Approved:
Date

MINUTES OF THE HOUSE NEW ECONOMY COMMITTEE.

The meeting was called to order by Chairman Mason at 3:40 p.m. on March 21, 2002 in Room 522-S of the Capitol.

All members were present except:
Representative Beggs - E
Committee staff present:
April Holman, Legislative Research Department
Bob Nugent, Office of Revisor of Statutes
Renae Jefferies, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary
Conferees appearing before the committee:
Proponents:
John Peterson, Heartland Chapter, National Assn. of Profession Employer Organization
Bill Maness, Oasis Outsourcing, Wichita
Jennifer Craig, Astra Group
Rob Bobst, Metal Finishing Inc. Wichita
Richard Cram, Department of Revenue
Steve Kelly - KDOC&H
Opponents:
Tim Short, Kansas Trial Lawyers Assn.
Larry Magill, Kansas Assn. Of Insurance Agents
Phil Harness, Division of Worker's Compensation
Written Testimony: AFL/CIO
Others attending:
See attached list

Representative Compton moved, seconded by Representative Long, that the March 12 and March 14 minutes be approved. The motion carried.

A sheet reflecting budget figures on the Problem Gambling Grant Program was distributed (Attachment 1). This information was provided by staff in response to a request at a previous meeting.

The Chairman opened the hearing on **SB 121.** Staff gave the history of the bill, stating that Professional Employer Organizations (PEO's) assist businesses with all aspects of human resource services. Review followed on background of the bill and the Interim Committee recommendation of passage of Section 2(definitions) and Section 3 (c) (requirement of written contract and tax language) of 2001 Senate Substitute for SB 121 be enacted by the 2002 Legislature.

John Peterson, Heartland Chapter of the National Association of Professional Employer Organization, appeared in support of the Senate Substitute for **SB 121** (Attachment 2). The bill requires (1) a PEO have a written contract between the client and the PEO**,** (2) provide a written notice to all assigned workers as to the nature of the relationship between the PEO and the client, and (3) requires the PEO to be responsible for income tax withholding, unemployment taxes and securing required worker's compensation coverage**.** He cited the history of the original bill, stating that SB 121 is the Senate Substitute bill, containing language recommended by the Division of Workman's Compensation, the Kansas Insurance Department and the Department of Revenue. It represents only a portion of the original bill and clarifies many of the issues surrounding PEO's. Attached to the testimony is a balloon amendment that was developed after discussions with State agencies. A fact sheet on PEO's was part of his testimony.

Bill Maness, Oasis Outsourcing in Wichita, appeared in support of the Senate Substitute bill **SB 121** (Attachment 3). He described the services rendered by PEO's to Kansas Business owners, stating that the bill was important in that it defines and codifies the relationship within the state and clarifies any ambiguities under common law. He urged the Committee to join the Senate in support of the Substitute Bill **SB 121,** that passed the Senate on a 40-0 vote. Discussion followed between the differences between PEO's and temporary staffing agencies.

Jennifer Craig, The Astra Group, appeared in support of **SB 121** (Attachment 4). She listed three specific benefits derived from the business relationship between PEO and small businesses: (1) Clearly defined employment policies ensuring compliance with applicable laws (2) reduced turnover and the associated cost savings and (3) reduction in health insurance costs. Currently there are no statutes on the books in Kansas that clearly define the rights and responsibilities of businesses and PEO's in a co-employment relationship. Discussion followed regarding the fee structure and if and how legislation would help deter current abuse in the industry.

Rob Bobst, V.P. Metal Finishing Inc. spoke in support of **SB 121** (Attachment 5). He gave testimony on how their PEO had provided workers compensation coverage, a competitive health and dental insurance plan, a complete 401 (k) program and a valuable flex spending "cafeteria program", as well as a full payroll processing and general HR services. This allowed his company to focus on the core aspects of their business. Discussion followed regarding the process of hiring a PEO and the amount of companies pooled for insurance purposes.

Richard L. Cram, Office of Policy & Research for the Department of Revenue talked about the new language in **SB 121** (Attachment 6). New language was added to the bill at the request of his Department and addressed certain tax issues relating to questions on "qualified business facility" income tax credits and corporate income tax liability. He clarified various terms in the bill. Discussion followed regarding the confusion over whether the employees work for the PEO or the company and which business entity has the tax liability.

Steve Kelly, KDOC&H spoke in support of **SB 121** (Attachment 7). This legislation addresses a new business trend (use of PEO's) and its resulting complications, as it regards accessing job creation tax credits associated with net new employment added at a "qualified business facility". He believes the bill would enhance KDOC&H's ability to encourage business locations and expansions. Discussion followed regarding various responsibilities of the two entities.

Timothy Short, Kansas Trial Lawyers Association appeared in opposition to **SB 121**(Attachment 8). They do not oppose the limited recommendations of the Special Committee on Taxation, however they have concerns about the remainder of the bill and its impact on Civil Law and Liability, and Workers Compensation. He reviewed three areas of concern: Workers Compensation Law, Civil Liability to Third Parties and the Employment Law. They believe that the bill would create confusion and uncertainties which are not in the best interest of Kansas employers, workers or consumers. Discussion followed regarding the definition and scope of the Human Resources duties.

Larry Magill, Kansas Association of Insurance Agents, spoke in opposition to **SB 121** (Attachment 9). They would support the Interim Committee recommendation of passage of section 2 and 3, however he voiced concerns regarding the drafting and intent of the legislation as it affects insurance for firms participating in a PEO. The following are the four areas in question: (1)Providing workers compensation coverage, (2)Workers compensation experience modifications, (3)Small group health insurance and (4)Insurance Agent licensing. His testimony included a balloon with recommended changes. Due to the complexity of the issue, he urged the Committee to recommend the legislation for interim study.

Philip Harness, Director of Workers Compensation, voiced his opposition to **SB 121** (Attachment 10). He expressed concerns of the ability to track the experience modification of employers who are taken under a PEO's insurance policy. He gave the history of dealings between the Division of Workers Compensation and PEO's and described current litigation processes against PEO's. He offered fourteen points for the Committee's consideration for basis of amendments to the bill.

The Chairman called attention to the *written testimony* from Wayne Maichel, Executive Vice President, Kansas AFL-CIO , stating their opposition to **SB 121** (Attachment 11).

The next meeting is March 26, 2002.

The meeting was adjourned at 5:30 p.m.

ECONOMIC DEVELOPMENT
COMMITTEE GUEST LIST

DATE: March 21, 2002

NAME	REPRESENTING
Phil Harness	KDHR-Div. of Work. Env.
David Cunningham	KASB
Steve Kelly	KDOCH
Larry McGill	Ks Assn of Ins Agents
Robert Babst	Metal Finishing Co - PEO customer
Jennifer Cross	The Hein Group
Bill Maness	OASIS OUTSOURCING
Stephanie Buchanan	DOB

Department of Social and Rehabilitation Services
Problem Gambling Grant Program
FY 2002

Beginning Balance	$	0
Receipts	$	100,000
Expenditures		
The Consortium		
- Problem Gambling HelpLine	$	12,000
Kansas Association of Addiction Professionals		
- Gambling Counselor Certification Training		
- Targeted efforts toward college age and older adults	$	88,000
Total Expenditures	$	100,000
Ending Balance	$	0

NEW ECONOMY
3-21-02
ATTACHMENT 1

TESTIMONY
OF JOHN C. PETERSON
Heartland Chapter of the
National Association of Professional Employer Organizations
Senate Substitute for SB 121
House New Economy Committee
March 21, 2002

Mr. Chairman and Members of the Committee. My name is John Peterson and I am pleased to appear this morning on behalf of the Professional Employer Organizations in Kansas in support of a Senate substitute for SB 121.

All businesses, particularly smaller businesses, face daily challenges of compliance with the myriad of federal and state requirements and regulations concerning their employees. This regulatory compliance and the resulting paperwork can take a good portion of an employer's time and distract them from their primary objective of producing goods and providing services to the general public. Moreover, many small businesses often lack the expertise or experience essential to assure high levels of compliance.

Professional Employer Organizations have emerged to provide reliable and comprehensive human resource services through a co-employment arrangement with the client employer. Under this arrangement, the PEO becomes responsible for paying wages and unemployment taxes, for withholding taxes, for assistance with regulatory compliance and worker's compensation. Equally significant, these organizations usually bring to work site employees retirement, health benefits and a myriad of other human resource services not otherwise available.

Substitute for SB 121 defines PEO's. This bill requires that a PEO have a written contract between the client and the PEO, provide a written notice to all assigned workers as to the nature of the relationship between the PEO and the client, requires the PEO to be responsible for income tax withholding, unemployment taxes and securing required worker's compensation coverage.

NEW ECONOMY
3-21-02
ATTACHMENT 2

Section 3, beginning on page 2, line 33, contains important language proposed by the Kansas Department of Revenue to make sure that businesses using PEO services neither lose existing tax benefits or avoid tax apportionment responsibilities under Kansas law.

The Senate Committee reworked the original SB 121 to incorporate changes proposed by the Division of Workers Compensation, the Kansas Insurance Department and the Department of Revenue.

The interim tax committee this summer considered the tax elements contained in Section 3 and recommended their passage.

PEO's are currently operating in the State of Kansas and it is important that these issues be clarified. We would urge your support for Senate Substitute for SB 121.

ministering the above provisions.

(d) As long as the professional employer organization's contract with the client remains in force, the professional employer organization shall have a right to and shall assume the following responsibilities:

(1) Pay wages and collect, report and pay employment taxes of its assigned workers from its own accounts;

(2) pay unemployment taxes as required by the employment security law;

(3) secure and provide all required workers compensation coverage for its assigned workers either in its own name or in its clients name.

(e) Both client and the professional employer organization shall be considered the employer for the purpose of the workers compensation act.

(f) Both the professional employer organization and its client shall be entitled to protection of the exclusive remedy provision of the workers compensation act irrespective of which entity secures and provides such workers compensation coverage.

(g) A recognized professional employer organization shall be deemed the employer for the purposes of sponsoring and maintaining benefit and welfare plans for its assigned workers.

(h) Assigned workers shall be deemed employees of the client for general liability purposes and for purposes of: Automobile insurance, fidelity bonds, surety bonds or employer's liability insurance other than workers compensation insurance carried by the professional employer organization unless the assigned workers are included by specific reference in the applicable prearranged employment contract, insurance contract or bond.

(i) Except for the conduct of the professional employer organization, a professional employer organization is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client that is so licensed, certified or regulated.

Sec. 4. (a) Financing of unemployment insurance benefits for workers assigned by a professional employer organization to a nonprofit organization or a unit of government shall be paid by the unit or organization as provided by the employment security law. Unemployment insurance benefits for workers assigned by a professional employer organization to any client other than a nonprofit organization or governmental unit shall be made in accordance with the provisions of this section.

(b) During the term of a professional employer organization agreement, a professional employer organization is liable in accordance with the provisions of employment security law, for the payment of contribu-

The insurance carrier shall issue a proof of coverage for each client of the employer PEO to the Division of Workers Compensation. The proof of coverage statement for each such client shall include the client's name, address, federal employer's identification number, payroll amounts and classification codes. When a client leaves a professional employer organization, the experience incurred by the client during the term of the relationship with the professional employer organization will remain part of the professional employer organization's experience calculation. The experience of the individual client during the term of the relationship with the PEO shall be provided to the client upon written request to the PEO for such information.

2.3

ALL ABOUT PEOs

Overview of PEOs

- Definition of a PEO
- PEOs Distinguished from Other Staffing Services
- Facts About PEOs
- Role of PEOs in Today's Workplace

Specifics of PEO Relationship

- PEOs Are Co-Employers
- PEOs Pay Wages and Employment Taxes
- PEOs Enhance Compliance with Employment Laws

Definition of a Professional Employer Organization

A Professional Employer Organization (PEO) is defined as: "an organization that provides an integrated and cost effective approach to the management and administration of the human resources and employer risk of its clients, by contractually assuming substantial employer rights, responsibilities, and risk and, through the establishment and maintenance of an employer relationship with the workers assigned to its clients."

More specifically, a PEO establishes a contractual relationship with its clients whereby the PEO:

- assigns workers to client locations, and thereby assumes responsibility as an employer for specified purposes of the workers assigned to the client locations;
- reserves a right of direction and control of the employees and may share such responsibility with the client, consistent with the client's responsibility for its product or service;
- pays wages and employment taxes of the employee out of its own accounts;
- reports, collects, and deposits employment taxes with state and federal authorities;
- establishes and maintains an employment relationship with its employees which is intended to be long term and not temporary; and
- retains a right to hire, reassign, and fire the employees.

Professional Employer Organizations Distinguished From Other Staffing Services

New and innovative employment arrangements are emerging in the workplace which do not conform to the traditional criteria used to evaluate employment relationships. The following definitions set forth the major categories of service provided by staffing companies today.

Professional Employer Organizations

A distinguishing characteristic of a PEO is co-employment, the relationship that arises when, in conjunction with their clients, the PEO establishes and maintains a long-term employer relationship with the workers assigned to its clients and contractually assumes substantial employer rights, responsibilities, and risks. Additionally, PEOs usually co-employ the majority of a client's workforce.

... the PEO establishes and maintains a long-term employer relationship with the workers assigned to its clients and contractually assumes substantial employer rights, responsibilities, and risks.

Temporary Staffing Services

Temporary staffing services are services provided by an organization that recruits and screens its own employees, who are then assigned to work at a client's premises to support or supplement a client's existing workforce for limited periods of time in work situations such as short term employee absences, temporary skill shortages, seasonal work loads, and special assignments and projects. The temporary staffing service has responsibility for ensuring the capabilities and skills of the individuals it supplies. The client has supervisory responsibility for the employees and management accountability for the function performed by the employees at the worksite in regard to results or output.

Managed Services

Managed services (also called "facilities management" or "outsourcing") are services provided by an organization that supplies employees to staff and manage a specific client facility or function on an ongoing basis. Examples of managed services include operating a mailroom or data processing center. The organization not only has responsibility for ensuring the capabilities and skills of the individuals it supplies and performing all other employer functions, but also has day to day supervisory responsibility for the employees and management accountability for the facility or function in regard to results and output. Managed Service providers are the sole employers of the employees supplied.

Payrolling Services

Payrolling Services involve arrangements consisting primarily of paying wages and related taxes for the employees of a third party. These actions are undertaken as an agent of the employer and with funds of the employer. As an agent, the payrolling service does not have responsibility or liability for the payment of wages or related taxes if the client does not provide payment in advance; additionally, as an agent, no employment relationship exists between the payrolling service and the client employees.

Placement Services

Placement Services are services provided by an organization that seeks to bring together job seekers and potential employers for the purpose of establishing a regular, full-time employment relationship. Placement service includes "temp-to-perm" arrangements where placement of the worker in a regular, full-time relationship is the specific purpose of the arrangement from the outset. Also referred to as a "try before you hire," a worker in this arrangement is, if hired, the employee of the full-time employer.

Facts About PEOs

Businesses today need help managing increasingly complex employee related matters such as personnel management, health benefits, workers' compensation claims, payroll, payroll tax compliance, and unemployment insurance claims. Businesses contract with a PEO to assume these responsibilities, which then allows the client to concentrate on the revenue-producing side of its operations.

A PEO provides integrated services which more cost effectively manage critical human resource responsibilities and employer risks for clients. PEOs deliver these services by establishing and maintaining an employer relationship with the workers assigned to its client and by contractually assuming substantial employer rights, responsibilities, and risk.

Benefits of PEO Services

For the business

- Controls costs
- Saves time and paperwork hassles
- Provides professional compliance (e.g., payroll, OSHA, IRCA, EEOC)
- Reduces turnover and attracts better employees
- Claims management (e.g., workers' compensation, unemployment insurance)
- Provides better benefits packages(s)
- Provides professional human resource services (e.g., employee handbooks, forms, policies and procedures)
- Reduces accounting costs

For the employee

- Comprehensive benefits previously unavailable
- Better employer/employee communications
- Payroll on-time and accurate
- Professional assistance with employment-related problems
- Professional orientation and employee handbook
- Extends statutory protection to more employees
- Up-to-date information on labor regulations and workers' rights, worksite safety
- Efficient & responsive claims processing
- Portable benefits (employees can move from one PEO client to another without loss of eligibility for benefits)

For the government

- Consolidates several small companies' employment tax filings into one
- More professional preparation and reporting
- Accelerated collection of taxes
- Extends medical benefits to more workers
- Expands the communication of government requirements and changes to small businesses
- Resolves many problems before they reach court
- Allows government agencies to reach business through a single-employer entity

Profile of Typical PEO Client

NAPEO's membership survey, performed by KPMG Peat Marwick, found that in 1997, the average PEO client had 16 workers, each earning an average of $18,178. KPMG Peat Marwick further found that the average PEO retains 85% of their clients over a one year period.

Alex. Brown & Sons, an investment banking firm, estimates that 40% of companies in a PEO relationship upgrade the overall benefits package offered to employees as a result of the PEO relationship. In addition, Alex. Brown analysts have found that an astounding 25% of the companies upgrading their benefits are offering health care and other benefits to their workers for the first time.

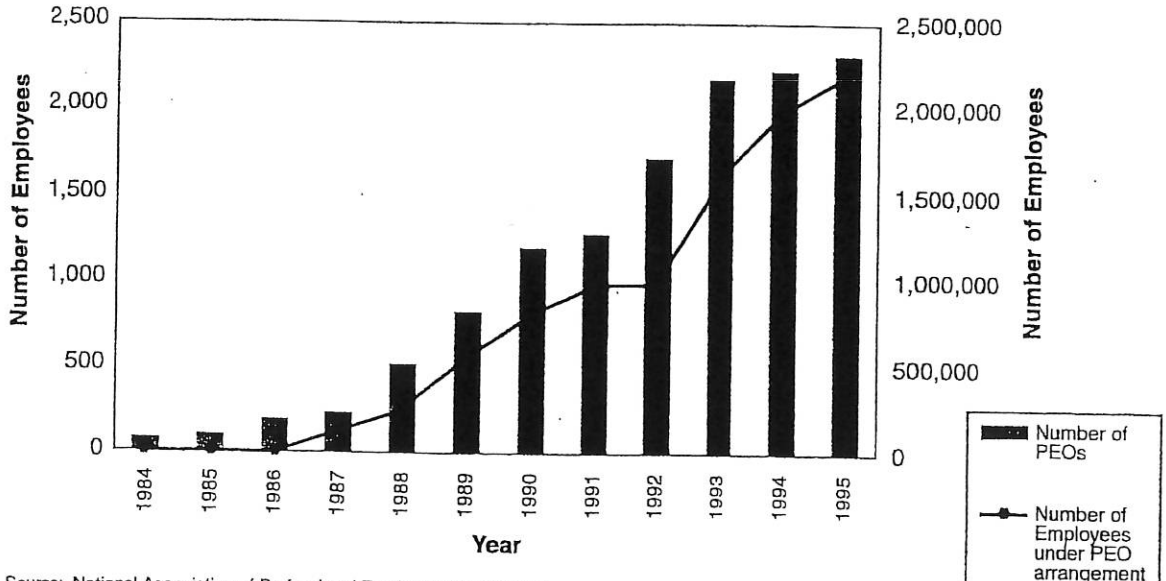
Industry Growth

In October 1984, Nations Business reported that the number of employees in PEO arrangements grew from 4,000 to 60,000 in the twelve months since October 1983. By 1997, industry analysis performed by Lehman Brothers indicated that 2,000 PEOs in the U.S. employ two million workers. Most other current estimates, including those of NAPEO, put the number of employees around 2 to 3 million and the number of PEOs at 2,00 plus, with an industry growth rate of 20-30% per year.

Government Response

State and federal regulatory agencies, the Small Business Administration, and state and federal legislators have shown keen interest and support for the growing industry and for the services provided by PEOs to businesses. Government officials have met with NAPEO representatives and have spoken at industry events on several occasions. Such appearances have been opportunities for educating administrators on the benefits and value of PEOs.

The Booming Employment Outsourcing Industries
PEO Employees and PEO Organizations, 1984-1995



Source: National Association of Professional Employer Organizations

The Role of PEOs in Today's Workplace

PEOs — One Response to Market Demands For Change

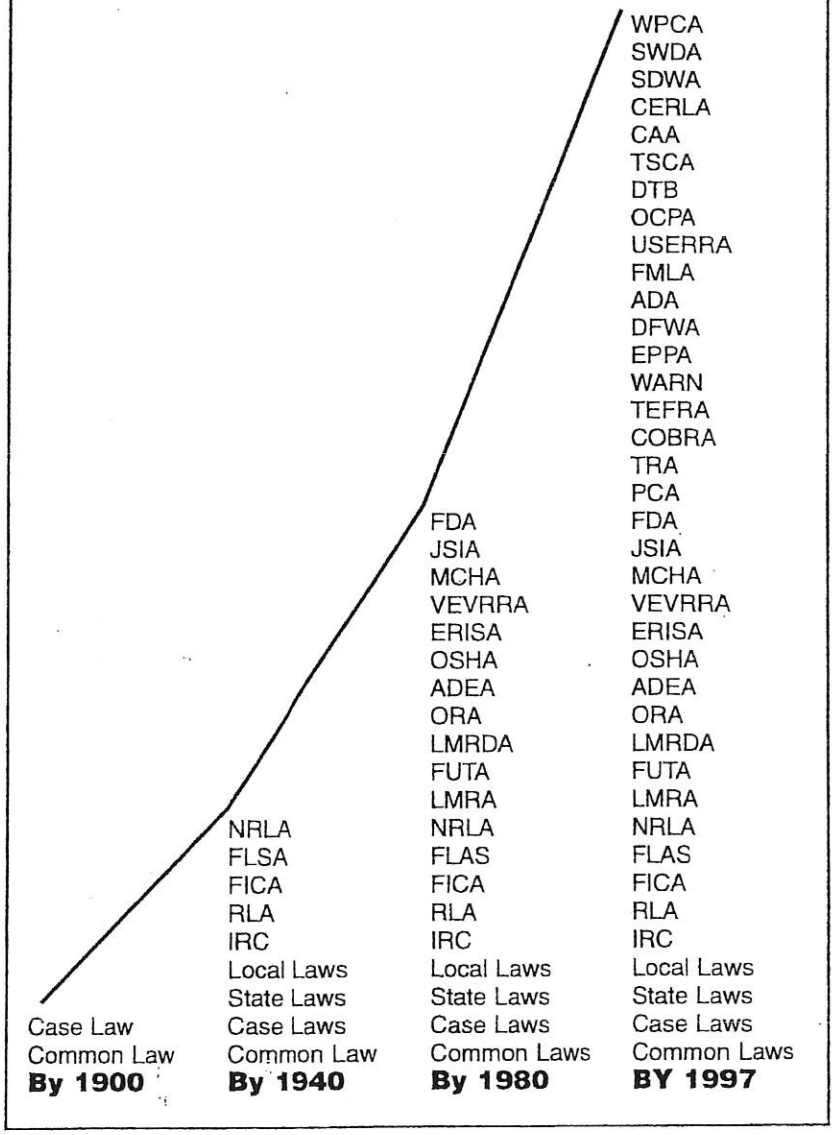
American business is undergoing fundamental changes in human resource management, and the PEO industry is one response to market demands. There are several factors driving the growth of the industry. First, over the last two decades, this nation has seen a significant increase in employment-related federal, state, and local laws and regulations. Second, the expertise required to manage a small to mid-sized business has outgrown the experience and training of many entrepreneurs who started these businesses. Third, working Americans demand quality, low cost health care, retirement savings plans, and other employee benefits for themselves and their families. In response to these demands, the PEO industry evolved from the need to divide the "business of business" into manageable parts and the need for small businesses to achieve economies of scale.

Helping Entrepreneurs With the "Business Of Employment"

PEOs offer to their clients and worksite employees the services and expertise of a personnel department within a large corporation. Few, if any, small businesses can afford a full-time staff consisting of an accountant, a human resource professional, a lawyer, a risk manager, a benefits manager, and a manager of information services. Professional employer organizations offer this expertise to their clients.

By providing these services, professional employer organizations enable their clients to concentrate on their business without the challenges and distractions associated with the "business of employment." As a result, PEOs enhance the profitability of their client companies. Further, costs related to monitoring of, and compliance with, employment laws are reduced, as are the often significant costs of failure to comply with such laws.

The Growing Burden of Employment Regulation



Helping American Workers and Their Families

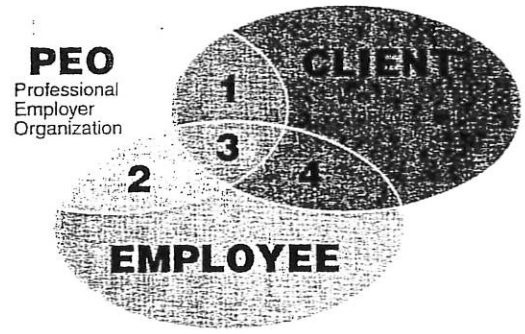
In addition to providing important services to their business clients, PEOs offer substantial advantages to worksite employees. In many cases, these employees would not be provided the number, or quality, of benefits that a PEO can offer. These benefits include health insurance, retirement savings plans, disability insurance, life insurance, dependent care reimbursement accounts, vision care, dental insurance, employee assistance plans, job counseling and educational benefits. Each individual small business's cost of establishing and administering this range of plans would be prohibitive. However, due to economies of scale, PEOs can sponsor and offer these plans at an affordable cost.

In many cases, employees of small businesses would not be protected by employment laws in the absence of the PEO relationship. Because worksite employees are included in the larger workforce of a PEO for purposes of determining statutory coverage, they are in many cases covered by employment laws that would not have otherwise applied. Further, there is generally a higher rate of compliance with these laws by a PEO than by its clients because PEOs provide full-time staff who are responsible for monitoring and ensuring compliance with such laws.

PEOs Are Co-Employers

The PEO relationship involves a contractual allocation and sharing of employer responsibilities between the PEO and the client; this shared employment relationship is called co-employment. When evaluating the employer role of either the PEO or the client, the facts and circumstances of each employer obligation should be examined separately, since neither party alone is responsible for performing all of the obligations of employment. Each party will be solely responsible for certain obligations of employment, while both parties will share responsibility for other obligations. When the facts and circumstances of a PEO arrangement are examined appropriately, both the PEO and the client will be found to be an employer for some purposes, but neither party will be found to be "the" employer for all purposes.

Illustrating the Co-Employment Relationship



1 Service Contract

2 Employment relationship with/ and responsibilities of the PEO

3 Shared relationship and employer responsibilities

4 Employment relationship with/ and responsibilities of the client

Both the PEO and the client company establish common law employment relationships with worksite employees. Each entity has a right to independently decide whether to hire or discharge an employee. Each entity has a right to direct and control worksite employees – the PEO directs and controls worksite employees in matters involving human resource management and compliance with employment laws, and the client company directs and controls worksite employees in manufacturing, production, and delivery of its products and services.

The client company provides worksite employees with the tools, instrumentalities, and place of work. The PEO ensures that worksite employees are provided with a workplace that is safe, conducive to productivity, and operated in compliance with employment laws and regulations. In addition, the PEO provides worksite employees with workers' compensation insurance, unemployment insurance and a broad range of employee benefits programs.

PEOs create an employment relationship with their workers. This relationship exists in fact, not just in form. PEOs can manage the risks attendant to the personnel functions that they perform only if they establish an employment relationship with their worksite employees. Unless a PEO has a right to direct and control worksite employees, as well as a right to hire, supervise, discipline, and discharge these employees, the PEO will merely assume liability without having a means to manage that liability.

PEOs manage their employment liability exposure by monitoring and requiring compliance with employment laws, developing policies and procedures that apply to worksite employees, supervising and disciplining worksite employees, exercising discretion related to hiring new employees, and ultimately terminating worksite employees who do not comply with requirements established by the PEO.

PEOs Pay Wages and Employment Taxes

PEOs assume responsibility and liability for the "business of employment" by establishing a co-employment relationship with employees who are assigned to work at client locations. The PEO assumes responsibility and liability for the business of employment, and the client company manages product development, product production, marketing, sales, and service. Among the employer responsibilities and liabilities a PEO assumes is the payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees.

PEOs Are Employers For FICA, FUTA, and Federal Income Tax Withholding Laws

Generally, an entity is an "employer" for federal employment tax purposes, if an employment relationship exists between the entity and the worker under the common law test of employment. In addition, under Internal Revenue Code Section 3401(d)(1), an entity is an "employer" for federal employment tax purposes if the entity has legal control of the payment of wages. While Code Section 3401 applies to federal income tax withholding obligations, the definition of "employer" under Code Section 3401(d)(1) has also been applied to FICA and FUTA taxes.

PEOs establish employment relationships with their worksite employees. PEOs reserve the right to direct and control worksite employees; develop policies and procedures applicable to worksite employees; retain the right to discharge worksite employees; have the legal obligation to pay salaries and wages to worksite employees; provide worksite employees with benefits, including workers' compensation insurance, unemployment compensation insurance, health insurance, retirement saving plans, life insurance, disability insurance, etc.; recruit and screen worksite employees; and reserve discretion with respect to the hiring of worksite employees.

In addition, many PEOs enter into written employment agreements with their worksite employees. While a client company may express dissatisfaction with a worksite employee, a client company may not terminate the worksite employee's employment relationship with the PEO, or otherwise affect the agreement between the PEO and the employee.

PEOs Pay Wages Regardless of Adequacy or Receipt of Client Payment

PEOs are employers for federal employment tax purposes under Code Section 3401(d)(1). PEOs are obligated to pay wages and salaries of worksite employees without regard to the receipt or sufficiency of fees. PEOs are contractually obligated to pay these wages and salaries under their agreements with client companies. Further, PEOs are obligated to pay these wages and salaries under state laws regulating the industry.

Case law affirms the principle that the PEO, and not the client, is responsible for the payment of wages and payroll taxes. In a case involving liability for employment taxes in an analogous context, the court in General Motors Corp. v. United States found that a contract labor supplier was the employer of certain engineers provided to General Motors, even though General Motors exercised some direction and control over the engineers, because the labor supplier controlled the payment of wages. Like the contract labor supplier in General Motors Corp. v. United States, PEOs have legal control over the payment of wages to worksite employees, and consequently, are the employers of these employees under FICA, FUTA, and federal income tax withholding rules.

Professional Employer Organizations Enhance Compliance With Employment Laws

PEOs Enhance Compliance With Employment Laws and Regulations

By becoming co-employers, PEOs fundamentally alter the relationship between worksite employees and clients. PEOs assume substantial liabilities in undertaking human resource functions on behalf of their clients. PEOs provide worksite employees with coverage under the entire spectrum of employment laws and regulations. Some of these liabilities include federal, state, and local discrimination laws, such as Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, Americans with Disabilities Act, Family and Medical Leave Act, and Pregnancy Discrimination Act. In addition, PEOs assume liability under the Fair Labor Standards Act, Immigration Reform and Control Act, COBRA, the Health Insurance Portability and Accountability Act ("HIPAA"), Employee Retirement Income Security Act ("ERISA"), Federal Insurance Contributions Act ("FICA"), Federal Unemployment Tax Act ("FUTA"), and state unemployment compensation and workers' compensation laws.

PEOs assume responsibility and liability for payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees.

In many cases, these laws would not apply without the PEO relationship. Generally, the determination of whether an employer is subject to a particular employment statute is based on the number of employees employed during the year. As such, some workers employed by a PEO are protected by these laws only because they are included in the larger work force of a PEO. PEOs develop policies and procedures to ensure compliance with employment laws, supervise and discipline worksite employees with respect to these policies and procedures, exercise discretion related to hiring new employees, and ultimately terminate worksite employees who do not comply with requirements established by the PEO.

PEOs Enhance Compliance With Employment Tax Requirements

PEOs assume responsibility and liability for payment of wages and compliance with all rules and regulations governing the reporting and payment of federal and state taxes on wages paid to its employees. By assuming this liability, PEOs accelerate the reporting and payment of taxes. Prior to entering into a relationship with a PEO, most small to medium-sized businesses accumulate tax liability in an amount requiring only monthly deposits. Because a PEO assumes this obligation, it is not uncommon for its daily tax liability to be over $100,000, thereby requiring daily electronic fund transfers.

Moreover, there is generally a higher rate of compliance with these laws by a PEO than by its clients prior to entering into a PEO relationship. As stated, PEOs are in the business of monitoring and ensuring compliance with these laws. PEOs employ a full-time, specialized staff that is responsible for complying with federal and state employment tax laws. This staff is charged with monitoring changes in these laws and with assuring that employment taxes are calculated correctly and remitted on a timely basis.

Bill Maness Testimony
S.B. 121, March 21, 2002
New Economy Committee

Chairman Mason, ladies and gentlemen of the committee, my name is Bill Maness and I am a District Manager with Oasis Outsourcing in Wichita. I am also President of the Heartland Chapter of the National Association of Professional Employer organizations. I stand before you today in support of Senate Bill 121.

As a relatively new industry to Kansas, Professional Employer Organizations, more commonly known as PEO's, provide Kansas business owners and their employees with many advantages. By entering into a contractually defined co-employment agreement with a business owner, a PEO provides enhanced employer services on an on-going basis. Payroll, workers compensation, employee health and retirement benefits, human resource management and regulatory compliance are just a few of the services PEO's deliver cost-efficiently to their clients. Employers are sometimes referred to as "non-compensated, highly-penalized tax collectors and redeemers of all social ills". Business owners did not go into business to become employers…they became one by default. A co-employment relationship allows the business owner to concentrate their resources on areas that will produce revenues and profits.

Kansas business owners derive benefit from the PEO relationship through the outsourcing of non profit-producing, administrative responsibilities of the business. Employees derive benefit by receiving more and better benefits, typically at lower costs and some of which were not available before. And PEO's derive benefit by offering their expertise to business owners and employees in order to grow their presence in Kansas.

Senate Bill 121 is important to Kansas business owners and PEO's in that it defines and codifies the relationship within the state and clarifies any ambiguities under common law. The bill defines the scope of the client-PEO relationship and seeks to statutorily recognize this new and thriving business in Kansas. The bill before you is an amended version of the initial proposed bill, which was altered in committee to accommodate interested parties and henceforth passed by the Senate by a 40-0 vote.

Please join the Senate in recognizing the importance of this bill to small business owners, employees and PEO's by supporting Senate Bill 121.

NEW ECONOMY
3-21-02
ATTACHMENT 3

Jennifer Craig, PHR Testimony
S.B. 121, March 20, 2002

Chairman Mason, ladies and gentlemen of the committee thank you for the opportunity to speak to you this afternoon. I am Jennifer Craig, Vice President of Human Resources at The Astra Group; a Professional Employer Organization based in Overland Park. I am here today in support of Senate Bill 121.

To reiterate some of what Mr. Maness has said, PEO's are designed to support small business owners by providing employment-related administrative tasks cost-effectively. Most, if not all, small businesses cannot afford to have a Human Resources professional on board to help them decipher the many federal, state and local regulations governing the relationship with their employees. Entrepreneurs open a business because they have a product or service they are passionate about. They don't realize that they have to comply with the EEOC and OSHA and the INS just to name a few. Nor do they realize that fees or penalties for non-compliance could put them out of business. By outsourcing tasks such as payroll processing, human resources management, benefits administration, worker's compensation and unemployment processing, the small business owner is allowed to focus his or her efforts on the profit-producing "core" business, and be compliant will all regulations.

Specific benefits derived from the PEO relationship by The Astra Group's clients are:

Clearly defined employment policies ensuring compliance with applicable laws.
Reduced turnover and the associated cost savings.
Reduction in health insurance costs - one client saw a 31% decrease in health insurance costs as a result of aggressive shopping by The Astra Group

The benefits of this relationship are not limited to the business owner. Employees also benefit in the form of better or more competitive benefit packages and greater focus on and compliance with federal, state and local laws designed to protect them.

Currently there are no statues on the books in Kansas that clearly define the rights and responsibilities of businesses and PEO's in a co-employment relationship. Senate Bill 121 does that. Leaving the terms of this important relationship open to interpretation does a disservice to small business owners and employees across the state. Please join the Senate, small business owners and employees, PEO's and myself in support of Senate Bill 121.

NEW ECONOMY
3-21-02
ATTACHMENT 4

Robert Babst Testimony
New Economy Committee, March 21, 2002

Chairman Mason, ladies and gentlemen of the committee, my name is Robert Babst and I represent Metal Finishing Company, a third generation family owned business headquartered in Wichita, KS. We have provided metal finishing services, non-destructive testing and painting services for the aircraft, agricultural, and other commercial industries since 1940 and currently employ approximately 150 individuals. In September of 2000 we entered into an agreement with the Oasis Group Professional Employer Organization (PEO) to manage the human relations aspects of our business.

Since that time, our PEO has provided Metal Finishing Company with workers compensation coverage, a competitive health and dental insurance plan, a complete 401(k) program, and a valuable flex spending "cafeteria program", as well as providing full payroll processing and general HR services. Our PEO relationship has been financially beneficial and a key element in allowing our company to grow and remain competitive in today's markets. We are better able to focus our energy on managing the core aspects of our business and meeting the needs of our customers.

The PEO's workers compensation program was offered to us at a time when we were unable to find a competitive program elsewhere. In addition, we are given incentives for good safety records. Our PEO has taken an active role in helping us promote worker safety and maintain a safe work environment through offering professional consultants and training materials at no additional cost to our company. As a result, our workers compensation claims have dropped dramatically since we entered our agreement with the PEO.

The health and dental insurance our PEO provides for us is key to our ability to attract and retain high quality employees. Prior to our PEO relationship, we had extreme difficulty maintaining a competitive medical insurance program due to our company's size and participation rates. Because of the efforts of our PEO , we are able to provide a high quality program competitive with those of the large aircraft manufacturers.

The 401(k) plan and flex-spending medical "cafeteria" plan provided to us by our PEO are also valuable resources which help our company attract and retain employees. In addition to these programs, the professional assistance and guidance our PEO is able to offer in dealing with our employee's various concerns is a valuable asset. In the past, we have had at least one full time employee to oversee human relations in our company. Now the human relations functions of our business occupy one employee less than one full day a week and the quality of service given to our employees is better than ever.

In conclusion, Metal Finishing Company's relationship with our PEO has been extremely beneficial to our company over the last year and a half. We are able to offer our employees benefits and services which are competitive with those of larger corporations while at the same time retaining the small company atmosphere that our employees also value. I urge the Committee to support Senate Bill 121 recognizing the PEO relationship in the state of Kansas. I feel that doing so will benefit Kansas small businesses tremendously and therefore provide a much needed boo as whole.

STATE OF KANSAS
Bill Graves, Governor

DEPARTMENT OF REVENUE
Stephen S. Richards, Secretary

Office of Policy & Research
Richard L. Cram, Director
915 SW Harrison St.
Topeka, KS 66625

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Office of Policy & Research

To: Representative William G. Mason, Chair
House New Economy Committee

From: Richard L. Cram

Re: Testimony on Substitute for Senate Bill 121

Date: March 21, 2002

Substitute for Senate Bill 121, which defines professional employer organizations, was introduced in the Senate Commerce Committee this past session, and although it was passed favorably by the Senate, the bill remained with the Tax Conference Committee at the end of the session. One provision in Substitute for Senate Bill 121 addresses an income tax issue. That provision, found in Section 3(c) of the latest version of the bill (p.2, lines 33-43 and p. 3, line 1), was suggested by the Department of Revenue, and is quoted below for reference:

> "Commencing after December 31, 1999, the client shall be considered as the employer of an assigned worker under the terms of the professional employer arrangement between the client and the professional employer organization, for purposes of : (1) subsection (d) of K.S.A. 79-32,154, subsection (d) of K.S.A. 74-50,114, K.S.A. 79-32,160a or K.S.A. 2000 Supp. 74-50,131, and amendments thereto; and (2) calculating the client's payroll factor under K.S.A. 79-3283. The client shall provide to the department of revenue the payroll information for assigned workers needed for purposes of administering the above provisions."

The Department requested that this language be added to the bill in order to clarify the status of professional employer organizations already operating in Kansas, and to resolve certain tax issues. This language would codify the answer to the question as to whether the client of a professional employer organization can treat the assigned workers as employees for purposes of determining "qualified business facility employees" and claiming the "qualified business facility" income tax credit under K.S.A. 2001 Supp. 79-32,153 *et seq.* It also addresses the question of whether the payroll for the assigned workers should be included in the client's payroll factor under K.S.A. 79-3283, for purposes apportioning the client's multi-state business income to Kansas and calculating the client's corporate income tax liability.

NEW ECONOMY
3-21-02
ATTACHMENT 6

The Department considers "qualified business facility" income tax credit claims on a case-by-case basis. However, the Department generally does not consider leased employees as "qualified business facility employees." Under current law, a question could exist as to whether a client company would remain eligible for the "qualified business facility" income tax credit upon signing up with a professional employer organization. Are the "assigned workers" of the client company considered to be "qualified business facility employees" of the client company, as that term is defined in K.S.A. 2001 Supp. 79-32,154(d)? Also, should the assigned workers also be considered employees of the client company in determining the client company's payroll factor under K.S.A. 79-3283 and calculating the three-factor formula used in apportioning the business income of the client company to Kansas for corporate income tax purposes (in situations where the company earns business income in more than one state)? Substitute for Senate Bill 121 would codify the answers to these questions and make clear that a client company would remain eligible for the "qualified business facility" income tax credit, and that the "assigned workers" could be counted as "qualified business facility employees" of the client company. Those same workers would also be included in the payroll factor of the client company, for purposes of corporate income tax.

The relationship between a professional employer organization, client, and assigned worker, as defined in Section 2 of SB 121, can be distinguished from leased employee situations. Even with passage of SB 121, the Department would continue to maintain the position that leased employees, in general, are not "qualified business facility employees." The professional employer organization and client are described as "co-employers." In many leased employee situations, the lessee does not want to be considered an employer of the leased employee. The professional employer organization must agree to employ all or a majority of a client's workforce. The arrangement must be ongoing, rather than temporary, and a written contract must exist. Employer responsibilities are shared.

"Qualified business facility employee" is defined at K.S.A. 2001 Supp. 79-32,154(d) as follows:

> "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed:
>
> (1)A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. . . .
>
> (2) For taxable years commencing after December 31, 1997, in the case of a taxpayer claiming a credit against the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, "qualified business employee" shall not mean any person who is employed in the operation of a qualified business facility in the state due to the merger, acquisition or other

reconfiguration of the taxpayer unless such employee's position represents a net gain of total positions created by the taxpayer and the employee's position was not in existence at the time of the merger acquisition or other reconfiguration of the taxpayer.

If the client of a professional employer organization operates and invests in a "qualified business facility" and attempts to claim the "qualified business facility" investment tax credit under K.S.A. 2001 Supp. 79-32,153 *et seq.*, in order to qualify for the credit (assuming the other requirements are met), the assigned workers must be considered employees of the client. However, the professional employer organization pays the salaries and issues the W-2's to the assigned workers.

Substitute for Senate Bill 121 makes clear that workers assigned by the professional employer organization to the client would be considered employees of the client, for purposes of claiming the investment tax credit.

If the client's assigned workers are considered employees of the client for purposes of the "qualified business facility" tax credit, then they should also be considered employees of the client for purposes of determining the client's corporate income tax liability. Companies earning business income in more than one state must apportion their income to Kansas using the "three-factor formula," consisting of the property, payroll and sales factors (property in Kansas divided by property everywhere, Kansas payroll divided by payroll everywhere, etc.). For corporate income tax purposes, K.S.A. 79-3283 defines the payroll factor as follows:

> "The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period."
>
> "Compensation" is defined as "wages, salaries, commissions and any other form of remuneration paid to employees for personal services." K.S.A. 79-3271.

Here, the professional employer organization issues the W-2's and pays the salaries to the assigned workers. Substitute for Senate Bill 121 would provide that the payroll for the client's assigned workers should be included in the client's payroll factor, for purposes of apportioning business income to Kansas and computing the client's corporate income tax liability.

Testimony to the House New Economy Committee
Hearing on Senate Bill 121
March 21, 2002

Chairman Mason and Members of the Committee:

I am Steve Kelly of the Kansas Department of Commerce & Housing and I am here today in support of changes proposed in Senate Bill 121. In our efforts to support business location and expansion in Kansas, we are in contact with a variety of firms and have observed certain business trends that have developed fairly recently, but continue to become more commonplace. This legislation is written to address one such trend and its resulting complications, as it regards accessing job creation tax credits associated with net new employment added at a "qualified business facility". The objective of the job creation tax credit is the encouragement of job creation associated with the establishment or expansion of a business enterprise or facility. As things currently stand, a business facility adding new employees that staffs and provides personnel-related functions at that facility through services contracted with a professional employer organization, is not eligible to receive job creation tax credits for employees added at the Kansas facility. The relationship with a professional employer organization may also impact the company's ability to qualify for investment tax credits in some instances. The employees addressed through this legislation are not temporary employees in the usual connotation of third party provided personnel; rather these are the long-term employees that staff the business operation on an ongoing basis. The business operation has simply chosen to utilize the services of a professional employment firm to staff the facility and to support the payroll, benefits and other human resource functions.

We are supportive of the changes suggested by SB121 and believe that they would enhance our ability to encourage business locations and expansions

NEW ECONOMY
3-21-02
ATTACHMENT 7

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the House Committee on New Economy

FROM: Timothy A. Short
Kansas Trial Lawyers Association

RE: Sub. SB 121

DATE: March 21, 2002

Chairman Mason and members of the House Committee on New Economy; thank you for the opportunity to offer comments today on Sub. SB 121. I am Tim Short and I appear before you today on behalf of the Kansas Trial Lawyers Association. I am a practicing attorney from Pittsburg, a member of the KTLA Board of Governors and the Legislative Executive Committee.

KTLA opposed the original SB 121 during the 2001 session. We also expressed our opposition to the Special Committee on Taxation that considered this bill during the legislative interim. The Interim Committee focused its attention on the implications of Sub. SB 121 on the Kansas Tax Code on Professional Employer Organizations. As a result of the interim study, the committee recommended passage of Sec. 2 (definitions) and Sec. 3(c) (the requirement of written contract and tax language) by the 2002 Legislature.

KTLA does not oppose the limited recommendations of the Special Committee on Taxation. However, we continue to have serious concerns about the remainder of the bill and its broader impact on civil law and liability and Workers Compensation. We believe the bill could have serious negative impact for consumers, workers and employers in its current form. We believe the issues addressed in the bill are best dealt with under contract between the employer and the PEO making this bill unnecessary.

In addition, note that this bill was not recommended by the Workers Compensation Advisory Council. The Council, charged with reviewing and making recommendations on all proposed legislation which deals with Workers Compensation issues, voted at its Feb. 13, 2001 meeting to not recommend this bill. The minutes of that meeting are attached to testimony submitted by the AFL-CIO.

For the committee's background, I would like to review our concerns with the bill with regards to the current version of Sub. SB 121:

1. WORKERS COMPENSATION LAW: The Kansas Trial Lawyers Association is concerned about the potential effect of Sub. SB 121 on the responsibilities of employers under

Terry Humphrey, Executive Director

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the Kansas Workers Compensation Act. K.S.A. 44-501, *et seq.*, and believes the bill is unnecessary in light of existing statutory law.

A. STATUTORY EMPLOYER STATUS: Under K.S.A. 44-503, an employer who subcontracts with an intermediary whose workers perform work which is part of principal employer's trade or business or which the principal employer has contracted with any other person to perform, the principal is considered a "statutory employer" of the assigned workers. Both the statutory employer and the immediate employer are potentially liable to an injured worker making a claim under the Kansas Workers Compensation Act, with the ultimate liability being borne by the employer closest to the injured worker which is properly insured or otherwise financially able to pay compensation. If the statutory employer is required to pay compensation because the immediate employer failed to purchase workers compensation insurance, the statutory employer has a right to seek indemnity from the immediate employer.

Subsection 3(e) of Sub. SB 121 states "Both client and the professional employer organization shall be considered the employer for the purpose of the workers compensation act." This appears to make the client an employer rather than a statutory employer of the assigned workers, confusing the issue of which has the ultimate liability to the injured worker.

B. EXCLUSIVE REMEDY: Under K.S.A. 44-503, both the statutory employer and the immediate employer generally have immunity from civil liability to an assigned worker for an on-the-job injury covered by the Kansas Workers Compensation Act. Subsection 3(f) of Sub. SB 121, which provides that both the client and the PEO are considered employers entitled to protection of the exclusive remedy provision of the Workers Compensation Act "irrespective of which entity secures and provides such workers compensation coverage" is unnecessary because it is already covered under current law.

C. INSURANCE COVERAGE OF CLIENT: Although "client" companies clearly remain liable under the Kansas Workers Compensation Act for injuries to assigned workers, Sub. SB 121 allows a client to forego purchasing Workers Compensation insurance which covers the assigned workers and rely upon the PEO to provide such insurance. If the PEO fails to purchase any Workers Compensation insurance or lets such insurance lapse, the client employer faces liability for a claim for which it is uninsured. While the Kansas Workers Compensation Fund will eventually pay compensation to the injured worker if the client is uninsured and unable to pay, significant delays will result in providing medical treatment and disability compensation to the injured worker, and the client will be legally liable to the Fund for indemnity.

2. CIVIL LIABILTY TO THIRD PARTIES: While the most onerous provisions of the original bill (which provided alternating immunity to the client and PEO depending upon which was controlling the assigned worker at any given moment) have been removed, KTLA remains concerned about the potential effect of Sub. SB 121 upon civil liability of clients and PEO's to third parties injured by acts or omissions of assigned workers.

A. LIABILITY UNCLEAR: Although the current version of Sub. SB 121 does not contain any provisions giving either the client or PEO express immunity, it may affect the

liability of either by governing whether the client or the PEO is the employer for such purposes. Subsection 3(h) provides:

> "Assigned workers shall be deemed employees of the client for general liability purposes and for purposes of: Automobile insurance, fidelity bonds, surety bonds or employer's liability insurance other than workers compensation insurance carried by the professional employer organization unless the assigned workers are included by specific reference in the applicable prearranged employment contract, insurance contract or bond."

This language is ambiguous. If the assigned workers are specifically referenced in "the applicable prearranged employment contract, insurance contract or bond," are the assigned workers not considered employees of the client for general liability purposes or under the client's insurance or bonds?

B. RESPONDEAT SUPERIOR: A company can only act through its employees. Since an employer reaps the benefits of its employees' actions, the common law of Kansas imposes vicarious liability upon an employer for acts or omissions of its employees which harm others under the doctrine of *respondeat superior*. Since both the client and the PEO benefit from the actions of an assigned employee, both should potentially be liable for injuries caused by the employee.

C. APPARENT EMPLOYER: Assigned workers will appear to customers and other members of the public to be employees of the client company. In deciding whether to do business with an assigned worker or let an assigned worker into their homes, people will rely upon the reputation and financial strength of the client company, and if injured by the assigned worker those people will look to the client company for payment of their damages.

Whether the client company is liable to third persons injured by assigned employees should not depend upon the particulars of its contract with a PEO or provisions in an insurance contract or bond. Third persons injured by assigned workers will not know those workers were employees of a PEO rather than the client company, and therefore may fail to hold the PEO accountable before the statute of limitations expires. If the applicable prearranged employment contract provides that the client is not the employer for general liability purposes, and the PEO is uninsured and insolvent, people injured by the assigned workers could be left with no remedy.

D. PEO NELGIGENCE IN HIRING: When the client company relies upon a PEO to screen applicants for employment, the PEO should be liable for its negligence in hiring. If, for example, a PEO hires a known sex offender to make service calls in customers' homes, or hires an unlicensed driver convicted of multiple DUI's to drive a company vehicle, the PEO should be liable for the injuries caused by its own negligence.

While the client company remains legally liable for injuries caused by its apparent employees, a jury may be reluctant to award full damages or may excuse the client from any liability in light of the client's reasonable reliance upon the PEO to screen job applicants. To assure adequate compensation is paid by the real culprit, those injured by negligently hired assigned workers

should be permitted to hold the PEO responsible for its negligence. Furthermore, the client company should be entitled to seek indemnification from the PEO if the client is held liable for damages caused by the PEO's negligence in hiring an assigned worker.

3. **EMPLOYMENT LAW:** KTLA is concerned about the impact Sub. SB 121 may have on employment law. Federal statutes governing employment discrimination should take precedence over a state law altering the definition of whether a client company or PEO is an employer of an assigned worker, but SB 121 may nonetheless create some confusion.

Thank you again, for allowing us to offer our concerns about the broad implications of Sub. SB 121. We continue to believe that the bill would create confusion and uncertainties which are not in the best interest of Kansas employers, workers or consumers. We do oppose the adoption of the Interim Committee's limited recommendation to adopt only Sec. 2 and Sec. 3(c). But for the reasons outlined in our testimony, we encourage you to oppose the bill in its present form.

Testimony on Senate Substitute for SB 121
Before the House New Economy Committee
By Larry Magill
Kansas Association of Insurance Agents
March 21, 2001

Thank you Mister Chairman and members of the Committee for the opportunity to appear today as an opponent of Senate Substitute for Senate Bill 121 without further study and possible amendments. While we appreciate the changes made by the Senate last year, we still have concerns with the drafting and intent of the legislation as it affects insurance for firms participating in a PEO.

The Interim Committee report recommended passage of section 2 (definitions) and section 3(c) (requirement of written contract and tax language). We have no problem with their recommendations dealing with the Kansas withholding, tax incentives and unemployment tax issues. KAIA would support the Committee separating out the tax issues and dealing with them.

Providing Workers Compensation Coverage
The legislation appears to require that the PEO provide the workers compensation coverage to their clients where it says, "the professional employer organization shall have a right to and shall assume the following responsibilities...secure and provide all required workers compensation coverage for its assigned workers either in its own name or in its clients name" on page 3 lines 2-4 and 9-10. Why not leave the decision to purchase workers compensation from the PEO up to the client? There may be instances where it makes more sense for the client to obtain their workers compensation coverage separately from the PEO arrangement. There are no doubt other valid reasons why a firm would purchase services from a PEO. Our reading of this language indicates that the client has no choice and that the purchase of workers compensation is tied by statute to the providing of the other services.

Workers Compensation Experience Modifications
We are concerned about the workers compensation experience modifications of businesses that enter into contracts with PEOs. Under the rules of the Kansas Workers Compensation Insurance Plan (assigned risk), a PEO organization must maintain a separate experience modification for each employer covered under a PEO's workers compensation insurance. This is called the multiple coordinated policies rule of the Kansas Plan. Does this act prohibit the application of that rule?

If the PEO is able to obtain coverage in the voluntary market, this rule does not apply. In that case, a new PEO would start out with a 1.00 or unity experience modification until they have been in business a minimum of three years. Once they are experience rated, the average experience modification for all the "pooled" risks would apply. This would certainly be attractive for businesses with an experience modification higher than the PEO's average but allowing them into the "pool" would not benefit the firms already in that have lower average experience. Are they then creating a "house of cards" where

the experience keeps spiraling upward as progressively higher experience modification firms join to get the benefit of a lower experience modification? Once their experience catches up with them, would they then form a new entity and start the process all over again?

From the firm's perspective that joins the PEO, they "launder" their experience when they go in by dropping their individual firm's experience modification in favor of the PEO's and then when they leave they would "launder" it again by going back to unity or 1.00 until they had been on their own three years or more.

In essence, joining a PEO could be a way to escape a firm's own experience modification for the time they are in the PEO and for thee years after. If a firm were paying a 50% surcharge on their workers compensation insurance because of bad loss experience and presumably a bad safety record, this would be a highly attractive alternative.

The safest way to prevent the leasing of employees from leading to "gaming" of the workers compensation rating mechanism is to require a multiple coordinated policy approach on both the voluntary and assigned risk markets. This gives the employer the most direct incentive to maintain a safe workplace and eliminates any concern with "gaming" the rating structure. Kansas Division of Workers Compensation Director Phil Harness proposed a regulation recently that would require that firms joining a PEO maintain their separate experience modifications and policies in a hearing on February 28, 2002.

Small Group Health Insurance

It is unclear from reading SB 121 whether or not the small group health insurance reforms would still apply to employers with less than 50 employees joining a PEO. These were enacted partly to protect workers from being excluded from small employers' group coverage because of health issues or having their coverage for pre-existing conditions restricted or eliminated.

If the legislature is serious about small group health insurance reform, this could be a sizeable loophole in the act that creates an unfair rate advantage for employers in the PEO. If the way around small group health reform is pooling employees, then shouldn't all employers have that option regardless of whether they buy their coverage from a PEO?

Under a proposed PEO law in Louisiana it states that, "each client shall be considered as a separate group for eligibility, rating and coverage purposes."

Insurance Agent Licensing

While we appreciate that Senate Substitute for SB 121 has eliminated language which specifically allowed PEO's to sell workers compensation coverage without having an agent's license, we would feel more comfortable if it specifically stated that providing

insurance coverage through a PEO requires the person to have an insurance agent's license.

Interim Study

Given the short amount of time left in this year's session to focus on a complex issue like this, we urge the committee to recommend the legislation for interim study. We could also support dealing with the tax issues as proposed by the Interim Tax Committee. We would be happy to provide additional information or answer questions. Thank you for the opportunity to appear today.

Session of 2001

Substitute for SENATE BILL No. 121

By Committee on Commerce

3-15

AN ACT relating to professional employer organizations; establishing certain minimum standards applicable to all professional employer organizations operating in the state.

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

Section 1. This act shall be known as the professional employer organization act.

Sec. 2. Unless the context clearly requires otherwise, these terms are defined as follows:

(a) "Administrative fee" means those amounts charged by the professional employer organization to the client over and above amounts applied to the mandatory state and federal taxes, wages of assigned workers and amounts applied to premiums or contributions for benefits provided for assigned workers.

(b) "Assigned worker" means a person having an employment relationship with both the professional employer organization and the client.

(c) "Client" means a person who contracts with a professional employer organization to obtain employer services from another person through a professional employer arrangement.

(d) "Person" means an individual, an association, a company, a firm, a partnership, a corporation or any other form of legally recognized entity.

(e) "Professional employer arrangement" means an arrangement, under contract or whereby:

(1) A professional employer organization agrees to employ all or a majority of a client's workforce;

(2) the arrangement is intended to be, or is, ongoing rather than temporary in nature;

(3) employer responsibilities for workers under the arrangement are in fact shared by the professional employer organization and the client; and

(4) for the purposes of this act, a professional employer arrangement shall not include:

(A) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of section

414(b) and (c) of the federal internal revenue code of 1986, as amended, and which does not hold itself out as a professional employer organization.

(B) Arrangements in which a person assumes full responsibility for the product or service performed by such person or such person's agents and retains and exercises, both legally and in fact, a right of direction and control over the individuals whose services are supplied under such contractual arrangements, and such person and such person's agents perform a specified function for the client which is separate and divisible from the primary business or operations of the client.

(C) Any person otherwise subject to this act if, during any fiscal year of the person commencing after July 1, 2000, the person pays total gross wages to employees employed by the person in the state under one or more professional employer arrangements which do not exceed 5% of the total gross wages paid to all employees employed by the person in the state during the same fiscal year under all arrangements described in paragraph (4) and that each person does not advertise or hold itself out to the public as providing services as a professional employer organization.

(f) "Professional employer organization" means any person engaged in providing the services of employees pursuant to one or more professional employer arrangements or any person that represents itself to the public as providing services pursuant to a professional employer arrangement.

Sec. 3. (a) Each professional employer organization shall have a written contract between the client and the professional employer organization setting forth the responsibilities and duties of each party. The contract shall contain a description of the type of services to be rendered by the professional employer organization and the respective rights and obligations of the parties.

(b) Each professional employer organization shall provide written notice of the general nature of the relationship between the professional employer organization and the client to the assigned workers located at the client work site.

(c) A professional employer organization shall be considered an employer for the purposes of withholding state income tax of the assigned workers pursuant to the Kansas income tax act. Commencing after December 31, 1999, the client shall be considered as the employer of an assigned worker under the terms of the professional employer arrangement between the client and the professional employer organization, for purposes of: (1) subsection (d) of K.S.A. 79-32,154, subsection (d) of K.S.A. 74-50,114, K.S.A. 79-32,160a or K.S.A. 2000 Supp. 74-50,131, and amendments thereto; and (2) calculating the client's payroll factor under K.S.A. 79-3283. The client shall provide to the department of revenue the payroll information for assigned workers needed for purposes of ad-

ministering the above provisions.

(d) As long as the professional employer organization's contract with the client remains in force, the professional employer organization shall have a right to and shall assume the following responsibilities:

(1) Pay wages and collect, report and pay employment taxes of its assigned workers from its own accounts;

(2) pay unemployment taxes as required by the employment security law;

(3) secure and provide all required workers compensation coverage for its assigned workers either in its own name or in its clients name.

(e) Both client and the professional employer organization shall be considered the employer for the purpose of the workers compensation act.

(f) Both the professional employer organization and its client shall be entitled to protection of the exclusive remedy provision of the workers compensation act irrespective of which entity secures and provides such workers compensation coverage.

(g) ~~A recognized professional employer organization shall be deemed the employer for the purposes of sponsoring and maintaining benefit and welfare plans for its assigned workers~~.

(h) Assigned workers shall be deemed employees of the client for general liability purposes and for purposes of: Automobile insurance, fidelity bonds, surety bonds or employer's liability insurance other than workers compensation insurance carried by the professional employer organization unless the assigned workers are included by specific reference in the applicable prearranged employment contract, insurance contract or bond.

(i) Except for the conduct of the professional employer organization, a professional employer organization is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client that is so licensed, certified or regulated.

Sec. 4. (a) Financing of unemployment insurance benefits for workers assigned by a professional employer organization to a nonprofit organization or a unit of government shall be paid by the unit or organization as provided by the employment security law. Unemployment insurance benefits for workers assigned by a professional employer organization to any client other than a nonprofit organization or governmental unit shall be made in accordance with the provisions of this section.

(b) During the term of a professional employer organization agreement, a professional employer organization is liable in accordance with the provisions of employment security law, for the payment of contribu-

[If properly licensed as an insurance agent under KSA 40- 4901,

[nothing herein shall require that the client obtain their workers compensation coverage from the professional employer organization. Each client shall maintain a seprate workers compensation policy with their own seprate experience modification where one is appliciable under an approved rating ~~sales~~ plan.]

[For purposes of the small employer group health reforms contained in KSA 40-2209b to 40- 2209 p, each client shall be treated as a separate employer.]

9-6

tions, penalties and interest on wages paid to employees assigned to a client company. The professional employer organization shall report and pay all contributions under its state employer account number, using the applicable contribution rate.

(c) When a client ceases to pay wages, such client shall be subject to termination of its employer account and experience rating records in the same manner as any other employer, in accordance with the provisions of employment security law. If a client which has ceased to pay wages subsequently resumes paying wages, it will be assigned the appropriate experience rate in accordance with the provisions of employment security law.

Sec. 5. (a) Nothing in this act exempts a client of a professional employer organization, nor an assigned worker, from any other state, local or federal license or registration requirement.

(b) Any individual who must be licensed, registered or certified according to law and who is an assigned worker is deemed an employee of the client for purposes of the license, registration or certification.

(c) Except for the conduct of the professional service organization, a professional employer organization does not engage in an occupation, trade or profession that is licensed, certified or otherwise regulated by a governmental entity solely by entering into a professional employer arrangement with a client company or an assigned worker.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

TESTIMONY BEFORE THE HOUSE NEW ECONOMY COMMITTEE ON SUBSTITUTE FOR SENATE BILL 121

By Philip S. Harness, Director of Workers Compensation
March 21, 2002

From a workers compensation viewpoint, Substitute for Senate Bill 121 presents various issues and concerns, some of which have been discussed by the Workers Compensation Advisory Council, but concluding with no recommendation made by that body to the Legislature on the original Senate Bill 121.

The Workers Compensation Advisory Council received testimony from a representative of the National Council on Compensation Insurance (NCCI) that it is unable to track the experience modification of employers who are taken under the PEO's insurance policy. Further, when that client employer seeks to sever the relationship with the PEO, say after three years, that client employer would come out of the relationship with its experience modification "laundered." Because of these events, it might be said that incentives for the safer employers are diminished and the market would have to adjust upward.

The Division of Workers Compensation's dealings with PEO's have been checkered. The Division currently has two cases pending involving what would be considered PEO's. Both claims involve the same employer and insurance carrier. In each case, both the "client" firm and the PEO agreed to employment by the PEO and coverage under the Workers Compensation Act. It was the insurance carrier who accepted premiums for coverage (for workers characterized as "clerical" while performing work requiring much greater exertion) who denied employment by the PEO and contended that the on-site client company was the employer. As the client company had arranged for the PEO to obtain workers compensation coverage, it had none of its own. In each case, the administrative law judge found the PEO to be the employer and further found the claim compensable. It would be up to the district court to determine, in an action between the PEO and the insurance carrier, whether there has been fraud in the formation of the insurance contract or whether additional premiums were owed after an audit.

In addition, the Division currently has fraud and abuse charges against one PEO and another PEO has filed for bankruptcy in Federal Bankruptcy Court. The fraud and abuse charges involve not providing workers compensation insurance for the Kansas employees of its Kansas client companies. A defense, relied upon by the defendant, was that it had contracted with another PEO to provide workers compensation insurance coverage and the second PEO had failed to provide that coverage. The second PEO denied that a contract to procure insurance existed. Meanwhile, there was an injury and the uninsured onsite client company ended up paying for it. Outside of workers compensation, there are allegations that monies paid by the client company to the PEO for federal and state tax withholdings, etc., were not properly forwarded.

Compiling statutes from Alabama, Florida, Idaho, Kentucky, Louisiana, Missouri, Tennessee, and Texas, I would suggest the following be considered by the committee to be amended into Substitute for Senate Bill 121:

NEW ECONOMY
3-21-02
ATTACHMENT 10

1. PEO's should be required to be licensed in the state.

2. Each licensed PEO should have a registered agent for service of process in the state.

3. Records of the PEO should be available for inspection by the state licensing authority.

4. PEO's should not be licensed in the state without providing proof of workers compensation coverage to the licensing authority.

5. PEO's should be required to have a bond with the state licensing authority.

6. PEO's with places of business in Kansas should be required to conspicuously post their license.

7. PEO's should be required to maintain a minimum net worth to obtain and maintain a license.

8. PEO's should be required to sue the name on their license in their conduct with those in the public and in conducting business with others.

9. PEO's should submit audited financial statements to the state licensing authority.

10. Each PEO shall set up a separate bank account(s) for purposes of keeping such money separate for the PEO's operating funds. Assigned workers' wages, withholdings, taxes, and benefit plan payments shall be paid promptly from these trust accounts.

In addition, it may behoove the state to:

11. Require listing of any and all states where the PEO has clients.

12. Require background checks on key personnel; background investigations before the sale of the PEO and its client list.

13. Set forth a way to track experience modifications.

14. Require that the PEO's insurance carrier file evidence of proof of workers compensation insurance coverage for each client of the PEO.

Kansas AFL-CIO

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UNION YES

TO: Members of the House Committee on The New Economy

FROM: Wayne Maichel, executive vice president
Kansas AFL-CIO

RE: Sub. SB 121

DATE: March 21, 2002

Chairman Mason and members of the House Committee on The New Economy; thank you for the opportunity to submit my comments on Sub. SB 121. I regret not being available to offer our comments in person.

The Kansas AFL-CIO has opposed SB 121 since its introduction during the 2001 Legislative Session. We continue to oppose the substitute version of the bill because of the bill's potential broad impact on civil law and liability and Workers Compensation. We believe the bill in its current form could have a serious impact on consumers, workers and employers. We believe the issues addressed in the bill are best dealt with under contract between the employer and the PEO making this bill unnecessary.

In my capacity with the AFL-CIO, I serve as an appointed member on the Kansas Workers Compensation Advisory Council. The Council is charged with reviewing and making recommendations on all pending legislation dealing with Workers Compensation issues. The Council reviewed SB 121 at its Feb. 13, 2001 meeting and voted 9 to 1 to "not recommend passage of this bill." A copy of the minutes of that meeting is attached to my testimony (Council recommendation appears on page 6 of the minutes).

The Kansas AFL-CIO agrees with the recommendations of the Special Committee on Taxation to eliminate all of the bill except the definitional section, Sec. 2, and Sec. 3(c). The remainder of the bill, dealing with Workers Compensation issues should be deleted.

Thank you for your consideration of our comments and on behalf of the Kansas AFL-CIO, I encourage you to oppose the bill in its present form.

KANSAS AFL CIO SOLIDARITY

NEW ECONOMY
3-21-02
ATTACHMENT 11

WORKERS COMPENSATION ADVISORY COUNCIL
FEBRUARY 13, 2001

Present:

Philip Harness	Pat Bush	Wanda Roehl	Dan Messelt
Wayne Maichel	Kip Kubin	Bill Knox	John Ostrowski
Marilyn Dobski	Bill Moore	Jim DeHoff	Terry Leatherman

Chair Philip Harness called the meeting to order. Chairperson Al Lane asked that an advisory council meeting be held before the turnaround date in order to discuss several bills.

OLD BUSINESS

1. APPROVAL OF MINUTES OF JANUARY 12, 2001, MEETING.

Member Wayne Maichel made a motion to approve the minutes; seconded by Member Kip Kubin. Motion passed unanimously.

2. GUIDES TO PERMANENT IMPAIRMENT - 5th EDITION.

Chair Philip Harness introduced Andrew Sabolic from the National Council on Compensation Insurance (NCCI). Mr. Sabolic indicated that NCCI did some initial analysis regarding rates, etc., if the 5th Edition of the guides is approved. He indicated that if this edition is approved, there would be little if any impact on costs in Kansas (other states will probably have more impact). He also indicated that NCCI should have more detailed information within the next few weeks. Mr. Sabolic indicated NCCI has a research area, actuaries, etc., who look at the data available to determine the cost impact. Member John Ostrowski reminded the council that at the last meeting, Dr. Mills pointed out the cost to perform some evaluation ratings would increase in cost, and he was struggling with the concept that if there would be no major changes, then why pay physicians the increased amount. Mr. Sabolic indicated that when he receives the finalized analysis, which will be broken down to show what was considered, he will send the information to Chair Harness.

Chair Harness asked the pleasure of the council; it was agreed to wait until the final analysis was received from NCCI before taking any action. Matter tabled to next meeting.

3. REPORT OF SUBCOMMITTEE.
   a. Date of Accident for Repetitive Stress Injuries

Chair Philip Harness asked if the subcommittee (Members Kip Kubin and John Ostrowski) had anything to add at this time.

Member Kubin indicated the subcommittee had met twice since the last meeting, but had

no report at this time. They are trying to work out details regarding some of the time limits that may be affected by the proposals. Member Ostrowski indicated that one of the "struggles" involves obtaining clear, concise deadlines to avoid delaying treatment. The subcommittee had exchanged more proposals just before this meeting. He feels they may be closer to agreement.

It was agreed this proposal will be held over until the next meeting.

4. EMPLOYER'S WRITTEN POLICY.

Chair Philip Harness reminded the members that this proposal was brought to the council by Kendall Cunningham.

Member John Ostrowski said if there were a vote on this item today, the Labor side would probably vote against it. He indicated he attempted to have Dave Hatcher (who runs HCI) appear at this meeting, but could not get it arranged on such short notice. Mr. Hatcher was a federal parole officer, but now runs his own business that basically writes policies and advises employers on worthwhile drug programs. Member Ostrowski's intent is to have him speak to the council about this proposal. One of the objectives of the proposal is to create a safer workplace. Member Ostrowski has determined from talking with Mr. Hatcher that when employers institute drug programs and explain the program to all employees, those employees are generally happy because no one wants to work with someone who is impaired. One employer program that Mr. Hatcher was able to share is with Hamm Quarries in Topeka. Their workers compensation claims have been reduced by one-third in the two years since the drug policy program has been in place. Hamm is willing to say that this drop is due to the drug policy. Member Ostrowski pointed out that this is the type of result wanted, but pointed out that the drug policy needs to be uniform across the board. He pointed out that the proposal seems to be another punitive attempt to "punish" someone, rather than to avoid workers compensation claims. The statute has been changed over the years in many ways; as an example, the presumption of impairment for a .04 alcohol consumption and that the impairment only has to contribute to the accident, where before it had to be a "substantial" contribution. Member Ostrowski gave an example of an employee who was crushed by steel because a forklift operator ran into a stack of iron beams. The injured employee had some marijuana in his system. He pointed out that an argument could have been made that he contributed to the accident because, maybe if he wasn't impaired, he could have jumped farther or quicker, and therefore his injuries may not have been as severe or may not have occurred at all. Member Ostrowski pointed out that Mr. Cunningham's proposals do nothing with probable cause except eliminate it in certain circumstances. In a situation such as above, the forklift operator would probably not be tested for impairment, while the injured employee would be. If that employer had a comprehensive drug program that applied across the board, both individuals may be required to be tested. Another problem is selective application of drug testing. Member Ostrowski indicated he would like to bring Mr. Hatcher in to talk to the council about such programs. He has drafted some language, but not in final form, which includes testing of those responsible for the accident even if they are not injured. The proposed language will include a "second chance" instead of termination; some type of education program; a written

policy to put into effect and uniformly applied; and other things to help create a safer workplace. Member Ostrowski pointed out that the proposed cutoff levels do not prove impairment.

This item was held over until the next meeting when hopefully Mr. Hatcher will be able to appear.

5. AMEND K.S.A. 44-532 TO ELIMINATE INTENT.

Chair Philip Harness reminded the members that this item was brought before the council by then Assistant Attorney General Karen Wittman. This is an amendment to K.S.A. 44-532 (d) to eliminate the "knowing and intentional" failure to secure workers compensation insurance and ration it down to "failure to secure" insurance. The packets contain a breakdown of the various states and the penalties imposed. Chair Harness indicated he would like to amend that part of K.S.A. 44-532 (d).

Member Kip Kubin indicated some modification could be made, but also pointed out that the penalty amount was raised just a couple of years ago. He does not believe we can impose high penalties and make employers strictly liable, but maybe the penalties could be lowered for strictly liable and a higher penalty for "knowing and intentional." Member Kubin pointed out that because one case failed, does not mean the statute needs to be changed.

Assistant Chair Dan Messelt indicated he feels that small employers would probably be hurt by this amendment. He indicated these are the employers who don't do a very good job of opening their mail or may forget to send in the premium.

Member Kubin pointed out these employers are not "getting off the hook" because, if the Workers Compensation Fund pays the claim, then the Fund pursues the employer civilly to recoup that money expended. Member John Ostrowski indicated he did not think the Fund pursues these matters. He indicated he does not have a problem with lowering the penalty and making it strict liability, but also suggested some type of progressive penalty if it happens repeatedly and suggested this include successor companies (buy outs, etc.). In looking at House Bill 2340, there is an interesting concept of the larger the employer, the larger the penalty for not having coverage. He thinks maybe the penalty should somehow be connected to the payroll. Member Kubin also suggested looking at the way Connecticut assesses, that being if you can show "knowing and intentional," the penalty is more.

It was suggested that Chair Harness take the above suggestions back to the Fraud and Abuse Section and see if something could be worked out. Member Wayne Maichel also wants to know why the Workers Compensation Fund is not pursuing recovery, if they are not. Chair Harness indicated he would contact Paula Greathouse and ask her to appear at the next meeting.

This item was held over until there is some specific proposed language.

6. PROPOSED REGULATION AMENDMENTS.

Chair Philip Harness indicated these proposed changes were introduced at the October 27, 2000, meeting. He asked the members if there were any problems. Member John Ostrowski had previously suggested changing the word "motion" to "application" in proposed 51-3-20. Chair Harness indicated this was an appropriate change. Member Ostrowski asked if the striking of 51-9-12, 51-9-13, and 51-9-14 was due to a conflict with the amended staute. Chair Harness indicated that amendments last year obviated them.

Member Ostrowski made a motion to adopt the proposed changes; seconded by Member Bill Knox. Member Ostrowski asked if the Division has a rehabilitation administrator; to which Chair Harness replied that there is, and he was present at the meeting, Richard Thomas. Member Ostrowski asked if the vendors were covered under the fee schedule. Mr. Thomas replied there are approximately 18 vendors, but that most of the work is done through job placement. He indicated that the present regulation requires vendors to have an office in Kansas; the proposed amendments would eliminate that requirement, but the vendors would still have to be approved by the rehabilitation administrator.

It was suggested that the council move on to Item #7 regarding House and Senate bills and come back to this item later in this meeting. Such was done. (See page 6.)

7. DISCUSSION OF HOUSE AND SENATE BILLS.

Senate Bill 88 concerns access to health care records and billing records; **House Bill 2087** concerns the release of medical records. Chair Philip Harness indicated that Chair Al Lane has had some hearings on House Bill 2087 and referred it to the advisory council. There have been no hearings on Senate Bill 88 and it is still pending in the Senate Judiciary Committee. Chair Harness pointed out that subsection (d) in Senate Bill 88 states that an "'authorized party' means a person or entity . . . or by court order or operation of law, . . ." and is assuming that may then refer to K.S.A. 44-550b which allows representatives of the carrier or employer access to such records. Section 3 (d) of SB 88 states that those authorized parties "shall maintain the confidentiality of such records and shall not use or release such records except for the purpose for which authorization was given . . ." Section 6 (a) states that "Any health care provider, patient, . . . or authorized party may bring a claim or action to enforce the provisions of this act, and any court having jurisdiction . . ." Chair Harness indicated that it would appear if there is a violation of this bill, the enforcement proceedings would probably be taken to the district court; he does not know if this would conflict with workers compensation since the district court really does not handle workers compensation matters now.

Member Kip Kubin inquired about the purpose of Senate Bill 88 and if there were specific problems the bill is trying to address; Chair Harness indicated Terry Humphrey, Kansas Trial Lawyers Association, was involved in the drafting of this bill, but he is not sure if they were simply trying to "catch" all medical records questions. He pointed out that on Page 3, lines 17-

22, the bill borrows the charge for copying from the workers compensation medical fee schedule.

Member John Ostrowski indicated he has had physicians who have refused to release records to anyone, even the patient. He indicated that SB 88 was lifted from other states, so obviously the problem is not exclusive to Kansas. This bill would make it mandatory that physicians and/or health care providers allow access to records to those listed and also sets out a cost for copying those records. Richard Thomas, supervisor of the Ombudsman Section of the Division of Workers Compensation, said his section receives several calls from injured workers and from representatives of carriers (medical managers), stating doctors will not release records. Usually a phone call to the doctor's office solves the problem, but not always, which then requires a subpeona.

The Labor side indicated they would have no problem with the passage of Senate Bill 88. Member Ostrowski indicated that House Bill 2087 may have "real problems." Chair Harness asked if there was a motion to fail to recommend the passage of HB 2087; Member Terry Leatherman made a motion to recommend against the passage of HB 2087; seconded by Member Wayne Maichel. Motion passed unanimously.

Member John Ostrowski made a motion to recommend passage of Senate Bill 88; seconded by Member Bill Knox.

Member Terry Leatherman indicated he had not looked at SB 88 from the prospect of workers compensation, but rather from a health care perspective. Terry Humphrey (KTLA) indicated to Chair Harness that members of KTLA and members of KBA were instrumental in writing SB 88; it is currently in the Judiciary Committee and no hearings have been held. Chair Harness said no one has asked the advisory council to look at this bill; maybe he was "jumping the gun" in asking the council to look at it. He indicated the bill would clarify that a patient is an "authorized party" for purposes of receiving medical records, but he knew of no "problem" that passage of this bill would solve. It was pointed out that K.S.A. 44-515 (a) waives any patient/physician privilege of medical records and that SB 88 would not be included in the Workers Compensation Act. Member Kubin said that SB 88 would have no impact on workers compensation other than giving claimants one more step to follow in the process to obtain medical records.

Member Maichel called for the question and a vote on the motion; nine votes aye; one vote nay (Leatherman).

House Bill 2251 concerns optional deductibles for workers compensation policies. New language would be added so that if a deductible is reduced or eliminated, the employer's experience modification "shall be" recalculated using the new, lower, or no deductible. It was pointed out that this would affect mainly larger employers. Andrew Sabolic indicated that when he talked with Larry McGill, he got the impression that they were not going to pursue passage of this bill.

Member Leatherman said that, since the author of the bill was not present at the meeting, he would make a motion that the council offer no recommendation on House Bill 2251; seconded by Wayne Maichel. Motion passed unanimously.

Member Wayne Maichel made a motion for no recommendation on **House Bill 2263**; seconded by Member Kip Kubin. Motion passed unanimously.

On **House Bill 2340** Member Wayne Maichel made a motion to table; seconded by Member Kip Kubin. Member Kubin called for question. Motion passed unanimously.

Senate Bill 121 relates to professional employer organizations; Member Wayne Maichel made a motion to not recommend passage of this bill; seconded by Member Kip Kubin. Motion passed 9-1; Member Terry Leatherman voted nay. He explained that he does not believe this is an issue for the council.

8. REVIEW OF BENEFITS.

Member Wayne Maichel indicated he did not have any recommendations at this time, but would like to have the opportunity to look at this issue at a future meeting.

(RETURN TO ITEM #6, PROPOSED REGULATION AMENDMENTS.)

Chair Philip Harness indicated to Member Terry Leatherman that the council has previously gone over the proposed amendments to regulations (Item #6). Member Leatherman indicated he had not had a chance to meet with other council members regarding these proposed changes. A short break was taken.

Member Leatherman made a motion to adopt the proposed regulation changes except for the change recommended by Member John Ostrowski to 51-3-20 wherein he requested changing the word "motion" to "application"; seconded by Member Wayne Maichel. Motion passed unanimously.

9. PROPOSALS 1-11.

Member John Ostrowski submitted 11 proposals that he wants the council members to consider at later meetings.

Proposal No. 1 would strike subsection (h) from K.S.A. 44-501, which reduces compensation benefits if an employee receives retirement benefits. Member Ostrowski believes this offset punishes more responsible employees. Now the Kansas Court of Appeals imputes the wage of an employee who voluntarily retires because of an injury which reduces work disability and the offset for retirement is taken anyway.

Proposal No. 2 would extend the time limit for giving notice of the accident to 25 days instead of the present 10 days.

Proposal No. 3 proposes that temporary total disability benefits should be based on 100 percent of the state's average weekly wage (present 75 percent).

Proposal No. 4 proposes that a "stay" be put in the law such that injured employees who are off work a considerable amount of time do not lose their unemployment benefits.

Proposal No. 5 proposes that shoulder injuries be removed from the schedule of benefits and returned to unscheduled injuries to the body as a whole.

Proposal No. 6 proposes that the calculation of benefits pursuant to K.S.A. 44-510e should be returned to pre-1993 status (abolishment of the accelerated formula).

Proposal No. 7 proposes that part-time workers in dissimilar employments should be compensated by their combined earnings (the same as part-time employees in similar employments who are treated as full-time employees).

Proposal No. 8 would strike the words "or by the normal activities of day-to-day living" contained in K.S.A. 44-508 (e).

Proposal No. 9 would remove the cap on permanent total disability.

Proposal No. 10 refers to the case of ***Pruter v. Larned State Hospital***, wherein benefits for injuries to nonparallel limbs which occurred in the same accident are to be compensated as two scheduled injuries. The proposal would reverse that decision and conclude that those injuries are "whole body" injuries.

Proposal No. 11 proposes to amend K.S.A. 44-510d (b) to allow temporary partial disability to be paid on scheduled injuries.

No comments were made and no action taken on any of these proposals at this time.

Chair Philip Harness pointed out some of the charts contained in the Fraud and Abuse Report; and also indicated the Division's Annual Reports are available.

Member Terry Leatherman requested the council make a declaration to the Legislature stating that monies collected from insurance carriers, self-insureds, and group pools as assessments to the Division of Workers Compensation not be used for purposes of the State General Fund during the appropriations process. Chair Philip Harness explained that the Legislature took a half million dollars from the Division last year, with oral comments that they would not do it again. Member Leatherman pointed out this was done the last two years. Chair

Harness indicated the first budget meeting with the Senate is scheduled for February 21, 2001. There was a discussion about how the Division ended up with an excess of monies such that the Legislature could take it; it was explained that the money was appropriated for the Division's new database project. Member Wayne Maichel indicated Labor had no problem with this proposal; however, pointed out that the Division should have justification for having any excess money, so that the Legislature cannot get to it. Member Leatherman indicated he proposed making a dual statement of not appropriating the money if the Division has it and not reaping more in assessment revenues than the Division needs to operate. Member Maichel indicated the statute now states that. Chair Harness pointed out that what happened was the Legislature, in their appropriations bill the last two years, inserted language "notwithstanding the provisions" of K.S.A. 74-712 and 74-713; thereby allowing the Legislature to take the Division's money.

Member Leatherman made a motion to take such a statement to the Legislature; seconded by Member Bill Moore. Member Leatherman attached a statement to the effect that the Division shall not assess insurance carriers, self-insureds, and group pools more than is needed to fund the Division with no surplus. Member Leatherman indicated that if more money was needed, then Chair Harness could come before this council to ask for approval. Motion passed unanimously.

Chair Harness pointed out that the Division's annual report contains information on a closed claims study which was recommended by Legislative Post Audit. There are some dramatic increases on indemnity, medical, hospital costs, and physicians payments.

Chair Harness also "made a pitch" for the Division to move forward with electronic data interchange (EDI); all states are moving in that direction. He indicated that after the new database is up and running with EDI capabilities, the Division will be able to accept that information.

Chair Harness indicated he would like to have another meeting, possibly in March, to tie up any loose ends. Member Wayne Maichel indicated that he observed the subcommittee (Kip Kubin and John Ostrowski) meet and seem to actually be "doing some good" in making the workers compensation law better for everyone. He stated that he would like the council to meet through the summer, even if the Legislature is not in session, to try to make more "meaningful changes" to benefit both sides.

Meeting adjourned.