

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 8, 2006 in Room 241-N of the Capitol.

All members were present except:

Bob Grant- excused  
Patricia Kilpatrick- unexcused

Committee staff present:

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

Conferees appearing before the committee:

Representative Dale Swenson  
Jim DeHoff, Executive Secretary, Kansas AFL-CIO  
Jeff Glendening, Kansas Chamber of Commerce

Others attending:

See attached list.

The Chairman welcomed Carol S. Cast, Coordinator, Employer Services Division of Workers Compensation, and Richard Thomas, Administrator, Public Resource Section, Kansas Department of Labor, Division of Workers Compensation, to the committee.

Carol S. Cast, Coordinator, Employer Services Division of Workers Compensation, gave an overview of the Division. Employees must be informed on what to do if they are injured on the job. Notice must be posted in one or more conspicuous places. The worker notifies employer within 10 days; 75 days for just cause. The accident report must be filed with the Division within 28 days. The employee files a written claim form with employer and the insurance provider pays the benefits. After an employee sustains injury, the employer is required to furnish all necessary medical treatment and has the right to designate the treating physician. The medical treatment to cure and relieve the effects of the injury has no maximum dollars. Medical mileage is 40 cents a mile if more than 5 miles round trip. The maximum benefit of work disability is \$100,000. Death benefit maximum is \$250,000 to a spouse and/or dependent children. If there is no spouse or dependent children the heirs receive \$25,000. If there are no dependents or heirs, the insurance company pays \$18,500 to the Workers Compensation Fund (Attachment 1).

Richard Thomas, Administrator, Public Resource Section, Kansas Department of Labor, Division of Workers Compensation, presented a brief history of Kansas Work Disability. Work disability was first established by the 1974 legislature. In 1987 some concerns of insurance companies, who were required to pay for vocational rehabilitation services and received no credit for these services, were addressed. In 1993 a new work disability definition was a part of the revisions to the Workers Compensation Act made by the Legislature (Attachment 2).

The Chairman opened the hearing on **HB 2614 - Employment Security Law, removing the pension offset to benefits.**

Staff gave a briefing on **HB 2614** which removes paragraph (n) which deletes offset to benefits when receiving some pensions.

Representative Dale Swenson, testified as a proponent to **HB 2614** which repeals the pension offset in unemployment insurance. Currently, this offset reduces a person's unemployment insurance benefits by the amount of pension or retirement benefits that the person can receive during the base period. This bill allows a claimant to receive full weekly benefits regardless of any pensions or retirement pay from a former employer. This is consistent with legislation passed in 2003 that repealed a similar offset concerning social security. According to the Director of the budget, the increased benefits would not create any noticeable effect on employers' U.I. rates, since it would be less than 0.6 percent of the balance of the fund (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 8, 2006 in Room 241-N of the Capitol.

Jim DeHoff, Executive Secretary, Kansas AFL-CIO, testified as a proponent to **HB 2614**. Current employment security law reduces the amount of unemployment insurance benefits that a person can receive by the amount of pension or retirement benefits that are paid during the claimants base period. **HB 2614** would allow unemployment insurance benefits to be paid for a period of 26 weeks directly after the effective date of retirement. A recent fiscal note by the State Director of Budget, projects estimated expenditures of 1.5 million to 2 million (Attachment 4).

Jeff Glendenning, Vice President of Political Affairs, The Kansas Chamber, testified as an opponent to **HB 2614**. The Kansas Employment Security Trust Fund was created by this body to mitigate financial loss of the individual who lost their job at no fault of their own. Also, the displaced worker must be able to work and must be seeking new employment to receive unemployment benefits. A retiree voluntarily leaves their place of employment and no longer seeks to be employed. Because this measure is not conducive with a business environment that seeks to grow jobs, the Chamber does not support **HB 2614** (Attachment 5).

During discussion it was asked if the Chamber supported the legislation in 2003 and how many employers are currently in Kansas. The Chamber will provide that information.

The Chairman closed the hearing on **HB 2614**.

The meeting adjourned at 10:00 a.m. The next meeting will be February 9, 2006.



*Kansas*  
*Legislature*

House Commerce  
and Labor

Presented by:

Carol S. Cast, Coordinator Employer Services  
Division of Workers Compensation

February 8, 2006



Comm & Labor  
2-8-06  
Atch #1

**INTRODUCTION  
TO BASIC  
WORKERS  
COMPENSATION**

Kansas Department of Labor

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**Kansas Department of Labor  
Website:  
[www.dol.ks.gov](http://www.dol.ks.gov)**

**Workers Compensation E-mail:  
[workerscomp@dol.ks.gov](mailto:workerscomp@dol.ks.gov)**

Kansas Department of Labor

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**POSTING NOTICE  
(FORM 40)**

- Employees must be informed on what to do if they are injured on the job.
- Notice must be posted in one or more conspicuous places.

Kansas Department of Labor

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**COMPENSABILITY**

**Arising out of  
and in the course of  
employment**

Kansas Department of Labor

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**SUMMARY OF HOW THE PROCESS  
WORKS**

- Injury Occurs
- Worker Notifies employer within 10 days; 75 days just cause – K.S.A. 44-520
- Employer mails or delivers KWC-27 to employee or legal beneficiary - K.S.A. 44-5,102(a)
- Employer notifies insurance carrier or group funded plan
- Employer/insurance carrier provides medical treatment
- Accident report filed with Division within 28 days

Kansas Department of Labor

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**SUMMARY OF HOW THE PROCESS  
WORKS**

- Division mails written claim form (K-WC-15) to employee along with (K-WC-136) information explaining injured workers rights.
- Employee files written claim form with employer
- Insurance provider pays benefits

Kansas Department of Labor

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**BENEFITS**

**MEDICAL TREATMENT**

After employee sustains injury, employer is required to furnish all necessary medical treatment and has the right to designate the treating physician.

Kansas Department of Labor

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**BENEFITS**

**MEDICAL TREATMENT**

- Medical treatment to cure and relieve the effects of the injury - no \$\$ maximum
- Medical mileage (More than 5 miles round trip) (Current \$.40/mile)

Kansas Department of Labor

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**UNAUTHORIZED MEDICAL TREATMENT**

Without application or approval, employee may consult a health care provider of the employee's choice for purpose of examination, diagnosis or treatment up to \$500.

(May not be used to obtain a functional impairment rating.)

Kansas Department of Labor

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**WHO PAYS WHAT**

The insurance carrier, group funded pool, or self-insured employer pays:

- Medical Treatment (Includes prescriptions)
- Medical Mileage – More than 5 miles roundtrip
- Travel & living expenses (KSA 44-515)
- Disability benefits

Kansas Department of Labor

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**PAYMENT OF MEDICAL BILLS**

- Employer co-ordinates with insurance carrier what medical treating facility to use – relay information to employees
- All medical bills submitted to insurance carrier (K.S.A. 44-559a(b))
- Employer does not pay any workers compensation expenses out of pocket unless they are a self-insured -employer and can, by statute, directly pay medical

Kansas Department of Labor

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**AGGRAVATION OF A PRE-EXISTING CONDITION**

- EMPLOYER IS RESPONSIBLE FOR THE INCREASED FUNCTIONAL DISABILITY CAUSED BY THE AGGRAVATION OF A PREEXISTING CONDITION
- RATING OF 10% INCREASES TO 20% THE EMPLOYER IS RESPONSIBLE FOR 10% PLUS MEDICAL

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**Temporary Total Benefits**

Exist when the injured worker is completely and temporarily incapable of engaging in any type of substantial and gainful employment

K.S.A. 44-510c(b)2

Kansas Department of Labor

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**TEMPORARY TOTAL BENEFITS**

- Temporary total disability 2/3 average weekly wage (AWW) not to exceed the state maximum in effect at time of injury (Current Maximum is \$467)
- Seven day waiting period

Kansas Department of Labor

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**TEMPORARY TOTAL**

Maximum temporary total computed as the dollar amount nearest to 75% of the state's average weekly wage for the previous calendar year.

Example: The maximum weekly benefit rate of \$467 for 7/1/05 – 6/30/06 was calculated based on the State's average weekly wage of \$622.09 for calendar year 2004.

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**PERMANENT PARTIAL SCHEDULED  
DISABILITY**

- Partial loss of use of a body part, such as arm, leg, or hand.
- Limited to a percentage of what is on the schedule per statute.
- Healing period is available in cases of amputation.
- Benefits are 66.67% of employee's average gross weekly wage, but not less than \$25 nor more than the statutory maximum.

Kansas Department of Labor

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**PERMANENT PARTIAL  
GENERAL DISABILITY**

- Exists when worker is disabled in manner which is partial in character and permanent in quality.
- Not covered by the scheduled (Such as back, neck, or hip)

Kansas Department of Labor

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**PERMANENT PARTIAL GENERAL  
DISABILITY**

- Compensation based on either percentage of functional impairment or the worker's reduced ability to perform work tasks and earn wages comparable to what they were earning before the injury.

Kansas Department of Labor

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**FUNCTIONAL VS WORK DISABILITY**

- Employees earning 90% of pre-injury wage are limited to functional impairment.
- Reduced ability to perform work tasks and earn wages comparable to what they were earning before injury could result in a work disability

Kansas Department of Labor

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**FUNCTIONAL**

DOA: 7/5/05

Compensation Rate: \$467

Percentage Impairment: 10% to back

$$415 \times 10\% \times \$467 = \$19,380.50$$

Kansas Department of Labor

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**WORK DISABILITY  
K.S.A.44-510(e)**

$$\frac{A + B}{2}$$

A= TASK performing skills of last 15 years

B= Actual EARNING LOSS: Date of injury compared to today's earnings

Kansas Department of Labor

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WORK DISABILITY

20 – 10 = 50% of skills lost

\$300 ÷ \$640 = 46.88% of earnings retained

53.12% Loss of earnings

Kansas Department of Labor

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- ONCE MAXIMUM MEDICAL IS MET, WORK DISABILITY MAY BE OWED IF AN INJURED WORKER IF NOT RETURNED TO WAGES AT LEAST 90 PERCENT AT THE TIME OF INJURY WAGES. THIS IS ONLY FOR GENERAL BODY INJURIES WHICH INCLUDES BACK AND NECK INJURIES.

DOESN'T INCLUDE SCHEDULED INJURIES

Kansas Department of Labor

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WORK DISABILITY

$$\frac{50\% + 53.12\%}{2} = 103.12$$

51.56% rating for work disability

$$415 \times 51.56\% \times \$467 = \$99,925.86$$

MAXIMUM BENEFIT IS \$100,000

Kansas Department of Labor

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**DEATH BENEFITS**  
(KSA 44-510b)

- \$250,000 Maximum to spouse and/or dependent children
- \$40,000 Lump sum immediately
- Minimum benefit is 50% of the state's average weekly wage (current minimum is \$299)

Kansas Department of Labor

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**PAYMENT TO MINORS**

When compensation is paid to or on behalf of minors, K.S.A. 44-513a directs such compensation to be paid in accordance with K.S.A. 59-3050 through 59-3095 which establishes the guidelines for obtaining a guardian or a conservator, or both for minor(s).

Kansas Department of Labor

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**GUARDIAN OR CONSERVATOR**

Probate statutes dictate if the compensation is over \$10,000, a guardian or conservator must be appointed to manage the minor's benefits.

Kansas Department of Labor

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1-10

**DEATH BENEFITS**

- \$25,000 to heirs if no spouse or dependents
- No dependents or heirs the insurance company pays \$18,500 to the Workers Compensation Fund
- Burial allowance is \$5000

Kansas Department of Labor

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Kansas Department of Labor

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1-11



# KANSAS

DEPARTMENT OF LABOR  
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony before the  
House Commerce and Labor Committee  
History of Kansas Work Disability  
Richard Thomas, Administrator, Public Resource Section  
Kansas Department of Labor, Division of Workers Compensation  
8 February 2006

Chairman Dahl and Members of the Committee:

Thank you for the opportunity to appear today to share with you a brief history of Kansas Work Disability.

Work disability by definition only occurs when an injury is to the general body and does not exist for an injury that is on the list of scheduled injuries established by the Kansas Legislature. The list of scheduled injuries and the maximum number of weeks payable for each injury on the schedule is found in K.S.A. 44-510d (6).

When there is a general body injury that results in a permanent impairment, the injured worker receives payment based on the percent of impairment determined by a physician. The rating must be based on the Fourth Edition of the American Medical Association's Guide for Evaluating Permanent Impairment. This permanent partial is paid for the loss of function to the body. The worker is entitled to the permanent partial even if the worker has returned to work. Work Disability is calculated when the employer has not or cannot accommodate the injured workers permanent restriction by modifying or reassigning the worker to a position that pays at least 90% of the pre injury wage. If the worker is returned to a position paying 90% of the pre injury wage, the worker is not entitled to work disability payments.

There have been three major legislative changes in the definition of work disability (permanent partial general disability).

## 1974

Work Disability was first established by the 1974 legislature and read as follows:

*... The extent of a permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the workman to engage in work of the same type and character that he was performing at the time of his injury, has been reduced...*

The definition was changed after a court case *Ploutz v Ell-Kan Co 234 Kan 953, 676 P.2d753 (1984)*. In 1984 the legislature made vocational rehabilitation available to injured Kansas workers. In the Ploutz decision, the Courts ruled under the existing law and looked solely at the same type and character of work Mr. Ploutz was doing at the time of injury. Even if vocational rehabilitation was successful and returned the worker to the same or even higher wages the worker would still receive the work disability because the definition only looked at the "same type and character" of work or work the worker was doing at the time of the injury.

Comm Labor  
2-8-06  
Atch #2



TOPEKA

HOUSE OF  
REPRESENTATIVES

Feb 8, 2006

Testimony H.B. 2614

Commerce and Labor Committee

DALE SWENSON  
REPRESENTATIVE 97<sup>TH</sup> DISTRICT  
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WICHITA KS 67217

STATE CAPITOL, ROOM 118-S  
TOPEKA KS 66512-1504  
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COMMITTEE ASSIGNMENTS:  
EDUCATION  
GOVERNMENTAL  
ORGANIZATION  
AND ELECTIONS  
SPECIAL CLAIMS  
AGAINST THE  
STATE (JOINT)  
WILDLIFE AND PARKS

Thank you for the opportunity to appear before the committee.

H.B. 2614 repeals the pension offset in unemployment insurance. Currently, this offset reduces a person's unemployment insurance benefits by the amount of pension or retirement benefits that the person can receive during the base period. This bill allows a claimant to receive full weekly benefits, regardless of any pension or retirement pay from a former employer. HB 2614 is consistent with legislation passed in 2003 that repealed a similar offset concerning social security.

Unfortunate circumstances, such as caring for an ill spouse, lay-off, or relocation, can force an employee into early retirement. Pensions for early retirement are usually very small, and economic conditions can force the retired employee to find other work. The pay and benefits of an entry-level position usually do not match that of the former employer. In addition, the retiree can sometimes face the unfortunate loss of the new employment.

H.B. 2614 helps the newly unemployed retiree by offering increased benefits.

According to Duane Goosen, the Director of the Budget, the increased benefits will not create any noticeable effect on employers' U.I. rates, since it will be less than 0.6 percent of the balance of the fund.

I ask for the Committees favorable recommendation of H.B. 2614.

Comm & Labor  
2-8-06  
Atch #3





President  
**Mark Love**

Executive Secretary  
Treasurer  
**Jim DeHoff**

Executive Vice  
President  
**Wil Leiker**

Executive Board

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Doris Branham  
Mike Brink  
Kurt Chaffee  
Herb Dicus  
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David Han  
Tom Harkness  
Hoyt Hillman  
Larry Horseman  
Jim Keele  
Lloyd Lavin  
Jerry Lewis  
Emil Ramirez  
Steve Rooney  
Rory Schaffer  
Richard Taylor  
Brian Thompson  
Dan Woodard*

TESTIMONY ON HB 2614  
to the House Commerce & Labor Committee  
on February 8, 2006

by Jim DeHoff, Executive Secretary  
Kansas AFL-CIO

Chairman Dahl and Committee Members:

I am Jim DeHoff, Executive Secretary, of the Kansas AFL-CIO. Thank you for the opportunity to appear before you today in support of HB 2614.

Current Employment Security law reduces the amount of unemployment insurance benefits that a person can receive by the amount of pension or retirement benefits that are paid during the claimants base period.

HB 2614 would allow unemployment insurance benefits to be paid for a period of 26 weeks directly after the effective date of retirement. We believe that if HB 2614 is passed, there would be a small fiscal impact to the Unemployment Security Trust Fund. A recent fiscal note by the State Director of Budget, projects estimated expenditures of 1.5 million to 2 million.

The Department of Labor has stated that passage of HB 2614 would have no noticeable effect on employer rates.

I would like to recommend to the committee that consideration be given to referring HB 2614 to the Employment Security Advisory Council for a recommendation. The Employment Security Advisory Council is made up of four members from labor, four members from business, and four members from the general public,

HB 2614 is on the agenda for the February 20, 2006 Advisory Council meeting.

Thank you.



Comm+Labor  
2-8-06  
A+ch#4

## Kansas Employment Security Advisory Council

(Revised January 20, 2006)

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## Legislative Testimony

HB 2614

February 8, 2006

Testimony before the Kansas House Commerce and Labor Committee  
By Jeff Glendening, Vice President of Political Affairs

Thank you Mr. Chairman, and members of the committee for this opportunity to testify in opposition to HB2614. My name is Jeff Glendening, and I am representing the over 10,000 member businesses of The Kansas Chamber.

The Kansas Employment Security Trust Fund was created by this body to mitigate financial loss of the individual who lost their job at no fault of their own. Also, the displaced worker must be able to work and must be seeking new employment to receive unemployment benefits. A retiree voluntarily leaves their place of employment and no longer seeks to be employed. This bill proposes to subvert a system created more than a half century ago to provide economic relief to someone who suddenly loses their job.

This legislation changes the scope of the fund and charges the job creators of Kansas with yet another burdensome tax of up to \$2,000,000.00. It is important to note the unemployment system is exclusively funded through a tax levied on Kansas employers. In 2005, Kansas business paid in excess of \$300 million in unemployment taxes.

Because this measure is not conducive with a business environment that seeks to grow jobs, we are asking that you not support HB2614.

Thank you again for the opportunity to voice our strong opposition of this bill.

*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  
2-8-06  
Atch #5