. 1979, ch. 159, § 7;
L. 1983, ch. 169, § 8;
L. 1986, ch. 191, § 5;
L. 1995, ch. 71, § 2;

secretary shall notify the state or local support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

44-718. Protection of rights and benefits; penalties.

(a) *Waiver of rights void.* No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by an individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of human resources or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of human resources or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of human resources. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

(c) *No assignment of benefits; exemptions.* No assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

(d) *Support exception.* (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations as defined under paragraph (7). If any such individual discloses that such individual owes support obligations, and is determined to be eligible for unemployment compensation, the

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual that owes support obligations as defined under paragraph (7):

(A) The amount specified by the individual to the secretary to be deducted and withheld under this subsection, if neither (B) nor (C) is applicable; or

(B) the amount, if any, determined pursuant to an agreement submitted to the secretary under section 454(20)(B)(i) of the social security act by the state or local support enforcement agency, unless subparagraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in section 462(e) of the social security act) properly served upon the secretary. 459(i)(5)

(3) Any amount deducted and withheld under paragraph (2) shall be paid by the secretary to the appropriate state or local support enforcement agency.

except in accordance with Section 6331 of the federal internal revenue code of 1986, and shall be exempt from,

ROBERT E. KREHBIEL

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TOPEKA

HOUSE OF
REPRESENTATIVES

February 24, 1998
 Testimony of Robert E. Krehbiel
 on
 H. B. 2982

I would like to thank Chairman Al Lane for his generous consideration in holding a hearing on H. B. 2982, and the Committee for their time and consideration of the important policy issue which the bill presents.

THE POLICY ISSUE

When an employee without dependents is accidentally killed in the course of his employment, what level of compensation is fair and equitable under the laws relating to workers compensation?

BACKGROUND

Prior to the enactment of worker's compensation laws, if an employee was injured as the result of work being performed, his or her only remedy lay in the civil courts based on a theory of negligence against the employer. There was no limitation placed on his recovery, and the amount of the employee's damages was fixed by a jury or a judge. In arriving at a monetary judgment, the court took into consideration all elements of damages that were available to a plaintiff who brought an action for negligence, including damages for pain and suffering and loss of earning power. Jury awards in an action for negligence could be exorbitant and seriously threaten the economic viability of the employer.

The injured worker, on the other hand, faced numerous obstacles to recovery. The employer had a number of defenses available including contributory negligence and assumption of the risk. It was often difficult for the injured worker to pursue his case successfully. In addition most work related injuries were simply accidents without negligence and no liability could be attributed to the employer. If the worker was injured through no fault of the employer and could no longer work, the employee had to care for himself or herself without compensation.

Thus there existed a mutual need for employers to limit their liability and for employees to obtain insurance for work related injuries. Worker's Compensation met those needs and

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represented a trade off of uncapped liability for the employer for providing insurance for work related injuries for the employee.

The passage of the worker's compensation law now requires employers to provide insurance on its employees for work related injuries. Employee's give up their right to sue for negligence in exchange for the compensation provided by worker's compensation insurance.

CURRENT LAW

When a single individual without dependents is killed in the course of his employment current worker's compensation benefits provide for a burial expense of \$4,300.00. If the cost of burial exceeds that amount the responsibility falls elsewhere. There is no other compensation paid for the life of the deceased worker.

Is this a fair trade-off?

Under current law there is no way out from under the worker's compensation statute for the injured worker. Even if the employer is grossly and wantonly negligent in causing the death of the employee there is no other compensation.

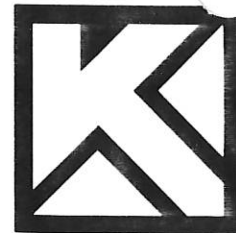
WHAT H. B. 2982 DOES

The proposed bill would change current law to require an employer to carry a term life insurance policy on each employee in the minimum amount of \$25,000.00 or provide for such compensation within the worker's compensation statute. The bill also increases the worker's compensation payable to "other dependents" to \$50,000.00.

It is my opinion current law falls far short of common decency. I would ask for your support for this bill.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2982

March 5, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why KCCI opposes HB 2982, as currently written, to explain how the bill could be amended, and to recommend the Committee refer this issue to the Workers Compensation Advisory Council to build consensus on this policy question.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 47% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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any work related fatality is tragic and there is no way to draw statistical comfort in the fact that in a work force that exceeds one million employees annually, death in the work place is a rare occurrence. The table below does review the number of fatal workers compensation accidents in recent years.

Year	Total Kansas Work Force (as of January)	Total number of worker accident reports	Total Workers Compensation Fatalities
1997	1.311 million	100,367	71
1996	1.287 million	94,465	66
1995	1.246 million	99,105	64
1994	1.231 million	95,565	45
1993	1.235 million	96,408	47
1992	1.242 million	89,794	48
1991	1.206 million	87,896	74
1990	1.208 million	81,501	53

When a workplace fatality occurs, current workers compensation law calls for the following compensation to be paid.

- * In all instances, a \$4,300 funeral allowance is paid by the employer. The Kansas Legislature has raised the funeral allowance twice in recent years. In the workers compensation reform bill of 1993 (SB 307), the \$3,200 allowance was raised to \$3,300. At the recommendation of the Workers Compensation Advisory Council, the Legislature raised the allowance to the current \$4,300 last year in HB 2011.
- * If the worker leaves behind a spouse or dependent children, those family members are eligible to receive up to \$200,000 in compensation benefits.
- * If the employee does not have a spouse or wholly dependent children, but there was a dependent who relied on the wages of the deceased worker, they could qualify to receive up to \$18,500 in compensation benefits.
- * If the worker leaves behind no family member who qualifies as dependent on the worker's income, the family of the worker receives only the funeral allowance. However, the employer is required to pay the Kansas Workers Compensation Fund, also known as the Second Injury Fund, \$18,500.

This forced contribution hardly creates a ripple in the flow of dollars that goes into the Workers Compensation Fund. The table below shows the total revenues that has been paid into the Fund in the 1990's, and shows that "non-dependent death assessments" has never been more than one/half of one percent of total Fund revenues.

Year	Total Fund Revenue	Non-Dependent Death Revenue	% of Total
1997	\$26,994,974	\$154,000	.28%
1996	\$33,383,957	\$203,500	.31%
1995	\$42,507,386	- 0 -	- 0 -
1994	\$64,251,990	\$ 92,500	.11%
1993	\$48,191,485	\$ 64,750	.13%
1992	\$36,290,877	\$166,500	.46%
1991	\$21,184,536	\$129,500	.52%
1990	\$21,371,086	\$ 55,500	.22%

When KCCI has asked about the philosophy behind paying this non-dependent death assessment, the answer we have received is this should be done to assure an employer pay some substantial amount of the money when a death occurs. In KCCI's opinion, this rationale is groundless and should be removed from Kansas law.

With this perspective on current law, KCCI has the following observations regarding HB 2982.

1) HB 2982 proposes a fundamental policy shift regarding workers compensation benefits.

The purpose of workers compensation is to provide prompt medical care when a work-related injury happens. If medical care cannot relieve the effects of the injury, compensation is provided in an attempt to make the employee whole. As this Committee understands, workers compensation is a compromise process. The employee receives care and compensation in a no-fault system funded entirely by their employer. The business is promised workers compensation will be the employee's exclusive legal remedy.

In fatal workers compensation cases, compensation is awarded to family members who were dependent on the deceased in a financial attempt to make them whole. HB 2982 proposes to stretch workers compensation liability to a new level, when it proposes to compensate family members,

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wit . any demonstration of their financial need to replace revenue lost because of the death of their relative.

In the emotion of this issue, it is important to be mindful of the rights and responsibilities assigned to Kansas employers when the Legislature acts on workers compensation matters.

2) HB 2982 does not address the state's current non-dependent death assessment to the Workers Compensation Fund.

As currently written, in non-dependent death cases, an employer would be required to pay a \$25,000 lump-sum settlement to the legal heirs of the deceased employee. In addition, they would be required to pay \$18,500 to the Kansas Workers Compensation Fund. To correct this, K.S.A. 44-570 must be amended.

3) HB 2982 will produce an increase, but not a huge increase, in workers compensation insurance costs.

HB 2982 will impact workers compensation insurance rates, but the impact should be slight.

Here's why:

- ◆ Fatality cases where there is a surviving spouse or children are not affected.
- ◆ Fatality cases with a partially dependent person could see a compensation increase of \$31,500 (\$50,000 - \$18,500).
- ◆ Fatality cases with no dependent persons could see a compensation increase of \$25,000. If K.S.A. 44-570 is deleted, the increase would be reduced to \$6,500. However, the revenue loss to the Workers Compensation Fund, while slight, will need to be paid by Kansas employers through Insurance Department assessments.
- ◆ In the 71 fatal workers compensation cases in 1997, there were 11 cases without a dependent.
 - ◇ If half of the remaining 60 cases involved partial dependency, the compensation increase would total \$945,000. The compensation increase in the non-dependent cases would increase \$275,000. These two increases would total an increase of \$1,220,000 in compensation paid by employers in these cases.

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in 1996, the Kansas Insurance Department reports that Kansas employers paid nearly \$15 million in workers compensation claims. To increase compensation in fatality cases by \$1.2 million would add less than one percent (.8%) to overall benefits paid.

- ◇ Let me stress that determining the effect that HB 2982 would have on workers compensation insurance rates is not nearly as simple as the process I have outlined. A definitive answer would require analysis by the actuaries at the National Council on Compensation Insurance. However, this perspective should raise confidence that an increase in death benefits, as proposed in this bill, should have an insurance rate impact of less than one percent.

4) Any change in compensation amounts should be based on sound principles.

In the explanation of HB 2982 last week, the only rationale given for proposing \$50,000 in compensation for partially dependent individuals was the amount should exceed the \$25,000 proposed to heirs of a deceased worker. KCCI does not see this as a solid basis for change.

KCCI SUGGESTED CHANGES TO HB 2982

1. Delete K.S.A. 44-570 which requires employers to contribute \$18,500 to the Kansas Workers Compensation Fund in non-dependent death cases.
2. On page 2, line 8, reduce the proposed maximum a partial dependent may receive from \$50,000 to \$25,000. Aside from a suggestion that the partial dependency maximum should differ from the lump-sum payment to heirs, no justification has been given to this benefit increase. Establishing a \$25,000 maximum benefit level in partial dependency cases would represent more than a 25% increase in this compensation. In addition, the law would grant the partially dependent a priority position in workers compensation fatality cases.

These two changes to HB 2982 would produce the following advantages.

1. You would create a benefit for heirs in fatal workers compensation cases that appears to be the most generous in the country.

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2. You would address a vexing concern employers have had of making a punitive payment to the Workers Compensation Fund and instead have their dollars benefit the relatives of their deceased worker.
3. You would largely mitigate the potential HB 2982, as currently written, might have on workers compensation insurance premiums. If amended as proposed by KCCI, the effect on insurance rates from death benefits in cases where no wholly dependent persons exist would be limited to \$6,500 per case, plus the need for revenue that will not be paid to the Workers Compensation Fund.

KCCI opposes HB 2982 in its current form. To amend the bill as KCCI has suggested would remove many of the Chamber's objections to the bill. However, because HB 2982 represents an important change in workers compensation law in Kansas, KCCI would respectfully suggest you follow the course you have often chosen when presented with a new concept for workers compensation. Refer this bill to the Kansas Workers Compensation Advisory Council and give business and labor an opportunity to present you a recommendation on this important policy question.

Thank you for considering KCCI's concerns regarding HB 2982. I would be happy to attempt to answer any questions.



MID-AMERICA LUMBERMENS ASSOCIATION

Art Brown

WRITTEN TESTIMONY

HOUSE BUSINESS, LABOR AND INDUSTRY COMMITTEE

House Bill No. 2982

March 5, 1998

MEMBERS OF THE COMMITTEE: *It is with deep regret that on the day of the public hearing on House Bill 2982, that I have an out of town conflict. I am hopeful that in your busy schedule, that you will take a little time to read this testimony which supports House Bill No. 2982.*

We support this bill. We had a member who had the misfortune of having a fatality at their place of work. It is hard to describe how that impacts a company. There is so much grief, sorrow and pain for both the workers and the employers. In regard to this incident, the worker was a young man who was an excellent employee with a good work record. He was just barely starting his life in the work world, and as such was still a single person.

We asked the advisory council in 1996 to address the issue of why a worker with a family receives a \$200,000.00 settlement upon the death of an employee, yet the employer is stuck with paying \$18,500.00 to the second injury fund? (note: we have absolutely no problem with the \$200,000.00 figure.) This just because the person has no immediate family members (wife, children.) The advisory council took no action on this matter, yet two of the members on that council, one from labor and one from business, agreed with us that the second injury fund was the wrong place to put these funds. The only action taken that year was to raise the burial allowance from \$3300.00 to \$4300.00. Pretty sad solution.

Because I am not there in person to personally testify to this bill, I am not sure what is being said from the proponets side of the issue. I would, however, like to pass on that our position would be to certainly allow a \$25,000.00 payment as indicated on page 2, lines 33 to 36. We would however just as soon see the balance of line 36 starting with the word "however," and up to line 37 ending with the word "state" being struck from the bill.

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**pg 2- Written Testimony for the House Labor, Business & Labor Comm.
3/5/98 HB 2982**

That stricken language deals with the same issue we addressed in 1996. Why should the employer be "penalized" \$25,000.00? To us, putting this \$25,000.00 into the second injury fund is indeed just that—a penalty because the person who died on the job had no family, and the heirs in that family receive absolutely no benefit, except a minimal burial allowance.

We would also agree to leave the language as is on line 37 after the word "state" to the end of line 40.

We cannot over emphasize how important good workers are to us. When we lose a worker in this manner, it is almost like losing a member of the family in many cases due to the fact so many of our members operate a small business. We certainly feel passage of HB 2982 would implement a policy change where everyone gains.

Seldom will you see us in agreement with the AFL-CIO, and the trial lawyers. In conversations with representatives of both of these groups, they told me they totally supported this position.

We are hopeful that you pass this bill out with the suggested stricken language. I will be back in Topeka on the 12th of March. I am hopeful that by then, this bill will be passed out of Committee and on its way to the floor of the House. If not, I will be available to comment to you on these written remarks, and I thank you for taking the time to read them.

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TOPEKA

HOUSE OF
REPRESENTATIVES

House Bill 2982

COMMITTEE ASSIGNMENTS

FINANCIAL INSTITUTIONS
INSURANCE
TAXATION

March 5, 1998

Please Support House Bill 2982

When I'm not serving in the legislature, I work for STAR LUMBER & SUPPLY Co. which has stores in Wichita, Salina, and Hutchinson. On November 26, 1996 Ryan Prose, a young man who was employed at STAR LUMBER, died in a fork lift accident at STAR's Hutchinson store. The tragedy didn't end there.

Ryan Prose was a young single man who worked at STAR on a part-time basis. He had no life insurance and he had NO dependents. At the time Ryan Prose was attending Hutchinson Junior Community College and was doing his best to pay for a pickup truck.

Not only did Ryan Prose's parents have to suffer over their son's loss, at their time of grief, they also had to repay his student loans, repay his automobile loan, and pay additional money for a respectful funeral.

STAR did pay the estate the \$4,300 for funeral expenses. STAR LUMBER also paid the state \$18,500 which, as I understand it, went to the Worker's Compensation Second Injury Fund. The \$18,500 didn't go to his estate, his family, because they were not dependents.

This young man's death was a tragedy. However, in their time of grief the family had to pay out funds that they should not have had to. These funds were available.

Why did the State take Ryan's parents funds? This small sum is not intended to make the parents feel better, but with this bill all the funds paid by an employer would be returned to people like Ryan's parents.

There is a balloon amendment from the Revisor which will strike K.S.A. 44-570. This will insure all funds go to the families who are struggling with their grief. By adding this amendment the state's Second Injury Fund will not benefit every time an employee without dependents dies. Why should the fund benefit? Let's help people like Ryan Prose's parents.

I urge you to Pass HB 2982 with it's amendments.

*House Business, Commerce
& Labor Committee
3/5/98
Att. 5*

MEMORANDUM

DATE: 3-4-98
TO: Representative Al Lane, Chairman
House Business, Commerce and Labor Committee
FROM: Paula Greathouse
Staff Attorney Workers' Compensation Fund
RE: Senate Bill 2982
CC: Committee Members

The Kansas Insurance Department has no position concerning the items contained in this bill. However, if the Committee considers an amendment to this bill that would eliminate the provisions of K.S.A. 44-570, concerning non-dependent deaths, there would be a fiscal impact.

During the last five fiscal years, the Kansas Workers' Compensation Fund has received the following from non-dependent deaths:

Fiscal Year	Total Dollars Received
1994	\$92,500
1995	\$0
1996	\$203,500
1997	\$154,000
1998 paid to date	\$111,000

The operating budget for the Kansas Workers' Compensation Fund was approximately \$22.6 million dollars this year. The Department would also remain neutral on any proposed changes to K.S.A. 44-570.

*House Business, Commerce
& Labor Committee
3/5/98
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