

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 9, 2006 in Room 241-N of the Capitol.

All members were present except:

Broderick Henderson- excused
John Grange- excused

Committee staff present:

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

Conferees appearing before the committee:

Jim Garner, Secretary of Labor
Terry Humphrey, Kansas Coalition for Workplace Safety
Representative Candy Ruff
Pat Oslund, Policy Research Institute, Kansas University
Franke Straub
Doug Allen
Wil Leiker, AFL-CIO
Mark Block

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2654 - Increase in workers compensation benefits and removal of cap on permanent total disability.**

Jim Garner, Secretary of Labor, testified as a proponent to **HB 2654**. This bill would provide a modest increase in the benefits paid to injured workers under the Kansas Workers Compensation system. Kansas ranks 44th in the nation in premium costs. The conservative "Small Business Survival Index 2005" ranks Kansas as the 8th best state for workers compensation costs. There is no crisis or escalation of premium costs in Kansas. In comparison, Kansas ranks 45th in the nation in weekly benefits to injured workers. This issue needs to be addressed (Attachment 1).

Terry Humphrey, Kansas Trial Lawyers Association Executive Director (KTLA), on behalf of Kansas Coalition for Workplace Safety, testified in support of **HB 2654**. Ninety-four percent of all workers in Kansas are covered by the state's workers compensation laws. Under Kansas law, an injured employee receives only two-thirds of his or her gross average weekly wage or a maximum of \$467 per week, whichever is higher. Only five states in the nation provide lower weekly benefits for their injured workers.

HB 2654 leads in the right direction: (1) Kansas workers who are injured on the job would be eligible to receive 75% of their average weekly wage instead of only two-thirds. (2) The maximum weekly benefit would be raised to 100% of the state's average weekly wage instead of the current 75%. (3) Workers who are totally disabled would receive benefits for the duration of their disability, like workers in most other states. The current benefit maximum would be raised to \$182,400 and adjusted the cap annually based on the percentage of change in the state's average weekly wage as presently calculated for purposes of determining the state's average weekly wage. KLA urges **HB 2654** be passed out with the Coalition's amendments (Attachments 2 & 3).

Representative Candy Ruff, testified as a proponent to **HB 2654**. Medical costs continue to drive the worker compensation engine in Kansas. Accounting for 50 to 60 percent of the premium costs, prescription drugs and medical procedures manage to almost double in price from year to year. It is seen in our employee health insurance premiums and our workers compensation premiums as well. The issues before us this year would center on good state policy. Permanent partial disability should not be capped at \$50,000 (Attachment 4).

Pat Oslund, Policy Research Institute, University of Kansas, testified as a proponent to **HB 2654**. Ms. Oslund

CONTINUATION SHEET

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

stated this testimony consists of her findings, and does not represent the position of the University of Kansas or any other parties. There are two ways in which we can try to estimate the impact of changing economic conditions on the value of benefit cap amounts. One method is to examine the impact of inflation. Another method of viewing the impact of changing economic conditions on workers compensation caps is to look at wage growth. The inflation and the wage growth methods are not completely different, because inflation is the major contributor to wage growth. But wage growth also reflects changing productivity, changing competitive positions, and other factors. Changes in the maximum weekly benefit allowed under Workers Compensation already are tied to wage growth. The total cumulative amounts that an injured worker can receive have remained unchanged over long periods of time (Attachments 5 & 6).

Franke Straub, an injured worker, testified as a proponent to **HB 2654**. Mr. Straub was injured and the insurance company routinely is late sending his checks. This injury will affect his ability to work for the rest of his life, but payments are capped at \$100,000. Over the 415 weeks his compensation is based on, if he would have continued to work earning \$800 per week, he would have made \$332,000. It is believed these changes in benefits are long overdue (Attachment 7).

Doug Allen, Spring Hill, Kansas, testified as a proponent to **HB 2654**. Mr. Allen was injured in an automobile accident. The benefits are substandard. **HB 2654** provides an increase in benefits; however, these changes are insufficient to meet the needs of injured workers in Kansas. Compensation for disabled workers should be fair (Attachment 8).

Wil Leiker, Executive Vice President, Kansas AFL-CIO, testified in support of **HB 2654**. This is an important change for Kansas workers, particularly workers who are higher wage earners. Under the current law, workers are asked to live on 50% or less of their weekly earnings when injured and unable to work. 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 regions, particularly when the legislature knows how devastating this is to injured workers (Attachment 9).

Mark Block, Dwight, Kansas, testified in support of **HB 2654**. Mr. Block was injured and had to have both legs amputated. His disability benefit is \$401 per week and he had been earning \$700 per week. This is not enough to survive on. Mr. Block stated this bill would not help him, but it would help other Kansans that were injured on the job (Attachment 10).

Written testimony in opposition to **HB 2654** was provided by: Jeff Glendening, Vice President of Political Affairs, Kansas Chamber of Commerce (Attachment 11); Tina N. Williams, Claims Director, Kansas Self-Insurers Association (Attachment 12); Ashley Sherard, Vice President, Lenexa Chamber of Commerce (Attachment 13); and Duane Simpson, Kansas Agribusiness Retailers Association (Attachment 14).

The Chairman closed the hearing on **HB 2654**.

The Chairman reminded the committee of the hearing on **HB 2614** February 8 wherein Mr. Jim DeHoff, Executive Secretary AFL-CIO recommended the bill be sent to the Employment Security Advisory Council. The Chairman asked what the committee wished to do.

Representative Schwab moved and Representative Humerickhouse seconded to refer **HB 2614** to the Employment Security Advisory Council. The motion carried.

The meeting adjourned at 10:50 a.m. The next meeting will be February 10, 2006.

COMMERCE AND LABOR COMMITTEE

DATE February 9 2006

NAME	REPRESENTING
Alex Kotouantz	P.I.A.
Doug Hollandsworth	DoJA
Jim GARNER	Secy Dept. of Labor
BRIAN McJone	
Wil Pad	Ks AFL-CIO
Earl Ransom	Local 307 USW
Kevin McClain	Local 307 USW
Dennis Phillips	KSCFF
Ed Redman	KSCFF
RICHARD THOMAS	KPCZ-WE
Scott Heidner	KS Self Insurers Association
Bill Curtis	Ks Assoc of School Bds
Derek Hein	Hein Law Firm
Natalie Haag	Security Benefit
Tom Kempley	KTLA



DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony in Support of 2006 HB 2654
House Commerce and Labor Committee
9 February 2006
Jim Garner
Secretary of Labor

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear in support of House Bill 2654. This bill would provide a modest increase in the benefits paid to injured workers under the Kansas Workers Compensation system.

First, let's take a look at the "lay of the land." Kansas ranks very well concerning workers compensation premium costs. The nationally recognized Oregon study ranks Kansas as 44th in the nation in premium costs. The conservative "Small Business Survival Index 2005" ranks Kansas as the 8th best state for workers compensation costs. And when considering premium costs as a percentage of total wages, Kansas is in good shape. Premiums in Kansas represent 0.80% of total wages. Premiums in the nation represent 2.09% of total wages.

Overall, the voluntary workers compensation market in Kansas saw an average 2.0% reduction in premium rates approved for 2006, saving employers roughly \$3.5 million. Since the reforms of 1993, premium rate filings in Kansas have resulted in over \$112 million in savings. Furthermore, the KCCI's own polling data suggests workers compensation is not the major concern for employers when it comes to the costs of doing business in Kansas.

Recently, the National Council on Compensation Insurance, the rating company of workers compensation underwriters in Kansas, presented its "State of the Industry" report for Kansas. Their report reflects that things are pretty darn good in Kansas. According to the NCCI, the average loss cost in Kansas is the lowest in the region. Moreover, the report showed the workers compensation market for insurers is profitable in Kansas.

Bottom line – there is no crisis or escalation of premium costs in Kansas.

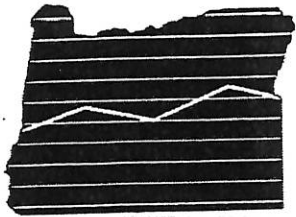
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In comparison, benefits levels in Kansas are low. We rank 45th in the nation in weekly benefits to injured workers. Relying on two-thirds of your previous weekly wage is quite a challenge for many families. During the time an injured worker is home from work on a disability, the worker's mortgage payment, car loan payment or child care bills are not reduced to two-thirds. It is time to do something to address this issue. In my opinion, House Bill 2654 is a good start but probably not enough. I support the bill as an effort to aim the focus where it is needed and address the extremely low level of benefits now provided to assist families when their lives are disrupted by a workplace injury.

Finally, as you address workers compensation issues this session, it would be unfortunate to create unintended consequences. There is a bill in the Senate (SB 461) that proposes drastic changes to the method by which pre-existing conditions and work disabilities are handled. My fear is that we could see a classic political slight of hand – giving with one hand while taking much more away with another. Even if House Bill 2654 were to become law, many injured workers could find themselves in even worse conditions with less compensation if the features of SB 461 also became law.

In conclusion, it is past time to address the low benefits to injured workers in Kansas. House Bill 2654 is a step in the right direction and I encourage your support of this legislation.

Thank you for the opportunity to appear and share my comments and concerns on this matter.



2004 Oregon Workers' Compensation Premium Rate Ranking Summary

Department of Consumer & Business Services

December 2004

By Derek Reinke and Mike Manley

Oregon employers in the voluntary market pay, on average, the forty-second highest workers' compensation premium rates in the nation.

Oregon's premium rate index is \$2.05 per \$100 of payroll. National premium rate indices range from a low of \$1.06 in North Dakota to a high of \$6.08 in California. Three jurisdictions have an index rating

above \$4.00; 13 are in the \$3.00-\$3.99 range; 26 are in the \$2.00-\$2.99 range; and nine have indices under \$2.00. Indices are based on data from 51 jurisdictions, for rates in effect as of January 1, 2004.

Classification codes from the National Council on Compensation Insurance (NCCI) were used in this study. Of the approximately 450 active classes in Oregon, 50

Figure 1. 2004 Workers' compensation premium rates

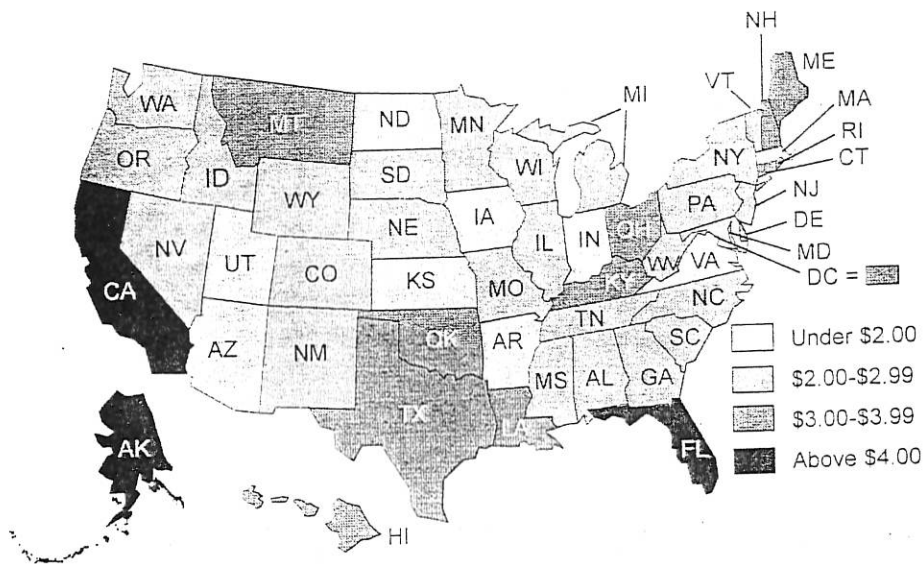


Table 1. Oregon's ranking in the top 10 classifications

Occupation	Ranking
Clerical office employees NOC	46
Salespersons - outside	47
College: Professional employees and clerical	44
Physician and clerical	31
Restaurant NOC	37
Store Retail NOC	43
Automobile service/repair center and drivers	33
Hospital Professional employees	29
Trucking: Local and long haul - all employees & drivers	25
Television/radio/telephone/telecommunication device	45

were selected based on relative importance as measured by share of losses in Oregon. To control for differences in industry distributions, each state's rates were weighted by 1998-2000 Oregon payroll to obtain an average manual rate for that state. Listed in Table 1 are Oregon's rankings in the 10 largest (by payroll) of the 50 classifications used.

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

Table 2. Workers' compensation premium rate ranking

2004 Ranking	2002 Ranking	State	Index Rate	Effective Date
1	1	California	6.08	January 1, 2004
2	15	Alaska	4.39	January 1, 2004
3	2	Florida	4.20	October 1, 2003
4	3	Hawaii	3.73	January 1, 2004
5	14	Ohio	3.59	July 1, 2003
6	16	Kentucky	3.48	September 1, 2003
7	4	Delaware	3.44	December 1, 2003
8	10	Montana	3.41	July 1, 2003
9	7	Louisiana	3.37	January 1, 2004
10	17	District of Columbia	3.26	November 1, 2003
11	13	Connecticut	3.23	January 1, 2004
12	18	New Hampshire	3.19	January 1, 2004
13	8	Maine	3.08	January 1, 2004
14	5	Texas	3.08	January 1, 2003
15	19	Oklahoma	3.07	2/1/02 State Fund. 1/1/04 private
16	6	Rhode Island	3.01	November 1, 1998
17	25	Vermont	2.99	April 1, 2003
18	9	New York	2.97	December 1, 2003
19	12	Alabama	2.88	March 1, 2004
20	23	Pennsylvania	2.82	April 1, 2003
21	22	Minnesota	2.74	January 1, 2004
22	26	Missouri	2.67	January 1, 2004
23	20	Illinois	2.65	January 1, 2004
24	24	West Virginia	2.64	July 1, 2003
25	29	Tennessee	2.62	March 1, 2003
26	11	Nevada	2.58	January 1, 2004
27	36	New Mexico	2.56	January 1, 2004
28	38	Wyoming	2.43	January 1, 2004
29	31	New Jersey	2.38	January 1, 2004
30	30	Michigan	2.34	January 1, 2004
31	21	Colorado	2.33	January 1, 2004
32	34	North Carolina	2.32	August 29, 2003
33	32	Wisconsin	2.27	October 1, 2003
34	27	Idaho	2.25	January 1, 2004
35	45	Washington	2.20	January 1, 2004
36	33	Mississippi	2.19	March 1, 2003
37	28	Georgia	2.14	November 1, 2001
38	39	Nebraska	2.10	February 1, 2003
39	42	South Carolina	2.08	January 1, 2004
40	40	Maryland	2.06	January 1, 2004
41	48	South Dakota	2.05	July 1, 2003
42	35	OREGON	2.05	January 1, 2004
43	43	Iowa	1.91	January 1, 2004
44	41	Kansas	1.81	January 1, 2004
45	37	Massachusetts	1.70	September 1, 2003
46	44	Utah	1.63	December 1, 2003
47	49	Virginia	1.57	April 1, 2003
48	47	Arkansas	1.57	July 1, 2001
49	46	Arizona	1.49	October 1, 2003
50	50	Indiana	1.24	January 1, 2004
51	51	North Dakota	1.06	July 1, 2003

Based on updated information, the 2002 ranking has been revised since it was originally published.

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

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

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State Voluntary Market Filings in Nearby States

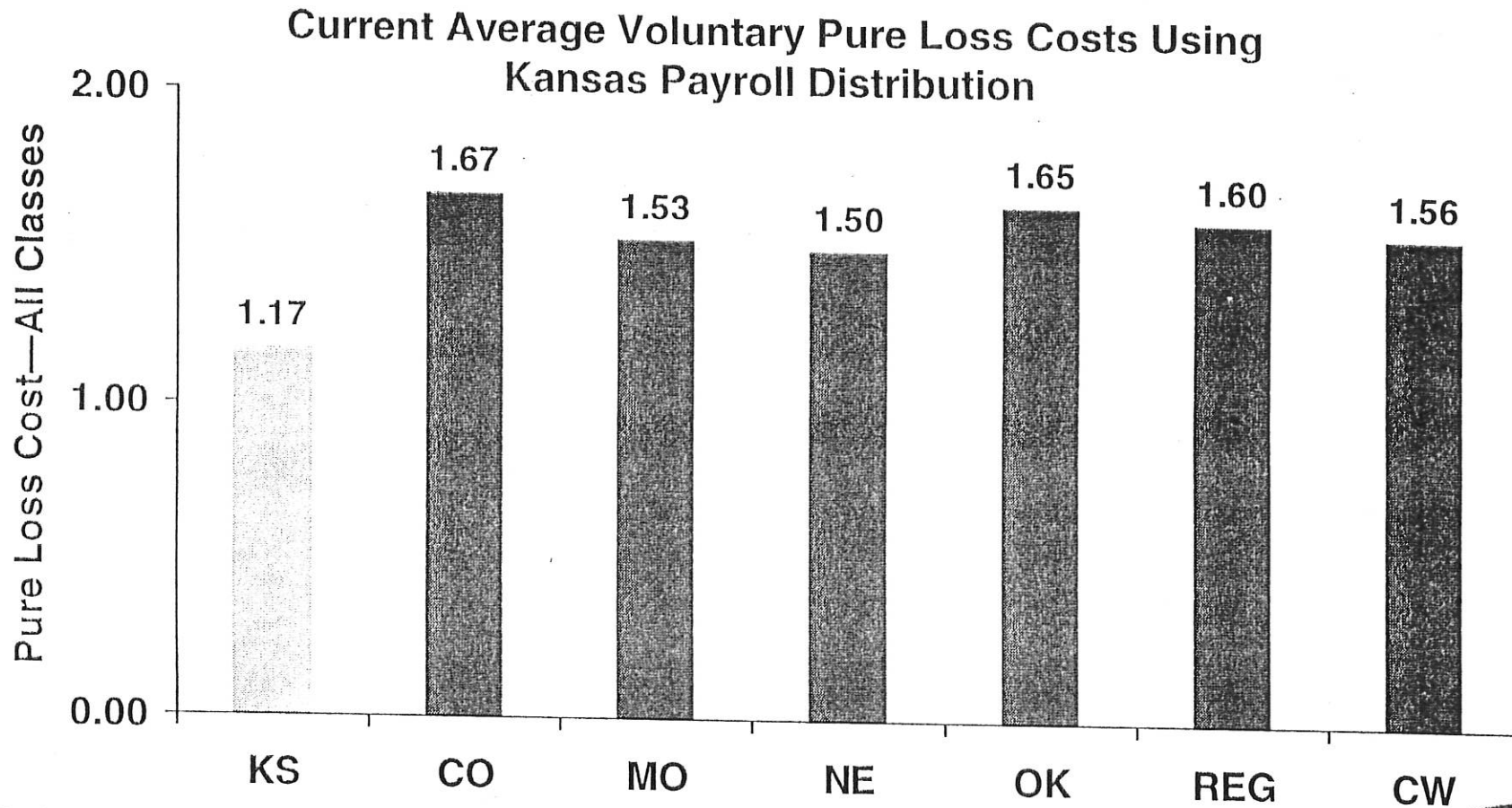
Oklahoma [^]	7/1/05	-10.5%
Nebraska	2/1/06	+4.4%
Colorado*	1/1/06	+4.3%
Indiana	1/1/06	+2.1%
Iowa	1/1/06	+1.8%
Illinois*	1/1/06	+6.5%
Missouri*	1/1/06	0.0%
Kansas	1/1/06	-2.0%
South Dakota	7/1/05	-1.3%

[^] Law Only

* Pending



After Adjusting to Kansas Payroll Distribution, Kansas Average Loss Cost Is the Lowest in the Region

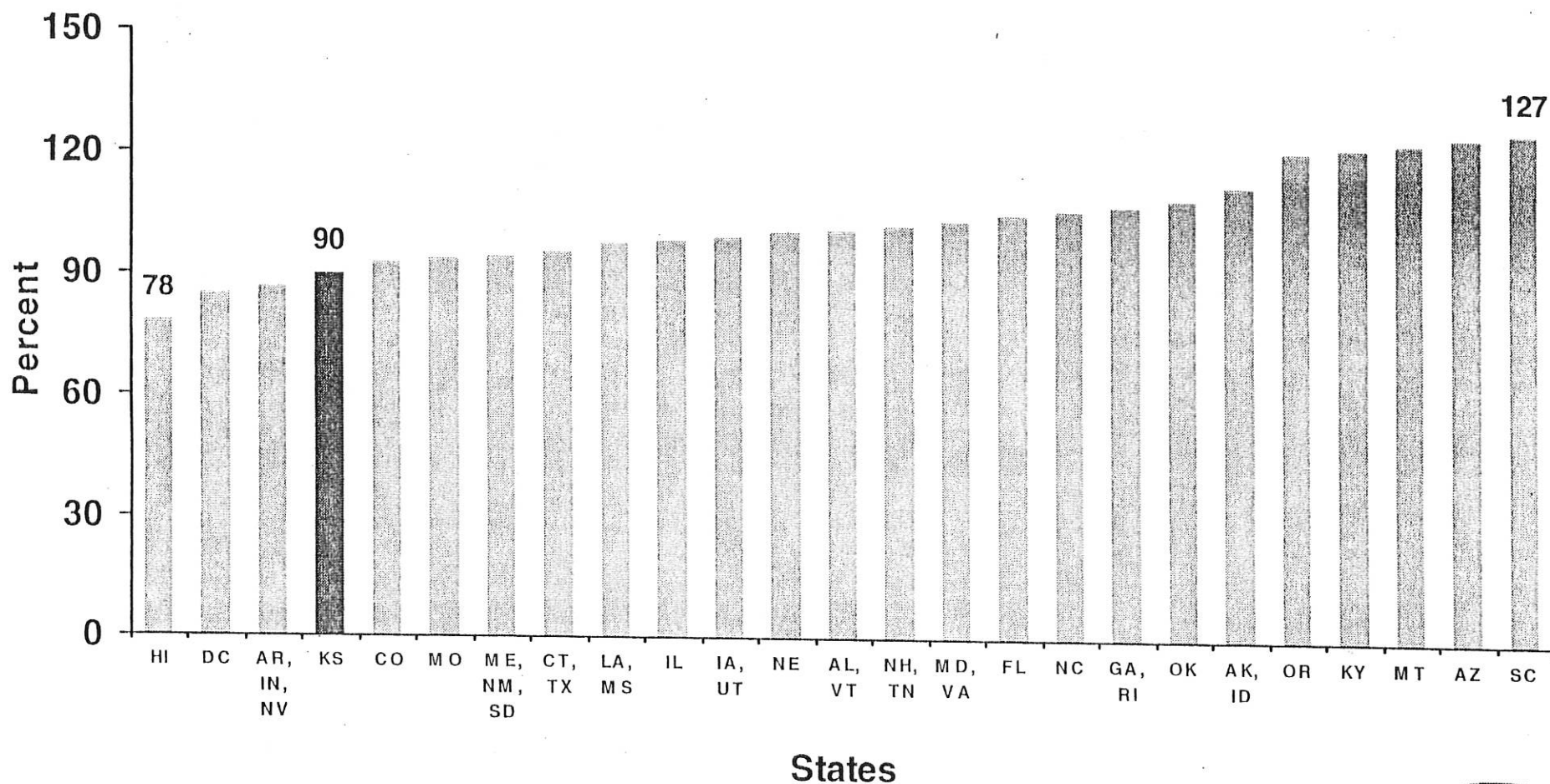


Regional Average includes Colorado, Missouri, Nebraska, and Oklahoma.
Based on the latest NCCI published rates and loss costs in each state.



Results Vary From State to State

Accident Year 2003 Combined Ratios



Data is evaluated as of 12/31/2003.



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
- 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/Roofers Local #20
- 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

Testimony Before House Commerce & Labor Committee February 9, 2006 Terry Humphrey, KTLA Executive Director On Behalf of the Kansas Coalition for Workplace Safety

Chairman Dahl and members of the committee, I am Terry Humphrey, executive director of the Kansas Trial Lawyers Association. I am here today as a representative of the Kansas Coalition for Workplace Safety. The Coalition is a group of more than 30 organizations representing nearly 500,000 working Kansans, including firefighters, nurses, teachers, senior citizens, businesses, labor unions, and others. Thank you for this opportunity to discuss the need to improve benefit levels for injured workers under the Kansas Workers Compensation Act and support HB 2654 with our suggested amendments.

In 2004, the Docking Institute of Public Affairs released a report on the state of workers compensation in Kansas. In the study's introduction, the Docking Institute cites "two significant conclusions": (1) Kansas employers pay low premiums compared to other states; and (2) benefit levels for injuries and illnesses are also comparatively low." Today I would like to focus on the second issue: the low benefits Kansas offers its injured workers and the need to improve them.

First and foremost, it is important to understand that 94% of all workers in Kansas are covered by the state's workers compensation laws. That means that nearly all of the workers in Kansas—and, presumably, most of your constituents—are directly affected by these laws and will be forced to subsist on the very low benefits if they are injured on the job. As you will hear in later testimony, the economic hardships injured workers must endure only add insult to their physical injuries.

Secondly, no discussion of workers compensation would be complete without

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acknowledging its impact on the state's employers and insurance carriers. Fortunately the news here is good. The work comp premiums paid by Kansas employers are far lower than both the countrywide and regional averages. In fact the Insurance Department has lowered the combined premiums by more than 32% between 1994 and 2006. Rates are so low that economic development groups like the Greater Wichita Economic Development Coalition cite them to attract new business to the state. This year the news for employers gets even better. Recently, the Insurance Department approved a 2% decrease in rates for the voluntary market for 2006.

Insurance companies operating in Kansas should be equally pleased. In 2003, Kansas ranked 6th in the country in work comp profitability. In fact, in 2002 and 2003, Kansas was one of only six states in which work comp insurers booked a profit *even before adding in their investment income*. Suffice it to say that Kansas employers and insurers are thriving under the current workers compensation laws. Unfortunately, the same cannot be said of the state's most important economic resource, its workers.

Under Kansas law, an injured employee receives only two-thirds of his or her gross average weekly wage or a maximum of \$467 per week, whichever is higher. For example, an employee who averages \$400 per week will receive benefits of approximately \$267 per week, or two-thirds of his average weekly wage. An employee who averages \$1,000 per week will receive the maximum of \$467 per week, which represents less than half of his average weekly pay. Since many Kansans live paycheck to paycheck, it is not surprising that such low weekly benefits can be financially devastating.

Only five states in the nation provide lower weekly benefits for their injured workers. Furthermore, Kansas provides the *lowest* benefit among our neighbors Missouri, Colorado, Nebraska and Oklahoma. This year even Arkansas, which formerly tied Kansas in weekly benefits, has surpassed us by raising their maximum weekly benefit.

Kansas' extremely low weekly benefits result in large part from the fact that benefits are capped at only 75% of the state's average weekly wage. In other words, the *maximum* amount an injured worker in Kansas can receive—regardless of how much he or she earned before the injury—is 25% *less* than the average weekly wage for all

employees in Kansas. This weekly cap of \$467 applies regardless of whether the employee is permanently totally disabled, temporarily totally disabled or permanently partially disabled. On top of the weekly cap, there are limits on the *total* amount of disability an injured worker can receive. For temporary total disability and permanent partial disability, the maximum benefit is \$100,000. For permanent total disability, when a worker is completely unable to return to substantial and gainful employment, the maximum benefit is \$125,000. Keep in mind, these are not lump-sum payments, but the maximum amount disabled workers can receive in weekly “installments” of \$467 or less.

Kansas is only one of four states in the nation that caps permanent total disability rather than provide lifetime benefits to the disabled worker—the *Kansas cap is the lowest*. In fact, Kansas has made no changes to the maximum benefits for permanent total disability or permanent partial disability since they were established in 1987! Think about what it means to be permanently disabled in 2006 and be forced to live on 1987 dollars. The fact that we have not raised these benefits in nearly two decades is appalling and does not reflect well on this state’s attitude toward its workforce and the families they support.

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

At least two of the recommendations Kansas has ignored for 30 years are relevant to today’s discussion. First, the Commission recommended that as of July 1, 1975, the maximum weekly benefit for temporary total disability and permanent total disability be *at least* 100% of the state’s average weekly wage. As we’ve seen, Kansas’ benefits are still only two-thirds of 75% of the state’s average weekly wage. The Commission

also recommended that permanent total disability benefits be paid “for the duration of the worker’s disability, or for life, without any limitations as to dollar amount or time.” Again, Kansas offers workers who suffer permanent total disability the lowest cap in the nation.

It is long past time for Kansas to come into compliance with the National Commission’s recommendations, and HB 2654 leads us in that direction in three important ways:

- (1) Kansas workers who are injured on the job will be eligible to receive 75% of their average weekly wage instead of only two-thirds;
- (2) The maximum weekly benefit will be raised to 100% of the state’s average weekly wage instead of the current 75%; and
- (3) Workers who are totally disabled will receive benefits for the duration of their disability, like workers in most other states.

In addition, the Kansas Coalition for Workplace Safety is proposing amendments to HB 2654 which would address the erosion of the values of the workers compensation benefit caps currently in place. As you know, the maximum benefits allowable for permanent partial disability have not changed since 1987. Think in terms of what \$100 could buy in 1987 compared to 2006. Think about how much wages have increased since 1987. In 1987, the maximum compensation rate was \$256. That means the state average weekly wage was \$341. The current state average weekly wage is approximately \$622. Yet, maximum rates have stayed the same since 1987. Further evidence as to the real erosion of benefits will be provided by Patricia Oslund of the University of Kansas Policy Research Institute.

The amendments we have attached would raise the caps from their 1987 rates of \$100,000 to a current benefit maximum of \$182,400 and would also adjust annually the cap based on the percentage of change in the state average weekly wage as presently calculated for purposes of determining the state average weekly wage. \$182,400 is the 2006 value of the \$100,000 cap considering the same rate of growth as wages across the state have risen in the 18 years since 1987.

Also we propose language to clarify the intent of HB 2654 regarding permanent total disability caps. Our language states that permanent total disability be paid for the duration of the condition. In other words, weekly benefits would continue as long as the worker continues to be permanently and totally unable to engage in any substantial gainful employment.

We also eliminate the \$50,000 cap on functional impairment only cases. This cap unfairly and unnecessarily disadvantages workers with significant functional impairments. For instance, a worker who loses an arm and has a gross average weekly wage high enough to receive the maximum temporary total rate would receive 210 weeks of compensation of the maximum rate of \$467 per week. That would equal total benefits of \$98,070. However, the current \$50,000 cap would limit the worker to a maximum of \$50,000. This provision produces grossly inequitable results. The original intent of the "Fletcher Bell" amendment was to limit awards where the injury did not affect the worker's ability to engage in work. Certainly, losing one's arm and similar serious injuries would affect a worker's ability to work. The limit is irrational and serves no legitimate purpose and should be stricken from the statute.

Another amendment to HB 2654 would provide authority for the administrative law judge to impose penalties on parties who do not comply with the orders of the ALJ. At the present time there is no enforcement mechanism to make an insurance company or employer follow an order of the court to provide medical care or to confirm treatment is authorized to a designated provider. Employers and insurance companies frequently refuse to acknowledge they are responsible for medical and have in fact advised doctors that they will not pay for medical treatment in direct violation of the administrative law judge's order. Employers and insurance carriers are routinely late in paying temporary total disability payments, bills, and reimbursement requests. This amendment will utilize the same procedure as currently employed in K.S.A. 44-512(a) to ensure benefits are timely provided. This change is desperately needed to control unscrupulous employer and insurance carriers.

In closing, let me remind the committee that Kansas is fortunate to have among the most desirable workers in the country. According to a recent Kansas Chamber poll, nearly three-quarters of all business owners surveyed said they were satisfied with the

quality of their workforce. But it is not enough to praise our workers when they are able-bodied. We must also ensure that their needs are taken care of when they are injured on the job. HB 2654 with the Coalition's amendments moves us closer to that goal. I urge you to pass HB 2654 with our amendments to protect our most valuable resource.

Thank you.

Kansas Coalition for Workplace Safety
Proposed Amendments to K.S.A. 44-510f and K.S.A. 44-512a

Section 3. K.S.A. 44-510f is hereby amended to read as follows: 44-510f. (a) ~~Notwithstanding any provision of the workers compensation act to the contrary,~~
† The maximum compensation benefits payable by an employer shall not exceed the following, *except that the maximum compensation benefits shall be adjusted annually in the same percentage as the percent of change in the state average weekly wage as determined pursuant to K.S.A.44-511:*

(1) For permanent total disability, ~~including temporary total, temporary partial, permanent partial and temporary partial disability payments paid or due,~~ \$125,000 ~~for an injury or any aggravation thereof such benefits shall be paid for the duration of the condition;~~

~~(2)~~ (1) for temporary total disability, including any prior permanent total, permanent partial or temporary partial disability payments paid or due, \$100,000 ~~182,400~~ for an injury or any aggravation thereof;

~~(3)~~ (2) subject to the provisions of subsection (a)(4), for permanent or temporary partial disability, including any prior temporary total, permanent total, temporary partial, or permanent partial disability payments paid or due, \$100,000 ~~182,400~~ for an injury or any aggravation thereof; and

~~(4)~~ (3) for permanent partial disability, ~~where functional impairment only is awarded,~~ \$50,000 ~~for an injury or aggravation thereof.~~

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

subsection shall not apply to any employer who pays any such unearned wages to an employee pursuant to an agreement between the employer and employee or labor organization to which the employee belongs.

K.S.A. 44-512a is hereby amended to read as follows: 44-512a. (a) In the event any *order of the administrative law judge is not complied with, including, but not limited to, providing medical treatment, confirming medical benefits coverage to providers, payment of temporary total disability pursuant to K.S.A. 44-512, and any compensation, including medical compensation, which has been awarded under the workers compensation act, is not complied with or paid when due to the any person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation ordered to provide such benefits* in an amount of not more than ~~\$100~~ \$500 per week *nor less than \$250 per week for each week any disability compensation is any ordered benefits are past due and in an amount for each past due medical bill equal to the larger of either the sum of \$25 \$100 or the sum equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.*

Workers comp Falling down on the job

When Lisa Wurgler was 27, she earned about \$730 a week as a nurse at a hospital in Rugby, N.D. "I felt if my parents ever needed help, if they had to go into a nursing home, I would be in a position to take care of them," she says. Now, six years later, Wurgler says she gets \$200 a week from Social Security. Her parents take care of her.

In 1990, Jim Stotts, then 46, earned \$33,000 a year as foreman of a city utility plant in Lafayette, La. He owned his own home and had \$30,000 in retirement savings. Within 18 months, he had lost it all.

In 1995, Jim Sargeant, now 37, was excited about his new job as a sales rep and distributor for a janitorial-equipment company, where he'd make \$35,000 a year. He and his wife were expecting their third child. They had saved \$13,000 toward a house, and they owned a minivan and a car. Two years later, short of cash, they had to give up their apartment, their cars, and all their savings. "We filed for bankruptcy," says Sargeant, of Clarkston, Wash. "We lost everything."

What caused these people to fall from the security of a regular paycheck to near-destitution? All were injured on the job, and workers compensation—the program that is supposed to pay for their medical care and some lost income—failed to help.

Lisa Wurgler injured her back lifting patients. But the North Dakota Workers Compensation Bureau cut off her benefits when she refused to go to a pain clinic after two others did her no good (among the recommended therapies: anger-management classes). The bureau declined to comment.

Jim Stotts suffered dizziness, burning nasal passages, sky-high blood pressure, headaches, and swollen eyes after being exposed to toxic solvent fumes while on the job at the power plant. Doctors recommended by his employer diagnosed him with toxic encephalopathy, a form of brain damage. But the city of Lafayette did not accept the diagnosis: according to the city's risk

manager, tests showed no brain damage. It took five years to win his claim. And even then, the city did not pay Stotts' ongoing medical bills until a settlement was reached last year.

Jim Sargeant, who was diagnosed with herniated disks after handling a 55-gallon drum of industrial cleaner, qualified for permanent disability under Social Security. A state board awarded him workers-comp benefits, but then withdrew them periodically. State officials have not returned our phone calls.

Workers compensation, from which 1.8 million people collected cash benefits in 1998, was designed as a safety net for those who are injured or die on the job. And experts agree that the system can work, especially for people whose medical conditions clear up quickly. But for others, the system falls short.

In the early 1990s, state legislatures across the nation, at the behest of insurance carriers and the business community, passed reform laws designed to improve the system. They did—for insurers and businesses. Workers-comp insurance, once the money-loser of the industry, grew fat with profits. And businesses saw premiums drop substantially from 1992 to 1996, a development that public officials say stimulates job growth.

The old system needed changing, many agree. But instead of targeting insurance



JOHN MCKAY of Monaca, Pa., with his wife Vickie and his son Nathan, 8, was a journeyman bricklayer before he injured his leg in 1992. Although he was declared permanently disabled and can't sit or stand well, his insurer forced him to take a telemarketing job. When he stopped working at the request of his doctor, his benefits were cut.

bureaucracies and employer fraud—two key problems that still exist—the new laws have generated profits for insurers and savings for employers mainly at the expense of injured workers. Those laws clamped down on benefits, raised eligibility requirements, and put medical treatment mainly in the hands of insurance companies, which can delay or deny medical care or income payments. The tactic is called “starving them out,” according to former insurance claims adjuster Erik Grindal of Coral Gables, Fla., who is now a lawyer. While waiting for help, claimants spend down their savings and then, out of desperation, accept a settlement for only a fraction of what they should get.

Robert Hartwig, chief economist of the Insurance Information Institute, defends the reforms. “The laws are designed to encourage people to go back to work,” he says. And while qualifying for workers comp may be more difficult now, he adds, “If you disagree with the decision, you can appeal; you have recourse.”

Meanwhile, many people continue to believe the notion—propagated by the insurance industry—that workers who file for benefits are merely milking the system. CONSUMER REPORTS’ chief medical adviser reviewed available documents of people whose stories are profiled in these pages and found evidence of disabling injuries. But all of them say they were treated like cheats. Observes Ernie Delmazzo, 42, a truck driver who hurt his neck in 1996 and now heads the Oregon Injured Workers’ Alliance, one of dozens of citizen groups that have grown up around the country in the last decade: “It’s a psychological nightmare. Even your neighbors look at you like you’re a fraud.”

To be sure, some workers abuse the system, though nobody knows exactly to what extent. The National Insurance Crime Bureau, an industry group, says workers-comp claimant fraud costs carriers about \$2.4 billion a year. But the group concedes that’s just a guess. Conning & Co., an insurance research firm, put claimant fraud at about 1.9 percent of premiums paid—or \$477 million.

In Florida, claimant-fraud cases typically average \$10,000 in undeserved payouts, says Ron Poindexter, director of the state’s division of insurance fraud. By contrast, he says, employers who fail to buy workers-comp insurance or cheat on their premiums by reclassifying workers in less dangerous and less costly job categories are bilking insurers out of millions annually. Worse, the injured employees end up filing for Social Security or public assistance, which may pay less and be harder to get.

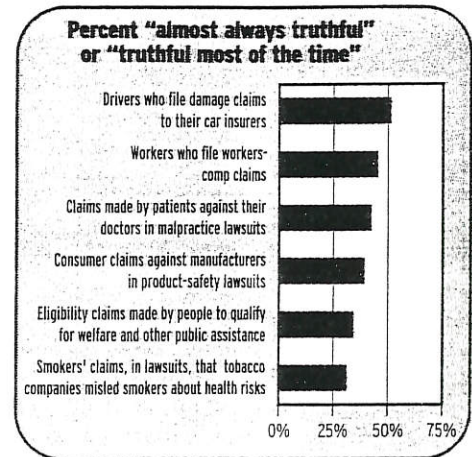
How believable are those claims?

Employers and insurers, says Jeffrey Biddle, a Michigan State University economics professor, sometimes assert that workers-comp claimants are afflicted with an “Oprah syndrome”—the desire to ditch work and watch TV all day.

To find out whether the public agrees, CONSUMER REPORTS conducted a phone survey in November of 1,001 Americans representing a cross-section of the population. We asked respondents how truthful they found six different types of claims. Only 46 percent viewed workers-comp claims to be truthful most of the time, though they were thought to be more truthful than all others in the survey except the claims that drivers make to their auto-insurance companies.

Fear of being disbelieved, says Biddle, may discourage injured workers from applying for workers comp in the first place. A study he conducted of Michigan workers, whose illness reports to companies would have qualified

them for benefits, showed that depending on the industry, only 9 percent to 45 percent of the complaints ended up as claims. A Connecticut study of workers suffering from repetitive-stress injuries found that only 15 percent filed for workers-comp benefits.



A VITAL SAFETY NET

Workers-compensation laws, adopted by all states between 1911 and 1940, were designed to accomplish two goals: to provide medical care and income to workers injured on the job and death benefits to families of those who died, and to protect employers from costly and unpredictable lawsuits by workers.

While each state has its own tangle of laws and regulations, most states require all businesses, except the very smallest, to provide workers-compensation coverage for their employees. To pay for the liability, employers buy insurance, usually from private carriers or state-run insurance funds, or they insure themselves.

If you’re injured on the job, you typically have no choice but to go through the workers-comp insurance system. Your regular health-care provider can and will turn you down for medical coverage—even if you have great benefits—if it discovers you were injured at work. As for lost income, many U.S. workers would have little help without workers comp if they were laid up from an on-the-job accident or an illness. Social Security Disability Income pays a stipend to anyone who is permanently and totally disabled, but it’s generally much smaller than workers comp.

Benefits available to injured workers were never princely, but by the 1970s their levels had sunk so far below the poverty line that President Nixon appointed the National

Commission on State Workmen’s Compensation Laws to study the problem. It recommended, among other things, that states pay totally disabled workers at least two-thirds of their salaries (workers comp is not taxable, so in theory workers don’t need all their wages), up to a cap of 100 percent of the state’s average weekly wage. Fearing federal takeover, states raised benefits. But as of last year, 17 states still didn’t meet that standard wage.

REFORMS CUT BENEFITS AND COSTS

By the mid-1980s, however, insurance carriers found themselves deep in trouble. Medical expenses were increasing by about 11 percent a year, and returns had dropped on the investments that insurers maintain to pay future claims. Premiums were insufficient, and the workers-comp line of insurance lost money every year from 1984 to 1992.

Carriers beseeched state insurance regulators for steep premium increases, blaming their losses on runaway benefit costs and claimant fraud. However, John Burton, dean of the School of Management and Labor Relations at Rutgers University and chairman of the national workers-comp commission, says the losses came partly because insurers had previously made excessive cuts in premiums to attract customers. As rates spiked, employers complained to governors and state legislators that there was a crisis. High workers-comp rates, they argued—then

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Who gets injured and how

Workers in private industry reported 1.8 million injuries and illnesses that required time off work in 1997, the most recent year available. We list the most common injuries, and, based on 1998 data, some industries with relatively high rates per 100 full-time workers.

Injuries and illnesses	Injury and illness rates by industry
Sprains, strains..... 43.6%	Air transportation..... 8.4
Bruises 9.0	Aluminum foundries 6.4
Cuts 7.3	Concrete block and brick 6.1
Fractures 6.5	Prepared flour mixes and doughs 5.7
Multiple traumatic injuries 3.3	Bottled and canned soft drinks 5.4
Heat burns..... 1.6	Commercial laundry equipment..... 5.3
Carpal tunnel syndrome 1.6	Logging 5.2
Tendinitis 1.0	Truck and bus body work 5.2
Chemical burns..... 0.7	Prefabricated wood buildings..... 4.8
Amputations 0.6	Shipbuilding and repair..... 4.8
Other..... 24.8	

Source: Bureau of Labor Statistics

about \$2.20 for every \$100 of payroll—would sink businesses, throw state economies into a recession, and eliminate jobs.

To whip up public support for reform, the insurance industry took its case to TV stations and newspapers across the nation. A powerful weapon was videotape culled from private investigators showing workers cheating small businesses. In a ten-day period in December 1991, no fewer than five reports appeared in the national media, including a "20/20" segment showing claimants committing outrageous abuses. Eric Oxfeld, president of UWC-Strategic Services on Unemployment and Workers' Compensation, which lobbies for insurers on this issue, now concedes that claimant fraud was never a major driver of workers-comp costs. "People understand fraud," he says. "So it got more attention perhaps than it deserved."

JIM STOTTS, 55, breathed in toxic fumes at a Lafayette, La., power plant where he worked for 18 years. His doctors said that he had suffered brain damage, but his employer disallowed his workers-comp claim and terminated him.

The campaign succeeded. In the last decade, 29 states passed major workers-comp laws designed to cut costs. For the most part, legislatures chose from a menu of standard remedies. They allowed insurers to establish managed-care programs that would require claimants to get treatment from insurer- or employer-approved doctors. Several states reduced the number of weeks that workers could collect, stopped benefits when an employee could return to any work, and cut off payments when a claimant reached age 65, whether or not he qualified

for Social Security. And 12 states passed provisions cutting workers-comp benefits if claimants also collected money from Social Security or from their own pension.

Benefits and employer costs, as a percentage of payroll, dropped by more than 20 percent from 1992 to 1996, although many workplace-safety experts believe that some



of the decline comes from safety measures adopted by employers, a decreasing percentage of dangerous jobs in the economy, and greater employer willingness to hire the disabled. If the Occupational Safety and Health Administration goes ahead with new ergonomics regulations, repetitive-stress injuries such as carpal tunnel syndrome could decline further.

Insurers had another reason to cheer: The Social Security offset handed them a multimillion-dollar windfall. By 1995, workers-comp carriers had become the envy of the insurance industry, with annual operating profits of 20 percent. More companies entered the business, and soon insurers were battling each other to cut premiums. Rates dropped further, and state officials crowded with joy: "We have driven a stake through the heart of the No. 1 job killer in California," said Pete Wilson, then the governor, upon passage of the state's reform in 1993.

The new laws not only reduced benefits but made them harder to collect. In many states, the burden is now on workers to prove by a preponderance of the evidence that their injuries occurred as a result of their job and not poor health habits, aging, or a pre-existing medical condition. To win a claim, says Cleveland workers-comp attorney Harold Ticktin, a worker practically has to be "convicted of injury on the job." The result is that ill and injured workers now must fight a series of battles: first, to get medical care; next, to withstand exams by insurance-company doctors who have an incentive to find excuses not to pay; then, to get a fair assessment of any permanent disability; and finally, to win a hearing if there's a dispute.

DELAYS IN MEDICAL CARE

These days medical care doesn't come without a struggle. In 38 states injured workers have to choose a doctor from a company-approved list or managed-care program controlled by the insurer. The doctor may give them a palliative—even for a painful or serious injury—until the insurer agrees to pay for more-expensive care including tests, visits to specialists, surgery, or medication. If there's a dispute, the worker must petition for a hearing before one of the state workers-comp judges. That may add days or months to the wait for treatment.

For example, when Dr. Harvey Baumann, a Providence, R.I., plastic surgeon who treats hand injuries, recommends that a postsurgical workers-comp patient receive rehabilitation, the insurer will grant only nine sessions—"enough for three weeks," he says, and often, not enough. "Even if I write

or can the claims adjuster asking for more sessions right away, the carrier will leave the patient waiting. By the time the insurer agrees to another nine sessions, the good of the first nine is lost." Withholding or delaying such care has cut insurers' medical cost increases to 3 percent per year this decade, from 11 percent per year in the 1980s. Those savings, however, can exacerbate the frustration and stress for some injured workers. "People become so desperate and depressed they can never return to a normal life," Baumann says.

Take the case of Paul Nessmith, a carpenter from Fort Lauderdale, Fla. In 1993 he injured his knee when he fell off a scaffold. A specialist recommended that the 24-year-old undergo arthroscopic surgery. Associated Industries of Florida, the insurer, insisted on a second opinion from its own independent medical examiner—but the claims adjuster took four months to set up the appointment. The new doctor approved the surgery, but it couldn't fix the problem, according to Nessmith's attorney, Andrea Wolfson. Nessmith's doctor told him they would try again, but the insurer wanted another independent assessment, which meant another four-month wait. He eventually got the surgery, but it did no good, his attorney says.

He tried to look for work as the insurer demanded, his wife says, but with only a tenth-grade education plus a leg brace and a cane, no one would hire him. The insurer contended, however, that he wasn't making a real effort and cut off his benefits. His wife, Susan, couldn't work because Paul couldn't take care of their baby, she says, adding that the family survived by borrowing from relatives and friends.

Four years later, after several hearings, a workers-comp judge ordered the insurer to pay Nessmith previously owed and ongoing benefits. The insurer made good on old payments, but paid no more. Wolfson was forced to go to court again, she says, "just to get him what the judge had already ordered." Nessmith took his own life in March 1998 by swallowing "all the prescription drugs he could lay his hands on," Wolfson says. Two days later, she received notification from the insurer that it was declaring Nessmith permanently and totally disabled and would pay

Susan a \$100,000 death benefit. The company declined comment on the case.

THE SECOND OPINION

Getting medical care depends on the opinion of an independent medical examiner (IME), a physician called in to assess a patient's condition. IMEs are paid by the insurer. On average, they earn \$507 per consultation, according to a 1997 survey of 266 IMEs conducted by SEAK, a medical-seminar company. Specialists like psychiatrists earn



SUSAN NESSMITH'S husband Paul, a Fort Lauderdale, Fla., carpenter, took his own life in 1998 after a five-year battle with his insurer to get medical benefits for his injured knee. "He was in constant pain and depressed because he couldn't take care of me and our daughter," she says. Two days after his death, she received word from the company that it had declared him permanently and totally disabled and awarded benefits.

as much as \$900 per consult.

The high fees are justified, says Dr. Chris Brigham, editor of The American Medical Association's The Guides Newsletter, which helps doctors and others evaluate workers-comp cases. A proper exam, he says, should include a complete review of the patient's medical records, a thorough interview, an appropriate physical examination (which typically takes about an hour and a half), and a written report—possibly a four- or five-hour job. Determining the severity and cause of an illness is a complicated task, and careful professionals can disagree.

But more than a dozen injured workers who spoke to CONSUMER REPORTS, whom we found through lawsuits, injured-worker groups, and the Internet, uniformly complained of doctors who clearly hadn't read their medical records and of examinations that lasted no more than 15 minutes. And

even though a negative report from an IME can play a big part in an insurance company's decision to cut off benefits immediately and unilaterally, workers in some states can't have anyone witness an exam except for their treating physician, who may not be available. Others can't even know what's in an IME's report until it becomes evidence at an official hearing.

IMEs also examine a worker's medical history to find other explanations for the illness or injury. In Oregon, for example, if 51 percent of the cause of the medical problem is attributable not to the job but to ordinary aging or a pre-existing medical condition, the worker gets nothing at all.

After Jim Stotts was diagnosed with toxic encephalopathy, for example, his employer called in an IME. In a letter to the IME, Lafayette's risk-management division suggested that his illness might be explained by alcohol abuse: "The application completed for physician's appointment ... shows that Mr. Stotts consumed approximately 40 drinks over ... one weekend," it read. A copy of the application shows that Stotts admitted to an alcohol problem—

12 years earlier. "The last time I had taken a drink was in 1978," he says.

Insurers sometimes shop patients around to a series of IMEs, flying them out of state and putting them up at motels. According to "Unjust Treatment," a 1998 New York AFL-CIO report, IME documents are often altered to please insurers.

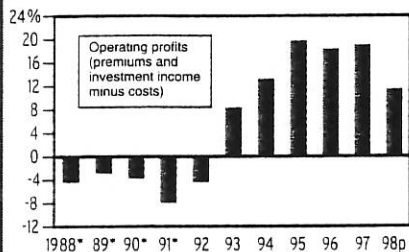
Mary Jeffords, 43, has two steel rods and four screws near the base of her spine and uses two canes to get around the apartment complex for the handicapped where she lives in Sanborn, N.Y. She was injured in 1987 in a brutal beating by a mentally retarded patient at the group home where she worked as a weekend supervisor. She spent a total of four months in the hospital and won benefits only last year—12 years after the attack—as a permanently and totally disabled person.

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Still asserting that she wasn't as injured as she claimed, Liberty Mutual, the insurer, asked for an assessment by an IME in 1996. After a hearing at which Liberty Mutual contended that Jeffords was only moderately disabled, she requested a copy of the report, and two surfaced. Both reports, dated the same day, were identical until the

Reforms aided insurers ...

Since passage of reform laws in the early 1990s, workers-compensation insurers have enjoyed years of profits, but they're starting to slip.



* Figures for 1988-1991 have been adjusted to reflect realized capital gains, to be consistent with other years.
 † Preliminary figures.
 Source: National Council on Compensation Insurance

conclusion on page 7; one called her disability "total," while the second said it was "moderate." After Jeffords complained to the New York attorney general about the two reports, however, her IME said that he had merely altered his initial opinion after reviewing his notes. Liberty Mutual said it had nothing to do with his change of mind. Meanwhile, the judge refused to reduce Jeffords' benefits.

WINNING LOST WAGES

An insurer makes temporary total disability payments, usually two-thirds of salary up to the state cap, until a worker reaches "maximum medical improvement." Then a doctor may release the claimant for work or assess any permanent impairment that prevents a return to the job. The conclusion, whatever it is, will determine how much an injured worker can collect in lost wages permanently. States should weigh many elements in determining a person's disability: education, age, capacity for retraining, pain, and so on, says Brigham of the American Medical Association newsletter.

Yet 38 states go solely by impairment scores set forth in the AMA Guides to the Evaluation of Impairment, even though Chapter 1 warns that financial awards should be not be based solely on scores. In many states, having severely damaged shoulders is a 15 percent whole-person impairment, so if two-thirds of a worker's average weekly wage is \$500, he would get \$75 a week no matter how important

shoulders are in doing his job.

About 1 to 3 percent of injured workers are declared totally and permanently disabled and receive the maximum state benefits. In a 1998 study of partially disabled workers who were injured in the early 1990s in California, Robert Reville, a RAND Institute analyst, found that generally claimants receive about 30 percent of their previous income instead of the two-thirds that the national commission had recommended. "They try to return to work," he says, "but their condition makes it hard for them to earn as much as before or to retain jobs."

APPEALING AN INSURER'S DECISION

A claimant who has been denied a medical treatment or wage-loss benefit has to take his or her case to the state workers-compensation board. That's no simple task. In Florida, which supposedly has a streamlined system, claimants must first meet with an ombudsman who tries to work out the problem with the insurance company. If that fails, there's a settlement conference, and if that fails, a trial before an administrative judge. Except for ombudsman meetings, the procedures are legal affairs, generally requiring depositions, testimony, and filing fees. Pursuing a case may take years. When the International Association of Industrial Accident Boards and Commissions polled states about how long it took for claims to get from an application for a hearing to the judge's decision, only 13 states responded. The average lag time ranged from 30 days in Michigan to 1½ years in Iowa. According to the California Compensation Institute, 43 percent of that state's cases are still open after 3½ years.

Many states limit workers-comp lawyers to small fees. One aim, of course, is to keep workers from being gouged. But the caps also have had an unintended effect: further prolonging the process.

In 28 states, insurers or state funds are required to pay a worker's legal bills if the worker wins a dispute. The bills are so small, says former Louisiana workers-comp judge Aimee Johnson, "There's not much incentive for insurers to pay a claim without challenging it." And plenty of attorneys, says Ernie Delmazzo of the Oregon Injured

Workers Alliance, prod workers to accept small lump-sum settlements rather than fighting it out in court for doubtful rewards. By contrast, there are no limits on what insurance companies can pay their own lawyers to defend them from claims.

Even when workers win, their benefits may be cut off if they don't cooperate with their insurer. John McKay, 48, of Monaca, Pa., is a former journeyman bricklayer who injured his knee and sustained nerve damage in his legs when a scaffold collapsed in 1992. He was declared permanently impaired; he can't walk well, and sitting for any length of time is painful.

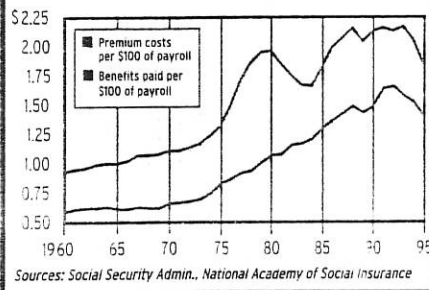
But in February 1997, Cigna, his insurer, forced him to take a job with a telemarketing company under a program the insurer subsidized. Hearings last year before the Pennsylvania Senate Labor and Industry

Committee revealed that the businesses involved failed to determine whether disabled workers could actually perform the work, rarely gave much training, and, after six months, either fired workers for incompetence or complained to insurers that they were uncooperative.

McKay received only one half-hour of training, he says, but persevered for six months by taking double his usual amount of pain medications. When he stopped working at his doctor's request, Cigna would not restore his benefits—though he got them restored six months later. The insurer declined to comment.

... and businesses

As a percentage of payroll, workers-compensation costs for employers have fallen in recent years.



Sources: Social Security Admin., National Academy of Social Insurance

ONE-SIDED ATTACK ON FRAUD

In their reform laws, 18 states set up special agencies to ferret out workers-comp fraud. It's important to crack down on cheaters; they boost premiums and the cost of goods and services for everyone. But most current enforcement efforts are one-sided: In almost all jurisdictions, the target is the claimant. Yet fraud by medical providers and employers is much more significant.

The Texas Research and Oversight Council on Workers' Compensation found that in 1996, fraudulent billing by doctors and other health-care providers cost about \$1.2 million—more than eight times the \$134,000 in phony worker claims that were uncovered. In Florida, a 1997 grand jury

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rep and that about 13 percent of a sampling of the state's businesses carried no workers-comp coverage, even though most are legally required to do so. Florida, Minnesota, Arkansas, and California have started efforts to prosecute employer fraud, but in many states it's not a priority. Claimant fraud is a felony, but a company's failure to carry workers-comp insurance may be only a misdemeanor.

These days, medical costs, which held steady in the early 1990s, have started spiking again. And as in their lush years, workers-comp carriers have allowed claims-handling expenses to steadily increase while cutting rates too far to cover them, according to a 1999 report on the workers-comp industry by Conning & Co., the research firm. Employers are paying about 20 percent less than they should be, says Hartwig of the Insurance Information Institute.

Insurance companies are again saying that unless something gives, premiums will rise. "Reform," says lobbyist Oxfeld, "is by no means at an end."

RECOMMENDATIONS

Workers deserve more help from the workers-compensation system than they're getting.

The Occupational Safety and Health Administration should persist in its enforcement and regulatory efforts to make the workplace safer. The easiest way to keep workers-comp premiums and benefits low is to cut on-the-job accidents and illnesses.

Congress should revive standards set by the National Commission on State Workers' Compensation Laws, which, among other things, asked that benefit caps be raised to 100 percent of each state's average weekly wage.

States should audit their workers-comp systems to see whether they're too restrictive. States should also tighten deadlines for decisions and fine parties that delay, to discourage "starve out" tactics. Workers who receive good prompt treatment are less likely to be permanently impaired.

Workers should contact their state labor department to see if their employers have workers-compensation insurance, if there's any doubt. When considering a job, they should ask if the company offers group private long-term disability insurance. Consumers can also buy long-term disability insurance on their own.

If you become injured on the job, immediately report the circumstances and date in writing to your employer and get a receipt.

For more information on workers comp, visit www.aflcio.org/safety/comp.htm. ©

RECALLS

Vehicles and equipment

► '91, '93-94 DaimlerChrysler minivans

Liftgate could drop suddenly and unexpectedly, possibly injuring anyone in its path.

Models: 1.8 million minivans made 8/90-6/94, including Chrysler Town & Country; Dodge Caravan and Grand Caravan; and Plymouth Voyager and Grand Voyager.

What to do: Have dealer inspect and, if necessary, install larger washers on bolts that attach liftgate supports.

Household products

► Gap and Old Navy children's pajamas

Garments may be neither flame-resistant nor self-extinguishing if fabric ignites, in violation of federal flammability standards.

Products: 231,000 garments sold 8/99-12/99 at GapKids, babyGap, Gap Outlet, and Old Navy stores for about \$20 to \$40. Six styles of pajamas are subject to recall, including the following:

Style 353558: 2-piece flannel pajama sets with long sleeves and pants, and buttons in front. Sets came in yellow with penguin print or navy with bear print. Labeled "Gap" and "100% polyester." Sold in sizes 2 through 14. Style 353554: Like 353558, but in fleece material. Came in white, blue, and pink with snowflake print.

Style 466291: 1-piece fleece footed pajama with zipper front and long sleeves. Came in navy with white star print. Labeled "babyGap" and "100% polyester." Sold in infant and toddler sizes XS through 3XL.

Style 674060: 2-piece button-front top with long sleeves and long pants. Came in lavender or blue with white piping around pant cuff; shirt has piping around collar, front placket, and cuff. Labeled "Old Navy" and "100% polyester." Sold in infant sizes 6 to 12 months through toddler sizes 2T to 3T.

Style 733002: 1-piece fleece footed pajama with zipper front and long sleeves. Came in blue with white snowflake print. Labeled "babyGap" and "100% polyester." Sold in infant and toddler sizes XS through 4XL. Style 733032: Like 733002, but in black-and-white pony print and cheetah print. Labeled "babyGap" and "100% polyester." Sold in infant and toddler sizes XS through 3XL.

What to do: Return garment to any Gap or Old Navy store for refund plus \$10 gift certificate. For information, call Gap at 800 427-7895 or 800 653-6289, or visit www.gap.com or www.old-navy.com.

► Sunbeam, Hankskraft, and SunMark "glow in the dark" humidifiers

Pose fire hazard.

Products: 560,000 humidifiers sold 3/95-12/97 at discount department stores and drugstores for \$8 to \$15. Sunbeam units came with 1-gallon, 1.5-gallon, or 2-gallon tank and have service numbers 644 through 646 written on back of motor housing. Hankskraft models came with 1.2-gallon, 1.7-gallon, or 2.5-gallon tank and have service numbers 1260 through 1262 on inside of plastic motor housing. SunMark humidifiers came with 1.2-gallon tank and have service number 1260 on inside of motor housing. Suspect units have date code 1001 through J226 stamped on electrical plug. Units are white with green, blue, or rust-colored covers. Brand name is written on plastic cover.

What to do: Call Sunbeam at 800 440-4668 to learn how to return humidifier to company for free replacement, or visit www.sunbeam.com.

FOR MORE INFORMATION

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To: House Commerce and Labor Committee

From: Rep. L. Candy Ruff

Re: HB 2654

When our Commerce and Labor Committee started meeting earlier this Session, we heard of the current status of the Kansas Workers Compensation program. Where the 1993 Legislative Session faced annual worker compensation premium increases from 10 to 20 percent, Kansas employers in 2006 were pleased to learn NCCI had recommended a two percent decrease. When Kansas companies shopped for worker compensation coverage in 1993 only a handful of insurance companies were willing to write policies. This year our Kansas Department of Insurance reports well over 200 companies eager to do business in Kansas. That might have something to do with the profits they can make. The Dole Institute at Fort Hays State reported not long ago that insurance companies writing worker compensation policies in Kansas enjoyed profits that ranked fourth in the nation.

Some statistics, however, never change. Whether 1993 or 2006, medical costs continue to drive the worker compensation engine in Kansas. Accounting for 50 to 60 percent of the premium costs, prescription drugs and medical procedures manage to almost double in price from year to year. We see it in our employee health insurance premiums and we see it in our worker compensation premiums as well. When it comes to indemnity costs that include benefits, lawyers and court proceedings, the impact on premiums remains constant from decade to decade. Chief among the reasons is this: Benefits to injured workers are 48th in the nation.

Our committee's new vice chairman said at the start of the Session that despite the lack of a crisis situation in worker compensation today, the issues before us this year would center on what is good state policy. I agree, Rep. Schwab, because the compensation given injured workers in Kansas is a disgraceful state policy. And that is why I asked for legislation to increase benefits. HB 2654 would first increase the weekly benefit injured workers receive while recuperating from injuries suffered on the job. This bill increases from 66 to 75 percent of the state's average weekly wage. My proposal would also raise the minimum weekly benefit for low-income workers from \$25 to \$100 a week, realizing the special circumstances surrounding the lives of workers living so near poverty. In addition, my proposal eliminates the cap paid to those who are permanently and totally disabled. Only four states cap these benefits and the other three top out at nearly a half million dollars compared to Kansas at \$125,000. How cruel it is for someone so dreadfully injured to face the future unable to work and devoid of benefits because they ran out. We can do better in Kansas.

It was also my intention to get rid of the Fletcher Bell provision in our worker compensation law. Capped at \$50,000 for permanent partial disability, this amendment was motivated by a settlement given the former insurance commissioner. Although not included in this bill, it is my intention to offer an amendment when this bill is worked.

A. consider what is good state policy in the Kansas Workers Compensation program, it is my hope that our committee and later our fellow House members accept an increase in benefits for injured workers. Other than the death benefit increase from \$125,000 to \$250,000 granted six years ago, workers compensation benefits have not been adjusted since 1987. That nearly 19 years ago. It's time to do a better job of compensating injured workers in Kansas.

The Changing Value of Workers Compensation Benefit Caps
Testimony presented to the House Commerce and Labor Committee

By Patricia Oslund, Policy Research Institute, University of Kansas
February 9, 2006

Chairman Dahl and Members of the Committee:

Good morning. My name is Pat Oslund, and I am a Research Economist at the University of Kansas Policy Research Institute. We at the Institute were contracted by the Kansas Coalition for Workplace Safety to provide background information about how changing economic conditions have affected the value of Workers Compensation Benefit Caps. The testimony that I present today consists of my own findings, and does not represent the position of the University of Kansas or any other parties.

Several benefits provided by Workers Compensation have an absolute dollar cap, or an absolute maximum payout. For example, the cap on payments for permanent total disability is \$125,000, as it has been since 1987. Fortunately, most workplace injuries do not disable the worker to the extent that the cap levels are reached. But unfortunately, benefit caps become effective in the most serious cases. And unfortunately the benefit cap amounts have not kept pace with changing economic conditions.

There are two ways in which we can try to estimate the impact of changing economic conditions on the value of benefit cap amounts. One method is to examine the impact of inflation.

You all have heard about the Consumer Price Index, which is reported in the news every month. The CPI is used to measure the purchasing power of a dollar in different time periods. To take an example, if the CPI was 100 in 1983 and 200 today, then inflation would have 100 percent between the two years, and you would need 200 dollars today to buy what you could have gotten for \$100 back in 1983, or to have the same purchasing power.

What you may or may not know is that there is not a single CPI, but rather several, covering different geographic areas and different groups of consumers. The CPI that comes closest to representing Kansas workers is called the Kansas City CPI for wage earners and clerical workers. Table 1 in your report shows inflation calculated using various price indexes. Table 2 shows the dollar amounts that you would need today to have the same purchasing power as provided by the worker comp benefit caps back when they last were adjusted. For example, today it would take over \$205,000 to buy the same goods and services that you could get for \$125,000 back in 1987.

Another method of viewing the impact of changing economic conditions on workers compensation caps is to look at wage growth. The inflation and the wage growth methods are not completely different, because inflation IS the major contributor to wage growth. But wage growth also reflects changing productivity, changing competitive positions, and other factors. Changes in the maximum weekly benefit allowed under Workers Compensation already are tied

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to wage growth. But the total cumulative amounts that an injured worker can receive have remained unchanged over long periods of time.

Table 3 shows what worker compensation caps would look like today if they had grown at the same rate as average Kansas wages. The rationale for this is that Worker Compensation benefits are intended to replace lost wages. We see, for example, that the benefit cap for total permanent disability, set at \$125,000 back in 1987, would be \$228,000 today if it had kept pace with wage growth.

Regardless of which method we use, it is clear that the value of worker comp cap amounts have not kept up with economic trends.

The Eroding Value of Workers Compensation Benefit Cap Levels

**A report prepared for the
Kansas Coalition for Workplace Safety**

**By
Patricia Oslund
Research Economist**

**Policy Research Institute
The University of Kansas
Lawrence, Kansas
Dr. Steven Maynard-Moody, Director**

February 8, 2006

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The Declining Value of Workers Compensation Benefit Cap Levels

This report addresses the effect of price inflation on the purchasing power of Workers Compensation Benefits. Worker compensation benefits depend on factors such as the extent of a worker's wage level and the extent of his injuries. However, benefits are capped at fixed dollar amounts. Benefit caps are not adjusted on a regular basis. As each year goes by, the maximum allowable benefits go less and less far towards supporting an injured worker and her family.

In this report, we look at two possible methods of valuing maximum benefit caps. One approach looks at what could be purchased by a worker whose injuries and wages warrant compensation at one of the maximum benefit levels. How have price changes affected the purchasing power of a worker's payments? To complete this analysis, we examine several alternative price adjustment measures provided by the US Bureau of Labor Statistics (BLS)¹. A second approach looks at wages; what would benefit caps look like today if they had grown by the same rate as Kansas average wages per employee?

Method 1: Purchasing Power Adjustment

We all experience the impact of inflation in our daily lives. Inflation produces winners and losers; one couple may retire comfortably on the proceeds of a home that has risen in value. Another couple may drift into poverty as the purchasing power of a fixed pension erodes. Inflation hits hardest on those whose income or benefits are defined in fixed dollar terms that are not adjusted over time. People who depend on benefits that have been capped under Kansas Workers Compensation provisions are a good example of this hardest hit group.

How to measure changes in the value of a dollar

When prices change, the purchasing power of a dollar changes accordingly. If people purchased only one good, say bread, measuring the purchasing power of a dollar would be easy: it simply would be the amount of bread that could be purchased with a dollar. But real people purchase an array of hundreds of goods and services. Furthermore, people purchase these goods and services in different proportions: for some people, gasoline is 20 percent of their weekly expenditures; for others it is only 5 percent. Hence there is no perfect measure of the value of a dollar or of the "cost of living."

However, the BLS calculates *approximations* of the cost of living, published as the often cited Consumer Price Index, or CPI. And in fact, there is not a single CPI, but rather several CPIs, each of which depends on the population group whose expenditure patterns are tracked.

Examples of price indexes include:

- all urban residents in the US (the most commonly used CPI)
- all urban wage earners and clerical workers in the US
- urban residents in the Midwest
- urban wage earners and clerical workers in the Midwest
- urban residents in the Kansas City Area (no other Kansas areas are included by BLS)
- urban wage earners and clerical workers in the Kansas City Area.

BLS price indexes are computed as the ratio between the weighted average of prices in the current time period to prices at some historical base time period (1982-1984 is used as the base for the CPI). By definition, the index is 100 in the base period. If the Consumer Price Index were 200 today, this would mean that prices on average had doubled since the base period. Inflation is calculated as the percentage change in a price index. Table 1 below shows several commonly used price indexes and the inflation that is computed from them.

Table 1: Price Indexes and Inflation

Index Name	Index- July 1987	Index- July 1993	Index- July 2000	Index- Dec. 2005	Inflation 1987- 2005	Inflation 1993- 2005	Inflation 2000- 2005
CPI-All Urban Consumers	113.8	144.4	172.8	196.8	72.9%	36.3%	13.9%
CPI-All Urban Consumers- Midwest	112.3	140.0	168.8	189.7	68.9%	35.5%	12.4%
CPI-All Urban Consumers- Kansas City	111.5	137.5	165.0	187.3	68.0%	36.2%	13.5%
CPI-Urban Wage Earners and Clerical Workers	112.7	142.1	169.4	192.5	70.8%	35.5%	13.6%
CPI-Urban Wage Earners and Clerical Workers-Midwest	110.4	137.2	165.1	185.1	67.7%	34.9%	12.1%
CPI-Urban Wage Earners and Clerical Workers-Kansas City	108.6	133.5	159.5	178.6	64.5%	33.8%	12.0%

As can be seen in Table 1, all of the listed priced indexes follow the same general pattern. However, prices have risen less rapidly in Kansas City and in the Midwest than they have in the nation as a whole. Similarly, prices based on the expenditure patterns of wage earners and clerical workers have risen less rapidly than prices based on the expenditures of all urban consumers.

In the calculations that follow, we rely on the CPI for Kansas City wage earners and clerical workers. The definition of this group most closely matches the characteristics of those who may become eligible for Kansas Workers Compensation benefits. It would be straightforward to change our calculations to make use of a different index; however this would not change our overall conclusions.

Adjusting benefits for inflation

Several workers compensation benefits are subject to a maximum capped level. Caps for total disability, partial disability, and temporary total disability have not been adjusted since 1987. The functional only cap has been set at \$50,000 since 1993, and the death benefit cap has been set at its current level of \$250,000 since 2000.

As can be seen in Table 2 below, substantial increases in Workers Compensation benefit caps would be necessary to bring the purchasing power of the benefits back to what they were when the caps were established. To put this in human terms, a worker in 1987 could have heated his home for a month, purchased 5 pounds each of bananas and hamburger, brought home 5 half-gallons of ice cream, and filled his car twice--all for under \$100². Today, the heating bill alone would be over \$100. Averaged over all of the goods a typical worker buys, prices are almost 65 percent higher than they were in 1987.

Table 2: Capped (Maximum) Benefits Adjusted for Inflation as of Dec. 2005

Capped Benefit	Maximum Amount (\$)	Date Last Adjusted	Inflation Based on KC CPI	Adjusted Amount (\$)
Permanent Total Disability	125,000	July, 1987	64.5%	205,625
Permanent Partial Disability	100,000	July, 1987	64.5%	164,500
Temporary Total Disability	100,000	July, 1987	64.5%	164,500
Functional Only	50,000	July, 1993	33.8%	66,900
Death	250,000	July, 2000	12.0%	280,000

Source: Data from BLS (see endnote 1). Calculations by PRI, University of Kansas.

Method 2: Average Wage Adjustment

So far, we have examined the effect of consumer price changes on the value of Workers Compensation benefits. This section takes an alternative approach, asking “what would benefit caps look like if they had kept pace with average *wage* changes?” It is true that the single biggest factor behind changes in the average wage is price changes, so the price and wage approaches will give somewhat similar results. However, wage changes also reflect such factors as changes in productivity and collective bargaining agreements.

Each year, the Kansas Department of Labor³ computes a statewide average weekly wage. This statewide average is used to peg maximum weekly Workers Compensation benefits—at two-thirds of the Kansas average wage per worker. But while wage growth is reflected in the growth of maximum weekly benefits, it does not affect benefit caps. As wages rise and caps remain constant, this means that many injured workers will reach their benefit caps in fewer weeks.

Table 3 below shows the adjustments that would be necessary in order for benefit caps to keep pace with the growth of wages in Kansas. We find that adjustments based on wage growth would be somewhat higher than adjustments based on changes in the Kansas City CPI.

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Table 3: Benefits Caps Compared with Growth of Kansas Average Wages

Capped Benefit	Maximum Amount (\$)	Date Last Adjusted	Growth in Kansas Av. Wage through 2005	Adjusted Amount (\$)
Permanent Total Disability	125,000	July, 1987	82.4%	228,000
Permanent Partial Disability	100,000	July, 1987	82.4%	182,400
Temporary Total Disability	100,000	July, 1987	82.4%	182,400
Functional Only	50,000	July, 1993	49.2%	74,600
Death	250,000	July, 2000	16.5%	291,250

Source: Wage data from Kansas Department of Labor (see endnote 3).
Calculations by PRI, University of Kansas.

Summary

We have examined the impact of fixed maximum benefit caps using two different methods. Under method 1, we used the CPI for wage earners and clerical workers for Kansas City to measure inflation. We found that benefits that were capped in 1987 would need to increase by about 65 percent to adjust for inflation; benefits that were capped in 1993 would need to increase by about 34 percent, and benefits capped in 2000 by about 12 percent.

Under method 2, we used data from the Kansas Department of Labor to measure changes in the average wage level. We estimated how much benefit caps would need to change in order to track wage growth. We found that benefits that were capped in 1987 would need to increase by about 82 percent to match wage growth; benefits that were capped in 1993 would need to increase by about 49 percent to match wage growth, and benefits capped in 2000 by about 17 percent.

The two methods differ somewhat in their exact dollar estimates. However, they both tell the same story—that maximum Workers Compensation benefits have eroded substantially over time.

¹ Data for Consumer Price Indexes are published by the US Bureau of Labor Statistics and are available on the BLS Web site: <http://www.bls.gov/cpi/home.htm> (02/08/2006).

² Data on prices for specific items are published By the US Bureau of Labor Statistics in its “Average Price Data” series. We used data for Kansas City where available and data for the Midwest Region otherwise. <http://www.bls.gov/cpi/home.htm> (02/08/2006).

³ Data on average wages are calculated by the Kansas Department of Labor. Historical data from 1993-2005 are published on the KDL website: http://www.hr.state.ks.us/wc/html/wccurrent_ALL.html (02/08/2006). Additional historical data were received directly from KDL.

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TESTIMONY IN SUPPORT OF
HOUSE BILL 2654

BY
FRANKE STRAUB
5983 S.W. 30TH TERRACE
TOPEKA, KANSAS 66614

February 9, 2006

Thank you Chairman Dahl and Members of the Committee. My name is Franke Straub. I was injured on August 18, 2004, while working at Alma Foods in Alma, Kansas. I injured my neck, back and right arm on August 18, 2004, while lifting a heavy piece of machinery. Since September 29, 2004, I have received temporary total disability benefits in the amount of \$449.00 per week. I am still receiving medical treatment, and the doctors are now talking about the possibility of surgery on my neck.

Prior to the injury, I was earning over \$800.00 per week. Since my injury, I have been forced to endure not only the stress of not being able to work and the pain associated with my injury, I have also been forced to endure the added stress of trying to live and pay my bills on about half of my normal income. Due to the severe reduction of my income, several of my bills are way behind, and I am looking at the possibility of bankruptcy. I have had to sell some of my possessions just to make ends meet, and if it was not for my fiancé allowing me to stay at her house, I would not be able to make ends meet at all.

Additionally, even though temporary total disability benefits have been ordered since September 29, 2004, the insurance company routinely is late with my checks. At times, they have been up to three weeks behind. Sometimes the checks will arrive on time for a couple weeks, and then the next check is a week or two late. This has happened as a regular course ever since September 29, 2004. Something needs to be done to correct this abuse by the insurance company. How would you be able to pay your bills if you never knew when you would get a paycheck? Not only has my income been cut in half, through no fault of my own, I also never know when I am going to get even that half.

Due to my injury to my neck, back and arm, and the resulting atrophy and loss of strength in my right hand, I will never be able to return to my prior occupation as an electrician/mechanic. In addition to being forced to live on approximately half of my normal income, I will have to figure out some way to earn a living after I have been released by the doctors. Right now, I understand that my benefits potentially available to me are capped at \$100,000.00, including the temporary total disability I have been paid and what I will receive for my permanent disability. I have lost my ability to earn wages in the labor market as a result of this injury which occurred through no fault of my own. I do not have any educational training other than that of an electrician. I cannot work as an electrician, because of this injury. I do not know how I will ever be able to earn any wages anywhere close to what I was earning before. This injury will affect my ability to work for the rest of my life, but I am capped

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by law at \$100,000. Over the 415 weeks that my compensation is based on, if I could have continued to work earning \$800 per week, I would have made \$332,000. This result is simply just wrong. No one in their right mind would want to be in the workers compensation system. It seems to me that Kansas employers, especially the corporations and the large insurance companies, are recording record profits at the expense of the suffering of Kansas workers and their families. You have the power to make changes necessary to treat Kansas workers fairly, and I urge you to do so. I also understand that Kansas has some of the lowest benefits in the Nation. I believe the way Kansas workers compensation law treats the hardworking employees in Kansas is wrong.

While the changes in benefits proposed by House Bill No. 2654 will not help me, I believe that the changes are appropriate and long overdue. I would urge you to vote in favor of this bill and to stand up for injured workers and their families in the State of Kansas. I will be watching how this Committee treats injured workers as will the 500,000 members of the Kansas Coalition For Workplace Safety.

Thank you for allowing me to testify.

TESTIMONY TO HOUSE COMMITTEE ON COMMERCE AND LABOR

RE: HOUSE BILL NO: 2654

Good Morning. My name is Doug Allen. I live in Spring Hill, Kansas. I am a workers' compensation victim. I am an injured worker and not an employer. I am here today to discuss the very substandard benefits provided to injured workers in this State. I have reviewed House Bill No. 2654 and appreciate that it provides for an increase in benefits currently being paid. I want you to understand that these changes are insufficient to meet the needs of injured workers in Kansas.

Like many other workers' compensation claimants, I live and work in Kansas. I have a family which I am raising in Kansas. My daughter goes to school in Kansas and my family goes to church in Kansas. I pay taxes in Kansas. I always assumed that if injured on the job, the laws in Kansas would protect me and my family. Then I was injured on the job and learned how a work related injury could affect me and my family.

I injured my shoulder, low back and both knees in accidents which occurred in September and October of 2004. My employer did not notify its workers' compensation insurance company in a timely manner but, rather, told me to go to a doctor if I absolutely needed to and charge it to my health insurance. I went to a doctor who performed surgery on one of my knees. The result has not been very good but I was supposed to have surgery on the opposite knee. Authorization has been withheld.

Although my employer finally notified its' workers' compensation insurance company of my claim eventually and medical care was provided for my back and shoulder, medical care was refused for my lower extremities. In order to obtain any relief I was forced to retain the services of an attorney. We have fought for treatment for over seven (7) months. I have been unable to work since May 30, 2005 and was terminated by my employer on June 17, 2005 because I could no longer do my job. I have received no compensation.

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I have been to two (2) hearings. Despite having an Order for medical care, the insurance carrier has refused to provide it even though I have won both hearings ordering them to provide medical treatment. There is no penalty in the workers' compensation law if the employer/insurance carrier fails or refuses to provide medical care they have been ordered to provide. The administrative law judge now says I can go to any doctor I want and the insurance company must pay but I've not been able to find an orthopedic surgeon who will assume care under the circumstances.

My salary prior to these injuries was over \$82,000.00 per year. I had fringe benefits which made my salary worth more than \$100,000.00 per year. I have been unable to work, generate any income from farm work or obtain another job due to these injuries. Even if I had been receiving the maximum workers' compensation benefits for this entire time I would have received less than \$13,500.00 or approximately twenty-eight percent (28%) of my normal earnings during that period. I have lost my fringe benefits such as vehicle expenses, 401k retirement and employer paid health insurance. I now pay about \$800.00 monthly.

I was a management employee. I may be more fortunate than many others. I had many employees who worked for me who made only \$12-\$15/hr. With wages between \$480 to \$600/wk., if they were paid temporary total disability, they would only receive \$320 to \$400/wk. Could you or your family live on that? Those same employees, if they had to go through what my family and I have been through, would have lost everything they had and would be far in debt with no hope of ever recovering. If the disability was permanent and bad enough, they would have no future nor would their families. These people do not want to become wards of the state.

I understand House Bill No. 2654 does increase some benefits, however, a much more realistic view should be taken. It is my understanding that there have been no changes in the method of computation to determine weekly benefits since July 1, 1974. (At which time it was determined the claimant's weekly benefit would be based on two-thirds (2/3) of his average weekly wage not to exceed sixty-five percent (65%) of the State's average

weekly wage for the preceding year). Please consider a more significant change in the law. I know the Coalition on Workplace Safety can provide you with statistics to show how low Kansas benefits are compared to those provided in other states. Why is it unreasonable to compute compensation on the injured workers actual wage?

The payment of benefits as the law is currently written can only cause the ruination of injured workers in this state. Workers who are supporting families and who become temporarily or permanently disabled cannot live on \$467/week (the current maximum payable in Kansas). I want to give my employer a full day's work for a day's pay. All I and others want is fair compensation when our jobs disable us. Kansas law does not do that now.

Please understand these injured workers are not only Republicans and Democrats but members of our families and our friends and neighbors. We should not treat our friends and neighbors this way.

Kansas AFL-CIO

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Testimony on HB 2654 to the House Commerce & Labor Committee

By Wil Leiker, Executive Vice President
Kansas AFL-CIO

February 9, 2006

My name is Wil Leiker, Executive Vice President of the Kansas AFL-CIO. I am here to testify in support of HB 2654. The intent of HB 2654 is, in part, to increase the weekly maximum compensation rate 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 when injured and unable to work. 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 employed Kansans 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 2005 NCCI report, which pictures the insurance industry making high profits as well as the Docking Institute report from 2004, which showed Kansas injured workers receiving benefits at a level near the very bottom of all states in this country. Hopefully 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. It is time to pass favorable legislation for Kansas working families. It is difficult to comprehend how the system can be considered "balanced" when benefits in many areas have been frozen for almost two decades. Obviously, any raise in benefits will have a minimal impact on premiums. To ignore the existing unfairness of the system year after year simply because of a potential increase in premiums is to turn our backs on the Kansas workforce and their families.



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In addition, HB 2654 would raise the permanent total disability from the current \$125,000. 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 19 years, and the cost of this change will have a minimal effect on premiums.

Thank you for allowing me to testify.

TESTIMONY IN SUPPORT OF
HOUSE BILL 2654

BY
MARK BLOCK
1515 D AVENUE
DWIGHT, KANSAS 66849

February 9, 2006

Thank you Chairman Dahl and Members of the Committee. My name is Mark Block. I suffered a work-related injury in a motor vehicle accident in Marion County, Kansas, on May 16, 2001. As a result of the work-related injury I 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 2654. I also spoke in favor of House Bill 2317 last year which would have raised benefits to injured workers.

Following my injury of May 16, 2001, which occurred through no fault of my own, I received temporary total disability benefits in the amount of \$401.00 per week which was the maximum rate for May, 2001. Before my injury, my wages, which included benefits, were over \$700.00 a week. My family and I have been forced to live on the \$401.00 a week maximum which was a 43% pay reduction. This reduction of wages created a substantial hardship for my family and myself, and in addition to the stress caused by the injury itself, my family and I were forced to endure the stress of trying to survive based on weekly payments of \$401.00 per week when we were used to having \$700.00 plus a week to live on. The current system, which only pays two-thirds of the injured worker's wage up to 75% of the State maximum, is a slap in the face to injured Kansas workers and hurts Kansas workers and their families.

While House Bill 2654, will not help me, it will make it easier for Kansas families to survive the hardships created by a work-related injury. Increasing the temporary total disability to 75% of the injured worker's wage and increasing the max to 100% of the State average weekly wage, is a step in the right direction. Under House Bill 2654, an injured worker would only suffer a 25% pay reduction instead of the nearly 50% reduction my family and I were forced to endure.

As a result of my injuries, I was deemed to be permanently and totally disabled, and my benefits, including temporary total disability benefits, were limited to \$125,000.00, which is supposed to cover my permanent total disability for the rest of my life. I also understand that Kansas benefits for permanent total disability are the absolute lowest in the Nation. This result is wrong and needs to be changed. Again, this will have no impact on my situation; however, hopefully, other Kansas workers and their families who find themselves in the same situation will not have to go through the devastating impact that being injured in Kansas and permanently

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and totally disabled has on Kansas workers and their families. It is my understanding this bill removes the cap on permanent total disability. Benefits would be paid for the duration of the disability. This change would place Kansas workers and families in line with the majority of States across the Country.

Additionally, I believe something needs to be done to correct abuses in the system by insurance carriers and employers. At the present time, insurance carriers and employers can simply disregard the Orders of the Administrative Law Judge in many instances and not be held accountable. In my case, the insurance company continuously did not pay bills on time, was routinely late with payment of temporary total disability benefits, and generally did not show any consideration to the hardship that payment of mileage, temporary total disability, and other bills in a late fashion caused upon me and my family. My attorney advises that everything within the law was done to make those bills and payments be made on time; however, the law does not have any penalties for the insurance carrier when they are inconsistent, late, and dilatory in taking care of their obligations. This needs to be changed, and insurance companies and employers need to be held accountable the same as injured workers are held accountable. I even tried to file a claim for abusive practice or act by the insurance company; however, the insurance department simply refused to get involved. This bill, as amended, would give the Administrative Law Judge the power to enforce their Orders and to stop the delay and abuses to the system by the insurance companies and employers.

As I stated in my testimony last year, I believe the Legislature should be responsible to the people of the State of Kansas. Most of the people of the State of Kansas are employees of some fashion, and most of those employees are voters in the State of Kansas. I would respectfully request that the rights of Kansas workers and families, who are your constituents, be foremost in the consideration of the Legislature.

Again, thank you for the opportunity to testify.

Legislative Testimony

HB 2654

February 9, 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 HB 2654. My name is Jeff Glendening, and I am representing the over 10,000 member businesses of The Kansas Chamber.

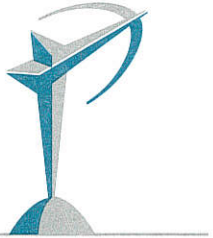
The bill proposes a series of benefit increases within the workers compensation act. The Kansas Chamber's opposition is based on the following observations.

- HB 2654 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 large 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 2654 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 2654. 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
2-9-06
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**THE KANSAS
CHAMBER**

The Force for Business

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Written Testimony Re: HB 2654
Committee on Commerce and Labor
Presented by Tina N. Williams
on behalf of
Kansas Restaurant and Hospitality Association
and
Kansas Self-Insurers Association
February 9, 2006

Chairman Dahl and Members of the Committee:

My name is Tina Williams and I am the Claims Director for Kansas Restaurant and Hospitality Association Self-Insurance Fund (KRHASIF). I am also on the Board of Directors of the Kansas Self-Insurers Association (KSIA). KRHA is the professional association for restaurant, hotel, lodging and hospitality businesses in Kansas and offers our members workers' compensation insurance through a self-insurance fund. Currently we insure approximately 500 employers who employ approximately 25,000 workers in the State of Kansas.

KRHASIF and KSIA oppose HB 2654. There are numerous employees in our industry who work part-time and have less than \$100 gross average weekly wage. The proposed changes would entitle those injured in the course and scope of employment to earn more money as a result of an injury if the minimum compensation rate is increased to the proposed \$100 per week. If an injured employee is earning more on workers' compensation than he/she would earn working, there is little incentive for an employee to return to work; therefore, significantly affecting the cost of claims, increasing experience modifiers, increasing premiums, etc.

Workers' compensation insurance is no-fault and pays benefits for work-related injuries, including cases where negligence is a factor. Removing the permanent total cap would potentially cause employers to pay for damages in instances where they have no fault. There are currently caps on liability so why would we remove them from workers' compensation?

An insured business pays insurance premiums based on their experience rating set by NCCI. Prior history impacts the experience rating and removing the caps would result in an ambiguous / exorbitant reserve for the unknown if the cap is removed. Employers will have a significant increase in the total incurred for each claim, causing an increase in their experience rating, causing an increase in their premiums.

Employers pay social security wages as well as workers' compensation insurance premiums. Workers' compensation gets no credit against Social Security and the employer pays for Social Security creating a double expense to the employer.

Thank you for allowing me to express our concerns with HB 2654.

Tina N. Williams
Claims Director

Comm + labor
2-9-06
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The Historic Lackman-Thompson Estate

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Lenexa, KS 66219-1236

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TO: Rep. Don Dahl, Chair
Rep. Scott Schwab, Vice-Chair
Members, House Commerce Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: February 9, 2006

RE: HB 2654 -- Workers Compensation Benefit Increases

The Lenexa Chamber of Commerce would like to express its concerns regarding HB 2654, a bill that would significantly increase workers compensation benefits.

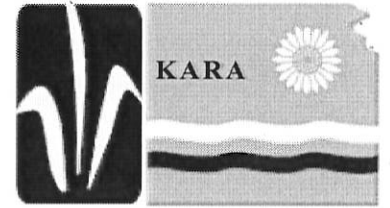
First, proposed changes in HB 2654 would result in some workers potentially earning more money during recovery from a workers compensation injury than they would earn working, providing little incentive for the employee to return to work. This disincentive would likely lead to increased claim costs, increased experience modifiers, and increased premiums.

Second, removing certain caps as proposed in HB 2654 would have serious consequences. Because potential claim costs would be unknown, it would create substantial ambiguity in the amount of reserves to be charged. In addition, employers would potentially face significant increases in claim costs, leading to increases in their experience rating and increases in their premiums.

Lastly, businesses have faced particularly difficult economic challenges in recent years. Increasing workers compensation benefits would increase costs and add yet another burden on businesses at a time when the economy is still struggling to rebound, discouraging the business recovery that is key to providing jobs and producing economic growth.

For these reasons, the Lenexa Chamber of Commerce urges the committee not to recommend HB 2654 favorable for passage. Thank you for your time and attention to this important business issue.

Comms Labor
2-9-06
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STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION
SUBMITTED TO THE
HOUSE COMMERCE COMMITTEE
IN OPPOSITION TO HOUSE BILL 2654
REP. DON DAHL, CHAIR
FEBRUARY 9, 2006

KGFA & KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

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Chairman Dahl and Members of the House Commerce Committee:

The Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association are opposed to HB 2654. The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry.

Between 2001 and 2004, agribusiness saw work comp increases ranging from 17% to 105%. In order to keep their doors open, our members have had to lay off workers. In the past two years, some rates have leveled off, while others have continued to climb. HB 2654 would greatly exacerbate the rising cost of work comp insurance.

This bill would increase the disability benefits and remove the cap, while doing nothing to reform our work disability statute. While business groups, the Governor and the House Democratic Caucus are all attempting to find ways to lower the cost of workers compensation, this bill would do the exact opposite. Our members are having difficulty paying workers compensation insurance today; this bill would make it even more difficult, likely resulting in layoffs.

Mr. Chairman and Members of the Committee, I urge you on behalf of the members of KGFA and KARA and every small business struggling to provide workers compensation insurance to defeat this proposal.