

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:01 a.m. on January 28, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Lynch (excused)

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

Conferees appearing before the committee:

Dick Brock, Administrative Assistant, Kansas Insurance Department  
Hal Hudson, National Federation of Independent Business  
Terry Leatherman, Kansas Chamber of Commerce and Industry

Others attending: See attached list

**Hearing on HB 2116 - Workers compensation, appeals board, composition, powers and duties.**

Dick Brock, Administrative Assistant, Kansas Insurance Department, testified in support of HB 2116 as one of the recommendations of the Commissioner's Workers Compensation Task Force. (Attachment 1) His testimony included a memorandum from his staff regarding this bill. He called the committee's attention to Sections 18 and 31. (Attachment 1a)

Hal Hudson, State Director, National Federation of Independent Business, appeared in support of HB 2116 and offered four suggestions for revising workers compensation laws. He felt this bill was a step in the right direction, especially in achieving goal No. 3 of the NFIB. (Attachment 2)

Terry Leatherman, Executive Director, Kansas Chamber of Commerce and Industry testified in support of HB 2116 stating that KCCI feels an appeals board should streamline the legal process, divorce political selection of the board, provide uniformity throughout the state, free the Director of Workers Compensation from judicial duties, and be cost competitive with the present system. KCCI would remove restrictions on preliminary hearing appeals. (Attachment 3)

Richard Mason, Executive Director, Kansas Trial Lawyers Association, provided written testimony in opposition to HB 2116. KTLA feels HB 2116 creates a new level of bureaucracy, would deprive people of their day in court, is an untried system, would take final interpretation from the Courts, and doesn't make it clear board members would physically go to all areas of the state. (Attachment 4)

The committee had not yet received a fiscal note from the Division of the Budget regarding HB 2116.

The meeting adjourned at 9:57 a.m. The next meeting is scheduled for January 29, 1993.

# GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: 1-28-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Rochelle Ols	Topeka	AP
Maria Aikman	"	Lt. GOV.
Larry Shaffer	Topeka	Kans. Hosp. Assoc.
Amy Abbruhl	Lawrence	intern for Rep. Minn.
Quinn Clark	Lawrence	Ballmark
Erin Kirk	Lawrence	KU
Brian Tance	Wichita	Boeing
Bill Curtis	Topeka	Ks Assoc of School Bds
Terry Leatherman	Topeka	KCCI
Brian Buxton	"	Flamingo Co's
Donald Timmermann	Parsons	Chamber of Comm.
Breckin Atherton	Parsons	KPhd.
Hal Hudson	Topeka	NFIB/Kansas
David Frankel	Lawrence	KLTA
TOM WHITAKER	TOPEKA	Ks MOTOR CARRIAGES ASSN
Joe Fuzjanic	Topeka	KCA
Frances Kastrer	Topeka	Ks Food Dealers Assn
Brad Snout	"	AIA
Jill Meyer	Lawrence	intern for Rep. Lahti
Melanie Sweeney	Oakland Park	OP Chamber of Commerce
G. Wiegand	Topeka	Wichita Eagle
Jacki Minor	Parsons	KACSO
Melinda McHaffey	Parsons	Parsons Chamber of Commerce

Testimony on  
House Bill No. 2116  
by  
Dick Brock  
Kansas Insurance Department

House Bill No. 2116 would create a Workers' Compensation Appeals Board and represents one of the recommendations of the Commissioner's Workers' Compensation Task Force I described at my earlier visit with this committee. Having said that, I want to emphasize, however, that the task force did not actually develop this recommendation or author its provisions. As I'm sure some of you recognize, this is a proposal that surfaced during the last session of the legislature although I don't believe it was ever actually introduced. The task force simply reviewed the concept, agreed with its purpose and included it in its recommendations.

The task force did make some changes in the proposal and I will discuss those when I attempt to address the specific provisions of the bill. Before doing that, however, I want to share with you my understanding of the task force reasons for including this new appeal mechanism in its recommendations. In doing that, it should be understood that the task force recommendations were adopted by consensus. Therefore, individual members of the task force or others commenting on House Bill No. 2116 may have different or additional reasons for their views on the measure.

If you will recall, the general focus of the task force efforts were changes or initiatives which would restore the original concept of workers' compensation as an administrative process designed to fairly and quickly compensate injured workers regardless of the cause of the workplace injury and regardless of fault. An important part of that design was intended to be the substitution of a quick, informal administrative process in lieu of the rigid, structured process used by the courts. The task force believes we have moved away from this concept

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and therein lies a significant part of the problem with which we are all struggling.

This movement and this result is certainly not the fault of the courts. Workers' compensation administration is obviously at least quasi-judicial but it seems to us it should be much more supervisory and administrative than judicial. The court machinery is just not well-suited for this specialized function. Courts are occupied with countless other types of litigation -- workers' compensation should seemingly involve much more finding of fact than interpretation of law -- intimate familiarity with the workers' compensation law, its purpose and processes -- and few would argue that the administration of the workers' compensation law should be a continuing process as opposed to a series of separate, individual cases each of which is largely resolved separately from the others and which sometimes results in inconsistent and conflicting decisions.

Creation of a workers' compensation appeals board, referenced simply as a workers' compensation board in House Bill 2116, would address these deficiencies while at the same time relieving the district courts of this burden. In addition, and equally important, the creation of a workers' compensation board should facilitate the hearing of appeals on preliminary hearing decisions which, I am advised, is currently very difficult.

New section 1 of House Bill No. 2116 contains the substance of the bill. In the interest of time, I will not go through each sentence or each provision but will attempt to describe the most significant elements. First, of course, is the statutory creation of the workers' compensation board composed of 5 members appointed by the Secretary of Human Resources. In making such appointments, however, the Secretary is required to appoint persons unanimously recommended by a 2 person nominating committee that is also created by House Bill No. 2116. This nominating committee is an important ingredient because it is through this process that House Bill No. 2116 proposes to place the appeals function in the hands of the interests most directly affected by the board's decisions, namely employers and employees. The nominating

committee would be composed of 2 members one of which would be selected by the AFL-CIO and one of which would be selected by the Kansas Chamber of Commerce and Industry. Nominees for appointment to the workers' compensation board would have to be agreed to by both members of the nominating committee and, as indicated earlier, the Secretary would be required to appoint that nominee. The only exception to such requirement would be a finding by the Secretary that the nominee does not meet the statutory qualifications for membership. In this case, he or she may reject the nominee which would require the nominating committee to make and present another selection.

For administrative support services, the workers' compensation board would be attached to the office of the Director of Workers' Compensation. Therefore, budgeting, personnel, purchasing and other such details would be provided the board by or through the Director's office. However, it is important to note that the proposed bill, specifically -- in lines 21-25 -- grants the board exclusive jurisdiction to review all decisions, findings, orders and awards of compensation rendered by either administrative law judges or the Director under the workers' compensation law. Therefore, the fact that the board is attached to the Director's office for administrative support does not diminish the board's authority or compromise its autonomy.

Those members familiar with the similar proposal last session may remember that that bill would have created a 3 member workers' compensation board and would have required all members of the board to sit and hear matters that came before it. The task force recommendation and the provisions of House Bill No. 2116 change this aspect of the board. As I noted, the board under House Bill 2116 would be composed of 5 members as opposed to 3. The reason we made this change was so the board would be free to divide itself and hear more than one case at any one time and location. The bill requires 3 members of the board to approve a decision or determination but the hearing process would be much more flexible than originally envisioned.

Finally, with respect to the basic concept underlying House Bill No. 2116, you may recall that when I briefed the committee earlier, I indicated that this recommendation would carry a significant fiscal note with it. I don't have, and really don't have the information necessary to develop, precise numbers regarding the cost involved. However, the bill provides that members of the board would be compensated and entitled to the same expense allowances as district judges who are designated as an administrative judge of a district court. Added to this, of course, would be the costs of support staff, office space, supplies and so forth. However, I would hope consideration will be given not just to the costs of establishing, implementing and maintaining a workers' compensation board but also to the reduced load on the Director's office and district courts as well as the more important contribution of effecting a significant improvement in the ability of the workers' compensation system to respond more quickly, more fairly and more efficiently with respect to matters in dispute.

Attached to my testimony is an unedited memorandum prepared by staff of the Workers' Compensation Fund that provides a very brief section by section description of the contents of House Bill No. 2116. All of these sections amend existing law as necessary to incorporate the workers' compensation board review process or, in some cases, make grammatical corrections to current language. One caveat I would express regarding the memorandum is that it was prepared from the perspective of the Fund. Therefore, when you see comments such as, "The administrative impact ... should be minimal," the reference is to the Fund as opposed to a general conclusion.

In addition there are two other changes that should be specifically noted. First, in section 18, on page 39, the task force recommended requiring all decisions of the board to be issued within 30 days from the date described instead of the current 90 day allowance. Second, in section 31, page 53 an amendment is included to eliminate the Director of the Division of Workers' Compensation being appointed for a specific term and instead provide that the Director serve at the pleasure of the Secretary of Human Resources. This was a change incorporated in the

proposal last year and the task force knew it was there because it was included in the proposal submitted to the task force by its subgroup assigned the responsibility of looking at these issues. Nevertheless, you should also know the task force really did not discuss this subject.

Attachment

M E M O R A N D U M

TO: Dick Brock  
Administrative Assistant

THROUGH: Steve Imber  
Chief Attorney

FROM: Bill Dempsey, Staff Attorney  
Workers' Compensation Fund

SUBJECT: House Bill No. 2116

DATE: January 27, 1993

Section 1 of House Bill 2116 proposes to enact new legislation that would place authority to review all decisions, findings, orders and awards of compensation by the director of workers compensation and all administrative law judges within a five member workers compensation board.

Applications and guidelines for membership to the board will be submitted to the director of workers compensation who will in turn submit qualified applicants to the board nominating committee for consideration. The two member nominating committee shall be appointed by the Kansas AFL-CIO and the Kansas Chamber of Commerce and Industry (KCCI).

This section appears to be designed to eliminate director and district court review of decisions and awards. Appeal of board decisions would go directly to the Kansas Court of Appeals eliminating review by the director and the 105 Kansas district courts. By eliminating these two steps of review, the system should become streamlined saving time and money - i.e., fund expenditures used to defend claims. Further, by eliminating the district courts and using a five person board, consistency in decisions issued in workers compensation cases should improve. In addition, bypassing the director and the district courts should weaken their political impact. However, the political impact of the AFL-CIO and the KCCI maybe strengthened. If the board is favorable to labor, awards granted against the Fund may increase, thus fiscally impacting this department. The administrative impact of this section should be minimal.

Section 2 proposes to amend K.S.A. 1992 Supp. 44-508 by adding subsection (D)(p) defining the workers compensation board as discussed above.

Section 3 proposes to amend K.S.A. 1992 Supp. 44-510 (D)(9) and (12) by submitting any order of the director under these sections and any civil fine imposed under these sections to review by the board.

Sections 4, 5, 10, 12, 26, 27, 28 and 30 propose to amend K.S.A. 1992 Supp. 44-510(b)(e), 44-510(c)(3), 44-512(b)(a), 44-525(a), 44-567(a)(1)(2) and (d), 44-569(a)(b)(c) and (d), 44-569a, and 44-5a04(b) by removing the word "director" and replacing with the words "administrative law judge" to achieve consistency with New Section 1.

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Section 6 proposes to amend K.S.A. 1992 Supp. 44-510d (a) (23) to comply with the Supreme Court ruling of Stephens v. Sugar Creek Packing, 250 Kan. 768, 830 P.2d 41 (1992), declaring this section unconstitutional.

Section 7 proposes to amend K.S.A. 1992 Supp. 44-510g (a) (3) by making a grammatical change only.

Section 7 would also amend K.S.A. 1992 Supp. 44-510g (e) (3) by striking the words "district court" and adding the word "board" as discussed under New Section 1 supra.

Section 7 would also amend K.S.A. 1992 Supp. 44-510g (j) by striking the word "director" and replacing with the words "administrative law judge" to achieve consistency with New Section 1.

Section 8 proposes to amend K.S.A. 1992 Supp. 44-511 (b) (5) by removing the word "director" and adding the words "administrative law judge" to achieve consistency with New Section 1.

Section 8 would also amend K.S.A. 1992 Supp. 44-511(b) (c) by increasing the gross average weekly wage of a volunteer member of the Kansas department of civil air patrol from \$433.80 to \$476.38. This will have minimal fiscal impact on this department.

Section 9 proposes to amend K.S.A. 1992 Supp. 44-512 by removing the word "director" and adding the words "administrative law judge" to achieve consistency with New Section 1.

Section 9 would also amend K.S.A. 1992 Supp. 44-512 to correct grammatical errors.

Section 11 proposes to amend K.S.A. 1992 Supp. 44-523(a) by striking the word "court" and adding the word "board" and by removing the word "director" and adding the words "administrative law judge" to achieve consistency with New Section 1.

Section 13 proposes to amend K.S.A. 44-528(a) by striking the words "director" and adding "administrative law judge" to achieve consistency with New Section 1.

Section 13 would also amend K.S.A. 44-528(b) in the same manner as 44-528(c) above.

Section 14 proposes to amend K.S.A. 44-532a by making grammatical changes. In addition, this section would be amended to state that whenever a worker files an application under this section, it shall be assigned to an administrative law judge for hearing. This should have no change or drastic effect on this department, but it may speed up the time necessary to implead the Fund and accelerate the time when liability will attach.

Section 14 would also amend K.S.A. 44-532a (b) by making grammatical corrections.

Section 15 proposes to amend K.S.A. 44-534(a) and (b) by making grammatical corrections.

Section 16 proposes to amend K.S.A. 1992 Supp. 44-534a (a) by striking the word "director" to achieve consistency with New Section 1.

Section 17 proposes to amend K.S.A. 44-549(a) by making grammatical corrections. In addition the word "director" is removed and the word "final", when referring to awards by an administrative law judge, is added to achieve consistency with New Section 1.

Section 17 also proposes to amend K.S.A. 44-549(b) by adding the words "and the board" and the word "shall" when referring to the power to administer oaths, to achieve consistency with New Section 1. In addition, grammatical errors are corrected.

Section 18 proposes to amend K.S.A. 1992 Supp. 44-551(a) by eliminating director reviews by assistant directors of workers compensation. If the review board of New Section 1 is enacted the assistant directors would not be needed for this function.

Section 18 also proposes to amend K.S.A. 1992 Supp. 44-551(b) (1) by allowing administrative law judges to compel documents and records to be presented to the same extent as a district court. This is consistent with the overall purpose discussed in New Section 1, supra. In addition, the word "director" is stricken and the words "board" and "administrative law judges" are added to achieve consistency with New Section 1.

Section 18 also proposes to amend K.S.A. 1992 Supp. 44-551(2)(A) by changing the word "director" to the words "by the board" to achieve consistency with New Section 1. Furthermore, the word "director" is changed to the words "the orders of the board" and the time of "90" days, when referring to any other acts, findings, awards, decisions, rulings or modifications in regard to review of preliminary awards, is changed to "30" days. This proposal should speed up the review process and may save money (i.e. P.P.D. payments etc.) and resultant over payments made by the Fund should the claim be found non-compensable or the award is reduced. By reducing this time period, it is arguable that this may also reduce the number and the amount of overpayments and assist in streamlining the process. (Note that this aspect does not change the review of preliminary awards under K.S.A. 44-534a, only other aspects.)

Section 18 would also amend K.S.A. 1992 Supp. 44-551 (2) (A), (13) and (c) by striking the word "director" and adding the words "board" and "of the board" to achieve consistency with New Section 1.

Section 18 would also amend K.S.A. 1992 Supp. 44-551(f) submitting any action by the director to review by the board as reflected in New Section 1.

Section 18 would also amend K.S.A. 1992 Supp. 44-551 (G) by maintaining judicial review as described under K.S.A. 44-556, in all other instances board decisions and awards are final.

Sections 19, 20, 21 and 22 propose to amend K.S.A. 1992 Supp. 44-552(a)(b) and (c), 44-553, 44-544, and 44-555 and should have no substantial effect on Fund liability or administration by this department.

Section 23 proposes to amend K.S.A. 1992 Supp. 44-556(a) by striking the word "director" and adding the word "board" to achieve consistency with New Section 1. Furthermore, it is also amended to disclose the procedural requirements necessary to appeal a board decision.

Section 23 would also amend K.S.A. 1992 Supp. 44-556(b) and (c) to disclose procedural requirements necessary to appeal a board decision.

Section 23 would also amend K.S.A. 1992 Supp. 44-556(d) (1) and (2) and this would have no administrative or fiscal impact.

Section 24 proposes to amend K.S.A. 44-557(a) to correct grammatical and gender language errors.

Section 25 proposes to amend K.S.A. 1992 Supp. 44-556a (b) (1) by stating that each such general fund entitlement is subject to reduction under K.S.A. 1992 Supp. 75-6704. This proposed change will not effect the way the Fund has operated for the last two years.

Section 25 also amends K.S.A. 1992 Supp. 44-566a (b) (2) by making grammatical corrections.

Section 29 proposes to amend K.S.A. 44-557(a) by making grammatical corrections and by changing "director" to administrative law judge" to achieve consistency with New Section 1.

Section 29 would also amend K.S.A. 44-557(b) by striking the words "he" or "she" to the words "the secretary of administration." This would have no fiscal or administrative impact.

Section 29 would also amend K.S.A. 44-557(b) by allowing all other claims to be paid under this subsection that are final awards in accordance with the orders of an administrative law judge or pursuant to orders of the director.

Section 30 proposes to amend K.S.A. 1992 Supp. 44-5a04 (b) by striking the word "director" and adding "administrative law judge" to achieve consistency with New Section 1.

Section 31 proposes to amend K.S.A. 75-5708(a) by making grammatical changes. In addition, the director of human resources would now serve the director of human resources at his/her pleasure instead of a four year term. This would have no administrative or fiscal impact.

Section 31 also proposes to amend K.S.A. 75-5708 (b) and (c) by making grammatical changes.

If you have any questions, please contact me at your convenience.

Respectfully submitted,

*Bill Dempsey S. E.*

Bill Dempsey, Staff Attorney  
Workers' Compensation Fund

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**Testimony of**  
**Hal Hudson, State Director**  
**National Federation of Independent Business**  
**Before the**  
**Kansas House Labor and Industry Committee**  
**Thursday, January 28, 1993**

Mr. Chairman and members of the Committee: Thank you for this opportunity to appear before your committee. My name is Hal Hudson, and I am the Kansas State Director for the National Federation of Independent Business. NFIB is the State's largest small-business advocacy group, with over 7,500 members who employ nearly 90,000 Kansans.

I am here to convey to you the concern expressed by members of NFIB/Kansas over the steadily rising cost of Workers Compensation insurance, and to support passage of H.B. 2116.

Because I am new to this position with NFIB, having just been named State Director on January 1, 1993, I am not prepared today to provide you with comprehensive information reflecting the many experiences our members have had with workers compensation claims. Nor have I prepared a long list of reforms needed to bring this problem under control. There are others in this room, including members of your committee, who have a much deeper understanding of what is wrong and what needs to be changed.

To underscore the fact that Kansas does not face this problem alone, I would like to quote a few lines from the July 1992 issue of State Legislatures, a publication of the National Conference of State Legislatures. I believe this is close to our situation in Kansas.

*"What ails the workers' compensation system -- excessive costs, fraud, waste, expanding definitions of eligibility for compensation and outdated, understaffed and under funded administration systems -- only gets worse every year.*

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*"The real cost drivers in the '80s, however, were increased medical costs, increased litigation (especially cases to recover loss of income), expansion of the kinds of injuries covered, such as stress, and growth of occupational diseases (carpal tunnel syndrome and asbestos related disorders.)"*

**What is to be done?**

At the risk of offering simplistic solutions to a very complex problem, I want to make only four suggestions:

- 1) We must introduce medical cost containment measures comparable to those now common in the general health field into the workers compensation field. (Implement legislation enacted in 1990, now embodied in K.S.A. 44-510.)
- 2) We need to review and make appropriate changes in the broad area of compensation eligibility, clearly defining work-related disabilities covered under the system.
- 3) We must restore workers compensation to a true no-fault insurance -- as it always was meant to be. Employers can afford to pay benefits for injured workers, but cannot afford a system of claims resolution by the courts. We need a no-fault system where the facts are determined by the administrative system, and only points of law are determined by the judiciary.
- 4) We need to explore the possibility of providing incentives for employers with effective safety programs, or a history of having a safe work place.

Although a comprehensive approach to reform of our present system requires much more detail than I have offered, H.B. 2116 appears to a step in the right direction to achieving our goal number 3. I am confident members of NFIB will be supportive of any legislative proposals that properly address these major points.

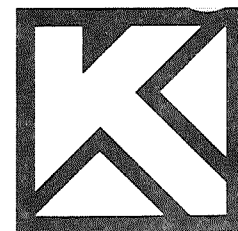
Thank you.

**NFIB/Kansas - 3601 S.W. 29th St., Suite 107, Topeka, KS 66614-2015 - (914) 271-9449**

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

HB 2116

January 28, 1993

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Committee on Labor and Industry

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to present the reasons why the Kansas Chamber supports adoption of HB 2116.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

HB 2116 would establish a workers' compensation board which would be responsible for hearing appeals of disputed cases in the workers' compensation legal process. KCCI feels the appeals board concept is one important ingredient in achieving "comprehensive reform"

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of the Kansas workers' compensation system. In the days ahead, I will look forward to supporting other needed elements to achieve "comprehensive reform." However, today I will restrict my comments to problems in the current legal framework in the Kansas workers' compensation system and how a workers' compensation board could correct the problems.

1. The Kansas workers' compensation legal maze is one of the most complicated systems in the United States. Workers' compensation cases in Kansas currently can weave from an administrative law judge, to the workers' compensation director's office, to one of the hundreds of district courtroom in Kansas, and then on to the Kansas Court of Appeals and the Kansas Supreme Court.

HB 2116 cuts off two links in the legal chain by eliminating appeals to the workers' compensation director and district court, and replaces it with a one-step system appeals process, thereby streamlining the legal system.

2. Consistency is lacking in today's workers' compensation legal process. The chief legal officer of the Kansas workers' compensation system, the workers' compensation director, is a political appointee. While the current workers' compensation director should be applauded for the praise he is receiving from all parties involved in workers' compensation, the recent past shows a pendulum of political philosophy has swayed in the workers' compensation director's office. Social philosophy has also produced judicial inconsistency at the district court level.

The unique selection process embraced in HB 2116 attempts to divorce political selection from the workers' compensation board, by requiring organizations representing Kansas employers and employees to agree on the membership of the workers' compensation board. This selection process will hopefully create an appeals board where the merits of a case determines its outcome.

3. After the crash course this committee has received on workers' compensation in recent weeks, I am sure all will agree workers' compensation is complex and confusing. In district courtrooms across Kansas bloated with civil and criminal cases, knowledge of workers' compensation law varies widely.

In HB 2116, judges on the workers' compensation board will devote all their energies to delivering decisions in workers' compensation cases. That fact, coupled with the attractive salary paid to board judges, should create a system where the judges are highly qualified and knowledgeable about workers' compensation law, and have the time to give each case before it the attention it deserves.

4. Currently, the Kansas workers' compensation director wears two hats. The director is an administrator of a 60 employee division of state government. The director is also a judge rendering decisions on appeals. During discussions of the problems of workers' compensation in Kansas, this committee has heard of the increased need in workers' compensation administration to develop a data collection process, explore managed care health care options and implement medical fee schedules and a utilization review system, and to manage a variety of dispute resolution concepts.

By freeing the workers' compensation director of judicial responsibilities, HB 2116 provides a workers' compensation director greater opportunity to manage the increasing responsibilities thrust on the division of workers' compensation.

5. A major concern associated with HB 2116 is the cost of implementing a workers' compensation board, which could approach a million dollars. Since Kansas employers will bear this cost, KCCI certainly shares that concern.

In considering the costs, please also consider the expenditures made today which would no longer be needed if a workers' compensation board is developed. First, the two assistant workers' compensation director positions, who are principally responsible for rendering appeal decisions, would not be needed. In addition, money currently spent in the district court appeal process would be saved. Regardless of the final cost, the benefits received from an improved judicial process should make the cost of the workers' compensation board a prudent expenditure of resources.

In restricting my comments to the benefits of a workers' compensation board, I should note another important element to "comprehensive" workers' compensation reform which should be added to HB 2116.



Currently, Kansas law greatly restricts appeals of "preliminary hearing" decisions rendered by administrative law judges. The inability to appeal preliminary hearing decisions results in a manifest injustice which substantially increases costs when preliminary orders are improper, significantly lengthens the time required to complete litigation, and encourages misrepresentation of facts and evidence at the preliminary level. The major reason why restrictions have been placed on preliminary hearing appeals is the current legal system's inability to handle the case load. Creation of a workers' compensation board creates an avenue where parties who feel an administrative law judge has erred in a preliminary hearing level to have their appeal heard.

Mr. Chairman, thank you for this opportunity to explain why KCCI strongly supports passage of HB 2116. I would be happy to attempt to answer any questions.



# KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 SW Jackson, Suite 706, Topeka, Kansas 66603-3731  
(913) 232-7756 FAX (913) 232-7730

January 28, 1993

TO: House Labor and Industry Committee  
FROM: Richard Mason, Executive Director  
RE: HB 2116 - Workers Compensation Board

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On behalf of our members I am submitting this written testimony in opposition to HB 2116, heard earlier today in your Committee.

HB 2116 is a product of the Insurance Department's Task Force on Workers Compensation. Our Workers Compensation Committee Chairman, Dennis Phelps, was a member of that Task Force. Our opposition to this proposal is evidence that many of this Task Force recommendations were not unanimously accepted by members of that Task Force.

KTLA's concerns with HB 2116 are as follows:

1. The bill creates a new level of bureaucracy which could (even according to those who argue for it) cost as much as \$1 million a year. Obviously, salaries of District Court Judges will not be affected, so clearly the expense of the Board will be "added cost". If the goal this session is to reduce costs, this proposal certainly does not meet that criteria.
2. We have had a workers compensation system of justice based upon "de novo" District Court review for many, many years. While not perfect, it does provide all concerned with a "day in court", which is something all citizens/litigants deserve, no matter what kind of case is involved. We see no bonafide reason why workers compensation litigation should be treated differently, particularly where it will make it more expensive.
3. No one really knows how this new system of adjudicating claims would work in reality. It is untried and the indications are that backlogs would soon develop with all cases coming to one board. With all the other problems we know exist with our workers compensation system, it seems unwise to run the risk of experimenting with a whole new system.
4. Proponents say the goal of HB 2116 is consistency and uniformity in interpretation of the Act. The proper legal mechanism for producing final interpretations is with a Court of final review (i.e., Kansas Court of Appeals or the Supreme Court).

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5. HB 2116 as written does not make it clear the board members will physically go to the different geographical areas of our state to hear cases. This will impose an additional expense on all the parties to a claim, particularly on claimants who cannot afford it.

The Kansas Trial Lawyers Association encourages you to reject HB 2116 as a component of any reform package developed by your Committee.