

Approved: As distributed  
date February 27, 1998

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 23, 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:  
Philip S. Harness, Director, Workers Compensation Division  
Terry Leatherman, Kansas Chamber of Commerce and Industry  
Jonathan Small, KOCH Industries  
Wayne Maichel, AFL-CIO  
Fran Welch, Division of Purchasing

Others attending: See attached list

Upon motion by Senator Gooch, seconded by Senator Brownlee, the Minutes of the February 20, 1998 Meeting were unanimously approved.

**SB 555 Workers compensation; procedural changes**

Philip S. Harness, Director, Workers Compensation Division, explained that Section 4, **SB 555** which deletes the written claim requirement is to reconcile the conflict presently in the statute relating to the statute of limitations. According to current law, KSA 44-534(b) requires an application for a hearing must be filed within 3 years of date of accident or within 2 years of last payment; KSA 44-557 requires filing for compensation must be commenced within 1 year from date of accident; and KSA 44-520a requires a written claim for compensation to be filed within 200 days after date of accident. The proposed new language is reconciles the conflicting statute of limitation language. (Attachment 1)

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), testified the KCCI has received numerous employer concerns about eliminating the written claim provision and the corresponding 200 day window to maintain a claim. Mr. Leatherman submitted written testimony that some attorneys have indicated the proposed change will not restrict an employer or employee's desire for prompt resolution of a workers compensation claim. (Attachment 2)

Jonathan Small, KOCH Industries, testified in opposition to **SB 555** as presently written. Mr. Small stated the Wichita Employers Workers Compensation Task Force Legislative Subcommittee could support **SB 555** if Section 4, Page 11 - lines 7-16 were reinstated which makes no change in the current written claim and time limitations. The task force believes Section 11, Page 23, striking lines 19-22, encourages concurrent civil litigation against employers before administrative remedies are exhausted. The task force further requests the addition of the words "permanent partial disability" on Page 23, Line 37. (Attachment 3)

Wayne Maichel, AFL-CIO, stated labor was not in agreement with any additional changes other than those approved by the Advisory Council.

Philip Harness, informed the Committee that the proposed amendment on Page 23, line 37, inserting the words "permanent partial disability" would not be appropriate inasmuch as a person can still work with a "permanent partial disability", but cannot with "temporary total or permanent total disability"; therefore, the fraud section would not be applicable.

The Chair informed the Committee consideration on **SB 555** will be continued.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 23, 1998.

**SB 573 - Consumer Protection; telephone solicitation**

Bob Nugent, Revisor of Statutes, submitted **Substitute for SB 573** which inserts KSA 50-670 as New Section 1; strikes the following language found in (2)(C) "~~to any person with whom the telephone solicitor has an existing business relationship; Inserts New Section 2; strikes subsection (b) in which the business establishment making the solicitation has made a prior sale to the consumer, is establishing a business to business relationship or has a clear, preexisting business relationship with the consumer, provided that relationship resulted in the consumer becoming aware of the full name, business address and phone number of the establishment; and; strikes (e) and (d), and re-identifies them as (b) and(c) (Attachment 4)~~

Senator Gooch made a substitute motion, seconded by Senator Feleciano, to **Substitute for SB 573** as approved on February 16 which amended New Section 1(C), and New Section 2 (c) following the word "relationship" by adding the following language: "provided that the solicitor is not an employee or a contract employee of a provider of telecommunications services."; to read as follows: in New Section 1 by striking subsection (2)(C), and New Section 2 subsection (c) in its entirety. The motion passed by a vote of Yes - 6, No - 4.

Senator Jordan moved, seconded by Senator Ranson that **Substitute for SB 573** be amended in New Section 1, (5)(3) and (5)(4) by striking the word "immediately" and inserting the word "promptly". The motion passed on a voice vote.

The Chair informed the Committee consideration on **Substitute for SB 573** will be continued.

**SB - 546 - Kansas use law; creating the Kansas use commission**

Fran Welch, Division of Purchasing, testified on **SB 546**, stating the Director of Purchasing presently sets the price for the consumable found in the Catalogue. Ms. Welch testified the Purchasing Division has no investigative powers nor a method to penalize a governmental entity that does not purchase a consumable as required by law.

A letter from Michael Byington was distributed to members of the Committee. (Attachment 5)

A letter from Paula Greathouse, Kansas Insurance Department regarding **SB 555** was distributed to members of the Committee. (Attachment 6)

The meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for February 24, 1998.

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 23, 1998

NAME	REPRESENTING
David Jordan	KCC
Henry Adams	Cartridge King of KS
Michael Byington	Emerson
Sandra Evans	Emission
Nick Laverentz	AARP - SLC
Tom York	KNEA - R
Charles H. "Bing" Freeman	AARP - SLC
Daniel Longhue	AARP - SLC
Mark Barclum	KDOCAH
Gregory Stan	AT&T
Carol O'Neil	"
Harry Born	Dept of Admin
Mike Morvay	Sprint
Don Holthaus	Western Resource
Roger Franck	Ks Gov. Consulting
John Pinegar	SITA
Jackie Clark	Halmark

TO: The Honorable Alicia Salisbury, Chair, Senate Commerce Committee  
Members of the Senate Commerce Committee

FROM: The Wichita Employers Workers Compensation Task Force Legislative  
Subcommittee  
Mike Armendariz, The Boeing Company  
Julie Bachman, Koch Industries, Inc.  
Verl Niedens, City of Wichita  
Terry Torline, Raytheon Aircraft  
Alan Weldon, USD 259

DATE: February 20, 1998

RE: Opposition to Senate Bill 555

We are opposed to Senate Bill 555 as presently written however, we would support the bill with the following amendments:

- Section 4, page 11 - Reinstate lines 7-16.
- Section 6, page 12 - Delete change on line 38 and lines 40-43. Page 13 - Delete lines 1-2.
- Section 9, page 17 - Reinstate lines 31-40.

We desire to make no change to the current law on written claim and time limitations so as to preserve the timely and accurate reporting of claims.

- Section 11, page 23 - Delete lines 19-22.

We are concerned that the proposed exclusive remedy language, if included here, would abrogate the 1996 changes to the law, i.e. the "Dillons statute," and have the effect of encouraging concurrent civil litigation against employers before administrative remedies are exhausted.

- Section 12, page 23 - Add "permanent partial disability."

This change corrects what we think is an inadvertent omission of another type of indemnity benefit.

Enclosed are the detailed amendments by line. Thank you.

Senate Commerce Committee

Date 2-23-98

Attachment # 1-1 thru 1-7

PROPOSED AMENDMENTS TO SENATE BILL 555

- Section 4, page 11 - Reinstate lines 7-16.
- Section 6, page 12 - Delete change on line 38 and lines 40-43. Page 13 - Delete lines 1-2.
- Section 9, page 17 - Reinstate lines 31-40.
- Section 11, page 23 - Delete lines 19-22.
- Section 12, page 23 - Add “permanent partial disability.”

1 compensation pursuant to an order or directive made by the director  
 2 under authority of the workmen's compensation act shall exclude and  
 3 satisfy all other claims and causes of action of such minor person for the  
 4 injury or death for which the compensation award is made in accordance  
 5 with K.S.A. 59-3001 et seq., and amendments thereto.

6 Sec. 4. K.S.A. 44-520a is hereby amended to read as follows: 44-  
 7 520a. (a) No proceedings for compensation shall be maintainable under  
 8 the workmen's compensation act unless a written claim for compensation  
 9 shall be served upon the employer by delivering such written claim to  
 10 him or his duly authorized agent, or by delivering such written claim to  
 11 him by registered or certified mail within two hundred (200) days after  
 12 the date of the accident, or in cases where compensation payments have  
 13 been suspended within two hundred (200) days after the date of the last  
 14 payment of compensation; or within one (1) year after the death of the  
 15 injured employee if death results from the injury within five (5) years  
 16 after the date of such accident.

17 (b) Where recovery is denied to any person in a suit brought at law  
 18 or in admiralty or under the federal employers' liability acts to recover  
 19 damages in respect of bodily injury or death on the ground that such  
 20 person was an employee and the defendant was an employer subject to  
 21 and within the meaning of the workmen's workers compensation act, or  
 22 when recovery is denied to any person in an action brought under the  
 23 provisions of the workmen's workers compensation law of any other state  
 24 or jurisdiction on the ground that such person was an employee under  
 25 and subject to the provisions of the workmen's workers compensation act  
 26 of this state, the limitation of time prescribed in subsection (a) (b) of this  
 27 section K.S.A. 44-534, and amendments thereto shall begin to run only  
 28 from the date of termination or abandonment of such suit or compen-  
 29 sation proceeding, when such suit or compensation proceeding is filed  
 30 within two hundred (200) days after the date of the injury or death com-  
 31 plained of the applicable statute of limitations for the proceeding.

32 Sec. 5. K.S.A. 44-532a is hereby amended to read as follows: 44-  
 33 532a. (a) If an employer has no insurance to secure the payment of com-  
 34 pensation, as provided in subsection (b) (1) of K.S.A. 44-532 and amend-  
 35 ments thereto, and such employer is financially unable to pay  
 36 compensation to an injured worker as required by the workers compen-  
 37 sation act, or such employer cannot be located and required to pay such  
 38 compensation, the injured worker may apply to the director for an award  
 39 of the compensation benefits, including medical compensation, to which  
 40 such injured worker is entitled, to be paid from the workers compensation  
 41 fund. Whenever a worker files an application under this section, the mat-  
 42 ter shall be assigned to an administrative law judge for hearing. If the  
 43 administrative law judge is satisfied as to the existence of the conditions

Reinstate lines 7-16

*Re-instate  
 eliminates  
 our defense*

1 prescribed by this section, the administrative law judge may make an  
 2 award, or modify an existing award, and prescribe the payments to be  
 3 made from the workers compensation fund as provided in K.S.A. 44-569  
 4 and amendments thereto. The award shall be certified to the commis-  
 5 sioner of insurance, and upon receipt thereof, the commissioner of in-  
 6 surance shall cause payment to be made to the worker in accordance  
 7 therewith. *In any case in which the workers compensation fund is re-*  
 8 *quired to make payments pursuant to this section and in which the com-*  
 9 *pensability is not an issue to be decided on review by the board, medical*  
 10 *and temporary total disability compensation shall be payable in ac-*  
 11 *cordance with the award of the administrative law judge and shall not be*  
 12 *stayed pending such review.*

13 (b) The commissioner of insurance, acting as administrator of the  
 14 workers compensation fund, shall have a cause of action against the em-  
 15 ployer for recovery of any amounts paid from the workers compensation  
 16 fund pursuant to this section. Such action shall be filed in the district  
 17 court of the county in which the accident occurred or where the contract  
 18 of employment was entered into.

19 Sec. 6. K.S.A. 1997 Supp. 44-534 is hereby amended to read as fol-  
 20 lows: 44-534. (a) Whenever the employer, worker, ~~the Kansas~~ workers  
 21 compensation fund or insurance carrier cannot agree upon the worker's  
 22 right to compensation under the workers compensation act or upon any  
 23 issue in regard to workers compensation benefits due the injured worker  
 24 thereunder, the employer, worker, *the workers compensation fund* or  
 25 insurance carrier may apply in writing to the director for a determination  
 26 of the benefits or compensation due or claimed to be due. The application  
 27 shall be in the form prescribed by the rules and regulations of the director  
 28 and shall set forth the substantial and material facts in relation to the  
 29 claim. Whenever an application is filed under this section, the matter  
 30 shall be assigned to an administrative law judge. The director shall forth-  
 31 with mail a certified copy of the application to the adverse party. The  
 32 administrative law judge shall proceed, upon due and reasonable notice  
 33 to the parties, which shall not be less than 20 days, to hear all evidence  
 34 in relation thereto and to make findings concerning the amount of com-  
 35 pensation, if any due to the worker.

36 (b) No proceeding for compensation shall be maintained under the  
 37 workers compensation act unless an application for a hearing is on file in  
 38 the office of the director within ~~three two~~ years of the date of the accident  
 39 or within two years of the date of the last payment of compensation,  
 40 whichever is later. *If the employer has not filed an accident report within*  
 41 *the parameters of K.S.A. 44-557, and amendments thereto, no proceeding*  
 42 *for compensation shall be maintained under the workers compensation*  
 43 *act unless an application for hearing is on file in the office of the director*

three

delete lines 40-43

*with*

1 *within three years of the date of the accident or within three years of the*  
2 *date of the last payment of compensation, whichever is later.*

3 Sec. 7. K.S.A. 1997 Supp. 44-551 is hereby amended to read as fol-  
4 lows: 44-551. (a) The duties of the assistant directors of workers com-  
5 pensation shall include but not be limited to acting in the capacity of an  
6 administrative law judge.

7 (b) (1) Administrative law judges shall have power to administer  
8 oaths, certify official acts, take depositions, issue subpoenas, compel the  
9 attendance of witnesses and the production of books, accounts, papers,  
10 documents and records to the same extent as is conferred on the district  
11 courts of this state, and may conduct an investigation, inquiry or hearing  
12 on all matters before the administrative law judges. All final orders,  
13 awards, modifications of awards, or preliminary awards under K.S.A.  
14 44-534a and amendments thereto made by an administrative law judge  
15 shall be subject to review by the board upon written request of any in-  
16 terested party within 10 days. Intermediate Saturdays, Sundays and legal  
17 holidays shall be excluded in the time computation. Review by the board  
18 shall be a prerequisite to judicial review as provided for in K.S.A. 44-556  
19 and amendments thereto. On any such review, the board shall have au-  
20 thority to grant or refuse compensation, or to increase or diminish any  
21 award of compensation or to remand any matter to the administrative law  
22 judge for further proceedings. The orders of the board under this sub-  
23 section shall be issued within 30 days from the date arguments were  
24 presented by the parties.

25 (2) (A) If an administrative law judge has entered a preliminary  
26 award under K.S.A. 44-534a and amendments thereto, a review by the  
27 board shall not be conducted under this section unless it is alleged that  
28 the administrative law judge exceeded the administrative law judge's ju-  
29 risdiction in granting or denying the relief requested at the preliminary  
30 hearing. Such an appeal from a preliminary award may be heard and  
31 decided by a single member of the board. Members of the board shall  
32 hear such preliminary appeals on a rotating basis and the individual board  
33 member who decides the appeal shall sign each such decision. The orders  
34 of the board under this subsection shall be issued within 30 days from  
35 the date arguments were presented by the parties.

36 (B) If an order on review is not issued by the board within the ap-  
37 plicable time period prescribed by subsection (b) (1), medical compen-  
38 sation and any disability compensation as provided in the award of the  
39 administrative law judge shall be paid commencing with the first day after  
40 such time period and shall continue to be paid until the order of the  
41 board is issued, except that no payments shall be made under this pro-  
42 vision for any period before the first day after such time period. Nothing  
43 in this section shall be construed to limit or restrict any other remedies

delete lines 1 and 2



1 (f) As used in subsections (d) and (e), "employers' insurance carrier"  
 2 includes any qualified group-funded workers compensation pool under  
 3 K.S.A. 44-581 through 44-591 and amendments thereto or a group-  
 4 funded pool under the Kansas municipal group-funded pool act which  
 5 includes workers compensation and employers' liability under the workers  
 6 compensation act.

7 (g) In any case in which any review is sought under this section and  
 8 in which the compensability is not an issue to be decided on review,  
 9 medical compensation shall be payable and shall not be stayed pending  
 10 such review. The worker may proceed under K.S.A. 44-534a and amend-  
 11 ments thereto and may have a hearing in accordance with that statute to  
 12 enforce the provisions of this subsection.

13 Sec. 9. K.S.A. 44-557 is hereby amended to read as follows: 44-557.

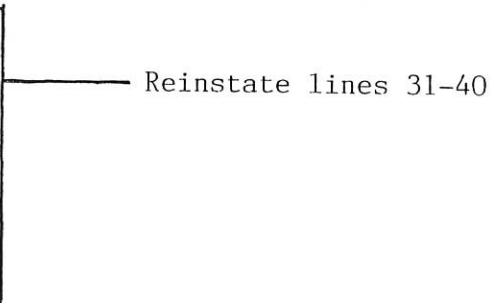
14 (a) It is hereby made the duty of every employer to make or cause to be  
 15 made a report to the director of any accident, or claimed or alleged ac-  
 16 cident, to any employee which occurs in the course of the employee's  
 17 employment and of which the employer or the employer's supervisor has  
 18 knowledge, which report shall be made upon a form to be prepared by  
 19 the director, within 28 days, after the receipt of such knowledge, if the  
 20 personal injuries which are sustained by such accidents, are sufficient  
 21 wholly or partially to incapacitate the person injured from labor or service  
 22 for more than the remainder of the day, shift or turn on which such  
 23 injuries were sustained.

24 (b) When such accident has been reported and subsequently such  
 25 person has died, a supplemental report shall be filed with the director  
 26 within 28 days after receipt of knowledge of such death, stating such fact  
 27 and any other facts in connection with such death or as to the dependents  
 28 of such deceased employee which the director may require. Such report  
 29 or reports shall not be used nor considered as evidence before the direc-  
 30 tor, any administrative law judge, the board or in any court in this state.

31 (e) No limitation of time in the workers compensation act shall begin  
 32 to run unless a report of the accident as provided in this section has been  
 33 filed at the office of the director if the injured employee has given notice  
 34 of accident as provided by K.S.A. 44-520 and amendments thereto; except  
 35 that any proceeding for compensation for any such injury or death, where  
 36 report of the accident has not been filed, must be commenced by filing  
 37 an application with the director within one year from the date of the  
 38 accident, suspension of payment of disability compensation, the date of  
 39 the last medical treatment authorized by the employer, or the death of  
 40 such employee referred to in K.S.A. 44-520a and amendments thereto.

41 (d)(c) The knowing failure of any employer or workers compensation  
 42 insurance carrier to file or cause to be filed any report required by this  
 43 section shall be subject to a civil penalty for each violation of not to exceed

*Just what*



Reinstate lines 31-40

1 missioner, to a monetary penalty of not more than \$10,000 for each and  
 2 every act or violation, but not exceeding an aggregate penalty of \$50,000  
 3 for any six-month period in addition to any penalty imposed pursuant to  
 4 subsection (g).

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

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

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

19 (m) *The remedies and penalties provided in this section are not ex-*  
 20 *clusive remedies and penalties and do not preclude the use of any other*  
 21 *criminal or civil remedy or penalty for any act that is in violation of this*  
 22 *section.*

23 ~~Sec. 12.~~ K.S.A. 1997 Supp. 44-5,125 is hereby amended to read as  
 24 follows: 44-5,125. (a) (1) Any person who obtains or attempts to obtain  
 25 any payment of compensation under the workers compensation act for  
 26 such person or who denies or attempts to deny the obligation to make  
 27 any payment of workers compensation benefits; who obtains or attempts  
 28 to obtain a more favorable workers compensation benefit rate or insur-  
 29 ance premium rate than that to which such person is otherwise entitled;  
 30 who prevents, reduces, avoids or attempts to prevent, reduce or avoid the  
 31 payment of any compensation under the workers compensation act; or  
 32 who fails to communicate a settlement offer or similar information to a  
 33 claimant under the workers compensation act, by, in any such case, know-  
 34 ingly or intentionally: (A) Making a false or misleading statement, (B)  
 35 misrepresenting or concealing a material fact, or (C) fabricating, altering,  
 36 concealing or destroying a document; (D) *is employed while receiving*  
 37 *temporary total disability benefits or permanent total disability benefits*  
 38 *to which they are not entitled; and*

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

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

Delete lines 19-22

or permanent partial disability

1-7

January 23, 1998

To: Members of the Senate Commerce Committee

From: Terry Leatherman, Kansas Chamber of Commerce and Industry

Re: Statute of Limitation Provision in SB 555

Some questions have arisen regarding a proposed change in Kansas workers compensation law in SB 555, regarding the time an employer must begin the hearing process in order to maintain a compensable claim. The proposed change in question begins on page 11, line 6 of SB 555. The same issue is addressed on page 12, line 36 and on page 17, line 31.

The recommended change was unanimously supported by the Workers Compensation Advisory Council at its January meeting and was developed by the two attorney members of the Council. The Council's action came in response to a request from the Workers Compensation Board of Appeals to address an inconsistency in current law. There is currently a conflict in the law where attorneys may argue the statute of limitations to bring a claim is 200 days, one year, two years or three years.

The idea the Council developed to address this was to streamline the process by eliminating the need for an employee to file with the employer a written claim, which the Council perceived as having little relevance to a workers compensation case. In addition, we supported having an application for hearing filed within two years of the date of accident or last payment of compensation, if the employer had filed an accident report, in order for a case to be considered. In cases where an accident report had not been filed, the limit is stretched to three years from the date of accident or last compensation payment.

Since the introduction of SB 555, KCCI has received numerous employer concerns about eliminating the written claim provision, and the corresponding 200 day window to maintain a claim. The businesses that have expressed concern rightly point out that this issue popped up quickly. The Council first considered this change at our January meeting and there was no opportunity for comment.

My contacts on legal questions in workers compensation tell me the proposed change in this area will not restrict an employer or employee's desire for prompt resolution of a workers compensation claim. However, it is also clear this issue is not one that needs immediate legislative action in order to curb a huge systemic problem. Therefore, if the Senate Commerce Committee desires to remove this provision from the bill, KCCI will pursue the concerns that have been raised and, if those concerns are calmed, can pursue amending the statute of limitation language into the bill as it progresses through the Legislature.

As always, KCCI welcomes the opportunity to be of assistance in your deliberations over workers compensation.

Senate Commerce Committee

Date 2-23-98

Attachment # 2

TO: The Honorable Alicia Salisbury, Chair, Senate Commerce Committee  
Members of the Senate Commerce Committee

FROM: The Wichita Employers Workers Compensation Task Force Legislative  
Subcommittee  
Mike Armendariz, The Boeing Company  
Julie Bachman, Koch Industries, Inc.  
Verl Niedens, City of Wichita  
Terry Torline, Raytheon Aircraft  
Alan Weldon, USD 259

DATE: February 20, 1998

RE: Opposition to Senate Bill 555

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This change corrects what we think is an inadvertent omission of another type of indemnity benefit.

Enclosed are the detailed amendments by line. Thank you.

Senate Commerce Committee

Date 2-23-98

Attachment # 3-1 thru 3-7

PROPOSED AMENDMENTS TO SENATE BILL 555

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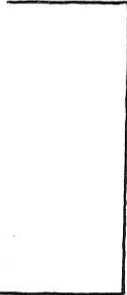
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 3 satisfy all other claims and causes of action of such minor person for the  
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 23 provisions of the workmen's workers compensation law of any other state  
 24 or jurisdiction on the ground that such person was an employee under  
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 26 of this state, the limitation of time prescribed in subsection (a) (b) of this  
 27 section K.S.A. 44-534, and amendments thereto shall begin to run only  
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 29 sation proceeding, when such suit or compensation proceeding is filed  
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Reinstate lines 7-16

3-4

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 2 award, or modify an existing award, and prescribe the payments to be  
 3 made from the workers compensation fund as provided in K.S.A. 44-569  
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 5 sioner of insurance, and upon receipt thereof, the commissioner of in-  
 6 surance shall cause payment to be made to the worker in accordance  
 7 therewith. *In any case in which the workers compensation fund is re-*  
 8 *quired to make payments pursuant to this section and in which the com-*  
 9 *pensability is not an issue to be decided on review by the board, medical*  
 10 *and temporary total disability compensation shall be payable in ac-*  
 11 *cordance with the award of the administrative law judge and shall not be*  
 12 *stayed pending such review.*

13 (b) The commissioner of insurance, acting as administrator of the  
 14 workers compensation fund, shall have a cause of action against the em-  
 15 ployer for recovery of any amounts paid from the workers compensation  
 16 fund pursuant to this section. Such action shall be filed in the district  
 17 court of the county in which the accident occurred or where the contract  
 18 of employment was entered into.

19 Sec. 6. K.S.A. 1997 Supp. 44-534 is hereby amended to read as fol-  
 20 lows: 44-534. (a) Whenever the employer, worker, ~~the Kansas~~ workers  
 21 compensation fund or insurance carrier cannot agree upon the worker's  
 22 right to compensation under the workers compensation act or upon any  
 23 issue in regard to workers compensation benefits due the injured worker  
 24 thereunder, the employer, worker, *the workers compensation fund* or  
 25 insurance carrier may apply in writing to the director for a determination  
 26 of the benefits or compensation due or claimed to be due. The application  
 27 shall be in the form prescribed by the rules and regulations of the director  
 28 and shall set forth the substantial and material facts in relation to the  
 29 claim. Whenever an application is filed under this section, the matter  
 30 shall be assigned to an administrative law judge. The director shall forth-  
 31 with mail a certified copy of the application to the adverse party. The  
 32 administrative law judge shall proceed, upon due and reasonable notice  
 33 to the parties, which shall not be less than 20 days, to hear all evidence  
 34 in relation thereto and to make findings concerning the amount of com-  
 35 pensation, if any due to the worker.

36 (b) No proceeding for compensation shall be maintained under the  
 37 workers compensation act unless an application for a hearing is on file in  
 38 the office of the director within ~~three to~~ three years of the date of the accident  
 39 or within two years of the date of the last payment of compensation,  
 40 whichever is later. *If the employer has not filed an accident report within*  
 41 *the parameters of K.S.A. 44-557, and amendments thereto, no proceeding*  
 42 *for compensation shall be maintained under the workers compensation*  
 43 *act unless an application for hearing is on file in the office of the director*

three

delete lines 40-43

*idea*

5  
3

1 *within three years of the date of the accident or within three years of the*  
2 *date of the last payment of compensation, whichever is later.*

delete lines 1 and 2

3 Sec. 7. K.S.A. 1997 Supp. 44-551 is hereby amended to read as fol-  
4 lows: 44-551. (a) The duties of the assistant directors of workers com-  
5 pensation shall include but not be limited to acting in the capacity of an  
6 administrative law judge.

7 (b) (1) Administrative law judges shall have power to administer  
8 oaths, certify official acts, take depositions, issue subpoenas, compel the  
9 attendance of witnesses and the production of books, accounts, papers,  
10 documents and records to the same extent as is conferred on the district  
11 courts of this state, and may conduct an investigation, inquiry or hearing  
12 on all matters before the administrative law judges. All final orders,  
13 awards, modifications of awards, or preliminary awards under K.S.A.  
14 44-534a and amendments thereto made by an administrative law judge  
15 shall be subject to review by the board upon written request of any in-  
16 terested party within 10 days. Intermediate Saturdays, Sundays and legal  
17 holidays shall be excluded in the time computation. Review by the board  
18 shall be a prerequisite to judicial review as provided for in K.S.A. 44-556  
19 and amendments thereto. On any such review, the board shall have au-  
20 thority to grant or refuse compensation, or to increase or diminish any  
21 award of compensation or to remand any matter to the administrative law  
22 judge for further proceedings. The orders of the board under this sub-  
23 section shall be issued within 30 days from the date arguments were  
24 presented by the parties.

25 (2) (A) If an administrative law judge has entered a preliminary  
26 award under K.S.A. 44-534a and amendments thereto, a review by the  
27 board shall not be conducted under this section unless it is alleged that  
28 the administrative law judge exceeded the administrative law judge's ju-  
29 risdiction in granting or denying the relief requested at the preliminary  
30 hearing. Such an appeal from a preliminary award may be heard and  
31 decided by a single member of the board. Members of the board shall  
32 hear such preliminary appeals on a rotating basis and the individual board  
33 member who decides the appeal shall sign each such decision. The orders  
34 of the board under this subsection shall be issued within 30 days from  
35 the date arguments were presented by the parties.

36 (B) If an order on review is not issued by the board within the ap-  
37 plicable time period prescribed by subsection (b) (1), medical compen-  
38 sation and any disability compensation as provided in the award of the  
39 administrative law judge shall be paid commencing with the first day after  
40 such time period and shall continue to be paid until the order of the  
41 board is issued, except that no payments shall be made under this pro-  
42 vision for any period before the first day after such time period. Nothing  
43 in this section shall be construed to limit or restrict any other remedies



1 (f) As used in subsections (d) and (e), "employers' insurance carrier"  
 2 includes any qualified group-funded workers compensation pool under  
 3 K.S.A. 44-581 through 44-591 and amendments thereto or a group-  
 4 funded pool under the Kansas municipal group-funded pool act which  
 5 includes workers compensation and employers' liability under the workers  
 6 compensation act.

7 (g) In any case in which any review is sought under this section and  
 8 in which the compensability is not an issue to be decided on review,  
 9 medical compensation shall be payable and shall not be stayed pending  
 10 such review. The worker may proceed under K.S.A. 44-534a and amend-  
 11 ments thereto and may have a hearing in accordance with that statute to  
 12 enforce the provisions of this subsection.

13 Sec. 9. K.S.A. 44-557 is hereby amended to read as follows: 44-557.

14 (a) It is hereby made the duty of every employer to make or cause to be  
 15 made a report to the director of any accident, or claimed or alleged ac-  
 16 cident, to any employee which occurs in the course of the employee's  
 17 employment and of which the employer or the employer's supervisor has  
 18 knowledge, which report shall be made upon a form to be prepared by  
 19 the director, within 28 days, after the receipt of such knowledge, if the  
 20 personal injuries which are sustained by such accidents, are sufficient  
 21 wholly or partially to incapacitate the person injured from labor or service  
 22 for more than the remainder of the day, shift or turn on which such  
 23 injuries were sustained.

24 (b) When such accident has been reported and subsequently such  
 25 person has died, a supplemental report shall be filed with the director  
 26 within 28 days after receipt of knowledge of such death, stating such fact  
 27 and any other facts in connection with such death or as to the dependents  
 28 of such deceased employee which the director may require. Such report  
 29 or reports shall not be used nor considered as evidence before the direc-  
 30 tor, any administrative law judge, the board or in any court in this state.

31 (e) ~~No limitation of time in the workers compensation act shall begin  
 32 to run unless a report of the accident as provided in this section has been  
 33 filed at the office of the director if the injured employee has given notice  
 34 of accident as provided by K.S.A. 44-520 and amendments thereto, except  
 35 that any proceeding for compensation for any such injury or death, where  
 36 report of the accident has not been filed, must be commenced by filing  
 37 an application with the director within one year from the date of the  
 38 accident, suspension of payment of disability compensation, the date of  
 39 the last medical treatment authorized by the employer, or the death of  
 40 such employee referred to in K.S.A. 44-520a and amendments thereto.~~

41 (d)(c) The knowing failure of any employer or workers compensation  
 42 insurance carrier to file or cause to be filed any report required by this  
 43 section shall be subject to a civil penalty for each violation of not to exceed

Reinstate lines 31-40

*Reinstate*

3-7

1 missioner, to a monetary penalty of not more than \$10,000 for each and  
2 every act or violation, but not exceeding an aggregate penalty of \$50,000  
3 for any six-month period in addition to any penalty imposed pursuant to  
4 subsection (g).

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

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

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

19 (m) The remedies and penalties provided in this section are not ex-  
20 clusive remedies and penalties and do not preclude the use of any other  
21 criminal or civil remedy or penalty for any act that is in violation of this  
22 section.

Delete lines 19-22

23 Sec. 12. K.S.A. 1997 Supp. 44-5,125 is hereby amended to read as  
24 follows: 44-5,125. (a) (1) Any person who obtains or attempts to obtain  
25 any payment of compensation under the workers compensation act for  
26 such person or who denies or attempts to deny the obligation to make  
27 any payment of workers compensation benefits; who obtains or attempts  
28 to obtain a more favorable workers compensation benefit rate or insur-  
29 ance premium rate than that to which such person is otherwise entitled;  
30 who prevents, reduces, avoids or attempts to prevent, reduce or avoid the  
31 payment of any compensation under the workers compensation act; or  
32 who fails to communicate a settlement offer or similar information to a  
33 claimant under the workers compensation act, by, in any such case, know-  
34 ingly or intentionally: (A) Making a false or misleading statement, (B)  
35 misrepresenting or concealing a material fact, or (C) fabricating, altering,  
36 concealing or destroying a document; (D) is employed while receiving  
37 temporary total disability benefits, or permanent total disability benefits  
38 to which they are not entitled; and

or permanent partial disability

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

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

SENATE BILL No. 573

By Committee on Commerce

2-3

9 AN ACT concerning consumer protection; relating to telephone solici-  
10 tation; amending K.S.A. 50-673 and repealing the existing section; ~~also~~  
11 ~~repealing K.S.A. 1997 Supp. 50-670.~~

50-670 and

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 [Section 1.] K.S.A. 50-673 is hereby amended to read as follows: 50-  
15 673. The provisions of K.S.A. 50-671 through 50-674 and amendments  
16 thereto do not apply to a transaction:

Section 2

17 (a) That has been made in accordance with prior negotiations in the  
18 course of a visit by the consumer to a merchant operating a business  
19 establishment that has a fixed permanent location and where consumer  
20 goods or services are displayed or offered for sale on a continuing basis;

21 (b) in which the business establishment making the solicitation has  
22 made a prior sale to the consumer, is establishing a business to business  
23 relationship or has a clear, preexisting business relationship with the con-  
24 sumer, provided that relationship resulted in the consumer becoming  
25 aware of the full name, business address and phone number of the es-  
26 tablishment;

Strike

27 b (c) in which the consumer purchases goods or services pursuant to  
28 an examination of a television, radio, or print advertisement or a sample,  
29 brochure, catalogue, or other mailing material of the telemarketer that  
30 contains:

31 (1) The name, address, and telephone number of the telemarketer;

32 (2) a full description of the goods or services being sold along with a  
33 list of all prices or fees being requested, including any handling, shipping,  
34 or delivery charges; and

35 (3) any limitations or restrictions that apply to the offer; or

36 c (d) in which the consumer may obtain a full refund for the return of  
37 undamaged and unused goods or a cancellation of services notice to the  
38 seller ~~within seven days after receipt by the consumer after the consumer~~  
39 ~~has had at least seven days to review the goods or services,~~ and the seller  
40 will process the refund within 30 days after receipt of the returned mer-  
41 chandise by the consumer or the refund for any services not performed  
42 or a pro rata refund for any services not yet performed for the consumer.

43 The return and refund privilege shall be disclosed to the consumer orally

Senate Commerce Committee

Date 2-23-98

Attachment # 4-1 thru 4-2

Sec. 1 K.S.A. 1997 Supp. is hereby amended to read as follows:

4-2

~~50-670. Unsolicited consumer telephone calls, requirements and prohibitions; persons not responsible for enforcement; unreasonable act or practice.~~ (a) As used in this section:

(1) "Consumer telephone call" means a call made by a telephone solicitor to the residence of a consumer for the purpose of soliciting a sale of any property or services to the person called, or for the purpose of soliciting an extension of credit for property or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of property or services to the person called or an extension of credit for such purposes;

(2) "unsolicited consumer telephone call" means a consumer telephone call other than a call made:

(A) In response to an express request of the person called;

(B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;

(C) to any person with whom the telephone solicitor has an existing business relationship; or

(D) by a newspaper publisher or such publisher's agent or employee in connection with such publisher's business;

(3) "telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device;

(4) "automatic dialing-announcing device" means any user terminal equipment which:

(A) When connected to a telephone line can dial, with or without manual assistance, telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator; or

(B) when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance;

(5) "negative response" means a statement from a consumer indicating the consumer does not wish to listen to the sales presentation or participate in the solicitation presented in the consumer telephone call.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall:

(1) Identify themselves;

(2) identify the business on whose behalf such person is soliciting;

(3) identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;

(4) immediately discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call; and

(5) hang up the phone, or in the case of an automatic dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within 25 seconds of the termination of the call by the person being called.

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes and when the telephone solicitor's service or equipment is capable of allowing the display of such number.

(d) A telephone solicitor shall not transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease.

(e) Local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section.

(f) Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

(g) This section shall be part of and supplemental to the Kansas consumer protection act.

*Immediately*

Strike

Choices & resources for people who are blind or low vision



**Envision**<sup>SM</sup>

**PLEASE REPLY TO: Michael Byington, Director  
Envision Governmental Affairs Office  
P. O. Box 1063  
Topeka, Kansas 66601  
(785) 575-7477 (local office and voice mail)  
(785) 233-2539 (FAX)  
mbyington@delphi.com or mbyingto@ink.org**

February 23, 1998

TO THE SENATE COMMERCE COMMITTEE STAFF:

RE: Senate Bill 546

While conferees did an excellent job of answering questions during the February 19, 1998 hearing on Senate Bill 546, this is a very complex Bill and a very complex issue. Several Senators asked questions which might benefit from in-depth exploration. This is the purpose of this testimony.

If concerns raised by particular Senators are omitted, this is not done intentionally. Instead it may have been believed that the issue was addressed with regard to another question.

Senator Steffes stated that he had not seen a Commission be given as many powers as are proposed for the Kansas Use Commission. He used as examples enforcement powers, price setting powers, etc. While I will not deny that these provisions exist, I would suggest that the Commission nonetheless is not a powerful body, and it in fact offers the State and the school districts significant advantages over dealing with the for profit sector for products and services. This is because of the make up of the

801 Senate Commerce Committee

Tel Date 2-23-98

We Attachment # 5-1 thru 5-4

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m

Commission. A majority of the Commission's members are product and service customers. Sellers/manufacturers make up a minority on the Commission. Thus the majority voters as to what gets enforced, how much products should cost, what should be made, what the specifications should be, etc. are the customers. This is analogous to allowing five rate payers from the public and four power company executives to vote on how much electric bills should be. The customer is placed in a very strong position. We do this knowingly. Again, our primary goal is to promote the Kansas Use program, a very positive program which provides employment for many severely disabled individuals who otherwise would not be employed.

This brings me to another point which I believe was raised by Senator Steffes. It was suggested to Mr. Adamson that, if the law was fully implemented, he would not be able to keep up with the demand. Mr. Adamson talked about the growth of his agency. We at Envision wish to report that we would also be able to meet such a challenge. Some research was done through 1990 census data to determine how many working age persons who are blind or severely disabled are unemployed. The results were the startling figure that 74% of all working age blind and severely disabled individuals are unemployed. All of us who participate in the Kansas Use Program are extremely dedicated to lowering this disgusting rate of unemployment which exists within the populations we serve. We want to have more good jobs to offer in a greater variety of fields. Give us the tools to grow, and we will reduce unemployment among the most severely underemployed population in America.

Senator Brownlee commented that, as a person who has operated a business, she felt that purchasers should buy from the company which offers the best product for the least money. She questioned the very efficacy of a set-aside, or mandatory purchase related program. In raising this issue, She may be questioning more the efficacy of the existing law than the provisions of Senate Bill 546, but this is certainly a valid line of inquiry. After all, if one does not support the concepts behind the original law, then it becomes difficult to support strengthening it. Given this fact, it is certainly logical to conclude that individuals who are a part of the population we serve can not move from job to job within a company, or from employer to employer, as easily as can a non-disabled person or a person who has only minor disabilities. Losing a job due to layoff or changes in the market place often results in a very long period of unemployment for the

population we serve. The Kansas Use Law exists as an attempt to in part address this concern. All eight of the current participant agencies who sell to the State under the existing Kansas Use Program do business in the private sector as well, and sell to entities of government other than those who are covered under the Kansas Use Program. Variations in the marketplace, however, make many unskilled and semi-skilled manufacturing jobs, and many service industry jobs, very unstable with employees changing jobs and work situations often. The Kansas Use Program provides a modicum of stability by providing a finite amount of consistent business. As our employees do not have the option of changing jobs as easily, this stable base of employment is very much needed. The Kansas Use Program is cost efficient because long periods of unemployment for our employees, all of whom qualify for public benefits, would be much more costly than the very small amount of money proposed to operate the enhanced Use Program proposed in Senate Bill 546.

In Senator Steineger's comments, he said he would be more inclined to give us the \$87,000.00 to hire a good marketing specialist/promotor as opposed to someone involved in enforcement of a mandatory program. He also commented that the Kansas Use Catalog appeared to be a strange mixture of products, which is perhaps driven in part by what our employees are able to make, but that he felt better product lines and marketing strategies could be used. Our response would be that the one professional position required to implement the changes would first and foremost be a promoter of the Kansas Use Program. It is true that we have given them some abilities to begin the initiation of enforcement actions, but it is certainly the intent of all eight Kansas Use provider agencies that enforcement will take little of the Kansas Use Commission's time or staff involvement. We suspect that perhaps only one enforcement action will set a precedent and correct the concerns about agencies and school districts not participating. The primary purpose of the Commission and its very limited staff would be to be the kind of promoter Senator Steineger described. These promotional duties are spelled out in lines 15 through 34 on page four of the bill. Oklahoma has such a position, and it has done wonders for the activity in their use program. We would also comment that our employees, despite severe disabilities, have a wide variety of skills and abilities, which with our guidance, can be focused toward many types of productive activity. The unique mixture of products available under Kansas Use are a result of what the State and the school districts have agreed to buy from us. The

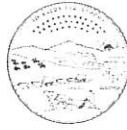
Commission and its small staff would indeed be an excellent mechanism to create new, and perhaps more cogent product lines.

Senator Gooch made the point that the Legislature is already under pressure to keep costs of education down. He therefore questioned the logic of forcing school districts to purchase products from a particular source, especially if the same products can be obtained less expensively from somewhere else. The assumption which is being made here, and one I must question, is that the school districts are getting the products less expensively from somewhere else; I believe this is largely untrue. Instead, what happens is that for-profit, multi-national suppliers who manufacture their products outside of Kansas, are much more able to aggressively promote and market their products. It is the for-profit sectors advantages in marketing, not in pricing, which seems to be driving the problem. The more major emphasis of the proposed Kansas Use Commission would be the education, promotion, and negotiation duties. Additionally, if the concern is that the school districts and State agencies would be paying higher prices, please note that, as I explained in responding to the concerns of Senator Steffes, the structure of 546 gives majority price setting control to representatives of State agencies and school districts. Fair market pricing will continue to be assured because the customers will remain in majority control of setting them. You may in fact wonder why we would propose legislation which allows a Use Commission with a majority of customers on it to decide our prices for us. We do so because our goal is indeed to garner satisfied customers, and to be able to manufacture and sell more products and services in order to employ more blind and severely disabled people. After all, that is what we are about.

In closing, the proponents who testified had intended to cover one technical issue regarding the bill. This was inadvertently omitted from oral and written testimony. Our original intent had been to have the chair of the Kansas Use Committee appointed each year by the Governor. Somehow in our communications with the Revisor's office, this clause was accidentally omitted from the version of the Bill you have. If the Committee chooses to advance the bill, this provision might be added for purposes of clarity. We want to thank Purchasing Director Houlihan for calling this issue to our attention.

Thank you for your review of this matter. Please let me know if I may answer any additional questions or concerns.





**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**

February 20, 1998

Senator Alicia Salisbury  
Kansas State Capitol  
Room 120 South  
Topeka, Kansas 66612

Re: Senate Bill 555

Dear Senator Salisbury:

As you are aware, the proposed changes to K.S.A. 44-532a, Page 12, Lines 7-12 and K.S.A. 44-551, Page 14, Lines 7-12, arose out of the case of a claimant who made several calls to the Governor's office, the Director of Workers' Compensation and your office alleging that he had been wrongfully denied benefits by the Kansas Workers' Compensation Fund.

Although the Kansas Insurance Department Workers' Compensation Fund chooses to remain neutral on the proposed legislation that would make changes to both K.S.A. 44-532a and K.S.A. 44-551 and require the Workers' Compensation Fund to make immediate payment on appeal in insolvent cases, it is imperative that your Committee know the full story before proceeding to legislate change based on this one unique case.

The claimant and his attorney, Chris Miller, initially settled their case with employer on January 8, 1996. At that time, the employer and the claimant, with advice of counsel, dismissed the Fund with prejudice. When a party to a suit is dismissed with prejudice, they cannot legally be brought into the suit again for any reason. Since the Fund was no longer a party to the suit, it had no standing to contest the reasonableness of the settlement between the claimant and the employer.

420 SW 9th Street  
Topeka, Kansas 66612-1678

913 296-3071  
Fax 913 296-2283  
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Senate Commerce Committee

Date 2-23-98

Attachment # 6-1 thru 6-4

In May 1996, the claimant attempted to bring the Fund back into the lawsuit even though they had dismissed the Fund in January, possibly anticipating a default by the employer.

Employer later discontinued making the agreed upon payments pursuant to the settlement hearing held in January 1996. Several depositions were taken and the employer testified that his company had gross revenues in excess of \$100,000 per month. In addition, he testified that he made numerous monthly payments in the \$5,000 to \$10,000 range to himself personally, "possibly". The payment due to the claimant was \$313 a week.

In August 1997, the Administrative Law Judge found that the employer was financially unable to pay the claimant and ordered the Fund to pay the award agreed upon by the claimant and employer in January 1996. Claimant immediately appealed the decision to the Board of Appeals. Subsequently, the Fund appealed the case.

During the time that this case was appealed, the claimant started making his telephone calls. K.S.A. 44-551 does not require that payments be made until thirty days after oral argument before the Board of Appeals. Therefore, the Fund had not commenced payment to the claimant. As part of the Workers' Compensation Act, K.S.A. 44-551 is applicable to both the Fund and any employer or insurance carrier. Since the claimant appealed the decision, he would not have been entitled to benefits under the statute even if the Fund had not appealed.

During the statutory waiting period, the Kansas Workers' Compensation Fund was informed that the employer had filed bankruptcy. Even though the Fund had a genuine and indisputable legal argument to support a denial of benefits to the claimant because the Fund had been dismissed with prejudice, Commissioner Sebelius determined that to follow this position would not be consistent with the public policy concerns related to the Fund. Payments were then immediately tendered to the claimant in this matter and continue today. To my knowledge, the claimant has not dismissed his appeal to date.

When the Director of Workers' Compensation initially brought up the proposed legislation, the Commissioner sent him additional information concerning the allegations made by the claimant. He stated in his response that: "It would appear from the proceedings that the Fund was, in the end, very generous with this particular claimant. And, it would also appear that Bruce Mayfield has done his usual exemplary job of research and litigation. There is no doubt in my mind that the Fund proceeded pursuant to the statutory authority available to it."

In addition, there has been communication to the attorney representing the Fund from the Assistant Kansas Attorney General in charge of fraud that there will be a fraud and abuse case filed against the employer in this case.

The Fund had many reasons for not immediately making payment to the claimant:

1. The claimant and his attorney dismissed the Fund with prejudice;
2. The Fund had evidence that the Employer was earning \$100,000 per month at the time the ALJ ordered the Fund to make payment to the claimant;
3. The claimant immediately appealed the decision by the ALJ;
4. Payments were stayed by statute when the claimant appealed regardless of whether or not the Fund appealed; and
5. There were allegations of fraud and abuse strong enough for the attorney general's office to investigate and contemplate a case being filed against the employer.

Because of the extremely unusual nature of this one case, the Department felt it was necessary to provide you with additional information concerning the impetus behind the proposed changes to K.S.A. 44-532a and K.S.A. 44-

551 in Senate Bill 555. Clearly this was an unusual claim with very unusual facts. As stated by the Workers' Compensation Fund Oversight Committee:

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.

If you have any questions or concerns, please feel free to contact me.

Sincerely,



Paula S. Greathouse  
Staff Attorney  
Workers' Compensation Fund

PSG

cc: Margaret Gatewood, General Counsel  
Thomas Wilder, Government and Public Relations  
Philip Harness, Director of Workers' Compensation  
Senate Commerce Committee Members