Approved: February 19, 19[illegible]
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 18, 1998 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, 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:
John M. Ostrowski, AFL-CIO
Paul Greathouse, Kansas Insurance Department, Workers' Compensation Fund
Patrick Nichols, Attorney, Topeka
Phil Harness, Director, Workers Compensation Division

Others attending: See attached list

SB 522 - Determining functional disability for repetitive motion injuries

John M. Ostrowski, on behalf of Kansas AFL-CIO, testified in opposition to **SB 522** and questioned why the employers, who requested this change, did not take their concern to the Advisory Council which is set up to handle these questions and has worked well to date. Mr. Ostrowski stated the present law established that pre-existing conditions are assessed appropriately as employers only pay for damages sustained by individuals in their employment. The Courts are fixing the date of injury on a case by case basis when a series of microtraumas are involved. Mr. Ostrowski stated enactment of **SB 522** is a denial of benefits to the employee and could expose employers to tort liabiity. (Attachment 1)

A copy of written testimony from Donna Massoth, stating her opposition to **SB 522** was distributed to the Committee. (Attachment 2)

The hearing on **SB 522** was concluded.

SB 555 - Workers compensation; procedural changes

Paula Greathouse, Kansas Insurance Department Workers' Compensation Fund, Staff Attorney, testified in support of two provisions in **SB 555.** The first change is found on Page 12, line 24, which inserts the words "workers' compensation fund"; and the second change is on Page 16, lines 24-34, requiring the party who ended up with the ultimate liability to reimburse any party who had paid the claim initially, as long as the reimbursement did not exceed the limits of the claim. (Attachment 3)

Patrick Nichols, attorney, KTLA, appeared in support of **SB 555**. Mr. Nichols submitted a proposed amendment, Page 1, striking lines 23-25, and inserting in lieu thereof "law judge can make any award concerning medical care that is authorized by KSA 44-510." KSA 44-510 deals with terms and conditions of medical benefits and peer review. (Attachment 4)

The Workers' Compensation Fund Oversight Committee submitted a letter to the Committee regarding **SB 555**. (Attachment 5)

Phil Harness, Director, Workers Compensation Division, explained **SB 555.** Mr. Harness stated the recommendations found in **SB 555** are those of the Workers Compenation Advisory Committee.

New Section 1 establishes a new procedure for post-award medical treatment requests, allowing for an evidentiary hearing, as well as dealing with attorney fees and appeals. If there is a post-award application for additional medical expenses there would be a separate opportunity for hearing and such a request would move to a second priority position.

Section 2, Page 4, line 38-43 refers to the utilization and peer review process and clarifies that hea[illegible] is necessary before any sanctions become operative; Page 5, lines 42-43, authorizes the release of pee[illegible] review reports to parties other than the health care provider upon the initiation of a hearing. If the peer and utilization review reports shows treatment was ineffective, it recognizes the right of the employee to initiate a preliminary hearing before the ALJ; Page 6 lines lines 38 - 43; Page 7, lines 1 - 43 allows ALJs to entertain applications for terminating or modifying medical care following a finding of overutilization, and permits an application to be filed after utilization review when it is adverse to the health care provider. Page 8, lines 5 - 33, authorizes the utilization and peer review reports and findings to be used as prima facie evidence of medical benefits, but also allows further evidence to rebut or contradict the prima facie evidence. The peer review and utilization review documents are currently protected by a privilege from discovery; however, may, upon further order of an ALJ, be subject to discovery. Currently, it is unclear whether these reports could be used to enhance medical treatment given to a claimant.

Page 10, lines 29 - 43 and Page 11, lines 1-4, strikes the current provisions for setting up of conservatorships when dealing with minors, and authorizes the ALJ to direct compensation to be paid in accordance with the probate code dealing with conservatorships.

Page 11, lines 6-15, strikes the written claim reference; and further, on Page 11, lines 17-31, provides that if an accident report is filed pursuant to statute, then an application for hearing must be filed within two years of the accident or the last payment of compensation. If no accident report is filed by the employer, then an application for hearing must be on file with the division within three years of the accident or the date of last payment of compensation.

Amendments on Page 12, lines 7-12 and Page 14, lines 7-12 allow a claimant to receive medical and temporary disability compensation from the Workers Compensation Fund when compensability is not an issue but the employer's insurance status and financial ability to pay is challenged and under review.

Page 18, line 25, allows the use of video conference in mediation.

Page 19, Line 26, new language "knowingly" is a recommendation of the Attorney General and the Advisory Council. The striken language "but are not limited to". Page 21, line 4, restricts the fraud and abuse section to 20 prohibited acts.

Page 22, Line 9-12, increases the penalty for fraud and abuse from $1,000 per act to $2,000 and changes the aggregate penalty from $2,500 in a 6 month period to $20,000 in a one-year period. Page 23, lines 12-22 allows for qualified immunity from civil or criminal liability for those individuals referring possible fraudulent or abusive workers compensation practices to the division.

Mr. Harness submitted an amendment which elevates the crimes to the same severity level as theft. The proposed amendments are on Page 23, line 42, and Page 24, lines 24-27. (Attachment 6)

Upon motion by Senator Gooch, seconded by Senator Steffes, the Minutes of the February 17, 1998 Meeting were unanimously adopted.

The meeting was adjourned at 8:55 a.m.

The next meeting is scheduled for February 19, 1998.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: 2-18

NAME	REPRESENTING
Dan Grant	KCCI
Bert Uroom	MID-AM Lumbermens
Bill Jarred	BOEING
Jean Schmidt	Kansas Ins. Dept.
Paula Greathouse	"
Harry Boosinger	Dept of Administration
Bernie Koch	Wichita Chamber
Pat Morris	KAIA
Clayton Porter	RCIL
Ronald D. Innes	Workers Comp. Division
David A Shufelt	KDHR - Work Comp
Phil Harness	KDHR - Work. Comp
John Ostrom	KS AFL-CIO
Patricia Nichols	KTLA
Dan Hemmyler	KTLA
Hal Hudson	NFIB/KS
Teresa Hennauer	State Farm
Susan anderson	Heit + Weir
Linda DeCoursey	KS Insurance Dept

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: ______________________

NAME	REPRESENTING
Dick Carter Jr.	KSIA
Bill Curtis	Ks Assoc of School Bds
Glenn M. Bradwell	KTLA

SENATE COMMERCE COMMITTEE
SB 522
FEBRUARY 18, 1998
TESTIMONY OF
JOHN M. OSTROWSKI
ON BEHALF OF KANSAS AFL-CIO

The Kansas AFL-CIO strongly **OPPOSES** the passage of SB 522. The bill, in its present form, will have the effect of destroying permanent partial disability compensation for repetitive use injuries.[1] At a time when rates are falling dramatically, and the insurance market is extremely competitive, why would we continue the attack on the most important resource of our State, our workers?

In 1993, the Kansas legislature, for the first time, allowed "offsets" for preexisting conditions. The battle cry of the employers at that time was loud and clear: **We only want to pay for the disability that we cause.** The language passed in 1993 has, in no uncertain terms, accomplished this purpose. Indeed, Court rulings have consistently **not** allowed compensation to be awarded against an employer for preexisting any conditions which were not caused in that employer's workplace.

Because this intended result has been reached, there is no need for amendment.

WHAT THIS BILL IS NOT ABOUT

It is respectfully suggested that there has been some confusing testimony relative to SB 522 presented to this Committee. Thus, there appears to be some need for clarification as to what the bill accomplishes, changes, and doesn't accomplish.

This bill is not about notice. In no way, shape, or form does this bill amend the notice provisions passed by the legislature. It will not make notice easier or more difficult for a claimant to give regarding injury.

It is to be recalled that Kansas currently has a 10-day notice of injury requirement. **This is the shortest statute of limitations ever in the history of the United States at both a federal and state level.** We give our workers, some of whom have a third grade education, 10 days to give notice of injury within the workplace setting. Conversely, we give the smartest businessmen with

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[1] The bill would be such a blatant denial of workers' compensation benefits for claimants injured by "overuse", that it would in all likelihood subject employers to tort liability. While the Courts of Kansas have consistently ruled that the legislature can limit compensation to workers in exchange for tort immunity, it does not logically follow that the legislature can *eliminate* benefits and still provide tort immunity.

Master's degrees a 5-year opportunity to file a lawsuit concerning a written contract.

Again, altering this already stringent standard is not affected by SB 522.

This bill is not about conditions caused outside the workplace setting. In Committee, there has been some testimony about the hypothetical worker who injures his knee playing football and has a disability. The worker aggravates his knee in the workplace. His total disability is determined to be 12% by the medical doctors. Ten percent of that was caused by the football injury, and 2% was caused by the work-related injury.

Pre-1993, claimant would receive compensation for 12% grounded in the proposition that employers take the worker as found. Based on the amendments made in 1993, **the worker will receive a 2% disability.** (For a worker making $8 an hour, his permanent partial disability compensation is approximately $600, assuming 18 weeks of temporary total.)

This bill is not about paying for arthritis claims, or conditions caused by the natural aging process. Again, this was covered in 1993. If an older worker comes to work for an employer, and suffers a minimal aggravation of an arthritic condition, the arthritic condition will be deducted (as in the example above) based on the 1993 amendments.

This bill is not about paying for conditions caused in some other employer's workplace. Assume an employee works for employer A for 20 years and develops problems from overuse. He goes to work for employer B and develops additional problems. Employer B will only pay for those portions of disability caused by the work the employee did for employer B. It is no different than the worker with the injured knee from football in the first example.

BACKGROUND

At issue is what is commonly referred to as "repetitive use" or "overuse" injuries. This is the meat cutter making thousands of cuts per hour on an assembly line who gradually develops significant medical problems. This is the word processor making thousands of key strokes per hour who gradually develops significant medical problems. This is the off loader of batteries from an assembly line who gradually develops significant medical problems.

For some time, the Kansas courts have struggled to fix a date of accident. There is a necessity to fix a date of accident so that the employer's obligation and the individual's rights can be determined. This fixing of the date was correctly referred to previously as a "legal fiction." The date of accident will impact, for example, the temporary total rate, appeal rights and procedures, procedures for obtaining medical care, etc. The date

of accident is also relevant for who has the coverage for the injury in question, potential Fund liability, and offsets for preexisting conditions.

There have been several attempts to provide a "bright line" approach to the date of accident. These various attempts have failed, largely because it is a *factual situation*. "One size does not fit all." Potential solutions have previously included the first time the claimant missed work, the first time restrictions were placed on him by a physician, the first time medical treatment was sought, and the first time claimant informed the employer of the problem. A few examples will show the inappropriateness of any "bright line."

Consider the worker who develops problems in his right hand that he believes are work related from repetitive flexion and extension. His employer disputes the claim, but agrees to place the worker at light duty, which is the proper thing to do regardless of whether or not the situation is ultimately ruled compensable. Claimant uses his unauthorized medical, and medical testimony supports his claim. The Administrative Law Judge finds that indeed claimant has an accident which arises out of and in the course of his employment, that notice has been properly given, and that claimant is in need of medical treatment. If we use the bright line of missing work, claimant cannot be afforded medical care because he has "not yet had an accident." (This is an actual case.)

Alternatively, consider the worker who develops a wrist problem, and for six months, wears a brace and avoids repetitive gripping. The problem seems to abate. The claimant properly protects himself by timely filing an Application for Hearing with the Director. Two years later, the employer has had two different insurance companies assigned through the risk pool. Claimant is now placed on a more vigorous job, which severely worsens his underlying condition, and leads to bilateral surgery from which he has horrid results. If we use the bright line of the first day of medical limitations, the carrier from three years ago is on the coverage, and the subsequent carriers have no exposure. This is completely illogical.

Neither of these two short examples makes sense.[2] Nor would complete denial of benefits make sense. As noted by the Dumbauld Court, (which apparently forms the basis for introducing SB 522):

> The selection of a single date is for purposes of finding 'accident' or 'occurrence' and for computation of benefits. It does not presupppose that all repetitive mini-traumas and the resulting impairment which preceded

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[2] Attached is a fairly typical scenario with which the courts have dealt. What is the appropriate "date of accident?"

> the accident date are to be considered to be preexisting conditions either for purposes of Fund liability or a reduction in benefits under K.S.A. 44-501(c). Instead, they are all treated as part of one injury. **There are circumstances where preexisting repetitive use injuries can be established within sufficiently defined perimeters of time and with sufficient medical evidence of separate impairment to establish Fund liability or a percentage of preexisting impairment.** However, the circumstances in this case do not fit within either of those categories.

In other words, apply a case-by-case approach based on the evidence presented. If a worker hires in to employment with a known disability from an overuse syndrome, it is clear that the law will allow the preexisting impairment to be offset when "aggravation" occurs. However, if a worker comes to work with a clean bill of health, and after several years of repetitive activity, begins to develop problems, it is completely illogical to only award compensation for one day of disability. **Such a harsh result was never anticipated by this legislature.** Rather, it is appropriate to determine that the disablement from injury is treated as "one injury" as was done by Dumbauld Court.

There has been some testimony about the filing of claims as a "series of accidents." It is true that this has become more prevalent, **BECAUSE OF GAMESMANSHIP BY DEFENSE ATTORNEYS ON BEHALF OF EMPLOYERS.** Consider Joe Worker who goes to work at the age of 33 for XYZ Corporation. His job is to off load product. He has no known health problems, and has never had a shoulder problem. Five years after starting work, and on January 3, 1997, Joe grabs a box and feels immediate, severe, excruciating pain in his shoulder. He reports his injury, and it is determined to be an acute tear of the rotator cuff.

Prior to the 1993 amendments, the claimant would have filed for an accident occurring on January 3, 1997. However, the defense attorney for XYZ Corporation will produce medical evidence that "healthy" rotator cuff tendons do not rupture. (Similarly, healthy discs do not herniate, healthy AC ligaments of the knee do not tear, healthy hands do not develop trigger locking, etc.) Therefore, based on reasonable medical certainty, Joe's torn rotator cuff was not caused <u>exclusively</u> on January 3, 1997 (recall that Joe was absolutely clueless as to any problem with his shoulder before this date). In all likelihood, a portion of that problem existed moments and weeks before the rupture of the shoulder.

Although the evidence will also show that this was caused by the five years of working as an off loader, the defense attorney will claim it was "preexisting" and seek an offset. To remedy this situation, a claimant's attorney is forced to file as a "series of

accidents" leading up to the January 3, 1997 event. To do otherwise is a disservice to his client since the evidence will show the work caused the problem.

It is also to be recalled that this is a **"two edged sword."** Many times, claimants have been charged with notice, and denied compensation, even though their condition worsened after a point in time. It is simply a question of what the evidence will show in terms of fixing the date of accident.

Finally, if there is a "bright line approach", which this amendment would force, let us not forget that the employer can manipulate the "date of accident." This is done by granting or denying light duty, having the dispensary doctor apply or not apply restrictions, stating that work is to be performed with or without accommodation, etc. Such manipulation should be avoided at all costs.

It is also worth considering that the compensation could become so minuscule pursuant to S.B. 522 (by only allowing a single day of compensation) that the courts would have to consider whether these workers have been effectively removed from the system; such that they have no remedy. This would expose the employer to tort damages. It is not believed that this is the result sought by Kansas employers who currently have enormous protection from lawsuits via the Kansas workers compensation system.

CONCLUSION

It is respectfully suggested that the Dumbauld Court reached exactly the result sought by the 1993 Kansas legislature. The employer in Dumbauld was only required to **pay for the condition caused in their work environment.** Had there been evidence of a preexisting condition, or a condition caused outside of the workplace, that portion would have been denied. There is no reason to amend 1993 law since it accomplishes the goals sought as regards preexisting conditions.

The Kansas AFL-CIO opposes the passage of SB 522. Such denial of benefits as attempted by this bill has never been the goal of this legislature. The result would be so harsh, and so drastically inappropriate, it could expose employers to tort liability. The better solution is to have the courts continue to determine on a case-by-case approach the date of accident when involved with a series of microtraumas. In such a series, preexisting impairment would still be offset, but the employee would be able to recover true compensation for the damage caused by the work being performed.

EE hires in/no health problems/ repetitive work re: hands (1/13/92)

Reports to plant RN; numb feeling in two fingers. put at reg. duty & given aspirin (4/6/95)

ER changes ins. carriers (7/1/95)

Sees family MD for routine physical. Dx of possible wrist sprain in passing; might consider a splint

Bids to night job, lighter work/more pay; symptoms go away 9/9/95 1/7/96

gets better in elbow, wrist worse- not severe; keeps working as instructed by RN

ER changes insurance co. 6/96

Has week with heavy OT, gets pretty bad. Wants to see MD 7/1/96 12/14/96

Doing reg. job. More problems at wrist/finger/elbow 5/97 - 7/12/97

Return to Co. MD. Put on light duty which is not available so off of work. 8/3/97

Symptoms worse while off work. Sent to ortho. 8/14/97

Taken off work-3 months. no help 11/7/97

RTW awaiting surgery

Surgery performed November 10, 1997

sees ortho. Dx of CTS for 1st time. Given injection and RTW & light duty 5/14/97

Light duty opens, rtrn to work 4/15/97

Symptoms return & worse OT. go away w/o tx or loss time. 2/28/97

Light duty slightly better. restriction removed. 2/11/97

Company Dr. puts on light duty. Dx of tennis elbow. Elbow splint given 2/11/97

reports to nurse--"just need to get conditioned--keep working" 2/14/97

Loses babysitter; back to day job; tougher work; pain in elbow and forearm 2/12-14

Symptoms very mild; continues exercises and rarely aspirin regular duty 4/95 - 9/95 (11/9/94)

achy feeling goes away (11/6/94)

At work notices "achy feeling" throughout body following week of heavy OT; including hands

UNDER SB522 THE ARGUMENT IS MADE THAT ALL PROBLEMS BEFORE 11/09/97 ARE PREEXISTING THE DATE OF ACCIDENT.

BEFORE THE SENATE COMMERCE COMMITTEE
Sen. Alicia Salisbury, Chair
Senate Bill 522
February 17, 1998

Dear Sen. Salisbury:

My name is Donna Massoth, and I developed bilateral carpal tunnel syndrome in the course of my employment for Raytheon Aircraft (Beech) in Wichita. I wished to testify before the Senate Commerce Committee regarding Senate bill 522, but could not make arrangements to be present at the times scheduled for hearings. I would greatly appreciate it if you would receive these written comments into the record as my testimony.

I worked full time as an electrical assembler for over 22 years for Raytheon from 1974 through the Spring of 1997. I lived in Kansas my entire life until my early retirement, when I moved with my husband to Afton, Oklahoma.

My job as an electrical assembler required me to construct junction boxes, strip, crimp and solder electrical wires, and I did this type of work all day long. I used several different kinds of hand tools that required me to clench and squeeze the tools. This work was repetitive and fast-paced. I began experiencing pain and numbness in my hands and wrists in 1995, and reported my progressively worsening symptoms to the company doctor on December 5, 1995. I continued working, and was not referred by the company physician to an orthopedic surgeon until February 1, 1996. I continued working through March 1, 1996, when I stopped working due to a left carpal tunnel release on Monday, March 4, 1996 and a right carpal tunnel release on March 25, 1996. My symptoms continued to gradually worsen until surgery.

I returned to my previous work after seven weeks of recuperation time. Despite successful surgeries, my hands and arms continued to hurt a great deal, and it was a real struggle to perform my job. I dropped my soldering iron frequently, had to take nonprescription pain medication often, and had great difficulty performing even normal activities like closing a ziplock plastic bag. My level of chronic symptoms kept wearing me down to the point where I finally elected to take early retirement on 5-1-97. I advised Raytheon in my exit questionnaire that "constant pain and discomfort in my wrists, arms and shoulder" influenced my decision to take early retirement. I did my job the way I was taught. I did not develop carpal tunnel syndrome because of an accident I negligently caused.

During attempts to settle my workers compensation permanent disability claim, I learned that, despite the fact that my bilateral carpal tunnel syndrome took six months to develop and worsen, the law required March 1, 1996 to be identified as the "date of accident" because that was the last date that I worked before I had to take off work for surgery. Obviously, my bilateral carpal tunnel syndrome did not all of a sudden appear and disable me on March 1, 1996. Indeed, it took the Raytheon doctors three months to figure out what to do about my bilateral carpal tunnel syndrome, all the while my hands and wrists were getting worse and worse. Please understand that I had no choice in the selection of the physicians authorized by Raytheon to treat me. My employer chose the physicians, authorized the examinations and tests, and completely controlled the delivery of my medical care. I suppose that I am fortunate that I experienced no lengthier a delay in receiving necessary surgical care.

I also discovered that Raytheon was going to defend my case by arguing that I was only entitled to permanent disability benefits based upon the slight amount of impairment of function that occurred on 3-1-96, and by arguing that the vast majority of my permanent impairment of function developed between 1995 and 2-29-96 while my condition was developing and worsening. Raytheon argued that the repetitious overuse that transpired between late 1995 and 2-29-96 constituted a condition that pre-existed my work-related injury, and that I was not entitled to permanent disability benefits for my injury. I was shocked and amazed to hear this argument being raised. Despite clear evidence that my bilateral carpal tunnel syndrome developed in an uninterrupted and continuous manner over a period of six months or so, the Raytheon lawyers tried to twist the facts and law to avoid responsibility for my injury. Thankfully, The Honorable John D. Clark rejected this argument based on the current language of K.S.A. 44-501(c) in Docket #213,006. My case is not the only one in which Raytheon has tried this trick. They also made this argument in **Dumbauld v. Beech**, Docket #187,935. The Workers Compensation Appeals Board also rejected the argument in that case.

It has come to my attention, however, that Senate Bill 522 has been introduced so as to amend K.S.A. 44-501(c) in a manner that will require administrative law judges and the Appeals Board to eliminate or substantially reduce permanent disability awards in the same manner as Raytheon attempted to do in my case. Please do not let this happen! Passage of this bill will result in many, many injured workers receiving virtually no permanent disability compensation for work-related injuries that are not contested, and which are caused because of the pace at which we are required to work, and with tools that

are well-known to magnify stress on wrists. Have permanent disability benefits for repetitive overuse injuries not been reduced enough over the past ten years? Are workers expected to submit to injuries in the course of employment, and not receive meaningful permanent disability compensation at all?

In my case, Dr. Jane Drazek testified that I had a 14% permanent impairment of function to the body as a whole for my bilateral carpal tunnel syndrome. She also testified that the permanent impairment of function rating that would have existed on February 29, 1996 (the day before my legally mandated date of injury) was also about 14% of the body as a whole. Raytheon argued that my "pre-existing condition" on 2-29-96, therefore, was the same as my permanent impairment of function on the date of accident, and argued that I should not be entitled to a permanent disability recovery at all. Since Raytheon could not convince Judge Clark that they should win this argument under current law, they are now trying to change the law. Senate Bill 522 will totally undermine the right to receive permanent disability benefits for thousands of injured workers. This is not fair. Please do not let it happen. Senate Bill 522 would allow every Kansas employer to argue that a repetitive overuse injury is two injuries: an injury occurring on the last day of work before surgery, and another injury that occurred on each previous work day while the condition was worsening, and while the company doctors were trying to decide how to treat the injury.

Donna Massoth

Donna Massoth
Rt. 3, Box 1989
Afton, OK. 74331

MEMORANDUM

DATE: **2-17-98**

TO: **Senator Alicia Salisbury, Chairperson**
Senate Commerce Committee

FROM: **Paula Greathouse**
Staff Attorney Workers' Compensation Fund

RE: **Senate Bill 555**

CC: **Committee Members**

The Kansas Insurance Department Workers' Compensation Fund would like to testify in favor of two provisions in Senate Bill 555.

The first requested change would merely fix an unintentional omission from **K.S.A. 44-534** last year. The change just adds the words "workers' compensation fund" a second time to the beginning sentence of the statute. This change is found on page twelve, line 24 of the bill.

The second requested change is a clarification of **K.S.A. 44-556(e)**. This change would simply require the party who ended up with the ultimate liability in a case to reimburse any party who had paid the claim initially, as long as the reimbursement did not exceed the limits of the claim. This change is found on page 16, lines 24-34.

The Kansas Insurance Department has no position concerning the remaining items in the bill. Thank you for your consideration.

Senate Commerce Committee

Date 2-18-98

Attachment # 3

Clarifying amendment to New Section 1.

Strike lines 23-25, and substitute the following language:

"law judge can make any award concerning medical care that is authorized by K.S. A. 44-510. No."

Senate Commerce Committee
Date 2-18-98
Attachment # 4

Session of 1998

SENATE BILL No. 555

By Committee on Commerce

2-2

AN ACT concerning the workers compensation act; providing for c procedural changes thereto; amending K.S.A. 44-513a, 44-520, 532a and 44-557 and K.S.A. 1997 Supp. 44-510, 44-534, 44-551, 44-556, 44-5,117, 44-5,120 and 44-5,125 and repealing the existing sections.

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

New Section 1. (a) At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall exercise such powers as are provided for the conducting of full hearings on claims under the workers compensation act. The administrative ~~law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award~~. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

(b) Any application for hearing made pursuant to this section shall receive priority setting by the administrative law judge, only superseded by preliminary hearings pursuant to K.S.A. 44-534a and amendments thereto. The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment back dated to the entry of the underlying award, but in no event shall such medical treatment be back dated more than six months. Reviews taken under this section shall receive priority settings before the board, only superseded by reviews for preliminary hearings. A decision shall be rendered by the board within 30 days from the time the review

K[illegible]CE (1912-1992)
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RICHARD T. MERKER
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BARRY D. MARTIN

February 17, 1998

VIA FACSIMILE & U.S. MAIL

Paula Greathouse
Kansas Workers Compensation Fund
420 Southwest 9th
Topeka, Kansas 66612

Re: **Workers' Compensation Oversight Committee**

Dear Paula:

The following is a statement which I was going to forward to Ms. Donaldson for her to submit to the Senate Committee on Senate Bill 555.

The Workers' Compensation Fund Oversight Committee supports all changes in Senate Bill 555 with the exception to the following, to-wit:

> *In any case in which the workers compensation fund is required to make payments pursuant to this section and in which the compensability is not an issue to be decided on review by the board, medical and temporary total disability compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review.* (page 12, lines 7-12)

> *In any case in which the workers compensation fund is required to make payments pursuant to K.S.A. 44-532a and amendments thereto and in which the compensability is not an issue to be decided on review by the board, medical and temporary total disability compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review.* (page 14, lines 7-12)

Although the Workers' Compensation Fund Oversight Committee is neutral relative to these additions, they would not appear to be necessary changes in the first instance.

The Committee would be opposed to any legislative change affording c[illegible] in an insolvency case superior benefits during the pendency of an appeal in comparison to cl[illegible] for an insured and/or solvent employer.

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The Fund already makes payment in the large majority of claims while on appeal unless an issue of compensability or possible fraud is raised by the Fund. Any payment made by the Fund during an appeal which is later found not to be due the claimant is uncollectible by the Fund.

The issue of parity among all claimants regardless of whether or not their employers are insured/solvent or uninsured/insolvent should be maintained.

Should you have any questions, please feel free to contact me.

Very truly yours,

J. Philip Davidson
For the Firm

JPD*kkp

missioner, 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~~ *workers* compensation fee fund.

(l) Any person who refers a possibly fraudulent or abusive practice to any state or governmental investigative agency, shall be immune from civil or criminal liability arising from the supply or release of such referral as long as such referral is made in good faith with the belief that a fraudulent or abusive practice has, is or will occur and said referral is not made by the person or persons who are in violation of the workers compensation act in order to avoid criminal prosecution or administrative hearings.

(m) The remedies and penalties provided in this section are not exclusive remedies and penalties and do not preclude the use of any other criminal or civil remedy or penalty for any act that is in violation of this section.

Sec. 12. K.S.A. 1997 Supp. 44-5,125 is hereby amended to read as follows: 44-5,125. (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; *(D) is employed while receiving temporary total disability benefits or permanent total disability benefits to which they are not entitled;* and

(2) any person who conspires with another person to commit any act described by ~~clause~~ *paragraph* (1) of this subsection (a), shall be guilty of:

(A) A XXXX nonperson misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result

class A

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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; ~~or~~

(B) a severity level 9, nonperson felony, if such amount is more than $500~~.~~ *but less than $25,000;*

(C) a severity level 7, nonperson felony, if the amount is more than $25,000, but less than $50,000;

(D) a severity level 6, nonperson felony if the amount is more than $50,000, but less than $100,000; or

(E) a severity level 5, nonperson felony if the amount is more than $100,000.

(b) Any person who knowingly and intentionally presents a false certificate of insurance that purports that the presenter is insured under the workers compensation act, shall be guilty of a level 8, nonperson felony.

(c) A health care provider under the workers compensation act who knowingly and intentionally submits a charge for health care that was not furnished, shall be guilty of a level 9, nonperson felony.

(d) Any person who obtains or attempts to obtain a more favorable workers compensation insurance premium rate than that to which the person is 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: (1) Making a false or misleading statement; XXXX *(3) fabricating, concealing or destroying a document; or (4) conspiring with another person or persons to commit the acts described* XXXX *shall be guilty of a level 9, nonperson felony.*

(2) misrepresenting or concealing a material fact;

in paragraphs (1), (2), or (3)

~~(b)~~ *(e)* 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) *or (c)* and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) *or (c)* 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)~~ *(f)* Any person aggrieved by a violation of subsection (a), *(b), (c) or (d)* 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

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