

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 14, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

John Ostrowski, Kansas AFL-CIO
Gary Peterson, Former Chairman and Appeals Board Member for Division
Terri Roberts, Kansas Coalition for Workplace Safety
Terry Leatherman, Kansas Chamber of Commerce
Beth Foerster, Adjunct Professor at Washburn University
Dan Keener, private citizen
Curt Richards, private citizen
Calli Denton for Janelle Schuster, private citizen
Mark Block, private citizen
Wil Leiker, AFL-CIO

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2272 - Workers compensation maximum benefits and advisory council.**

Staff gave a briefing on **HB 2272** which strikes language on page 1 from lines 28 through 30. On page 3 there is a change that changes the advisory committee from four to three affirmative votes from the five voting members. There is a technical change on page 3, lines 32 through 35 that is outdated..

John Ostrowski, on behalf of the Kansas AFL-CIO, testified in support of **HB 2272**. The original intent of this bill was to prevent someone with a low disability from recovering a large amount of money. When the law was passed, a worker with a very high average weekly wage could have a very minor injury and receive a significant payout.

In reality, the law has done the exact opposite of what it was intended to do. Workers who have high medical disabilities are being punished by giving them low awards.

The law was written to cover "work disability cases", but instead, it has affected scheduled injury cases as well. Virtually every scheduled injury is impacted by the \$50,000 cap when there is serious injury. The figures are worse now than they were in 2004 because the average weekly wage has gone up to \$440. Therefore, an amputated arm receives half of what the legislature intended.

The AFL-CIO supports the change in the voting requirements of the Advisory Council. In the past, virtually all of the compromises that failed received at least three votes from each side of the table. It is believed that the Advisory Council has a useful purpose to serve the legislature. Especially in the avoidance of new laws passed that create "unintended circumstances" (Attachment 1).

Gary Peterson, former Chairman and Workers Compensation Appeals Board Member for the Division, testified in support of **HB 2272**. The bill would allow the Advisory Council to approve legislative recommendations by a majority vote of three of five members. Currently four out of five members on each side is required before approving any proposed changes.

Workers compensation is a very complex area of the law. Under the present law it is difficult to reach

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 14, 2005 in Room 241-N of the Capitol.

agreement on issues due to the current voting requirements on the Advisory Council. For example, a compromise was worked out on date of injury language by a Subcommittee to the Advisory Council, but was not approved because two of the five members of the employers' side voted against the compromise language. A simple majority of members of each side of the table would facilitate compromise between the parties. The Advisory Council was established to assist the legislature in this complex area of the law. When one side perceives that it has all of the leverage, they are less likely to reach a compromise. **HB 2272** levels the playing field and there will be less need for hearings in the legislature (Attachment 2).

Terri Roberts, J.D., R.N., Chairperson, Kansas Coalition for Workplace Safety, testified in support of **HB 2722**, which would eliminate the \$50,000 limit on awards for permanent partial disability in cases where only functional impairment is present. The bill also reduces the super majority for purposes of adoption of recommendations by the Kansas Workers Compensation Advisory Committee (Attachment 3).

Terry Leatherman, Vice President of Public Affairs, Kansas Chamber of Commerce, testified as an opponent to **HB 2272**. In prior testimony on **HB 2142**, the Kansas Chamber found merit to lifting the current benefit cap to \$50,000. However, it is important to point out that legislation also contained reforms concerning the date of accident for non-traumatic injury and attorney fee limits that would encourage workers compensation claim settlements. As a result, the Chamber encourages the committee to advance the functional impairment benefit change by approving **HB 2142** rather than on **HB 2272**.

As an Advisory Council participant since its inception, the Kansas Chamber questions the effectiveness of changing the voting requirements (Attachment 4).

The Chairman closed the hearing on **HB 2272**.

The Chairman opened the hearing on **HB 2317 - Compensation of disabilities under workers compensation act**.

Beth Regier Foerster, Adjunct Professor, Washburn University Law School, testified in support of **HB 2317**. Ms. Foerster appeared one year ago and indicated the benefits paid to injured workers in Kansas was "woeful." There has been virtually no change in the condition of workers compensation since that time. The premiums remain stable, insurance company profits remain high and the significant cost driver in the system remains the ever escalating cost of medical care.

The first portion of the bill deals with an increase in temporary total weekly benefits. Temporary total benefits are those benefits paid to a worker when they are completely unable to work during the recovery period. The most typical example is an individual who undergoes surgery, and is therefore removed from the workplace. Again, in order to receive these benefits, the worker must be declared unable to be engaged in substantial and gainful employment.

It is believed there is a drafting error in the bill. The intent of the bill was to remove the 75% multiplier, and permit a worker to receive 66.67% of their average weekly wage up to a "cap" of 100% of the state's average weekly wage. Currently, the state's maximum is \$449. In other words, this weekly cap at today's rate would change to \$673. This would put Kansas approximately equal with Missouri and Colorado.

Temporary total is arguably the most important indemnity benefit for an injured worker. Working families plan their budgets around the income they earn. Even the most responsible workers have little discretionary income available to them should they become injured on the job.

HB 2317 further seeks to increase permanent total disability to \$250,000. The amount that an injured worker receives for permanent total disability has not increased since July of 1987. Kansas is the lowest state in the nation in benefits for permanent total disability. Only four states cap permanent total disability.

Permanent total and permanent partial disability has now been "frozen" for almost two decades. Permanent partial disability needs to be dramatically increased to minimally conform with inflation and the increased cost of living (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 14, 2005 in Room 241-N of the Capitol.

Terrie Roberts, J. D., R. N., Chair, Kansas Coalition for Workplace Safety, testified as a proponent to **HB 2317**, stating the Coalition is very supportive of increasing the benefit package in Kansas for workers injured on the job. Kansas currently has the 7th lowest benefit package in the country (Attachment 6).

Dan Keener, private citizen, Rush Center, Kansas, testified in support of **HB 2317**. While doing work on a subcontract basis for insurance carriers, Mr. Keener slipped off a ladder and hurt his back. His experiences with workers compensation were not very good. Checks were constantly interrupted by the insurance carrier. The insurance carrier constantly and continuously ignored court orders. After hiring an attorney, Mr. Keener settled for much less than \$125,000, but wisely did not give up future medical as the insurance company repeatedly suggested (Attachment 7).

Curt Richards, private citizen, Russell, Kansas, testified as a proponent to **HB 2317**. Mr. Richards had been Director of Maintenance for Russell Regional Hospital for 15 years when he hurt his back moving 100 pound tubs of ice melt. Paychecks were less than half of his salary and the checks were always late. He did not want to settle his case, and against his attorney's advice, he settled for approximately the maximum allowed by the law as they were financially desperate and lost nearly everything. It is felt that workers compensation did not come close to doing what was intended (Attachment 8).

Calli Denton, Kansas Trial Lawyers Association, gave testimony for Janelle J. Schuster, private citizen in support of **HB 2317**. Ms. Schuster was earning \$700 to \$800 a week, depending on overtime. As a result of injury, she was taken off work by the authorized treating physicians, and was paid \$432 per week. The decrease in salary created substantial hardships. It is time for legislators to stand up for what is right and fair for employees (Attachment 9).

Mark Block, private citizen, a proponent of **HB 2317**, was injured in a motor vehicle accident in Marion County, Kansas, on May 16, 2001 and suffered burns to 55% of his body. Mr. Block is permanently and totally disabled and benefits are limited to \$125,000 which is supposed to cover permanent total disability the rest of his life. Kansas benefits for permanent total disability are the absolute lowest in the nation. This needs to be changed (Attachment 10).

Wil Leiker, Executive Vice President, AFL-CIO, testified in support of **HB 2317**. The intent is to move the weekly maximum up for temporary total disability from its present level. It is unfair to ask workers to live on 50% or less of their weekly earnings. This is unfair, since the intention of the workers compensation system is, in part, wage replacement. A serious injury should not force a worker into bankruptcy, or force them to sell assets to keep the family's welfare intact. Permanent total disability needs to be raised from \$125,000 to \$250,000 (Attachment 11).

Terry Leatherman, Kansas Chamber of Commerce, testified opposing **HB 2317** as it removes a financial incentive that exists in the law today to encourage return to work by injured employees. As a result, employer costs would not just be increased workers compensation premiums, but also higher expense to perform work not being done by employees off work on workers compensation. **HB 2317** would prompt a massive increase in the cost of workers compensation insurance, a cost paid exclusively by businesses (Attachment 12).

The Chairman closed the hearing on **HB 2317**.

The meeting adjourned at 10:45 a.m. The next meeting will be February 15, 2005.

COMMERCE AND LABOR COMMITTEE

Date February 14, 2005

NAME	AGENCY
Wil Leiker	Ks. AFL-CIO
Judy Shaw	Goodyear Tire & Rubber Co.
Beth Foerster	Attorney, Adjunct
Cecile Denton	KTLA
Jim Mc Huff	Kansas AFL-CIO
Perry Roberts	KS Coalition for Workplace Safety
Mark Block	
Anne Block	
Dag Peterson	Attorney
RICHARD L THOMP	IHOE-WE

TESTIMONY IN SUPPORT OF HB 2272
by

JOHN M. OSTROWSKI
ON BEHALF OF KANSAS AFL-CIO
February 14, 2005

Thank you Mr. Chairman, my name is John Ostrowski. I appear today on behalf of the Kansas AFL-CIO in support of HB 2272.

The first section of the bill (lines 29-30) would strike the \$50,000 functional impairment cap. This is the so-called "Fletcher Bell amendment." The original intent of this amendment was to prevent someone with a **low disability** from recovering a large amount of money. In short, when the law was passed, a worker with a very high average weekly wage could have a very minor injury and receive a significant payout.

In reality, the law has done the exact opposite of what it was intended to do. We are punishing workers who have **high medical disabilities** by giving them low awards.

The law was written to cover "work disability cases", but instead, it has affected scheduled injury cases as well. Attached is a page from the Docking Institute report showing calculations based on a \$440 maximum weekly wage. You can see that virtually every scheduled injury is impacted by the \$50,000 cap when there is serious injury. The figures are worse now than they were in 2004 because the average weekly wage has gone up to \$440. Therefore, an amputated arm receives half of what the legislature intended.

It is also true that the accelerated formula for computation of awards in work disability cases abrogated entirely the need for the Fletcher Bell amendment. Unfortunately, the \$50,000 cap was passed in a separate bill in advance of the acceleration of the work disability statutes.

I would point out that Lew Ebert from KCCI acknowledged that the \$50,000 cap is unfair, and should be abolished. Proposed legislation by the KCCI also struck the \$50,000 cap.

The AFL-CIO would also support the change in the voting requirements of the Advisory Council. In the years that I have served on the Advisory Council, there have been numerous compromises negotiated between the parties. Virtually all of the compromises that failed received at least three votes from each side of the table. It is respectfully suggested that many issues could have avoided controversy in the legislature had these compromises been presented for passage.

Unlike some others, I believe that the Advisory Council has a useful purpose to serve the legislature. Especially in the avoidance of new laws passed that create

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“unintended circumstances.”

I will stand for questions.

Table 5-2 lists the various scheduled injuries and payments.

Table 5-2

<u>Kansas Scheduled Injuries</u>	<u>Amputation or 100% Loss of Use</u>	<u>5% Loss of Use</u>
Shoulder (225 weeks)	\$99,000 ²⁰⁰⁵ 101,025	\$4,950
Arm (210 weeks)	\$92,400 94,290	\$4,620
Forearm (200 weeks)	\$88,000 89,800	\$4,400
Hand (150 weeks)	\$66,000 67,350	\$3,300
Leg (200 weeks)	\$88,000 89,800	\$4,400
Lower leg (190 weeks)	\$83,600 85,310	\$4,180
Foot (125 weeks)	\$55,000 56,125	\$2,750
Eye (120 weeks)	\$52,800 53,800	\$2,640
Hearing-both ears (110 weeks)	\$48,400	\$2,420
Hearing-one ear (30 weeks)	\$13,200	\$660

ALL REDUCED TO \$50,000

-Based on current \$440 maximum weekly wage.

Source: Kansas Division of Workers Compensation

Table 5-3 provides a comparison of the maximum weekly benefit in each state. The data shows that Kansas provides one of the lowest weekly benefits in the nation. Only Mississippi, Arizona, Georgia, New York, and Louisiana provide less (Arkansas provides the same amount). Furthermore, in the five-state Midwest region, Kansas provides the lowest benefit. Missouri allows for a weekly benefit of \$662.55, Colorado provides \$659.12, Nebraska allows \$542, and Oklahoma provides \$528.

**TESTIMONY ON BEHALF OF
THE KANSAS TRIAL LAWYERS ASSOCIATION
REGARDING HB 2272**

By
GARY M. PETERSON
FORMER CHAIRPERSON AND WORKERS COMPENSATION
APPEALS BOARD MEMBER
3900 SW CHELMSFORD ROAD
TOPEKA, KANSAS 66610

February 14, 2005

Thank you Chairman Dahl and Members of the Committee. I am an attorney and formerly served on the Workers Compensation Appeals Board for 10 years. I retired from the Appeals Board approximately two years ago and still remain active in the workers compensation field.

I appear today asking you to support Sec. 2 of House Bill 2272, amending the Workers Compensation Advisory Council statute found at K.S.A. 2004 Supp. K.S.A. 44-596. HB 2272 would allow the Advisory Council to approve legislative recommendations by a majority vote of three of five members. Currently, K.S.A. 44-596 requires four out of five members on each side approving any proposed changes. As you know, the Advisory Council is made up of 10 members, five of which represent employers and five of which represent employees.

Workers compensation is a very complex area of the law. Under the present law it is difficult to reach agreement on issues due to the current voting requirements on the Advisory Council. For example, a compromise was worked out on date of injury language by a Subcommittee to the Advisory Council, but was not approved because two of the five members of the employers' side voted against the compromise language. It is interesting to note that one of the two members voting against the compromise language had originally voted for the compromise on the Subcommittee. A simple majority of members of each side of the table would facilitate compromise between the parties.

Obviously, the Advisory Council was established to assist the Legislature in this complex area of the law. It worked very well during the early years of its inception. However, in the last few years it has been difficult to reach agreement on issues in part because of the four out of five requirement. Reducing the numbers needed to reach an agreement to a simple majority vote would facilitate agreement on complex issues.

When one side perceives that it has all of the leverage, they are less likely to reach a compromise. This proposal, HB 2272, levels the playing field. With a level playing field, the parties are more likely to compromise resulting in recommendations to the Legislature that have already been agreed to by the parties and, therefore, there will be less need for the types of hearings currently taking place in this Committee.

Thank you for allowing me to appear in support of HB 2272.

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Kansas Coalition for Workplace Safety

Promoting Economic Security Through Workplace Safety for Kansas Workers and their Families.

Coalition Members:

- AARP Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance -- KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Roofers Local #20
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

Coalition Members:

- AARP Kansas

For More Information Contact
Terri Roberts J.D., R.N.
troberts@ksna.net
785.233.8638

H.B. 2272 Workers Compensation: Eliminating \$50,000 cap and eliminating the Super Majority Vote Required on the Advisory Committee
February 14, 2005

Chairman Dahl and members of the House Commerce and Industry Committee, I am Terri Roberts R.N., the Chair of the Kansas Coalition for Workplace Safety.

We are very supportive of H.B. 2272 which would eliminate the \$50,000 limit on awards for permanent partial disability in cases where only functional impairment is present. The bill also reduces the "Super majority" for purposes of adoption of recommendations by the Kansas Workers Compensation Advisory Committee. This will allow more flexibility to the intended process of making policy and mechanical recommendations to the Kansas legislature and/or division with the Department of Labor.

We endorse both of these concepts and believe that as a matter of public policy they would be a positive step in improving our workers compensation program in general.

Thank You.

Terri Roberts J.D., R.N.
Chairperson
Kansas Coalition for Workplace Safety
785-233-8638
cell: 785-231-9511
e-mail: troberts@ksna.net

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Atch # 3

Legislative Testimony

Bill: HB 2272

Date: February 14, 2005

Testimony before the Kansas House Committee on Commerce and Labor
By Terry Leatherman, Vice President of Public Affairs



**THE KANSAS
CHAMBER**

The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: info@kansaschamber.org

www.kansaschamber.org

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber has concerns regarding HB 2272.

First, HB 2272 proposes to lift the current \$50,000 cap on compensation awards paid to workers in functional impairment cases. In prior testimony on HB 2142, the Kansas Chamber found merit to this benefit increase proposal. However, it is important to point out that legislation also contained reforms concerning the date of accident for non-traumatic injury and attorney fee limits that would encourage workers compensation claim settlements. As a result, we would encourage the Committee to advance the functional impairment benefit change by approving HB 2142, rather than this bill.

A second HB 2272 change reduces the approval requirements for the Workers Compensation Advisory Council. The Kansas Chamber respectfully questions the effectiveness of this change. As a Council participant since its inception, the Kansas Chamber's experience would be that this change will not produce an improved Council work product.

Thank you for permitting me to comment on HB 2272. I would be happy to answer any questions.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

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TESTIMONY BEFORE HOUSE COMMERCE & LABOR COMMITTEE

February 14, 2005

BETH REGIER FOERSTER
ADJUNCT PROFESSOR
WASHBURN UNIVERSITY LAW SCHOOL
ATTORNEY AT LAW
PO BOX 1453
TOPEKA KS 66601
(785) 233-2323
bethfoerster@mcwala.com

Mr. Chairman, Members of the Committee:

My name is Beth Regier Foerster, and I appear today in **SUPPORT** of HB 2317. This actually the third time that I have spoken before the Legislature regarding benefit increases for injured workers in Kansas. I initially made a presentation during the summer legislative interim committee in 2004, and I appeared before this Committee almost one year ago to the day.

I am an attorney, and a portion of my practice is dedicated to representing injured workers. I am also an adjunct professor at Washburn Law School where I have taught workers compensation for over 10 years.

One year ago, I indicated to you that the benefits paid to injured workers in Kansas was "woeful." There has been virtually no change in the condition of workers compensation since the time of my last testimony. It is my understanding that you have had a presentation by the NCCI, and you are aware that:

- a) premiums remain stable,
- b) insurance company profits remain high, and
- c) the significant cost driver in the system remains the ever escalating cost of medical care.

The only thing that has changed since I last testified is that workers have fallen yet another year behind in benefit increases. In fact, things are so similar that I have attached my previous testimony dealing with benefits in Kansas.

A. TEMPORARY TOTAL

The first portion of the bill before you deals with an increase in temporary total weekly benefits. Temporary total benefits are those benefits paid to a worker when they are completely unable to work during the recovery period. The most typical

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example is an individual who undergoes surgery, and is therefore removed from the workplace. Again, in order to receive these benefits, the worker must be declared unable to be engaged in substantial and gainful employment.

Attached as Exhibit A is a table showing the maximum weekly benefits for each state. You will note that Kansas is tied for the sixth lowest state in the nation with Arkansas. As pointed out by the Docking Institute in their January 2004 report, Kansas is the lowest in the five state midwest region consisting of Missouri, Colorado, Nebraska and Oklahoma. A near neighbor, Iowa, allows over \$1100 in benefits per week.

In conversations I have had, I believe that there is a drafting error in the bill. As I understand, the intent of the bill was to remove the 75% multiplier, and permit a worker to receive 66.67% of their average weekly wage up to a "cap" of 100% of the state's average weekly wage. Currently, the state's maximum is \$449. In other words, this weekly cap at today's rate would change to \$673. This would put us approximately equal with Missouri and Colorado.

Temporary total is arguably the most important indemnity benefit for an injured worker. Working families plan their budgets around the income they earn. Even the most responsible workers have little discretionary income available to them should they become injured on the job. Most workers live "paycheck to paycheck", and they do not anticipate being unable to work for an extended period of time. Again, even the most responsible workers put their savings into long term benefit structures, such as a 401k. If they are forced to use that money because of an on-the-job, they suffer severe withdrawal penalties.

The problems are multiplied when insurance companies contest claims, delay payments, or interrupt benefits. You have heard, or will hear, testimony from injured workers who simply cannot recover financially once they become injured on the job. Workers who average more than \$674 per week under current law do not receive the intended two-thirds of their wage to live on. Every dollar earned above \$674 decreases the 66.67%.

Furthermore, if a worker averages \$674 per week and receives the maximum workers compensation, their take-home is still reduced below 66.67%. Approximately 25% of their income would go to taxes, so preinjury, they would be living on over \$500 per week.

The loss of income is usually too great to absorb following significant injury for any worker making more than \$674 per week. As the wage goes up, the disparity increases. Why does the legislature want to treat working families this way?

B. PERMANENT TOTAL

HB 2317 further seeks to increase permanent total disability to \$250,000. As I stated in my testimony previously, the amount that an injured worker receives for

permanent total disability has not increased since July of 1987. I have attached as Exhibit B a showing of tables published by the Division of Workers Compensation. It is now 18 years since the legislature has raised the cap for the most severely injured. In my previous testimony, I gave some examples of things that happened in 1987. While permanent total disabilities are rare, they are the most devastating to the worker. Again, you have heard, or will hear, from some of these workers.

Kansas is the lowest state in the nation in benefits for permanent total disability. Only four states bother to cap permanent total disability, and we are half of the next lowest.

By doubling the permanent total amount as proposed in HB 2317, Kansas could move all the way into a tie for last place with one other state. How can anyone, in good faith, argue against such a change?

C. CLOSING THOUGHTS

In my testimony of one year ago, I proposed some modifications to the system beyond simply raising benefits. These included:

- a) a limited return of vocational rehabilitation,
- b) enhanced safety incentives,
- c) reform of medical costs, and
- d) insurance company reform.

It is my understanding that a bill has been introduced which would make the insurance industry more competitive by making price comparisons available on the Web and reforming the residual market. These reforms seem like common sense, and reforms which would help employers. I would urge this Committee's support of that bill.

I would be remiss if I did not again point out that not only permanent total, but also permanent partial disability has now been "frozen" for almost two decades. Permanent partial disability needs to be dramatically increased to minimally conform with inflation and the increased cost of living. Finally, I support the removal of the \$50,000 cap as proposed by HB 2272.

I will stand for questions.

Table 5-3
 Maximum Weekly Benefit by State

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

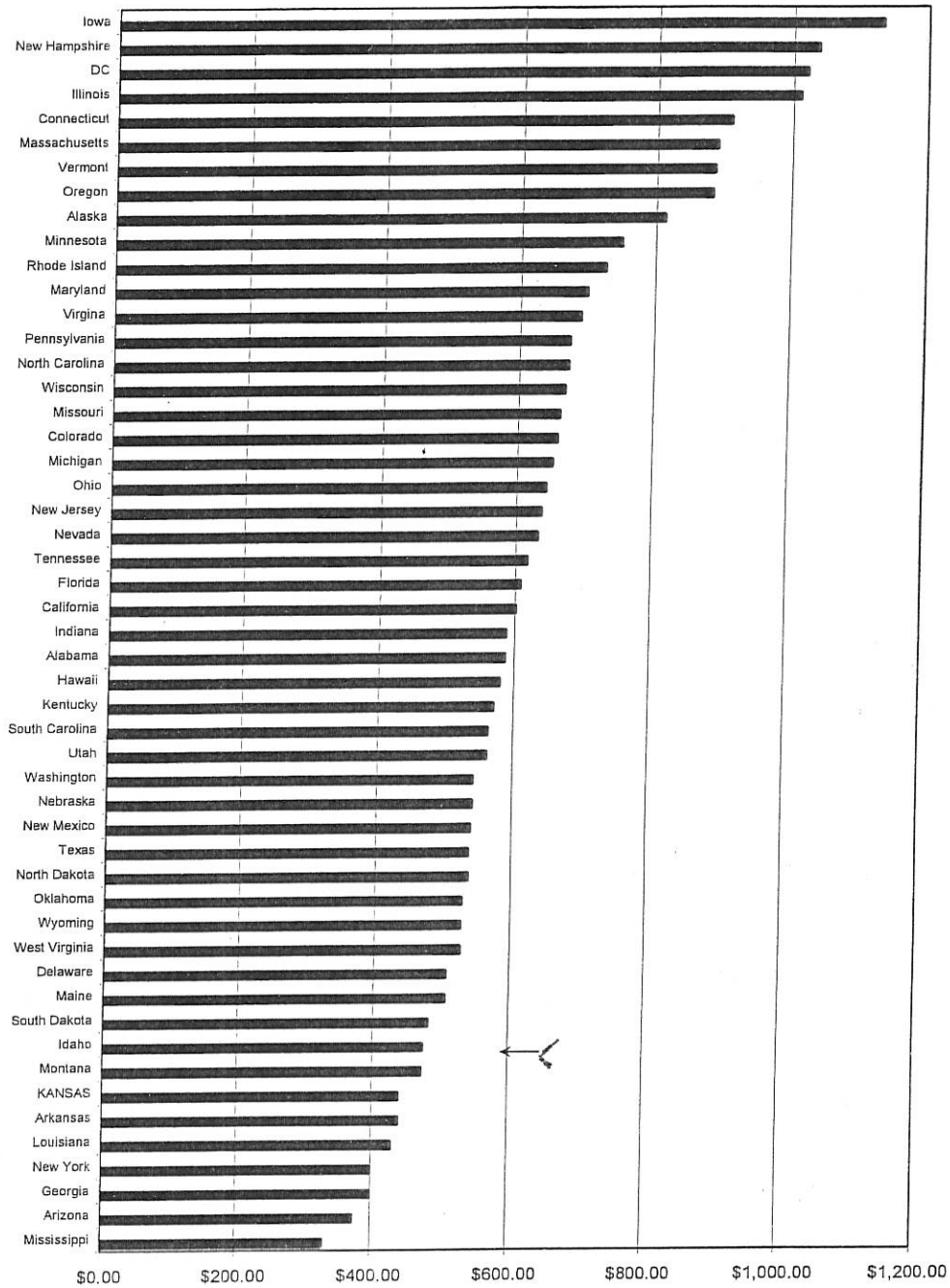


Exhibit A

5-4

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	\$318	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 to 6-30-03	\$432	125,000	100,000	250,000	5,000	\$500
7/1/03 - 7/1/04	440	" "	" "	" "	" "	" "
7/1/04 - 7/1/05	449	" "	" "	" "	" "	" "

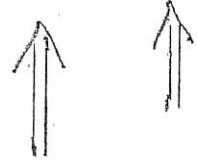


EXHIBIT B

TESTIMONY BEFORE HOUSE COMMERCE & LABOR COMMITTEE

February 6, 2004

BETH REGIER FOERSTER

ADJUNCT PROFESSOR

WASHBURN UNIVERSITY LAW SCHOOL

ATTORNEY AT LAW

PO BOX 1453

TOPEKA KS 66601

(785) 233-2323

bethfoerster@mcwala.com

Mr. Chairman, Members of the Committee:

I initially testified before the legislative interim committee, and at that time, attempted to present "neutral testimony" regarding Kansas workers compensation in my position as an adjunct professor at Washburn Law School. I have taught workers compensation at Washburn for over ten years. It is my understanding that my role today is more from the perspective of the injured worker. This is acceptable to me since I represent, and have represented, injured workers for many years. It is also my understanding that I am to generally speak in broad overview relative to Kansas workers compensation. That is, "how the heck are things?"

A. THE STATE OF THINGS FROM THE EMPLOYER/INSURANCE CARRIER PERSPECTIVE

The interim committee heard, and in the upcoming weeks this Committee will hear testimony that there is no "crisis" in workers compensation. As such, there is simply no need for "reform." I do not pretend to be a source of independent research, but it seems overwhelmingly correct that all statistical data from the NCCI, and other sources, indicates:

- * Kansas premiums are very low both nationally and within the geographic area. (Exhibit 1)
- * Indemnity payments to injured workers were approximately equal in 2003 to those paid in 1993. (KDHR, Annual Report, 2003)
- * The Insurance Department has approved a decrease of 35.2% for combined premiums between 6/1/94 and 1/1/03. (Exhibit 2)

While others will present more information on all of these statistics, again, as a broad overview, these statistics seem uncontroverted, and

totally incompatible with a drive for reform legislation.

While there has just been approval for a modest rate increase by the Insurance Commissioner (my understanding is 1.9%) for the upcoming year, it is clear that the upturn is due to:

- * the ever accelerated rising costs of medical care
- * the cyclical nature of the insurance industry
- * general inflationary pressures

It is also of note that the NCCI has publicly stated that SB 181, and spinoff similar legislation, will not lead to a reduction in premiums. Perhaps more interesting is the recent price quotation from the NCCI that indicates passage of Substitute for SB 181 will lead to a premium increase.

B. THE STATE OF THINGS FROM THE INJURED WORKERS PERSPECTIVE

Now turning to how things are on a broad scale from the injured worker's perspective. Quite frankly, the picture changes from "stable" or "as anticipated" to "bleak." In short, in all five categories of monetary benefits paid to injured workers (i.e. indemnities), there is a huge deficiency. Prior to discussing these deficiencies, I would emphasize that there are two very favorable components of the current workers compensation system:

- * Preliminary Hearings. So far as I am aware, the Kansas preliminary hearing structure, or so-called "emergency hearing," is a useful tool that is unique to Kansas. It allows an administrative law judge to quickly institute benefits in certain cases without penalty to individual insurance companies if an error is made. This tool has become more and more utilized because insurance carriers have become less and less responsive to on-the-job injuries. For example, Liberty Mutual Insurance Company writes, by far, the greatest number of policies for Kansas employers. Liberty Mutual has consolidated their claims to Schaumburg, Illinois and elsewhere. They have no offices or claims representatives within the State of Kansas and are extremely difficult to communicate with if you are an injured worker. This causes an ever increasing delay in instituting benefits of medical care and temporary total. Without the unique preliminary hearing process of Kansas, there would not be a remedy.

* Return to Work Incentive. In 1993, the Kansas Legislature made substantial modifications to the Kansas Workers Compensation Act. Virtually every change in 1993 represented a reduction in benefits to injured workers. One of the few benefits to injured workers was a strong incentive for employers to return them to work following injury at 90% or more of their preinjury wage. By returning them to work, in a real job, paying real wages, employers were able to avoid "work disability." This "reward program" to employers has proven successful. Indeed, since 1993, many injured workers have been retained by their employers who otherwise would have been terminated due to physical disabilities caused by industrial accident.

As I indicated before, every indemnity category within Kansas is woefully deficient. There are five types of money paid to injured workers.

Permanent Total Disability

When a worker is completely unable to return to substantial and gainful employment following injury, they are entitled to permanent total disability not to exceed \$125,000 paid out weekly. Kansas is only one of four states in the Union which caps permanent total disability rather than providing lifetime benefits. Not only does Kansas institute this cap, but it also pays the lowest amount of the four capped states. The nearest state pays double what Kansas pays or \$250,000.

In July of 1987, the amount that an injured worker in Kansas could receive as a maximum for permanent total disability was raised from \$100,000 to \$125,000. Since 1987, this cap has never been raised!

The Legislature should think about that statement. Therefore, I will repeat it.

In July of 1987, the amount that an injured worker in Kansas could receive as a maximum for permanent total disability was raised from \$100,000 to \$125,000. Since 1987, this cap has never been raised!

Temporary Total Disability

Regardless of what a worker makes while working, they are only allowed to currently receive \$440 per week when off work and unable to work because they are healing/recovering from injury. At the current time, there are only five states in the nation that provide less than Kansas (we are tied with Arkansas at \$440). We are the lowest state in the entire midwest region. Kansas legislators often seem to be interested in what Missouri does, and Missouri provides \$662, more than a one-third increase. Iowa provides over \$1100 per week! (See Exhibit 3) Benefits are low!

Permanent Partial Disability

Because Kansas is so inadequate in its temporary total rate (i.e. 75% of the State's average weekly wage representing the "cap"), they are also a low benefit state in terms of scheduled and unscheduled injuries. Scheduled injuries are, generally speaking, paid for individual body parts (an arm, a leg, a foot, etc.) General bodily disabilities are the type of injury where so-called "work disability" is *possible*.

In July of 1987, the amount that an injured worker in Kansas could receive as a maximum for permanent partial disability was raised from \$75,000 to \$100,000. Since 1987, this cap has never been raised!

The Legislature should think about that statement. Therefore, I will repeat it.

In July of 1987, the amount that an injured worker in Kansas could receive as a maximum for permanent partial disability was raised from \$75,000 to \$100,000. Since 1987, this cap has never been raised!

In 1987, Ninja Turtles were introduced and made popular. In 1987, Mike Hayden had just assumed office. In 1987, a loaf of white bread was less than 50 cents. Since 1987, COLAs under Social Security have risen in excess of 3% per year (see attached Exhibit 4) for a total increase of over 50%.

It is troublesome that the KCCI and others would be complaining about the amount paid for work disability claims in Kansas when the Kansas

Legislature has kept the cap on these working families for almost 17 years. Is this the way we want to treat our most precious resource? Again, what an embarrassment.

While this failure to increase permanent partial disability may be complex in terms of cost of living, mathematical formulas, work disability and other factors, I can give other examples of what Kansas families are dealing with. A Kansas injured worker must submit, virtually without limitation, to every medical examination set by an insurance carrier. If the claimant must travel out of town for this appointment, the insurance carrier must pay mileage and per diem. In 1978, yes, 1978, the Kansas Legislature raised the per diem rate from \$7 per trip to \$15. There has never been another increase which is more than a quarter of a century ago. You can, therefore, send an injured worker from Garden City to Kansas City, pay their mileage, and reimburse them \$15 for motels and meals.

Or consider the huge increases that have taken place in medical expenses over the years. Kansas allows for an injured worker to seek medical care on his own up to \$500 (since the insurance carrier gets to pick the doctor). That \$500 limitation, despite the rising costs of medical, has not been changed in over ten years.

These are just a few examples of what I consider to be the woeful state of benefits for workers and their families in the State of Kansas.

Temporary Partial Disability

Temporary partial occurs when an injured worker is basically still in the recovery period but can return to work part time. We are again dealing with the "caps" that I have already discussed (that is 75% of the State's average weekly wage). Injured workers should be encouraged to return to work as quickly as possible. The payment of some wage replacement, that is "temporary partial," is supposed to supplement the wages they earn. And yet, for some types of injuries, (scheduled injuries to an arm or a leg), the law does not compel the replacement of these wages. It is grossly unjust to force an injured worker who is recovering to live on half of his/her paycheck during the recovery period. In fact, it encourages workers not to go back to work so that they can collect temporary total disability. Yet, when a change was suggested in the Advisory Council to remedy this unfortunate situation, the business community would not agree.

D) SUGGESTED MODIFICATIONS

In conclusion, it is my opinion overall that employers/insurance carriers should be satisfied with the states of workers compensation in Kansas. The low premiums then allow to successfully compete against all neighboring states. Conversely, and as I hope I have demonstrated, employees "need an increase in benefits" since they have not had one for almost 20 years! In addition, there need to be systemic reforms. While there are many possible, the following seem to be the most serious to me:

- * A limited return of vocational rehabilitation for the most physically and/or economically injured. In 1993, when dealing with vocational rehabilitation, the Kansas Legislature killed the fly with a sledgehammer. I know of no claimant who has been voluntarily provided vocational rehabilitation since 1993. What occurs currently is that the insurance carrier simply weighs the costs of paying out the claim versus rehabilitating the worker. As we have seen, the cost of paying the claim in Kansas has not increased since 1987. There should be a system to rehabilitate workers, particularly younger workers, so that they can be returned to preinjury wages.
- * Safety. The Kansas Legislature has never made safety in the workplace a true priority by either an incentive based program, or through investing funds into safety. Kansas again ranks poorly on a national scale for safety despite the improvements in recent years. Aggressively dealing with this issue will lead to fewer injuries, and reduce premiums.

There are two possibilities here. Either a reward for good behavior, or punishment for bad behavior. The Legislature should pick one, but currently Kansas does neither. In other words, we should give a discount for safety programs, or an escape from the exclusive remedy for egregious situations. That is, the "carrot or the stick."

- * Medical costs. Rising medical costs are obviously a national phenomenon. It is a difficult problem, but if it can be approached at all, it can be approached on a state level within a controlled system.

An example of an abuse is the in-house nurse case manager. He or she is paid at one rate as an employee of the insurance company, but then "billed out" at a much higher rate as a medical person. The billed out rate is passed along to the employer, and represents another "profit" for the carrier which is not reflected in their normal transaction costs.

- * Insurance company reform. In the mid 1990s, when the stock market was very good, and insurance companies made substantial money, employers did not experience the true reduction in benefits to which they were entitled. A way should be found to level out the spikes in premiums to employers so that they can more adequately set their overhead and budgets. Furthermore, whenever there is a spike in premiums, the immediate response of some (most) is to reduce benefits for workers. This cyclical argument against injured workers should be avoided which would also, again, aid employers.

Premium Rate By State

Source: Research and Analysis Section, Oregon Department of Consumer and Business Services; Kansas Division of Workers Compensation

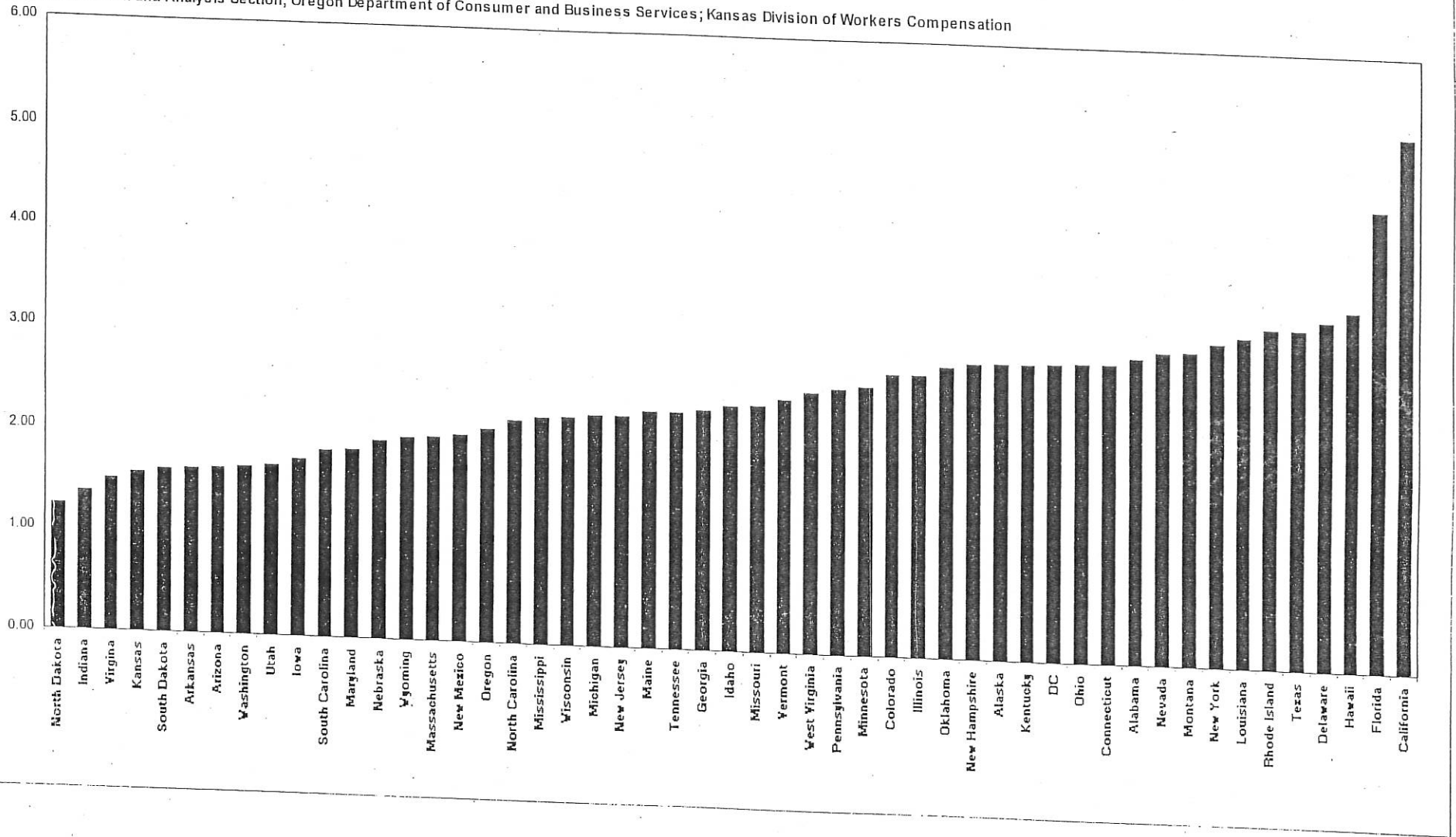


Exhibit 1

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

Effective Date of Change	Manufacturing	Contracting	All Other	Overall Approved	Overall Requested
11/21/1989 (Disapproved)	0	0	0	0	22.6%
5/1/1990	7.3%	0.7%	7.3%	5.6%	22.6%
6/1/1991	23.4%	31.4%	21.5%	24.0%	30.9%
6/1/1992	26.9%	26.6%	17.2%	21.7%	31.4%
6/1/1993	5.4%	6.7%	2.0%	3.9%	21.3%
		In voluntary market In assigned risk plan Law change		0% 12.9% -11.0%	

Effective Date of Change	Manufacturing	Contracting	Office and Clerical	Goods and Service	Misc.	Overall Approved	Overall Requested
6/1/1994	-1.7%	-3.4%	-2.4%	-3.9%	4.5%	-2.0%	-0.3%
6/1/1995 Voluntary Loss Costs	-5.7%	-4.3%	-9.3%	-8.3%	-8.7%	-6.9%	-5.0%
6/1/1995 Assigned Risk Plan Rates	-7.3%	-5.9%	-10.9%	-9.9%	-10.2%	-8.5%	-8.5%
6/1/1996 Voluntary Loss Costs	-13.1%	-11.1%	-9.8%	-6.4%	-12.3%	-10.4%	5.6%
6/1/1996 Assigned Risk Plan Rates	-18.5%	-16.7%	-15.4%	-12.2%	-17.8%	-16.0%	-1.1%
1/1/1998 Voluntary Loss Costs	-14.7%	-8.8%	-12.6%	-13.8%	-12.3%	-12.7%	-12.7%
1/1/1998 Assigned Risk Plan Rates	-19.1%	-13.5%	-17.1%	-18.3%	-16.8%	-17.2%	-17.2%
1/1/1999 Voluntary Loss Costs	-6.0%	-1.4%	-2.7%	-5.2%	-3.2%	-4.0%	-4.0%
1/1/1999 Assigned Risk Plan Rates	-9.1%	-4.7%	-5.9%	-8.3%	-6.5%	-7.2%	-7.2%

Exhibit 2

Wrkcomp2.XLS

DICK COOK
LEGISLATIVE INTERIM
C'EE 2004

5-14

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

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

Maximum Weekly Benefit By State

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

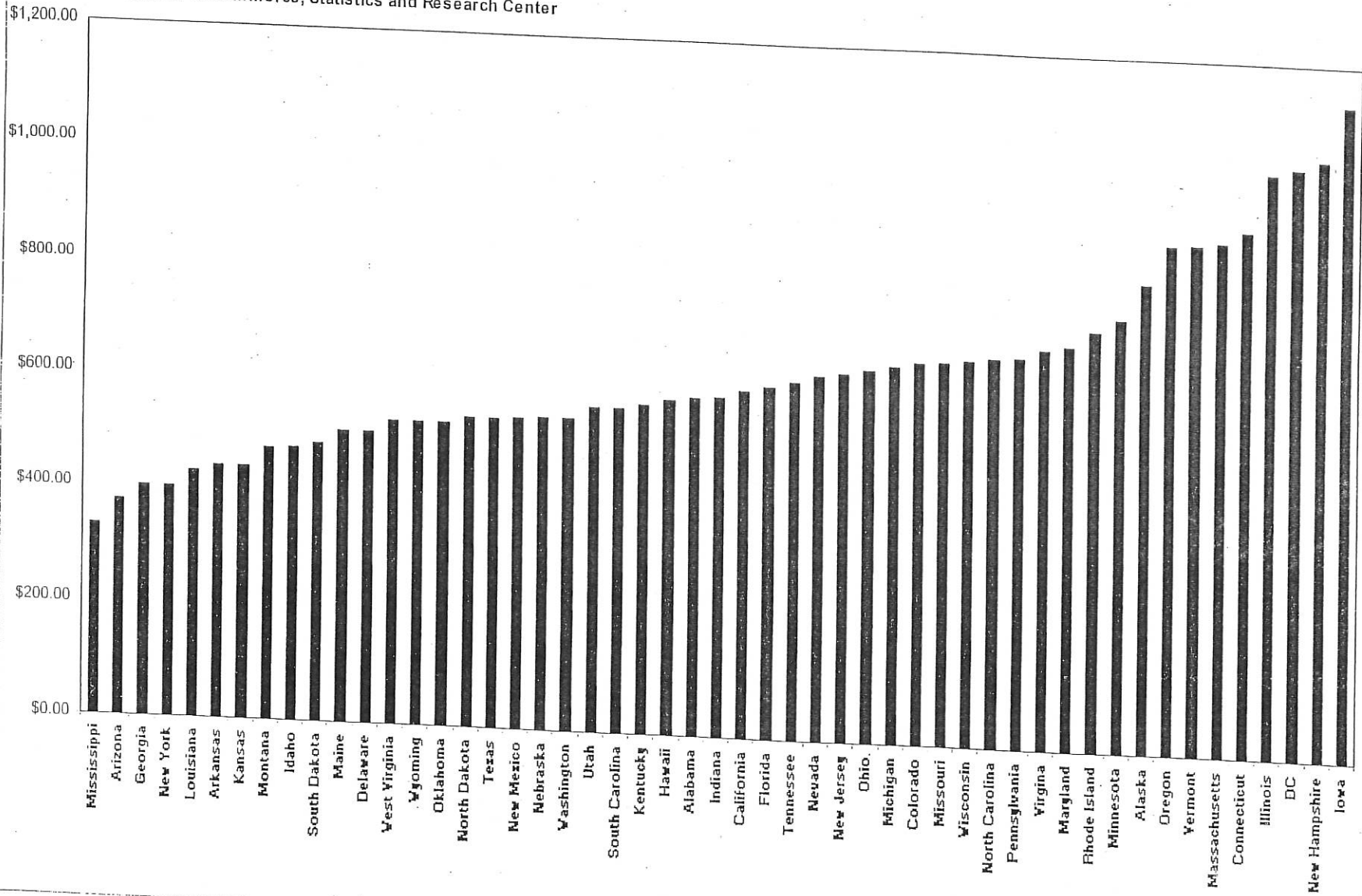


EXHIBIT 3

5-16

Social Security
Online

Automatic Increases

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Cost-of-Living Adjustments, 1975-2003

Updated October 16, 2003

Social Security Cost-Of-Living Adjustments

History

Social Security benefit increases, also known as cost-of-living adjustments or COLAs, have been in effect since 1975. The 1975-82 COLAs were effective with Social Security benefits payable for June in each of those years; thereafter COLAs have been effective with benefits payable for December.

Year	COLA	Year	COLA	Year	COLA
1975	8.0%	1985	3.1%	1995	2.6%
1976	6.4%	1986	1.3%	1996	2.9%
1977	5.9%	1987	4.2%	1997	2.1%
1978	6.5%	1988	4.0%	1998	1.3%
1979	9.9%	1989	4.7%	1999	^a
1980	14.3%	1990	5.4%		2.5%
1981	11.2%	1991	3.7%	2000	3.5%
1982	7.4%	1992	3.0%	2001	2.6%
1983	3.5%	1993	2.6%	2002	1.4%
1984	3.5%	1994	2.8%	2003	2.1%

^a The COLA for December 1999 was originally determined as 2.4 percent based on CPIs published by the Bureau of Labor Statistics. Pursuant to Public Law 106-554, however, this COLA is effectively now 2.5 percent.

Basis for COLAs
Detailed information on COLAs is available.

The first automatic COLA, for June 1975, was based on the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) from the second quarter of 1974 to the first quarter of 1975. The 1976-82 COLAs were based on increases in the CPI-W from the first quarter of the prior year to the corresponding quarter of the current year in which the COLA became effective. After 1982, COLAs have been based on increases in the CPI-W from the third quarter of the prior year to the corresponding quarter of the current year in which the COLA became effective.

SSI COLAs

COLAs for the Supplemental Security Income (SSI) program are generally the same as those for the Social Security program. However, COLAs for SSI have generally been effective for the month following the effective month

Kansas Coalition for Workplace Safety

Promoting Economic Security Through Workplace Safety for Kansas Workers and their Families.

Coalition Members:

- AARP Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance -- KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Roofers Local #20
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

Coalition Members:

- AARP Kansas

For More Information Contact
Terri Roberts J.D., R.N.
troberts@ksna.net
785.233.8638

H.B. 2317 Raising Workers Compensation Benefits for Injured Workers February 14, 2005

Chairman Dahl and members of the House Commerce and Industry Committee, I am Terri Roberts R.N., the Chair of the Kansas Coalition for Workplace Safety.

The Coalition as you know is very supportive of increasing the benefit package in Kansas for workers injured on the job. Kansas currently has the 7th lowest benefit package in the country, and we welcome the opportunity to dialogue on improvements to this package. This bill increases to 100% all the formulas used to award compensation following injury. The overall benefit package has been in place for 12 years, and it is time that changes be made. Too many injured workers are economically hurt by the current benefit package and cannot provide adequately for their families. The Kansas Coalition for Workplace Safety strongly endorses this proposal and requests serious consideration of it.

Thank You.

Terri Roberts J.D., R.N.
Chairperson
Kansas Coalition for Workplace Safety
785-233-8638
cell: 785-231-9511
e-mail: troberts@ksna.net

Comm Labor
2-14-05
Atch # 6

DAN KEENER
RR 2 BOX 16B
RUSH CENTER, KS 67575

My name is Dan Keener. I have traveled from Rush Center, Kansas to be here today in support of HB 2317. I particularly want to speak on that portion of the bill which doubles the amount of permanent total disability benefits for injured workers.

Before talking about the bill itself, I would like to give you a little bit of my background. It seems to me that I wear different hats than some others that you might hear testify.

First of all, I have spent a lot of time as a small business owner. I was a founder and owner-operator of a fiberglass plant in Rush County. I also was part owner of a meat packing plant and an ambulance service. Therefore, I think I have a "business perspective", and understand the strains of meeting a payroll and dealing with overhead, including paying workers compensation premiums.

I would also not consider myself to be a "liberal", since I am a dyed-in-the-wool Republican. I was the Rush County Chairman of the Republican Central Committee for many years, and have served on the State Republican Committee for two terms. I am presently a precinct committeeman, and most recently, I ran unsuccessfully as a Republican candidate to serve as a representative for the 118th District.

I have additionally taught classes at Barton County Community College, serving as an EMT instructor for over six years. Again, I think I have a rather diverse background. I am also an injured worker.

Before telling you specifically why I support this bill, I think that it would also be important to know something about my experiences with workers compensation. To put it mildly, my experiences in this system were not very good.

Interestingly, I was actually hurt while doing work on a subcontract basis for insurance carriers. Specifically, I injured my back while working as a roof inspector for damages from the weather. I slipped off a ladder and hurt my back.

Comm & Labor
2-14-05
Atch # 7

I attempted to work for approximately four months after the injury. Like a lot of workers, I hoped my injuries were not serious, and I sincerely wanted to continue my employment.

Ultimately, I saw several doctors at the request of the insurance carrier. Finally, it was decided that I had to have surgery on my back. This was my fourth back surgery. I think that the doctors that treated me did their best, but I continue to have a great deal of pain, and am unable to function on a regular basis in any capacity.

Because I am often forced to lie down throughout the day, and because I often have several days a week where I am completely unable to do anything, I am currently unable to be employed. In fact, as I stand here before you, I am wearing a dorsal column stimulator. This is an electronic gizmo that is implanted in my spinal column. Currently, it is set to shock my spinal column with 3.2 volts of electricity every half second for a half second. There are times that this piece of equipment has significantly helped my pain. At other times, no matter what I do, my pain cannot be relieved.

I indicated to you earlier that my experiences with workers compensation were not very good. For one thing, my checks were constantly interrupted by the insurance carrier, often without any warning or reason. I cannot tell you how frustrating it is to be completely unable to work, and dependent upon a check that may or may not come in the mail. There were also many medical bills that were paid late, and I was constantly hounded by collection people. When you are in substantial pain, and have no money, it certainly does not add to your pleasant disposition to be harassed by bill collectors over medical bills from doctors that the insurance carrier chose to send me to. I really cannot tell you which was worse, the physical pain or the mental and emotional pain.

Through this whole process, my credit has been destroyed, and will probably never be redeemed. I was forced to hire an attorney to help me through this system. When I see my file in his office, it fills two banker's boxes. We have had to fight at every step of the way.

What is most amazing to me is that the insurance carrier constantly and continuously ignores Court Orders. I was hurt in 1998, so we are approaching seven years since I was injured, and we are still forced to fight for my medical care. My attorney has gotten

penalties from the insurance carrier, went to many hearings, and even filed an abusive practice with the Division of Workers Compensation. All of this has been to no avail. Right now, we have yet another pending application for penalties because the insurance company has ignored the Court Order to provide me with medication and mileage.

I ultimately was forced to settle my case for much less than the maximum of \$125,000 because I was getting farther and farther behind economically. The insurance carrier repeatedly tried to get me to give up future medical, but my attorney wisely instructed me not to, despite my desperate financial situation.

I will tell you that part of the reason for settlement was for me to buy an incredibly cheap house that did not even have functioning heat. In the course of the ongoing litigation, I was often forced to live with relatives because I could not pay rent. This was most humiliating to feel like a moocher after years of work. By being able to at least have a roof, although leaky, over my head, restored some of my sense of self-esteem and independence.

It is clear to me that the insurance company would have paid more money if they had a larger exposure than only \$125,000. I was only 53 when I became disabled. How could \$125,000 expect to cover my lost earnings until my intended retirement age of 65? It is my understanding that the Kansas legislature has not increased the amount of permanent total disability for almost 20 years. To me, this seems unconscionable.

I also want to say that when I was an employer, I was very concerned about my employees. I really think that while employers do care about their employees, and want to treat them well, insurance companies get away with murder in their handling of people. In my weakened condition, I spend a lot of time at coffee shops, and I know that I am not the only one who has been abused by this system.

I do want to tell you that despite all this, I continue to try. Without any assistance, I have been trying to proceed with self-directed vocational retraining at Ft. Hays State. While it has not been easy, I will keep trying.

Thank you for your time.

TESTIMONY REGARDING HB 2317

My name is Curt Richards, and I am here in support of HB 2317. I reside at 529 East 7th, Russell, KS. I came here today because I think that it is important for the legislature to understand what it is like to be an injured worker. For me, and for others that I am familiar with, this was the worst experience of my life, and what I consider to be a tragedy continues today. I would hope that you would support the pending bill, and any other bill which helps injured workers. I would like to tell you a little bit about me.

My injury occurred in 2002. At that time, I was working for Russell Regional Hospital as the Director of Maintenance. I had been there for 15 years, and I can honestly tell you that it was a "labor of love." Although my job was physical, I was a valued employee, and part of the team that was always planning improvements for the hospital, including expansion. I took a great amount of pride in my work. Any job has its ups and downs, but the ups far outweighed the downs for me. I was also paid very well, worked a lot of overtime, and had very good fringe benefits. In short, I cannot really imagine a better job. I felt pride in being able to support my wife and children.

I injured my back and was sent to several doctors by the insurance carrier. I tried to do everything that the doctors and the insurance carrier wanted me to do. This included a very long course of physical therapy because it seemed the insurance carrier did not want to provide surgery. In retrospect, I honestly feel that the physical therapy made me worse. Week after week I would go to therapy and hurt so bad in my legs that I would literally cry.

Finally, I was able to get a third opinion, and surgery was again recommended. Even after the doctor recommended surgery, it took six long weeks for the insurance carrier to okay it. Again, I was in unbearable pain.

Surgery did help relieve my leg pain, and for that I am grateful. However, I am left with a great deal of ongoing pain in my back. After surgery, the surgeon ordered physical therapy. Again, six weeks later, I went for a checkup with the doctor, and the physical therapy had still not been approved by the insurance carrier. I never understood how they could not approve physical therapy after surgery, and that fact was never explained to me. I think the delay by the insurance company jeopardized my recovery. Although my treating doctor was very angered by the delay, he, of course, would not say that it harmed me. In addition to the constant hassle about getting treatment, I had multiple, multiple problems over my checks coming

Comme Labor
2-14-05
Atch #8

timely. The insurance company had an Internet site that I could log onto. By checking that site, I could tell when my check was not processed. I called and called whenever the checks were going to be late with very little satisfaction. I think I called them for between 15 and 20 late checks in this whole scenario.

This caused an incredible amount of financial stress. As I told you before, I was a highly compensated employee, and my average weekly wage was computed to be \$996.88 by the attorneys. To go from that income to \$432 a week was difficult, and then to have the checks always late was impossible. I ultimately was forced to hire an attorney to try to get some things straightened out. He was able to get back pay for the weeks they had missed, but by the time the insurance company was forced to pay that, it was "too little-too late."

In an effort to keep my family's head above water, I cashed out a portion of my 401k. Of course, I was penalized heavily for doing that. I was hoping things would work out, but they just got worse, and I ended up cashing out my entire 401k. Then we were forced to live off of credit cards, and things really snowballed after that.

My wife, the secretary/treasurer of the family unit, started talking about bankruptcy. I could not believe it! How had things progressed to this state from where we were before my injury? The thought of bankruptcy was emotionally devastating to me, and I kept stalling the inevitable. Finally, we had no choice but to file for bankruptcy. I am sure there are people that look on bankruptcy as "no big deal", but for me, it was crushing.

My employer tried to help me in every way they could because they wanted me back. I tried to return to work after surgery. I would work an hour or two a few days a week, and then the pain would be so intense that I could not continue. Again, I thought that if I would just keep pushing myself, I could tough it out and get better. I thought it would be like exercising, and that I could build myself up in increments, getting stronger and stronger. It was just the opposite.

My understanding is that you are considering legislation that would allow a higher weekly rate for high wage earners like I used to be. Also, that it would allow for more compensation when someone becomes totally disabled. If my weekly rate was higher, and if the insurance carrier had paid when they were supposed to, I might have been able to stay on my feet and avoid bankruptcy. I at least would have had a chance.

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Against my attorney's advice, I settled my case for approximately the maximum allowed by the law. In order to get a reasonable settlement proposal, we had to fight many battles, and the case actually submitted to the judge with all the evidence taken. The first offer my attorney received from the insurance carrier was \$20,000 and a closure of medical.

I did not want to settle my case. We were absolutely desperate, and at the time of settlement, we could not even get a running vehicle so my wife could get to work and support the family! Again, how did things get this bad?

Even though I got approximately the maximum amount, I virtually lost everything. I was only 44 years old when I got hurt. At my wage, and without regard to raises, if I had worked until age 65, I would have earned well over a million dollars.

I really do not know of anything that I could have done differently, but I truly feel that workers compensation did not come close to doing what it is intended to do. No family should have to go through what my family went through. While I recognize that my physical condition is perhaps just the result of "bad luck", the work comp system failed me and made matters worse. No amount of money could really make me "whole", and I understand that. However, injured workers should not be just discarded by society.

My understanding is that Kansas has very low benefits in the areas that this bill deals with. Anything that you can do to help the workers is long overdue, especially since apparently there have been no increases for a long period of time.

TESTIMONY IN SUPPORT OF
HOUSE BILL 2317

BY
JANELLE J. SCHUSTER
319 N.E. ASPEN LANE
TOPEKA, KANSAS 66617

February 14, 2005

Thank you Chairman Dahl and Members of the Committee. My name is Janelle Schuster, and I appear on behalf of injured workers in the State of Kansas. I am here today to ask all of you to support the increases in workers compensation benefits contained in House Bill 2317.

While working at a local plant here in Topeka, I suffered an injury in September of 2002. At the time of my injury I was earning approximately \$700.00 to \$800.00 a week, depending on overtime. As a result of my injury I was taken off work by the authorized treating physicians, and my income went from \$700.00 to \$432.00 a week, depending on overtime, to the maximum TTD rate of \$432.00 per week. **None of my bills or living expenses, however, went down any at the same time.**

The decrease from my normal wages to the \$432.00 a week created substantial hardships in my ability to stay current on my bills and to otherwise survive. Fortunately, I was lucky in that my husband was able to work extra hours to make up some of the difference. Were it not for my husband's ability to work extra hours, I am sure that we would have ended up in bankruptcy and lost everything we own.

Even with my husband working extra hours, we still had to exhaust all of our savings just to be able to live and to keep our bills paid. During the 42 weeks I was off work, my husband and I had to significantly reduce our standard of living and, luckily, had some savings to fall back on or we would have been in serious trouble.

In addition to the stress involved in being injured, the Kansas workers compensation system produces additional stress by the low benefits that are currently being paid. The stress of wondering whether or not you are going to be able to pay all of your bills and live certainly adds to the stress involved in dealing with an injury caused by my employment. While talking about stress, I think it is important to add that the employer and insurance company also did their best to make the workers compensation claim as stressful as possible by refusing to pay bills in a timely fashion, fighting my obtaining appropriate medical care, and delaying paying temporary total disability benefits for seven weeks.

As I understand House Bill 2317, an injured worker would receive 100% of his average gross weekly wage up to the State's average weekly wage, rather than the less than two-thirds I

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received while I was going through the workers compensation process. I have been advised that benefits paid to Kansas workers are among the lowest in the Nation. I have also been advised that there are two studies, one put out by *Forbes Magazine* and one by *The Wall Street Journal* that Kansas ranks as the Number One place to have a business in the United States. Obviously, Kansas has good hardworking employees, or it would not be rated Number One. Unfortunately, the current Kansas workers compensation system which pays two-thirds or less wages to those employees who are temporarily unable to work due to an injury, treats employees like they are "Number Two."

It is time the Legislature took a hard look at the effect the current substandard benefits have on honest hardworking Kansas citizens and does the right thing and makes the changes proposed.

It is time for Legislators to stand up for what is right and fair. **Workers vote and we intend to watch whether you stand up for workers and their families, or whether you continue to stand up for big business and the Kansas Chamber of Commerce and Industry.**

Again, thank you for letting me have an opportunity to be heard here today.

TESTIMONY IN SUPPORT OF
HOUSE BILL 2317

BY
MARK BLOCK
1515 D AVENUE
DWIGHT, KANSAS 66849

February 14, 2005

Thank you Chairman Dahl and Members of the Committee. My name is Mark Block. I was injured in a motor vehicle accident in Marion County, Kansas, on May 16, 2001, and suffered burns to 55% of my body. As a result of my injuries, I lost both of my legs.

I am here today on behalf of workers in the State of Kansas to ask that the Legislature approve House Bill 2317.

I have not been able to work since the date of my injury and have not yet been released by the treating doctors. Since I have been injured, I have received temporary total disability at the rate of two-thirds of my average weekly wage at the date of injury. My temporary total disability benefits have been limited to \$401.00 a week, which was the maximum for a May 2001 injury.

Since my injury, which occurred through no fault of my own, my family and I have been forced to try to live on \$401.00 a week when my weekly wage before the injury, which included benefits, was over \$700.00 a week. Essentially, my family and I have been forced to survive on a nearly 50% pay reduction.

As I understand House Bill 2317, benefits paid to injured workers in situations similar to mine would result in payments of approximately \$598.00 which is almost \$200.00 more a week than what I am receiving. This reduction in wages has created a substantial hardship for my family and myself. In addition to the stress caused by the injury itself, my family and I are forced with the stress of trying to survive based on weekly payments of \$401.00 a week. The current system, which only pays two-thirds of the injured worker's wage up to 75% of the State maximum, is a travesty and hurts Kansas workers and families. House Bill 2317, while it will not help me, will make it easier for Kansas families to survive the hardships created by a work-related injury, and I would urge you to approve the same.

Additionally, because my injuries have made me permanently and totally disabled, my benefits I understand are limited to \$125,000.00, which is supposed to cover my permanent total disability the rest of my life. I also understand that Kansas benefits for permanent total disability are the absolute lowest in the Nation. This result needs to be changed. While I understand I will not benefit from it, hopefully, other workers who find themselves in the same situation I am in, will not have to go through the devastating impact that being injured in Kansas causes to workers

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and families. This bill would increase compensation for permanent total disability to \$250,000.00, which I also understand is the level of the next lowest State below Kansas in the Nation. As I understand it, Kansas is one of only four States that puts a cap on permanent total disability, but at least doubling the maximum rate is a step in the right direction.

I am proud to come here today on behalf of injured workers, because I think the Legislature should represent the people of the State of Kansas which includes the majority of the voters of the State of Kansas who are employees, and that you as Legislators need to listen to the working people instead of just listening to the Kansas Chamber of Commerce and Industry and big business, and look at the real effects of legislation on workers and not just employers' and insurance companies' profit margins.

Again, thank you for the opportunity to testify.

Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-2775



President
Ron Eldridge

Executive Secretary
Treasurer
Jim DeHoff

Executive Vice
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Testimony on HB 2317 to the House Commerce & Labor Committee

by Wil Leiker, Executive Vice President
Kansas AFL-CIO
February 14, 2005

My name is Wil Leiker, Executive Vice President of the Kansas AFL-CIO. I am here to testify in support of HB 2317. The intent of HB 2317 is to move the weekly maximum up for temporary total disability from its present level. This is an important change for Kansas workers, particularly workers who are higher wage earners. Under the current law, we are asking some workers to live on 50% or less of their weekly earnings. This is unfair, since the intention of the workers compensation system is, in part, wage replacement. As you have heard before, and as I am sure you appreciate, most workers live from paycheck to paycheck when they are working and supporting their families. A serious injury should not force them into bankruptcy, or force them to sell assets to keep the family's welfare intact.

You are aware of the NCCI reports, as well as the Docking Institute report from 2004. You are aware that this is a change which is affordable, and necessary. It has often been stated that Kansas is a low benefit state, and that employers enjoy low premiums. Kansas should not be proud of the fact that their temporary total rate is the lowest in the five state region, particularly when the legislature knows how devastating this is to injured workers. We have been reducing benefits for workers for many years in a row. It is time to pass some favorable legislation for the working families.

In addition, HB 2317 would raise the permanent total disability from \$125,000 to \$250,000. Again, it is really sad that we are even here talking about this today, and debating it. There simply are not that many permanent total cases, and you are talking about the most severely injured workers. Again, we are only one of four states in the nation that does not pay lifetime benefits for permanent total. Our caps have not been increased in 18 years, and the cost of this change will have a minimal effect on premiums.

Thank you for allowing me to testify.



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Legislative Testimony

Bill: HB 2317

Date: February 14, 2005

Testimony before the Kansas House Committee on Commerce and Labor
By Terry Leatherman, Vice President of Public Affairs

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber opposes passage of HB 2317. The bill proposes a series of benefit increases within the workers compensation act. The Kansas Chamber's opposition is based on the following observations.

- HB 2317 would prompt a massive increase in the cost of workers compensation insurance, a cost paid exclusively by businesses in our state. I do not know how huge the impact would be, but it would be conservative to estimate the workers compensation insurance increase to be in the tens of millions of dollars.
- Kansas employers would be paying these higher costs in a workers compensation environment where:
 - little legal relief exists when workers aggravate a medical condition due to a preexisting condition,
 - Kansas continues to utilize a contentious "work disability" compensation process,
 - and where no steps are being taken to reduce the litigiousness of our workers compensation law.
- HB 2317 removes a financial incentive that exists in our law today to encourage return to work by injured employees. As a result, employer costs will not just be increased workers compensation premiums, but also higher expense to perform work not being done by employees off work on workers compensation.

The Kansas Chamber would urge the Committee reject HB 2317. Thank you for the opportunity to comment on the legislation before you today.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

Comm + labor
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The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: info@kansaschamber.org

www.kansaschamber.org