Approved: 2-3-93
Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:00 a.m. on January 19, 1993, in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

George Welch, Director, State Self Insurance Fund
Jerry Ann Donaldson, Legislative Research Department

Others attending: See attached list

George Welch, Director, State Self Insurance Fund, returned to answer any questions the committee might have.

The state's workers compensation costs have been about 44 percent less than the regular employer over the past nine years, or about 5 percent less per year. He attributed this to good management practices and an excellent staff. The state is the largest self insured in Kansas. The state has no safety program, but thought this would help with costs. He provided some information on how he thought a safety program could be incorporated into the Workers Compensation Act. (Attachment 1)

Jerry Donaldson, Legislative Research Department, reported on Proposal No. 24 - Workers Compensation of the Report on Legislative Interim Studies to the 1993 Kansas Legislature. Proposal No. 24 directed the Special Committee on Workers Compensation to, until November 4, 1992, compile, collect, and assimilate information on specific issues within the topic of workers compensation and, thereafter, develop recommendations deemed appropriate. (Attachment 2)

The meeting adjourned at 9:57 a.m. The next meeting is scheduled for January 20, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 1-19-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Richard Morton	Topeka	KTLA
Bill Wempe	"	KS. Ins. Dept
J. Oakes	Topeka	KIADA
Bill Tarrell	Wichita	Boeing
Marla Rutter	Topeka	Dept. of Admin.
Billy Newman	Topeka	D of A
David Frankel	Lawrence	KTLA - student intern
David Hanson	Topeka	NAII
BRAD SMOOT	"	AIA
Julie Klein	"	Hein, Ebart & Rasch
Carl Hill	✓	KS Motor Carriers Assn
Keow Darter	Topeka	D of A Division of Personnel
Chuck Stones	"	KS Bankers Assn
Kathy Taylor	"	"
Debbie Bassett	"	D of A
CLIF BULLOCK	✓	✓
Dan Hollandsworth	✓	D of A
W.A. Keeper	✓	D of A
Kevin Robertson	Topeka	Barbee & Assoc
Wayne Maichel	"	KS AFL-CIO
Jill Meyer	Lawrence	student intern
Jamie Stubbs	Topeka	Stubbs & Assoc
Bill Curtis	Topeka	Ks. Assoc. of School Bds

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 1-19-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Joe Fevjania	Topeka	KCA
Bill Stanton	"	Fleming Cos.
FRANCES KASTNER	"	KS Food Dealers
Dinah Kane	Baxter Springs KS	-Intern
Tom R Tunnell	Topeka	Kansas Grain & Feed Assn
Rick McKee	"	KS Livestock Assn.
SHAWN HARRELSON	Topeka	Ks. Tire Dealers Assn.
Jim Allen	"	PRAK Inc
Cameron Brewer	Topeka	KTLA
Terry Leatherman	Topeka	KCCI
Art Brown	topeka	KS. Car Dealer Assn

PROBLEM: Safety

Bob Shiprack, an Oregon representative said in a telephone interview with the joint meeting of legislative committees on October 22, 1992, that the premier feature of the Oregon workers' compensation act is safety. After putting safety into their act in 1990, he has observed a safety revolution in the work-place that has caused a dramatic decrease in accidents in the work-place. The law will not tolerate reckless employers and they provide for strong penalties for violators.

Safety performance is increasingly prominent on the agendas of many companies who provide goods and services to residents in the state of Kansas. Several factors are powerful contributors to this trend, not the least of which is workers' compensation costs. Other factors, such as an increasing awareness of international competition, a growing awareness of environmental issues and widespread reorganization of personnel into leaner and more competent work-forces, highlight the value of any mechanism that promotes continuous improvement in safety performance.

Each year, nationwide, an estimated 11,000 people die and about 2,000,000 are injured or become ill as a result of accidents or exposure in the work-place. A significant number of these deaths and injuries are preventable if just four essential conditions can be met:

1. Workers are fully warned about hazards and understand

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warnings and the consequences of ignoring them;

2. Workers receive adequate information about how to work safely within environs that may be inherently hazardous;

3. Workers use state-of-the-art protective devices to minimize exposure to hazards; and

4. Employers shape workers' work habits and attitudes so as to produce safe work habits.

Most safety professionals are convinced, as am I, that if these conditions are met, there will be a significant reduction in accident rates and in claims resulting from accidents. Many companies across the nation are implementing effective safety or accident-prevention programs. Raytheon, a nationally known manufacturing company, says a safety training program cuts its accident rate 33% in one year. Mr. Shiprack said in Oregon, where companies with 10 or more employees must have safety programs, insurance premiums have dropped more than 10% annually for three straight years. We too must develop a comprehensive safety action plan embodying the elements of disability prevention, management commitment and accountability, safe work environment and practices and safety training. It is my premise that safety and loss control are fundamental management issues and not unique programs. Injuries in the work-place are an indication of management of that work-place. The workers' compensation injuries are a barometer of management.

The state of Oregon cut serious loss time claims by 60% upon the institution of a safety program (Business Insurance, December 2, 1991). This is a very dramatic cut, but other literature would tend to support cuts in workers' compensation costs of 30% and higher upon the institution of strong loss prevention or safety programs. If there were 6,693 loss time accidents in 1991, as reported in the 17th Annual Statistical Report from the Division of Workers' Compensation, a 30% decrease would cut 2,008 of those losses. The Kansas Workers Compensation Closed Claim Study reported the average cost for indemnity and medical alone was $25,164 per claim. If a safety program were instituted and cut losses by 2,008, the minimum savings from this simple solution would be in excess of $50,000,000.

Here is an idea for blending safety into the workers' compensation act.

SOLUTION: Proposed New Statute

Safety. (a) Every employer shall furnish a place of employment which shall be safe for the employees therein and shall adopt and use methods and processes reasonably adequate to render employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of all employees.

(b) No employee shall remove, displace, damage, destroy or

carry off any safety device or safeguard furnished and provided for use in any employment or place of employment, nor interfere in any way with the use thereof by any other person, nor shall any employee interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment.

(c) If injury is caused by the failure of the employee to use safety devices which are provided in accordance with any statute, lawful order, or manufacturer's requirement for any equipment, and such safety devices are adequately maintained, and the use of which is reasonably enforced by the employer, or if injury results from the employee's failure to obey any reasonable rule adopted and enforced by the employer for the safety of the employee and of which the employee has notice, the compensation awarded shall be reduced by one-half, not to exceed $25,000.

(d) If injury is caused by the failure of the employer to comply with this section or any other statute or lawful order, compensation awarded shall be increased by one-half, not to exceed $25,000. Failure of an employer to enforce compliance by employees with this section or any other statute or lawful order constitutes failure by the employer to comply with this section.

(e) Any insurance company desiring to write workers' compensation insurance in Kansas, or any business applying for a self-insurance permit, shall maintain or provide accident prevention facilities and staff as a prerequisite for a license to write such insurance or operate as a self-insured. Such facilities

and staff shall be adequate to furnish accident prevention services required by the nature of its policyholders' operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The insurer or self-insured may employ qualified personnel, retain qualified independent contractors, contract with policyholders to provide qualified accident prevention programs, personnel and services, or use a combination of methods enumerated in this section. Notice of services as provided in this section shall appear in bold type on the front of each workers' compensation policy. If an insurance company or self-insured does not maintain or provide accident prevention services required by this section, the insurance company or self-insured commits a _____. Each day of non-compliance is a separate violation.

PROPOSAL NO. 24 -- WORKERS COMPENSATION

Proposal No. 24 directed the Special Committee on Workers Compensation to, until November 4, 1992, compile, collect, and assimilate information on specific issues within the topic of workers compensation and, thereafter, develop recommendations deemed appropriate.

BACKGROUND

The Chairperson of the House Labor and Industry Committee, as well as individual senators, requested the study since there were two 1992 bills, S.B. 666 and H.B. 3039, that would have enacted significant changes to the Workers Compensation Act. Neither bill passed. S.B. 666 became House Sub. for S.B. 666 and ultimately died on General Orders in the House. H.B. 3039 also became a House substitute bill and eventually was rejected by the Senate. Most of the provisions of S.B. 666, with some modification, were amended into H.B. 2207 which, in its original form, would have amended the Workers Compensation Act to restore carpal tunnel syndrome injuries to the general body injury classification and would thereby remove such an injury from the scheduled injury status. H.B. 2207, as amended by the Senate on Final Action, with S.B. 666 provisions, retains the carpal tunnel syndrome changes in response to a recent Kansas Supreme Court case that declared it is unconstitutional to classify a carpal tunnel syndrome injury as a scheduled injury.

1992 Proposed Legislation

Issues contained in H.B. 2207 and H.B. 3039 are presented below for comparison purposes. The versions of the bills outlined are H.B. 2207 as amended by the Senate on Final Action and Sub. for H.B. 3039 as amended by the House Committee of the Whole.

Fraud. H.B. 3039 would have created a new crime, a class C misdemeanor, for knowingly making false statements by either the injured worker, the employer or the insurance company. An employer also could have pursued recovery for benefits fraudulently paid.

H.B. 2207 would have allowed the Director of Workers Compensation, upon application of the employer or insurance carrier, to conduct a hearing to determine employee fraud. Upon a finding of such fraud, the director would have had to cancel future benefits and order the employee to repay fraudulently obtained benefits plus interest. Any unpaid amounts would have been deducted from any future workers compensation awards.

Subrogation. H.B. 3039 would have required that the employer receive notice of any recovery from another source and would have had the right to intervene and participate. It would been up to the court to decide the extent of participation, including the apportionment of costs and fees.

H.B. 2207, in addition to the provisions of H.B. 3039, would have required the court to set the amount of attorney fees to be paid by the employer and the employee.

Collective Bargaining. Under H.B. 3039, certain issues such as a list of health care providers, how to utilize such health care providers, resolution of differences over the list and utilization procedures, and programs for returning injured workers to employment including light duty, modified work, return to work programs and retraining programs would have been matters that could have been covered by a

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collective bargaining agreement. Any such agreement could not, however, have reduced an injured worker's benefit, as set forth in the Workers Compensation Act.

H.B. 2207 had no similar provision.

Payroll Threshold. H.B. 3039 would have raised the payroll threshold for mandatory coverage under the workers compensation law from $10,000 to $20,000 total gross annual payroll.

H.B. 2207 would have kept the payroll threshold at the current $10,000 level. The bill would have allowed employers of salaried, management-level employees and executive officers to file an election to come under the Workers Compensation Act.

Disqualification of Benefits – Alcohol and Drug Use. H.B. 3039 had no provisions similar to those that were contained in H.B. 2207.

H.B. 2207 would have expanded disqualifications to include alcohol use and the use of prescription or nonprescription drugs that are used for nontherapeutic purposes.

Maximum Fees; Advisory Panel. H.B. 3039 would have provided that portions of the medical compensation statute (K.S.A. 44-510) which conflict with provisions of a collective bargaining agreement would not have applied to employees governed by the collective bargaining agreement.

With regard to maximum fees for medical compensation services, the advisory panel only would have had to advise the Director of Workers Compensation in establishing a plan for approving maximum fees. The maximum fees would have been subject to approval by the Director. Providers would have been able to receive the usual and customary charge for the community in which the services rendered were less than the maximum fees approved by the Director.

H.B. 2207 would have required the Director to establish rules and regulations for maximum fees. The Advisory Panel would have been required to assist the Director and approve the fee schedule.

Health Care Provider Choice. H.B. 3039 would have given the injured worker the right to choose a health care provider in the first instance. If the services were unsatisfactory to the employee, he or she would have been entitled to services of a health care provider furnished by the employer.

H.B. 2207 would have required that if the services of a health care provider are unsatisfactory to an injured employee, the Director could authorize, upon application, the appointment of another health care provider from a list of three health care providers submitted by the employee.

Reduction in Benefits for Prior Injury. H.B. 3039 would have provided that compensation for permanent partial disability for a prior injury would be reduced by the percentage of preexisting functional impairment that was caused by traumatic origin and for which prior medical treatment was sought. Such an occurrence and treatment would have to have taken place before the employee obtained work with the employer and suffered a later injury for which the claim currently was being made.

H.B. 2207 would not have allowed for compensation of a preexisting condition except for aggravation of a preexisting condition. Compensation would not have been allowed for accidental injuries directly caused by the aging process.

Work Disability. H.B. 3039 would have provided that an employee would not be able to receive compensation for a permanent partial general disability above the percentage of functional impairment while the employee was engaged in any work for wages that are comparable to the average gross weekly wage as computed under the Act subject to the provisions of K.S.A. 44-528 and amendments.

Under H.B. 2207, work disability would not have existed if the employee returned to work for comparable wages. The two-prong disability test, *i.e.*, the reduction of a claimant's ability to perform work in the open labor market and the ability to earn comparable wages articulated in *Hughes v. Inland Container Corp.* 247 Kan 407 (1990), would have been eliminated.

Maximum Benefit for Functional Impairment. Under H.B. 3039, the maximum benefit available for permanent partial disability for functional impairment only would have been $62,500 except that an employee could have been awarded medical compensation under K.S.A. 44-510.

Under H.B. 2207, the maximum compensation benefits for permanent partial disability where functional impairment only is awarded would have been $50,000 for an injury or aggravation. Maximum compensation benefits for permanent partial disability would have been limited to an amount which does not increase the total of all awards of permanent partial disability during the employer's lifetime to more than 100 percent permanent partial disability, except the employee could have continued to receive necessary medical compensation.

Vocational Rehabilitation. Under H.B. 3039, the restated purpose of the Act would have been to restore to an injured worker the ability to perform work at a comparable wage. The vocational rehabilitation administrator, under the approval and direction of the Director of Workers Compensation, would have directed and audited the vocational rehabilitation of injured workers. The Director would have been charged with approving individual rehabilitation providers, facilities, institutions, agencies, and employer programs. Approval would have required physical facilities and staffing with specifically trained and qualified personnel. The Director could have revoked the authority of a rehabilitation provider if the provider failed to provide quality or timely services.

If an application for vocational rehabilitation were filed the adverse party would have been given seven days to object. There was to be no referral for rehabilitation unless it appeared probable that: (1) the injury was compensable; (2) the employee had reached maximum medical improvement; (3) the employee had physical limitations from the injury which would have required the employee be employed in work that would accommodate the limitations; and (4) the employer has not offered the employee accommodated work at a comparable wage. If there were a referral, it would have been to a qualified rehabilitation provider on a rotational basis by the Director's office for up to four weeks to return the employee to work for the same employer. If the employee could have returned to work for the same employer, the employee would be referred to the Kansas Vocational Rehabilitation Center for evaluation. After evaluation, the selected provider would write a rehabilitation plan based on the evaluation for either up to 12 weeks of job placement or up to 72 weeks of training. The plan for rehabilitation would be appealable to the rehabilitation administrator, administrative law judge, and the Director of Workers Compensation.

Most of the provisions of H.B. 2207 were similar to H.B. 3039. Mandatory vocational rehabilitation would have been deleted and replaced with provisions which would have made vocational rehabilitation discretionary. The employer would have selected the vocational rehabilitation provider. The Director would have been charged with the duty of continuously monitoring the various vocational rehabilitation vendors in addition to any facility, institution, agency, or employer. Further, the Director would have had the ability to suspend or revoke the authority of any vocational rehabilitation service provider. The

procedure and duties of the Vocational Rehabilitation Administrator were outlined in the bill. In addition, at 65 years of age, an injured worker no longer would have been eligible for vocational rehabilitation benefits.

Formal Offer of Settlement. Under H.B. 3039, after providing the required certifying letter and waiting 60 days, the claimant could have made a formal offer of settlement regarding the nature and extent of disability. Upon final disposition of the claim, if the nature and extent of disability met or exceeded the formal offer which was not adopted, the opposing parties would have been made responsible for all expenses incurred by the claimant after the date of the formal offer. These provisions would not have applied where the compensability of the claim was at issue, unless it was found to not be a valid issue.

Under H.B. 2207, no similar provisions existed.

Assignment of Child Support. Under H.B. 3039, an exception to the nonassignability of compensation benefits would have been made for child support orders. Procedures for voluntary and nonvoluntary assignment of a portion of compensation would have been set forth. Specifically, any such assignment would have been made subject to liens for attorney fees under the Act.

Under H.B. 2207, an exception to the nonassignability of compensation benefits would have been made for child support orders. Procedures for voluntary and nonvoluntary assignment of a portion of compensation would have been set forth. Specifically, any such assignment would have been made subject to liens for attorney fees under the Act.

Notice. H.B. 3039 had no provisions similar to those contained in H.B. 2207.

Under H.B. 2207, without actual knowledge on the part of an employer, an injured worker would have been required to notify the employer of an injury within ten days of an accident. After the ten-day requirement, a claimant could have overcome the notice bar by showing that the failure to notify was due to just cause. There was, however, a 60-day time limit that acted as a bar for compensation unless the employer had actual knowledge of the accident.

Date for Hearing; Claimant's Certifying Letter. Under H.B. 3039, the claimant would have been required to submit a certifying letter to the administrative law judge, stating that the claim was ready for regular hearing. The hearing would have been held within 120 days of the date of the certifying letter, but not earlier than 60 days after the date the certifying letter was mailed, unless the parties certified that the Workers Compensation Fund would not have been impleaded.

Under H.B. 2207, no similar provisions existed.

Suitability of Work; Lump Sum Review and Modification. Under H.B. 3039, notwithstanding the provisions in the Work Disability Section above regarding permanent partial general disability, an employee could have been found, either on review of an award or on initial hearing, to have a work disability upon showing that the work being performed for a comparable wage was not suitable work. In determining suitability, the administrative law judge would have considered the following elements: (1) the physical requirements and modifications proposed; (2) the number of hours to be worked per

week and the rate of pay; (3) when the work was to be performed; (4) comparison of fringe benefits; and (5) the opportunity for advancement.

An application for a review and modification hearing would have been permitted in the case of a lump-sum settlement, except that no such proceeding could have been initiated more than one year after the date the lump-sum settlement agreement was entered into and approved.

Under H.B. 2207, no separate specific provisions existed. (See section on Work Disability.)

Attorney Fees. Under H.B. 3039, attorney fees would have been further limited in cases where the compensation to be paid to an injured worker would have exceeded the offer to settle made prior to representation by an attorney. Fees would have been limited to the lesser of: (1) a reasonable amount for such services; or (2) the amount equal to 50 percent of the amount of compensation recovered and paid which exceeded the amount offered prior to the employee's attorney involvement, subject to an overall maximum of 25 percent of the total compensation recovered.

Under H.B. 2207, attorney fees would have been limited as in H.B. 3039 (above) except that 25 percent limit instead of a 50 percent limit of the amount of compensation recovered and paid which is in excess of the amount offered to the employee before the attorney's involvement would have applied.

Open Records Exception. H.B. 3039 would have provided an exception to the open records requirement of the workers compensation law when confidential information was gathered under the data gathering provision of the bill. These data gathering provisions are described in the section on Data Gathering.

H.B. 2207 contained the same exception noted above.

Data Gathering. H.B. 3039 would have required the Director of Workers Compensation to gather data and conduct studies to evaluate the workers compensation system in Kansas. The Director would have been required to independently evaluate insurance industry data for workers compensation and other data for a thorough evaluation of the system's effectiveness. The Director would have been authorized to access certain confidential information from the Department of Human Resources, Division of Employment Security; the Insurance Department; and the Department of Revenue, and would have the same duty of confidentiality as such other agencies and would have been subject to the same penalties for violation thereof.

H.B. 2207 would have required the Director of Workers Compensation to gather data and conduct studies to evaluate the workers compensation system in Kansas. The Director was independently to evaluate insurance industry data for workers compensation and other data for a thorough evaluation of the system's effectiveness. The Director would have authorized access to certain confidential information from the Department of Human Resources, Division of Employment Security; the Insurance Department; and the Department of Revenue, with the same duty of confidentiality as such other agencies and subject to the same penalties for violation thereof.

Workers Compensation Fund – Negotiating Attorney Contracts. H.B. 3039 would have required the Commissioner of Insurance to establish a negotiating committee to obtain legal services for the Workers Compensation Fund (Second Injury Fund) through a negotiated bid process. Prior to negotiating for legal services, the committee would have been required to advertise for proposals.

Under H.B. 2207, no similar provision existed.

Safety. Under H.B. 3039, an employer could have qualified for reductions in workers compensation insurance premium charges. In order to qualify, employers would have been required to participate successfully annually in a comprehensive and unlimited consultation under the Occupational Safety and Health Consultation, Education and Training program administered by the Secretary of Human Resources.

Successful participation was defined in the bill as:

1. undergoing a safety and health hazard survey of the workplace, including evaluation of the employer's safety and health program;

2. correcting identified hazards within a reasonable time;

3. establishing and implementing an effective workplace safety program;

4. reducing by one-third or more the employer's lost work day rate if that rate is above the national average for the employer's industry, or maintaining a rate below the national average; and

5. continuing to reduce for renewal of successful participation status, the employer's lost work day rate by annual increments of one-third until such rate is at or below the average national rate for the industry or maintaining such rate below such average national rate.

The premium rate reduction would have been an appropriate reduction in accordance with a rate filing which was required by the section to be made with the Commissioner of Insurance and which was to provide for appropriate reduction in premium charges for insured employers who successfully participated in the program.

The program under this section was modeled after the "SHARP" program that was implemented in Oklahoma pursuant to a 1988 Oklahoma enactment.

Under H.B. 2207, no similar provisions existed.

Other Current Workers Compensation Studies

There are two other task force groups currently conducting an examination of various workers compensation topics. The Governor's Task Force, formed in 1992, has held a series of meetings on selected issues within the workers compensation framework. The Assistant Director of the Workers Compensation Division is the Chairperson of the Governor's Task Force. A report containing recommendations should be forthcoming shortly. Starting in 1991, another group, the Insurance Commissioner's Task Force on Workers Compensation, also has conducted hearings on this topic. The impetus for the Insurance Commissioner's Task Force was the continuing increase in workers compensation costs and various rate increases. As a result of the Insurance Commissioner's efforts, the Tillinghast actuarial firm developed a report containing an interpretive analysis of the Kansas Workers Compensation Closed Claim Study in an effort to identify the reasons for costs continuing to escalate. A copy of the Tillinghast report is available in the Kansas Legislative Research Department. Suggested changes to the Workers Compensation Act and proposed legislative drafts should be ready in time for the 1993 Session.

In addition, there is a Legislative Post Audit report, dated November, 1992, entitled "Examining Increases in Expenditures from the State Workers Compensation Fund" which is now available from the Legislative Division of Post Audit. This performance audit examined why expenditures from the Workers Compensation (Second Injury) Fund have increased in recent years. According to the findings of the study, the expansion of coverage of the Fund, due to judicial and legislative actions, along with increased industrial accidents, is one of the major factors in dramatically increased expenditures. Limiting coverage, however, would not reduce workers compensation costs, the study concluded. It would merely shift costs from the Fund both to employers and insurers. Further, cost control measures implemented by other states are not readily transferable to Kansas, since Kansas does not have the basic management information needed to pinpoint the types and causes of the cost driving injuries that need to be controlled. In addition, the report includes several recommendations for improving the operation of the Fund. There is another performance audit, in the early stages, being prepared to examine the structure of the Workers Compensation Division, Department of Human Resources. This study should be completed by the end of February, 1993. Questions to be explored by the second audit will include the following:

1. How do Kansas Workers Compensation benefits and premiums compare with other states?

2. Have changes in federal or state law over the years contributed to the rising cost of premiums?

3. What cost containment measures have other states enacted to help control the rising costs of workers compensation benefits?

4. What types of management information systems have other states implemented to help identify and control workers compensation costs?

COMMITTEE ACTIVITIES

During the interim the Special Committee on Workers Compensation structured the meetings differently than the ordinary committee hearing in at least two respects. First, testimony was received only from those individuals considered experts in the field of workers compensation and not from employers, employees, and labor advocates. Also, the Committee initiated a series of teleconference calls with some of the experts from across the United States, as well as locally, who possess a great deal of expertise in various aspects of workers compensation. Initially, the Committee viewed a videotape, prepared by the National Conference of State Legislatures (NCSL), designed to outline the major concerns with workers compensation systems nationwide. Various experts focused on specific areas to set out not only some of the problems with the system but also some of the ways different states have dealt with difficult areas of the workers compensation programs. A copy of the tape is available from NCSL.

The Committee heard testimony on several occasions from the Assistant Director of the Workers Compensation Division who also appeared as Chairperson of the Governor's Workers Compensation Task Force and an individual with the Kansas Foundation for Medical Care, Inc., who addressed cost controls through utilization review. A conferee from Travelers Insurance Company related how managed care results in reduced costs. Physicians from Topeka and Lawrence commented on various cost containment issues and made suggestions regarding a maximum fee schedule, employer response in reinstating an injured worker, a limitation on people who direct costs, and a limit on specialists who may order high-ticket items. The Director of the State Self Insurance Fund presented the Committee with statistics regarding the Fund. One of the Co-Chairpersons of the Special Committee on Workers Compensation, who also is the Chairperson of the NCSL Blue Ribbon Panel formed to assist the NCSL Task Force on Workers Compensation, reviewed the *Blue Ribbon Panel Report*. A copy of the *Blue Ribbon Panel Report* is available in the Kansas Legislative Research Department.

By teleconference call, the Committee heard testimony from: two NCSL consultants who spoke about data collection and cost issues; the Wisconsin Administrator of the Workers Compensation Division regarding the

Wisconsin Workers Compensation Advisory Council; the Commissioner of the Arkansas Workers Compensation Review Board on the administration of a workers compensation agency; and a legislator from Oregon who related the Oregon experience and resultant reform of the Oregon Workers Compensation Act and establishment of an Occupational Safety and Health Act (OSHA) type safety law.

Other conferees included the Administrative Assistant with the Insurance Commissioner and a representative of the Legislative Division of Post Audit who presented up-to-date information on the study which their respective group or agency had conducted. See the section entitled "Other Current Workers Compensation Studies."

CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes there are issues that need to be dealt with during the 1993 Session. The Committee is mindful of the fact that additional information and recommendations will be forthcoming from both the Insurance Commissioner's Task Force on Workers Compensation and the Governor's Task Force on Workers Compensation. Consideration should be given to the reports from each of these groups by the 1993 Legislature and any proposals for reducing costs in the system.

Due to time constraints and the nature of the Committee's study, the committee did not submit specific language for amendments to the workers compensation statutes to accompany this report. The Committee, however, based on the information received and the testimony of conferees, makes the following recommendations:

Fraud. The Committee recommends the enactment of legislation which would make fraud or conspiracy to defraud, by any party or parties, new crimes -- a class C misdemeanor for fraud and a felony for conspiracy to fraud. An Assistant Attorney General position should be established to investigate and to prosecute workers compensation fraud cases. The powers and duties of this person should be similar to those of the Assistant Attorney General assigned to Alcoholic Beverage Control.

Medical Fee Schedule. The Committee believes that a medical fee schedule is an important cost containment mechanism and should be implemented without further delay. The Committee endorses the concept that the medical fee advisory panel should operate in an advisory capacity only.

Managed Care. The Committee is aware that employers can contract with a managed care organization and that such a contract would take care of issues such as peer review. The Committee believes managed care also is important to medical cost containment and encourages the Workers Compensation Director's efforts to enter into contracts for utilization review and peer review.

Advisory Council. The Committee strongly endorses the concept of a labor management advisory council on workers compensation. It is recommended that such an advisory group be statutorily created and patterned after the Wisconsin Council. The Council thus would be comprised of ten voting members: five representing labor nominated by the Kansas AFL CIO and five representing management nominated by the Kansas Chamber of Commerce and Industry. The appointment authority should be the Secretary of Human Resources in a manner similar to the selection of the Employment Security Advisory Council. There are additional members on the Wisconsin Advisory Council who are nonvoting, and the advisability of this concept should be further reviewed for applicability to a Kansas council. While Wisconsin law requires a unanimous vote of the Council to approve any recommendations, the committee believes an eight out of ten vote would be more desirable. Further, the Committee believes there should be a provision whereby the labor and management members could hold separate closed caucus meetings not subject to the open meetings law.

Administration. The Committee strongly recommends there should be administrative procedures established for streamlining contested claims to avoid delays that occur with the current system. Further, the Committee urges the Director to make recommendations for administrative proposals that would not only streamline resolution of contested claims but also reduce litigation.

Vocational Rehabilitation. The Committee is convinced that the vocational rehabilitation provisions have not worked as intended and have added significantly to the cost of the system. The Committee believes vocational rehabilitation is an important component in the system but that statutory changes should be made to make it discretionary and enhance its practically and timeliness. The stated purpose of vocational rehabilitation should be to restore to an injured worker the ability to perform work at a comparable wage. The vocational rehabilitation administrator, under the approval and direction of the Director, should direct and audit the vocational rehabilitation of injured workers. The Director should be charged with approving individual rehabilitation providers, facilities, institutions, agencies, and employer programs. Approval should entail a review of physical facilities and staffing with specifically trained and qualified personnel. The Director could revoke the approval of a rehabilitation provider if the provider fails to provide quality or timely services.

Permanent Partial Disability. The Committee encourages the Division of Workers Compensation and other study groups and other interested parities to continue working on statutory language to clarify worker disability. The question that is central to the discussion of work disability is whether there is an irrebuttable presumption of no work disability as long as the employee is engaged in work of a similar nature and at a comparable wage to the work performed before the injury.

Board of Review. The Committee concludes that a Board of Review, as a last fact finder, should be substituted for the Director's review and the district court level of review. (The House Co-Chairperson expressed reservations about this concept.)

Data Collection. The Committee concludes that a data collection mechanism should be a high priority of the workers compensation agency, so that policymakers can have necessary information about where the dollars are going and can monitor reforms to determine if they are accomplishing what was intended. Amendments to K.S.A. 44-557a, that would give the Director latitude in determining the type of data needed and the method of collecting that data, are recommended. Any legislation would need to identify and state the purpose for collecting specific information.

Child Support. The Committee recommends an exception in the law to the nonassignability of workers compensation. Specifically, the Committee recommends a provision whereby procedures would allow for voluntary and nonvoluntary assignment of a portion of compensation benefits for child support.

Safety. Reflecting a strong belief that injury prevention is one of the surest avenues of achieving a healthier workers compensation system, the Committee recommends that incentives be considered for those employers who adhere to sound safety practices and, conversely, that the effectiveness of penalty provisions for those employers who ignore or violate safety principals be assessed. Specifically, the Committee encourages further study of various safety proposals:

1. conducting safety and health hazard surveys of the workplace, including evaluation of the employer's safety and health program;

2. correcting identified hazards within a reasonable time;

3. establishing and implementing an effective workplace safety program; and

4. reducing by one-third or more the employer's lost work day rate if that rate is above the national average for the employer's industry, or maintaining a rate below the national average.

The Committee was impressed with the Oklahoma "SHARP" plan regarding workplace safety and suggests the Plan deserves further consideration. In addition, the Committee believes further efforts that emphasize education and training in programs aimed at reducing and preventing accidents should be encouraged.The Committee focused particular attention on the Oklahoma Sharp plan and suggests that the plan deserves further consideration. Because OSHA standards are targeted to certain safety issues and not workplace ergonomics, the Committee believes further efforts that emphasize education and training in programs aimed at reducing and preventing accidents should be encouraged.