

Approved: April 7, 2000

Date

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 8:02 a.m. on March 31, 2000 in Room 526-S of the Capitol.

All members were present except: Rep. Rick Rehorn - excused

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

Conferees appearing before the committee: Phil Harness, Director, Workers Compensation, KDHR
Tom Whitaker, Kansas Motor Carriers

Others attending: See attached list

Action on: SB 219 - Workers compensation, administrative changes.

Senate Bill 219 was heard in our committee on March 11, 1999. The bill was blessed this week and the committee can now take action to pass the bill out of committee.

A mediation team composed of representatives from the Kansas Chamber of Commerce and Industry, Kansas Trial Lawyers Association, Kansas AFL/CIO, the Department of Human Resources, and Reps. Lane, Beggs and Ruff have been meeting for several weeks to come to an agreement on several issues related to workers compensation and changes to these statutes. This would be in place of amending the exclusive remedy law. The team came to an agreement which involved amending into **SB 219** the following: **SB 139** - state agencies; self-insurance rates changes; **SB 644** - workers compensation, bill dispute resolution; and **HB 2907** - civil procedures; filing of cross appeals; plus other items agreed to during the medication process.

Revisor Bob Nugent provided the committee with a bill draft which would become **House Substitute for SB 219**, which includes the above bills and the amendments agreed to by the mediation team.

Phil Harness, Director of the Workers Compensation Division, Kansas Department of Human Resources, gave a brief overview of the amendments included in **H Sub SB 219**. (Attachment 1) He answered many questions from the committee. Changes to the draft that need to be made are: 1) on page 22, line 1, strike after 50%, "~~for the benefit of~~" and add "to" so that it reads "50% to the dependent children." and 2) on page 24, the last line of section (e), after "maximum", add "*nor be less than the minimum*", so to read "maximum nor be less than the minimum weekly benefits provided in subsection (a)."

Tom Whitaker, Kansas Motor Carriers, explained the change in the standards for drug testing. The federal standards had been changed after the bill left the Senate and before it was heard in committee and **H Sub for SB 219** reflects these changes. It was brought to the Revisor's attention that 6-Acetyl morphine (to be cross-referenced to footnote 4) was omitted from the list of drugs on page 14 of the bill draft and it will be added, footnote 4 is already in the bill draft. (Attachment 2)

A letter from Andrew Sabolic, National Council on Compensation Insurance, Inc., shows the cost impact that passing this bill would have on the workers compensation insurance costs. (Attachment 3)

Rep. Beggs made a motion to pass out H Sub SB 219 favorably for passage with the above three changes in the bill draft. The motion was seconded by Rep. Ruff. The motion carried. Rep. Humerickhouse requested that his no vote be recorded. Rep. McCreary asked to be recorded as a non vote, as he had not had time to read the lengthy bill draft.

Chairman Lane adjourned the meeting at 8:40 a.m. No other meetings are planned for this year.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: March 31, 2000

NAME	REPRESENTING
Hal Hudson	NFIB / Kansas
Kathy Ketchum	KDHR
GEORGE WOLF	KDHR
Rick Beyer	KDHR
Wayne Maibach	K AFL-CIO
John Ostrowski	Ks AFL-CIO
Bernie Koch	Wichita Chamber
John Zelenik	The Boeing Company
MIKE TAYLOR	City of Wichita
PAT BUSH	Western Resources
Terry Leatherman	KCCI
Mike Mill	Dept. of Agr.
TOM WHITAKER	Ks MOTOR CARRIERS ASSN.
Barb Conant	KTLA
DICK CARTER	KSIA

**TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE
AND LABOR COMMITTEE ON HOUSE SUBSTITUTE FOR
SENATE BILL 219**

**By Philip S. Harness, Director
March 31, 2000**

This House Substitute consists of most of the provisions of Senate Bill 219, Senate Bill 644, Senate Bill 139, House Bill 2907, and proposed amendments to K.S.A. 44-510b and 44-531 dealing with death claims.

Items

1. **Proposed amendment to K.S.A. 1999 Supp. 44-510.** This proposed amendment takes existing sections of K.S.A. 1999 Supp. 44-510 and places them together with other sections dealing with comparable subject matter so that the statute reads in a sequential fashion. For example, existing sections of K.S.A. 1999 Supp. 44-510 dealing with the medical administrator and the medical fee schedule are placed together. There are new provisions that streamline the medical bill dispute resolution and utilization review procedures with existing provisions on the same subject matter in order to provide for a more streamlined and understandable procedure. Several mandatory words, such as "shall," have been deleted in favor of "may," as well as changing the civil fine appeal process from the district court of Shawnee county to the workers compensation board.
2. **New section on post-award medical proceedings.** This proposed amendment sets forth a new procedure for post-award medical treatment requests, allowing for an evidentiary hearing as well as dealing with attorneys fees and appeals therefrom. Should there be a post-award application for additional medical expenses, there would be a separate opportunity for hearing and such request would move to a second priority position, following preliminary hearings (which are at the top of the trial docket); appeals therefrom would be treated the same way.
3. **Proposed amendment to K.S.A. 44-501 (d)(2)** to include certain drug levels under the conclusive presumption of employee impairment. Also, this proposed amendment would add the language "or under the supervision of." Present law requires blood or other samples to be collected by a "licensed health professional." This function is sometimes routinely performed by persons who are not licensed, phlebotomists for example. This amendment would allow non-licensed persons to collect and label test samples, but only under the supervision of a licensed professional.
4. **Proposed amendment to K.S.A. 1999 Supp. 44-508 (i).** This proposed amendment would include in the definition of "health care provider" any person licensed to practice audiology.

5. **Proposed amendment to K.S.A. 1999 Supp. 44-510b.** This is a proposed amendment to insert a reference to certain sections of this bill where the statute currently refers to K.S.A. 44-510. This is necessary because K.S.A. 44-510 is actually repealed by the repealer clause, and since this statute originally referred back to K.S.A. 44-510, it must refer back to the section that took the place of K.S.A. 44-510. There are proposed amendments to address the following concerning death claims:
 - a. Initial payment of \$40,000 not subject to the eight percent discount, immediately due and payable;
 - b. minimum weekly benefit of 50 percent of the average weekly wage;
 - c. maximum death benefit of \$250,000;
 - d. removal of the provisions concerning spousal remarriage.
6. **Proposed amendments to K.S.A. 44-510c.** Modifications to temporary total disability are done at the preliminary hearing stage after the 1993 amendments. This proposed deletion of language referring to review and modification would keep it consistent. Also, this is a proposed amendment to replace the reference to K.S.A. 44-510 with reference to the new sections which will take the place of K.S.A. 44-510.
7. **Proposed amendment to K.S.A. 1999 Supp. 44-510d.** This proposed amendment would replace the references to K.S.A. 44-510 with a corresponding reference to the appropriate new sections that will replace K.S.A. 44-510 upon its repeal.
8. **Proposed amendment to K.S.A. 1999 Supp. 44-516.** This is a proposed amendment which would add language to K.S.A. 44-516 to provide that the medical report of the health care provider appointed to perform an independent medical evaluation shall be considered by the administrative law judge without the necessity of taking the deposition of that health care provider. Of course, any party may depose the health care provider if that party chooses to do so. This would conform K.S.A. 44-516 to K.S.A. 44-510e and K.A.R. 51-9-6.
9. **Proposed amendment K.S.A. 44-519** to allow that, except in the matters of preliminary hearings (under K.S.A. 44-534a), no report of a health care provider shall be otherwise admitted into evidence without foundation testimony. This has long been the practice in preliminary hearings by virtue of K.A.R. 51-3-5a, which has allowed medical reports without foundation testimony. A concern was raised as to whether the regulation conflicted with the statute; in order to alleviate that concern, there would be an exception made within the statute.
10. **Proposed amendment to K.S.A. 44-527** to conform to actual practice by requiring certified mail rather than registered mail if the Director disapproves an agreement.

11. **Proposed amendment to K.S.A. 1999 Supp. 44-531.** This is a proposed amendment to clarify that the eight percent lump sum discount would not apply to the \$40,000 initial payment in death claims.
12. **Proposed amendment to K.S.A. 1999 Supp. 44-550b.** This is a proposed amendment to replace the references to K.S.A. 44-510 with the corresponding reference to the appropriate new sections that will replace K.S.A. 44-510 upon its repeal. This section also contains grammatical amendments (inserting the word “which” that was accidentally omitted when the statute was first drafted as well as striking the words “records for its” as being unnecessary) that do not make any substantive changes to the statute.
13. **Proposed amendment to K.S.A. 1999 Supp. 44-556.** This is a proposed amendment which would allow cross appeals to our appellate courts for workers compensation matters. This was formerly addressed by House Bill 2907.
14. **Proposed amendment to K.S.A. 44-557.** The Workers Compensation Act contains two (2) conditions precedent for an employee to meet prior to the ability to litigate a claim. The first one is a notice of the accident to the employer within ten (10) days (may be extended to 75 days for just cause); the second is an employee must make a written claim upon the employer for benefits within 200 days. Prior to 1993, the statute allowed an extension of the 200-day rule of up to one (1) year if the employer had failed to file an accident report. A revision in 1993 clouded that one-year extension language by stating that if an accident report was not filed by the employer (within 28 days), then a proceeding for compensation must be commenced by filing an **application** with the Director within one (1) year. An **application** has been considered to be the filing of a Form E-1 (application for regular hearing). The statute would seemingly say that instead of having the written claim requirement extended to one (1) year, a claimant must now file an **application** (Form E-1) within one (1) year. That would put the statute in direct conflict with K.S.A. 44-534 (the general workers compensation statute of limitations) which says one must file an **application** with the Director within two (2) years of the last payment of compensation or three (3) years from the date of accident. Under a literal reading, if an employer does not do what is required by statute (timely file an accident report), the claimant is penalized by having to file the Form E-1 within one (1) year. The Workers Compensation Board has issued at least two (2) opinions in this area noting the mistake and indicating that surely this is not what the Legislature intended to do, and so held. The proposed amendment would insert the language back to its pre-1993 meaning and extend the 200-day rule to one year in the case of a failure by the employer to file an accident report.

There is a proposal to amend subsection (d) to prosecute the repeated failure of any employer to file an accident report (present language is the “knowing failure.”). Further, the penalty against a workers compensation insurance carrier was stricken since the duty to file an accident report under subsection (a) is solely upon the employer.

Also, subsection (e) is proposed to be amended so that the proceeding to recover the \$250 penalty is pursuant to the Kansas Administrative Procedures Act (KAPA) and not in the district court of Shawnee County.

15. **Proposed amendment to K.S.A. 44-557a.** This proposed amendment would allow the Division of Workers Compensation to collect not only the medical information it now collects, but also hospital charges and related diagnostic procedure codes. The Senate added a penalty paragraph for self-insured employers, pools, insurance carriers, and/or vocational rehabilitation providers who fail to provide statistical information.
16. **Proposed amendment to K.S.A. 1999 Supp. 44-567.** This is a proposed amendment to K.S.A. 44-567 to replace the references to K.S.A. 44-510 with the corresponding reference to the appropriate new sections that will replace K.S.A. 44-510 upon its repeal.
17. **Proposed amendment to K.S.A. 1999 Supp. 44-576.** This is a proposed amendment, dealing with the state self-insurance fund, which would allow the secretary of administration to set a self-insurance assessment rate for each state agency based upon the accidental injury and occupational disease experience of that particular state agency in place of a single self-insurance assessment rate for all state agencies. This was formerly Senate Bill 139.
18. **Proposed amendment to K.S.A. 44-5,104.** This is a proposed amendment, added by the Senate, which clarifies that accident prevention programs of carriers and pools shall be maintained and provided upon the request of the covered employer. Inspections necessary to determine the adequacy of the accident prevention services may be done on a random basis and based upon employer complaints, and the result shall be reported to the insurance commissioner. The information on the type of accident prevention programs will still be submitted to the secretary of human resources, who shall send the information and results to the insurance commissioner who shall widely disseminate information about the program. Further, the education requirements for an insurance carrier field safety representative was modified to delete business degrees and insert, in its place, industrial hygiene degrees along with other specific degrees and/or designations, or five (5) years of experience.
19. **Proposed amendment to K.S.A. 44-5,120.** There is a proposed amendment made to K.S.A. 44-5,120 (d)(20), the fraud and abuse administrative statute, which section deals with the failure to file required documents and reports, to make an exception for failure to file accident reports, which will be prosecuted pursuant to the K.S.A. 44-557 proceeding.
20. **Proposed amendment to K.S.A. 44-5,122.** The Senate added a proposed amendment which would allow the assistant attorney general, assigned to the Division of Workers Compensation, the authority to prosecute a criminal fraud and abuse case which the county attorney fails to prosecute within 90 days.

21. **Proposed amendment to K.S.A. 44-5,125.** This is a proposed amendment to K.S.A. 44-5,125, the criminal fraud and abuse statute, which would extend the statute of limitations to five (5) years.

22. **Within the repealer provision of the proposed legislation,** along with other statutes, the bill would repeal K.S.A. 44-513 which statute should have been repealed in the 1993 reforms as it was abrogated by other statutes. K.S.A. 44-513 provides for tendering payment into the district court or to the director for death claims where only the apportionment of the benefits is not agreed to by the dependents. The statute is no longer necessary because amendments over the years to K.S.A. 44-510b have provided a statutory formula for apportionment of benefits once the determination of dependency has been made. Another statute which would be repealed would be K.S.A. 44-501a, which the Kansas Supreme Court declared unconstitutional in the *Osborne* case. This statute was an attempt to apply K.S.A. 44-501 retroactively, which attempt failed.

Tom Whitaker

(f) **Confirmatory test.** (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite ¹	15
Cocaine metabolite ²	150
Opiates:	
Morphine	2,000
Codeine	2,000
6-Acetylmorphine	10 ng/ml
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine ³	500

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid.

²Benzoylcegonine.

³Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

⁴Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(g) **Reporting results.** (1) The laboratory shall report test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number).

(2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the employer. *Provided*, that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the

data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide the employer an aggregate quarterly statistical summary of urinalysis testing of the employer's employees. Laboratories may provide the report to a consortium provided that the laboratory provides employer-specific data and the consortium forwards the employer-specific data to the respective employers within 14 days of receipt of the laboratory report. The laboratory shall provide the report to the employer or consortium not more than 14 calendar days after the end of the quarter covered by the summary. Laboratory confirmation data only shall be included from test results reported within that quarter. The summary shall contain only the following information:

- (i) Number of specimens received for testing;
- (ii) Number of specimens confirmed positive for—
 - (A) Marijuana metabolite
 - (B) Cocaine metabolite
 - (C) Opiates
 - (D) Phencyclidine
 - (E) Amphetamine;
- (iii) Number of specimens for which a test was not performed.

Quarterly reports shall not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent disclosure of such data, the laboratory shall not send such a report until data are sufficiently aggregated to make such an inference unlikely. In any quarter in which a report is withheld for this reason, or because no testing was conducted, the laboratory shall so inform the consortium/employer in writing.

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) **Long-term storage.** Long-term frozen storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1-year period, an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen af-



Regulatory Services Division

Andrew Sabolic
State Relations Executive

Post-it® Fax Note	7671	Date	3/30	# of pages	2
To	Rep Al Lane	From	Andrew Sabolic		
Co./Dept.		Co.	NCCI		
Phone #		Phone #			
Fax #		Fax #			

March 30, 2000

The Honorable Al Lane
115-South
State Capitol Building
Topeka, KS 66612

Re: **Latest Fatal Benefit Proposal – Cost Impact**

Dear Representative Lane:

Here is the cost impact on the most recent fatal benefit proposal. The cost impact is based on the most recent, Kansas distribution of losses by injury type.

Proposal

- Increase the fatal benefit to \$250,000
- Provide an immediate lump sum of \$40,000
- Eliminate the remarriage penalty, therefore, the widow will continue to receive weekly benefits upon remarriage, but sacrifices the 100 week lump sum payout
- Increase the minimum weekly benefit to 50% of the SAWW (for fatal benefits only)
- The maximum weekly benefit remains the same, which is 66 2/3 or 75% of the SAWW
- The remaining \$210,000 is paid out over time

Impact

Fatal costs will increase by 41.7%, which results in an increase of 2.4% in total indemnity costs.
Total workers compensation costs will increase by 1.0%.

If you have any questions, please call me.

Sincerely,

Andrew Sabolic
State Relations Executive

AS:ah

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE

3-31-00

Attachment 3

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