

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:00 a.m. on February 19, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research
Deb Hollon, Legislative Research
Mitch Rice, Revisor of Statutes
Norman Furse, Revisor of Statutes
Jodie Anspaugh, Secretary

Conferees appearing before the committee: Julie Bachman, Wichita Area Employers Work Comp Task Force
Wanda Roehl, Wichita Area Employers Work Comp Task Force
Bill Curtis, Kansas Association of School Boards
Secretary Garner, Kansas Department of Human Resources
Bud Langston, resident of Topeka
Pamela Pettis, resident of Carbondale
James Snell, injured worker, resident of McClouth
Diana McCombs, injured worker, resident of Kansas City

Others attending: See attached list.

Chairperson Brownlee called the meeting to order at 8:00 a.m. She announced that SB 65 will be voted on tomorrow due to time constraints today. Mitch Rice, Revisor of Statutes, distributed a revised SB 133, and explained the changes in the bill. (Attachment 1) Senator Emler moved that the bill be amended as the balloon states. Senator Jordan seconded. The motion carried. Senator Barone moved that the committee recommend SB 133 favorable for passage as amended. Senator Emler seconded. The motion carried.

Chairperson Brownlee continued the hearing on SB 181. Phil Harness, Acting Director of Workers Compensation, distributed a chart regarding the 2002 Oregon Workers' Compensation Premium Rate Ranking, which compares workers compensation premium rates for all fifty states. (Attachment 2) Kansas was ranked 41st in 2002. He also distributed a handout from the National Council on Compensation Insurance's Kansas Workers Compensation State Advisory Forum (Attachment 3) and an Occupational Injuries and Illnesses Table. (Attachment 4) Mr. Harness said that Kansas is doing well in safety compared to the Midwest region.

Jim Garner, Acting Secretary of Human Resources, testified in opposition to SB 181. (Attachment 5) He is opposed to the bill because it is unfair and unnecessary. He believes that the date of injury should be the date an employee cannot return to work. Workers may lose benefits if the date of injury is changed. Insurance rates have stabilized and have decreased in the last couple of years, so this is unnecessary. There is no need for the dramatic reduction in benefits that SB 181 would cause.

Bud Langston, resident of Topeka, testified in opposition to SB 181. (Attachment 6) He questioned the committee on what was to be done with the injured worker who can no longer work. This bill jeopardizes injured workers. He does not believe that businesses are suffering from increased premiums.

Pamela Pettis, resident of Carbondale, testified in opposition to SB 181. (Attachment 7) She is an injured worker, and lost her career as a result of her injury. She believes that this bill will only make things worse for injured workers.

James Snell, resident of McLouth, testified in opposition to SB 181. (Attachment 8) He is an injured worker who will soon no longer receive work comp benefits, and is not able to return to his former job. He disagrees with the decision of the legislature to terminate vocational rehabilitation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:00 a.m. on February 19, 2003 in Room 123-S of the Capitol.

Diana McComb is a resident of Kansas City and an injured worker. She testified in opposition to SB 181 because it reduces benefits to workers who need them the most. (Attachment 9)

Julie Bachman, Wichita Area Employers Work Comp Task Force and KOCH Industries, testified in support of SB 181. (Attachment 10) She believes that Kansas businesses need an equitable and streamlined Workers Compensation Act in order to remain competitive. She supports the language in the bill that would restore the credit for preexisting conditions. She said that employers need this more specific language in order to apportion Permanent Partial Disability in cases where non-work-related problems are aggravated by work activities. She also appreciates the clarification of the date of accident that this bill contains.

Wanda Roehl, Wichita Area Employers Work Comp Task Force and Raytheon Aircraft, testified in support of SB 181. (Attachment 11) She believes that this bill would minimize litigation and simplify the work disability calculation process. She said that it would partially address the issue of employees being laid off, and filing a claim that turns into a work disability claim when the employee is not off due to the injury, but rather to a downturn in the economy.

Bill Curtis, Kansas Association of School Boards, testified as a proponent to SB 181. (Attachment 12) He is most supportive of two conditions of the bill which include the credit for pre-existing conditions and a workers compensation offset for general disability compensation when that disability compensation was financed by the employer. He believes Kansas is at the threshold of a workers compensation crisis and SB 181 is a step in the right direction.

Written testimony was provided by the following: (Attachments 13-34)

Proponents:

Representative Rob Boyer
Pete Schrepferman, Johnstone Supply Company
Bob Vancrum, Greater Kansas City Chamber of Commerce
Alan P. Weldon, Wichita Area Work Comp Task Force

Opponents:

Doug Banka, resident of Topeka
Bridget Cozad, resident of Wichita
Charles W. Evans, resident of Olathe
Leland Glaser, resident of Emporia
Dennis Horner, Kansas Trial Lawyers Association
Patrick T. Lehman, Kansas Fire Service Alliance
Patrick Nichols, resident of Topeka
John Ostrowski, McCullough, Wareheim, and LaBunker
George Pearson
Doug Pickard, International Association of Fire Fighters
W Clark Roush, resident of Topeka
Elton "Sonny" Schmidt, resident of Topeka
C.E. "Sonny" Scroggins, Kansas National Action Network
Dennis N. Shumate, resident of Junction City
William A. Sweet, resident of Wichita
Bart Thomas, resident of Manhattan
Jason Witte, resident of Overland Park
Albert Herdoiza, resident of Topeka

The committee briefly asked questions of the three proponents. Senator Brownlee announced that she will form a subcommittee on workers compensation. The committee members will be announced at the end of the day.

The meeting was adjourned at 9:30 a.m. The next meeting is scheduled for February 20 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Wednesday, Feb. 19, 2003

NAME	REPRESENTING
Natalie Bright	WIBA
Bob Vancrum	Greater KC Chamber of Commerce
John Olson	Stammek
Bart Thomas	Thomas Signs Co.
Jeff Cooper	Injured workers
Dennis Shumate	Injured workers
Ann Shumate	Injured Workers
Gary Howard	Injured workers
William A Sweet	Injured Workers
Bruce Coyal	Injured workers
James Wisdom	Injured Workers (vote NO)
Dennis J Carpenter	Ks. Rest. & Hosp. Assn.
David Bryant	Injured workers
James E Benefield	Injured Workers Ks AFLCIO
Beth Forster	Individual
James Snell	injured worker
John Kumplice	KTLA
Michael Felber	KTLA
Thomas F.	Injured workers
Walt	liquid assets
Catherine Witte	Injured workers
Scott Heidner	Ks Self Insurers Association

**SENATE COMMERCE COMMITTEE
GUEST LIST**

DATE: Wednesday, Feb. 19, 2003

NAME	REPRESENTING
Jim McHaff	Kansas AFK-CIO
John & Emma Albeck	Self
Debbie Snow	CWA
Wendy Langford	Lawyer for CWA
Ken Huesit	KDHR - work comp
Bred Sweet	NCCI & AIA
Pat Bush	Westar Energy & KSIA
PAT LEHMAN	KS FIRE SERVICE ALLIANCE
Megan Chalfant	Burgess and Associates
Bernie Koch	Wichita Area Chamber
Bill Curtis	Ks Assoc of School Bds
Jim Gammur	Secy KDHR
Sonny Scoppino	National Actupw Network
Roger Fincher	Injured Kansans
George Pearson	Injured Workers
Dick Santner	Injured workers
DALE SOMMER	SELF
DENNIS HORNER	KTLA.
CHARLES EVANS	Injured worker
Pagan Elason	Injured workers
Lee Elason	Injured workers
Wanda Reed	Wichita Area Work Comp Task Force

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Wednesday, Feb. 19, 2003

NAME	REPRESENTING
PATRICK VICTORS	SELF / opponent
Bret Klendering	LKM
Doug Banka	SELF / opponent
Doug Pickard	IAFF Local 135, Wichita
Joseph Debe	IAFF FMO
Ed Bodman	Ks state council of firemen
Robert S. Wiob	Ks. St. Council of Firefighters
Jimmy Barngrover	TEAMSTERS 696
Sonny Schmidt	/ opposed
Clyde A. BRACKEN	TOPEKA FEDERATION OF LABOR
Tom Slattery	
Harvey L. Kippes	TEAMSTER # 699
Larry Miser	TEAMSTERS # 696
Jack St	Teamster # 696
Marcelino Anguiano Sr	Teamsters # 696
Andy Zdy	PLUMBERS & PIPEFITTERS # 165
Todd A Newkirk	IBEW # 309 / opposed
Larry Conaway	Teamsters # 696
mark conaway	Operating Engineers Local 10
JOHN CONAWAY	MYSELF
Tom Coy	TEAMSTER 696
Larry Holm	Painters # 96

SENATE BILL No. 133

By Committee on Commerce

2-4

9 AN ACT concerning workers compensation; relating to compilation and
10 publication of certain statistics and data; amending K.S.A. 2002 Supp.
11 44-557a and repealing the existing section.
12

Recommendations of Acting Director
of Workers Compensation

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

[material within brackets would be
deleted]

14 Section 1. K.S.A. 2002 Supp. 44-557a is hereby amended to read as
15 follows: 44-557a. (a) The director shall: (1) Compile and publish statistics
16 to determine the causation of compensable disabilities in the state of
17 Kansas and (2) compile and maintain a database of information on claim
18 characteristics and costs related to ~~open and~~ closed claims, in order to
19 determine the effectiveness of the workers compensation act to provide
20 adequate indemnity, medical and vocational rehabilitation compensation
21 to injured workers and to return injured workers to remunerative em-
22 ployment. The commissioner of insurance shall cooperate with the direc-
23 tor and shall make available any information which will assist the direc-
24 tor in compiling such information and statistics and may contract with the
25 director and the secretary of the department of health and environment
26 to collect such information as the director deems necessary. The secretary
27 of revenue shall cooperate with the director and shall disclose individual
28 income taxpayers names, addresses and social security numbers to the
29 director to be used solely for the verification of workers compensation
30 data files. For purposes of this subsection, such disclosure shall not be
31 considered the disclosure of any particulars of a report or return.

[In order to further the purpose of
subsection (a), each

[and insurance carrier

32 (b) ~~Each~~ self-insured employer, group-funded workers compensation
33 pool, ~~insurance carrier and vocational rehabilitation provider~~ shall submit
34 to the director the disposition of a statistically significant sample of ~~open~~
35 ~~and~~ closed claims under the act ~~and, in connection with the closing of~~
36 ~~each claim in which payments were made, the following:~~ (1) The dates,
37 time intervals, amounts and types of weekly disability payments made, (2)
38 the dates and gross amounts of payments made to each type of medical
39 compensation provider, (3) the dates and type of service for which pay-
40 ment was made and the gross amounts paid to each vocational rehabili-
41 tation provider, and (4) the dates and types of fees paid as claim costs.
42 Unless provided by regulations to the contrary, on or after January 1,
43 2004, any insurer, group-funded workers compensation pool or self-in-

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Attachment 1

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4 sured employer who voluntarily submits claim information to the director
 5 pursuant to release 1 of the international association of industrial accident
 6 boards and commission's electronic data interchange implementation
 7 guide dated August 9, 1995, and amendments thereto, up to April 4, 2002,
 8 shall be deemed to be in compliance. Each self-insured employer, group-
 9 funded workers compensation pool, insurance carrier, vocational reha-
 10 bilitation provider, or health care facility shall submit medical informa-
 11 tion, by procedure, charge and zip code of the provider, or by hospital
 12 charge and related diagnostic and procedure codes in order to set the
 13 maximum medical fee schedule. ~~The director of workers compensation
 may adopt and promulgate such rules and regulations as the director
 deems necessary for the purposes of administering and enforcing the
 provisions of this section.~~

~~(c)~~

(d)

14 ~~(e)~~ The director may contract for professional actuarial or statistical
 15 services to provide assistance in determining the types of information and
 16 the methods of selecting and analyzing information as may be necessary
 17 for the director to conduct studies of open and closed claims under the
 18 workers compensation act and to enable the director to make valid sta-
 19 tistical conclusions as to the distribution of costs of workers compensation
 20 benefits.

(e)

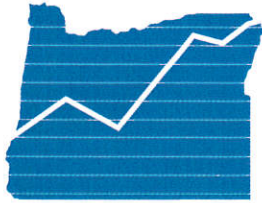
(f)

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

or insurance carrier

24 ~~(e)~~ If a self-insured employer, group-funded workers compensation
 25 pool, insurance carrier or vocational rehabilitation provider fails to supply
 26 the information required by this section, the director shall issue and serve
 27 upon such person a summary order or statement of the charges with
 28 respect thereto and a hearing shall be conducted thereon in accordance
 29 with the provisions of the Kansas administrative procedure act. An ad-
 30 ministrative penalty of up to \$500 for each violation or act, along with an
 31 additional penalty of up to \$100 for each week thereafter that such report
 32 or other information is not provided to the director shall be imposed.

33 Sec. 2. K.S.A. 2002 Supp. 44-557a is hereby repealed.
 34 Sec. 3. This act shall take effect and be in force from and after its
 35 publication in the statute book.



2002 Oregon Workers' Compensation Premium Rate Ranking

Research & Analysis Section

Department of Consumer & Business Services

January 2003

by Derek Reinke and Mike Manley

Oregon employers in the voluntary market pay, on average, the 35th highest workers' compensation premium rates in the nation.

Oregon's premium rate index is \$2.06 per \$100 of payroll. National premium rate indices range from a

low of \$1.24 in North Dakota to a high of \$5.23 in California. Two jurisdictions have an index rating above \$4; eight are in the \$3.00-\$3.99 range; 26 are in the \$2.00-\$2.99 range; and 15 have indices under \$2.00. Indices are based on data from 51 jurisdictions, for rates in effect as of January 1, 2002.

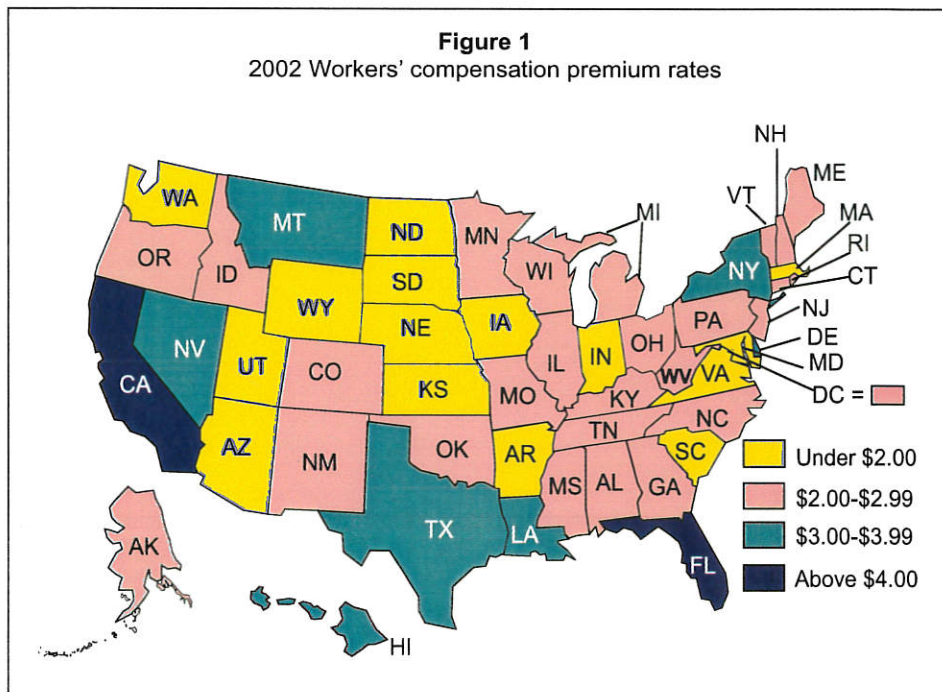


Table 1

Oregon's ranking in the top 10 classifications

Occupations	Ranking
Clerical Office Employees NOC	41
College: Professional Employees & Clerical	40
Salespersons - Outside	46
Physician and Clerical	24
Automobile Service/Repair Center & Drivers	29
Store: Retail, NOC	39
Hospital: Professional Employees	31
Electrical Wiring - Within buildings & Drivers	47
Chauffeurs NOC	32
Hotel: Restaurant Employees	28

Classification codes from the National Council on Compensation Insurance (NCCI) were used in this study. Of the approximately 450 active classes in Oregon, 50 were selected based on relative importance as measured by share of losses in Oregon. To control for differences in industry distributions, each state's rates were weighted by 1996-1998 Oregon payroll to obtain an average manual rate for that state. Listed in Table 1 are Oregon's rankings in the top 10 of the 50 classifications used.

Table 2 (on the back) contains the premium rate ranking for all 51 jurisdictions.

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Table 2. Workers' compensation premium rate ranking

2002 Ranking	2000 Ranking	State	Index Rate	Effective Date
1	3	California	5.23	January 1, 2002
2	1	Florida	4.50	January 1, 2001
3	8	Hawaii	3.48	July 1, 2001
4	16	Delaware	3.38	December 1, 2001
5	4	Rhode Island	3.29	November 1, 1998
6	7	Texas	3.29	January 1, 2002
7	2	Louisiana	3.19	May 1, 2001
8	6	New York	3.13	October 1, 2001
9	12	Montana	3.04	July 1, 2001
10	5	Nevada	3.02	July 1, 2001
11	18	Alabama	2.96	March 1, 2001
12	17	Connecticut	2.90	January 1, 2002
13	9	Ohio	2.89	July 1, 2001
14	28	Alaska	2.87	January 1, 2002
15	24	Kentucky	2.87	September 1, 2001
16	10	District of Columbia	2.86	June 1, 2001
17	20	New Hampshire	2.85	January 1, 2002
18	11	Oklahoma	2.82	8/1/99 State Fund, 12/1/01 private
19	15	Illinois	2.73	January 1, 2002
20	14	Colorado	2.73	January 1, 2002
21	22	Minnesota	2.60	January 1, 2002
22	25	Pennsylvania	2.57	April 1, 2001
23	13	West Virginia	2.53	July 1, 2001
24	33	Vermont	2.45	April 1, 2001
25	26	Missouri	2.39	January 1, 2002
26	29	Idaho	2.37	January 1, 2002
27	21	Georgia	2.32	November 1, 2001
28	19	Maine	2.30	January 1, 2002
29	31	Tennessee	2.30	March 1, 2000
30	23	Michigan	2.25	January 1, 2002
31	27	New Jersey	2.25	January 1, 2002
32	32	Wisconsin	2.22	January 1, 2002
33	30	Mississippi	2.21	March 1, 2001
34	43	North Carolina	2.17	April 1, 2001
35	34	OREGON	2.06	January 1, 2002
36	42	New Mexico	2.01	January 1, 2002
37	36	Massachusetts	1.98	July 1, 2001
38	39	Wyoming	1.97	January 1, 2002
39	45	Nebraska	1.93	February 1, 2001
40	46	Maryland	1.84	January 1, 2002
41	48	Kansas	1.84	January 1, 2002
42	49	South Carolina	1.82	May 1, 2001
43	41	Iowa	1.74	January 1, 2002
44	47	Utah	1.67	December 1, 2001
45	38	Washington	1.65	January 1, 2002
46	37	Arizona	1.63	October 1, 2001
47	40	Arkansas	1.62	July 1, 2001
48	44	South Dakota	1.61	July 1, 2001
49	51	Virginia	1.50	April 1, 2001
50	50	Indiana	1.37	January 1, 2002
51	35	North Dakota	1.24	July 1, 2001

Although some states may appear to have the same index rate, the ranking is based on calculations prior to rounding to two decimal places. The index rates reflect appropriate adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends.

Employers can reduce their workers' compensation rates through accident prevention, safety training and by helping injured workers return to work.

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National
Council on
Compensation
Insurance, Inc.

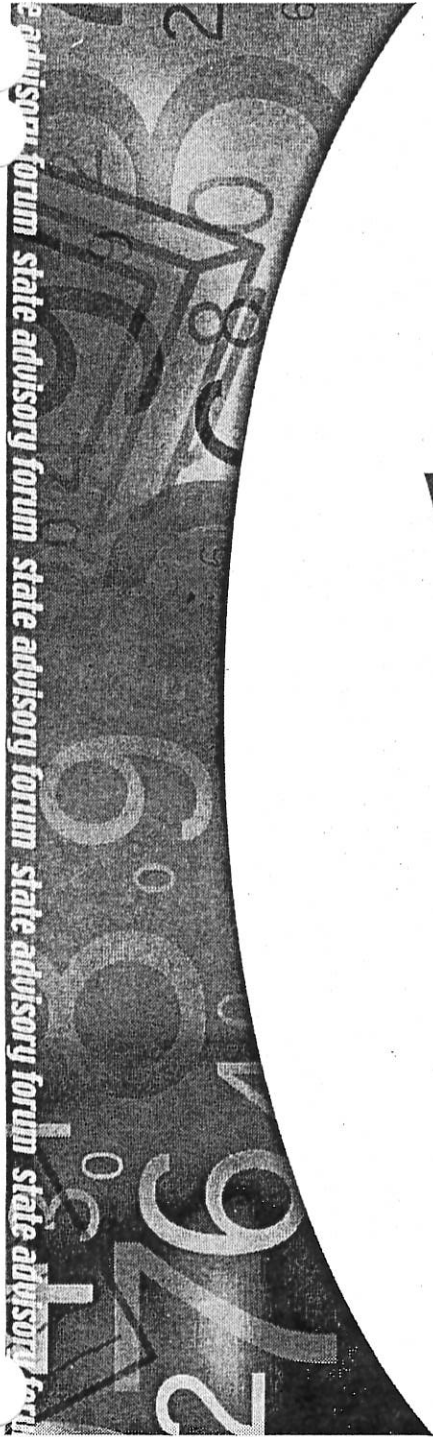
Kansas Workers Compensation State Advisory Forum

June 5, 2002

Presented by:

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201-386-2635



OCCUPATIONAL INJURY & ILLNESS INCIDENCE RATES OVER TIME & NATIONAL AND REGIONAL RANKINGS

- The four major incidence rates reported in the BLS survey- "Total Injuries & Illnesses," "Total Lost Workday Cases," "Total Lost Workday Cases- Days Away from Work" and "Cases Without Lost Workdays"- are good benchmark statistics for comparing the frequency of occupational injury and illness over time and between the states.
- Since 1994 the trend in both the nation as a whole and in the state of Kansas has been a decrease in the rate of "Total Injuries & Illnesses," "Total Lost Workday Cases," "Total Lost Workday Cases with Days Away from Work," and "Cases Without Lost Workdays."
- From 1994 through 1999 Kansas ranks in the top ten (among states and territories) for highest "Total Injuries & Illnesses" incidence rates for all six years. For "Total Lost Workday Cases" the rankings for Kansas are somewhat more favorable although the state still ranks in the top 15 and is above the national average for 1994 through 1999. For all six years Kansas has been at, or just under, the national average for "Lost Workday Cases with Days Away from Work" and the state does considerably well in the rankings for "Cases Without Lost Workdays" and is above the national average for all six years.
- When ranked against other Midwest states Kansas ranks no higher than fifth and no less than seventh for "Total Injuries & Illnesses." On "Total Lost Workday Cases" Kansas ranks no higher than fifth and no less than seventh, on "Lost Workday Cases with Days Away from Work" the state ranks no higher than sixth and no less than eighth for all the years of the study. For "Cases Without Lost Workdays" Kansas ranks fifth, sixth or seventh for all years except one.

Senate Commerce Committee

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APPENDIX A

Occupational Injuries & Illnesses Tables

Table 1. State* Rank by "Total Injuries and Illnesses" Per 100 FTE

Rank	1999		1998		1997		1996		1995		1994	
	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate
1	Maine	9.3	Maine	9.7	Wisconsin	10	Michigan	10.6	Wisconsin	11.2	Michigan	11.5
2	Iowa	8.7	Washington	9.5	Iowa	9.8	Wisconsin	10.4	Michigan	10.9	Wisconsin	11.5
3	Kentucky	8.4	Wisconsin	9.5	Washington	9.8	Washington	10.3	Indiana	10.8	Indiana	11.3
4	Wisconsin	8.4	Iowa	9.3	Nebraska	9.5	Iowa	9.8	Washington	10.5	Iowa	10.8
5	Indiana	8.3	Michigan	8.6	Indiana	9.3	Indiana	9.7	Iowa	10.4	Kentucky	10.6
6	Alaska	8.1	Indiana	8.5	Kentucky	9.3	Nebraska	9.7	Montana	10.1	Maine	10.5
7	Michigan	8.1	Kansas	8.5	Michigan	9.1	Maine	9.4	Kentucky	9.9	Washington	10.3
8	Kansas	7.6	Nebraska	8.5	Maine	8.7	Alabama	8.9	Kansas	9.7	Missouri	10.2
9	Missouri	7.6	Kentucky	8.4	Kansas	8.6	Kansas	8.9	Maine	9.7	Nebraska	10.2
10	Vermont	7.6	West Virginia	8	Alaska	8.4	Montana	8.9	Missouri	9.7	Kansas	9.8
11	Alabama	7.5	Alaska	7.8	Utah	8.3	Utah	8.9	Nebraska	9.5	Mississippi	9.8
12	Utah	7.4	Montana	7.8	Alabama	8.1	Kentucky	8.7	Tennessee	9.4	Utah	9.5
13	Nevada	7.3	Minnesota	7.7	Montana	8	Missouri	8.6	Utah	9.1	Arkansas	9.4
14	Montana	7.2	Missouri	7.6	Missouri	7.8	Alaska	8.5	Arkansas	8.9	Tennessee	9.4
15	West Virginia	7.2	Tennessee	7.6	Nevada	7.8	Nevada	8.4	Oregon	8.8	Nevada	9.3
16	Nebraska	7.1	Utah	7.6	Oregon	7.8	Nevada	8.4	Alaska	8.5	Vermont	9.3
17	Oregon	7	Oklahoma	7.5	Rhode Island	7.8	Arkansas	8.2	Minnesota	8.5	Alabama	9.2
18	Rhode Island*	7	Alabama	7.3	Arkansas	7.6	Tennessee	8	Rhode Island	8.5	Pennsylvania	9.1
19	Minnesota	6.9	Nevada	7.3	Minnesota	7.6	Oklahoma	7.8	Alabama	8.3	Montana	9
20	Arkansas	6.8	Vermont	7.1	Tennessee	7.6	Oregon	7.8	Oklahoma	8.3	Alaska	8.8
21	Connecticut	6.8	Arkansas	7	Oklahoma	7.1	Arizona	7.7	Nevada	8.2	Oklahoma	8.8
22	Tennessee	6.8	Illinois	7	Hawaii	6.8	Connecticut	7.4	Florida	8.1	Hawaii	8.7
23	Oklahoma	6.6	Oregon	6.9	California	6.7	New Mexico	7.3	Connecticut	8	Minnesota	8.7
24	Arizona	6	Rhode Island	6.7	Vermont	6.7	Rhode Island	7.1	Hawaii	8	Oregon	8.7
25	Hawaii	6	Connecticut	6.6	Connecticut	6.6	Florida	6.9	Georgia	7.7	Georgia	8.6
26	Illinois	6	Hawaii	6.5	Hawaii	6.6	Hawaii	6.8	California	7.4	Wyoming	8.6
27	California	5.9	California	6.3	New Mexico	6.5	North Carolina	6.7	New Mexico	7.3	Connecticut	8.5
28	Massachusetts	5.8	Arizona	6.1	Arizona	6.4	California	6.6	Texas	7.2	Rhode Island	8.5
29	North Carolina	5.7	New Mexico	6.1	Virginia	6.4	Texas	6.3	North Carolina	7.1	Arizona	8.3
30	Puerto Rico	5.7	North Carolina	6.1	North Carolina	6.3	Virginia	6.3	Virginia	7.1	California	8.1
31	South Carolina	5.7	Florida	5.9	New Jersey	6	Georgia	6.1	Maryland	6.6	Florida	8
32	Delaware	5.6	Georgia	5.8	South Carolina	5.9	Massachusetts	6.1	New Jersey	6.3	New Mexico	7.9
33	Florida	5.4	Massachusetts	5.7	Massachusetts	5.7	Louisiana	5.9	Massachusetts	6.1	North Carolina	7.8
34	Georgia	5.4	South Carolina	5.7	Delaware	5.6	South Carolina	5.9	Louisiana	6	Virginia	7.3
35	Maryland	5.2	Virginia	5.7	Texas	5.6	New Jersey	5.8	Delaware	5.9	Massachusetts	7.2
36	New Mexico	5.1	Delaware	5.5	Georgia	5.5	Delaware	5.6	New York	5.1	Texas	7.1
37	Virginia	5.1	Texas	5.2	Maryland	5.2	Maryland	5.4	Guam	4.6	Delaware	6.9
38	Texas	5	Louisiana	5.1	Guam	4.9	New York	4.9	Puerto Rico	4.2	New Jersey	6.9
39	Louisiana	4.8	Maryland	5	Louisiana	4.9	Guam	4.5	American Samoa	3.1	South Carolina	6.9
40	New Jersey	4.4	New Jersey	4.8	New York	4.4	Puerto Rico	4.4	Virgin Islands	2.2	Maryland	6.8
41	New York	4.1	Guam	4.5	Puerto Rico	4.3	Virgin Islands	2.2			Louisiana	6.2
42	Guam	4	New York	4.3	Virgin Islands	1.4					New York	5.5
43	Virgin Islands	1.9	Puerto Rico	4.3							Guam	5.1
44			Virgin Islands	2							Puerto Rico	4.7
45											Virgin Islands	3.3
46											American Samoa	2.5
	National Average	6.3	National Average	6.7	National Average	7.1	National Average	7.4	National Average	8.1	National Average	8.4
	Kansas	7.6	Kansas	8.5	Kansas	8.6	Kansas	8.9	Kansas	9.7	Kansas	9.8

43

*Includes only states and territories participating in the BLS survey.

Table 2. State* Rank by "Total Lost Workday Cases" Per 100 FTE

Rank	1999		1998		1997		1996		1995		1994	
	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate
1	Maine	4.9	Maine	4.9	Maine	4.5	Michigan	4.9	Maine	5.3	Maine	5.6
2	Iowa	4.1	Wisconsin	4.4	Wisconsin	4.5	Maine	4.8	Wisconsin	5.1	Michigan	5.2
3	Kentucky	4.1	Iowa	4.2	Iowa	4.4	Wisconsin	4.6	Michigan	5	Wisconsin	5.1
4	Indiana	3.9	Kentucky	4.1	Kentucky	4.4	Iowa	4.4	Indiana	4.9	Kentucky	5
5	Michigan	3.9	Michigan	4.1	Alaska	4.2	Indiana	4.2	Iowa	4.7	Hawaii	4.9
6	West Virginia	3.9	Washington	4	Michigan	4.2	Alaska	4.1	Kentucky	4.7	Indiana	4.9
7	Wisconsin	3.9	West Virginia	4	Indiana	4.1	Kentucky	4.1	Tennessee	4.3	Iowa	4.8
8	Alaska	3.8	Alaska	3.9	Washington	4.1	Oklahoma	4.1	Washington	4.3	Mississippi	4.6
9	Rhode Island	3.8	Oklahoma	3.9	Kansas	4	Alaska	4	Alaska	4.2	Alaska	4.3
10	Washington	3.8	Indiana	3.8	Rhode Island	3.9	Kansas	4	Kansas	4.2	Arkansas	4.3
11	Kansas	3.6	Nebraska	3.8	Nebraska	3.8	Washington	3.9	Missouri	4.2	Nebraska	4.3
12	Puerto Rico	3.6	Hawaii	3.7	Hawaii	3.7	Nebraska	3.8	Arkansas	4.1	Tennessee	4.3
13	Oklahoma	3.5	Kansas	3.7	Oklahoma	3.7	Oregon	3.8	Hawaii	4.1	Kansas	4.2
14	Vermont	3.5	Rhode Island	3.7	Alabama	3.6	Tennessee	3.8	Oregon	4.1	Nevada	4.2
15	Alabama	3.4	Minnesota	3.5	Minnesota	3.6	Minnesota	3.7	Nebraska	4	Oregon	4.2
16	Connecticut	3.4	Puerto Rico	3.5	Oregon	3.6	Connecticut	3.6	Rhode Island	4	Vermont	4.2
17	Hawaii	3.4	Tennessee	3.5	California	3.5	Hawaii	3.6	Connecticut	3.9	Washington	4.2
18	Oregon*	3.4	Alabama	3.4	Puerto Rico	3.5	Missouri	3.5	Missouri	3.9	Alabama	4.1
19	Tennessee	3.4	Connecticut	3.4	Tennessee	3.5	Rhode Island	3.6	Nevada	3.9	Connecticut	4.1
20	Minnesota	3.3	Nevada	3.4	Missouri	3.4	Arkansas	3.5	Alabama	3.7	Missouri	4.1
21	Arkansas	3.2	Oregon	3.4	Arkansas	3.3	Puerto Rico	3.5	California	3.7	Oklahoma	4.1
22	Missouri	3.2	Missouri	3.3	Nevada	3.3	California	3.4	Oklahoma	3.7	Rhode Island	4.1
23	Nebraska	3.2	Montana	3.3	Connecticut	3.2	Nevada	3.4	Montana	3.6	California	4
24	California	3	California	3.2	Montana	3.2	Arizona	3.3	Utah	3.5	Pennsylvania	4
25	Nevada	3	Vermont	3.2	Utah	3.1	Montana	3.3	Florida	3.4	Puerto Rico	3.9
26	Utah	3	Arkansas	3.1	Florida	3	Utah	3.3	Georgia	3.3	Georgia	3.8
27	Illinois	2.9	Illinois	3.1	Vermont	3	Florida	3.2	Puerto Rico	3.3	Minnesota	3.8
28	Massachusetts	2.9	New Mexico	3.1	Arizona	2.9	New Mexico	3.2	Texas	3.3	Utah	3.8
29	Montana	2.8	Guam	3	Massachusetts	2.9	Massachusetts	3.1	Virginia	3.3	Wyoming	3.7
30	Texas	2.8	Utah	3	New Mexico	2.9	Texas	3.1	New Mexico	3.2	Arizona	3.6
31	Arizona	2.7	Massachusetts	2.9	North Carolina	2.9	North Carolina	3	North Carolina	3.2	Massachusetts	3.5
32	Delaware	2.7	North Carolina	2.8	Texas	2.9	Guam	2.8	Maryland	3.1	North Carolina	3.5
33	South Carolina	2.7	Arizona	2.7	Virginia	2.9	Louisiana	2.8	Massachusetts	3.1	Texas	3.5
34	Maryland	2.6	Delaware	2.7	Delaware	2.8	Virginia	2.8	Delaware	2.8	Delaware	3.4
35	New Mexico	2.6	Florida	2.7	New Jersey	2.8	Georgia	2.7	New Jersey	2.8	Maryland	3.4
36	North Carolina	2.6	Texas	2.7	Maryland	2.5	Maryland	2.6	Louisiana	2.6	New Mexico	3.4
37	Virginia	2.5	Georgia	2.6	South Carolina	2.5	New Jersey	2.6	New York	2.6	Florida	3.3
38	Florida	2.4	Virgin Islands	2.6	Georgia	2.4	Delaware	2.5	Delaware	2.5	Virginia	3.3
39	Georgia	2.3	Maryland	2.4	Louisiana	2.3	South Carolina	2.5	American Samoa	2.5	Montana	3.2
40	Guam	2.3	South Carolina	2.4	New York	2.3	New York	2.4	Guam	2.5	New Jersey	3.2
41	New Jersey	2.3	Louisiana	2.3	Guam	2.2	Virgin Islands	1.4	Virgin Islands	1.3	New Jersey	3.2
42	Louisiana	2.1	New Jersey	2.2	Virgin Islands	1					Guam	3
43	New York	2.1	New York	2.2							Louisiana	2.9
44	Virgin Islands	1.1	Virginia	1.2							South Carolina	2.9
45											New York	2.8
46											Virgin Islands	2
	National Average	3	National Average	3.1	National Average	3.3	National Average	3.4	National Average	3.6	National Average	3.8
	Kansas	3.6	Kansas	3.7	Kansas	4	Kansas	4	Kansas	4.2	Kansas	4.2

*Includes only states and territories participating in the BLS survey.

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Table 3. State* Rank by "Lost Workday Cases with Days Away from Work" Per 100 FTE

Rank	1999		1998		1997		1996		1995		1994	
	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate
1	Puerto Rico	3.5	West Virginia	3.5	Alaska	3.5	Alaska	3.6	Hawaii	3.8	Hawaii	4.6
2	Alaska	3.4	Alaska	3.4	Puerto Rico	3.5	Puerto Rico	3.5	Alaska	3.7	Puerto Rico	3.9
3	West Virginia	3.4	Hawaii	3.4	Hawaii	3.3	Hawaii	3.3	Washington	3.4	Alaska	3.8
4	Hawaii	3	Puerto Rico	3.4	Washington	3.2	Washington	3.1	Wisconsin	3.4	Kentucky	3.7
5	Rhode Island	2.8	Guam	3	Kentucky	2.8	Oklahoma	3	Indiana	3.3	Wisconsin	3.7
6	Washington	2.8	Washington	2.9	Rhode Island	2.8	Wisconsin	3	Puerto Rico	3.3	Vermont	3.6
7	Kentucky	2.5	Montana	2.7	Wisconsin	2.8	Guam	2.8	Kentucky	3.2	Washington	3.5
8	Vermont	2.4	Rhode Island	2.7	Oklahoma	2.7	Montana	2.7	Montana	3.1	Indiana	3.4
9	Wisconsin	2.4	Wisconsin	2.7	Montana	2.6	Rhode Island	2.7	Nevada	3	Maine	3.3
10	Connecticut	2.2	Oklahoma	2.5	Indiana	2.4	Indiana	2.6	Maine	2.9	Mississippi	3.3
11	Guam	2.2	Kentucky	2.4	Iowa	2.4	Oregon	2.6	Oregon	2.9	Nevada	3.3
12	Montana	2.2	Maine	2.4	Oregon	2.3	Alabama	2.5	Rhode Island	2.9	Oklahoma	3.3
13	Oklahoma	2.2	Nebraska	2.4	Connecticut	2.2	Connecticut	2.5	Michigan	2.8	Wyoming	3.3
14	Indiana	2.1	Vermont	2.3	Guam	2.2	Maine	2.5	Oklahoma	2.8	Iowa	3.1
15	Iowa	2.1	Connecticut	2.2	Maine	2.2	Iowa	2.4	Tennessee	2.8	Rhode Island	3.1
16	Maine	2.1	Indiana	2.2	Massachusetts	2.2	Kentucky	2.4	Iowa	2.7	Alabama	3
17	Massachusetts	2.1	Iowa	2.2	Nebraska	2.2	Michigan	2.4	Missouri	2.7	Guam	3
18	Oregon	2.1	New Mexico	2.2	Nevada	2.2	Nebraska	2.4	Connecticut	2.6	Michigan	3
19	Nebraska*	2	Massachusetts	2.1	New Jersey	2.2	Tennessee	2.4	Maryland	2.6	Nebraska	3
20	Illinois	1.9	Oregon	2.1	Tennessee	2.2	Massachusetts	2.3	Nebraska	2.6	Oregon	3
21	Kansas	1.9	Tennessee	2.1	Vermont	2.2	Nevada	2.3	Arkansas	2.5	Tennessee	3
22	Maryland	1.9	Nevada	2	Alabama	2.1	New Mexico	2.3	Kansas	2.5	Connecticut	2.9
23	Minnesota	1.9	Alabama	1.9	California	2.1	Kansas	2.2	New Mexico	2.5	New Jersey	2.9
24	New York	1.9	California	1.9	Kansas	2.1	Minnesota	2.2	Alabama	2.4	Pennsylvania	2.9
25	Tennessee	1.9	Delaware	1.9	Michigan	2.1	New York	2.2	California	2.4	Arizona	2.8
26	Alabama	1.8	Illinois	1.9	New Mexico	2.1	Utah	2.2	Guam	2.4	Maryland	2.8
27	California	1.8	Kansas	1.9	Utah	2.1	Arkansas	2.1	New Jersey	2.4	Missouri	2.8
28	Delaware	1.8	Maryland	1.9	Arkansas	2	California	2.1	Minnesota	2.3	Montana	2.8
29	Michigan	1.8	Minnesota	1.9	Delaware	2	Louisiana	2.1	New York	2.3	Arkansas	2.7
30	Missouri	1.8	New York	1.9	Maryland	2	Maryland	2.1	Texas	2.3	California	2.7
31	New Jersey	1.8	Utah	1.9	Minnesota	2	Missouri	2.1	Utah	2.3	Kansas	2.7
32	New Mexico	1.8	Arizona	1.8	New York	2	New Jersey	2.1	Virginia	2.3	New Mexico	2.7
33	Arkansas	1.7	Arkansas	1.8	Missouri	1.9	Arizona	2	Florida	2.2	Utah	2.7
34	Nevada	1.7	Michigan	1.8	Texas	1.9	Florida	2	Massachusetts	2.2	New York	2.6
35	Texas	1.7	Missouri	1.8	Virginia	1.9	Texas	2	Delaware	2	Florida	2.5
36	Utah	1.7	New Jersey	1.8	Arizona	1.8	Delaware	1.9	Georgia	2	Georgia	2.5
37	Arizona	1.6	Virgin Islands	1.7	Florida	1.8	North Carolina	1.9	Louisiana	2	Massachusetts	2.5
38	South Carolina	1.6	North Carolina	1.6	North Carolina	1.7	Virginia	1.9	North Carolina	2	Virginia	2.5
39	Virginia	1.6	Texas	1.6	Louisiana	1.6	Georgia	1.7	American Samoa	1.5	Minnesota	2.4
40	Florida	1.5	Florida	1.5	South Carolina	1.6	South Carolina	1.6	Virgin Islands	1.2	North Carolina	2.4
41	Louisiana	1.4	Louisiana	1.5	Georgia	1.4	Virgin Islands	1.3			Texas	2.4
42	Georgia	1.3	South Carolina	1.5	Virgin Islands	1					Delaware	2.3
43	North Carolina	1.3	Georgia	1.4							Louisiana	2.2
44	Virgin Islands	1	Virginia	1.2							South Carolina	2.1
45											Virgin Islands	1.9
46											American Samoa	1.1
	National Average	1.9	National Average	2	National Average	2.1	National Average	2.2	National Average	2.5	National Average	2.8
	Kansas	1.9	Kansas	1.9	Kansas	2.1	Kansas	2.2	Kansas	2.5	Kansas	2.7

*Includes only states and territories participating in the BLS survey.

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Table 4. State* Rank by "Cases Without Lost Workdays" Per 100 FTE

Rank	1999		1998		1997		1996		1995		1994	
	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate
1	Washington	5.3	Washington	5.5	Nebraska	5.8	Washington	6.4	Montana	6.5	Indiana	6.4
2	Iowa	4.6	Iowa	5.1	Washington	5.7	Nebraska	5.9	Washington	6.3	Wisconsin	6.4
3	Indiana	4.4	Wisconsin	5.1	Wisconsin	5.5	Wisconsin	5.8	Wisconsin	6.1	Michigan	6.3
4	Maine	4.4	Kansas	4.8	Iowa	5.4	Michigan	5.7	Indiana	5.9	Washington	6.1
5	Montana	4.4	Maine	4.7	Indiana	5.2	Indiana	5.6	Michigan	5.9	Iowa	6
6	Utah	4.4	Nebraska	4.7	Utah	5.2	Montana	5.6	Iowa	5.6	Missouri	6
7	Wisconsin	4.4	Indiana	4.6	Kentucky	5	Utah	5.6	Utah	5.6	Nebraska	5.9
8	Kentucky	4.3	Utah	4.6	Michigan	4.9	Iowa	5.4	Kansas	5.5	Montana	5.8
9	Missouri	4.3	Michigan	4.5	Montana	4.8	Missouri	5	Missouri	5.5	Utah	5.7
10	Nevada	4.3	Montana	4.5	Kansas	4.6	Nevada	5	Nebraska	5.5	Kansas	5.6
11	Alaska	4.2	Kentucky	4.3	Alabama	4.5	Alabama	4.9	Kentucky	5.2	Kentucky	5.6
12	Michigan	4.2	Missouri	4.3	Missouri	4.5	Kansas	4.9	Tennessee	5.1	Mississippi	5.2
13	Alabama	4.1	Minnesota	4.1	Nevada	4.5	Maine	4.7	Arkansas	4.8	Tennessee	5.2
14	Vermont	4.1	Tennessee	4.1	Arkansas	4.3	Minnesota	4.7	Minnesota	4.7	Alabama	5.1
15	Kansas	4	West Virginia	4	Maine	4.3	Arkansas	4.6	Oregon	4.7	Arkansas	5.1
16	Nebraska	3.9	Alabama	3.9	Alaska	4.2	Kentucky	4.6	Florida	4.6	Nevada	5.1
17	Minnesota	3.6	Alaska	3.9	Oregon	4.1	Alaska	4.4	Oklahoma	4.6	Pennsylvania	5.1
18	Arkansas*	3.5	Arkansas	3.9	Tennessee	4.1	Arizona	4.4	Alabama	4.5	Vermont	5.1
19	Oregon	3.5	Vermont	3.9	Minnesota	4	Tennessee	4.2	Rhode Island	4.5	Maine	4.9
20	Connecticut	3.4	Illinois	3.8	Rhode Island	3.9	New Mexico	4.1	Alaska	4.4	Minnesota	4.9
21	Tennessee	3.4	Nevada	3.6	Vermont	3.7	Oregon	4	Georgia	4.4	Wyoming	4.9
22	Arizona	3.3	Oklahoma	3.6	Arizona	3.6	Connecticut	3.8	Maine	4.4	Georgia	4.8
23	West Virginia	3.3	Oregon	3.5	Florida	3.6	Florida	3.7	Nevada	4.3	Arizona	4.7
24	Rhode Island	3.2	Arizona	3.4	New Mexico	3.6	North Carolina	3.7	Connecticut	4.1	Florida	4.7
25	Georgia	3.1	North Carolina	3.3	Oklahoma	3.5	Oklahoma	3.7	New Mexico	4.1	Oklahoma	4.7
26	Illinois	3.1	South Carolina	3.3	Virginia	3.5	Rhode Island	3.5	Hawaii	3.9	New Mexico	4.5
27	North Carolina	3.1	Connecticut	3.2	Connecticut	3.4	South Carolina	3.5	North Carolina	3.8	Alaska	4.4
28	Oklahoma	3.1	Florida	3.2	North Carolina	3.4	Virginia	3.5	Texas	3.8	Connecticut	4.4
29	California	3	Georgia	3.2	South Carolina	3.4	California	3.3	Virginia	3.8	Oregon	4.4
30	South Carolina	3	California	3.1	California	3.2	Georgia	3.3	California	3.7	Rhode Island	4.4
31	Florida	2.9	New Mexico	3.1	New Jersey	3.2	Hawaii	3.2	Maryland	3.5	North Carolina	4.3
32	Massachusetts	2.9	Virgin Islands	3.1	Georgia	3.1	New Jersey	3.2	New Jersey	3.5	California	4.1
33	Delaware	2.8	Rhode Island	3	Hawaii	3.1	Texas	3.2	Louisiana	3.4	South Carolina	4
34	Hawaii	2.7	Delaware	2.8	Hawaii	2.8	Delaware	3.1	Delaware	3.2	Virginia	4
35	Louisiana	2.7	Hawaii	2.8	Massachusetts	2.8	Louisiana	3.1	Massachusetts	3	Hawaii	3.8
36	Maryland	2.7	Louisiana	2.8	Guam	2.7	Massachusetts	3	New York	2.5	Massachusetts	3.7
37	Virginia	2.6	Massachusetts	2.8	Maryland	2.7	Maryland	2.8	Guam	2.1	New Jersey	3.6
38	New Mexico	2.5	Maryland	2.6	Texas	2.7	New York	2.5	Puerto Rico	0.9	Texas	3.6
39	Texas	2.3	New Jersey	2.6	Louisiana	2.6	Guam	1.7	Virgin Islands	0.9	Delaware	3.5
40	New Jersey	2.2	Texas	2.6	New York	2.1	Puerto Rico	0.9	American Samoa	0.6	Maryland	3.4
41	New York	1.9	New York	2.1	Puerto Rico	0.7	Virgin Islands	0.8			Louisiana	3.3
42	Guam	1.7	Guam	1.6	Virgin Islands	0.4					New York	2.7
43	Puerto Rico	0.9	Puerto Rico	0.9							Guam	2.1
44	Virgin Islands	0.8	Virginia	0.8							Virgin Islands	1.2
45											American Samoa	1
46											Puerto Rico	0.8
	National Average	3.3	National Average	3.5	National Average	3.8	National Average	4.1	National Average	4.4	National Average	4.6
	Kansas	4	Kansas	4.8	Kansas	4.6	Kansas	4.9	Kansas	5.5	Kansas	5.6

*Includes only states and territories participating in the BLS survey.

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Table 5. Midwest States Rank by "Total Injuries & Illnesses" Per 100 FTE

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Rank	1999		1998		1997		1996		1995		1994	
	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate
1	Iowa	8.7	Wisconsin	9.5	Wisconsin	10	Michigan	10.6	Wisconsin	11.2	Michigan	11.5
2	Wisconsin	8.4	Iowa	9.3	Iowa	9.8	Wisconsin	10.4	Michigan	10.9	Wisconsin	11.5
3	Indiana	8.3	Michigan	8.6	Nebraska	9.5	Iowa	9.8	Indiana	10.8	Indiana	11.3
4	Michigan	8.1	Indiana	8.5	Indiana	9.3	Indiana	9.7	Iowa	10.4	Iowa	10.8
5	Kansas	7.6	Kansas	8.5	Michigan	9.1	Nebraska	9.7	Kansas	9.7	Missouri	10.2
6	Missouri	7.6	Nebraska	8.5	Kansas	8.6	Kansas	8.9	Missouri	9.7	Nebraska	10.2
7	Nebraska	7.1	Minnesota	7.7	Missouri	7.8	Missouri	8.6	Nebraska	9.5	Kansas	9.8
8	Minnesota	6.9	Missouri	7.6	Arkansas	7.6	Minnesota	8.4	Arkansas	8.9	Arkansas	9.4
9	Arkansas	6.8	Oklahoma	7.5	Minnesota	7.6	Minnesota	8.2	Minnesota	8.5	Oklahoma	8.8
10	Oklahoma	6.6	Arkansas	7	Oklahoma	7.1	Oklahoma	7.8	Oklahoma	8.3	Minnesota	8.7
11	Illinois	6	Illinois	7								
	National Average	6.3	National Average	6.7	National Average	7.1	National Average	7.4	National Average	8.1	National Average	8.4

Table 6. Midwest States Rank by "Total Lost Workday Cases" Per 100 FTE

Rank	1999		1998		1997		1996		1995		1994	
	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate	State	Incidence Rate
1	Iowa	4.1	Wisconsin	4.4	Wisconsin	4.5	Michigan	4.9	Wisconsin	5.1	Michigan	5.2
2	Wisconsin	3.9	Iowa	4.2	Iowa	4.4	Wisconsin	4.6	Michigan	5	Wisconsin	5.1
3	Indiana	3.9	Michigan	4.1	Michigan	4.2	Iowa	4.4	Indiana	4.9	Indiana	4.9
4	Michigan	3.9	Oklahoma	3.9	Indiana	4.1	Indiana	4.2	Iowa	4.7	Iowa	4.8
5	Kansas	3.6	Indiana	3.8	Kansas	4	Oklahoma	4.1	Kansas	4.2	Arkansas	4.3
6	Oklahoma	3.5	Nebraska	3.8	Nebraska	3.8	Kansas	4	Missouri	4.2	Nebraska	4.3
7	Minnesota	3.3	Kansas	3.7	Oklahoma	3.7	Nebraska	3.8	Arkansas	4.1	Kansas	4.2
8	Missouri	3.2	Minnesota	3.5	Minnesota	3.6	Minnesota	3.7	Nebraska	4	Missouri	4.1
9	Arkansas	3.2	Missouri	3.3	Missouri	3.4	Missouri	3.6	Minnesota	3.9	Oklahoma	4.1
10	Nebraska	3.2	Arkansas	3.1	Arkansas	3.3	Arkansas	3.5	Oklahoma	3.7	Minnesota	3.8
11	Illinois	2.9	Illinois	3.1								
	National Average	3	National Average	3.1	National Average	3.3	National Average	3.4	National Average	3.6	National Average	3.8

Testimony Before the Senate Commerce Committee
On Senate Bill 181
by Acting Secretary Jim Garner
Kansas Department of Human Resources
February 19, 2003 – 8:00 a.m. – Room 123-S

Good morning, Madam Chair Brownlee and Members of the Committee:

Thank you for this opportunity to appear before you today and to allow me to express my opposition to Senate Bill 181. I express opposition to this bill for two simple reasons: This bill is quite unfair and it is totally unnecessary.

First of all, Senate Bill 181 is one-sided and unfair. You have previously heard the details of the specific changes to our workers compensation laws set out in this bill. The bill would eliminate the concept of work disability and replace it with a concept of supplemental functional disability. This change directly and negatively impacts those workers who cannot return to their former work. It reduces the level of benefits a person experiencing such a disability would be entitled to receive. This is a major change in law and has the primary effect of reducing benefits for injured workers.

The bill also creates a new test for determining the date of injury for repetitive use, cumulative traumas. It would establish three alternatives that could potentially be the date of injury. This is confusing, to say the least. The Kansas Supreme Court has thoroughly analyzed and reviewed this issue and has developed a pretty clear test – the date of injury is the last day worked by the employee. The proposal in the bill would only create confusion on when the date of injury occurs and would lead to greater litigation on this issue. It also could create traps for injured workers that would lead to the denial of claims based on technicalities. The effect could be

detrimental to that employee who tries hard to stay on the job and continues to show up for work in spite of his or her pain. The Kansas Supreme Court clearly laid out the potential prejudicial result of using other dates of injuries such as those proposed in this bill. The court noted that Illinois once used the option of the date of when the injury is diagnosed as work-related. However, the Illinois courts later acknowledged that this rule was unfair to an employee who continues to work notwithstanding the progressive disability.

Attached to my testimony is a quote from Kansas Supreme Court expressing their logic in rejecting alternative dates of injury, such as those proposed in this bill. In selecting the last day the employee performs work as the date of injury, the Kansas Supreme Court noted the fairness of this date. *"This rule disregards attempts by either claimants or respondents to move a date of accident or occurrence to before or after an advantageous time for purely monetary or coverage reasons."* See the Treaster decision at page 624. The proposed change in Senate Bill 181 would lead to just the result the Kansas Supreme Court was trying hard to avoid.

There are other major changes to the law that would have negative impacts on benefits to injured workers. I respectfully urge the Committee to be very cautious in making these types of huge and significant changes to our Workers Compensation laws. This bill makes complex changes. These matters should be carefully reviewed by the Workers Compensation Advisory Council.

Our Workers Compensation laws must be fair to both employers and employees. Senate Bill 181 does not pass the fairness test. It will only result in reduced benefits for injured workers.

The second reason to reject this bill is that it is totally unnecessary. The facts do not demonstrate any crisis in the workers compensation insurance market. In fact, the insurance rates have greatly stabilized and, in most of recent years, rates have actually decreased.

The last major changes to the Workers Compensation laws occurred in 1993. At that time, our state was experiencing huge, double-digit increases in workers compensation insurance rates. The overall average approved rate increase in 1991 was 24.0%, and in 1992 it was 21.7%.

Since the workers compensation legislation in 1993, rates have decreased and stabilized. I have attached information obtained from the Kansas Insurance Department documenting the recent trends in approved workers compensation insurance rates. Here are the facts: The overall average approved worker compensation insurances rates decreased 2.0% in 1994; decreased 6.9% in 1995; decreased 10.4% in 1996; decreased 12.7 % in 1998; decreased 4.0% in 1999; decreased 0.5% in 2000; increased 3.3% in 2001; decreased 4.4% in 2002; and increased 1.8% in 2003.

There are 250 insurance companies writing workers compensation insurance in Kansas. These facts indicate a healthy, competitive and stable workers compensation insurance market. The present situation is nothing like the situation Kansas was facing in the early 1990's.

Even the evidence concerning the high risk, or assigned risk, market does not support any need for major changes reducing benefits to injured workers. For most years since 1994, the overall average approved rates for the assigned risk pool have seen significant decreases. For 2003, the assigned risk plans overall rates increased only 3.0%.

Bottom line, there is no need for Senate Bill 181 and the type of dramatic reductions in benefits to injured workers that it proposes.

Madam Chair and members of the Committee, Senate Bill 181 is unfair and one-sided public policy. There is no evidence showing any need for reductions in benefits to injured workers. I urge the Committee to allow these matters to be thoroughly reviewed by the Workers Compensation Advisory Council.

Again, thank you for allowing me the opportunity to appear today and to share my thoughts on this bill. I would be glad to take any questions you may have.

Attachments

Kansas Supreme Court in Treaster v. Dillon Companies, 267 Kan. 610, 618 (1999) (quoting Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 228-29 (1994):

“We carry that decision one step further and conclude that the last day of work should be the date from when disability is computed in all cases involving carpal tunnel syndrome. There are other possible dates. We could select the date on which the injury first ‘manifest itself.’ We could select the date on which the injury is first ‘diagnosed.’ However, as is illustrated by the Illinois decisions in *Peoria County Belwood* and *Oscar Mayer*, those two dates can be prejudicial to some claimants. **If we were to adopt either the date on which the injury ‘manifests itself’ or the date on which the injury is ‘diagnosed,’ we would set a potential trap for the individual who, despite pain and discomfort, continues to work long after his or her carpal tunnel is ‘diagnosed’ or has ‘manifest itself’.** Those individuals would find their claims for compensation barred by the statute of limitations. It seems to us that we should adopt the rule that causes the least potential prejudice and upholds the spirit of our Workers Compensation Act. We believe use of the last day of work accomplishes both of those purposes. (Emphasis added)

History of Kansas Workers' Compensation Rate Filings

Effective Date of Change	National Council on Compensation Insurance			Overall Approved	Overall Requested		
	Manufacturing	Contracting	All Other				
11/21/1989 (Disapproved)	0	0	0	0	22.6%		
5/1/1990	7.3%	0.7%	7.3%	5.6%	22.6%		
6/1/1991	23.4%	31.4%	21.5%	24.0%	30.9%		
6/1/1992	26.9%	26.6%	17.2%	21.7%	31.4%		
6/1/1993	5.4%	6.7%	2.0%	3.9%	21.3%		
		In voluntary market		0%			
		In assigned risk plan		12.9%			
		Law change		-11.0%			
Effective Date of Change	Manufacturing	Contracting	Office and Clerical	Goods and Service	Misc.	Overall Approved	Overall Requested
6/1/1994	-1.7%	-3.4%	-2.4%	-3.9%	4.5%	-2.0%	-0.3%
6/1/1995 Voluntary Loss Costs	-5.7%	-4.3%	-9.3%	-8.3%	-8.7%	-6.9%	-5.0%
6/1/1995 Assigned Risk Plan Rates	-7.3%	-5.9%	-10.9%	-9.9%	-10.2%	-8.5%	-8.5%
6/1/1996 Voluntary Loss Costs	-13.1%	-11.1%	-9.8%	-6.4%	-12.3%	-10.4%	5.6%
6/1/1996 Assigned Risk Plan Rates	-18.5%	-16.7%	-15.4%	-12.2%	-17.8%	-16.0%	-1.1%
1/1/1998 Voluntary Loss Costs	-14.7%	-8.8%	-12.6%	-13.8%	-12.3%	-12.7%	-12.7%
1/1/1998 Assigned Risk Plan Rates	-19.1%	-13.5%	-17.1%	-18.3%	-16.8%	-17.2%	-17.2%
1/1/1999 Voluntary Loss Costs	-6.0%	-1.4%	-2.7%	-5.2%	-3.2%	-4.0%	-4.0%
1/1/1999 Assigned Risk Plan Rates	-9.1%	-4.7%	-5.9%	-8.3%	-6.5%	-7.2%	-7.2%

History of Kansas Workers' Compensation Rate Filings
National Council on Compensation Insurance

Effective Date of Change	Manufacturing	Contracting	Office and Clerical	Goods and Service	Misc.	Overall Approved	Overall Requested
1/1/2000 Voluntary Loss Costs	-7.6%	2.3%	-1.8%	3.8%	0.6%	-0.5%	-0.5%
					Combined	-0.7%	
1/1/2000 Assigned Risk Plan Rates	-11.0%	-1.5%	-5.4%	-0.1%	-3.1%	-4.2%	-4.2%
1/1/2001 Voluntary Loss Costs	10.70%	-3.80%	0.20%	2.20%	8.50%	3.30%	3.50%
					Combined	4.30%	
1/1/2001 Assigned Risk Plan Rates	25.30%	8.90%	13.40%	15.70%	22.80%	17%	17.20%
1/1/2002 Voluntary Loss Costs	-2.90%	-7.10%	0.00%	-4.90%	-4.60%	-4.40%	-4.40%
					Combined	-4.00%	
1/1/2002 Assigned Risk Plan Rates	0.30%	-4.10%	3.20%	-1.80%	-1.50%	-1.30%	-1.30%
	(-1.3% is a combination of 5.2% rate decrease and 4.1% changes in AR pricing programs)						
1/1/2003 Voluntary Loss Costs	4.10%	-3.10%	12.00%	5.00%	-5.70%	1.80%	3.90%
					Combined	1.90%	
1/1/2003 Assigned Risk Plan Rates	5.30%	-2.00%	13.30%	6.20%	-4.60%	3.00%	5.20%

TESTIMONY BEFORE THE SENATE COMMERCE COMMITTEE IN OPPOSITION TO
SENATE BILL 181

BY BUD LANGSTON

FEBRUARY 19, 2003

OUTLINE OF TESTIMONY

1. 1987 CHANGES IN WORKERS COMPENSATION
 - A. TO PROVIDE VOCATIONAL REHABILITATION BENEFITS TO INJURED WORKERS
 - B. REPEAL ANTWI DECISION
 - C. REDUCE EMPLOYER OBLIGATION ON AWARDS

2. 1993 REPEAL OF VOCATIONAL REHABILITATION BENEFITS
 - A. CHANGE FORMULA IN DETERMINING WORK DISABILITY
 - C. INTENT TO REDUCE RISING COST OF WORKERS COMPENSATION

3. PROBLEMS WITH SENATE BILL 181
 - A. REDUCE OBLIGATION OF EMPLOYERS UNDER GENERAL DISABILITY
 - B. FAILS TO OFFER INJURED WORKER ADEQUATE RECOURSE FOR INJURY MAY REMOVE HIM/HER FROM WORK FORCE
 - C. APPEARS THAT IF EMPLOYEE IS UNDER NO RESTRICTIONS WHEN TERMINATED THERE IS NO WORK DISABILITY
 - D. STATE PROGRAMS OFFER LITTLE TO NO ALTERNATIVE FOR RETURN TO WORK OF WORKER WITH THE GREATEST NEED
 - E. PROPOSED FORMULA FOR GENERAL DISABILITY IS NOT SUFFICIENT TO COMPENSATE AN INJURED WORKER FOR LOSS OF EARNINGS
 - F. TRIER OF FACT TO IMPUTE WAGE IF INJURED WORKER IS NOT EMPLOYED BASED ON WORKERS ABILITY TO EARN POST INJURY

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TESTIMONY ON SENATE BILL 181

My name is Pam Pettis and I am employed with the State of Kansas. I am an injured worker who was hurt on September 13, 1999 as a Corrections Officer. I was hurt when a gate closed crushing the left side of my body.

As a result of my workers compensation injury, I lost my career as a Corrections Officer. I have been returned to work for the State of Kansas, but I am now frozen in my pay and I will never receive another pay increase in my current position, all due to my injury. Workers compensation only paid me based on my date of injury wage and not on the loss of the wage increases I would have gotten as a Corrections Officer.

I received a permanent partial impairment rating of 11.5% to the body as a whole and I still receive medical treatment.

It is my belief that Senate Bill 181 will make things worse for injured workers. I do not want anyone to have any worse time than I did with my injury and with having to change careers and being frozen without being able to make the same wages I would have made as a Corrections Officer.

Senate Bill 181 does not treat injured workers fairly and I ask you to oppose it.

PAMELA PETTIS
3706 E 117TH ST
CARBONDALE KS 66414

Senate Commerce Committee

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**James W. Snell
P.O. BOX 385
McLouth, KS 66054
785-691-6374**

February 19th, 2003

Dear Kansas Legislatures,

My name is James Snell. I am 29 years old and a life long resident of Kansas and a proud father of a 9 year old son, Gregory.

Two years ago I suffered a debilitating head injury, shoulder injuries and knee injuries in a fall off a truck with a 50 gallon barrel and down a flight of stairs in my course of employment.

I have endured 6 separate surgeries in 22 months. I have had 3 on my left shoulder, 2 on my right knee and 1 on my left knee. I have spent months on end in a Kansas City rehabilitation institute for my head injury. I have spent months and months in rehab just to learn to walk straight again and to function half way normal in society.

I am now coming to the point in my case where my doctors next month are releasing me from treatment and providing me with a disability rating. My body has been medically manipulated the best that can be done. My attorney advises me shortly I will no longer receive any more money from the workers compensation carrier. I will likely not be taken back to my previous

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employment. My doctors have restricted me to such a degree all of the work I have did is no longer available to me.

I inquired to what kind of vocational training is available for someone like me so I could maybe return to some kind of work. I was told vocational rehabilitation was terminated by you in 1993. I then contacted the state of Kansas to determine what type of vocational rehabilitation would be available to me. I was told due to the budget crisis there is no money available to retrain me.

I now face the harsh reality of losing my home due to the fact I will soon have no income to make my payments.

Why am I here today you may ask? This law doesn't really effect me. Vocational rehabilitation was done away with 10 years ago and now the legislatures are working on getting rid of most of the benefits for the severely injured people. I am told the bill in front of you still compensates people with minor injuries and appears to punish people like me with severe injuries. The reason I am here today is I wish someone would have stood up and had a voice here 10 years ago so vocational rehab and other benefits would have been here today for me.

The only way I may be able to make sure the same thing doesn't happen to others that has happened to me is to speak with the legislatures today. I only wish more people would have spoke up when you eliminated vocational rehabilitation 10 years ago. I could not believe my ears when I was told the legislature was thinking of taking even more benefits from severely injured workers like myself.

Not only have I lost 2 years of my life I have to think of the next 50 years of what's going to happen. I have not been able to play sports with my son for the last 2 years and I am now forced to tell him soon that we may lose our home we worked so hard to get. Please consider what effect your votes have on people such as me. In the future what ever you do to help the workers injured on the job please do so and think what would be like to not be able to run across your back yard and grab your son or daughter and play tag or kick ball. Then think what it would be like knowing what little benefits you do have coming may be cut even more.

Thank you,

James W. Snell

TO: MEMBERS OF THE SENATE COMMERCE COMMITTEE

FROM: DIANA MCCOMBS

RE: 2003 SB 181

DATE: FEBRUARY 19, 2003

TESTIMONY

Chairman Brownlee and members of the Senate Commerce Committee. I am Diana McCombs and I live in Kansas City, Kansas. I appreciate the opportunity to appear before you today in opposition to Senate Bill 181.

I hurt my back in September of 2000 and have developed RSD as a result of my injury. It is unlikely that I will ever be able to return to work and I will require ongoing medical treatment for the rest of my life. Although my workers compensation claim is still pending and would probably not be affected by Senate Bill 181, I still feel compelled to appear here today to urge you to vote against this bill out of fear of how this bill would affect injured workers in the future.

Senate Bill 181 is a bad law for the simple reason that it reduces the benefits to those workers who need these benefits the most . . . Workers who are so injured that they cannot return to their prior employment.

I have had to make several life style adjustments as a result of my injury. I was forced to sell my car to obtain an automatic since I am unable to operate a clutch. In addition, my husband had to leave his job to help take care of me. Thus, losing the retirement benefits we had planned on. Also, we sold our home and moved to an apartment since I am unable to work in my garden,

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negotiate steps or walk very far. This injury has caused me and my husband great financial losses. I want to emphasize the financial and emotional harm that passing this bill will cause other injured workers.

I cannot understand why we would pass a law to reduce workers compensation benefits in Kansas when our benefits are already some of the lowest in the country and well below the national average. I understand that Kansas has one of the highest rates of injury in the country. It would seem to me that a better approach would be to take steps to decrease worker injuries and not our benefits.

Thank you for the opportunity to express my concerns regarding Senate Bill 181. I respectfully request the committee to oppose this bill. Thank you.



**SENATE COMMERCE COMMITTEE
Hearing on SB 181
February 19, 2003**

**Julie Bachman
Wichita Area Work Comp Task Force**

Madam Chair Brownlee and members of the Senate Commerce Committee:

I am Julie Bachman of Koch Industries, Inc., which has its corporate headquarters and a manufacturing plant in Wichita, Kansas. Thank you for allowing me to speak on behalf of the Wichita Area Work Comp Task Force in support of Senate Bill 181.

Wichita employers support Senate Bill 181 because it seeks to shore up the 1993 Workers Compensation reforms which have been eroded by court decisions over the past ten years. Workers compensations costs are rising to those levels experienced in the early 1990's even though the number of injuries has declined. Employers are paying more money on fewer injuries. In order to remain competitive, Kansas businesses need an equitable and streamlined Workers Compensation Act.

Today I would like to focus on two elements of SB 181: Preexisting Conditions and Date of Injury. While work disability and retirement offsets are also very important issues, they will be addressed by other employer representatives today.

1. RESTORE THE CREDIT FOR PREEXISTING CONDITIONS by changing 44-501(c) as follows:

44-501(c) The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased functional impairment or disability. A prior impairment rating or permanent restrictions are not necessary to prove preexisting functional impairment or disability. The trier of fact shall consider all medical testimony on the issue of preexisting impairment or

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disability. Any award of compensation shall be reduced determined by showing, through medical evidence, the amount of functional impairment determined to be preexisting or disability caused by work activity for the employer from whom the employee is seeking compensation.

Employers need this more specific language in order to apportion Permanent Partial Disability in cases where non-work-related problems are aggravated by work activities. Recent court cases have blocked nearly every avenue that employers have used to prove up preexisting conditions (i.e. previous functional impairment ratings or previous restrictions). We employers are left with little else to prove that a preexisting condition existed, so we need this clarified in SB 181 to fulfill the intentions of the 1993 reform.

Even the slightest work activity can temporarily aggravate a preexisting condition such as arthritis, in which case medical treatment and perhaps Temporary Total Disability benefits would be provided. That would not change under SB 181. What would change is the way Permanent Partial Disability awards are treated: judges would be required to determine through medical evidence how much of the permanent impairment or disability is caused by the work activity.

EXAMPLE:

- **Accounting assistant logged 12,000 miles in one year on her Harley motorcycle including a trip to Sturges, South Dakota.**
- **Towards the end of the year, she developed carpal tunnel syndrome which she related to computer use at work.**
- **Employer was ordered to pay for surgery and Temporary Total Disability benefits since judge found work and motorcycle activities were both contributing factors.**
- **Employee received \$20,000 in settlement for a 12% functional impairment with no credit for the preexisting condition caused by motorcycle riding.**

Under the new provisions of SB 181, a judge would be required to determine how much of the \$20,000 was related to computer use versus the preexisting condition.

**2. DEFINE DATE OF ACCIDENT IN CUMULATIVE TRAUMA CASES
by adding criteria that the earliest date of three possible dates be used.**

Employers want the cumulative trauma date of accident defined for two purposes:

- To determine which carrier or policy period provides the coverage for the claim.
- To determine the rate at which benefits are paid.

Clarification of the date of accident should have minimal, if any, impact on the injured employee. Currently there is no way to determine which of the many methods the courts will use to determine date of accident in say, carpal tunnel syndrome.

Sometimes the date of accident is determined to be the day of the hearing if no time has been lost. In reality, we as employers have already had to pick a date of accident well before a hearing so that we can file a First Report of Injury, administer the claim, pay for medical treatment, prepare wage statements, log the injury on our OSHA logs, etc. For ease of administration and to eliminate the guesswork we support clarification of this definition.

In summary, we support SB 181 because it restores the 1993 reforms which have been eroded by court decisions over the past ten years and it streamlines the administration of claims. Kansas businesses need these changes to remain competitive and move forward.

Thank you for allowing the Wichita Area Work Comp Task Force to provide input today. I would be happy to try to answer any questions.

SENATE COMMERCE COMMITTEE
Hearing on SB 181
Wanda K. Roehl
The Wichita Area Work Comp Task Force

Madam Chair Brownlee and members of the Senate Commerce Committee:

I am Wanda Roehl, a member of the Wichita Area Work Comp Task Force. I am here today in support of SB 181, especially as it relates to work disability.

Work disability is a form of wage replacement compensation that is paid to an injured employee who has a whole body disability and who is not returned to comparable wage (90% of pre-injury wage).

Currently, it is based on an average of the percentages of the following:

The extent an employee has lost the ability to perform work tasks they performed in any substantial gainful employment during the fifteen-year period preceding their accident. *(This is not always relevant, as through education or training, the employee may have no intention of working in the same position as they did ten or fifteen years ago.)*

The difference between the average weekly wage the worker was earning at the time of their injury and the average weekly wage they were earning after their injury.

Current law encourages litigation and "dueling docs", for to determine the first prong "loss of ability to perform work tasks they have performed in the previous 15 years", it is first necessary to determine the employee's work restrictions. The treating physician will provide one set of restrictions and the claimant doctor will provide another. Next, the employer's lawyer sends the employee to a vocational "expert" who gives a task loss, and the claimant's lawyer sends the employee to another vocational "expert" who gives a different task loss.

In addition, the current statute states that the work disability shall be the "extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen year period preceding the accident, averaged together ..." This was well intended language, but it is not practical to have a medical doctor determine the employee's ability to perform tasks that the employee has performed the previous fifteen years.

The following are two examples of settlements. In the first example the employee does not return to work and is paid a work disability. In the second example, the

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employee is returned to work at comparable wage and is paid his functional impairment only.

Example 1

- Date of Accident: 7/1/01
- Bilateral CTS
- 1) Employee cannot return to work due to restrictions or 2) is laid off due to Economy

Claim Exposure

- Medical \$ 7,500
- Indemnity \$ 4,170
- Settlement \$ 87,305
- **Total \$ 98,975**

Example 2

- Date of Accident: 7/1/01
- Bilateral CTS
- Employee Returns To Work

Claim Exposure

- Medical \$ 7,500
- Indemnity \$ 4,170
- Settlement \$ 17,305
- **Total \$ 28,975**

The major concern we now have as employers, especially in the aircraft industry, relates to work disabilities when employees are laid off from accommodated duty, or cannot be returned to comparable wage due to layoffs.

Although the employee may have very minimal restrictions, they become eligible for a work disability for reasons unrelated to their injury; namely because of an economic downturn.

Prior to two recent court decisions, workers who became unemployed because of a reduction in force (downturn in economy) were not considered eligible for work disability unless the workers were on restrictions at the time of layoff. However, two recent decisions (Brian Dry vs. Precision Machine & Supply and Stellex Precision; and Tallman V. Case Corporation) say that if an employee is laid off, then makes a claim for workers compensation and is treated for a general bodily injury, the employee is eligible for a work disability, even though his or her unemployment had nothing to do with an injury or a work restriction.

Although I am here today representing the Wichita Area Task Force, I manage the self insured workers compensation program for Raytheon Aircraft Company. Because of general economy and layoffs of approximately 2,000 employees over the past two years, Raytheon work comp costs for 2002 increased \$1,000,000 over year 2000 costs. The cost of this increase equates to approximately 40 jobs.

Another member of the Task Force manages the workers compensation for the School District , USD 259, in Wichita. For every \$100,000 he spends on workers compensation, the School District could put three teachers in classrooms.

In summary, we support the provision for supplemental compensation in SB 181, as we believe it would minimize litigation and simplify the work disability calculation process. In addition, the proposed legislation would partially address the issue of employees being laid off, and filing a claim that turns into a work disability claim when the employee is not off due to the injury, but rather to a downturn in the economy.

Thank you very much for allowing our input on this bill. I will be happy to answer any questions.



Testimony on SB 181
before the
Senate Committee on Commerce

By

Bill Curtis, Associate Executive Director
Kansas Association of School Boards

February 19, 2003

Madam Chair and members of the Committee, I appreciate the opportunity to testify today in favor of SB 181. My name is Bill Curtis and one of my duties is to serve as administrator of a workers compensation pool sponsored by my employer, the Kansas Association of School Boards. That pool currently has 209 members, comprised of 182 unified school districts, twelve community colleges, fourteen intermediate service units (mostly special education cooperatives), and one vocational technical college. I also serve this year as President of the Kansas Self-Insurers Association. Both groups support SB 181.

My testimony today is mostly limited to those two provisions of SB 181 which, I believe, were a part of the law as enacted by the 1993 session of the Kansas Legislature. They would not be a part of the discussion today if case law had not eroded the intent of that reform. We are talking about credit for pre-existing conditions and a workers compensation offset for general disability compensation when that disability compensation was financed by the employer. Obviously many of us do not agree that the justification expressed for changing the intent of the 1993 Legislature in case law was sufficient.

The reforms of 1993 abolished the "second injury" reimbursement concept and replaced it with a credit for functional impairment ratings when a pre-existing condition existed. This philosophy is consistent with the fact that an injured employee should not receive functional impairment compensation for the same impairment rating more than once for the same injury. In the absence of an impairment rating, the health care provider should make a judgement concerning how much the most recent injury aggravated the pre-existing condition. It was pointed out in testimony in 1993 that there were claimants who had obtained functional impairment compensation in excess of 100% for injuries to various joints. It should also be noted here that the vast majority of employers in Kansas are not self-insured. Workers compensation insurance calculates premiums mathematically by using an experience rating system based upon losses. Basically, the

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more losses debited against an employer, the higher premiums for that employer for the next three years. Hence, when a credit is not received by the employer for a pre-existing condition, the "additional" compensation paid becomes a part of an additional premium burden for the employer for the next three years. Today, employers are not receiving credit for pre-existing conditions whether that pre-existing condition is work related or not.

The same situation exists for offsets of workers compensation benefits when the claimant is drawing disability compensation. The notion was expressed as one of fairness in that an employee should not be entitled to full workers compensation benefits if he/she was also drawing disability benefits when the disability benefit was either fully or partially funded by the employer. The offset was to be apportioned according to the amount of employer contribution to the disability plan. If the disability plan providing the benefit was paid fully by the employer, there would be no offset. A court case two years ago, Green vs. City of Wichita changed this concept in that the claimant was awarded full workers compensation benefits. Hopefully, the language in SB 181 would restore the offset.

Madam Chair and members of the Committee, let me conclude by sounding a warning. I believe we are at the threshold of another potential crisis in workers compensation in Kansas. I offer the following indicators: (1)For the past three years our pool has seen a dramatic increase in loss rates per \$100 of payroll; (2)Our loss cost multiplier has increased over the last two years from a 1.15 to a 1.20, to a 1.33, to a 1.38, and potentially to a 1.431 or more for next year; (3)There is virtually no competition for workers compensation insurance for schools in Kansas; (4)Schools in our pool are looking at a substantial increase in premiums next year; (5)The last audits by both an independent firm and by the Kansas Insurance Department confirmed losses from 6-30-01 to 6-30-02 required an infusion from cash reserves of over \$2 million; (6)The KASB pool is not alone in the bad news quoted above. In conversations with other pool administrators and articles in professional publications, the workers compensation market in Kansas is not "alive and well." In the opinion of many, the rulings by administrative law judges are not consistent, the appeals system is not working efficiently, and the system is awarding compensation for conditions that were never intended to be covered by the workers compensation act. All of these factors are leading to loss ratios out of control and, eventually, higher rates.

Thank you for your time and attention. SB 181 is certainly not the answer to all the problems but it is a step in the right direction. I would hope the Committee would pass the bill favorably.

TO: Members of Senate Commerce Committee
FROM: Doug Banka
RE: 203 SB181
DATE: February 19, 2003

Chairman Brownlee and Members of the Senate Commerce Committee:

I am Doug Banka from Topeka, Kansas.

I appreciate the opportunity to appear before you today in opposition to SB181.

My attorney calls my case a vocational rehabilitation success story. As some of you may remember, vocational rehabilitation was provided as a way to minimize work disability between 1987 and 1993. Through vocational rehabilitation and with the assistance of my attorney, Patrick Nichols, I was able to obtain a college education. I am a productive citizen and will pay far more in taxes than the cost of my education.

My wife, Pam Banka, also was injured at work. Fortunately, her lawyer was able to secure a work disability payment for her injuries. Because she was able to get work disability, she was able to "get back on her feet" and our family could pay the debt that we had incurred while she was unable to work. This gave us a little bit of a fresh start. She is now in a management position in a local branch of a national chain store.

Without work disability or vocational rehabilitation, our family would have had to go on welfare to pay our bills. This would have been humiliating to us, expensive to the State, and would have done nothing to deter the employers from creating unsafe workplaces. It would have rewarded the employers, at our expense, for no good purpose.

Doing away with work disability will cause far more harm than good. If costs are not going up, then there is no reason to punish injured workers and deny them the chance that my wife and I both had for a fresh start. Oppose this bill so that other injured workers can remain productive citizens, not burdens on the community.

Thank you for the opportunity to express my concerns regarding SB181. I respectfully request the Committee to oppose the bill.

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STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES
February 18, 2003

COMMITTEE ASSIGNMENTS

COMMERCE AND LABOR
ECONOMIC DEVELOPMENT
FINANCIAL INSTITUTIONS
PUBLIC SAFETY BUDGET

ROB BOYER

REPRESENTATIVE, 38TH DISTRICT
JOHNSON COUNTY
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Senator Karin Brownlee
Senate Commerce Committee

Dear Members of the Committee:

I am writing to encourage you to consider important changes to our State's worker's compensation law. The application of the law has become unfavorable to the business community and is resulting in double digit-increases in worker's comp premiums.

I offer my own company, Shred-it, as an example. I have been in business for the past seven years and have 36 employees. In those seven years, I have always encouraged safe practices and we have always had an active safety training program. With the exception of a few minor scratches and a twisted ankle our safety record is spotless. In fact, in seven years we have only had two worker's comp claims that were severe enough to warrant lost days. Both of them have been in the last two years and they are the subject of this letter.

The first was an employee who fell off the roof of his house while working on the weekend. He came in to work Monday morning complaining of soreness, but felt like he was "okay to go ahead and work." He left the office and returned an hour later complaining that his shoulder was hurting too much to continue. He acknowledged that he injured himself at home over the weekend. Consistent with federal law, we filed a worker's comp claim and sent him to the doctor. The results were inconclusive, but over the next twelve months we paid this individual \$42,000 in lost wages and medical expenses. Our insurance carrier, CNA, went to court against the individual and we lost. Kansas' courts sighted "aggravated injury on the job" as their reason for ruling with the employee. He injured himself at home and admitted as much, but the one hour he worked was enough to "aggravate" the injury and we paid even though we were clearly not responsible for his injury.

The second serious claim in my company's history involved an individual who came to work for me during the winter of 2002. On his third day on the job, he claimed that he slipped in the snow and hurt his hip. An MRI revealed that he was suffering from a degenerative hip defect that was slowly destabilizing his hip. Although the problem was genetic and his hip had been deteriorating since he was a child, we bought him a new hip for the price of \$26,000. Again, we fought in Kansas court and lost. The court sighted "aggravated injury on the job" as their reason for ruling with the employee.

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I am a strong supporter of safety in the workplace, but this is ridiculous. Two claims, neither of which were the result of negligence on my part, yet I paid the price. People who say that Kansas is a no-fault system are wrong. Clearly in these two cases the fault was placed on my company and although the insurance company paid my experience mod went through the roof and my annual premiums increased by \$22,000-- all for two injuries that were not my responsibility.

I encourage you to think about the burden being placed on Kansas' businesses. If it cost me, a small businessman, \$22,000 in increased premiums imagine what it is costing larger employers. It isn't even the money that's always the frustration. It's the knowledge that, as an employer, you can do everything right and still lose. It slaps in the face of entrepreneurial spirit, the desire to do right by your employees, and the fundamental believe that if you work hard and work honestly you will be successful. The intent of worker's comp is good, but the application in Kansas is out of balance.

Thank you for your time.

Sincerely,

Rep. Rob Boyer
District 38

SB 181

Bridget Cozad's Testimony before the Senate Committee on Commerce on February 19, 2003.

Madam Chairperson Brownlee and members of the Committee:

My name is Bridget Cozad, and I am from Wichita. Thank you for the opportunity to appear today in opposition to Senate Bill 181.

I began working in aircraft in 1975 and at Boeing Co. in 1983. I was the sheet metal assembler, and my work involved riveting, drilling and other repetitive duties. Around Thanksgiving 1990, I began experiencing symptoms in both hands and notified my employer. The condition in my hands continued to get worse to the point that I missed two months work in the spring of 1991. After a couple months off work, my symptoms improved, and I returned to work. Returning to repetitive duties, though, aggravated what had then been diagnosed as carpal tunnel syndrome. I continued working for almost a year until March of 1992 when I could no longer tolerate the loss of grip, pain and discomfort. I hired a lawyer, and filed my written claim for workers compensation benefits.

I was sent to a specialist, Dr. Harry Morris, who performed a release of my right carpal tunnel on Dec. 1, 1992. He then performed a release of my left carpal tunnel on March 15, 1993. When I was released from care, I was given permanent restrictions to not use power tools such as rivet guns and drill motors, and no repetitive use of both arms. These restrictions ended my career as a sheet metal mechanic in aircraft.

With the help of my lawyer, I went to Court and obtained an Award for work disability. That recovery for work disability allowed me to enroll in the Wichita Area Central College, where I took courses in fashion and interior merchandising. I graduated with Honors. Immediately after graduation I went to work for JC Penney. With my education and recommendations from staff at Central College, I moved to a job as assistant manager at Braun's Fashions and later a management position. I am still in retail service and sales, and I am now earning more than I ever earned in aircraft.

It is my understanding that if Senate Bill 181 would have been in effect when I experienced my injuries, I would have received no benefits under the Workers Compensation Act: no medical benefits; no weekly benefits; and no recovery for work disability. I first notified my employer of my condition around Thanksgiving of 1990. I continued work, hoping my condition would improve, and did not file for Workers Compensation benefits until the spring of 1992. Senate Bill 181 moves the injury date on repetitive use injuries to first notification of the employer. Written claim must be filed within 200 days of the date the employer is first notified. My written claim would have been filed out of time, even though my injuries were clearly work-related.

It is only with my recovery for work disability that I was able to enroll at the Wichita Central College, and it is only with those courses that I was able to gain employment in retail management. People who experience career-ending injuries must be allowed the opportunity to retrain themselves and rejoin the workforce. Compensation for work disability allows that to occur.

Without my recovery for work disability and the opportunity to retrain, I would have been un-employed and forced to accept financial assistance from various State agencies for food, housing, medical care and the necessities of everyday life. I would have been a financial burden to this State instead of a contributing taxpayer.

Thank you for the opportunity to tell my story to this committee. I respectfully request that each of you oppose Senate Bill 181.

Bridget Cozad

Senate Commerce Committee

2-19-03

Attachment 15

TO: Members of the Senate Commerce Committee

FROM: Charles W. Evans
715 S. Church Terrace
Olathe, Ks. 66061

RE: 2003 SB 181

DATE: February 17, 2003

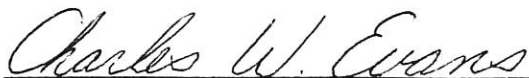
Chairman Brownlee and members of the Senate Commerce Committee. I am Charles Evans from Olathe. I appreciate the opportunity to appear before you today in opposition to SB 181. I was born in Wichita and have spent most of my life as a Kansas resident.

I recently suffered an on the job injury. The current state standards for workers disabled on the job are inadequate at best. I live a very modest lifestyle. No credit card balances, no car payment and I rarely eat out or indulge myself with other forms of entertainment. Like so many others I was living from paycheck to paycheck with nothing left over. I immediately suffered the loss of one weeks pay and then a reduction in salary of 30% for an indeterminable period. I would have been forced to sell my home and empty my savings if not for the support and generosity of my family. I was lucky enough to have at least had these options. How many others do? I am no longer able to perform the duties I have in the past. The settlement I received will not even cover the wages I have lost let alone the cost of retraining or the cost of future medical care related to my injury, which I am told, I will most likely require. I was denied basic medical insurance for nearly two years from my date of injury and to this day I cannot afford it.

Businesses have a "You break it, you bought it" policy. The same rules should apply to them without discounts, without exceptions. After all, we are not talking about a glass trinket on a shelf here but the quality of lives of our friends and coworkers and their families. An injury on the job is a sentence to poverty, suffering and hardship with the current levels of protection for workers. The concept of lowering the standards even further is unconscionable.

Please consider SB 181 from the perspective of the people whom you represent. I strongly urge the committee to oppose this bill. Thank you.

Respectfully,



Charles W. Evans

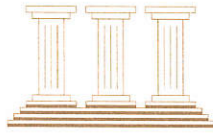
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Chairman Brownlee and members of the committee, I am Leland Glaser. I reside in Emporia, Kansas. I appear before you today to speak in opposition to Senate Bill 181.

In October of 1997, I was working as an HVAC technician and was making \$560.00 per week. My job provided me with health insurance and other benefits. I was climbing a ladder that had a cage around it when I fell, striking my neck and shoulder against the cage. This injury has led me to being totally disabled. I am no longer able to perform any substantial or gainful employment. My wife has to provide basic home health services for me. I can walk for short distances on some days but, I often need to use a wheelchair to have any mobility. I have been told by my doctors that my life span has been shortened and that I will soon be confined to a wheelchair.

My workers compensation benefits are \$351.00 per week. However, for over one year I received no benefits at all while I was waiting for the decision from the Appeals Board. After my injury, I had to completely wipe out my savings. I sold all of my tools which had cost me \$10,000. I sold savings bonds worth about \$2,000. When I had exhausted all of my financial resources, I had to move to cheaper housing. Even after that, my family was not able to adjust to the dramatic drop in income that resulted from my disability. My wife and I had to file bankruptcy.

If I had been able to work since 1997, I would have made over \$145,000 to date. I am fifty years old. Normally, I would have worked until I was sixty-five years old. Without any raises, I would have been able to make over \$436,000 over the next 15 years. The maximum that I can get from workers compensation over and above what I have received is another 80 weeks of compensation or about \$29,000. In other words, I will get over my remaining lifetime about the same amount that I would have received in one year of working. The Kansas legislature should be concerned with increasing disability benefits, not decreasing benefits. Please treat workers and their families with respect. Please vote no on Senate Bill 181.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Commerce Committee

FROM: Dennis Horner
Workers Compensation Chair
Kansas Trial Lawyers Association

RE: 2003 SB 181

DATE: Feb. 18, 2003

Chairman Brownlee and members of the Senate Commerce Committee, I am Dennis Horner and I offer comments today on behalf of the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to appear before you today in opposition to SB 181.

The Kansas business community is promoting a legislative agenda to further weaken workers' protection under the Kansas Workers Compensation Act. SB 181 would further decrease already substandard workers compensation benefits -- benefits which have not been increased since the late 1980s.

Kansas employees depend on a system that offers them minimal safety protection in the work place. If injured on the job, workers and their families must rely on substandard benefits.

- Workers compensation benefits are among the lowest in the nation and are well-below the national average.
- Changes to the Workers Compensation Act in 1993 severely diminished the rights of Kansas injured workers.
- Kansas workers have a high rate of injuries in the workplace. The Bureau of Labor Statistics ranks Kansas 9th highest in the United States.
- Vocational rehabilitation benefits to injured workers were revoked in 1993.
- The number of claims per \$1 million of payroll has decreased since 1993. (NCCI)
- Of total costs, medical expenses are approximately 61%. (KCWS)

Premium costs for workers compensation coverage in Kansas is below both national and regional averages (KWC)

Senate Bill 181 seeks to destroy benefits to injured victims in the following ways:

Proposed Amendment to Section 1(c)

K.S.A. 44-501(a) presently provides "the burden of proof shall be on the clamant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right

KTLA / SB 181

- 1 -

2/18/2003

Terry Humphrey, Executive Director

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715 •

E-Mail: triallylaw@ink.org

Senate Commerce Committee

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de...ds.”

The proposed revisions in subsection (c) seek to reduce the workers benefits without proof of the preexisting impairment by current standards and without evidence. Paragraph (a) requires the claimant to prove his/her claim but does not place the same standard on the employer in terms of any potential credit or setoff. The Board has held the employers have the same burden of proof in cases of setoff or credits and this section is an attempt to circumvent an otherwise fair rule. At present, employers do have the right to offset prior permanent impairment but must offer some proof to the trier of fact. This is not only fair but the same burden as placed on the claimant.

Proposed Amendment to K.S.A. 44-501(h)

The proposed changes in (h) will diminish the injured workers benefits by the amount of collateral disability insurance even though the worker may have paid for the insurance. For the worker who was prudent and obtained disability insurance, his/her worker's compensation benefits are reduced. If a worker has paid premiums for 20 years and sustains an injury, the compensation carrier seeks to avoid payment for risks it has received premiums for. Carriers received separate and distinct premiums for all coverages and should not be permitted to avoid payment due to collateral coverage for which premiums have been paid. While the carriers suggest claimants should not be permitted to double dip, they seek to double charge for multiple coverages and avoid payment.

Proposed Amendment to K.S.A. 44-510e(a)

The proposed change seeks to invalidate compensation for work disability. This proposed change directly impacts those workers whose injuries are severe enough to prevent their return to the same employment.

Under the present law, workers who are displaced from their jobs and lose more than 10% earning capacity may seek work disability. While inadequate to compensate them for the long term loss of earning capacity, the current law does provide some basic compensation for loss of earning ability.

Example: A production worker manufacturing mattresses sustains a career ending back injury. The worker made \$750.00 per week pre accident and will now make \$5.15 per hour. The worker sustains a 73% loss in earning ability which over the course of 20 years will mean a loss to the injured worker and his/her family of \$565,760.00. Under the present law, the worker could receive \$432.00 / week up to \$100,000.00 in workers compensation benefits or 18% of his/her losses. Under the proposed changes, the injured worker may well receive less than \$30,000.00. The proposed changes are not only unfair to the injured citizens of our state but place their families at extreme financial risk. Given the current low level of compensation premiums in this state, such a proposal is unreasonable and devastating to injured victims.

A further provision within subsection 501e(a) provides for no work disability if the worker is not on work restrictions when terminated. (Page 5, Lines8-14) This provision invites inappropriate medical opinions to be given employers by company doctors in order to terminate employees and attempt to avoid work disability.

At Page 5, Line 34, the proposed change in wording seeks to totally avoid work disability and provide functional impairment only. Again this has the most devastating impact on the most severely affected workers who are displaced from their jobs by work injuries.

Proposed Changes to K.S.A. 44-508(d)

The proposed change punishes good, honest, loyal, hardworking workers who continue to work with pain without filing claims.

First, many injured workers do not understand the nature of their injuries or how those injuries may impact them in the future. Often, workers will continue to work with problems assuming the problems will subside and not impact them prospectively. Often, occupational physicians fail to correctly diagnose the condition or provide meaningful treatment for repetitive use injuries. Moreover, occupational physicians often fail to communicate with the workers about the problem, the need for diagnostic testing or a specialist. The worker who works with problems and continues in his/her duties will likely be forbidden from collecting compensation benefits if this specific proposal is made law.

Example (1): A worker at Kansas University Medical Center with 30 years experience develops repetitive use problems. The worker is seen by the occupational physician who prescribes hand splints and a return to work. The doctor communicates to the worker the diagnosis is work related but returns the worker to her position. After nine months, the worker is no better and seeks assistance. This worker would be precluded from seeking compensation since more than 200 days have passed since the condition was related to the worker.

In this example, the worker did not immediately pursue a claim and relied upon the company physician for the splint(s). The worker did return to work as directed. Because the worker did not seek immediate legal advice and file a claim, her rights for permanent impairment have been violated.

Example (2): A worker at Acme Manufacturing reports problems which he/she believes are work related. The employer provides treatment and the doctor suggests the problems are not work-related and returns the worker back to work. After continuing to work for eight months with no reduction in symptoms, the worker files a claim. Under this proposal, the worker who tries to continue working will be denied since more than 200 days passed after his/ her notice to the employer.

In this example, the earliest date of "accident" is when the employee gave notice. The employee returned to work and did not immediately file a claim. While this worker would be protected under current law, he/she would be denied under the changes proposed.

Example (3): An employee reports a repetitive use problem and sees a company physician who places the employee on restricted duty. The physician continues the employee on restricted duty for nine months and relates the condition is not work related. Even though the causation is in issue, the worker is precluded from compensation because of being on restricted duty for nine months.

This highlights the unfairness of the proposed changes in that workers may unknowingly languish at jobs which continue to aggravate their condition. If the worker lasts long enough without filing a claim, they are denied benefits. In this example, the worker loses even if the condition is work related because of the restricted duty provided.

The proposed changes encompassed in SB 181 are completely unfair to injured workers and unnecessary to employers. Any legislation considered by the Kansas legislature should improve work place safety and improve benefits to injured workers. We strongly urge the committee to oppose SB 181.

**Written Testimony to the
Senate Commerce Committee
SB 181
Presented by Patrick T. Lehman
For the Kansas Fire Service Alliance
February 19, 2003**

Thank you Madame Chair, members of the committee. I am Pat Lehman and I represent the Kansas Fire Service Alliance. The Alliance is made up of the Kansas State Firefighters Association, the Kansas State Fire Chiefs Association, and the Kansas State Professional Fire Chiefs Association. The Kansas Fire Service Alliance opposes SB 181.

SB 181 reduces the benefits to injured firefighters and their families. The bill diminishes injured firefighter benefits by the amount of disability insurance even though the firefighter may have paid for the insurance. SB 181 eliminates disability compensation for firefighters who lose more than 10% earning capacity. Current law allows for some basic compensation for loss of earning ability.

The Kansas Fire Service Alliance is opposed to any legislation that reduces benefits to firefighters that are injured in the line of duty. We oppose SB 181 and ask the committee to oppose this bill.

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TO: Members of Senate Commerce Committee
FROM: Patrick Nichols, Topeka Kansas
RE: 2003 SB181
DATE: February 19, 2003

Chairman Brownlee and members of the Senate Commerce Committee, I am Patrick Nichols from Lawrence, Kansas. I appreciate the opportunity to appear before you today in opposition to SB 181.

By way of identification, I am an attorney in private practice formerly of Topeka, Kansas and now from Lawrence, Kansas. I have practiced workers' compensation for 25 years. I was counsel for the plaintiff in the lawsuit that declared the Workers' Compensation Board unconstitutional and which unsuccessfully challenged the 1993 amendments to the Workers' Compensation Act. I have testified over 20 times before both Houses of the Legislature on a variety of matters, but primarily in the area of workers' compensation.

Every change in workers' compensation law during my lifetime has been to reduce workers' benefits under the claimed assumption that premiums will be lowered. Oddly enough, even though benefits have been cut in amendment after amendment, the forces of big business in Kansas seem never to be satisfied and always want more. In fact, before the 1993 amendments, the costs were already declining.

There is no need for changes in the law. Although insurance costs are on the rise due to poor investments, Kansas compensation rates increased less than two percent (2%) this year. The cost of workers compensation coverage on average represents no more than one percent of total wages paid. More than sixty percent (60%) of the benefits are for medical costs not affected by this bill. An employer with a payroll of two million dollars per year would see an increase this year of only four hundred dollars (\$400.00), with only two hundred and fifty dollars going for increased disability costs. This insignificant increase does not justify any benefit reductions or changes. Instead, they show there is ample room for benefit increases.

The 1993 amendments did serious damage to the rights of injured workers. First vocational rehabilitation, a program created to help retrain and reemploy the injured workers of Kansas, was repealed. This program helped many people obtain better jobs with better educations. Among the other draconian changes made to the law are elimination of shoulder injuries from general work disability claims, denying compensation where the accident was not reported within 10 days even where the claimant may not know they were injured or the employer can show any prejudice or harm; denial of full compensation where pre-existing conditions have been aggravated by a work place injury; using retirement benefits that workers bargained for as part of their salary package to reduce work disability awards; enacting obstacles to obtaining good

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medical care and physician choice, mandating the use of an arbitrary standard, the AMA guides, and erecting impediments to the smooth administration of the system, including pre-hearing settlement conferences, court ordered IME's, notice of intent filings, etc.

One good thing came from the 1993 amendments. This was the opportunity for employers to prevent any award of work disability by simply returning employees to work within their restrictions and paying them 90 percent of their pre-injury earnings. For years, employers had complained about work disability awards alleging that they simply wanted to get injured workers back on the job. The legislature in 1993 gave them this opportunity. The backers of SB 181 complain about work disability, yet they could defeat it in every single claim by simply relying on current law.

This bill alters and changes work disability and changing the appropriate claims deadline for gradual injuries will have serious collateral consequences. The changes in work disability will create new obstacles to prevent many injured workers from getting back on their feet. As a result, they are more likely to become burdens on society to the welfare and Social Security disability systems. Likewise, their children will be less likely to obtain high wage employment or attend college. Tax revenue will be lost to the state; welfare and disability costs will go up. Changing the effective date for filing a claim will punish those workers who attempt to "tough it out on the job". As a result, more claims will be filed immediately when symptoms first arise causing increased litigation and clogging the Workers' Compensation Court.

Changes are needed to the Workers' Compensation Act. The maximum benefit for temporary and permanent partial disability is \$100,000.00. This amount has not increased in 16 years. Adjusted for inflation would be approximately \$160,000.00. Costs for everything from automobiles to washing machines has increased substantially. CEO's, managers and workers' compensation claims adjusters have all gone up essentially during this time. Injured workers in Kansas need this maximum amount adjusted in the interests of fairness.

Permanent total disability is paid for when a worker is rendered, as a result of his injury; permanently and totally unable to engage in substantial and gainful employment. Though this person will never be able to work at a job again, the amount they can receive is limited to \$125,000.00. For a well-paid worker, they will receive only six years compensation. Lifetime disability should result in lifetime payments.

Finally, workers' compensation rates could be reduced if reckless disregard for the safety of their workers is precluded from the loss and risk pool if a disregard for a safety device by a worker is shown, compensation can be completely denied. If an employer evidences a willful disregard of workers' safety or a reckless indifference, the law should be amended to give the injured worker to the employer in court for traditional common law damages. The law should provide that where the worker recovers less than what he would have received under the Workers' Compensation Act, the worker is required to pay the employer's attorney's fees. Driving up cost for the safe and prudent Kansas employers.

Thank you for the opportunity to speak against SB181. I encourage you to oppose this bill.

McCullough, Wareheim & LaBunker

A PROFESSIONAL ASSOCIATION

JOHN M. OSTROWSKI
BETH REGIER FOERSTER
JAMES E. BENFER III
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Of Counsel
—
ROBERT B. WAREHEIM
Retired
—
R. (REG) LaBUNKER
1903-1989
—
TERRY D. WATSON
1942-1982

February 19, 2003

THE HONORABLE KARIN BROWNLEE
STATE CAPITOL RM 123-N
TOPEKA KS 66612

Re: SB 181

Dear Chairperson Brownlee:

As you will recall, I appeared and testified relative to Senate Bill 181. On returning to my office, it appeared that there was a potential conflict between information presented by KTLA and myself relative to premiums in Kansas. More specifically, I indicated in my written testimony that Kansas had "higher than average premiums" and low benefits. Furthermore, that this represented a system "somewhat out of balance."

That information appears to conflict with testimony presented by KTLA that Kansas, on a national level, has low premiums. In reality, and having reviewed the situation, neither statement is incorrect.

As your Committee is aware, I referenced a seminar which I attended presented by the NCCI. The seminar was held in Topeka on June 5, 2002 and presented by Jim Davis and Terri Robinson. They referred to the report set forth in my written testimony, Workers Compensation State Rankings Manufacturing Industry Costs and Statutory Benefit Provisions, Actuarial & Technical Solutions, Inc., 2001 Edition. That source of information is also referred to in the report referenced by KTLA, Workers Compensation in Kansas, Labor Research Association, February 20, 2000.

Actuarial & Technical Solutions states: "While low statutory benefit levels would be expected to generate a low cost, and high benefit levels a high cost, a direct comparison of the two rankings reveals some noteworthy contradictions." NCCI in the June seminar agreed with this statement. Actuarial & Technical Solutions clearly identified Kansas as a low benefit state. On the overall grid,

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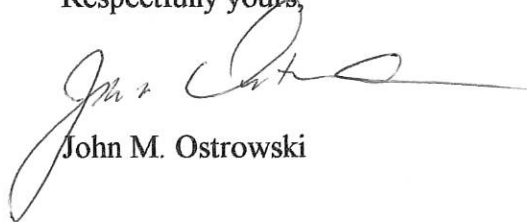
Actuarial & Technical Solutions refer to Kansas presently as an average cost state; but additional information contained in the report indicated that Kansas was recently rising toward the higher end of average. Thus, the systemic problem to which I referred, and to which the NCCI referred, does exist.

I believe that the major difference between the information I presented, and that presented by KTLA is that Actuarial & Technical Solutions was clearly referring to manufacturing industry costs. Conversely, the KTLA actuarial data is more geared to a national comparison on an overall statewide basis; i.e. not limited to manufacturing. In Kansas, manufacturing is only a small percentage of our overall industry which may account for some discrepancy between the numbers.

Senator Wagle also asked a question relative to employer fraud. Phil Harness indicated that he generally did not combine figures for misrepresentation with figures for noncompliance. I am not confident why those numbers would not be combined. Both actions are clearly set out as "fraudulent" by K.S.A. 44-5,120, et seq.

I hope this clarifies any concerns, but should issues still exist, please advise.

Respectfully yours,



John M. Ostrowski

Committee Members
JMO:kn

Written Testimony of George Pearson

SB 181 is bad Public Policy. It removes the incentive for employers to retain injured workers by eliminating Work Disability in favor of “supplemental functional disability compensation.” Under current law if the employer takes back the injured worker and pays him or her 90% of their wage at time of injury, there is no Work Disability, end of story. This is the incentive. The employer avoids the prospect of paying 415 weeks multiplied Task Loss % averaged with Wage Loss % multiplied by permanent partial disability compensation rate (2/3 of that worker’s average weekly wage) by retaining the injured worker at 90% of the same wage.

Obviously this is good public policy to encourage employers to retain the injured worker which SB 181 does not do because “supplemental functional disability compensation” is always less than 100 weeks of compensation because the Judge must impute a post-injury wage to the injured worker which will always be at least minimum wage, equalling \$206 per week (unless the worker is permanently totally disabled) and the percentage difference will always be less than 100 weeks. SB 181 goes from 415 weeks of compensation we are using for a baseline to less than 100. This pretty much eliminates the motivating factor the current law contains to inspire employers to retain workers injured while in their employ.

SB 181 most severely punishes the most severely injured, the CAREER-ENDING injuries, which cost the worker his future earning ability by reducing his possible permanent partial disability benefit in a huge way and thereby eliminating the incentive to his employer to keep him working. This is incredibly bad Public Policy and something the Kansas Legislature should want no part of.



INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

Local 135, Wichita, Kansas

ENTERPRISE PLACE
1330 EAST FIRST STREET, #106
WICHITA, KANSAS 67214
TELEPHONE (316) 263-6651

February 19th, 2003

Good morning Senators, my name is Doug Pickard. I am a member of the Wichita Fire Department serving since 1976. I currently hold the rank of Fire Captain, and am the President of the International Association of Firefighters, Local 135 (Wichita Chapter). It is from these multiple perspectives that I address you this morning on Senate Bill #181. This Bill, as proposed, is a step backward in the care of Firefighters that are injured in the line of duty.

The proposed changes will diminish injured firefighters benefits by the amount of collateral insurance; in the case of Wichita Firefighters this will unduly tax supplemental insurance programs funded by employee organizations. This Bill will shift the responsibility from the Employer to an insurance policy that is paid for by the Firefighters themselves. This concept is the absolute antithesis to the intent of the original Workers Compensation Act.


This Bill would shift the burden of proof to the claimant. It requires the injured Firefighter to prove the extent of his or her injury, potentially at his or her own expense. The Employer is not under the same burden of proof, thereby establishing a double standard.

Proposed changes also include an expansive evaluation of injury, potentially encompassing an entire career filled with minor injuries or repetitive injuries incurred in multiple dynamic, unpredictable emergency scenes. Firefighters by nature are the type of personnel that deliver heroic efforts despite the calculated risks associated with firefighting. This makes them even more likely to be injured in times of lean budgets and inadequate staffing that exist today within the Fire Service. Employers would be better served to explore the possibility of increased staffing which will greatly diminish work related injuries, thereby negating the need for emasculating the current Workers Compensation Act.

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In closing I urge you to protect your Firefighters in the State of Kansas by defeating the proposed SB-181. The Firefighters of the State of Kansas have historically delivered services above and beyond expectations, and deserve the protections found in the current Workers Compensation Act. Any dilution of the existing protection would be an injustice, and we as Firefighters implore you to consider repealing the proposed changes in SB-181.

Sincerely



Doug Rickard
President
IAFF, Local 135

TESTIMONY ON SENATE BILL 181

My name is W. Clark Roush and I am here to tell you that workers compensation benefits are very difficult to obtain and do not pay for the loss of a job. As a result of my medical restrictions I lost my job at Computer Dynamics. I had a one-armed injury. Under workers compensation, even when it is a repetitive use injury, it does not pay for the loss of my job when one arm is injured.

The amount I received did not cover the fact that I lost my job.

Senate Bill 181 makes repetitive use injuries and workers compensation injuries pay even less for people injured in the future. I cannot stand by and let less benefits be paid to injured workers when I know that the amounts that I received did not cover the loss I suffered and that my family suffered. Please do not pass Senate Bill 181.

WILBURN CLARK ROUSH JR
1716 SW 26TH STREET
TOPEKA KS 66611

Senate Commerce Committee
2-19-03
Attachment 24

TO: Members of Senate Commerce Committee
FROM: Elton "Sonny" Schmidt
RE: 203 SB181
DATE: February 19, 2003

Gentlemen, Chairman Brownlee, and Members of the Senate Commerce Committee:

I am Elton "Sonny" Schmidt from Topeka, Kansas.

I appreciate the opportunity to appear before you today in opposition to Senate Bill 181.

I injured my back on a loading dock working for USD 501 in Topeka. I had surgery and continued to work with restrictions for several years. I never thought of hiring a lawyer. One day, the management called me in to tell me that they were tired of accommodating my restrictions and I was going to be fired. I had to get a lawyer and pursue a workers' compensation claim to recover for my injuries.

I did recover work disability. I recovered the maximum amount of work disability after I had the case heard by a judge. This represents a little over three years of my salary. I have a wife and five children.

If I had not received a work disability award, my family would be on welfare. Even so, the maximum amount of work disability is far too low. As I understand it, the maximum amount has not been raised in over 13 years. Certainly, my cable bill, grocery bill, gasoline prices, automobile prices, utility bills, etc. have all gone up in the last 13 years.

The provision to do away with work disability is a terrible idea. It will put people on welfare because they cannot have any help to get re-started with their lives. It will do nothing to reduce workplace accidents and will only hurt injured people.

The law does need to be changed. The maximum amount should be raised by at least the amount of inflation since its last increase. This would be a change to approximately \$160,000.00 maximum benefit.

Thank you for the opportunity to express my concerns regarding SB181. I respectfully request the Committee to oppose this bill.

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Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Legislative Testimony - SB 181

February 18, 2003

Testimony Provided to Senate Committee on Commerce

By Pete Schrepferman, Owner, Johnstone Supply Company

Madam Chairperson and members of the Committee:

Thank you for the opportunity to provide written testimony in support of SB 181. The bill contains a number of reforms to the workers' compensation system, which the members of the Wichita Independent Business Association (WIBA) support.

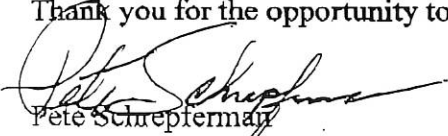
SB 181 proposes to replace the current work disability definition and replace it with a definition for functional impairment. Currently, work disability compensation is awarded to employees who do not return to work at 90% of their pre-injury wage due to their injury. The test utilized to measure work disability is a measurement of the loss of ability to perform tasks. This criteria is difficult to measure and is arguably not relevant. By using the functional impairment test, workers would be compensated for the degree of their injury. Doctors would determine the degree of injury by using guidelines from the American Medical Association.

In addition, an employee will receive "supplemental compensation" to compensate them for their wage loss. A simple wage comparison will be used to determine the amount of supplemental compensation. The percentage difference between pre-injury and post-injury wages will become the number of weeks of supplemental compensation awarded. For instance, an employee who was earning \$500 a week, but after their injury can only earn \$400 a week, has suffered a 20% wage loss. In this scenario, the employee's 20% wage loss would lead to 20 additional weeks of supplemental compensation, in addition to their compensation for functional impairment.

The other provision WIBA supports in SB 181 is that it specifically sets out that employers are only responsible for injuries caused by work performed for the respective employer, not for any pre-existing conditions the worker may have experienced. Pre-existing condition reform was a key element in the 1993 reform, which was to compensate workers for injuries they suffered on the job, but not for injuries they had suffered prior to the incident. Unfortunately, many decisions today do not resemble the 1993 legislative intent. WIBA believes employers should be held responsible for the degree of injury their employees suffered while on the job, but not for conditions that pre-existed the work place accident. The change in SB 181 attempts to further codify the 1993 legislative intent.

Workers' compensation is an expensive part of doing business in Kansas, and cost has been on the increase in recent years. WIBA supports SB 181 and we encourage you to vote in favor of this bill.

Thank you for the opportunity to comment on SB 181.


Pete Schrepferman

WIBA Legislative Affairs Committee Chairman

Senate Commerce Committee

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Attachment 26

415 S. Main Street / Wichita, KS 67202-3719

316-267-8987 / 1-800-279-WIBA / FAX 316-267-8964 / E-mail: information@wiba.org / Web Site: www.wiba.org

Mr. C.E. "Sonny" Scroggins
Kansas National Action Network
901 SW Tyler
Topeka, KS. 66612
Telephone: (785) 357-8853
E-Mail: biasbustersofkansas@yahoo.com

Prepared for Delivery to the Honorable Special Committee on Commerce, Kansas Body Politics.
(19 Feb. 2003)

Distinguished Members of the Special Committee on Commerce

Good Morning to you all, with gratitude and admiration for your energetic commitment and leadership, I commend you for your good work, I wish you the best in all of your endeavors, and look forward to your contributions to come. As a member of the National Action Network under the Leadership of the Rev. Al Sharpton, that I am pleased to extend you my greetings of the day in Opposition to Senate Bill, No. 181.

The National Action Network call upon Members of the Legislature to resist the Policies and Overall Political Direction of Senate Bill 181, a benefit cutting bill that punishes the most severely injured/Career-Ending Injured Worker and encourage Lawmakers to have political courage and not vote it into law!!!! The unfairness of this Bill is blatantly obvious and even more so when there is no logical reason to cut benefits to injured workers after the cost savings of the "93" changes i.e. there is no Work Comp Cost Crisis to warrant such a Draconian Change in Law!!! Senate Bill 181 must be seen for what it is and resisted. Too many times in history people have waited until it was to late to resist.

Thomas Huxley has said that "the great end of life is not knowledge but action." But we need some knowledge, do we not, in order to distinguish between appropriate and inappropriate, faithful and unfaithful action, political courage, and the lack of it.

Senate Bill 181 is a slow and Dangerous Descent of the most severely injured into Economic Deprivation and Membership in a Permanent Underclass. It is Unjust, It is Immoral and You Would Be Wrong For That !!!!! It is unimaginable that lawmakers would shirk for an instance their responsibility to provide Relief that is Humane for Workers, who can no longer Work!!!

Jobs come and go, but the need to work doesn't!!! The Kansas Business Community is promoting a Legislative Agenda to further weaken workers protection under the Kansas Workers Compensation Act, you must not allow it to happen. Thanking You for Your Kind Attention to my remarks, I particularly want each of you to know, that you may expect the National Action Network to be a Champion against Senate Bill No. 181 in the State of Kansas.

It is then, in the spirit of the Jewish oriented "come let us reason together" maxim, that I thank you for the opportunity to share!

Cc The Honorable Kelvin Alexander, Field Director, National Action Network.
See Attachments

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Talking points
SB 181

The Kansas business community is promoting a legislative agenda to further weaken workers' protection under the Kansas Workers Compensation Act. SB 181 further decreases already substandard workers compensation benefits -- benefits which have not been increased since the late 1980s.

Kansas employees depend on a system that offers them minimal safety protection in the work place. If injured on the job, workers and their families must rely on substandard benefits.

- Kansans have a higher risk of being injured on the job than workers in other states.
- Workers compensation benefits are among the lowest in the nation and are well-below the national average.
- On the other hand, Kansas businesses enjoy workers compensation premium costs that are below average. Kansas employers' workers compensation costs are almost half of the average for the nation and the region.

SB 181 does nothing to improve work place safety or the compensation benefits to injured workers.

How does SB 181 improve the workers compensation system for Kansas? The answer is simple. It doesn't.

FACTS ABOUT THE KANSAS WORKERS COMPENSATION SYSTEM

1. The 1993 overhaul of the Workers Compensation Act was overhauled severely diminished the rights of Kansas injured workers.
2. Kansas workers have a high rate of injuries in the workplace. The Bureau of Labor Statistics ranks Kansas 9th highest in the United States.
3. Kansas compensation benefits are among the lowest in the nation.
4. Vocational rehabilitation benefits to injured workers were revoked in 1993.
5. The number of claims per \$1 million of payroll has decreased since 1993. (NCCI)
6. Of total costs, medical expenses are approximately 61%.(KCWS)
7. Premium costs for workers compensation coverage in Kansas is below both national and regional averages (KWCS)

Senate Bill 181 seeks to destroy benefits to injured victims in the following ways:

1. The proposed amendment to Section 1(c)

K.S.A. 44-501(a) presently provides "the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends."

The proposed revisions in subsection (c) seek to reduce the workers benefits without proof of the preexisting impairment by current standards and without evidence. Paragraph (a) requires the claimant to prove his/her claim but does not place the same standard on the employer in terms of any potential credit or setoff.

The Board has held the employers have the same burden of proof in cases of setoff or credits and this section is an attempt to circumvent an otherwise fair rule.

At present, employers do have the right to offset prior permanent impairment but must offer some proof to the trier of fact. This is not only fair but the same burden as placed on the claimant.

2. Proposed Amendment to K.S.A. 44-501(h)

The proposed changes in (h) will diminish the injured workers benefits by the amount of collateral disability insurance even though the worker may have paid for the insurance. For the worker who was prudent and obtained disability insurance, his/her worker's compensation benefits are reduced. If a worker has paid premiums for 20 years and sustains an injury, the compensation carrier

seeks to avoid payment for risks it has received premiums for. Carriers received separate and distinct premiums for all coverages and should not be permitted to avoid payment due to collateral coverage for which premiums have been paid. While the carriers suggest claimants should not be permitted to double dip, they seek to double charge for multiple coverages and avoid payment.

3. Proposed Amendment to K.S.A. 44-510e(a)

The proposed change seeks to invalidate compensation for work disability. This proposed change directly impacts those workers whose injuries are severe enough to prevent their return to the same employment.

Under the present law, workers who are displaced from their jobs and lose more than 10% earning capacity may seek work disability. While inadequate to compensate them for the long term loss of earning capacity, the current law does provide some basic compensation for loss of

earning ability.

Example: A production worker manufacturing mattresses sustains a career ending back injury. The worker made \$750.00 per week pre accident and will now make \$5.15 per hour. The worker sustains a 73% loss in earning ability which over the course of 20 years will mean a loss to the injured worker and his/her family of \$565,760.00. Under the present law, the worker could receive \$432.00 / week up to \$100,000.00 in workers compensation benefits or 18% of his/her losses. Under the proposed changes, the injured worker may well receive less than \$30,000.00. The proposed changes are not only unfair to the injured citizens of our state but place their families at extreme financial risk. Given the current low level of compensation premiums in this state, such a proposal is unreasonable and devastating to injured victims.

A further provision within subsection 501e(a) provides for no work disability if the worker is not on work restrictions when terminated. (Page 5, Lines 8-14) This provision invites inappropriate medical opinions to be given employers by company doctors in order to terminate employees and attempt to avoid work disability.

At Page 5, Line 34, the proposed change in wording seeks to totally avoid work disability and provide functional impairment only. Again this has the most devastating impact on the most severely affected workers who are displaced from their jobs by work injuries.

4. Proposed changes to K.S.A. 44-508(d)

The proposed change punishes good, honest, loyal, hardworking workers who continue to work with pain without filing claims.

First, many injured workers do not understand the nature of their injuries are how those injuries may impact them in the future. Often, workers will continue to work with problems assuming the problems will subside and not impact them prospectively. Often, occupational physicians fail to correctly diagnose the condition or provide meaningful treatment for repetitive use injuries. Moreover, occupational physicians often fail to communicate with the workers about the problem, the need for diagnostic testing or a specialist. The worker who works with problems and continues in his/her duties will likely be forbidden from collecting compensation benefits if this specific proposal is made law.

Example (1): A worker at Kansas University Medical Center with 30 years experience develops repetitive use problems. The worker is seen by the occupational physician who prescribes hand splints and a return to work. The doctor communicates to the worker the diagnosis is work related but returns the worker to her position. After nine months, the worker is no better and seeks assistance. This worker would be precluded from seeking compensation since more than 200 days have passed since the condition was related to the worker.

In this example, the worker did not immediately pursue a claim and relied upon the company

physician for the splint(s). The worker did return to work as directed. Because the worker did not seek immediate legal advice and file a claim, her rights for permanent impairment have been violated.

Example (2): A worker at Acme Manufacturing reports problems which he/she believes are work related. The employer provides treatment and the doctor suggests the problems are not work related and returns the worker back to work. After continuing to work for eight months with no reduction in symptoms, the worker files a claim. Under this proposal, the worker who tries to continue working will be denied since more than 200 days passed after his/ her notice to the employer.

In this example, the earliest date of "accident" is when the employee gave notice. The employee returned to work and did not immediately file a claim. While this worker would be protected under current law, he/she would be denied under the changes proposed.

Example (3): An employee reports a repetitive use problem and sees a company physician who places the employee on restricted duty. The physician continues the employee on restricted duty for nine months and relates the condition is not work related. Even though the causation is in issue, the worker is precluded from compensation because of being on restricted duty for nine months.

This highlights the unfairness of the proposed changes in that workers may unknowingly languish at jobs which continue to aggravate their condition. If the worker lasts long enough without filing a claim, they are denied benefits. In this example, the worker loses even if the condition is work related because of the restricted duty provided.

The proposed changes encompassed in Senate Bill 181 are completely unfair to injured workers and unnecessary to employers.

TO: Members of the Senate Commerce Committee

FROM: Dennis N. Shumate, 3332 Union Road, Junction City, Kansas 66441

RE: 2003 SB 181

DATE: February 19, 2003

Chairman Brownlee and members of the Senate Commerce Committee, I am Dennis Shumate from Junction City, Kansas.

I appreciate the opportunity to appear before you today in opposition to SB 181.

Until just recently I was employed as the Senior Sargent and Senior Road Deputy at the Geary County Sheriff's Department. On September 17, 2001, I injured my back while pulling a fire hose off a reel on a truck. I have had treatment for my back injury, and the doctors placed a restriction of 30 pounds lifting due to my injury. Because of the restrictions, my employer chose not to bring me back to work.

The doctors have given me a 10% functional impairment, but because of the injury, I have lost the ability to do my chosen occupation. I am pursuing a work disability claim which, hopefully, will compensate me for at least a portion of what I have lost. However, I understand that the compensation is capped at \$417.00 a week, for a total payout not to exceed \$100,000.00. The present benefits are insultingly low; however, this proposed legislation as I understand it would significantly reduce benefits and result in even more hardship on Kansas families.

Under this proposed legislation, I would receive the functional impairment of approximately \$15,000.00. If a Judge said I could earn half as much as I did as Senior Deputy, I would get an additional \$20,750.00. \$35,000.00 total in compensation for losing my ability to do the job I loved, through no fault of my own, is insulting to both myself and my family. This proposed law does nothing to encourage employers to take injured workers back to work, and would result in even more employees like myself, being put out of work. Please do not make honest hardworking employees suffer even more than I have suffered.

Thank you for the opportunity to express my concerns regarding SB 181. I respectfully request the Committee to oppose this bill.

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TESTIMONY OF WILLIAM A. SWEET

Madam Chairperson Brownlee and members of the Senate Commerce Committee: My name is William Sweet and I am from Wichita, where I have lived for the last 27 years. I am 33 years old, married to my wife, Brandi, who is employed at the Wichita Chamber of Commerce.

I appreciate this opportunity to appear before you today in opposition to Senate Bill 181.

My experience with the Workers Compensation Laws in Kansas has taken place over the last 3 years. From 1991 thru 2000, I worked in the aircraft industry in Wichita. In February of 2000, while working for the Boeing Co., I developed carpal tunnel syndrome in both arms, accompanied by tendonitis and traumatic arthritis also in both arms. For two years I treated with a number of doctors selected by Boeing's insurance company and was given permanent restrictions of no lifting over 7 lbs with each hand, no repetitive use of either hand and to wear splints on my hands as needed. In September of 2000, Boeing stated they could not find work for me within those restrictions and terminated me as a medical layoff. At that point I was earning about \$800.00 per week, and I was out of a job in the only field I had worked for the last ten years. I received unemployment at around \$240.00 a week, I looked for jobs at the rate of 3 to 4 times a week but no one would hire me with the permanent restrictions on my hands and arms. Knowing that I had to retrain myself completely, I enrolled in management and business classes at Wichita State University. I got a job selling suits at Dillard's for \$300.00 per week with a schedule that would allow me to attend my classes. The financial hardship on my family and myself was overwhelming in that for 10 months we were living at less than half of what I had previously earned. I never received any workers compensation payments of any kind until July of 2001. I then began receiving \$287.25 per week as well as a lump sum payment and will continue to receive that amount for approximately 3 more months. As a result of my management classes, last August I began as a shift manager in a video store and have been promoted to assistant manager. The doctors have told me the pain in my arms and hands will be with me for the rest of my life and while I may never be able to return to earning as much as I had at Boeing, I can now at least provide for my family and have hope for the future. If the workers compensation benefits I received had been any less, I would never have been able to survive the period of retraining necessary to allow me to get a job I can do considering my restrictions.

It is my understanding that the proposed changes to the workers compensation law could possibly completely eliminate a person with an injury such as myself from receiving any permanent compensation. At a minimum, the proposed changes would cut benefits to less than half of what I was entitled to receive. I doubt my family could have financially survived a situation such as that. Please don't place injured workers in that situation.

Thank you for the opportunity to tell my story to this committee. I respectfully request each of you to oppose Senate Bill 181.

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TO: Members of the Senate Commerce Committee

FROM: Bart Thomas, 5640 Anderson Avenue, Manhattan, Kansas 66502

RE: 2003 SB 181

DATE: February 19, 2003

Chairman Brownlee and members of the Senate Commerce Committee, I am Bart Thomas from Manhattan, Kansas.

I appreciate the opportunity to appear before you today in opposition to SB 181.

I own Thomas Signs, Inc., an outdoor advertising agency in Manhattan, Kansas, and have several employees. I also personally suffered a work related injury on December 2, 2000. Based on my experience as an injured worker, I can tell you firsthand that Kansas work comp benefits are extremely low and barely enable families to survive. I can also tell you that families depend on those workers compensation benefits to live when the wage earner is injured.

I cannot imagine anybody that is familiar with the system recommending lowering those benefits even further. As an employer and an injured worker, I am asking this Committee to not hurt families by reducing work comp benefits further. In fact, I believe work comp benefits should be increased.

Thank you for the opportunity to express my concerns regarding SB 181. I respectfully request the Committee to oppose this bill.

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SENATE COMMERCE COMMITTEE
Hearing on SB 181
Written Testimony of Alan P. Weldon
The Wichita Area Work Comp Task Force

February 19, 2003

Chairman Brownlee and members of the Senate Commerce Committee, I am Alan Weldon, the current chairman of the Wichita Area Work Comp Task Force, an ad hoc group of those who work with their employers' workers compensation programs on a daily basis.

Workers compensation was established in Kansas in 1911 to allow workers with job-related injuries to seek medical attention without having to go through the courts to establish negligence before obtaining the medical care they needed. It was one of the first "no fault" laws enacted in this state. Senate Bill 181 does not affect this purpose of the Kansas Workers Compensation Act. SB 181 does not affect access to medical care, nor does it affect temporary disability payments.

SB 181 addresses the benefit under our current law for permanent disability, or the cash award or settlement workers may receive after they have reached their maximum medical improvement. SB 181 has four main provisions. One establishes a date of accident for cumulative trauma disorders. The courts have used a half dozen different dates in various rulings, and this change merely takes the earliest of three possibilities thus simplifying the process of the claim. It has little, if any, affect on the access to medical care or possible disability payments.

Another provision clarifies the intent of the retirement credit offset. Coordination of work comp benefits with federal old age social security benefits goes back many years. In 1993, the law changed to expand this credit to include benefits from other retirement plans. Due to a court ruling in *Green v. City of Wichita*, disability retirement, when the injured employee will not return to work, was excluded from the retirement offset. The intent is coordinate benefits so injured employees will not receive a greater net income as a result of the job accident than they received before the injury. The Task Force believes compensation was meant to replace lost income, and it was not the legislative intent for employees to receive a total benefit from their employer that is in excess of the pre-injury wage.

The intent of the third provision in SB 181 is to restore the credit in KSA 44-501(c) for preexisting conditions. The courts have held that (1) contrary to what is stated in KSA 44-501(a) the burden of proof of establishing the disability is on the employer, (2) that there is no statutory authority for using permanent work restrictions as grounds for establishing pre-existing disability, and (3) that a previous impairment rating does not establish the degree of disability at the time of subsequent job-injury due to modern medical treatment, time, and the healing qualities of nature. So what the legislature hath granted, the courts have taken away. Consequently, an employer has had to pay a

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permanent partial disability settlement for an employee who fell from a ladder while cleaning out the gutters of his house. He made it in to work the following day and claimed a job aggravation moving a box at work. I have paid settlements that included the ongoing treatment for personal arthritis, aggravated by a fall at work or a student kicking a Paraprofessional in the affected knee. I have a 71-year old substitute teacher whose doctor recommended a total knee replacement one month before she fell on the stairs on a field trip. Our work comp program paid for the new knee, but why should the cash settlement for permanent partial disability also include the years of a personal degenerative condition in the knee?

In 1998, my employer had 83 lost time claims, and 27 claims that resulted in its paying out \$245,191.20 in awards and settlements for permanent partial and work disability. In 2002, it had 71 lost time claims, or 12 fewer than four years earlier, and 29 claims that received \$432,440.26 in settlements and awards. This is almost an 80% increase in four years in the amount paid out for permanent partial and work disability while the number of claims is about the same.

However, pre-existing conditions is only part of the problem. The fourth provision addressed by SB 181 is work disability. In 1974, the legislature adopted an occupational standard of disability evaluation with respect to permanent partial disability. This standard features the application of the loss of wage earning capacity theory in assessing the extent of permanent partial disability. The disability formula was changed in the current act in the wee hours of the morning during the wrap-up session in 1993. Governor Finney vetoed the legislature's reform bill, and late-night compromises were made to prevent a second veto by the Governor. The current disability definition was one of these last-minute compromises.

The current disability definition has two parts: a loss of job tasks performed in the past 15 years and a loss of wages. The task loss is not always relevant because through education or training injured employees might have no intention of working in the same position they did 15 years ago. The wage loss was not tied to the job injury in the current definition; it simply states the wage loss is the difference between the pre-accident wage and the post-accident wage the employee receives. The law says nothing about why the difference exists. So there is a financial incentive not to return to work before settling a workers compensation claim. Even the courts recognized this and stated the employee must make a "good faith" effort to return to work. However, they left it to an administrative law judge to determine what constitutes a "good faith" effort. I had a custodian with a 40-lbs. lifting restriction who had not returned to work at the time of his regular hearing. He wrote down the names of 100 businesses from the yellow pages in the phone book. The names were written with the same pen in the same handwriting. My attorney asked the claimant if he could remember one person he talked to at any of the businesses. He could not produce or recall a single name. Yet the ALJ said this constituted a good faith effort and awarded his person a \$100,000 in a work disability. I dare say this person isn't going to return to work until the money is gone.

The fourth provision in SB 181 is not a perfect solution. It replaces the current disability definition, which only encourages litigation and rewards our less motivated employees.

Supplemental income payments still pay in addition to the claimant's job-related, functional impairment. In my example above, the custodian, who didn't return to work by the time of his hearing, would receive an award of \$40,000 rather than the \$100,000 the ALJ gave him. So it does not eliminate the problem, but just reduces the employer's exposure.

In conclusion, why is the Wichita Area Work Comp Task Force taking the time and effort to call the legislature's attention to some of the problems we have with our current law? Any saving in workers compensation costs is money an employer can use to accomplish its purpose for being in business. It is money it can use to increase market share, buy new equipment, provide jobs, or improve its product and/or service. Each \$100,000 my workers compensation program can save could put three more people back to work.

Thank you for your attention and considering my remarks. I ask that you pass SB 181 on to the floor of the State Senate.

TO: Members of Senate Commerce Committee

FROM: Jason Witte

RE: 203 SB181

DATE: February 19, 2003

Chairman Brownlee and Members of the Senate Commerce Committee:

I am Jason Witte from Overland Park, Kansas.

I appreciate the opportunity to appear before you today in opposition to SB181. I am a college graduate currently employed in the credit industry in Overland Park as a manager. While I was a student, I had a summer job in a lumber yard in Topeka. I was on the tennis team at my college and loved to play golf.

I was not aware that my employer had removed the safety guards from the table saws. Not being experienced in this area, I did not understand the need for safety guards. One day, my hand got caught in the saw. After multiple surgeries, I am permanently crippled in the use of my hand. I was no longer good at tennis. Because I cannot make a fist with this hand, I will never be a good golfer.

Under the laws of Kansas, because my injury was to my hand, all I received was functional impairment compensation. This means I received nothing for the loss of enjoyment of life, or the disfigurement I have, or all of the problems that I will have through the years in using my hand. For a lifetime of problems I received only \$5,000.00.

The current law regarding functional impairment is unfair and inadequate. To extend that concept to all injured workers, in whatever form, would be a gross injustice.

The law does need to be changed. The system of measuring functional impairment needs to be modified so that a judge can increase the payments where serious deformity or disfigurement exists, or there is a significant loss in the enjoyment of life. Moreover, employers who allow unsafe workplaces should be subject to lawsuits in civil court. By taking them out of workers' compensation, those employers will be discouraged from ignoring workers' safety, and others, safe employers will not have to subsidize the cost of their actions. Workers should have the right to sue in civil court for damages where employers recklessly disregard the safety or disable safety devices.

Thank you for the opportunity to express my concerns regarding SB181. I respectfully request the Committee to oppose this bill.

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Attachment 32

**TESTIMONY BEFORE THE
SENATE COMMERCE COMMITTEE
IN SUPPORT OF SENATE BILL 181
FEBRUARY 19, 2003
BY BOB VANCNUM, GREATER KANSAS CITY
CHAMBER OF COMMERCE
GOVERNMENT AFFAIRS SPECIALIST**

Honorable Chairwoman and Members of the Committee:

On behalf of The Greater Kansas City Chamber's over 3,000 Kansas members, I am offering testimony in support of Senate Bill 181, which will make substantive changes to the state's workers' compensation law.

Kansas is the only state in the region that offers work disability. The proposal to replace it with supplemental income is a superior approach to the current law.

SB 181 further clarifies the 1993 workers' compensation reforms that the employer is liable only for work-related injuries rather than for pre-existing conditions.

The proposed changes define the date of accident for repetitive use injuries. The current interpretation of law is that the date of accident is the date that the employee is taken off of work, which leads to unnecessary ambiguity. The change to 44-508 provides three alternative dates, the earliest of which constitutes the date of accident. The change provides a more certain date for any kind of case.

SB 181 would also reduce claims costs to all employers, including school districts, municipalities, counties and even state government. At a time when the Kansas Legislature is seeking ways to cut the cost of government, SB 181 would be an effective way to reduce workers' compensation costs.

The members of The Greater Kansas City Chamber of Commerce appreciate the opportunity to give written testimony in support of this important measure.

LAW OFFICES

C. ALBERT HERDOIZA

ATTORNEY AT LAW / ABOGADO

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KANSAS CITY, KANSAS 66106
FAX: (913) 432-4464
(913) 432-4484

VIA FAX 1-785-368-7119

February 17, 2003

Senator Karin Brownlee
Senate Commerce Committee
State Capital Building
10th Avenue, Room 136 North
Topeka, KS. 66612-1590

RE: Senate Commerce Committee: Senate Bill 181

Dear Senator Brownlee:

I am an attorney with a statewide practice that primarily deals with Hispanic clients who have been injured while working.

I am writing in opposition to Senate Bill 181.

I have first hand knowledge of what Senate Bill 181 would cause families of injured workers in the State of Kansas. I plan to attend the Senate Committee Hearings on Wednesday at 8:30 a.m. Unfortunately I will be in Nashville, TN Monday and Tuesday and will not have an opportunity to meet with you regarding this. But, I would like an opportunity to talk to you in more detail about this bill and why it would have a devastating economic impact on working families in the State of Kansas.

Sincerely,

C. Albert Herdoiza (ba)

C. Albert Herdoiza
(Dictated but not read)

CAH:ba

Senate Commerce Committee

2-19-03

Attachment 34