

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:10 a.m. on February 14, 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
Renae Jeffries, Revisor of Statutes
Jerry Donaldson, Legislative Research Department
Bev Adams, Committee Secretary

Conferees appearing before the committee: Tina DeLaRosa, KDHR
Phil Harness, Director of Division of Workers Compensation
Kathy Greenlee, Kansas Insurance Department
Jim Keating, Ks. State Fire Chiefs Association
Jason White, Ks. Emergency Medical Services Assn.
Terry Humphrey, KTLA
Wayne Maichel, Ks. AFL/CIO
Sandy Jacquot, League of Kansas Municipalities

Others attending: See attached list

Hearings on: HB 2300 - Shorter terms for the Kansas Advisory Committee on Hispanic Affairs.

Tina DeLaRosa, Executive Director of the Kansas Advisory Committee on Hispanic Affairs, Kansas Department of Human Resources (KDHR), appeared as a proponent of the bill. The purpose of the bill would be to correct an imbalance in the rotation of service of the members of the Kansas Advisory Committee on Hispanic Affairs. ([Attachment 1](#))

No others were present to testify for or against the bill and Chairman Lane closed the hearing on **HB 2300**.

HB 2301 - Workers compensation; computation of benefits and administrative changes.

Phil Harness, Director of the Division of Workers Compensation, KDHR, appeared as a proponent of the bill. The bill is a compilation of recommendations to amend the Workers Compensation Act passed by the Workers Compensation Advisory Council. The main change deals with the state's average weekly wage of volunteer public sector personnel. Others changes concern post-award medical procedure and wording to modify a health care provider's usual charge. ([Attachment 2](#)) Mr. Harness finished his testimony answering questions from the committee.

Kathy Greenlee, General Counsel, Kansas Insurance Department (KID), appeared on behalf of the Kansas Insurance Department in support of the bill. The Kansas Insurance Department's concern is that one workers comp pool regulated by KID was not paying benefits figured on full-time benefits to volunteer firefighters who are injured on the job serving as firefighters. ([Attachment 3](#))

Jim Keating, Kansas State Fire Chiefs Association, appeared as a proponent of the bill. His concern is that volunteer firefighters injured while performing as firefighters and who are unable to return to their regular jobs, received compensation based on community service work at maximum benefit calculated from \$37.50 per week. ([Attachment 4](#))

Jason White, Kansas Emergency Medical Services Association, testified as a proponent of the bill. The ambulance services in Kansas are having a crisis due to problems recruiting and retaining qualified staff. One of the issues relate to the concern that an injury while providing a volunteer service will significantly affect

CONTINUATION SHEET

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE, Room 521-S Statehouse, at 9:10 a.m. on February 14, 2001.

the person's ability to meet job and family needs with the combined impact of potentially having no income. (Attachment 5)

Terry Humphrey, Kansas Trial Lawyers Association, appeared as a proponent of the bill. The KTLA fully supports the bill for all the reasons that the committee has heard so far. (Attachment 6)

Wayne Maichel, Kansas AFL/CIO, appeared before the committee to offer their support of the bill. He is also a member of the Workers Compensation Advisory Council (WCAC). The changes contained in the bill were discussed by the WCAC and have been recommended unanimously to the Legislature to be passed.

Sandy Jacquot, League of Kansas Municipalities (KLM), appeared before the committee as an opponent. The KLM disagree about the language and the manner in which volunteer firefighters should be covered for workers compensation purposes. They do not believe that this bill addresses all of the competing public policies or legal impediments that are inherent in this issue. They feel that the bill only raises more questions and problems. (Attachment 7) Ms. Jacquot concluded her testimony by answering questions from the committee.

No others were present to testify for or against the bill. Chairman Lane closed the hearing on **HB 2301**.

Chairman Lane adjourned the meeting at 10:05 a.m. The next meeting is scheduled for February 15, 2001.

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: February 14, 2001

NAME	REPRESENTING
Emily August	LKM
Jason White	KEMSA
Bill Curtis	Ks Assoc of School Bds
Shirley Allen	Bothemburg Assoc
Terry Leatherman	KCCI
Wayne Maisher	K. AFL-CIO
Fred Luckie	KANSAS HOSP. ASSN
Andrew Sabolic	NCCI
Lawrence D Baker	The City of Overland Park
JIM KEATING	K.S.A.F.C.
PAT LEHMAN	KFSA
Jeff Bothenberg	Kansas Peace Officers Ass'n
TERRY A. TRACY	KS-DWC
Rick Pittman	Health Midwest
Rachel Thomas	DHR-WORKERSCOMP -

HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: Feb 14, 2001

NAME	REPRESENTING
Don Doesigen	KD+IR
Kathy Grebler	KS Insurance Dept.
Jean Bartu	KADC
John Thompson	KTLA
John Hunter	KMS



KANSAS

Bill Graves
Governor

DEPARTMENT OF HUMAN RESOURCES
Kansas Advisory Committee on Hispanic Affairs

Richard E. Beyer
Secretary

TESTIMONY TO HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR

Wednesday, February 14, 2001

By Tina DeLaRosa

Executive Director, The Kansas Advisory Committee on Hispanic Affairs

Testimony, HB 2003

Good morning, Mr. Chairman and members of the committee.

I'm Tina DeLaRosa, Executive Director of the Kansas Advisory Committee on Hispanic Affairs, known as KACHA.

I'm here in support of House Bill 2300.

The purpose of the bill is to correct an imbalance in the rotation of service of the members of our committee.

As things now stand, four of our seven committee members have three-year terms of office, which expire on June 30, 2001. The other three have terms of office, which expire on June 30, 2003. None of our committee members have terms of office which expire in 2002.

To ensure continuity in the committee's activities, we want to be sure that at least two of the committee members are appointed or re-appointed each year. This bill sees to that, without disrupting the terms of office of any of the existing members.

The bill requires that two of the positions that expire on June 30, 2001 will be filled with appointments (or re-appointments) for a regular three-year term, and the other two will be filled with appointments for a one-year term.

After that, all appointments to the committee will be for three-year terms.

I stand ready to answer any questions you may have.

House Business, Commerce & Labor Committee

2-14-01

Attachment 1

1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1853
phone 785-296-3465 • fax 785-296-8118 • www.hr.state.ks.us

**TESTIMONY BEFORE THE HOUSE BUSINESS,
COMMERCE & LABOR COMMITTEE**

HOUSE BILL NO. 2301

February 14, 2001

By Philip S. Harness, Workers Compensation Director

House Bill 2301 is a compilation of recommendations to amend the Workers Compensation Act passed by the Workers Compensation Advisory Council.

The most verbose change is found on Pages 10-11 dealing with the state's average weekly wage of volunteer public sector personnel, i.e. volunteer law enforcement officers, emergency medical technicians, mobile intensive care technicians, and firefighters. First, a little historical background may be helpful. Prior to the 1993 workers compensation reforms, a covered injured volunteer's average weekly wage was based on what a full-time worker earned. In 1993, a sentence was added to K.S.A. 44-511 (b)(6)(A) which reads "Volunteer employment shall not be presumed to be full time employment." In April, 1997, the Workers Compensation Board issued an opinion on this issue in *Whelan v. City of St. Paul*, Docket No. 202,839, wherein it found that a volunteer firefighter was a part-time volunteer and based the weekly indemnity benefit on the part-time wages. Mr. Whelan's wages over the past 26 weeks were based on the actual number of incidents (15) that he responded to times the hourly rate (\$7.23 per hour) that a similar city (City of Chanute) paid their firefighters. However, our statute set a minimum weekly wage of \$37.50 which was the figure used by the Workers Compensation Board since the actual calculation would have been less than that figure. Since temporary total disability is calculated upon two-thirds of the average weekly wage (but not to exceed the state's maximum), the firefighter in question received \$25.00 per week. House Bill 2301 amendments would require that these volunteers be paid benefits based on the state's average weekly wage until the physician releases the injured worker to return to work.

A second change is found at both Page 13, Line 22 and Page 16, Line 21, requiring the post-award medical procedure to be used when compensability is not an issue and additional medical benefits are sought when a workers compensation matter is on review to the board or on review from the board to the Court of Appeals. The post-award medical procedure was not available until K.S.A. 44-510k was enacted by the 2000 Kansas Legislature.

The last change appears at Page 7, Line 9, wherein the wording "so long as reasonable" is inserted to modify a health care provider's usual charge. A health care provider is paid the usual charge or the amount set forth in the maximum medical fee schedule, whichever is less. However, the maximum medical fee schedule may not address all facets of health care, in which case the insurer is required to pay the usual charge. If the entity's usual charge is outside the parameters for fees for similar treatment and care imposed by similarly situated health care providers, the statute would provide no relief to the payor. The addition of this wording is sought

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Attachment 2

to impose a requirement of reasonableness on the usual charge where that particular charge is not addressed in the fee schedule.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TESTIMONY

TO: House Committee on Business, Commerce & Labor
FROM: Kathy Greenlee, General Counsel
RE: House Bill 2301
DATE: February 14, 2001

I appear today on behalf of the Kansas Insurance Department in support of House Bill 2301. A few months ago, we learned that a worker's compensation pool that we regulate is paying part-time benefits when the volunteer firefighters are injured while serving as firefighters. Concerned fire chiefs and firefighters brought this problem to our attention. To our knowledge, every other insurer or work comp carrier is providing full-time worker's compensation benefits to volunteer firefighters.

As we investigated, we learned that the work comp pool is basing its decision on the language of K.S.A. 44-511(b)(6)(A). The end of that paragraph states, "Volunteer employment shall not be presumed to be full time employment." You will find that phrase on page 10, lines 36 and 37, of House Bill 2301.

In 1995, the Kansas Insurance Department issued a bulletin directing companies to pay full-time benefits. Given the plain language of K.S.A. 44-511, the pool questioned the sufficiency of our bulletin.

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Attachment 3

In researching the legal issue raised by the work comp pool, we learned that the Workers Compensation Appeals board issued an opinion in April of 1997 requiring the carrier to pay a volunteer firefighter only part-time benefits.

We approached the Division of Worker's Compensation and the Work Comp Advisory Council and asked them to consider this issue. This bill is the product of those discussions and the Advisory Council deliberations.

Volunteer firefighters perform an invaluable community service for hundreds of Kansas communities. In order for cities and counties to attract volunteers, they must be certain that volunteers will receive full worker's compensation benefits if they are injured in the line of duty.

Fire protection is critical for everyone. We strongly urge you to adopt this bill.



February 14, 2001

Testimony Presented to the House Business, Commerce and Labor Committee

House Bill 2301

As President of the Kansas State Association of Fire Chiefs, I am pleased to have the opportunity to provide testimony on this bill today.

The Problem:

During the 1993 legislative session, Senate Bill #307 passed which amended K.S.A. 44-511 with the sentence added "volunteer employment shall not be presumed to be full time employment". Shortly thereafter, several cases involving volunteer firefighters injured while performing as a firefighter and were unable to return to their regular job, received compensation based on community service work at maximum benefit calculated from \$37.50 per week. This was completely unacceptable and placed an undue burden on the volunteer as well as their families.

In 1995 the State Insurance Commissioner issued a bulletin to all work compensation carriers operating in Kansas to pay benefits at the full time rate for any volunteer firefighter injured in the line of duty. Challenges have continued thru time regarding the 1993 legislative change and in this past year several cases have come about where a volunteer emergency services worker has been compensated at a rate below \$30.00 per week.

In addition to the above language, as it existed in K.S.A. 44-511 (6)(A), it was never definitive as to what wage a volunteer firefighter might be compensated at if injured. The law read that an injured volunteer firefighter was to be paid at the same rate as someone performing that task full time. If the department had no full time firefighters, the compensation was to be based on the usual wage for that service. Therefore, most departments operated under the premise that compensation would be paid at the rate of the wage of the nearest paid firefighter. At best this varied greatly, case to case, and fire departments where never sure of exactly what compensation would be paid.

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Attachment 4

EXECUTIVE BOARD

PRESIDENT

Chief Jim Keating
St. Marys Fire Department
P.O. Box 56
St. Marys, Kansas 66536
785-437-6287

VICE PRESIDENT

Chief John Lloyd
Wellington Fire Department
200 North C Street, Suite 200
Wellington, Kansas 67152
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Colby, Kansas 66701
785-462-4454

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Chief Richard Klaus
Ellis County Fire Department
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Hays, Kansas 67601
785-625-1061

DISTRICT 3 REPRESENTATIVE

Division Chief Marvin VanBlaricon
Salina Fire Department
222 West Elm
Salina, Kansas 67401
785-826-7340

DISTRICT 4 REPRESENTATIVE

Battalion Chief Gary D. Lee, Sr.
Lenexa Fire Department
9620 Pflumm
Lenexa, Kansas 66215
913-888-6380

DISTRICT 5 REPRESENTATIVE

Chief Larry Ellis
Comanche Co. Fire Department
HC 72 Box 49
Coldwater, Kansas 67029
316-582-2359

DISTRICT 6 REPRESENTATIVE

Chief Eddie Moore
Arkansas City Fire Department
115 South D
Arkansas City, Kansas 67005
316-441-4430

DISTRICT 7 REPRESENTATIVE

Chief Jerry Hallbauer
Chanute Fire Department
P.O. Box 907
Chanute, Kansas 66720
316-431-5236

EDITOR

Chief Ken Leu
Harper Fire Department
P.O. Box 36
Harper, Kansas 67058
316-896-7311

SECRETARY/TREASURER

Chief Curtis Wilson
Winfield Fire Department
817 Fuller Street
Winfield, Kansas 67156
316-221-5560

PAST PRESIDENT & SEC/TREAS

Chief H.A. Hartley
Shawnee Fire Department
6501 Quivira Road
Shawnee, Kansas 66216
913-631-1080

The Effect:

At a time when volunteerism is on a sharp decline, especially in the emergency services, word of this problem has been questioned by current volunteer emergency service members as to their status if injured. As leaders in the Kansas Emergency services, we are working very hard to encourage capable persons to join their local emergency services. We must resolve this problem to give assurance to new, as well as current emergency service members, that they will be compensated at a fair rate if injured and not penalized for volunteering their time to their communities.

The Solution:

The changes as indicated in House Bill 2301 would satisfactorily address the problem. While in some cases the state average wage would be lower than that normally paid to a full time firefighter, at least all volunteer firefighter departments across the state would know what the compensation rate would be based upon, which would allow the departments to purchase additional compensation insurance to cover their members if they wish. This proposal has been discussed with the major fire service organizations in the state. All have supported this change. We believe that House Bill 2301 is a viable solution and should be agreeable to the fire service, state agencies, insurance industry and city and county governments.

We urge your passage of House Bill 2301 from the committee.

Testimony presented by:

Jim Keating
President K.S.A.F.C
Phone 785-437-6287
Fax 785-437-3166
e-mail smksfd@earthlink.net

Attachment: Copy of letter from injured volunteer emergency services worker.

11/10/00

Dear Mr. Keating,

During a recent conversation with Mr. John Washburn, he suggested that I contact you with regards to my particular situation (reference Work Comp injuries). Mr. Washburn indicated that my experiences might prove of some value to you in your efforts to lobby for fair compensation for injured Fire/EMS personnel.

I am a volunteer ambulance crew member paid on a per-run basis. On Feb. 17, 1999 I was injured in a freak accident during an ambulance run. Tests showed that I had "blown out" my left ACL. Since my "regular" job at that time was as a Corrections officer for the Cloud County Sheriff's Dept., it's obvious that there was no way I could work in any proximity to the inmates, much less respond to any ambulance calls.

↘

After four knee surgeries, seemingly endless physical therapy and fifteen months, I was finally able to return to work at the Sheriff's Dept. After my disability benefits from the department ran out (6 months duration), my WorkComp carrier informed me that \$23.03 per week was all I was eligible to receive (documentation available). Although they were quite good about the medical bills and the mileage allowances, twenty-three dollars a week doesn't stretch far at all.

Although I "frugaled" my way through it, by the time I returned to work in May I was financially wiped out. We are still attempting to ascertain the percentage of permanent disability, but that is a story for another time.

Mr. Washburn has indicated that many things are trying to happen,

Legislatively speaking, and there is hope that the problems in Kansas may someday soon be rectified.

While I personally prefer optimism, I also realize that any such legislation will more than likely not help me (or anyone else) in my current situation - not unless it's retro-active, and that's ever less likely. However, my concern is for the future of volunteers, not necessarily just fire or EMS. It worries me how many services we will all lose if no one will willingly donate their time, skills and labor because they "can't afford to take the risk". I'm sure this thought has occurred to several people - hence the push for legislation..

Ms. Keating - I don't know what

7

I could do to help - besides possibly testify before any committees - but I'm not afraid to try. (I don't know how I'd pay the gas mileage to get to wherever I needed to be, but given enough time, I'd find a way).

I would be interested in hearing any updates, ideas, etc; and would enjoy hearing from you at your convenience.

I can be reached at the address and phone listed below.

Thank you for your time and efforts in attempting to solve a serious problem. Its very much appreciated!

Sincerely,
Marcia Samples
RR1 Box 122
Glaseco, Ks. 67445
(785) 568-2787



METROPOLITAN AMBULANCE SERVICES TRUST
4521 Metropolitan Avenue, Kansas City, KS 66106-2551
Telephone (913) 384-3911 • Fax (913) 384-7396

Kansas Emergency Medical Services Association (KEMSA) testimony in support of
HB2031

February 14, 2001

KEMSA is the professional association that attempts to represent the interests of the almost 10,000 EMT's and paramedics that serve the citizens and visitors to Kansas.

KEMSA supports HB 2031.

Presently a true crisis exists in many ambulance services in Kansas due to the problems to recruit and retain qualified staff. The initial training requirements, regular continuing education hours and for the volunteer staff's, the problems of disrupting the work and family life with an unexpected request for service, have led to a serious shortage of personnel in many communities

The Board of EMS staff has used the term "crisis" to describe the problems that many volunteer services are having with getting and holding onto staff. One of the issues relates to the concern that an injury while providing a volunteer service will significantly affect the person's ability to meet job and family needs with the combined impact of potentially having no income.

KEMSA believes that strengthening the workers comp protections for those who serve their communities as volunteers to staff the EMS system is of paramount importance.

We appreciate your continued support of this bill.

Submitted by Jason White, KEMSA



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Business, Commerce and Labor Committee

FROM: Terry Humphrey
Executive Director

RE: 2001 HB 2301

DATE: Feb. 14, 2001

Chairman Lane and members of the House Business, Commerce and Labor Committee, thank you for the opportunity to comment on HB 2301. I am Terry Humphrey, executive director of the Kansas Trial Lawyers Association.

The Kansas Trial Lawyers support HB 2301, which proposes to provide comparable workers compensation benefits to volunteer firefighters, law enforcement officers emergency medical technician or mobile intensive care technician who are injured while performing their volunteer responsibilities. These people give not only their time and energy to the community in their volunteer capacity, but they also risk being injured. We believe it is only right that they receive the appropriate compensation should they be injured.

Thank you for the opportunity to submit our comments on HB 2301. We encourage the committee to support this bill. We are happy to answer any questions that you may have or provide additional information.

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Attachment 6

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw@ink.org



League of Kansas Municipalities

TO: House Committee on Business Commerce and Labor
FROM: Sandy Jacquot, Director of Law/Legal Counsel
DATE: February 14, 2001
RE: Opposition to HB 2301

I want to thank the committee for the opportunity to appear and testify in opposition to HB 2301. The Kansas Municipal Insurance Trust (KMIT), a workers compensation pool for municipalities, is under the umbrella of the League of Kansas Municipalities and the League provides administration of the pool. As part of my duties for the League, I am currently serving as the interim pool administrator. It is in both of these capacities, for the League and for KMIT, that I appear today.

In 1993, the Kansas Legislature amended K.S.A. 44-511 to provide that when considering payment of workers compensation benefits to volunteer firefighters and law enforcement officers, among others, “[v]olunteer employment shall not be presumed to be full-time employment.” In 1995, Insurance Commissioner Kathleen Sebelius issued Bulletin 1995-10, in essence requiring volunteer firefighters to be paid as if they were full-time employees. Since that time, there has been disagreement about the language and the manner in which volunteer firefighters should be covered for workers compensation purposes.

A substantial number of cities in Kansas rely on volunteer firefighters to provide fire protection in our local communities. It is not uncommon for a city to have a fire chief and 20 or more volunteer firefighters. Most of the volunteers put in anywhere from 3 to less than 20 hours per month. While cities depend upon the civic mindedness of their citizenry to step forward as volunteers, there is an inherent inequity and unfairness in requiring workers compensation coverage based upon full-time employment.

Some of our cities employ part-time firefighters. These individuals work, in most cases, more hours than a volunteer, but their benefit will be based upon actual hours on the payroll. Thus, a part-time firefighter working more hours than a volunteer will have a lesser benefit under HB 2301. In addition, as a matter of good public policy, light duty is encouraged as a way to minimize workers compensation costs. To what extent will a city be able to require the volunteer to serve in a light duty position? Theoretically it should be at least 40 hours per week, if the benefit is based upon full-time employment. Another issue that arises is that a volunteer may be deemed unable to return to firefighting and, thus, be eligible for workers compensation, but in fact returns to his or her regular job.

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Currently, pursuant to workers compensation regulations, the maximum payroll an insurer can charge a city for volunteer firefighters is capped. This translates directly into reduced premiums to cover the risk of injury to the firefighters. This bill would require increased benefits, but without increased premium dollars. The flip side to this, however, is that our cities could not afford the increased premiums to cover the additional risk, which is likely why the cap exists. Obvious solutions would be to minimize the risk of injury by requiring pre-volunteer physical examinations for firefighters, eliminating many from the volunteer pool, and requesting that cities only provide fire protection within their jurisdictional boundaries. Many cities contract to provide coverage in townships, as well. Forcing cities to make these choices is not good public policy. Another very simple solution, and one that many cities have opted for, is to purchase disability insurance or replacement income type insurance for the volunteers.

In short, we do not believe this bill addresses all of the competing public policies or legal impediments that are inherent in this issue. Rather, the bill is an attempt at a quick fix that really fixes nothing, but only raises more questions and problems. We strongly urge the committee to reject HB 2301. Thank you again for allowing me to testify in opposition to HB 2301.