

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:07 a.m. on January 30, 2001 in Room 521-S of the Capitol.

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

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

Conferees appearing before the committee: Sam Sellers, Kansas Assn. of Insurance Agents
Tim Madden, Dept. of Corrections
Roger Aeschliman, KDHR
Phil Harness
Rep. Nancy Kirk
Steve Rips, injured worker
Jeff Cooper, KTLA
Mitch Wulfekoetter, KS AFL/CIO
Pat Bush - Kansas Self Insurers Assn.
Terry Leatherman - KCCI
Brad Smoot - American Insurance Assn.
Jerry Slaughter - Kansas Medical Society

Others attending: See attached list

Introduction of Bills

Sam Sellers, Kansas Association of Insurance Agents, requested that a bill be introduced that would amend K. S. A. 44-559a, concerning the workers compensation insurance deductible option. (Attachment 1) Rep. Humerickhouse made a motion to introduce the requested bill as a committee bill. The motion was seconded by Rep. Grant. The motion carried.

Tim Madden, Department of Corrections, requested the introduction of a committee bill that would amend K. S. A. 75-4362, concerning the state drug screening program. (Attachment 2) A motion was made by Rep. Johnson to introduce the proposed bill as a committee bill. It was seconded by Rep. Levinson. The motion passed.

Roger Aeschliman, Deputy Secretary, Kansas Department of Human Resources (KDHR), brought before the committee a request to introduce four proposed bills: 1) concerns the Kansas Wage Payment Act at K. S. A. 44-324, 2) an amendment to K. S. A. 74-6703 concerning ex-officio members of the Kansas Commission on Disability Concerns, 3) Amendment to K. S. A. 74-710a(a), which describes how employers will be classified for the purpose of establishing UI tax rates, and 4) an amendment to K. S. A. 74-6502, which creates the Kansas Advisory Committee on Hispanic Affairs. (Attachment 3) Rep. Johnson moved that the four proposed bills be introduced as four committee bills. Rep. Ruff seconded the motion. The motion carried.

Hearing on: HB 2087 - Workers compensation; release of medical data restricted

Chairman Lane opened the hearing by introducing Phil Harness, Director of the Division of Workers Compensation, who explained the consequences of the bill.

Mr. Harness stated that the bill, as presently drafted, would present a dramatic change from the way discovery is being done in Kansas workers compensation. The bill would limit the respondent employer and/or its insurance carrier from inquiring into a claimant's medical history except for medical records which are "directly related to" the "injury or disability which is the subject of the claim or to a prior compensable injury"

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S
Statehouse, at 9:07 a.m. on January 30, 2001.

even if there is a release by the injured worker. ([Attachment 4](#))

Rep. Nancy Kirk had the bill introduced at the request of a constituent and her growing awareness of the importance of the privacy of medical records. The medical records unrelated to the injury are currently unprotected for all workers. ([Attachment 5](#))

Steve Rips, the injured worker for whom **HB 2087** was introduced, appeared before the committee to tell his story. He was assisted by Rep. Kirk. His refusal to sign a medical authorization resulted in his not receiving compensation for his injury. It is his belief that Kansas laws governing workers' compensation need to be adjusted to take into consideration the federal act that protects Americans with disabilities. ([Attachment 6](#))

Jeff Cooper appeared before the committee on behalf of the Kansas Trial Lawyers Association (KTLA) as a proponent of the bill. The association believes the bill addresses some very important concerns regarding privacy of the contents of medical records and provides a starting point for addressing the concerns. Mr. Cooper ended his testimony by answering questions from the committee. ([Attachment 7](#))

Mitch Wulfekoetter, Kansas AFL/CIO, appeared as a proponent of the bill. They support the concept of privacy for injured workers that the bill addresses. He stated that Steve Rips is a good example of the problem. It is very important to a lot of people that their complete medical records not be opened for all to see. He concluded his testimony by answering questions. ([Attachment 8](#))

Pat Bush, Kansas Self Insurers Association, appeared as an opponent of **HB 2087**. He feels that the bill would limit access to medical records even when an authorized release is obtained from the injured worker. The health care providers will be burdened with deciding what notes to send. The association believes it will have the most negative impact on the injured worker, as medical treatment will be delayed. ([Attachment 9](#))

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), testified as an opponent to the bill. He explained that the goal of workers compensation is to get the worker treated and back to work quickly after an injury. The KCCI feels that the bill may impede this process and be a detriment of employers and workers. They feel that a serious problem does not exist within the workers compensation system regarding the medical history disclosure. ([Attachment 10](#))

Brad Smoot, American Insurance Association, appeared as an opponent of the bill on behalf of their member companies and those they insure. They believe that: 1) the phrase "directly related" is vague and begs for confusion, delay and litigation, 2) the bill fails to identify a procedure for adjudicating a disputed request for medical information, and 3) the bill could unnecessarily complicate medical records handling in Kansas. ([Attachment 11](#))

Jerry Slaughter, Kansas Medical Society, stated that they do not have a position on **HB 2087**. They do question how a physician will decide what records are relevant and who is liable for releasing the wrong records or too much information.

Chairman Lane asked if there were others in the audience who wished to testify for or against **HB 2087**. There was no response and he closed the hearing on the bill.

Chairman Lane announced that the bill would be referred to the Workers Compensation Advisory Council.

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for Wednesday, January 31, 2001.

**HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE
GUEST LIST**

DATE: January 30, 2001

NAME	REPRESENTING
Kevin Barone	Hain/West Chkd.
John Frederick	The Boeing Company
Ed O'Malley	Overland Park Chamber
Jeff K. Cooper	Kansas Trial Lawyers Assoc.
John Humphrey Mark W. Smith	Kansas Trial Lawyers Assoc. ICS AFL-CIO
J.P. Small	KOCH INDUSTRIES; BOMBARDIER
J. Stubbs	Ks. Bldg. IND. ASSN.
Sam Sellers	KS Assoc. Ins. Agents
Tim Medden	Ks Dept of Corrections
Barb Conrad	Ks Trial Lawyers Assoc
Jim McHaff	KS AFL-CIO
Bud Smart	AIA
Kevin Davis	Am. Family Ins
Paul Davis	KS Bar Assn.

**HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE
GUEST LIST**

DATE: Jan. 30, 2001

NAME	REPRESENTING
Mark Pan	Manpower / SHRM
Chip Wheelen	Osteopathic Association
Mike Michael	Dept. of Admin.
Ernie Allen	Bottenberg & Assoc
Julie Clark	Halmark
Wren Mull	Kathy Damron & Assoc
Phil Balth	K f B
Mike Steinfert	Kansas Farm Bureau
Jen Koehler	Kansas Farm Bureau
Wanda Kinney	✓ Osage County
Patrick Bush	KSIA
George Barbee	KSIA
Gene AntRover	KATTP / KS Govt Consulting
Terry Leatherman	KCCI

44-532a. Workers compensation insurance; deductible option; payment of deductible by insurer; reimbursement by employer; pre-

mium credits; deductible not applicable in experience modification calculation; deductible amounts subject to reimbursement; benefits subject to assessments; state plan not required to offer deductible policies; provisions not applicable to self-insurers and group-funded pools. (a) Each insurer issuing a policy to assure the payment of compensation under the workers compensation act may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under the workers compensation act.

(b) The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers compensation in the same manner as payment or nonpayment of premiums. The insurer may require adequate security to provide for reimbursement of the paid deductible from the insured. An employer's failure to reimburse deductible amounts to the insurer shall not cause the deductible amount to be paid from the workers compensation fund under K.S.A. 44-532a, and amendments thereto, or any other statute. The insurer shall have the right to offset unpaid deductible amounts against unearned premium, if any, in the event of cancellation.

(c) Such deductible shall provide premium credits as approved by the commissioner of insurance, and losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification.

If the employer reduces or eliminates their deductible, the employer's experience modification shall be recalculated using the new, lower or no deductible.

(d) The commissioner of insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or be passed on to the worker.

(e) The deductible amounts paid by an employer shall be subject to reimbursement as provided for under K.S.A. 44-567, and amendments thereto, when applicable. All compensation benefits paid by the insurer including the deductible amounts shall be subject to assessments under K.S.A. 40-566a[*] and 74-713, and amendments thereto. The Kansas workers compensation plan under K.S.A. 40-2109, and amendments thereto, shall not require deductibles under policies issued by the plan.

(f) This section shall not apply to employers who self-insure against liability for workers compensation, group-funded workers compensation pools established pursuant to K.S.A. 44-581 *et seq.*, and amendments thereto, or municipal group-funded pools established pursuant to K.S.A. 12-2616 *et seq.*, and amendments thereto.

(g) The provisions of this section shall be effective on or after July 1, 1991.

History: L. 1991, ch. 144, § 1; May 23.

Sam Sellers

House Business, Commerce & Labor Committee

1-30-01

Attachment 1




DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(785) 296-3317

Bill Graves
Governor

Charles E. Simmons
Secretary

MEMORANDUM

DATE: January 30, 2001
TO: House Business, Commerce and Labor Committee
FROM: Charles E. Simmons 
Secretary of Corrections
RE: Request for Bill Introduction
1 rs 0265

The Department of Corrections respectfully requests introduction by the House Business, Commerce and Labor Committee of the attached bill draft. A summary of the proposed bill is presented below.

Employee Drug Testing

K.S.A. 75-4362 would be amended to include state parole officers and all correctional facility staff within the definition of "safety sensitive positions" for the purposes of the state drug screening program. Additionally, this proposed bill would remove the restriction on the discipline of employees who engage in the use of illegal drugs relative to participation in a drug treatment program.

I appreciate your consideration of our request, and would be pleased to answer any questions you might have.

CES/TGM/cj

w/attachment

House Business, Commerce & Labor Committee

1-30-01

Attachment 2

PROPOSED BILL NO. _____

By

AN ACT concerning public officers and employees; relating to drug testing; amending K.S.A. 2000 Supp. 75-4362 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 75-4362 is hereby amended to read as follows: 75-4362. (a) The director of the division of personnel services of the department of administration shall have the authority to establish and implement a drug screening program for persons taking office as governor, lieutenant governor or attorney general and for applicants for safety sensitive positions in state government, but no applicant for such a position shall be required to submit to a test as a part of such program unless the applicant is first given a conditional offer of employment. The director also shall have the authority to establish and implement a drug screening program for persons currently holding the office of governor, lieutenant governor or attorney general or safety sensitive positions in state government, based upon reasonable suspicion of illegal drug use by any such person.

(b) Any public announcement or advertisement soliciting applications for employment in a safety sensitive position in state government shall include a statement of the requirements of the drug screening program established under this section for applicants for and employees holding such position.

~~(c) No person shall be terminated solely due to positive results of a test administered as a part of a program authorized by this section if: (1) The employee has not previously had a valid positive test result; and (2) the employee undergoes a drug evaluation and successfully completes any education or treatment program recommended as a result of the evaluation.~~ Nothing herein shall be construed as prohibiting demotions, suspensions or terminations pursuant to K.S.A. 75-2949e or 75-2949f, and amendments thereto.

(d) Except in hearings before the state civil service board

regarding disciplinary action taken against the employee, the results of any test administered as a part of a program authorized by this section shall be confidential and shall not be disclosed publicly.

(e) The secretary of administration may adopt such rules and regulations as necessary to carry out the provisions of this section.

(f) "Safety sensitive positions" means state law enforcement officers who are authorized to carry firearms, state ~~corrections officers~~, correctional facility staff, state parole officers, juvenile correctional facility staff, heads of state agencies who are appointed by the governor and employees on the governor's staff.

(g) All persons employed within a correctional institution, as defined in K.S.A. 21-3826, and amendments thereto, or a juvenile correctional facility, as defined in K.S.A. 38-1602, and amendments thereto, or state parole officers may be subject to drug screening based upon reasonable suspicion of illegal drug use.

Sec. 2. K.S.A. 2000 Supp. 75-4362 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

REQUEST FOR BILL INTRODUCTION

Kansas Department of Human Resources – January 30, 2001

1 - Amendment to the Kansas Wage Payment Act at K.S.A. 44-324. This amendment simplifies and clarifies our collection procedure under that act. It delays the acceptance of an assignment for collection until the agency's order is final and all appeals are exhausted. It also eliminates the distinction between claims over \$10K and claims under \$10K.

2 - Amendment to K.S.A. 74-6703, which describes the ex officio members of the Kansas Commission on Disability Concerns. This amendment updates the descriptions of some of the ex-officio members of the Commission.

3 - Amendment to K.S.A. 44-710a(a), which describes how employers will be classified for the purpose of establishing UI tax rates. Our Labor Market Information Services unit (LMIS) must switch from the old Standard Industrial Classification system (SIC), which classifies employers according to their end products or services, to the new North American Industry Classification System (NAICS), which classifies employers according to the processes they use in their business. The statutory amendment simply changes the word "division" to "sector" wherever it appears in subsection (a) of K.S.A. 44-710a. Regulatory changes are also planned.

4 - Amendment to K.S.A. 74-6502, which creates the Kansas Advisory Committee on Hispanic Affairs (KACHA). This amendment staggers the three-year terms of office of KACHA members so at least two of the seven members are appointed or reappointed each year. This will help provide more continuity in the committee. The amendment also makes clear that the term of office of a committee member does not expire until their successor is appointed.

Electronic versions of these proposed bills have already been forwarded to the Revisor of Statutes.

CONTACT: Roger Aeschliman, 296-0821
Don Doesken, 296-4902

House Business, Commerce & Labor Committee

1-30-01

Attachment 3

**TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE
& LABOR COMMITTEE
HOUSE BILL NO. 2087
January 30, 2001**

By Philip S. Harness

The bill, as presently drafted, presents a dramatic change from the way discovery is being done in Kansas workers compensation. "Discovery" is the term used to allow all litigants to use certain tools available to them to ascertain facts and inquire into certain areas of knowledge of witnesses in order to narrow issues for trial. The underlying purpose for very liberal discovery rules, as we have in Kansas for civil court procedures, is to allow the parties to get at the truth. This is in stark contrast to the historical trial procedure which could best be described as trial by ambush, by using secret witnesses, producing surprise documents, and not allowing other litigants the opportunity to hear what will be testified to at trial until the trial itself when it is too late to rebut it. The modern view is to allow a pretrial opportunity to question witnesses for a full and fair disclosure of facts that will be testified to at trial, compel the production of documents, and gather evidence to rebut groundless claims and/or defenses.

The bill would limit the respondent employer and/or its insurance carrier from inquiring into a claimant's medical history except for medical records which are "directly related to" the "injury or disability which is the subject of the claim or to a prior compensable injury" even if there is a release by the injured worker. Some issues arise:

1. K.S.A. 44-501(c) states that an award of compensation must be reduced by the amount of any preexisting functional impairment. In order to prove the existence of preexisting impairment, the employer must have access to past medical records. The bill, however, seems to limit access to past records to only those relating to "prior compensable permanent injury." Not all preexisting functional impairments are due to compensable injuries. For example, there could be a preexisting impairment resulting from an earlier automobile accident, an old softball injury, or a slip and fall in a grocery store parking lot. Without the availability of these medical records, the bill would effectively prevent the reduction of the award which is required by K.S.A. 44-501(c).
2. Who makes the call as to whether the records are "directly related"? It may well fall to a medical records technician in the physician's office and it may not be that obvious to the layperson's eye, especially considering that work-related aggravation of a preexisting condition is compensable. One should consider the workers compensation case of *Fees v. Chance Industries*, Docket No. 172,192, wherein the Workers Compensation Board found compensable an impairment to the back due to an altered gait which was the result of a work-related injury to the claimant's left ankle. Also, in *Hammerschmidt v. Kingman Community Hospital*, Docket No. 166,016, the Board found compensable permanent impairment to the claimant's back caused by an altered gait due to a knee

injury. One-third of the back problem was traced back to 1977 when the claimant was seen for degenerative disc disease and two-thirds attributable to the altered gait following the 1989 knee injury, and noted she had had no knee problems since prior knee surgery in 1987.

Records for an “unrelated” condition could hold information about whether a claimant had any past complaints about the condition in issue in the workers compensation matter or the course of those complaints. This is important for such issues as causation and apportionment of non-medical benefits. For example, if a claimant had a non-work-related prior car accident and injured his/her left arm, that would likely not be a “prior compensable injury,” but information about that accident and the injury suffered would certainly be relevant to a current claim for another injury to the same arm. Under the wording of House Bill 2087, it could well be outside the reach of the parties and the administrative law judges if the physician’s medical records clerk determined that the prior records were not “directly related to” a current claim to the same arm. Because the litigants may be uneasy with a third party (like medical records clerks) making this determination, it is foreseeable that all respondents will be asking for the administrative law judges to issue Orders of Production of records to all physicians just to make sure that records were not mistakenly left out. In order for Orders for Production to be issued, the case needs to be docketed (so the judge would have the docket in front of them to issue such an order). Workers compensation is set up such that employers are encouraged to voluntarily offer workers compensation benefits without the necessity of docketing a claim and litigating it. Employers now would be encouraged not to voluntarily offer those benefits in order to provoke a claimant to docket the claim so that the employer could get this needed Order for Production.

3. It would appear that it is up to the medical community to go through these records with a fine-toothed comb, presumably at their own expense, and make these legal judgments as to what is “directly related.” Health care providers may be reluctant to release any records for fear of whatever consequence may be attached as a result of violating this bill, which will trigger more depositions of health care providers. Before releasing medical information, a health care provider would be required to review the records and determine which are related to “prior compensable permanent injury.” The health care provider may not even know whether the records pertain to a compensable injury or whether that injury is permanent in nature. This may not be possible for the health care provider to determine, especially in those instances where treatment was eventually transferred to another provider. Even if there is continuity of health care providers, from one injury to the next, the first injury may have been ruled not compensable by an administrative law judge, after treatment and care for the first injury. Even though the same physician is engaged to treat for the second injury, he/she may or may not know of the finding by the administrative law judge.
4. Workers compensation claimants in Kansas are required to give notice only of an

accident and are not required to give notice of particular body parts injured with specificity. Whatever medical records are "directly related" may change throughout the course of the case.

5. There is a backdrop of federal regulations to this issue. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required congress to establish federal privacy standards by August, 1999, and failing that deadline, the Department of Health and Human Services (HHS) has the authority to issue regulations which establish medical records privacy standards. HHS published proposed regulations on November 3, 1999, and final regulations on December 24, 2000. Generally, the rules appear to exclude workers compensation programs.

If I can provide further information, please advise.

NANCY A. KIRK
 REPRESENTATIVE, FIFTY-SIXTH DISTRICT
 SHAWNEE COUNTY
 HOME ADDRESS: 932 FRAZIER
 TOPEKA, KANSAS 66606
 (785) 234-8806

OFFICE: ROOM 284-W STATE CAPITOL
 TOPEKA, KANSAS 66612-1504
 (785) 296-7673



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS

AGENDA CHAIRPERSON
 TAXATION
 INSURANCE
 KANSAS 2000 SELECT
 INTERSTATE COOPERATION
 JOINT COMMITTEE LONG TERM
 CARE SERVICE

TESTIMONY ON HB 2087

Thank you for allowing me to testify today on HB 2087. This bill is the result of a request from a very concerned constituent and my growing awareness of the importance of the privacy of medical records. Currently our worker's compensation statutes, rules and regulations permit the employer or insurance company to have any medical records they request that accrued before the injury, at the time of the injury, and after the injury. A reasonable person would assume the information to be requested would be related to the injury, but there are no limits to the information that can be requested. The release of information forms employees are expected to sign can be open ended or so broad that all medical information can be obtained. In fact, any information the employer or insurance company wants must be provided or the employee risks compensation.

My constituent is a member of a class of individuals protected by ADA. Initially there were questions whether the insurance company had violated his rights under ADA. An opinion was requested from the Attorney General. She opined that a potential conflict exists between the Kansas Worker's Compensation Act and the ADA. However, if an employer requests a medical examination or medical inquiries that are job-related and consistent with business necessity, there is no conflict. Whether the requests meet the basic requirements will have to be decided on the facts of each case.

Because our worker compensation rules do not require the requests for medical information to be limited to the injury or its circumstances, the employer is at risk for charges of violating ADA regulations. The injured worker who is not a member of a protected class has no such protection.

The medical records unrelated to the injury are currently unprotected for all workers. Given the climate in this country surrounding the importance of protecting medical information, I believe it is time to change our worker's compensation rules and bring them into line with our notions of privacy. In no way am I suggesting the employer or insurance company should not have ready access to medical information related to the injury. This bill is simply the beginning of the discussion. I leave it up to those of you who are more versed in the complex rules of worker's compensation to make this bill work.

House Business, Commerce & Labor Committee

1-30-01

Attachment 5

TESTIMONY FOR HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR

I would like to thank the Chair and the other members of the committee for allowing me to testify before you on the important issue of medical privacy.

The Kansas laws governing workers' compensation apparently have never been adjusted to take into consideration the federal act that protects Americans with Disabilities Act (ADA). There are built-in conflicts between the two pieces of legislation. I do think this needs to be addressed by this committee and the Kansas Legislature.

I am Steve Rips. I am a person with a disability. I want to share with you why I feel so strongly that our Kansas laws need to be changed.

At the time of my accident, I had been with the same employer for 14 years. I attempted to sit in a chair that had a loose seat. As I sat down the seat moved off the chair. I fell through the chair frame injuring the area between my shoulder and my elbow and a portion of my upper back. I went to a doctor because the area continued to hurt. The physician initially thought my arm was broken and recommended that I see a specialist. The specialist determined that the bone was not broken, just very sore.

My employer began the process of notifying his workers' compensation insurance company concerning my injury and the need to pay for the medical expenses. The insurance company sent forms for me to complete including the attached Medical Authorization form.

When I read the Medical Authorization form I was angry and insulted. If I signed this form, all my medical information, including psychiatric records would be made available leaving me vulnerable to discrimination. People with psychiatric problems face discrimination throughout our society and I do believe that our workers' compensation laws support the continuation of this discrimination. I was especially insulted by the sentence in the second paragraph. What does a communicable or venereal disease has to do with an injured arm? I refused to sign this form and thereby gave up my right to have workers' compensation pay for my work injuries.

House Business, Commerce & Labor Committee

1-30-01

Attachment 6

Nothing in this medical authorization form limits the search of medical records to those related to the injury. Nothing in the Kansas law requires the requested medical records be limited to job related issues or be consistent with a business necessity. Both of which are required by ADA.

The current Kansas Workers' Compensation laws allow employers to go on a medical fishing trip. My rights to medical privacy should not be pushed aside simply because I was injured and had rightly been considered for workers' compensation reimbursement for my work related injury.

There is no excuse for permitting a medical authorization form to be used that gives the employer wholesale access to the employee's medical records. Using global access forms may be more convenient for the insurance company, but it cannot be at the expense of medical privacy for the disabled individual or any other employee.

I do believe that if any of you were asked to sign this medical authorization form you would rightly refuse to do so or at the least be very angered. I do understand the complexity of changing Workers' Compensation laws, but it is time we did so.

I thank you for your time and I would be willing to stand for questions.

MEDICAL AUTHORIZATION

TO: _____

SUBJECT: REQUEST BY THIRD PARTIES FOR MEDICAL REPORTS AND RECORDS

THE ADDRESSEE(S) are hereby authorized to give the following named service company, to-wit: KRHA SELF INSURANCE FUND or any representative of them, any and all information which any of them may request from you regarding my physical condition, medical treatment rendered by you for me at any time and all medical records covering such medical examinations, diagnosis, prognosis, treatment and hospitalization, as the case may be, and to allow any of them or any physician selected by them to examine X-ray pictures of me, and to inspect, review and make copies, including photostatic copies, of all medical records which you have in your possession or control regarding my past, present and future physical condition and/or treatment.

You are hereby authorized to release information pertaining to a communicable or venereal disease including, but not limited to diseases such as hepatitis, syphilis, gonorrhea and the human immunodeficiency virus.

I further authorize any addressee to accept a photostatic copy of this Medical Authorization with the same force, effect and release as the original and this Medical Authorization is to remain in full force and effect until cancelled by me in writing.

I fully understand that I am waiving my right to object to your releasing and providing such information by reason of it being personal, privileged information or on any other grounds.

Signed on this _____ day of _____, 19____ at _____, Kansas.

(Signature)

(Name typed or printed)

WORKERS' COMPENSATION

EMPLOYER Tevis Restaurant GROUP _____

If possible, state employee's past wages for 3 months previous to date of accident.
Please give fully and carefully all information requested.
This is IMPORTANT for Employer, Employee, and the Insuror.

Employee Steve Rippl
Date employee ceased to work 2-18-99
Number of Hours employee worked per week 19
Number of Days employee worked per week 4
Number of Hours employee worked per day 4 or 7
Did employee pay part of earnings to helpers? no

Social Security # _____
How long employed? 14 years
Is employee paid by hour, day, week, or month? _____
At what rate? 5.90 per hour
Number of days employee was hired to work per week? 4
Number of hours employee was hired to work per week? 19

	DATES (INCLUSIVE) OF EACH PERIOD PAID FOR			GROSS AMOUNT PAID EMPLOYEE INCLUDING TIPS AND OVERTIME.
	FROM	TO	YEAR	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
Total				

This is a correct statement of Employee's earnings as actually taken from our payroll records.

List fringe benefits. _____
By RICK TEVIS
Title MANAGER

DO NOT FILL IN

AWW _____
Weekly TTD Rate _____

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2087

To: Chairman Al Lane and Members of the
Committee on Business Commerce and Labor

From: Jeff K. Cooper, Kansas Trial Lawyers Association

Date: January 30, 2001

Dear Chairman Lane and Members of the Committee:

My name is Jeff K. Cooper, and I am appearing on behalf of the Kansas Trial Lawyers Association in support of House Bill No. 2087. On behalf of the Kansas Trial Lawyers Association, we would like to advise the Committee that we believe the bill addresses some very important concerns regarding privacy of the contents of medical records.

The right to privacy is one of the most important rights guaranteed to citizens of the United States and the State of Kansas. The current workers compensation system requires an injured worker to waive all of their rights with regard to confidentiality of medical records when a workers compensation claim is filed. Highly personal, private information, which is not relevant nor directly related to the injury, or workers compensation claim, may be made known to the employer to the detriment of the injured worker.

An example of such a result might be a worker who suffers a low back injury, and in the course of obtaining all of the worker's prior medical records, the records reveal that the injured worker has a past history of psychological counseling following a divorce, or prior history of treatment for drug or alcohol abuse. The discovery of information such as divorce counseling or treatment for drug or alcohol abuse would certainly not be relevant to the issues pertaining to the low back injury, however, would serve as a source of embarrassment, as well as possible other consequences, if made known to the employer.

The Kansas Trial Lawyers Association asserts that House Bill No. 2087 correctly identifies the problems related to the current system of release of medical records, and provides a starting point for addressing the concerns. We believe the proper course of action requires a balance between the value of privacy to the injured worker and the employers' and insurance carriers' need to obtain information relating to the injury at work and to prior compensable permanent workers compensation injuries. Greater emphasis should be placed on privacy of medical records and the information contained therein which is not relevant to the workers compensation claim, and steps need to be taken to protect those interests of privacy.

House Business, Commerce & Labor Committee

1-30-01

Attachment 7

HOUSE BILL NO. 2087

CONFEREE: MITCHELL D. WULFEKOETTER
Presented on Behalf of
KANSAS AFL/CIO

I would like to thank the Chair and the Committee for the opportunity to express the views of the Kansas AFL/CIO on House Bill 2087. My name is Mitchell Wulfekoetter. I am a Topeka attorney and have been involved in private practice with the firm of McCullough, Wareheim & LaBunker P.A. since 1987. A majority of my practice has been and is workers compensation claims.

The Kansas AFL/CIO certainly supports the concept of privacy for injured workers that House Bill 2087 addresses. Currently, Regulation 51-9-10(3) creates an absolute blanket waiver of medical privileges when a worker seeks workers compensation benefits. The Regulation does not in any way narrow the waiver of the medical privilege and confidentiality to medical records or medical information that is relevant to the workers compensation claim. This allows employers, their insurance carriers, and their attorneys to obtain all medical information about an injured Kansas, even if the medical information is not relevant to the pending claim and would not be probative of any issues relating to the claim.

I could give many examples of situations where very personal and private medical information was obtained on injured workers despite the fact that it is irrelevant to the claim. One example is hypothetical "Mary" who injured her neck lifting a cinder block. The insurance carrier and their attorney asked and received the names and addresses of all medical professionals who have provided professional services, for both physical medicine and emotional medicine. They might discover that "Mary" had a difficult time giving birth to her second child and that a c-section was required as well as counseling for postpartum depression. There is no relevance of such personal and private medical information to the work comp claim and the insurance company, their attorney, and the employer have no business obtaining this information about "Mary".

Allowing carriers, employers, and their attorneys blanket access to this information is problematic for many reasons. First and foremost, all Kansas citizens have rights of privacy because of the State and U.S. Constitution. The right to privacy is also a moral and ethical right. An injured worker should retain these concepts of privacy if the medical information sought has no bearing on the issues of the claim. Allowing blanket production of all medical information, especially in the hands of the employer, serves no legal purpose and may result in actual or subjective repercussions to the worker's employment relationship and personal psyche. It could also result in an injured worker deciding not to pursue their rights under Kansas Law, especially if the person has a delicate or personal medical history that would not in any other way be relevant to the employer or the employee's ability to do his or her job.

The Kansas AFL/CIO submits that House Bill 2087 identifies and addresses this very important concept of privacy for injured workers. Undoubtedly, the passing of this law would result in additional work by medical providers, insurance companies, and attorneys. We submit that when you balance what should be Kansas policy of privacy for injured workers against the nominal burdens on the system, privacy and privacy expectations more than justify the passing of House Bill 2087.

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Attachment 8

Testimony In Opposition Of HB 2087
January 30, 2001

Mr. Chairman, members of the committee, my name is Pat Bush, I'm the past-president of KSIA, the Kansas Self-Insurers Association. I'm here this morning to testify on behalf of KSIA in opposition of House Bill No. 2087. While I understand the legislature often looks for ways to improve the workers compensation system in this State, I must explain to you the negative impact HB 2087 will have on our current system.

Let me list and explain a few of the negative implications this bill will have on those of us administering workers compensation benefits to the injured workers of this State.

1. HB 2087 limits access to medical records even when an authorized release is obtained from the injured worker. This alone contradicts an individuals right to decide who can or cannot receive copies of their medical records.

2. This Bill limits an administrators access to information that is used to help identify causation and apportionment for non-work related contributing factors, which will lead to workers being compensated for non-work

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related impairments. This is definitely not the intent of workers compensation benefits and I'm sure not the change this legislature intends to make.

3. HB 2087 will also lead to increased litigation. Either party in a claim wishing to obtain additional medical records will be forced to have the claim docketed to get an "Order of Production" for the records. I'm not even sure HB 2087 will recognize an "Order of Production" because it clearly states the director of workers compensation is also excluded from obtaining this information. None the less, by pursuing an "Order of Production", the already overburdened workers compensation system will experience a needless uptake of docket hearings in order for the parties to gain access to information which is instrumental in processing claims effectively.

4. The health care providers will be burdened with trying to sanitize clinical notes to comply with HB 2087. This will be time consuming to the health care provider. Who I'm sure will pass the cost along to the employer through copying fees, which in turn raises the cost to provide injured workers with benefits. I don't believe it is the legislative intent to raise the cost to provide workers compensation coverage in Kansas.

5. KSIA questions the need for legislation as outlined in HB 2087. Those of us administering workers compensation benefit programs across the state are not abusing claimant's privacy rights with our current process. Just because the group health care side of the equation may be having problems in this arena does not automatically mean changes should be made on the workers compensation side where no problems have been specifically identified.

In closing, let me remind this committee that HB 2087 will have the most negative impact on the injured worker. Medical treatment for the individual who sustains a work related injury will only be delayed as the administrators of the workers compensation benefits programs would be hindered by the road blocks of HB 2087 and have to detour from current practices to obtain the information necessary to make decisions in authorizing and directing medical care.

Thank you.

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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HB 2087

January 30, 2001

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Vice President – Legislative Affairs
Kansas Chamber of Commerce and Industry

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Vice President for Legislative Affairs for the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to express why the Kansas Chamber has concerns regarding HB 2087.

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

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

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

The intention of the bill appears to be to restrict the flow of medical information to an employer, insurer or the Division of Workers Compensation about an individual seeking workers compensation. There are several reasons why this change could adversely and unfairly affect an employer's management of a workers compensation case.

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Attachment 10

uring the 1993 reform of the workers compensation act, a key policy decision reached by Kansas lawmakers was that employers should only be responsible for compensating an injured worker for the degree in which an injury was caused by work. In other words, when a minor workplace occurrence was the final element in a significant trauma, conditions that preexisted the accident would be considered when determining financial compensation. Reviewing whether a preexisting condition would be applicable in a workers compensation case can necessitate a review of the medical history of an injured worker. By limiting medical review to the subject of the claim or to prior compensable permanent injuries, HB 2087 could preclude an employer from determining a preexisting condition.

When a workplace injury occurs, a key goal of all parties should be the prompt return to work of the injured worker. Return to work accomplishes mutual goals for the employer and employee. For the worker, the longer they are off work, the less likely they are to return to work. For the employer, return to work returns the employee to productivity and can reduce the overall compensation that will be awarded in a case. Successful return to work programs need medical information to assure a safe reintegration to the workforce. It would appear that a treating physician in a workers compensation case would retain the right to prior medical information. As a result, their critical opinion on return to work limitations should still be available. However, if HB 2087 does impede on the implementation of return to work efforts, it would be to the detriment of employers and workers.

Please consider one more point about an employer obtaining medical information about a worker beyond the scope of a workers compensation case. If information obtained leads to some change in the employee's position of employment, the employer would be open to significant charges under the Americans With Disabilities Act.

To my knowledge, a serious problem does not exist within the Kansas workers compensation system regarding the medical history disclosure. As a result, the Kansas Chamber would urge this Committee to not approve HB 2087. Thank you for the opportunity to comment on the legislation before you today. I would be happy to answer any questions.

BRAD SMOOT

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**Statement of Brad Smoot
Legislative Counsel
American Insurance Association
House Business, Commerce & Labor Committee
Regarding 2001 House Bill 2087
January 30, 2001**

Mr. Chairman and Members:

The American Insurance Association is a trade association representing more than 300 property and casualty insurers, most of whom do business in Kansas. AIA member companies provide auto, homeowners, business liability and workers compensation insurance. On behalf of our member companies and those they insure, we must respectfully oppose 2001 House Bill 2087.

First, when applied to medical information, the phrase "directly related" (line 18) is vague and begs for confusion, delay and litigation. It also places the medical provider in the role of making legal judgments about what information is "related" to a claim . . . a function normally left to the claim settlement and adjudication process itself.

Second, the bill fails to identify a procedure for adjudicating a disputed request for medical information. Will records need to be subpoenaed? How will the release of records be enforced? What liability exposure does a medical provider incur for the inappropriate release of medical records or the failure to disclose records that should have been released? Won't all these questions and others delay the prompt adjudication of a workers claim for health and disability benefits?

Finally, the issue of medical records privacy is a huge issue encompassing all types of insurers (accident & health, life, auto, as well as workers comp), providers (doctors, hospitals, rehab services, etc.) as well as employers. It is the subject of federal law and regulation, and a National Association of Insurance Commissioners model regulation. Kansas Insurance Commissioner Sebelius, NAIC President, has requested introduction of the model bill in the House Insurance Committee. AIA supports the NAIC model bill and is concerned that H 2087 could unnecessarily complicate medical records handling in Kansas.

For the above reasons, we would urge the Committee not to recommend H 2087 and refer the matter for further review and comment by the Workers Compensation Advisory Council. Thank you for consideration of our views.

House Business, Commerce & Labor Committee

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Attachment 11