

Approved: February 10, 1999  
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 9, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Jerry Donaldson, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Roger Aeschilman, Acting Director, Department of Human Resources

Others attending: See attached list

In response to a request by the Committee, a copy of Foster Care Opinion Survey conducted by the Kansas Association of Public Employees, was distributed. (A copy is on file in the Office of Legislative Research)

The Chair advised the Committee a letter addressed to Senator Pat Ranson, over the signature of Dick Cook, Kansas Insurance Department, relating to a Kansas Closed Claim Study, was distributed. (Attachment 1)

Roger Aeschilman, Acting Director, Department of Human Resources, submitted proposed amendments in response to the three immediate concerns addressed in the Legislative Post Audit Report. 1) Subsequent Reporting - a proposed amendment to KSA 44-557a (Attachment 2). The Department stated there is presently a 25% compliance to the reporting requirement by insurance groups.

Mr. Aeschilman informed the Committee the Department surveyed Colorado, Florida, Iowa, Montana, Oregon, Wisconsin, and Texas regarding the costs of subsequent reporting, and found that such a requirement involves between one and twenty employees; annual costs are between \$350,000 and \$1,000,000; there is a percentage use of Electronic Data Interchange from 0 to 44%; and the number of reports received are between 15,000 to 400,000. (Attachment 3)

There is no penalty in current law for noncompliance. The Committee requested, for its consideration an amendment to current data reporting law which would impose a penalty on insurance companies for noncompliance.

2) Accident prevention programs - The Department submitted two amendments to KSA 44-5,104; a mandatory requirement; (Attachment 4) and a discretionary requirement. (Attachment 5). Mr. Aeschilman stated the "Mandatory" requirement would necessitate personnel inspecting insurance company records, requiring approximately 4,000 man days, rather than personnel inspecting work sites in Kansas. The Division's philosophy has been that "Discretionary" or random sampling is a better utilization of personnel.

3) Fraud and Abuse - The Department recommended the following statutory changes: A. the Fraud unit be allowed the option of either sending a case to a county prosecutor, or charge the case themselves; and B. extend the statute of limitations to five years. In response to the Legislative Post Audit report, the Fraud and Abuse unit are currently evaluating other states and other law enforcement agencies to create a more efficient investigation section; creating a procedure manual; implementing a more efficient "case tracking" system; and will initiate a procedure to collect information regarding adjudicated cases. (Attachment 6)

Mr. Aeschilman submitted a Task and Timeline document for completion of Database Migration.  
(Attachment 7)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m.  
on February 9, 1999.

**Upon motion by Senator Gooch, seconded by Senator Brownlee, the Minutes of the  
February 5, 1999, meeting were unanimously approved.**

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 10, 1999.

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 9, 1999

NAME	REPRESENTING
Rich Gutman	Health Midwest
Art Brown	mid Am Umberson life
Tom Whitaker	Ks MOTOR CARRIERS Assn
Bill Sneed	State Farm
Randy Williams	Ks Dept of Human Resources
Dick Shein	Ks Dept of Human Resources
Bill LeSarge	Gas. Ins. DEPT.
Dick Cook	" " "
Kevin Davis	Am. Family Ins
Joan Schmidt	Ks. Dept. of Ins.
PAT Morris	K.A.I.A.
Stacy Soldan	Hein + Weir Chtel.
Joe Lawton	Post Audit
Anthony Perez	Post Audit
Kip Kubin	Payne + Jans CITO
Terry Leatherman	KCCI
Stephen Duvall	KDHR
William Sander	KDHR
Rudy Leuteninger	KDHR

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 7, 1999

NAME	REPRESENTING
Phil Harless	KDHR - Div. of Work Emp.
David A. Shufelt	" " " " "
Jim Martin	KTLA
Glenn W. Getchell	KTLA



COPY

**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**  
Fire and Casualty Division

February 8, 1999

SENATOR PAT RANSON  
SENATE COMMERCE COMMITTEE  
300 SW 10TH AVE ROOM 449N  
TOPEKA KS 66612-1504

Re: Kansas Workers Compensation Closed Claim Study

Dear Senator Ranson:

Toward the end of the Senate Commerce Committee's Friday, February 5, 1999 session, you proposed a question indicating that since there was a workers compensation closed claim study completed in 1992 by the Kansas Insurance Department, they may have closed claim data.

I was not personally involved with workers compensation insurance departmental issues in 1992; therefore, instead of saying anything Friday regarding the captioned, I wanted to do some homework before responding to your question.

After researching this issue, I have determined that in 1992, Insurance Commissioner Ron Todd requested the National Council on Compensation Insurance (NCCI) to initiate a Kansas Closed Claim Study. NCCI was primarily involved in the acquisition of the data. Tillinghast, a consulting firm, was retained by NCCI to perform the analysis of the data. Since NCCI retained Tillinghast, it is anticipated that NCCI paid for this study.

Insurance carriers file premium and loss information with our office. However, the carriers are not required to file claim data with our office that could be used for subsequent claim reporting. By statute, the Commissioner has appointed the NCCI as the statistical agent to collect detailed claim data.

I hope the above information is helpful; however, please contact me if you have any questions regarding this matter.

Very truly yours,

Dick Cook, Supervisor  
Commercial Multi-Peril & Casualty Section

cc: Senate Commerce Committee

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Topeka, Kansas 66612-1678

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Senate Commerce Committee

Date: 2-09-99

Attachment # 1



**44-557a. Compilation and publication of statistics; database of information; submission of data; contracts for actuarial or statistical services.** (a) The director shall: (1) Compile and publish statistics to determine the causation of compensable disabilities in the state of Kansas and (2) compile and maintain a database of information on claim characteristics and costs related to open and closed claims, in order to determine the effectiveness of the workers compensation act to provide adequate indemnity, medical and vocational rehabilitation compensation to injured workers and to return injured workers to remunerative employment. The commissioner of insurance shall cooperate with the director and shall make available any information which will assist the director in compiling such information and statistics and may contract with the director and the secretary of the department of health and environment to collect such information as the director deems necessary.

(b) Each self-insured employer, group-funded workers compensation pool, insurance carrier and vocational rehabilitation provider shall submit to the director ~~the disposition of a statistically significant sample of open and closed~~ *characteristics of all claims under the act and, in connection with the closing of each claim in which payments were made, including but not limited to the following:* (1) The dates, time intervals, amounts and types of weekly disability payments made, (2) the dates and gross amounts of payments made to each type of medical compensation provider, (3) the dates and type of service for which payment was made and the gross amounts paid to each vocational rehabilitation provider, and (4) the dates and types of fees paid as claim costs. Each self-insured employer, group-funded workers compensation pool, insurance carrier, vocational rehabilitation provider, health care provider, or health care facility shall submit medical information, by procedure, charge and zip code of the provider in order to set the maximum medical fee schedule. The director of workers compensation may adopt and promulgate such rules and regulations as the director deems necessary for the purposes of administering and enforcing the provisions of this section.

(c) The director may contract for professional actuarial or statistical services to provide assistance in determining the types of information and the methods of selecting and analyzing information as may be necessary for the director to conduct studies of open and closed claims under the workers compensation act and to enable the director to make valid statistical conclusions as to the distribution of costs of workers compensation benefits.

(d) The director shall obtain such office and computer equipment and employ such additional clerical help as the director deems necessary to gather such information and prepare such statistics.

Costs of Subsequent Reporting  
Survey of Seven States  
February 1999

- States in the survey: Colorado, Florida, Iowa, Montana, Oregon, Wisconsin, Texas
- Range of average number of FTEs: 1 to 20
- Range of annual costs (indemnity only): \$350,000 to \$1,000,000
- Range of percentage use of Electronic Data Interchange: 0 to 44%
- Range of number of reports received: 15,000 to 400,000
- Startup costs: unknown but larger

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Attachment # 3

**44-5,104. Accident prevention programs; requirements and reports; inspections; duties of secretary of human resources; failure to maintain, penalties.** (a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and ~~may offer to~~ shall provide accident prevention programs as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is (1) a college graduate who has a bachelor's degree in science, ~~business industrial hygiene~~, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional *who has attained the designation from the board of certified safety professionals*, (4) a certified industrial hygienist *who has attained the designation from the American Board of Industrial Hygiene*, (5) an individual with ~~at~~ 5 years of experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of human resources, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of human resources. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations imposed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

(b) The secretary of human resources ~~may~~ shall conduct such inspections ~~as the secretary deems necessary annually~~ to determine the adequacy of the accident prevention services required by subsection (a) for each insurance company and group-funded self-insurance plan providing workers compensation insurance coverage in Kansas.

(c) A notice that accident prevention services are available to the policyholder from the insurance company shall appear in no less than ten-point boldface type on the front page of each workers compensation insurance policy delivered or issued for delivery in this state.

(d) At least once each year, each insurance company or group-funded self-insurance plan providing workers compensation insurance in Kansas shall submit to the director of workers compensation detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

- (1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;
- (2) the *names*, number and qualifications of field safety representatives employed;
- (3) the number of site inspections performed;
- (4) any accident prevention services made available under a contractual arrangement;
- (5) a specification and listing of the premium size of the risks to which accident prevention

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Attachment # 4-1 thru 4-2



services were actually provided;

- (6) evidence of the effectiveness of and accomplishments in accident prevention; and
- (7) any additional information required by the director of workers compensation.

(e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of workers compensation shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125 and amendments thereto. *The secretary shall send the information and results obtained from subsection (d) to the insurance commissioner who shall widely disseminate information about the program.*

(f) The secretary of human resources shall *annually request appropriations* to employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other work places and at the locations of the accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

(g) The insurance company or group-funded self-insurance plan, and any agent, servant, or employee thereof, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection or other activity or by a service undertaken or not undertaken by the insurance company or group-funded self-insurance plan for the prevention of accidents in connection with operations of the employer. This immunity shall not affect the liability of the insurance company or group-funded self-insurance plan for compensation or as otherwise provided in this act.

**44-5,104. Accident prevention programs; requirements and reports; inspections; duties of secretary of human resources; failure to maintain, penalties.** (a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and ~~may offer to~~ shall provide accident prevention programs, *upon request of the covered employer, with or without an additional fee*, as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is (1) a college graduate who has a bachelor's degree in science, ~~business industrial hygiene~~, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional *who has attained the designation from the board of certified safety professionals*, (4) a certified industrial hygienist *who has attained the designation from the American Board of Industrial Hygiene*, (5) an individual with ~~to~~ 5 years of experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of human resources, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of human resources. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations imposed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

(b) The secretary of human resources may conduct such inspections as the secretary deems necessary to determine the adequacy of the accident prevention services required by subsection (a) for each insurance company and group-funded self-insurance plan providing workers compensation insurance coverage in Kansas, *including but not limited to, random inspections and those based upon employer complaints. The secretary shall not be required by this section to inspect each insurance company or group-funded self-insurance plan.*

(c) A notice that accident prevention services are available to the policyholder from the insurance company shall appear in no less than ten-point boldface type on the front page of each workers compensation insurance policy delivered or issued for delivery in this state.

(d) At least once each year, each insurance company or group-funded self-insurance plan providing workers compensation insurance in Kansas shall submit to the director of workers compensation detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

(1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;

(2) the *names*, number and qualifications of field safety representatives employed;

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Attachment # 5-1 thru 5-2

- (3) the number of site inspections performed;
- (4) any accident prevention services made available under a contractual arrangement;
- (5) a specification and listing of the premium size of the risks to which accident prevention services were actually provided;

- (6) evidence of the effectiveness of and accomplishments in accident prevention; and
- (7) any additional information required by the director of workers compensation.

(e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of workers compensation shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125 and amendments thereto. *The secretary shall send the information and results obtained from subsection (d) to the insurance commissioner who shall widely disseminate information about the program.*

(f) *Within appropriations therefor,* The secretary of human resources shall employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other work places ~~and at the locations of~~ *and may audit* the accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

(g) The insurance company or group-funded self-insurance plan, and any agent, servant, or employee thereof, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection or other activity or by a service undertaken or not undertaken by the insurance company or group-funded self-insurance plan for the prevention of accidents in connection with operations of the employer. This immunity shall not affect the liability of the insurance company or group-funded self-insurance plan for compensation or as otherwise provided in this act.

## FRAUD CHANGES

### Statutory Changes:

**1. Because of statutory reforms in 1998, no substantive changes need to be made to the fraud and abuse statutes at this time.**

-We are still seeing the positive effects of changes to the administrative and criminal statutes at this time and it would be unnecessary to change those statutes again so soon after they were reformed.

**2. We recommend that the Fraud unit be given the option of prosecuting a criminal case themselves rather than send a case out to a county prosecutor.**

-Changes in K.S.A. 44-5,122 would allow for the option of either sending a case to a county prosecutor first, or charge the case initially themselves.

-Those statutory changes are attached.

**3. We recommend that criminal prosecutions for workers compensation fraud be given a statute of limitations of five years.**

-Due to the length of time that a claim for benefits under the workers compensation system can sometimes take, a five year statute of limitations would be extremely helpful to allow action under more penalizing criminal statute.

-Those statutory changes are attached.

### In-House Changes:

-Based on the recommendations made in the report, the unit is currently:

**1. Evaluating other state's fraud investigation sections, as well as other investigative agencies within this state to create the most efficient system possible.**

-We are consistently trying to improve the systems that we operate under and are currently evaluating other states and other law enforcement agencies in our state to see if we can "borrow" some of the ideas they have already implemented.

-Once we determine the best system we can implement we will create a written procedure manual. (See #2, below)

**2. Creating a procedure manual.**

-We are now in the process of developing what can best be described as a "procedure manual".

-This manual will be an invaluable tool as to how the unit will operate on a day to day basis, as well as allow transition from one administration to the next.

-The manual that currently exists has some good features to it, but is not comprehensive enough to allow for a complete procedural process to be developed. We will therefore adopt some portions of the "old" manual into the new one.

-This manual will include a possible overview on how cases are charged, either administratively or criminally. This will more than likely include regular meetings with the Director and the Assistant Director as to case numbers and status reports.

-Will also include changes in how monies from administrative remedies are collected (KDHR legal)

Senate Commerce Committee

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Attachment # 6-1 thru 6-H

### **3. Implementing a more efficient “case tracking” system.**

- Currently getting computerized system for case tracking.
- Determining whether it would be more cost efficient to borrow one from another law enforcement agency, or use an outside vendor.
- New system will include “tickler” reminder technology to prevent cases from potentially becoming too old.

### **4. Information Gathering**

- No one has ever asked the fraud unit to track statistical information in the past, will do it now based on the recommendations of the report.
- Will Collect Information on:
  - Names of the parties involved in a referral, including what employment area the referral is coming from, (manufacturing, service, etc.)
  - what specific violation of the workers compensation act is being alleged
  - who specifically the referral is against (worker, employer, doctor, attorney, etc.)
  - date case referral was received
  - date investigation was completed
  - the date the unit investigator may have referred the case back to an investigator for additional investigation.
  - the date the case was then re-referred to the unit administrator
  - the date charges administratively OR
  - the date charges filed criminally
  - when the case was finally and officially closed by the unit and the reason the case was closed.
  - any fines or restitution recovered by the unit OR
  - what penalties were imposed as the result of a criminal prosecution.
- This information will then be annually presented to the workers compensation advisory committee so that they may examine any foreseeable trends in the area of workers compensation fraud and make recommendations to the legislature accordingly.

**Table 1: Synopsis of Accident Prevention Data, 1993-1996**

<b>Year</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>
<b>Firms Requested to Report</b>		294	143	145
<b>Firms Reporting</b>	193	284	131	117
<b>Cost of Accident Prevention Services</b>	\$3,519,682	\$5,635,234	\$6,261,635	\$5,958,256.38
<b>Total Field Safety Representatives</b>	348	360	499	496
<b>Suspect Field Safety Representatives</b>		52	21	58
<b>Safety Audits</b>	8,090	12,010	10,900	12,406
<b>Industrial Hygiene Audits</b>	443	314	246	272
<b>Training Programs</b>	786	1,935	1,377	2,108
<b>Companies Contracting Services</b>	34	48	37	40

**Table 2: KDHR Accident Prevention Activity, 1997**

<b>Activity</b>	<b>Measure</b>
Safety FTEs	4.40
Industrial Hygiene FTEs	3.40
Total Visits	420
Total Hazards	4,427
Serious Hazards	2,953
Safety Visits	326
Industrial Hygiene Visits	94
Visits/Safety FTE	74
Visits/IH FTE	28



Additionally, the Industrial Safety & Health Section has participated in two strategic initiatives with OSHA and industry groups to target high hazard jobs. The section has provided consultation services for employers, on-site and off-site training for employees, and technical information through jointly sponsored seminars and conferences. The initiatives have targeted a specific industry--oil and gas--and a job activity involving several industries--trenching. These have resulted in significant decreases in lost-time injuries and fatalities over the last two years as Workers Compensation data indicate.

**Table 3: Impact of Strategic Initiatives**

	Oil and Gas		Trenching	
	Injuries	Fatalities	Injuries	Fatalities
FY89		5		
FY90		6		1
FY91		4		2
FY92	1,146	3	1,406	1
FY93	1,105	2	1,375	3
FY94	783	5	1,208	2
FY95	599	6	1,022	2
FY96	528	0	769	0
FY97	430	0	518	0

Recently, a third initiative has been introduced to target falls. This has led to an increase in consultations in the affected SICs, but the ultimate impact is not yet quantifiable.

STATE OF KANSAS  
**DEPARTMENT OF HUMAN RESOURCES**



Bill Graves, Governor

Wayne L. Franklin, Secretary

**DIVISION OF STAFF SERVICES**

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**Tasks and Timelines for Completion of Database Migration  
Division of Workers Compensation  
Kansas Department of Human Resources  
February 1999**

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<b>Task</b>	<b>Timeline</b>
1. Complete design and budgetary plan	February 1999
2. Present finished project plan to review groups	March – April 1999
3. Submit RFP for approval to appropriate agencies	April – June 1999
4. Submit data scrubbing RFP for approval	May 1999
5. Receive and Review RFP submissions (in house)	July 1999
6. Award RFP to qualified vendor	August 1999
7. Develop and test client-server application	September 1999 – March 2000
8. Train Workers Compensation staff	January – February 2000
9. Implement new program	April 2000
10. Revise database screens and edits based on customer input	May 2000

Senate Commerce Committee

*Our Mission: To provide quality employment services in an efficient manner which*

Date: 2-09-99

Attachment # 7