

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 16, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **HB 2671-Workers compensation, occurrence deductibles, defined** by introducing Kathie Sparks from Legislative Research to explain the bill. Ms. Sparks stated this bill would allow insurers issuing workers compensation policies to offer optional occurrence or per claimant, or both.

Upon the conclusion of Ms. Sparks explanation of the bill Chairperson Brownlee introduced Larry Magill representing the Kansas Association of Insurance Agents to give his testimony as a proponent of **HB 2671**. Mr. Magill presented written testimony. (Attachment 1) Mr. Magill stated the bill is a cost saving measure and a risk management tool. The bill gives greater flexibility to the work comp statute for deductibles. He urged the Committee to pass the bill out favorable.

Upon the completion of Mr. Magill's testimony a discussion followed with the Committee. Senator Kelly made reference to the fiscal note asking if this would increase the insurance premiums for businesses which carry work comp insurance. Mr. Magill stated, if it did increase the insurance premiums it would be very slight. He also added that it is optional. Senator Barone entered the discussion with the same concerns as Senator Kelly. Senator Barone stated his concern was in individual businesses and what impact the bill would have on them.

With no other questions or discussion, Chairperson Brownlee closed the hearing on **HB 2671**.

Chairperson Brownlee opened the hearing on **HB 2753-Workers compensation, closing claims five years old** by introducing Helen Pedigo from the Revisors office to explain the bill. Ms. Pedigo stated **HB 2753** would amend the Workers Compensation Act dealing with closure of claims by providing any claim that has not proceeded to final hearing, a settlement hearing, or an agreed award under the Workers Compensation Act within five years from the date of filing an application for hearing would be dismissed by the administrative law judge for lack of prosecution. She stated an extension of time would be allowed for good cause and if filed before the time limit expires.

Chairperson Brownlee introduced Jeff Glendening representing the Kansas Chamber to give his testimony as a proponent to **HB 2753**. Mr. Glendening presented written testimony. (Attachment 2) Mr. Glendening stated the bill was a simple bill and passed the House with only 1 no vote. He stated this has always been an issue and became necessary with the recent passage of the Sarbanes-Oxley act in Washington. Businesses are now required to carry forward their liability which includes workers compensation claims. Businesses need the ability to close the Workers Compensation claims to avoid excess liability. He also stated they had worked with the opposition in the House Committee and both sides agreed with the bill.

With no questions or discussion, Chairperson Brownlee closed the hearing on **HB 2753**.

Chairperson Brownlee suggested putting one of these bills into the other. **Senator Jordan made a motion to roll HB 2753 into HB 2671 and pass it out favorably for passage. Senator Ritz seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to the ALJ bill. She stated she had been given

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 16, 2006 in Room 123-S of the Capitol.

additional information from Dick Thomas with the Division of Workers Compensation regarding penalties and fraud and abuse procedures for not following a ruling made by an ALJ on a work comp case. (Attachment 3) Chairperson Brownlee stated the statutes might address her concerns with the ALJ's not having the power of contempt. Paula Greathouse, Director, Division of Workers Compensation entered into the discussion at the request of the Chair. Director Greathouse stated she felt that the ALJ's did not need the contempt power because the statute covered rules and procedures for fraud and abuse. She also stated when investigating for fraud abuse, they do a portion of the investigation and the Insurance Commissioners Office does part. Senator Emler joined in and stated he felt the penalties for fraud abuse in the statute seemed to be appropriate and did not think language needed to be added to the bill giving contempt power to the ALJ's. Chairperson Brownlee stated that she would take final action on the bill tomorrow morning. Senator Kelly joined the discussion with concerns on how big an issue it is for the ALJ to make a ruling and the insurance carrier to refuse to honor the ruling. Director Greathouse responded by saying this is not a huge problem.

Meeting adjourned at 9:05 a.m. with the next scheduled meeting tomorrow, March 17, 2006 at 8:30 a.m. in room 123S.



Kansas Association of Insurance Agents



Testimony on House Bill 2671  
Before the Senate Commerce Committee  
By Larry Magill  
March 16, 2006

Thank you madam Co-Chair and mister Co-Chair and members of the committee for the opportunity to appear today in support of House Bill 2671, a measure introduced by the House Commerce & Labor committee at our request. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches across the state that employ a total of approximately 2,500 people. Our members write approximately 70% of the business property and liability insurance in Kansas including workers compensation. Independent agents are free to represent a number of different insurance companies.

We were instrumental in passing the original workers compensation deductible legislation in 1991 that allowed deductibles for the first time in workers compensation insurance. Deductibles have long been used as a risk management technique to handle small claims that can negatively impact the business' cost of insurance.

Under Kansas' statute, which is known as a net deductible law, the amount paid by the business under their deductible is not included in the calculation of their experience modification. Their experience modification is generally the single largest factor influencing their cost of coverage. The National Council on Compensation Insurance (NCCI) calculates the experience modification for every business with more than \$2,250 in annual premium by skipping the most recent year and looking at the previous three years premiums and losses. This is done to allow claims to "mature" or develop towards their final cost.

After 9-11 the industry began charging a catastrophe loading in the rates and agents and their clients began to think more about the impact of a catastrophic event. Some other states according to NCCI currently offer an occurrence deductible. This means that the deductible applies only once to each occurrence, regardless of how many employees are hurt. Because the vast majority of claims involve the injury of just one person, the cost to protect the business from a catastrophic event should be slight.

I have attached an analysis from NCCI of the impact of HB 2671. They indicate that "all most all" occurrences involve only one claimant but that there would be a reduction in the credit for the additional risk to the insurer of having the occurrence deductible. We think the current credits are slight so any decrease is going to be slight by necessity. The main reason deductibles are attractive to businesses is because of their favorable impact on the businesses experience modification.

We asked for the House amendment that allows a per claimant, a per occurrence or both deductibles instead of mandating that all deductibles be per occurrence to give the greatest flexibility in the marketplace to the businesses and insurers. Some very large employers might want to accept a per claimant deductible and the amendment allows that to happen.

Senate Commerce Committee  
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Attachment 1-1

If this bill passes, every business in Kansas will have the option to be protected from a multiple deductible event and, if they choose that, there will be a slight decrease in the credit for deductible as a result. However, the biggest incentive and the biggest cost saving from deductibles are in the calculation of the experience modification and not from the very small deductible credit. The calculation of the experience modification will not be effected—unless there is a catastrophe!

This issue is more important than ever since over time, businesses have adopted larger deductibles. Insurers can individually file for an occurrence deductible today but it has almost never happened for medium to small employers. This affords the protection to every business in Kansas and we think makes good risk management sense.

We urge the Committee to report House Bill 2671 out favorably for passage. We would be happy to provide additional information or answer questions. Thank you for your consideration.



## Legislative Testimony

HB 2753

March 16, 2006

Testimony before the Kansas Senate Commerce Committee  
By Jeff Glendening, Vice President of Political Affairs

Thank you Madam Chair, and members of the committee for this opportunity to testify in support to HB 2753. My name is Jeff Glendening, and I am representing the over 10,000 member businesses of The Kansas Chamber.

This measure will allow employers to close workers compensation claims if, and only if, the injured employee filed the claim for a preliminary hearing and then did not proceed to prosecute the claim over a period of five years.

With the recent passage of the Sarbanes-Oxley act in Washington, businesses are now required to carry forward their liability which includes workers compensation claims. Businesses need the ability to close these claims to avoid excess liability.

Thank you again for the opportunity to voice our support of this needed legislation.



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Attachment 2-1

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

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WORKERS COMPENSATION PENALTIES AND ABUSIVE PRACTICES

**Penalties and Fraud and Abuse Procedures**

The following statutes address the procedures and the process to address the refusal of a party to follow an order from an Administrative Law Judge. The process under K.S.A. 44-512 is filed with the Administrative Law Judge.

The second statute dealing with the Fraud and Abuse issue specifically deals with the refusal to follow an order for compensation (medical treatment is considered as compensation). The statute K.S.A.44-5, 120 is below. The Insurance Commissioner's Office has the authority over Insurance Companies and Group Pools.

**44-512a**

**Chapter 44.--LABOR AND INDUSTRIES**

**Article 5.--WORKERS COMPENSATION**

**44-512a. Failure to pay compensation when due; civil penalty; imposition and collection; attorney fees; other remedies.** (a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the 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 in an amount of not more than \$100 per week for each week any disability compensation is past due and in an amount for each past due medical bill equal to the larger of either the sum of \$25 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.

(b) After the service of such written demand, if the payment of disability compensation or medical compensation set forth in the written demand is not made within 20 days from the date of service of such written demand, plus any civil penalty, as provided in subsection (a), if such compensation was in fact past due, then all past due compensation and any such penalties shall become immediately due and payable. Service of written demand shall be required only once after the final award. Subsequent failures to pay compensation, including medical compensation, shall entitle the employee to apply for the civil penalty without demand. The employee may maintain an action in the district court of the county where the cause of action arose for the collection of such past due disability compensation and medical compensation, any civil penalties due under this section and reasonable attorney fees incurred in connection with the action.

(c) The remedies of execution, attachment, garnishment or any other remedy or procedure for the collection of a debt now provided by the laws of this state shall apply to such action and also to all judgments entered under the provisions of K.S.A. 44-529 and amendments thereto, except that no exemption granted by any law shall apply except the homestead exemption granted and guaranteed by the constitution of this state.

Senate Commerce Committee

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Attachment 3-1

# WORKERS COMPENSATION PENALTIES AND ABUSIVE PRACTICES

History: L. 1943, ch. 189, § 1; L. 1961, ch. 243, § 2; L. 1974, ch. 203, § 20; L. 1987, ch. 187, § 10; L. 1990, ch. 183, § 5; L. 1993, ch. 286, § 39; July 1.

## 44-5,120

### Chapter 44.--LABOR AND INDUSTRIES

#### Article 5.--WORKERS COMPENSATION

**44-5,120. Fraudulent or abusive acts or practices**; defined; powers, duties and functions of director of workers compensation and commissioner of insurance; application of section; administrative investigation and enforcement; hearings; costs; cease and desist orders; civil penalties; repayments, interest; review referrals, immunity. (a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

(19) refusing to pay any order awarding compensation;

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421 and amendments thereto by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. Complaints filed with the director or the commissioner of insurance may be dismissed by the director or the commissioner of insurance on their own initiative, and shall be dismissed upon the written request of the



## WORKERS COMPENSATION PENALTIES AND ABUSIVE PRACTICES

complainant, if the director or commissioner of insurance has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the director or commissioner of insurance which shall be deemed to exhaust all administrative remedies under K.S.A. 44-5,120 and amendments thereto for the purpose of allowing subsequent filing of the matter in court by the complainant. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review.

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, "costs" include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$20,000 in a one-year period;

(2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;

(3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.

## WORKERS COMPENSATION PENALTIES AND ABUSIVE PRACTICES

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than \$10,000 for each and every act or violation, but not exceeding an aggregate penalty of \$50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fee fund.

(l) Any person who refers a possibly fraudulent or abusive practice to any state or governmental investigative agency, shall be immune from civil or criminal liability arising from the supply or release of such referral as long as such referral is made in good faith with the belief that a fraudulent or abusive practice has, is or will occur and said referral is not made by the person or persons who are in violation of the workers compensation act in order to avoid criminal prosecution or administrative hearings.

History: L. 1993, ch. 286, § 1; L. 1997, ch. 125, § 18; L. 1998, ch. 114, § 7; L. 2000, ch. 160, § 22; July 1.