

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman David Wysong at 8:30 a.m. on March 3, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Norm Furse, Office of the Revisor of Statutes
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department
Mr. Julian Efird, Kansas Legislative Research Department

Conferees appearing before the Committee:

Senator Anthony Hensley, District 19
Mr. Wil Leiker, Executive Vice President, Kansas AFL-CIO
Mr. Dennis Phillips, Lobbyist, Kansas State Council of Fire Fighters
Ms. Patrician Oslund, MA,
Institute for Policy & Social Research, University of Kansas
Mr. Delbert Young, Private Citizen
Ms. Shirley Young, Private Citizen
Mr. Timothy Short, Attorney at Law, on behalf of the Kansas Association for Justice
Ms. Kathy Outlaw, representing Kansas State Nurses Association
Ms. Terry Humphrey, President, Kansas Coalition for Work Place Safety
Mr. Don Saylor, President & CEO,
Kansas Restaurant & Hospitality Association

Others attending:

Please see attached list.

Possible action on SB108 - an act concerning the economic revitalization and reinvestment act relating to the Secretary of Commerce and the Kansas Development Finance Authority authorizing the issuance of bonds for certain economic development projects

Upon calling the meeting to order, Chairman Wysong announced that he would like to entertain a motion to pass out **SB108** which is the solar energy bill. Senator Kelsey made a motion to pass SB108 favorably. It was seconded by Senator Holland and the motion carried.

The Chair then directed the Committee to the fiscal note reminding them of the testimony at the February 26, 2009 meeting stating it was nonexistent and the Secretary of Commerce's office will absorb the work. A copy of this fiscal note is (Attachment 1) attached and incorporated into the Minutes as referenced.

Discussion on SR1828 - a resolution urging the Kansas congressional Delegation to oppose legislation that disenfranchises workers to removing their right to a private ballot union election.

The Chair then turned the Committee's attention to **SR1828** in their bill books asking them to look at it today and/or tonight because tomorrow he would like to have an up or down vote as he does not plan on having a hearing or work the bill and he will be doing this before the Committee concludes the 2-day hearing on **SB258**.

Hearing on SB258 - an act concerning workers compensation relating to caps to benefits

Chairman Wysong then opened the hearing on **SB258** and called on Mr. Ken Wilke, Office of the Revisor of Statutes, to explain the bill who stated the bill basically directs the Secretary of Labor to adjust the current caps on all benefits in the Workers Compensation Act by an amount that is equal to the cost of living adjustment since they were last increased. He went on to say:

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on March 3, 2009, in Room 545-N of the Capitol.

Page 2

- The mechanism would require the Secretary to determine the increase and publish it in the Kansas register within 60 days after the effective date of the act and annually after July 1 of each year.
- It is similar to what is found in the statutes for the Secretary of State publishing.
- The act would become effective upon its publication in the register.
- One of the caps that is mentioned for \$125,000 is found in K.S.A. 44-510f found in subsection (e), paragraph one, and is a cap on permanent total disability and that was raised in 1987 from \$100,000. Also in paragraph three of the same subsection, there is a cap on temporary partial disability that was raised from \$75,000 to \$100,000, permanent partial disability for functional impairment is only awarded a cap of \$50,000 and added in 1993.

As there were no questions from Mr. Wilke, the Chair called on the first of nine proponents, Senator Anthony Hensley, District 19, who stated that the public policy change in this bill is a step in the right direction toward economic justice for Kansas working families who experience an unfortunate or sometimes tragic incident of a loved one injured or killed on the job due to no fault of their own and a statement about statutory caps that have been in place since 1987. He went on to say that the bill requires the Secretary of Labor:

- 1, To adjust those caps in an amount equal to the Midwest cost-of-living adjustment.
2. To determine the amount of increase, since the caps were last enacted based on the CPI for Midwest urban wage earners published by the U.S. Bureau of Labor Statistics.

And lastly, Senator Hensley offered two primary advantages to taking this approach as opposed to increasing the caps in the statute:

1. The first advantage in requiring the Secretary of Labor to adjust the caps on benefits annually is to keep up with the cost-of-living.
2. The second is to remove the issue of caps on benefits from the political process.

A copy of his testimony and an attachment comparing 1987 prices with 2008, is ([Attachment 2](#)) attached and incorporated into the Minutes as referenced.

The Chair then called upon Mr. Wil Leiker, Executive Vice President, Kansas AFL-CIO, who stated that the Workers Compensation Law (WCL) was enacted to protect the employer from being sued and to have a safety net for the injured worker. (Today 94% of the entire Kansas workforce is covered by the Kansas WCL). He went on to offer a break down of each type of disability, be it temporary total, permanent total, temporary partial or permanent disability, along with an example of each plus the maximum dollar amount to be paid.

Lastly, he said couple the low benefit payments by employers during the time frame of 1987 through 2008 with the one hundred thirteen (113) major tax cuts granted to the business community, one can only conclude that the injured employee be given some consideration, and offering that in the last four years along, the tax cuts enacted for businesses are about \$1.14 billion through FY2013. A copy of his testimony and attachments (showing the maximum permanent total (P.D.) benefits by state for 2008, their rankings, and maximum benefits by state) is ([Attachment 3](#)) attached and incorporated into the Minutes as referenced.

The third proponent called upon was Mr. Dennis Phillips, Lobbyist, Kansas State Council of Fire Fighters, who stated that Kansas is one of only five states that cap benefits for workers who are permanently and totally disabled, with Kansas being the lowest. He went on to say that the cost of supporting the families of firefighters who are seriously injured or killed in the line of duty has increased by 77% since 1987 according to a study done by the Policy Research Institute at the University of Kansas. A copy of his testimony is ([Attachment 4](#)) attached and incorporated into the Minutes as referenced.

The Chair then recognized Ms. Patrician Oslund, MA, Institute for Policy & Social Research, University of

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on March 3, 2009, in Room 545-N of the Capitol.

Page 3

Kansas, who offered a report addressing the effect of price inflation on the purchasing power of Workers Compensation Benefits, looking at two possible methods of valuing maximum benefit caps:

1. Method 1: Purchasing power adjustment including how to measure changes in the value of a dollar and adjusting benefits for inflation and offering two tables:

A. the first showing price indexes and inflation rates and the second showing capped benefits adjusted for inflation as of July 2008.

B. Method 2: Average Wage Adjustment, offering a table showing benefit caps compared with growth of Kansas average wages as of July 2008.

A copy of her report is ([Attachment 5](#)) attached and incorporated into the Minutes as referenced.

Next to testify was Mr. Delbert Young, a private citizen and a 27-year employee at Boeing, who offered his experience with workers compensation after being injured on the job in July, 2006 and misdiagnosed by several doctors. A copy of his testimony is ([Attachment 6](#)) attached and incorporated into the Minutes as referenced.

Mrs. Shirley Young, his wife, was the sixth proponent and testified her husband's primary physician told the couple that had he been diagnosed and treated earlier, about 75 percent of his injuries would have been fixed, which make his permanent injuries even more difficult to accept. She stated Mr. Young had lost his employer paid health insurance when he lost his job and that the cap on benefits will run out in less than five years even though he has a lifetime injury and cannot return to work. A copy of her testimony is ([Attachment 7](#)) attached and incorporated into the Minutes as referenced.

The next conferee called upon was Mr. Timothy Short, Attorney at Law on behalf of the Kansas Association for Justice, who testified that as a 30-year practicing attorney a large part of his practice has been devoted to helping working Kansans when they are forced to navigate the complicated workers compensation system after being seriously injured on the job. He went on to say that because worker compensation benefits are so much less than what the employee had been earning, often the taxpayers are left picking up the tab one way or another for the benefit's inadequacy available under the WCA. (Disabled workers cannot support their families on the compensation so they end up on food stamps, on cash assistance, or on Social Security Benefits.). Lastly he stated that although the maximum weekly benefit payment increases annually in response to an increasing state average weekly wage (SAWW), it does not increase the total capped benefit level, and although this bill does not fix all the problems, it restores the purchasing power of disability benefits bringing fiscal relief to Kansas families that currently are asked to make ends meet in 2009 with the purchasing power of 1987. A copy of his testimony is ([Attachment 8](#)) attached and incorporated into the Minutes as referenced.

Ms. Kathleen Outlaw, representing the Kansas State Nurses Association (KSNA), and the eighth proponent, offered and explained statistics and sources regarding health care workers. She concluded her testimony saying the KSNA requests that the bill be passed without amendments. A copy of her testimony is ([Attachment 9](#)) attached and incorporated into the Minutes as referenced.

The final proponent was Ms. Terry Humphrey, President, Kansas Coalition for Work Place Safety, who stated that the benefit levels on compensation for permanent total disability and permanent partial work disability have remained unchanged since 1987, even though wages in Kansas have more than doubled over the 22 years since these limits were last raised and functional impairment has not changed in 16 years since the "Fletcher Bell Amendment" was enacted in 1993. She offered statistics from Mr. Allan Schwartz, an actuary with AIS Risk Consultant who reviewed the bill. Ms. Humphrey then called on Mr. John Ostrowski of the Kansas Coalition for Workplace Safety to offer testimony in conjunction with hers. Mr. Ostrowski stated that the benefits of the vast majority of injured workers will not change under this bill, only the most severely injured. A copy of Ms. Humphrey's testimony including Mr. Schwartz's findings and Mr. Ostrowski's testimony is ([Attachment 10](#)) attached and incorporated into the Minutes as referenced.

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on March 3, 2009, in Room 545-N of the Capitol.

Page 4

Chairman Wysong then called on the only opponent of the bill, Mr. Don Saylor, President & CEO Kansas Restaurant & Hospitality Association (KRHA), along with the KRHA Education Foundation. He stated he is also representing the Kansas Self-Insurers Association (KSIA) which is a not-for-profit organization with more than 80 members representing both public and private employers who are primarily self insured for workers compensation. He went on to say that they oppose the bill, that any adjustment to caps needs to be researched as part of a comprehensive economic study, and wondered if NCCI had been contacted regarding what impact an increase would have on cost. A copy of his testimony is (Attachment 11) attached and incorporated into the Minutes as referenced.

The Chair then asked for questions or comments from the Committee which came from Senators Faust-Goudeau, Lynn, and Reitz including thanking Mr. Young for his courage to come forward and share his story. How much have the workers' compensation rates increased in relation to premium increases? If you raise caps will it raise premiums and if so, by how much? And, where are the Boeing members to explain themselves regarding Mr. Young's situation?

Adjournment

As it was past 9:30 a.m., Judicial Committee time, the Chair said they would continue with the hearing tomorrow and adjourned the meeting. The time was 9:35 a.m.

The next meeting is scheduled for March 4, 2009.