

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 16, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Broderick Henderson- excused
Representative Doug Patterson- excused
Representative Rick Rehorn- absent
Representative Todd Novascone- excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Rena Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Martha Smith, Kansas Manufactured Housing Assn.
Kent W. Dederick, International Assn. Of Firefighters
John M. Ostrowski, Kansas AFL-CIO
Jeff K. Cooper, Kansas Coalition for Workplace Safety
Terri Roberts, Kansas Nursing Association
Mark Desetti, Kansas Coalition for Workplace Safety

Others attending:

See Attached List.

The Chairman opened the hearing on **HB 2719 - Establishing manufactured home installation licenses and apprentice installation licenses and standards for the installation and siting of manufactured homes.**

Staff gave a briefing on **HB 2719.**

Martha Smith, Executive Director, Kansas Manufactured Housing Association, testified in support of **HB 2719.** The manufactured housing industry asked for the introduction of this legislation to satisfy a change in federal law. The industry has been federally regulated since 1976 and HUD is the regulator.

The federal changes came about on December 27, 2000, when President Clinton signed the Manufactured Housing Improvement Act into law. This Act does several things for both the industry and the consumer. It created a private sector consensus committee to make recommendations to the Secretary of HUD on ways to keep our building code up to date. It provides for a manufactured housing division within HUD, a career administrator and clarifies the scope of federal preemption. Furthermore, homeowners and the industry would benefit from the requirement that each state must institute an installation program. The state program is to include a state standard, training, licensing, inspection and a dispute resolution provision within five years of the law's enactment (December 27, 2000).

If there isn't any legislation, HUD will set up shop in Kansas and administer the program. If that happens there would be a loss of control and revenue at the local level and our home buyers would ultimately pay for the inflated costs typical of federally run programs.

HB 2719 provides licensing, testing, training and a dispute resolution program within the Department of Vehicles. The inspection requirement is left at the local level. If a city or county currently has an inspection program, the only change would be that they inspect to a state code vs. a local code and the license would be issued by the state. The federal standard has not been published, however, HUD's December 22, 2003, semi-annual regulatory agenda stated that the Installation Program would be published in March 2004. It is felt that legislation needs to be passed this year (Attachment 1).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 16, 2004 in Room 241-N of the Capitol.

Secretary Joan Wagon, Department of Revenue, testified in opposition to **HB 2719**, stating this is not a good fit for the Department of Revenue. She recommends delaying action until the federal rules are published and then take a look at them. The Department of Revenue does not know anything about housing standards. This could be looked at during the 2005 Legislature or in a summer interim study. The Department does not have trained staff or procedures and is not ready to proceed with this (Attachment 2).

The Chairman closed the hearing on **HB 2719**.

The Chairman opened the hearing on **HB 2757 - Compensation for disabilities under the workers compensation act**.

Staff gave a briefing on **HB 2757**.

Kent Dederick, Captain, Topeka Fire Department and member of the Kansas Coalition for Workplace Safety, testified in support of **HB 2757**. Workers compensation benefits in Kansas are not only low, compared to the national average but also to the Midwest region. Kansas currently ranks 43rd among the 50 states with a maximum weekly benefit of \$440. Permanent partial disability is capped at \$100,000 and permanent total disability at \$125,000 which has not been changed since 1987. Benefits to injured workers need to be increased that allows them to continue to be a productive part of society and not a drain on society (Attachment 3).

John M. Ostrowski, Kansas AFL-CIO, testified in support of **HB 2757**, stating the benefits in Kansas are low for injured workers when compared both nationally and regionally. It is obvious if benefits were increased, there would be an increase in premiums. However, it would clearly seem that benefits could be increased and Kansas would remain an attractive place for businesses, at least in the arena of workers compensation. Benefits in Kansas are low because of multiple "caps" within the system. In fact, as will be discussed, Kansas is in the unique position of having "caps on top of caps." It is by setting the caps low, and then putting caps on top of the caps, that Kansas produces such low benefits (Attachment 4).

Jeff Cooper, Attorney at Law, testified as a proponent to **HB 2757**, stating Kansas has the 7th lowest benefits to injured workers. Kansas ranks 4th lowest in the nation in costs to employers overall. The benefits are the absolute lowest in the nation for the employee who is permanently and totally disabled from any substantial gainful employment. The system artificially separates workers disability based on the body part injured and does not take into account the real impact of the injury. **HB 2757** is a step in the right direction and proposed amendments go further to address the heart of the matter (Attachment 5).

Terri Roberts, J.D., R.N., Executive Director, Kansas State Nurses Association (KSNA), testified in support of **HB 2757**. Kansas has failed to implement many of the National Commission's recommendations, now over 30 years old. The Commission recommended the maximum weekly benefit for temporary total disability and permanent total disability be at least 100% of the state's average weekly wage. Kansas' benefits are still only two-thirds of 75% of the state's average weekly wage. The recommendation that total disability benefits be paid "for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time" has not been implemented in Kansas. Kansas offers workers who suffer permanent total disability one of the lowest caps in the nation. KSNA supports changes that would increase the benefit package for injured workers in Kansas and provide a living and proper compensable wage (Attachment 6).

Mark Desetti, director of political action and government relations for the Kansas National Education Association and a representative of the Kansas Coalition for Workplace Safety, testified as a proponent to **HB 2757**. Under Kansas law an injured employee receives only two-thirds of his or her gross average weekly wage or a maximum of \$440 per week, whichever is higher. For example, an employee who averages \$400 per week would receive benefits of approximately \$267 per week or two-thirds of his average weekly wage. An employee who averages \$1,000 per week would receive the maximum of \$440 per week, which represents only 44% of his average pay (Attachment 7).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 16, 2004 in Room 241-N of the Capitol.

The following written testimony was received in support of **HB 2719**: Tom Byrne, Royal Supply (Attachment 8), Rod Cellmer, General Manager, Schult Homes (Attachment 9), Garrett L. Wright, Vice President, D&H Homes, (Attachment 10), Richard Krell, Division Manager, Liberty Homes (Attachment 11), Danny Burtzloff, LMH Homes, Attachment 12).

The following written testimony was received in support of **HB 2757**: Marlee Carpenter, Vice President Government Relations (Attachment 13). Ernest Kutzley, AARP (Attachment 14).

The meeting adjourned at 11:00 a.m. The next meeting will be February 17.

COMMERCE AND LABOR COMMITTEE

Date February 16, 2004

NAME	AGENCY
Ken Seiber	Hiri Law Firm
Scott Heider	KS Self Insurers Assoc.
RICHARD THOMAS	KDIRC - WC
John m Ostrowski	KS AFL-CIO
Wil Leiker	KS AFL-CIO
Ray T. Detman	KBIWCF
Tom Krugel	KTLA
Ashley Shurard	Lenexa Chamber
Dorey Denge	Now KMHA
John Gray	KMHA
Roy Popper	KMHA
Frank Jimmy	KMHA
SCOTT SCHNEIDER	KS CHAMBER
Bob Haley	KOFA
Bill Curtis	KS Assoc of School Bds



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**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON
COMMERCE AND LABOR**

TO: Representative Don Dahl, Chairman
And Member of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

RE: HB 2719 – Kansas Manufactured Housing Act; prescribing
installation standards; licenses for installers and apprentice
installers; fees and civil penalties

Chairman Dahl and Members of the Committee, my name is Martha Neu Smith and I am the executive director of Kansas Manufactured Housing Association (KMHA). Thank you for the opportunity to comment on HB 2719.

KMHA represents all facets of the manufactured housing industry, (i.e. manufacturers, retailers, community owners & operators; finance & insurance companies; service and suppliers and transporters).

The Manufactured Housing Industry asked for the introduction of HB 2719 to satisfy a change in federal law. For those of you who are not familiar with the manufactured housing industry, we have been federally regulated since 1976, and HUD is our regulator.

The federal changes came about on December 27, 2000, when President Clinton signed the Manufactured Housing Improvement Act into law. This Act did several things for both the industry and the consumer. It created a private sector consensus committee to make recommendations to the Secretary of HUD on ways to keep our building code up to date. It provides the Manufactured Housing Division within HUD a career administrator and clarified the scope of our federal preemption. Furthermore, homeowners and the industry will benefit from the requirement that each state must institute an installation program. The program is to include a state standard, training, licensing, inspection and a dispute resolution program within five years of the law's enactment.

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What happens if we do nothing? If we do nothing, HUD will set up shop in Kansas and administer the program for us. If that happens there will be a loss of control and revenue at the local level; and our homebuyer will ultimately pay for the inflated costs typical of federally run programs. Not to mention, can you imagine an individual's level of frustration when trying to find their way through HUD's maze of red tape, hierarchy and regulations?

KMHA felt that having HUD administer the program would not a positive step for our homebuyer, local governments or the industry; and tried to approach the federal requirements (state installation standard, training, licensing, inspection and a dispute resolution program) with the least disruptive and least expensive approach for all the parties. HB 2719 provides licensing, testing, training and a dispute resolution program within the Department of Vehicles. The inspection requirement is left at the local level. Under HB 2719, if a city or county currently has an inspection program, the only change will be is that they will inspect to a state code vs. a local code and the license will be issued by the State.

Why the Department of Vehicles? The Manufactured Housing Industry is currently licensed within the Department of Vehicles under K.S.A. 58-4200 the Manufactured Housing Act. Within K.S.A. 58-4207 are the requirements for the licensing of: new and used manufactured home dealers; manufactured home manufacturers; factory representatives; brokers; lending agencies; manufactured home salespersons and insurance companies.

KMHA estimates with the new federal requirements the Department of Vehicles will issue approximately 50 to 70 manufactured home installer's licenses, which are \$300 and are issued once every three years.

Do we need to do anything this year, the federal standard hasn't been published yet? Yes, the Legislature needs to pass HB 2719 this year, because the Director will have several initial requirements that will take a significant amount of time. For example, tests will either need to be developed or an existing test certified and a training program will need to be developed and approved. Both of these requirements would need to be based on the installation standard that is adopted through the rule and regulation process.

The federal standard has not been published, however, HUD's December 22, 2003, semi-annual regulatory agenda stated that the Installation Program (comprised of the model installation standard, training/licensing of installers, and inspection of home installation) will be published in March 2004. That is why we drafted HB 2719 with the installation standard requirement as part of the rule and regulation process. We understand that for individuals outside the industry that the installation standard requirement seems overwhelming, that is why KMHA worked for several years on developing a generic installation standard.

We worked with installers, manufacturers, retailers, suppliers, and a Kansas licensed engineer. Even so, this standard would have to go through the rule and regulation process that is not a quick process.

What have other states done? Of our border states, Missouri currently has a bill in their Legislature; Oklahoma passed legislation in 2000; Colorado passed legislation in 2000; and Nebraska already had a program. We feel Kansas is on track with HB 2719, however, with the amount of work to be done after a bill passes we do not feel that we can wait until the 2005 Legislative Session to start working on the federal requirements.

KMHA feels HB 2719 is a reasonable approach to a somewhat daunting task and we would strongly urge the Committee to pass HB 2719 and keep as much control and revenue in Kansas as possible.

Thank you.



K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

Testimony to House Commerce and Labor Regarding House Bill 2719

Kansas Department of Revenue by Joan Wagnon, Secretary of Revenue

Chairman Dahl and Members of the Committee:

The Department of Revenue opposes this legislation. Once the Federal Rules come out we will begin a study on this issue and assist in crafting language for the 2005 session.

The bill proposed by the Kansas Manufactured Housing Association relates to the state administration of The Manufactured Housing Improvement Act of 2000. KDFA, and its subsidiary the Kansas Housing Resources Corporation, wish to express concern that legislative enactment of the proposal this year is premature and recommends an interim study.

This Federal law primarily relates to installation of what used to be referred to as mobile homes and the establishment of a dispute resolution process. The law provides for a five year implementation period. By December 27, 2005 Kansas must have a program related to installation and a dispute resolution process that satisfies Federal requirements or the United States Department of Housing and Urban Development (HUD) will administer the federal requirements. The Federal government is in the process of developing the requirements; however, that process has not been completed.

The policy options before the State are (1) should the state or HUD administer the federal requirements and (2) does the State wish to exceed the Federal requirements. When faced with a similar set of policy options related to the National Manufactured Housing Construction and Safety Standards Act of 1974, Kansas along with 14 other states elected to have HUD administer the minimum federal standards.

Since Kansas elected not to administer the 1974 Act, there is no clear "organizational home" for this program. Before the State commits to any organizational change, KDFA recommends that the Legislature delay action until it can review at least the initial drafts of the federal requirements to determine what is actually required and what the impact of various options will be on Kansas.

Kansas has the ability to delay action until the 2005 Legislature and then implement the program by the December 27, 2005 "deadline." In the event that the 2005 Legislature elected not to implement a program, the decision could be reversed in future Sessions.

KDFA recognizes that policy makers will be required to make decisions in 2005 and that preparation for those decisions should be started. KDFA believes that an interim study will allow policy makers to study the federal requirements as drafts are released and consider what

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action should be taken.

TO: Members of the House Commerce and Labor Committee

FROM: Kent W. Dederick International Association of Firefighters,
Local 83; Topeka , Kansas

Chairman Dahl and members of the committee, thank you for the opportunity to speak to you on some of the concerns I have regarding workers compensation benefits. I am Kent Dederick, a captain with the Topeka Fire Department and a member of the Kansas Coalition for Workplace Safety.

Workers compensation benefits in Kansas are not only low, compared to the national average but also to the Midwest region. Kansas currently ranks 43rd among the 50 states with a maximum weekly benefit of \$440.

In addition permanent partial disability is capped at \$100,000 and permanent total disability at \$125,000, with these caps not being changed since 1987. This along with the cost of inflation and the beginning low amounts further shows the gross inadequacies of the Kansas Workers Compensation plan to start with.

Using myself as an example, I currently earn a weekly wage of approximately \$1000. I have the expenses of a house payment, a car payment, utilities, insurance, and helping to put two children through college. If I were injured at work today and not be able to return to my present job, my weekly income would be decreased

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by \$560 per week or \$29,120 per year which is equivalent to a 66% decrease of my annual wage. So my question is, what do I give up first? Do I tell my children that I can no longer afford to help pay for their education? Do I quit paying for insurance and utilities? Do I give up my home and vehicles? Or do I declare bankruptcy and rely on the state welfare system to survive?

Some may think this scenario is extreme, but I believe it paints a picture that is very realistic and probable with the conditions that exist today when injured workers can no longer pay their bills. It not only hurts their families but also the businesses that depend on their patronage.

We should not be looking to cut benefits of injured workers but increase them to a level that allows an injured worker to continue to be a productive part of society and not a drain on it.

I believe the workers compensation system was established to care for workers in this state, provide for them during traumatic times and not allow employers to create a disposable work force.

Kent W. Dederick



HOUSE COMMERCE & LABOR COMMITTEE
TESTIMONY REGARDING HB 2757 AND
BENEFITS IN KANSAS WORKERS COMPENSATION

KANSAS AFL-CIO
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Thank you Chairman Dahl for this opportunity to present testimony regarding benefits for injured Kansas workers. I appear today on behalf of the Kansas AFL-CIO and other injured workers statewide.

Your Committee, as well as the interim committee, has heard testimony from several conferees who have indicated that benefits in Kansas are low for injured workers when compared both nationally and regionally.

The initial question is why are benefits considered low, or what is the structure of Kansas workers compensation that produces low benefits? The second question is whether or not as a policy matter the Kansas Legislature will make corrections to the benefit structure.

I would start out by emphasizing that it is obvious if benefits are increased, there will be an increase in premiums. However, it would clearly seem that benefits could be increased, and Kansas would remain an attractive place for businesses, at least in the arena of workers compensation. Furthermore, it is respectfully suggested that by taking a serious look at known cost drivers within the system (i.e. medical care, safety, and insurance reform), benefits could be increased without any significant rise in premiums.

Benefits in Kansas are low because of multiple "caps" within the system. In fact, as will be discussed, Kansas is in the unique position of having "caps on top of caps." It is by setting the caps low, and then putting caps on top of the caps, that Kansas produces such low benefits.

TEMPORARY TOTAL DISABILITY

There are four types of money paid in workers compensation. HB 2757 deals with two of these benefits, i.e. temporary total and permanent total. Attached as Exhibit 1 is a copy of 44-510c. This has both a definition of temporary total and a definition of permanent total. In its simplest form, temporary total is when the injured worker is off work recovering from the injury and is unable to work.

You will note that Kansas only pays two-thirds of 75% of the State's average weekly wage to these individuals. At the current time, this represents a payment of \$440 per week as a maximum. Attached as Exhibit 2 is a chart showing how the weekly rate has changed in the past

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many years under this formula.

From Attachment 3, you can easily see that Kansas is one of the lowest states in the nation, and is the lowest in the region. This is primarily because Kansas uses 75% of the State's average weekly wage rather than 100%.¹ By using only 75% of the State's average weekly wage as the cap, all workers are treated as if they are earning no more than \$660 per week at the time of injury. To earn \$660 per week, we are talking about a wage of \$15.00 per hour, with average overtime of three hours per week.

As the preinjury wage increases, workers receive a *reducing percentage* of income to live on while off for injury. For example, it is not that unusual for workers in Kansas to earn \$50,000 per year. If they do so, and they pay 25% in taxes, their net annual income is roughly \$37,500. If they are off for a year due to injury, they will take home approximately \$22,900 in temporary total benefits (52 weeks x \$440). For this year, their "take home pay" will be reduced to **61% of what they were making when injured.**

Most workers live virtually "paycheck to paycheck." We do not plan the family budget around 60% of our income. It is respectfully suggested that the real problem with undercompensating a family trying to live on workers compensation is the "snowball effect" of the setback. Credit cards get maxed out, penalties get assessed on the car loan, second mortgages are taken against the family home, etc. Of critical importance is the cancellation of health insurance when the COBRA payment is simply unable to be purchased. Many families simply do not make it, and bankruptcies do occur because of the shortfall.

It would be of significant help to families to raise the multiplier from 75% to 100%. Caps would still be in place, but the level would be approximately the same as Missouri and other states within the region. Workers would get help when it is needed the most.

PERMANENT TOTAL DISABILITY

Attachment 1 contains the definition of permanent total disability. Permanent total disability has the same weekly cap as temporary total. From Exhibit 2, you can see that Kansas' maximum benefit for permanent total disability has not been changed since 1987! You have already been presented testimony that Kansas is one of only four states that does not pay lifetime benefits for permanent total disability.

It is inconceivable that 17 years have gone by without an increase for the most severely injured. Indeed, Terry Leatherman of the KCCI admitted at the interim committee that Kansas'

¹ The AFL-CIO notes that HB 2757 proposes raising 66 2/3rds percent to 75%. Certainly, this would be beneficial to injured workers. We recognize that most states use 66 2/3rds percent because the money is received tax free. The average worker pays 25% in income taxes, and therefore, there is an argument that a reduction in income while recovering from injury results in a motivation to return to work.

rates for permanent total were inadequate. Kansas should, minimally, double the payout, if not removing the caps altogether.

Another problem exists with permanent total in that if the worker becomes permanently totally disabled due to a scheduled injury, they are capped by the schedule for the injured body part. A truck driver who loses 90% of the function of his leg only gets paid for 90% of loss of use of the leg. He does not receive any compensation for his total inability to work even though he has been rendered unemployable. Permanently totally disabled individuals should receive permanent total disability regardless of the body part injured.

Due to a recent case by the Kansas Supreme Court (*Pruter v. Larned State Hospital and State Self-Insurance Fund*, S.Ct. 84,865), things are even worse for injured workers. For decades, the law indicated that if a claimant received multiple scheduled injuries in a singular accident, their disability was treated as a general bodily disability. Without a legislative change, the Kansas courts have indicated that now scheduled injuries should be "stacked." The law should be returned to its pre-*Pruter* status.

For example, consider the worker who suffers a severe injury to an arm and a leg that renders him unemployable. Assume the worker has suffered a 90% loss of use to each extremity. That is, there is virtually no remaining use of the arm and leg. Even though that worker is unable to work, if he was earning \$8.00 per hour at the time of injury, the maximum compensation he would receive would be less than \$79,000, or **only 63% of the already capped permanent total amount of \$125,000.**

TEMPORARY PARTIAL DISABILITY

Temporary partial disability is also controlled by the cap. Recent court cases have ruled that when an individual is recovering from injury and working part time, they will not receive wage replacement if it is a scheduled injury.

Therefore, if a worker with a leg injury is released to part-time work, that worker receives no compensation for the lost wages during the recovery period from the injury.

The Kansas courts made a very harsh decision in doing this, and have actually encouraged workers not to return to work. As I pointed out before, workers compensation benefits are not taxed. If the worker "sits at home," he will at least receive two-thirds of his old wage. Under this case interpretation, the worker will only receive **37.5% of their wage while recovering from injury** (50% for part-time work less 25% for taxes)!

PERMANENT PARTIAL DISABILITY

As with permanent total disability, and as shown by Exhibit 2, permanent partial disability has not been raised in Kansas since 1987. Note, however, that in 1987, the maximum weekly rate

was \$256. Currently, the maximum weekly rate based on increasing wages of workers is, as discussed above, \$440; **an increase of 172% from 1987**. By the same standard, permanent partial disability should be \$172,000, simply accounting for inflation, cost of living increases, etc.

What this means is that no worker in Kansas currently making more than \$660 per week (including the value of fringe benefits if lost) can ever receive more than the value of a 55% permanent partial disability, assuming no temporary total. (415 weeks x 55% x \$440 = \$100,430) In the typical example I have attached as Exhibit 4, it shows that a severely injured worker will ***never receive more than a 50% Award for permanent partial disability*** if they receive as little as 40 weeks of temporary total.

The bottom line is this. The more severely injured workers, with wages above \$660 per week, are receiving less and less compensation with each passing year due to the cap on permanent partial disability. As wages go up next year, these injured workers fall farther and farther behind the curve. This is after they have already suffered significant loss of income while on temporary total (again because of the 75% multiplier discussed above). The "adjustment period" they were supposed to receive because they could not return to 90% of their wages at the time of injury has been extremely shortened. Meanwhile, as shown by the Docking Institute Report, premiums are low to employers, and insurance company profitability is high.

A CAP IN A CAP

Not only does Kansas have the 75% multiplier, extremely low benefits for permanent total disability, and a permanent partial cap that has been frozen since 1987, Kansas also has K.S.A. 44-510f(4) (attached as Exhibit 5).

This is a cap on a cap, that again affects the most severely injured. Consider the worker with 100% loss of use of their shoulder. They should receive \$440 per week for the maximum of 225 weeks or \$99,000. Under the above statute, they are limited to \$50,000, which means they get a mere ***50.5% of what the statute for scheduled injuries calls for***. Similar percentages exist for severely injured arms, legs, and even hands. We are compensating workers at roughly one-half of their medical, anatomical disability. Again, stated alternatively, the worker who completely loses an arm gets treated the same as the worker who "only" loses 50% of the function of the arm.

This is an extremely harsh provision, that although it does not arise very often, is brutal to many workers.

RETIREMENT BENEFITS

Attached as Exhibit 5 is a copy of K.S.A. 44-501(h). This provision was added to the law in 1993. The alleged intent was to prevent a worker from sitting home and collecting so-called "work disability." The provision, as written, and as interpreted by the courts, is quite unfair.

In the first instance, if a worker does not look for work when they are able to work, the courts will "impute a wage." This has the effect of preventing someone from sitting at home and collecting a 100% wage loss. These cases that "impute a wage" have already been brought to this Committee's attention. In essence, the insurance carrier/employer is "double dipping" because of the court interpretations on top of the legislative changes.

In addition, we are punishing the more responsible worker who chose to forego immediate gratification of higher wages by accepting lower wages *with fringe benefits*. Assume any job in the open labor market is properly valued at \$10.00 per hour. A responsible worker may accept \$7.00 per hour if the job includes benefits such as retirement and health insurance. If he suffers an injury, the worker who accepted more money per hour will receive significantly more workers compensation benefits. This is patently unfair. It is true because the other worker has both a higher average weekly wage, and does not suffer the retirement offset.

Finally, many employees are forced due to their economic circumstances, or the provisions of the plan they participate in, to "take retirement." Because of this provision, even though they are not "retiring," they will lose their work disability to which they are entitled, or give up their retirement benefits which they earned through their labors for many, many years. It is a Hobson's choice.

The Kansas AFL-CIO has urged on many occasions that this provision from the law be stricken. Labor would not oppose substituting disability income for retirement income. In other words, it would at least be a comparison of apples to apples; i.e. that the worker would not be paid twice for the same disability.

I will stand for questions.

44-510c. Compensation for permanent total and temporary total disabilities. Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i and amendments thereto and as follows:

(a) (1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to 66 $\frac{2}{3}$ % of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511 and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

(2) Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Loss of both eyes, both hands, both arms, both feet, or both legs, or any combination thereof, in the absence of proof to the contrary, shall constitute a permanent total disability. Substantially total paralysis, or incurable imbecility or insanity, resulting from injury independent of all other causes, shall constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

(b) (1) Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510h and 44-510i and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during such temporary total disability, in a sum equal to 66 $\frac{2}{3}$ % of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511 and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto, per week.

(2) Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary medical limitations for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, except that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation.

(3) Where no award has been entered, a return by the employee to any type of substantial and gainful employment or, subject to the provisions of subsection (b)(2), a release by a treating health care provider or examining health care provider, who is not regularly employed or retained by the employer, to return to any type of substantial and gainful employment, shall suspend the employee's right to the payment of temporary total disability compensation, but shall not affect any right the employee may have to compensation for partial disability in accordance with K.S.A. 44-510d and 44-510e and amendments thereto.

(c) When any permanent total disability or temporary total disability is followed by partial disability, compensation shall be paid as provided in K.S.A. 44-510d and 44-510e and amendments thereto.

MOST STATES
Allow 100%
of STATE'S
Average
Wage

Exhibit 1

4-6

WORKERS COMPENSATION SCHEDULE OF BENEFITS

FISCAL YEAR	MAXIMUM WEEKLY COMPENSATION	MAXIMUM TOTAL COMPENSATION BENEFITS				UNAUTHORIZED MEDICAL EXPENSES
		PERMANENT TOTAL DISABILITY	TEMPORARY OR PARTIAL DISABILITY	DEATH	FUNERAL	
7-1-79 to 6-30-80	148.00	100,000	75,000	100,000	2,000	150.00
7-1-80 to 6-30-81	170.00	100,000	75,000	100,000	2,000	150.00
7-1-81 to 6-30-82	187.00	100,000	75,000	100,000	2,000	350.00
7-1-82 to 6-30-83	204.00	100,000	75,000	100,000	2,000	350.00
7-1-83 to 6-30-84	218.00	100,000	75,000	100,000	3,200	350.00
7-1-84 to 6-30-85	227.00	100,000	75,000	100,000	3,200	350.00
7-1-85 to 6-30-86	239.00	100,000	75,000	100,000	3,200	350.00
7-1-86 to 6-30-87	247.00	100,000	75,000	100,000	3,200	350.00
7-1-87 to 6-30-88	256.00	125,000	100,000	200,000	3,200	350.00
7-1-88 to 6-30-89	263.00	125,000	100,000	200,000	3,200	350.00
7-1-89 to 6-30-90	271.00	125,000	100,000	200,000	3,200	350.00
7-1-90 to 6-30-91	278.00	125,000	100,000	200,000	3,200	350.00
7-1-91 to 6-30-92	\$289	125,000	100,000	200,000	3,200	\$350
7-1-92 to 6-30-93	\$299	125,000	100,000	200,000	3,200	\$350
7-1-93 to 6-30-94	\$313	125,000	100,000	200,000	3,300	\$500
7-1-94 to 6-30-95	\$319	125,000	100,000	200,000	3,300	\$500
7-1-95 to 6-30-96	\$326	125,000	100,000	200,000	3,300	\$500
7-1-96 to 6-30-97	\$338	125,000	100,000	200,000	3,300	\$500
7-1-97 to 6-30-98	\$351	125,000	100,000	200,000	4,300	\$500
7-1-98 to 6-30-99	\$366	125,000	100,000	200,000	5,000	\$500
7-1-99 to 6-30-00	\$383	125,000	100,000	200,000	5,000	\$500
7-1-00 to 6-30-01	\$401	125,000	100,000	250,000	5,000	\$500
7-1-01 to 6-30-02	417	125,000	100,000	250,000	5,000	500
7/1/02 - 6/30/03	432	125,000	100,000	250,000	5,000	500
7/1/03 - 6/30/04	440	125,000	100,000	250,000	5,000	500

YEAR OF
LAST
INCREASE FOR
PERMANENT
TOTAL AND
PERMANENT
PARTIAL

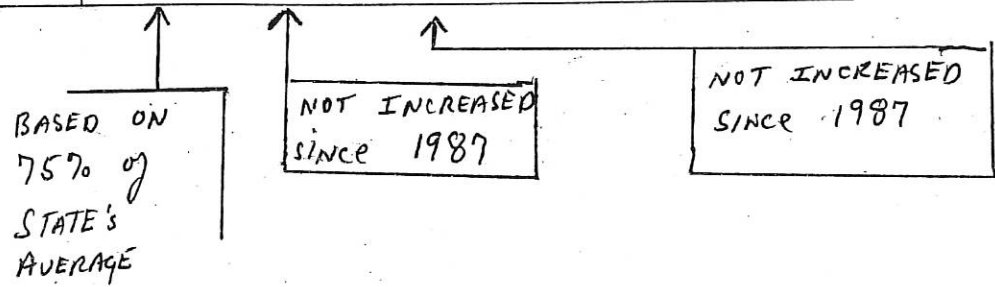


Table 5-3

Maximum Weekly Benefit by State

Source: U.S. Chamber of Commerce, Statistics and Research Center

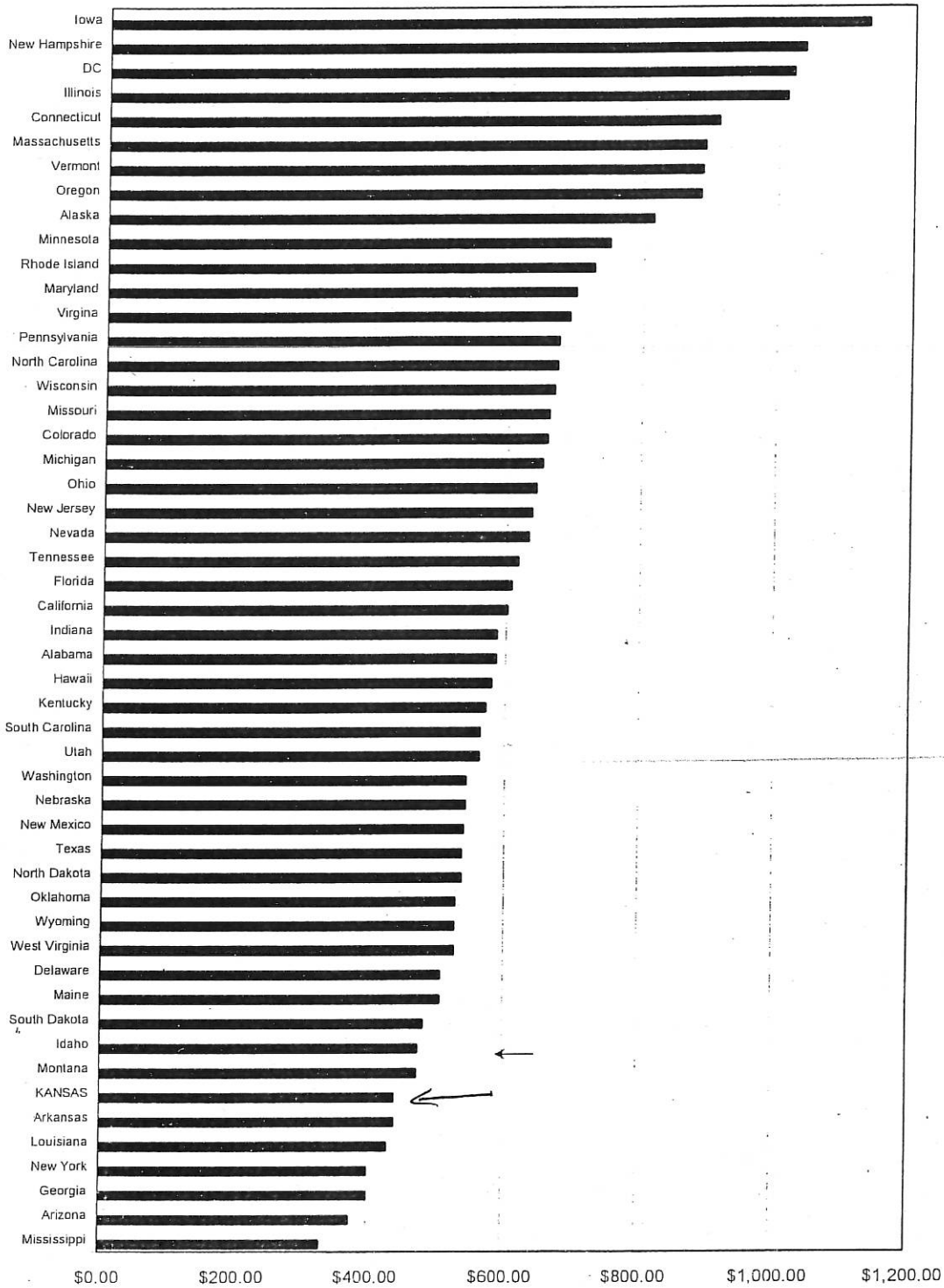


Exhibit 3

FACTS

INJURED WORKER: "Joe", a lifetime auto mechanic

PREINJURY WAGE: \$17.50 x 40 hrs. \$700.00
 4 hrs OT at 1½ x 105.00
 Lost fringe benefits + 75.00
 TOTAL \$880.00

TYPE OF INJURY: Lifting- leads to two level fusion

AMA RATING: 15% impairment

TEMPORARY TOTAL: Released to work 40 weeks post surgery

RETURN TO WORK: Auto parts counter salesperson

POST INJURY WAGE: \$9.50 per hour x 40 = \$380.00

WORK DISABILITY: 61% (57% wage loss/65% task loss)

CALCULATIONS

415	weeks allowed for injury
<u>+15</u>	weeks (additional temporary total allowed)
430	weeks
<u>- 40</u>	weeks of temporary total disability (totals \$17,600 (40 x \$440))
390	
<u>x48%</u> ← ←	<i>Absolute cap regardless of "true" disability</i>
187.20	
<u>x\$440.00</u>	
\$82,368.00	permanent partial disability
<u>+17,600.00</u>	temporary total paid
\$99,968.00	

***BECAUSE of the TTD "cap," Joe only receives 50% of his preinjury wage (K.S.A. 44-510c).

***Due to the cap on PPD, he is only paid for a 48% disability, despite the fact that he has a 61% (K.S.A. 44-510f)

***If Joe had earned a retirement benefit during his many years of labors, and was forced to take it even though he had returned to work, he would receive no work disability but only his functional impairment (K.S.A. 44-501(h)).

EXHIBIT 4

44-510f. Employer's maximum liability for disability compensation; credit for unearned wages. (a) Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following:

(1) For permanent total disability, including temporary total, temporary partial, permanent partial and temporary partial disability payments paid or due, \$125,000 for an injury or any aggravation thereof;

(2) for temporary total disability, including any prior permanent total, permanent partial or temporary partial disability payments paid or due, \$100,000 for an injury or any aggravation thereof;

(3) subject to the provisions of subsection (a)(4), for permanent or temporary partial disability, including any prior temporary total, permanent total, temporary partial, or permanent partial disability payments paid or due, \$100,000 for an injury or any aggravation thereof; and

(4) for permanent partial disability, where functional impairment only is awarded, \$50,000 for an injury or aggravation thereof.

Effective July 1, 2003
TABLE OF MAXIMUM BENEFITS
 Kansas Workers Compensation Law

Medical and hospital allowances	no limit
Death: spouse & wholly dependent children	\$250,000
Death: heirs (no dependents)	\$25,000
Burial allowance	\$5,000
Permanent total disability	\$125,000
Temporary total disability	\$100,000
Partial disability	\$100,000
Partial disability limited to functional impairment	\$50,000
Maximum weekly benefits: (7-1-99 to 6-30-00)	\$383
(7-1-00 to 6-30-01)	\$401
(7-1-01 to 6-30-02)	\$417
(7-1-02 to 6-30-03)	\$432
(7-1-03 to 6-30-04)	\$440

Medical mileage for more than 5 miles—Call 1-800-332-0353

	Maximum weeks that may be paid	Compensation at \$440 per week
Shoulder	225	\$99,000
Arm	210	\$92,400
Forearm	200	\$88,000
Hand	150	\$66,000
Leg	200	\$88,000
Lower leg	190	\$83,600
Foot	125	\$55,000
Eye	120	\$52,800
Hearing, both ears	110	\$48,400
Hearing, one ear	30	\$13,200
Thumb	60	\$26,400
Finger 1st (index)	37	\$16,280
Finger 2nd (middle)	30	\$13,200
Finger 3rd (ring)	20	\$8,800
Finger 4th (little)	15	\$6,600
Great toe	30	\$13,200
Great toe, end joint	15	\$6,600
Each other toe	10	\$4,400
Each other toe, end joint only	5	\$2,200

All REDUCED
to \$50,000

Allowance of 10% and not over 15 weeks for healing period following an amputation.

professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(g) It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(h) If the employee is receiving retirement benefits under the federal social security act or retirement benefits from any other retirement system, program or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment.

44-502. Reservation of penalties. Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

44-503. Subcontracting. (a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal; and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed. For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor.

TESTIMONY BEFORE
THE HOUSE COMMERCE & LABOR COMMITTEE

February 16, 2004

JEFF K. COOPER #12477
COOPER & LEE, L.L.C.
ATTORNEYS AT LAW
COMMERCE BANK BUILDING
100 S.E. 9TH STREET, 3RD FLOOR
TOPEKA, KANSAS 66612

I am testifying here in support of House Bill 2527.

We have heard where Kansas ranks in real undisputed figures. Kansas has the 7th lowest benefits to injured workers. Kansas ranks 4th lowest in the Nation in costs to employers overall. We have the absolute lowest benefits in the Nation for the employee who is permanently and totally disabled from any substantial gainful employment. We have a system that artificially separates workers based on the body part injured and which does not take into account the real impact of the injury. House Bill 2527 is a step in the right direction, but I am proposing amendments that go further to address the heart of the matter.

INCREASE IN MAXIMUM TEMPORARY TOTAL DISABILITY (TTD) RATE

House Bill 2527 increases the maximum TTD rate to 100% of the State Average Weekly Wage. As of July 1, 2003, the State Average Weekly Wage is \$587. That figure is based on all wages paid to workers across the State. As of July 1, 2003, the max rate for TTD is 75% of that figure, or \$440. That figure, \$440 per week, is the most any injured worker can receive while he or she is off work.

CURRENT FORMULA:

State Average Weekly Wage \$587 x 75% = \$440 = Maximum Weekly Rate

PROPOSED FORMULA UNDER HOUSE BILL 2527:

State Average Weekly Wage \$587 x 100% = \$587 Maximum Weekly Rate

Example = Bill Boeing Worker = \$52,000 a year income

\$52,000 ÷ 52 = \$1,000 per week (average weekly wage)

Comme Labor
2-16-04
Atch # 5

CURRENT LAW:

Max Weekly Rate \$440

HOUSE BILL 2527:

Max Weekly Rate \$587 [Increase \$147]

Obviously, this is not a huge increase. We still have employees with house payments, car payments, bills—used to living on \$1,000 per week—now receiving \$587 instead of \$440.

INCREASE COMPENSATION RATE

House Bill 2527 also increases the compensation of the average weekly wage. The bill would increase the compensation from two-thirds ($\frac{2}{3}$) of their average weekly wage to 75% of their average weekly wage.

CURRENT LAW:

\$587 average weekly wage x .6667 = \$391.35

HOUSE BILL 2527:

\$587 average weekly wage x .75 = \$440.25 [Increase \$48.90]

Again, this is a small increase, but realistically will have a beneficial result to injured workers and families who are struggling to make their bills. House Bill 2527 is a much needed step in the right direction.

COSTS

Before talking about the additional changes we are proposing by amendment, we should talk about costs of the changes. The fact is right now Kansas is 4th lowest in the Nation in workers compensation costs to the employer. The Docking Institution shows workers compensation costs for employers is 0.77% in 2002 of wages paid—about half the cost of 1992. Those costs have dropped by one-half ($\frac{1}{2}$) based at least in part on the fact that workers have not had an increase in benefits since 1987. Indemnity payments to injured workers in 2003 are approximately equal to those paid in 1993. Between 1994 and 2003, premiums for employers have decreased 35.2% for combined premiums.

Mr. Lew Ebert testified on behalf of KCCI that Kansas ranked 25th in the U.S. for attractive business climate. We know for certain that Kansas is not 25th based on workers compensation rates. Mr. Ebert says “winning States” “attacked” spiraling health care costs, “attacked” increasing workers compensation costs, “attacked” unfriendly unemployment compensation formulas and “attacked” high costs of litigation. Mr. Ebert touted North Carolina as the Number One ranked State for business climate and indicated North Carolina has been Number One for the last three years.

Comparing North Carolina to Kansas in workers compensation, their benefit rate for injured workers (TTD Rate) is \$674 per week—compared to our \$440. There has been no significant workers compensation legislative changes made in North Carolina for at least 10 years. North Carolina is not “attacking” workers compensation. Mr. Ebert should realize that anti-people strategies such as “attacking” unemployment, “attacking” health care costs, and “attacking” workers compensation have not improved the business climate in Kansas. Mr. Ebert did list in his “winning States” list the one thing North Carolina has done to promote business growth “improve their tax climate for business.”

In 1996, the North Carolina Legislature passed the William S. Lee Quality Jobs And Business Expansion Act (known as the Bill Lee Act). This law has a system of innovative State Tax Credits offered to business for job creation, investment, worker training, and research and development, making it attractive for businesses to grow and expand in North Carolina. Rather than focusing on denying compensation and health care benefits to unemployed and injured workers, North Carolina Legislators provide business tax credit programs to create jobs, and their legislation encourages employers to provide health insurance to workers. North Carolina has been the Number One State for business growth for the past three years with significantly higher workers compensation benefits than Kansas. North Carolina, as shown in the Docking Report, is 15th from the top in maximum weekly benefits by State, and Kansas is 7th from the bottom. Workers compensation rates are not the problem in Kansas. In fact, in a recent article in the Wichita Business Journal, low work comp rates were cited as a reason that a new business chose Wichita over several other sites in other States.

PROPOSED AMENDMENTS

This Committee has heard Judge Moore testify that there are problems with the amount of benefits paid to workers. His example was the young man who lost his sight of an eye and received meager benefits. The proposed amendments would address those issues, and we submit would fairly compensate injured workers.

PERMANENT TOTAL DISABILITY

While, fortunately, there are only a small number of cases where the worker is permanently and totally unable to engage in any work, it is clear that this is the most egregious example of low benefits in Kansas. Beth Foerster testified that Kansas has the absolute lowest rate in permanent total disability benefits and is only one of four States that cap permanent total disability benefits. Kansas should come in line with the vast majority of other States who do not have caps and who pay lifetime benefits to a worker and his family who has suffered an injury that precludes them from earning any income. Even Terry Leatherman, for the KCCI, testified that benefits were too low.

Example - Current Law:

30 year old worker has an injury and becomes a quadriplegic
yearly salary \$25,000 a year at the time of the injury
 $\$25,000 \div 52 = \480.77 for an average weekly wage
 $\$480.77 \times .6667$ ($\frac{2}{3}$) = a comp rate of \$320.53
 $\$125,000$ (max for permanent total disability) $\div \$320.53 = 389.98$ weeks of
benefits (7.5 years)

After 7.5 years no further monetary payments are made to the worker and his family.

Proposed Change:

30 year old worker has an injury and becomes a quadriplegic
yearly salary \$25,000 a year at the time of the injury
 $\$25,000 \div 52 = \480.77 for an average weekly wage
 $\$480.77 \times 75\% = \360.58 comp rate per week

Under the proposed change, the worker would be paid \$360.58 per week for the remainder of his life (subject to review and modification).

PERMANENT PARTIAL DISABILITY

The current law has a maximum cap of \$100,000 which was last changed in 1987. In 1987, the max TTD rate was \$247 per week.

1987:

$\$247 \times 415$ weeks (total weeks available) = \$102,505

The cap when implemented in 1987 actually was a computation of the maximum rate times 415 weeks.

Current Law 2004:

$\$440$ (the max temporary total disability rate) $\times 415$ weeks = \$182,600
(This would exceed the cap by \$82,600.)

Under current law, a worker with a 55% disability maxes out at \$100,000. The most severely injured workers, under the current system, are not being adequately taken care of.

$\$440 \times 228.25$ weeks (415 $\times 55\%$) = \$100,430

Proposed Amendment:

An injured worker would be entitled to 75% of the worker's gross average weekly wage for 415 weeks. In effect, the maximum benefit would be capped by the 415 weeks, which appears to be in line with the 1987 changes, which cap benefits of the maximum rate times 415 weeks. The Proposed Amendment Formula would be as follows:

415 weeks (maximum weeks available) \times % of disability \times gross average weekly wage (subject to the TTD Cap of the State Average Weekly Wage)

Example Under Proposed Amendment:

$415 \times 55\% = 228.25$ weeks of benefits

$228.25 \times \$587$ (State Average Weekly Wage) = \$133,982.75

(This example assumes the employee has an average weekly wage of \$782.66 \times 75% = \$587. Lower wages would result in less money.)

Since 1987 there have been no increases in benefits to injured workers. No cost of living increases or inflation taken into account. While I have not reviewed actual figures, I suspect that 17 years worth of adjustments to the \$100,000 cap in 1987 would exceed the proposed formula. As an added benefit, this proposed change would allow adjustments in the formula based on increases and/or decreases in the State Average Weekly Wage, and would more accurately represent real effects on the injured workers and their families.

SCHEDULED INJURIES

This Committee has heard testimony concerning the difference between scheduled injuries and general bodily or whole body injuries. With a severe scheduled injury, benefits are payable only for impairment, even though the injured worker may have suffered a career-ending injury. The AMA Guides, as we are required to use to determine impairment on all injuries, breaks down all types of injuries into whole body impairments. Under the AMA Guides there is no distinction between scheduled vs. non-scheduled injuries in terms of the way impairment is assigned. Our Proposed Amendment would change the status of the law and make all types of injuries subject to computation of benefits in exactly the same manner. The result would be a simpler formula for computing benefits to an injured worker. The formula would also allow the Courts to consider the very real impact to a worker and their family caused by a severe scheduled injury, and would look at the reality of the situation as opposed to some arbitrary list of types of body parts injured. By computing benefits in exactly the same way for all types of injuries, which would follow the AMA Guides, the result would be a fair equitable system for all parties and would reduce substantially the amount of litigation involved in all workers compensation cases.

Example: Joe Smith injures his right arm as a result of a fall. Under the current law, a 10% impairment to the arm times 210 weeks (current schedule) would equal 21 weeks of benefits.

Proposed Change: Under the AMA Guides that 10% impairment to the arm would equate to a 6% whole person impairment. $6\% \times 415 = 24.9$ weeks of benefits. This change would result in most cases in a slightly greater number of weeks of benefits; however, the AMA Guides proportionately decrease already the adjustment from an injury to a specific body part to a whole person (10% of the arm = 6% whole person).

Under this Proposed Change, the only issue would be whether or not the employee was able to go back to work. The same incentive that has been talked about before to encourage employers to retain handicapped workers would be in place. Under the current law, the employer pays the same amount of money for a scheduled injury whether they continue to provide a job for an injured worker or not. We believe the incentive to the employer needs to be in place for both scheduled injuries, as well as it is currently in place for whole body injuries. If the employee suffers a career-ending injury, which simply happens to be a scheduled injury, this Proposed Change would allow consideration of those facts

Judge Moore's example of the young employee who lost an eye is indeed a good example of the inequality in our current system. However, Judge Moore did not further take into consideration the impact of that loss of an eye (a scheduled injury) to certain types of workers. For example, if that young individual happened to be an over-the-road truck driver and lost his eye, he cannot obtain a commercial drivers license with loss of eyesight in one eye. In effect, that individual would lose the ability to perform his job as an over-the-road truck driver. The current law does not take into consideration the fact that the worker and his family has lost the ability to earn a living due to a scheduled injury. Under the current law, the injured worker, if we assumed the worker was earning \$50,000 a year, would receive the following:

$$\begin{array}{l} \$50,000 \div 52 = \$961.54 \text{ (gross average weekly wage)} \times .6667 = \$641.05 \text{ (greater} \\ \text{than the current cap of \$440)} \qquad 120 \text{ weeks} \times \$440 = \$52,800 \end{array}$$

The worker can no longer go back to work, can no longer earn \$50,000 a year; however, his compensation is capped by the functional impairment of \$50,000. In effect, under the current system, the employee has received one year's salary in exchange for a career-ending injury.

The Proposed Amendment would allow the Courts' discretion to look at these types of injuries and determine the appropriate amount of compensation that comports with the actual real life losses sustained by the injured worker, rather than an artificial schedule.

In litigation, one of the biggest issues we see being litigated, is whether a certain injury is a whole body or a scheduled injury. Insurance companies make great efforts through the selection of the physicians to attempt to limit injuries to a scheduled injury, rather than treating the whole person. This Proposed Change would eliminate the litigation currently seen as to whether the worker has suffered a scheduled vs. a general bodily injury. Eliminating scheduled injuries, and making all injuries general bodily, would clearly comport with the intent of the law and would more accurately reflect realistic results to injured workers.

TEMPORARY PARTIAL DISABILITY

Under current law, temporary partial disability is only applicable to whole body/general bodily injuries. Under current law, if a worker has a whole body injury and is only able to work four hours a day rather than their regularly scheduled eight hours due to doctors' restrictions, the employer is required to pay two-thirds of the difference between what they were making on the date of injury and what they are making working four hours a day. However, the statute does not provide the same benefits for individuals who suffered a scheduled injury. If the same worker, who has an injury to his shoulder, can only work four hours a day, the law does not require the employer to pay temporary partial to partially compensate the worker for the four hours per day they are losing. Again, this is another example of differential treatment based on wording, rather than based on reality. This provision would be corrected by implementing the amendment to eliminate scheduled injuries. However, if scheduled injuries are not changed, then certainly an amendment is appropriate to require temporary partial disability compensation be paid to individuals who suffered scheduled injuries.

CONCLUSION

It is time for the Legislature to stand up for the working people of Kansas. The Coalition For Workplace Safety consists of 500,000 members across the State, who stand committed to

making Kansas a safer and better place to live and raise families. Together, let's make Kansas a place where an injured worker is treated fairly. A place, where the family does not suffer, because of a workplace injury. A place, where society does not end up paying for suffering caused by workplace injuries. This Legislature can fix the system where the only true crisis is low benefits to injured workers and their families. House Bill 2527, and the amendments proposed, is a needed step in correcting that crisis.

44-510d. Compensation for certain permanent partial disabilities; schedule. (a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i and amendments thereto, but shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total loss of use and as provided in the following schedule, 66 $\frac{2}{3}$ % of the average gross weekly wages to be computed as provided in K.S.A. 44-511 and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c and amendments thereto. If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

- (1) For loss of a thumb, 60 weeks.
- (2) For the loss of a first finger, commonly called the index finger, 37 weeks.
- (3) For the loss of a second finger, 30 weeks.
- (4) For the loss of a third finger, 20 weeks.
- (5) For the loss of a fourth finger, commonly called the little finger, 15 weeks.
- (6) Loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the first phalange and any part of the second phalange of any finger, which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of $\frac{2}{3}$ of such finger and the compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the first phalange and any part of the second phalange of a thumb which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of the entire thumb. The loss of the first and second phalanges and any part of the third proximal phalange of any finger, shall be considered as the loss of the entire finger. Amputation through the joint shall be considered a loss to the next higher schedule.
- (7) For the loss of a great toe, 30 weeks.
- (8) For the loss of any toe other than the great toe, 10 weeks.
- (9) The loss of the first phalange of any toe shall be considered to be equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of the amount above specified.
- (10) The loss of more than one phalange of a toe shall be considered to be equal to the loss of the entire toe.
- (11) For the loss of a hand, 150 weeks.
- (12) For the loss of a forearm, 200 weeks.
- (13) For the loss of an arm, excluding the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 210 weeks, and for the loss of an arm, including the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 225 weeks.
- (14) For the loss of a foot, 125 weeks.
- (15) For the loss of a lower leg, 190 weeks.
- (16) For the loss of a leg, 200 weeks.

(17) For the loss of an eye, or the complete loss of the sight thereof, 120 weeks.

(18) Amputation or severance below the wrist shall be considered as the loss of a hand. Amputation at the wrist and below the elbow shall be considered as the loss of the forearm. Amputation at or above the elbow shall be considered loss of the arm. Amputation below the ankle shall be considered loss of the foot. Amputation at the ankle and below the knee shall be considered as loss of the lower leg. Amputation at or above the knee shall be considered as loss of the leg.

(19) For the complete loss of hearing of both ears, 110 weeks.

(20) For the complete loss of hearing of one ear, 30 weeks.

(21) Permanent loss of the use of a finger, thumb, hand, shoulder, arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight of an eye or the hearing of an ear, shall be equivalent to the loss thereof. For the permanent partial loss of the use of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, compensation shall be paid as provided for in K.S.A. 44-510c and amendments thereto, per week during that proportion of the number of weeks in the foregoing schedule provided for the loss of such finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, which partial loss thereof bears to the total loss of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear; but in no event shall the compensation payable hereunder for such partial loss exceed the compensation payable under the schedule for the total loss of such finger, thumb, hand, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, exclusive of the healing period. As used in this paragraph (21), "shoulder" means the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures.

(22) For traumatic hernia, compensation shall be limited to the compensation under K.S.A. 44-510h and 44-510i and amendments thereto, compensation for temporary total disability during such period of time as such employee is actually unable to work on account of such hernia, and, in the event such hernia is inoperable, weekly compensation during 12 weeks, except that, in the event that such hernia is operable, the unreasonable refusal of the employee to submit to an operation for surgical repair of such hernia shall deprive such employee of any benefits under the workers compensation act.

(23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

(b) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation. The healing period shall not be more than 10% of the total period allowed for the scheduled injury in question nor in any event for longer than 15 weeks. The return of the employee to the employee's usual occupation shall terminate the healing period.

44-510c. Compensation for temporary or permanent partial general disabilities; extent of disability; functional impairment defined; termination upon death from other causes; limitations; other remedies excluded. (a) If the employer and the employee are unable to agree upon the amount of compensation to be paid in the case of injury ~~not covered by the schedule in K.S.A. 44-510d and amendments thereto,~~ the amount of compensation shall be settled according to the provisions of the workers compensation act as in other cases of disagreement, ~~except that in case of temporary or permanent partial general disability not covered by such schedule,~~ the employee shall receive weekly compensation as determined in this subsection during such period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks. Weekly compensation for temporary partial general disability shall be ~~66 2/3%~~ 75% of the difference between the average gross weekly wage that the employee was earning prior to such injury as provided in the workers compensation act and the amount the employee is actually earning after such injury in any type of employment, except that in no case shall such weekly compensation exceed the maximum as provided for in K.S.A. 44-510c and amendments thereto. Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality ~~and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto.~~ The extent of permanent partial general 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 with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury. If the employer and the employee are unable to agree upon the employee's functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination. The amount of weekly compensation for permanent partial general disability shall be determined as follows:

(1) Find the payment rate which shall be the lesser of (A) the amount determined by multiplying the average gross weekly wage of the worker

prior to such injury by ~~66 2/3%~~ or (B) the maximum provided in K.S.A. 44-510c and amendments thereto;

(2) find the number of disability weeks payable by subtracting from 415 weeks the total number of weeks of temporary total disability compensation was paid, excluding the first 15 weeks of temporary total disability compensation that was paid, and multiplying the remainder by the percentage of permanent partial general disability as determined under this subsection (a); and

(3) multiply the number of disability weeks determined in paragraph (2) of this subsection (a) by the payment rate determined in paragraph (1) of this subsection (a).

The resulting award shall be paid for the number of disability weeks at the full payment rate until fully paid or modified. If there is an award of permanent disability as a result of the compensable injury, there shall be a presumption that disability existed immediately after such injury. In any case of permanent partial disability under this section, the employee shall be paid compensation for not to exceed 415 weeks following the date of such injury, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

(b) If an employee has received an injury for which compensation is being paid, and the employee's death is caused by other and independent causes, any payment of compensation already due the employee at the time of death and then unpaid shall be paid to the employee's dependents directly or to the employee's legal representatives if the employee left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such employee shall cease and be abrogated by the employee's death.

(c) The total amount of compensation that may be allowed or awarded an injured employee for all injuries received in any one accident shall in no event exceed the compensation which would be payable under the workers compensation act for 100% permanent total disability resulting from such accident.

(d) Where a minor employee or a minor employee's dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action against the employer shall inure or accrue to or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee.

(e) In any case of injury to or death of an employee, where the employee or the employee's dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or action shall inure, accrue to or exist in favor of the surviving spouse or any relative or next of kin of such employee against such employer on account of any damage resulting to such surviving spouse or any relative or next of kin on account of the loss of earnings, services, or society of such employee or on any other account resulting from or growing out of the injury or death of such employee.

44-510f. Employer's maximum liability for disability compensation; credit for unearned wages. (a) Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following:

(1) For permanent total disability, including temporary total, temporary partial, permanent partial and temporary partial disability payments paid or due, ~~\$125,000~~ for an injury or any aggravation thereof;

75% of the worker's gross average weekly wage for the remainder of the worker's life.

(2) for temporary total disability, including any prior permanent total, permanent partial or temporary partial disability payments paid or due, ~~\$100,000~~ for an injury or any aggravation thereof;

temporary partial

~~(3) subject to the provisions of subsection (a)(4), for permanent or temporary partial disability, including any prior temporary total, permanent total, temporary partial, or permanent partial disability payments paid or due, \$100,000 for an injury or any aggravation thereof; and~~

75% of the worker's gross average weekly wage for 415 weeks calculated pursuant to K.S.A. 44-510e.

~~(4) for permanent partial disability, where functional impairment only is awarded, \$50,000 for an injury or aggravation thereof.~~

(b) If an employer shall voluntarily pay unearned wages to an employee in addition to and in excess of any amount of disability benefits to which the employee is entitled under the workers compensation act, the excess amount paid shall be allowed as a credit to the employer in any final lump-sum settlement, or may be withheld from the employee's wages in weekly amounts the same as the weekly amount or amounts paid in excess of compensation due, but not until and unless the employee's average gross weekly wage for the calendar year exceeds 125% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto. The provisions of this subsection shall not apply to any employer who pays any such unearned wages to an employee pursuant to an agreement between the employer and employee or labor organization to which the employee belongs.



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JANICE JONES, R.N., M.N., C.N.S.
PRESIDENT

TERRI ROBERTS J.D., R.N.
EXECUTIVE DIRECTOR

H.B. 2757 Workers Compensation Benefits Testimony Before House Commerce & Labor Committee February 16, 2004

Chairman Dahl and members of the committee, I am Terri Roberts J.D., R.N., Executive Director of the Kansas State Nurses Association. Thank you for this opportunity to discuss benefit levels for injured workers under the Kansas Workers Compensation Act.

Kansas has failed to implement many of the National Commission's recommendations, now over 30 years old:

- The Commission recommended the maximum weekly benefit for temporary total disability and permanent total disability be *at least* 100% of the state's average weekly wage. Kansas' benefits are still only two-thirds of 75% of the state's average weekly wage.
- The recommendation that total disability benefits be paid "for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time." has not been implemented in Kansas. Kansas offers workers who **suffer permanent total disability** one of the lowest caps in the nation.

We know from the Docking Institute of Public Affairs report released last week that Kansas employers pay the 4th lowest premiums compared to other states; and benefit levels for injuries and illnesses are the 7th lowest in the country.

KSNA supports changes that will increase the benefit package for injured workers in Kansas and providing a living and proper compensable wage. Even the proposals here are modest changes, for the profession that I represent. Registered nurses earning \$35,000 per year would qualify for the maximum weekly benefit of \$440 per week, which represents only 65% of their average pay. This pay, depending on the size of the family, (many RN's are heads of households with dependents) may qualify the family for food stamps and other public assistance, because the earnings are close to poverty level ratings. Is this what we want for workers in Kansas? Is this fair and equitable, considering it is the sole remedy?

We urge this committee to give serious consideration to raising the benefits paid to injured workers and supporting this bill.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

CONSTITUENT OF THE AMERICAN NURSES ASSOCIATION

Commerce Labor
2-16-04
Atch # 6

Testimony Before House Commerce & Labor Committee
February 16, 2004
Mark Desetti
Kansas Coalition for Workplace Safety

Chairman Dahl and members of the committee, I am Mark Desetti, director of political action and government relations for the KNEA and a representative of the Kansas Coalition for Workplace Safety. The Coalition is a group of more than 30 organizations representing nearly 500,000 working Kansans, including firefighters, nurses, teachers, senior citizens, businesses, labor unions, and other others. Thank you for this opportunity to discuss benefit levels for injured workers under the Kansas Workers Compensation Act.

Last week the Docking Institute of Public Affairs released a report on the state of workers compensation in Kansas. In the study's introduction, the Docking Institute cites "two significant conclusions": (1) Kansas employers pay low premiums compared to other states; and (2) benefit levels for injuries and illnesses are also comparatively low. Today I would like to focus on the second issue: the low benefits Kansas offers its injured workers.

As you know, under Kansas law, an injured employee receives only two-thirds of his or her gross average weekly wage or a maximum of \$440 per week, whichever is higher. For example, an employee who averages \$400 per week will receive benefits of approximately \$267 per week, or two-thirds of his average weekly wage. An employee who averages \$1,000 per week will receive the maximum of \$440 per week, which represents only 44% of his average pay.

According to the Docking Institute study, only five states in the nation provide lower weekly benefits for their injured workers: Mississippi, Arizona, Georgia, New York and Louisiana. We tie with Arkansas at \$440 per week. Furthermore, among our neighbors Missouri, Colorado, Nebraska and Oklahoma, Kansas provides the *lowest* benefit. Missouri, for example, allows for a weekly benefit of \$662.

Commerce Labor
2-16-04
Atch #7

This maximum of \$440 per week represents 75% of the average weekly wage in Kansas. In other words, the *maximum* amount an injured worker in Kansas can receive—regardless of how much he or she earned before the injury—is 25% *less* than the average weekly wage for employees in Kansas. This weekly cap of \$440 applies regardless of whether the employee is permanently totally disabled, temporarily totally disabled or permanently partially disabled. On top of the weekly cap, there are limits on the *total* amount of disability an injured worker can receive. For temporary total disability and permanent partial disability, the maximum benefit is \$100,000. For permanent total disability, when a worker is completely unable to return to substantial and gainful employment, the maximum benefit is \$125,000. Keep in mind, these are not lump-sum payments, but the maximum amount disabled workers can receive in weekly “installments” of \$440 or less.

Kansas is only one of four states in the nation that caps permanent total disability rather than provide lifetime benefits to the disabled worker—and *Kansas’ cap is the lowest*. In fact, Kansas has made no changes to the maximum benefits for permanent total disability or permanent partial disability since they were established in 1987! Think about what it means to be permanently disabled in 2004 and be forced to live on 1987 dollars. The fact that we have not raised these benefits in nearly two decades is appalling and does not reflect well on this state’s attitude toward its workforce, especially its most vulnerable workers.

Unfortunately, Kansas’ history of closing its eyes to injured workers predates 1987. In 1972, the National Commission on State Workmen’s Compensation Laws delivered a report that sets out 19 essential recommendations for states to adopt in order to maintain an equitable and effective workers compensation system. For those too young to remember 1972, Nixon was still president, Robert Docking was governor of Kansas, and *The Godfather* was the top movie. For the more than three decades since then, the U.S. Department of Labor analyzes each state’s compliance with the Commission’s report annually. To this day, according to the Docking Institute, “Kansas has adopted fewer of the essential recommendations than any other state in the region.” Nebraska, Oklahoma, Missouri and Colorado are all in greater compliance with the Commission’s recommendations than we are.

At least two of the recommendations Kansas has ignored for 30 years are relevant to today's discussion. First, the Commission recommended that as of July 1, 1975, the maximum weekly benefit for temporary total disability and permanent total disability be *at least* 100% of the state's average weekly wage. As we've seen, Kansas' benefits are still only two-thirds of 75% of the state's average weekly wage. The Commission also recommended that total disability benefits be paid "for the duration of the worker's disability, or for life, without any limitations as to dollar amount or time." Again, Kansas offers workers who suffer permanent total disability the lowest cap in the nation.

It is long past time for Kansas to come into compliance with the National Commission's recommendations. I want to remind the committee that 94% of employees in Kansas are covered by the workers compensation system. That means that for the vast majority of Kansas employees, the workers compensation system is their *exclusive remedy* when they are injured on the job. What we are asking for today is that Kansas workers who are injured on the job be eligible to receive 75% of their average weekly wage and that the maximum weekly benefit be raised to 100% of the average weekly wage in Kansas. Kansas workers are among the best in the country, and they and their families are entitled to nothing less when they are injured on the job.

Thank you.



www.royal-durhamsupply.com

To: Representative Don Dahl, Chairman
& Members of the House Committee on Commerce and Labor

From: Tom Byrne, Vice President
Royal Supply, Incorporated

Date: February 11, 2004

RE: HB 2719- Kansas manufactured housing act; prescribing installation standards; providing for manufactured home installers' licenses; providing for apprentice installers' licenses; authorizing certain fees and civil penalties.

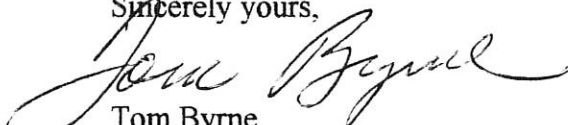
Royal Supply is a wholesale/retail distributor of manufactured housing parts and supplies for businesses and consumers in Kansas and has been in business since 1986. I have personally served on the Kansas Manufactured Housing Association installation task force since 1997.

I believe that HB 2719 contains the elements that meet the federal requirements set forth by the Manufactured Housing Improvement Act of 2000 while preserving local control for consumers, local governments and this industry.

HB 2719 does not create a new agency, does provide for State licensing versus licensing by the Department of Housing and Urban Development and leaves inspections at the local government level. This bill also provides for licensing of installers by the Department of Vehicles which is where our current licensing and titling requirements resides.

I would appreciate your support for this House Bill.

Sincerely yours,


Tom Byrne
Royal Supply

5116 S. Broadway • Wichita, Kansas 67216 • (316) 524-9335 • 1-800-777-7117 • FAX (316) 524-9336
5900 N.E. Connecticut, Kansas City, MO 64120 • (816) 483-7979 • 1-800-729-2772 • FAX (816) 483-1914

Comm & Labor
2-16-04
Atch # 8



2/11/04

Representative Don Dahl
Chairman
House Committee on Commerce and Labor

Dear Representative Dahl,

I am the General Manager of Schult Homes in Plainville, KS. Our Plant opened in June of 1968 and I joined Schult in December of 1969. In my 34 years, there has been a lot of evolution and positive change in the Manufactured Housing Industry.

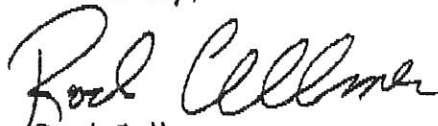
HB 2719 is one of the positive changes we are seeking for our industry. I have been serving on our task force and support the proposals of the bill.

We feel that we are being fiscally prudent by not asking for a new administrative agency and feel the Department of Vehicles would serve us well, as that is where our license and titling requirements currently are.

We feel that HB 2719 will comply with the upcoming Federal requirements for installation standards while keeping control at a local level.

I ask for your support on this Bill. If you have any questions please contact me at 1-800-255-0323 or email at rcellmer@oakwoodhomes.com.

Sincerely,


Rod Cellmer
General Manager



4103 East Hwy. 50
GARDEN CITY, KANSAS 67846
Phone: (620) 275-1067
www.dandhhomes.com

4103 East Hwy. 50
Garden City, KS 67846

February 10, 2004

RE: Kansas Manufactured Housing Act; prescribing installation Standards

House Committee on Commerce and Labor

My name is Garrett Wright Owner of D&H Homes in Garden City, Kansas. My father started D&H Homes in 1971 and I have been Vice President and General Manager Since 1990. I am Currently serving on the Kansas Manufactured Housing Association's Board of directors and have served on the Task Force on Installation Committee Since Sept. 1998.

I believe completely in manufactured housing and also believe that manufactured housing is the most affordable housing for the largest portion of our population. HB2719 will help the manufactured industry by keeping the installation of these homes uniform and consistent from county to county and city to city. HB2719 will also help maintain a level of professionalism with the industry and will protect the consumer from improper installations.

We are currently licensed (Dealer) and all our titling is under the Department of Vehicles. I believe that the same department should also license our installer's, to keep all of our licensing in one department. Our inspections should remain with the local government to help keep costs down for the State and the consumer. State licensing will help insure that the consumer gets a quality installation so they can enjoy their new home for years without further expenses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Garrett L. Wright', is written over a faint, larger version of the signature.

**Garrett L. Wright
Vice President
D & H Homes**

Comm + Labor
2-16-04
Atch # 10



LIBERTY HOMES, INC.

Kansas Division

Representative Don Dahl, Chairman
And Members of the
House Committee on Commerce & Labor
Statehouse
Topeka, Kansas 66612

Dear Chairman Dahl and Members of the Committee,

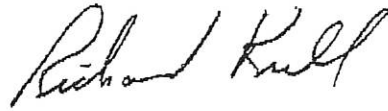
My name is Richard Krell and I am the Division Manager for Liberty Homes located in Yoder, Kansas and I have been in the Manufactured Housing Industry for 37 years, 32 of them in Kansas.

I am writing you to voice Liberty Homes' support of HB 2719. The industry has worked for years trying to improve our quality and our image and we feel HB 2719 is another step in that positive direction.

Since 1976, the federal government -- HUD, has regulated the manufactured housing industry. In 2000, President Clinton signed the Manufactured Housing Improvement Act which required states to have a program that: trained & licensed manufactured home installers; have a state installation standard and a process where disputes could be settled. Consequently, Kansas Manufactured Housing Association introduced HB 2719. While this bill was introduced to meet HUD requirements that go into effect in 2005, we feel this program provides long-term benefits to our customer, which in turn provides long-term benefits to the industry.

I understand that there is some question as to what state agency our licensing should be located and whether or not we need to address the requirement of the Manufactured Housing Improvement Act of 2000 this year. First, the association looked at all the agencies that might be a logical location and met with several of them. It was our conclusion that while the Department of Vehicles may not initially seem to be the best location, it is the most logical. The Department of Vehicles licenses all other areas of our industry not to mention they also issue and eliminate our titles. Second, the industry feels very strong that this issue does need to be addressed this year. As a manufacturer that deals with HUD on a regular basis, the very last thing we want our customers to have to deal with is bureaucracy and red tape at HUD. While we tried to make this legislation as simple as possible there are a lot of requirements the Director will need to address. KMHA has tried to do a lot of the preliminary work, developed a generic installation standard that has been stamped by a Kansas Engineer, has materials to develop a test or has a name of a testing company to provide a test and can be a resource for training. Most KMHA members, like myself are also available to the Director and her staff to help implement HB 2719.

Again, I would ask the members of the House Commerce and Labor Committee to support HB 2719.

A handwritten signature in cursive script that reads "Richard Kull".

Division Manager
Liberty Homes



733 E. Hwy 54
Liberal, KS 67901
620-624-1981

February 11, 2004

Representative Don Dahl
Chairman: House Committee on Commerce and Labor

Dear Rep. Dahl,

It is my understanding that HB2719-Kansas Manufactured Housing Act is scheduled for a hearing on February 16, 2004 and I would like to ask for your support on this bill. The citizens of Kansas need this bill to be passed and enacted into law so that the Federal government does not step in and bog down the system.

I do not ask your support without benefit to myself. I am a manufactured home retailer in Liberal, KS. My father started the company over 40 years ago. I grew up in the business and I have seen numerous changes in the homes and the people involved. When I was a young man, just about anyone could be called a Mobile Home Installer. The homes were not as large and complex as they are today. A person installing a new Manufactured Home must know what they are doing.

My business is currently licensed by the Department of Vehicles to do business. I feel that this Department also should be the one licensing home installers as it goes hand in hand with business licenses and my sales people's licenses.

In my opinion HB2719 levels the playing field for all Manufactured Home Retailers in Kansas. Currently, several counties and cities around the state require me to be licensed by them to install a manufactured home in their jurisdiction. To be licensed by all the counties and cities in Kansas would be cost prohibitive. HB2719 would make it where I would be licensed by the State of Kansas and could install manufactured homes anywhere in the state. It would also give me one standard to meet when installing the homes.

Another vital thing HB2719 does, in my opinion, is that it keeps control of Manufactured Homes Installations in the state. If Kansas does not enact a home installation standard then HUD will step in as required by federal law. This would be a horrific nightmare for everyone concerned. A consumer that did have a problem would have to work his/her way through the federal government to try and get the problem corrected. I do not know about you, but I would rather deal with someone where I could go in and talk face to face if needed. This would not even be an option if HUD takes over.

Again I ask you for your support on HB2719. If you would like to discuss anything about this I would be happy to visit with you. I may be reached at the following numbers:

620-624-1981 – Office Number 620-624-1984 – Fax Number 620-629-0765 – Cell Number

You can also email me at: danny@lmhhomes.com

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny Burtzloff', with a large, stylized flourish at the end.

Danny Burtzloff

Toll Free 800-475-0054

E-Mail info@lmhhomes.com

Fax 620-624-1984

Visit our Web Site www.lmhhomes.com

Comm labor
2-16-04
Atch # 12

Legislative Testimony

HB 2757

Monday, February 16, 2004

Testimony before the Kansas House Commerce and Labor
By Marlee Carpenter, Vice President Government Relations

The Kansas Chamber opposes HB 2757. This bill increases the cost of doing business in Kansas. For Kansas business to grow and expand, the cost of doing business in the state must not be increased.

HB 2757 increases the workers compensation benefits to 75% from 66 2/3% of the average gross weekly wage of the injured employee. Second, by striking the second 75% it would allow for a worker's benefit to increase to 100% of the state's average weekly wage.

Put another way, all benefits would increase 8.3%. As a percent increase over the 66 2/3% base, 8.3% represents a 12.3% in benefits if determined by the average gross weekly wage of the employee and it would also increase the maximum benefit by \$110 per week – the single largest benefit increase the system has ever seen.

The actual amount one receives under the current workers compensation benefit schedule is the lesser of two amounts: either two-thirds of one's gross average weekly wage; or, the maximum in effect at the date of the injury.¹ The current maximum benefit in Kansas is \$440, which is 75% of the state's average weekly wage. The secretary of human resources determines this wage. K.S.A. 44-704 requires the agency to create a state average weekly wage using filings from the insured employees of the unemployment insurance pool.

Everyone values the contributions our Kansas employees make to our businesses, our communities and our families. That is why it is important to make workplace safety everyone's first priority. Last year saw a 6.4% decrease of workplace injuries and illnesses and a 21% decrease in fatalities from the previous year.

The Kansas Chamber believes these proposed benefit increases would negatively impact the ability of Kansas to generate new jobs in the light of the current economic conditions. We urge your opposition to enactment of HB 2757.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.

¹ Kansas Division of Workers Compensation 29th Annual Statistical Report Fiscal year 2003, Jim Garner, January 2004

Comm + Labor
2-16-04
Atch #13



The Force for Business

835 SW Topeka Blvd.

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E-mail: info@kansaschamber.org

www.kansaschamber.org



February 16, 2004

Representative Dahl, Chair
House Commerce and Labor Committee

Good morning Chairman Dahl and Members of the House Commerce and Labor Committee. My name is Ernest Kutzley and I am the Director of Advocacy for AARP Kansas. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our support and comments on House Bill 2757.

More than 33 million men and women age 50 and older are in the labor force, a number that will rise sharply as the workforce grows older and as employers face labor and skills shortages resulting from slowing labor-force growth.

Of AARP members 44 percent work full or part time. More than 80 percent of AARP's youngest members (ages 50 to 54) are employed. Widespread labor and skills shortages, coupled with a decline in the number of labor-force participants between the ages of 35 and 44, may prompt employers to find innovative ways of encouraging older workers to continue working.

As part of our national employment policy, AARP is committed to expanding employment opportunities, promoting job security and safety for workers of all ages and to removing all barriers to equal employment opportunity. These goals include increasing employment opportunities, providing access to jobs through training, other programs designed to encourage older workers to remain in the labor force and to improve the job security of all working Americans.

Extensive research has found no relationship between age and job performance. Americans age 55 and above take fewer sick days, adapt to new technologies successfully, and are more loyal to their employer than those in their 30's.

Research completed by the Docking Institute "Workers Compensation in Kansas" concluded that.

- Weekly benefits for injured workers in Kansas are among the lowest in the nation and the lowest in the surrounding five-state region.
- Kansas had the fourth lowest premium rate in the nation in 2002.

Therefore, AARP supports HB 2757 that would increase workers compensation for certain disabilities and bring benefits more in line with the national average of benefits paid to injured workers.

Thank you for this opportunity to present our support and comments on the House Bill 2757.

Ernest Kutzley