Approved: 2-19-93
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 February 5, 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:

Dick Brock, Administrative Assistant, Kansas Insurance Department
Kay Sage, Director of Human Resources, Kansas Labor, Inc.
Art Brown, Kansas Lumber Dealers
Terry Leatherman, Kansas Chamber of Commerce and Industry
Kirk Lowry, Kansas Trial Lawyers Association
George Gomez, Director, Division of Workers Compensation

Others attending: See attached list

Hearing on HB 2150 - Workers compensation, penalties for certain false or misleading statements and related activities, cause of action.

Dick Brock, Administrative Assistant, Kansas Insurance Department, appeared in support of HB 2150 which embodies a recommendation of the Commissioner's Workers Compensation Task Force regarding fraud and abuse in the workers compensation system. 1992 Substitute for House Bill 3039, which addressed the same subject in a less detailed fashion, was used as the basic vehicle for this bill. (Attachment 1)

Kay Sage, Director of Human Resources, Kansas Labor, Inc., of Osage City testified in support of HB 2150 having dealt with the frustration of fraud in the workers compensation system over the past 8 years. (Attachment 2a) She brought with her the written testimony of John W. Samples, President, Kan Build, Inc., Osage City, who included a copy of his company's safety incentive program with his testimony. (Attachment 2b)

Art Brown, Kansas Lumber Dealers, testified in support of HB 2150, but felt the penalty for fraud in the workers compensation system should be upgraded from Class "C" misdemeanor to Class "E" felony. (Attachment 3)

Terry Leatherman, Executive Director, Kansas Chamber of Commerce and Industry, appeared in support of HB 2150. KCCI supports the passage of a workers compensation fraud statute, but suggested three changes in the legislation. Recommendations one and two are in the written testimony. Third, they would like a provision for recovery of attorney fees. (Attachment 4)

Kirk Lowry, Kansas Trial Lawyers Association, reported that the Association finds HB 2150 generally balanced in its coverage for all parties involved in the workers compensation system; but feels it will have very little impact, if any, on the premiums paid by Kansas employers. KTLA supports the bill if two changes are made, both are covered in their written testimony. (Attachment 5)

Janet Stubbs, Home Builders Association, provided written testimony in support of HB 2150 and a strong penalty for attempts to defraud the workers compensation system either by the worker himself or a person who assists in the action to commit fraud. (Attachment 6)

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY, Room 526-S Statehouse, at 9:00 a.m. on February 5, 1993.

Hearing on HB 2151 - Workers compensation, apportionment or assignment of risk plan, reduction of assessments.

Dick Brock, Kansas Insurance Department, appeared in support of HB 2151 as recommended by the Commissioner's Workers Compensation Task Force which addresses the subsidization of risks in the Kansas Workers Compensation Insurance Plan by employers insured in the normal or voluntary workers compensation insurance market. Mr. Brock called the committee's attention to an error on page 2 of his testimony, the 1991 underwriting loss for the Plan was in excess of $55 million, not $71 million as stated. (Attachment 7)

As time was short, Chairman Heinemann asked the other conferees if they could return next week to present their testimony.

George Gomez, Director, Division of Workers Compensation, proposed amendments to the workers compensation law for consideration by the 1993 legislature. Vice Chairman Lane moved and Representataive Webb seconded that the Director's proposals be introduced as a committee bill. Motion carried. A copy of the bill changes was sent to the Revisor to be put into bill form. A synopsis of the Director's proposal is attached. (Attachment 8)

The meeting adjourned at 10:02 a.m. The next meeting is scheduled for February 8, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 2-5-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Bill Morrissey	Topeka	DHR/Work Comp
Wayne Maichel	TOP	KS. AFL-CIO
GEORGE WELCH	"	DPS
Bill Wempe	"	KS. Ins. Dept.
RAY RATHERT	"	KS. Ins. Dept.
[illegible]	"	K/DHR Dept.
DICK THOMAS	"	DHR-Work Comp
John M. Ostrowski	"	AFL-CIO
Dick Brock	"	Ins Dept
Lisa Unruh	Topeka	DOB
Michelle Davidson	Topeka	Social Work
Joe Turgeon	Topeka	KCA
Marcia Culkman	"	Lt. Gov.
Larry Shaffer	Topeka	Kns. Hosp. Assoc
Harry D Nelson	Wichita	KS AFL-CIO
Kathy Seyton	Topeka	Div. of Budget
J. Wrigley	"	Wichita Eagle
Bob Totten	Topeka	Ks Contractors Association
TOM WHITAKER	TOPEKA	KS Motor Carriers Assn
Tom Slattery	"	AGC
Dave Frankel	Lawrence	KTLA - student intern
Kathy Gourley	Topeka	KTLA
[illegible]	"	"

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 2-5-93

NAME	ADDRESS	COMPANY/ORGANIZATION
Bill Buxton	Topeka	Flaming Co.
~~Dorothy Taylor~~	Topeka	Prof. Ind. Ins. Agents
Jim McHoff	Topeka	KS AFL-CIO
Rich McKee	"	KS Livestock Assoc.
Bill Curtis	Topeka	Ks Assoc of School Bds
Terry Leatherman	Topeka	KCCI
Pat Brown	- -	KS LBR Dealers Assn

Testimony on
House Bill No. 2150
by
Dick Brock
Kansas Insurance Department

House Bill No. 2150 embodies a recommendation of the Commissioner's Workers' Compensation Task Force which emerged from our discussions regarding what we loosely described as fraud and abuse in the workers' compensation system. The original suggestion considered by the task force was a proposal based on a bill under consideration in Missouri. It would have created a separate and distinct unit within the Division of Workers' Compensation to investigate and dispose of a laundry list of defined acts and allegations of fraud or abuse prohibited by the proposal. In addition to administrative penalties that could be imposed by the Director, the original recommendation provided for a referral of the investigative file to appropriate authorities for further prosecution.

At the final meeting of the task force prior to the legislative session, a fairly extensive discussion took place on this issue. As a result of the discussion, attention shifted to a bill introduced last session, Substitute for House Bill No. 3039, which addressed the same subject in a less detailed fashion. The consensus ultimately reached was a recommendation that 1992 Substitute for House Bill No. 3039 be used as the basic vehicle but the targeted practices be expanded to include a composite of the most frequent and significant acts at least as identified by the complaints and anecdotal information with which task force members were familiar.

The actual drafting of the proposal now before you was not possible during the course of the task force meeting. Therefore, as chair of the task force, I drafted the proposal based on the conceptual consensus and distributed it to task force members. Nevertheless, the final product has not been the subject of any collective discussion by the task force. I give you this background simply because I want the committee to be

House Labor and Industry
Attachment 1
2-5-93

aware that there were some fairly strong differences of opinion on this issue.

With regard to the bill itself, I would first draw your attention to the fact that it is intended to apply to any person who knowingly or intentionally acquires or attempts to acquire some undue benefit or advantage from the workers' compensation system by committing deceitful acts of the nature described in lines 25 through 30 of page 1 of the bill. This includes injured workers who obtain or attempt to obtain compensation to which they know they are not entitled, employers who deliberately understate their payroll or misrepresent the work performed by employees in an effort to lower their workers' compensation premium to a level below that which would otherwise apply; insurance companies or insurance adjusters who falsely and intentionally portray certain facts to reduce or avoid the payment of workers' compensation benefits; and attorneys who conceal a settlement offer to a workers' compensation claimant. Under the provisions of House Bill No. 2150, these persons for these acts could be found guilty of a Class C misdemeanor.

In addition, the person benefitting from the violation would be required to pay or repay the amount realized plus interest. If such payment or repayment is not made, the aggrieved person has, by subsection (c), a cause of action against the party committing the transgression.

Subsection (d) of the bill simply retains the existing procedures for reimbursements arising from the ordinary operation of the workers' compensation process.

As much as we all hear about fraud and abuse in the workers' compensation system, this bill seems to be too short and too simple to address the issue. However, as I attempted to describe, its application is fairly broad and the relief or access to relief provided is about as reliable as we can make it. I suppose the one questionable point is whether greater emphasis should be placed on the possibility of fraud by including some specific investigatory responsibilities and assigning them to the Attorney General or some other office.

1-2

KANSAS LABOR, INC.

Re: House Bill No. 2150

I have dealt over the pass eight (8) years with the frustration of the injured employee, co-worker, and the employer on the issue of fraud in the workers compensation system.

Our support of this bill is backed by these issues:

1. At the present time, there is a distrust between labor/management, amongest co-workers, and others due to the fraud in our system.

   When employees are aware that a co-worker is off work due to an injury and witness them outside work engaging in activities they were restricted from doing this does two things:

   a. Creates dissension amongst workers because there is no penalty for deception under the current system.

   b. Gives co-workers the incentive to try to deceive the employer.

2. Takes money away from items that benefit the entire workforce: 1) equipment improvements
   2) workplace upgrading
   3) safety incentives

3. This law is needed to force compliance by <u>all</u> employers, employees, physicians, lawyers and insurance carriers.

   Companies that are operating in good faith are penalized for all other participants who are not. No matter how much safer we get, how much we reduce our claims, our rates continue to skyrocket to compensate for the poorly operated companies, fraud, greed, and the inadequency of the system.

We are, for a large part, an employee-owned company. Management, hourly workers, and members of the community all invested in buying our facility four (4) years ago.

We bought it, <u>all</u> of us, with the intention of it being a long term investment in our future. We intended to work hard at making it a success and then be able to enjoy the benefits. It was to be a place to hopefully retire from.

House Labor and Industry
Attachment 2a
2-5-93

P.O. BOX 94 • OSAGE CITY, KS 66523 • 913-528-4169

Most our employees have worked hard through some very difficult times. They do not want to see the results of their hard work going for naught because of a handful of individuals with only their own short term gains in mind.

Implementation of this Bill would force many of these people to face the fact that the crime of insurance fraud really is a crime and the threat of punishment is a fact.

Hopefully, this would greatly impact the number of false claims filed and frivolous lawsuits that often accompany them.

Kaye Sage

Kaye Sage
Director of Human Resources
Kansas Labor, Inc.

KAN-BUILD, INC.

NICHOLS ROAD & HWY 31 EAST • OSAGE CITY, KS 66523 • 1-800-343-2783 • 913-528-4163 • FAX 913-528-4795

Re: Workers Compensation Breakdowns

I listened with frustration to comments being made during the hearing on House Bill 2121. At that time I was not prepared to respond in a coherent manner.

Comments from both sides sounded as if it is a labor and management fight with management taking advantage. The owners and managers that I know realize their employees are their most valuable asset.

We may talk of employee fraud and not define that the number of employees involved is surely less than 2% but causing a much larger part of the workers compensation problem.

Everyone needs to step back and see what we want to accomplish the following is what I believe all Kansans need to have happen.

1. A safe work place
2. More jobs and more businesses in Kansas because of our attitude to the work place and insurance.
3. A system that protects workers injured on-the-job but does not allow fraud and abuse of the system.

The list of results is short but far reaching. The list of items which will truly make the employer/employee relationship closer as a result of limited outside interference.

1. Better define pre-existing conditions and eliminate many of them from the second injury fund. Many pre-existing conditions come from agriculture which we have seen fit to exclude the rest should not pay for this exclusion or agriculture needs to be included. (I farm 300 acres.)
2. Establish regional boards to review cases where accidents are questionable and establish some level of proof in the system.
3. Set rates of physicians to avoid gouging rates on exams.
4. Establish standards within the state for defined safety programs.
5. Remember the hourly wage of many non-technical jobs has been based on the physical level involved in many cases. The employees understand, as does management, the body ages. These jobs take a toll on the body, and allowances should be made in these situations. Employers cannot stop the aging process.

House Labor and Industry
Attachment 26
2-5-93

6. Limit legal fees to a flat $80.00 per hour and put a maximum dollars per claim.

7. Many of my employees are given awards from the fund for injuries primarily due to age not the work place. The employees are satisfied with their medical care and benefits. The State sends a check for $3,000.00 - $5,000.00 the employee didn't want nor expect. The system doesn't have this kind of money.

8. Employees must take some accountability for their actions. Medical treatment should be covered and paid time off, but punitive damages shouldn't be allowed when a person injuries himself through his own negligence.

9. Prevent attorneys from involvement until labor/ management have failed to solve the situation. Prevent attorneys from involvement before the employee notifies management of an accident.

10. Establish penalties for fraud by employers, employees, physicians, and attorneys.

11. Prevent ads by attorneys which encourage frivolous claims.

12. Encourage incentive health and exercise programs in the work place which will lower both health costs and workers compensation accidents.

13. Employers which run sweat shop operations and abuse employees should have civil penalties applied.

Currently, under the system lost days and the frequency of accidents drive modifiers of workers compensation up. This in itself creates friction and mistrust.

When the employee is hurt, his degree of pain may not be readily visible to the employer. The employer has been taught and encouraged by the insurance companies and the attorneys to get the employees back to work. When we try to do this to lower our lost work days to lower expenses, the employees resent it and rightly so. However, many employees do abuse this program. There must be some better lines drawn to allow compassion without changing modifiers.

I personally believe fraud and the outrageous settlements granted for frivolous injuries to be 95% at fault in the system. Penalties must be enacted.

When there is fraud, 98% of the employees are as outraged as I. Neither one of us can do anything unless we want to break the law.

Kansas has an unbelievable opportunity to make this a model state for employers and employees helping work together to make a state of which we can all be proud.

In my experience as a worker and an owner of over 24 years in this state, I believe on the whole that we provide a safer work place and treat our people better than other areas of the Nation. With insurance rates today, I assure you anyone not concerned with safety is either in an illegal business or insane.

To illustrate my point on fraud and how today dollars are very important:

In January of 1992, I explained to my employees in great detail how the insurance rates would bankrupt our company if we didn't avoid accidents. We made no work place changes, but instituted a monetary reward system. I have enclosed a copy of this incentive system for your review. Accidents dropped from 46 to 21. Lost work days dropped from 316 to 52.

I can assure you the environment didn't change. We added over 50 new inexperienced employees during 1992 which should have caused accidents to go skyhigh.

I truly believe if we can obtain the reforms I've mentioned and get the outsiders out of the work place and appoint a board for both employers and employees to resolve grievances, the system and the state will prosper.

Footnote: One Representative at the Hearing 2121 asked, "Don't the insurance companies spend dollars for ergonomics and help the employer".

Kan Build, Inc. spend nearly $134,000 in 1992 on premiums. Our carrier wouldn't pay any part of an Ergonomics Group that we brought into the plant. The group did some good, but the employees make it happen.

Give us a program that allows employers to work with employees.

John W. Samples
President, Kan Build, Inc.

KAN BUILD, INC.

SAFETY INCENTIVE PROGRAM

WORKER'S SAFETY
LOTTERY PROGRAM

In the interest of promoting a safer workplace and reducing the overall cost of work related injuries, Kan Build, Inc is pleased to announce the implementing of a program of monetary rewards for the production employees of our plant.

Awards will be made monthly.

Eligible employees will be those who have been employed at least 30 days and have not had a work related injury anytime in the past 30 days.

Amount of Award - $100 per recipient.

Number of Awards per Month: Maximum 3

LOTTERY DRAWING FOR AWARDS

1. Each accident free employee's name is placed in the drawing.

2. Drawing is held at the noon hour on the first Friday of the month for the previous month.

3. The President, Production Manager, and Personnel Manager reviews the accidents for the previous month before the drawing.

4. Drawing is held - awards given in cash with a note attached that the employee will receive a 1099 at the end of the year.

5. An employee who suggests and assists in implementing a safety improvement for a specified safety problem or a potential safety risk in the plant, will get their name placed in a drawing twice for the rest of the year, if the employees qualifies for the month.

6. Each employee without a recordable injury/accident for the calendar year and 6 months service will receive an incentive bonus of $ 50.00.

7. Also, if we reduce the Company injuries/accidents by 50% of the recordable injuries in 1991 which is not more than 18 recordable injuries after April 1,1992, an additional drawing will be held at the end of the year for all employees without a recordable injury and 6 months of service for 3 awards of $250.00 each.

8. In addition, if we reduce the Company injuries/accidents by 80% of the recordable injuries in 1991 which is not more than 7 recordable injuries after April 1, 1992, an additional drawing will be held at the end of the year for all employees without a recordable injury and 6 months of service for 3 awards of $500.00 each.

9. This program is intended as an incentive towards safety. If frequency of accidents is not reduced significantly, management reserves the right to discontinue the program.

10. Definition of "Accident":

    "Any occurrence that results in bodily harm requiring the employee to interrupt their normal duties to seek medical assistance outside of the plant."

11. All accidents will be reported to the appropriate management person. Any accidents not reported in a timely manner will result in the disqualification of an employee's participation for the next three (3) months.

12. When an employee has a recordable accident, it will make him ineligible for six (6) months (including the month in which the accident occurred).

    RVD 09/11/92

AWARDS DETERMINATION PER MONTH

LOCATION	NUMBER OF INJURIES	NUMBER OF AWARDS
KBI	0	3
	1	2
	2	1
	3	0

	Monthly	Annually
Maximum Cost/Mo.	$ 300	$ 5,100+

(Assumes no lost time accidents for 12 months)

800 WESTPORT ROAD • KANSAS CITY, MISSOURI 64111-
816/931-2102 FAX 816/931-4617

MID-AMERICA LUMBERMENS ASSOCIATION

MLA
ARKANSAS KANSAS
MISSOURI NEBRASKA
OKLAHOMA

TESTIMONY TO THE HOUSE LABOR AND INDUSTRY COMMITTEE

H.B. 2150 RM. 526-A February 5, 1993

Mister Chairman, members of the committee;

My name is Art Brown and I represent the retail lumber dealers in the state of Kansas. It is with sincere thanks that I have been given the opportunity to speak to you today in support of House Bill 2150.

As a membership, we applaud the effort you are putting into resolving the extremely complex issue of the Workers Compensation system. We commend you for grappling with the issue of fraud, one of the cost drivers that we certainly feel needs to be addressed. It is a complex issue, a passionate issue, and we are pleased to see a bill being discussed before the committee to address it.

In looking over this bill, we certainly feel that the committee is starting to head in a good direction to deal with this issue. However, one part of the bill that concerns us is the penalty provision.

We feel that anyone who is sly and clever enough to commit a successful fraudulent act against the Workers Compensation system, is also sly and clever enough to make sure any monetary awards collected will be extremely difficult to retrieve, if not at times impossible. While the good intent of the bill is to make sure the affected party is given restitution and, where applicable, attorneys fees, the problem, as we see it, is retrieving the funds that were taken for the fraudulent act.

We also feel that there should be a very strong dis-incentive for committing a fraudulent act, which in many cases can amount to thousands of dollars. A Class "C" misdemeanor, as defined by statute, is a maximum of one month in jail and a maximum $500 fine. We just don't feel this is a very powerful deterrent to someone, again, who is sly and cleaver enough to take advantage of the system the way it is currently set up. The likelihood of anyone serving any time in prison for a Class "C" misdemeanor is rare to say the least. $500 is certainly not much to give up, if in the meantime the perpetrator has managed to skim thousands of dollars out of the system and it cannot be retrieved.

LUMBER GROWS ON TREES

House Labor and Industry
Attachment 3
2-5-93

As a membership, the fraud component of the Workers Compensation system is one that is extremely passionate to us. While figures show that as a cost driver it is not as severe as other areas of the system, it is still an area we very much want to see some significant reform. Anyone who commits fraud against the system is driving up the cost if it. With that thought, penalties against offenders should be harsh enough to deter anyone who would think of abusing the system for personal gain, no matter what their income level. At $500, we don't think that is harsh enough.

Because there is a great likelihood that there will be other pieces of legislation that will deal with this issue, we feel that this particular bill will not be the last we hear on how to deal with this problem. However, if this does indeed become the only vehicle that deals with the handling of fraud in the Workers Compensation system, then we would have to say that the penalty provision be upgraded to a Class "E" felony so that there is some real "teeth" in the reform of this issue.

I have attached a copy of the Statute that outlines the penalty provisions for both a Class "C" misdemeanor and a Class "E" felony.

Again, we commend the committee for exploring the avenues of reform with this issue, and wish you the utmost in success in dealing with this and all of the complex issues involved with the Workers Compensation system.

It is always a pleasure to address this committee, and I stand ready to answer any questions or discuss any part of my testimony with you. Thank you.

Article 45.—CLASSIFICATION OF CRIMES AND PENALTIES

21-4501.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 231, effective July 1, 1993.

Law Review and Bar Journal References:
"A Quantitative and Descriptive Survey of Evidence Law in the Kansas Appellate Courts," Stanley D. Davis, 37 K.L.R. 715, 718 (1989).
"Nonsupport of Children: Criminal Prosecution as an Alternative," Michael W. Laster, J.K.T.L.A. Vol. XV, No. 5, 27, 28 (1992).

CASE ANNOTATIONS

62. Cited; indigent defendant's right to transcript of sentencing hearing following denial of sentence modification examined. State v. Duckett, 13 K.A.2d 122, 764 P.2d 134 (1988).
63. Sentencing examined where two criminal offenses with identical elements but different penalties involved. State v. Nunn, 244 K. 207, 228, 768 P.2d 268 (1989).
64. Time limits on district court's jurisdiction to modify sentences and exceptions thereto (21-4603(3)) examined. State v. Saft, 244 K. 517, 769 P.2d 675 (1989).
65. Where statute itself corrects sentence, correction of record of sentencing clerical in nature, and no hearing required. State v. Young, 14 K.A.2d 21, 38, 784 P.2d 366 (1989).
66. Appeal from probation denial following guilty plea where statutory presumption of probation applies (21-4606a) examined. State v. VanReed, 245 K. 213, 215, 777 P.2d 794 (1989).
67. Seven factors for consideration in sentencing not detailed where court exceeded minimum sentence; no abuse of discretion shown. State v. Meyers, 245 K. 471, 479, 781 P.2d 700 (1989).
68. Sentence enhancement within limits prescribed by law and without partiality, prejudice, oppression or corrupt motive not disturbed on appeal. State v. Trotter, 245 K. 657, 664, 783 P.2d 1271 (1989).
69. Mere reference to and adoption of presentence report as insufficient to overcome elements in 21-4601, 21-4606 and 21-4606a examined. State v. Tittes, 245 K. 708, 710, 784 P.2d 359 (1989).
70. Consequences of third or subsequent conviction of driving with suspended license determined. State v. Harpool, 246 K. 226, 229, 788 P.2d 281 (1990).
71. Ambiguous plea agreement as strictly construed against state determined. State v. Marks, 14 K.A.2d 594, 595, 796 P.2d 174 (1990).
72. Effect of 21-4603(3)(a) on court's discretion to modify sentence, nature of SRDC recommendation examined. State v. Moon, 15 K.A.2d 4, 5, 801 P.2d 59 (1990).
73. No requirement that life sentence be changed to term of years; question of good time credits is one for legislature. State v. Carmichael, 247 K. 619, 622, 623, 801 P.2d 1315 (1990).
74. Amendments to sentencing statutes regarding modification (21-4603(3)(a)) and presumption of probation (21-4606a) determined as substantive and applicable prospectively. State v. Sylva, 248 K. 118, 119, 804 P.2d 967 (1991).
75. Trial court's consideration of events occurring after crime for which defendant being sentenced examined. State v. Hannah, 248 K. 141, 143, 804 P.2d 990 (1991).
76. Mandate in 1989 Supp. 21-4603(3)(a) (now 1990 Supp. 21-4603(4)(a)) regarding sentence modification examined in depth; held constitutional. State v. Reed, 248 K. 792, 794, 811 P.2d 1163 (1991).
77. Penalties for class E felonies compared with provisions of 8-262(a)(3) for convictions of driving with a suspended license (minor over 14 years of age). State v. Frazier, 248 K. 963, 965, 811 P.2d 1240 (1991).
78. Time during which probation may be revoked examined; probation period held limited to maximum sentence time. State v. Grimsley, 15 K.A.2d 441, 443, 808 P.2d 1387 (1991).
79. Appellate court review of minimum sentence not involving presumptive probation after plea of guilty or nolo contendere examined. State v. Salinas, 15 K.A.2d 578, 579, 811 P.2d 525 (1991).
80. Record of criminal activity examined where court imposed consecutive maximum sentences within statutory limits. State v. Barraza-Flores, 16 K.A.2d 15, 23, 819 P.2d 128 (1991).

21-4501a.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 232, effective July 1, 1993.

21-4502. Classification of misdemeanors and terms of confinement; possible disposition. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year;

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months;

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month;

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503 and amendments thereto, instead of or in addition to confinement, as provided in this section.

(3) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt

beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(4) Except as provided in subsection (5), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under the uniform controlled substances act (K.S.A. 65-4101 *et seq.* and amendments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

(5) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (4) are permissive and not mandatory.

History: L. 1969, ch. 180, § 21-4502; L. 1977, ch. 117, § 2; L. 1979, ch. 90, § 4; L. 1989, ch. 95, § 4; July 1.

CASE ANNOTATIONS

6. Cited; presumption in favor of probation (21-4606a) examined where first convictions are Class E felonies. State v. Knabe, 243 K. 538, 539, 757 P.2d 308 (1988).

7. Limitations on conditions of probation and parole (21-4602) determined. State v. Mosburg, 13 K.A.2d 257, 261, 768 P.2d 313 (1989).

8. Offenses charged under Kansas securities act (17-1252 et seq.) determined to be felonies. State v. Kershner, 15 K.A.2d 17, 22, 801 P.2d 68 (1990).

9. Court lacks authority to require defendant to serve time in county jail as condition of probation. State v. Walbridge, 248 K. 65, 67, 805 P.2d 15 (1991).

21-4503. Fines. (1) Except as provided in subsection (2), a person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class B or C felony, a sum not exceeding $15,000.

(b) For a class D or E felony, a sum not exceeding $10,000.

(2) A person who has been convicted of a felony violation of or any attempt or conspiracy to commit a felony violation of any provision of the uniform controlled substances act may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class A felony, a sum not exceeding $500,000.

(b) For a class B or C felony, a sum not exceeding $300,000.

(c) For a class D or E felony, a sum not exceeding $100,000.

(3) A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class A misdemeanor, a sum not exceeding $2,500.

(b) For a class B misdemeanor, a sum not exceeding $1,000.

(c) For a class C misdemeanor, a sum not exceeding $500.

(d) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor.

(4) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(5) A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court not exceeding $500.

History: L. 1969, ch. 180, § 21-4503; L. 1979, ch. 90, § 5; L. 1983, ch. 135, § 3; L. 1984, ch. 39, § 34; L. 1990, ch. 100, § 3; July 1.

Revisor's Note:
This section was amended by L. 1992, ch. 239, § 233, effective July 1, 1993.

Law Review and Bar Journal References:
"Nonsupport of Children: Criminal Prosecution as an Alternative," Michael W. Laster, J.K.T.L.A. Vol. XV, No. 5, 27, 28 (1992).

CASE ANNOTATIONS

4. Consequences of third or subsequent conviction of driving with suspended license determined. State v. Harpool, 246 K. 226, 227, 788 P.2d 281 (1990).

21-4504. Conviction of second and subsequent felonies; exceptions. (a) If a defendant is convicted of a felony specified in article 34,

3-4

(d) Class D, the sentence for which shall be an indeterminate term of imprisonment fixed by the court as follows:

(1) For a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, a minimum of not less than two years nor more than three years and a maximum of not less than five years nor more than 10 years; and

(2) for any other crime, a minimum of not less than one year nor more than three years and a maximum of not less than five years nor more than 10 years.

(e) Class E, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be one year and the maximum of which shall be fixed by the court at not less than two years nor more than five years.

(f) Unclassified felonies, which shall include all crimes declared to be felonies without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime. If no sentence is provided in the statute, the offender shall be sentenced as for a class E felony.

History: L. 1969, ch. 180, § 21-4501; L. 1978, ch. 120, § 3; L. 1982, ch. 137, § 1; L. 1984, ch. 119, § 9; L. 1988, ch. 115, § 10; May 19.

Revisor's Note:

For Judicial Council comment, see 21-4503.

Cross References to Related Sections:

Criteria for setting minimum sentence, see 21-4606.

Law Review and Bar Journal References:

"Decisions, Decisions, Decisions," Terry L. Bullock, 17 W.L.J. 26 (1977).

Possible conflict between Habitual Criminal Act and Mandatory Sentencing Act, 26 K.L.R. 277, 279, 280, 282, 287 (1978).

"Toward Certainty in Sentencing: Kansas Modifies the Indeterminate Sentence," Wayne K. Westblade, 18 W.L.J. 578, 591 (1979).

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 394 (1979).

"Survey of Kansas Law: Family Law," Camilla Klein Haviland, 27 K.L.R. 241, 250 (1979).

"The Admissibility of Child Victim Hearsay in Kansas: A Defense Perspective," Christopher B. McNeil, 23 W.L.J. 265, 268 (1984).

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 409 (1984).

Attorney General's Opinions:

Classification of crimes and penalties; prospective application of increased penalties. 82-187.

Classification of crimes and penalties; effect of legislation providing for reduction of sentences. 84-57.

CASE ANNOTATIONS

1. Search with warrant for narcotics not unconstitutional. State v. Loudermilk, 208 K. 893, 494 P.2d 1174.

2. Construed; class B felonies; minimum and maximum sentences; error in fixing minimum term; conviction affirmed; sentence modified. State v. Frye, 209 K. 520, 522, 496 P.2d 1403.

3. Aggravated robbery; maximum sentence under subsection (b); no prejudice shown without a reasonable question of partiality. State v. Skinner, 210 K. 354, 356, 503 P.2d 168.

4. Subsection (a) discussed; although death penalty provision constitutionally impermissible, life imprisonment imposed under section upheld. State v. Randol, 212 K. 461, 462, 470, 471, 513 P.2d 248.

5. Sentences imposed hereunder for convictions under 21-3502 and 21-3503 upheld; statement of accused properly admitted. State v. Nichols, 212 K. 814, 512 P.2d 329.

6. Sentence imposed hereunder falling within statutory limits cannot be said to be excessive. State v. Miles, 213 K. 245, 247, 515 P.2d 742.

7. Mentioned; code has no application to crimes committed prior to effective date. State v. Ralls, 213 K. 249, 251, 515 P.2d 1205.

8. Judgment revoking probation and defendant's sentencing under subsection (b) affirmed; evidence supported trial court's judgment. State v. Dunham, 213 K. 469, 470, 517 P.2d 150.

9. Sentencing hereunder for conviction under felony murder rule; exclusion of jurors opposed to capital punishment not error. State v. Shepherd, 213 K. 498, 499, 516 P.2d 945.

10. Assault in federal penitentiary; Assimilative Crimes Act has no application if act is made penal under federal statutes. United States v. Patmore, 475 F.2d 753, 754.

11. Sentence hereunder and 21-4504; conviction of forcible rape; record reviewed; no error. State v. Platz, 214 K. 74, 519 P.2d 1097.

12. Sentence hereunder after conviction of burglary; extra judicial statements supported by evidence; exclusion of testimony upheld. State v. Law, 214 K. 643, 522 P.2d 320.

13. Applied, conviction of second degree murder; record examined; no error. State v. Wilson, 215 K. 437, 438, 524 P.2d 224.

14. Consecutive sentences authorized under 21-4608 proper; conviction of two counts of aggravated assault. State v. Bradley, 215 K. 642, 648, 527 P.2d 988.

15. Sentence under subsection (e) for violation of 21-3720 reversed; erroneous instructions. State v. Smith, 215 K. 865, 866, 868, 528 P.2d 1195.

16. Instruction as to death penalty provision did not constitute reversible error; conviction of second degree murder. State v. Smith 216 K. 265, 269, 530 P.2d 1215.

17. Applied in construing 21-4603; reduction in life sentence by district court authorized if recommended by secretary. State v. Sargent, 217 K. 634, 635, 639, 538 P.2d 696.

18. Jury had no function to perform in fixing penalty upon conviction of felony murder. State v. Goodseal, 220 K. 487, 502, 553 P.2d 279. Overruled as to collateral felony: State v. Underwood, 228 K. 294, 615 P.2d 153.

19. Sentence hereunder after second conviction of heroin possession; judgment affirmed. State v. Loudermilk, 221 K. 157, 557 P.2d 1229.

20. Sentence hereunder from conviction of involuntary

3-5

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 2150

February 5, 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:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber supports HB 2150.

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.

A critical element in KCCI's proposals for "comprehensive" reform of the Kansas workers' compensation system is establishment of criminal and civil penalties for individuals who receive workers' compensation benefits through fraudulent means. As the

House Labor and Industry
Attachment 4
2-5-93

members of this Committee know, workers' compensation has become a very expensive part of being in business in Kansas in recent years. However, equally vexing to Kansas employers is the feeling that the money they spend on workers' compensation is not benefitting "truly injured workers."

Passage of a workers' compensation "fraud" statute is one step in restoring employer confidence that workers' compensation is an avenue where only workers who suffer work-related injuries may receive prompt and effective medical care and fair compensation.

In presenting our support for HB 2150, KCCI would respectfully suggest two changes in the legislation.

1) HB 2150 exposes any person who commits workers' compensation fraud to a class C misdemeanor. Since fraudulent acts in this area could represent tens of thousands of dollars, KCCI suggests the criminal exposure mirror criminal theft.

2) HB 2150 places criminal enforcement authority with county/district attorneys. This policy decision is consistent with legislation KCCI supported in 1992 and remains acceptable to KCCI. However, the Kansas Chamber does not oppose the establishment of a Kansas Attorney General investigation and prosecution unit dealing with workers' compensation reform, and would welcome such a unit being amended into HB 2150.

Mr. Chairman, thank you for the opportunity to explain why KCCI feels a workers' compensation fraud statute is an important component in the development of needed "comprehensive" reform of the Kansas Workers' Compensation system. 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

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
HOUSE LABOR AND INDUSTRY COMMITTEE
regarding
HB 2150 - FALSE STATEMENTS AND REPRESENTATIONS
February 5, 1993

HB 2150 represents an attempt by the Insurance Deparatment Task Force on Workers Compensation to address what is perceived to be one of the cost drivers in our workers compensation system, fraudulent claims. We want to make it clear that in our collective experience in representing injured workers we do not feel the filing of fraudulent claims is a significant problem. Thus, we feel enactment of HB 2150 will have very little impact, if any, on the premiums paid by Kansas employers.

We do, however, find HB 2150 to generally be balanced in its coverage. All parties involved in the workers compensation system appear to be covered. For this reason, we support the bill if two changes are made.

First, on page 1, line 23, the language "or similar information" is probably unconstitutionally vague. In State v. Kee, 238 Kan. 342, 351, 711 p.2d 746(1985) the court states:

> "The test to determine whether a criminal statute is unconstitutionally void by reason of being vague and indefinite is whether its language conveys a sufficiently definite warning as to the conduct proscribed when measured by common understanding and practice. If a statute conveys this warning it is not void for vagueness. Conversely, a statute which either requires or forbids the doing of an act in terms so vague that persons of common intelligence must necessarily guess at is meaning and differ as to its applications is violation of due process."

We submit that the language "or similar information" would fail this test of constitutionality and therefore suggest it should simply be removed.

House Labor and Industry
Attachment 5
2-5-93

Our other recommended change is also found on page 1, line 23. Our reading is the language "failure to communicate" applies only to the claimant's attorney. It is certainly unethical for a claimant's attorney not to communicate a settlement offer to his or her client and it is probably a breach of duty to a client. We doubt, therefore, that this occurs often enough to even be deserving of this "solution". However, if it is going to be criminally unlawful for a claimant's attorney to fail to communicate a settlement offer to the client, it should also be unlawful for a defense attorney or insurance company which fails to communicate a settlement offer to the client or insured. Accordingly, we suggest that line 23 be further amended to read "a claimant, employer or insurance carrier".

We appreciate the opportunity to comment on HB 2150.

HOME BUILDERS ASSOCIATION
OF KANSAS, INC.

WRITTEN TESTIMONY

HOUSE LABOR AND INDUSTRY

February 5, 1993

My name is Janet Stubbs, representing the Home Builders Association of Kansas, on HB 2150.

The Home Builders Association of Kansas supports a strong penalty for attempts to defraud the Workers Compensation system either by the worker himself or a person who assisted in the action to commit fraud.

During the interim of 1992, the HBAK formed a Task Force, as did many other groups. A major complaint by our membership is the "Monday morning" injuries suffered by their employees and the fact that the system permitted compensation for these injuries which the employers believe are not work related.

Further complaints were made against the medical and legal communities. Numerous horror stories were given by members during our meetings. If desired, those individuals could furnish testimony to share these experiences with the Committee. However, I elected not to take the Committee's time for this type detailed testimony as I think you have repeatedly heard such reports.

Our membership, most of which are small employers, have experienced severe increases in workers compensation rates over the last four years and want action taken to prevent additional expense to their business, before it is too late. However, we question the deterrent factor of a Class C misdemeanor penalty and urge consideration of a more severe penalty.

House Labor and Industry
Attachment 6
2-5-93

816 Tyler, Suite 300A • Topeka, Kansas 66612 • (913) 233-9853

Testimony on
House Bill No. 2151
by
Dick Brock
Kansas Insurance Department

House Bill No. 2151 is a proposal recommended by the Commissioner's Workers' Compensation Task Force which addresses the subsidization of risks in the Kansas Workers' Compensation Insurance Plan (Plan) by employers insured in the normal or "voluntary" workers' compensation insurance market.

The Plan is a mechanism created pursuant to K.S.A. 40-2209 to make workers' compensation insurance available to employers who are unable to find an insurance company that will voluntarily underwrite their risk. An employer can find themselves in this situation for any number of reasons. The risk may not generate enough premium; it may be a type of business that is considered to be too susceptible to workplace injuries; it may have a poor claims history; or its underwriting characteristics may indicate that if its claims history isn't already unsatisfactory it will become so. The point is there is no requirement for any individual insurance company to provide workers' compensation insurance to any particular employer. Instead, risks who cannot otherwise obtain coverage may do so through the Plan where the risk is, in effect, shared by all insurance companies writing workers' compensation insurance in Kansas.

Because risks in the "plan" may be there for so many different reasons, there has been a natural reluctance on the part of the "Plan's" Governing Board and the Commissioner to require the premiums paid by risks in the Plan to be substantially different than the premiums paid by the same or similar risks insured by the voluntary market. This philosophy worked well for a number of years because the population of risks insured by the Plan was relatively small. Therefore even though the aggregate claims experience of the Plan business was, as it usually is for any residual market mechanism, not as favorable as the experience in the voluntary

House Labor and Industry
Attachment 7
2-5-93

market, the subsidization of the Plan through the assessments on insurance companies were not of such magnitude that it was a concern. For example, information developed by the National Council on Compensation Insurance indicates that in 1982 there were 3,524 policies issued by the Kansas Workers' Compensation Insurance Plan representing about 8.4% of the total workers' compensation premium written in the state. In 1991, this number had increased to 13,071 policies representing 30% of the total premium and produced an underwriting loss for the Plan in excess of $71 million.

This increase in the number of risks and premium dollars in the Workers' Compensation Plan is, of course, offset by a decrease of the same magnitude in the voluntary market. As a result, we have a problem that really feeds on itself because the premium written in the voluntary market not only has to fund the difference between the premiums and the losses generated by the Plan but is exacerbated by the fact that every dollar of premium written by the Plan reduces the voluntary assessment base by the same dollar. This results in a higher assessment to cover the losses of more insureds. I don't have the assessment rate for 1983 but, for 1986 it was 9.4%. That is it took 9.4% of the premiums written by each company in the voluntary market to cover the operating losses of the Plan. In 1991, this assessment rate was 24.1%.

Obviously, the insurance companies are entitled to recoup this assessment and the procedures used to develop workers' compensation rates incorporate this factor. In addition, the Plan losses which produced the assessment are included in the loss experience used in the ratemaking process. However, and this is a key element, even though this ratemaking formula will produce an adequate rate level overall based on past losses and expenses, it does not and cannot recognize that the future losses of risks in the Plan will continue to be worse than the loss experience upon which the rates are based. Therefore, from the outset, the new rates are not adequate with respect to risks written in the Plan. As a result, insurance companies know that every risk they write in the voluntary market and every dollar they receive on that business is going to be subject to an assessment down the road. They also know that, if

everything remains the same, the assessment will be approximately equal to their last one. And they also know there is a good chance the assessment will be even higher. Consequently, as the assessment increases the companies become more reluctant to write risks voluntarily and therefore become more selective. In other words, if they know it is likely that only 80 cents of every $1.00 they collect will be available to pay the benefits, expenses and hopefully produce a margin of profit, they are going to look for the kinds of risks that might produce this result. Otherwise, they decline the risk, it ends up in the Plan, the assessment base further erodes, plan losses per dollar of premium continue to increase and the vicious cycle continues.

There are only 3 ways I know of to resolve this problem. First, we could require that greater weight be given to the Plan losses in the rate development formula. By doing so, the historic and inherent inadequacy of Plan rates would be addressed because we would be basing the future rates on the worst of the past losses. The problem with this approach is that if we want to develop an overall basic rate level for both voluntary business and Plan business; and, if we primarily base that overall rate level on the loss experience of the plan, we will produce an excessive rate for the voluntary business. Consequently, this doesn't seem to be a very good solution.

A second approach would be to simply develop rate levels of the Plan and the voluntary market independently from each other. To do so, we would separate the ratemaking process so that rates for risks written in the voluntary market would be based exclusively on the loss experience and expenses of those risks. Rates for risks written in the Plan would be based solely on their expenses and experience. This is the way it is done with respect to private passenger automobile insurance and the problem we are confronted with in workers' compensation does not exist in that area. There are distinct differences in the private passenger and workers' compensation insurance markets, however, that make it doubtful this same process would be successful with respect to workers' compensation.

First, there are obviously more private passenger automobiles to insure than there are employers and there is much more commonality between private passenger automobiles than employers. Consequently, that line of business can be separated into voluntary and plan business and each pool will still be large enough to produce actuarially sound rates. In addition, and perhaps more significant, risks generally find themselves in the automobile insurance plan because they present an identifiable underwriting problem or, as in the case of young, unmarried males, are in a group that has an undesirable history of moving traffic violations and accidents. The population of the Workers' Compensation Plan is far different. As of December 31, 1988, the last date for which I had numbers available, over half the risks in the Plan paid less than $1,000 in premium. 84% of the risks paid less than $5,000. However, this 84% of the risks produced only 20% of the Plan's total premium and only 18% of the losses. If we made the Plan self-sustaining by basing the Plan's rate level on its own experience, there should be a significant exodus of risks from the Plan back to the voluntary market. If so, we would hope the Plan's population would ultimately drop back to somewhere around the 8.4%, 1982 level I mentioned previously. However, if it did, the number of risks left in the Plan would be so small that its rate levels would be subject to significant, frequent, and unacceptable increases and decreases.

Therefore, the third approach to the problem is that contained in House Bill No. 2151. Essentially, the amendment appearing in new subsection (e) on pages 2 and 3 of the bill would, if enacted, establish, as public policy, a limitation on the degree to which the risks in the Kansas Workers' Compensation Plan should be subsidized by risks in the voluntary market. Specifically, House Bill No. 2151 would require this subsidy to be less than 10% of the voluntary premium by December 31, 1996. However, it does so in a way that avoids the problems associated with the other alternatives. At this point in time, I don't know how the Governing Board of the Plan will accommodate this policy if the bill is enacted so it's difficult to imagine what the Commissioner might or might not approve. Nevertheless, it is a virtual certainty that the lion's share of any increased burden will fall on those risks that are producing the

losses. That obviously is the fairest way to do it but the question to be answered is how many risks would be available to absorb it.

The last provision of the amendment is simply a contingency and a warning to insurers that failure to respond to this initiative will nullify the subsidy limitation established by House Bill No. 2151.

7-5

Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

Information
913-296-3441
Fax
913-296-0839
Director's Office
913-296-4000
Topeka Law Judges
913-296-7012

DIVISION OF WORKERS COMPENSATION
800 SW JACKSON ST STE 600
TOPEKA KS 66612-1227

Rehabilitation
913-296-2050
Claims Advisory
913-296-2996
Self Insurance
913-296-3606
Medical Utilization Review
913-296-0846

February 5, 1993

Synopsis of Director's Proposals

1. 44-501 Disallows compensation for sports or recreational injuries unless it is a job duty or requested by the employer and for injuries a major contributing cause of which is drugs or over .04 blood alcohol.

2. 44-505 Changes threshold for mandatory employer coverage from $10,000 payroll to $20,000 payroll.

3. 44-510 Makes medical advisory panel advisory only, provides that deliberations of utilization and peer review is confidential except report when it is filed with director. Gives utilization and peer reviewers immune from tort.

4. 44-510a Provides that if pre-existing impairment for which medical treatment was sought and which was caused by accident outside work is aggravated by later work injury the pre-existing portion of the later overall impairment is not compensable.

5. 44-510e a) Provides a new test for work disability which calls for:
a) calculation of the percent loss in ability to perform tasks that the worker actually performed in work for the fifteen years prior to the injury; and,

b) averaging that percent with the percent arrived at by comparing the wage at the time of the injury with the wage after the injury; and,

c) then subtracting the percent of any known or unknown pre-existing impairment from the averaged percent to arrive at the percent of work disability.

b) Provides that a worker is not entitled to compensation for work disability if the employer retains the worker in work paying comparable wages.

House Labor and Industry
Attachment 8
2-5-93

6. 44-510g Creates a new vocational rehabilitation law providing that:

a) an employer or insurance carrier cannot refer an employee to a provider in which either has a demonstrable financial interest;

b) clarifies that medical management services provided unilaterally by the employer is not a vocational rehabilitation or medical expense;

c) an employee or an employer may apply for a referral for job placement if the employee has restrictions due to the injury and the employer does not return the worker to comparable paying work;

d) the application would be approved or denied without hearing;

e) if approved, the job placement is for 45 days to return the worker to work. If job placement is not successful, all rehabilitation efforts end until the extent of disability is determined;

f) if there is a determination of work disability, either party may apply for an assessment and training which cannot cost more than $6,000 for training costs;

g) Catastrophic injury victims can apply for assessment without going through job placement and adjudication of the extent of disability but the assessment is through the state vocational rehabilitation agency.

7. Provides for allowing up to 25% of weekly compensation and up to 40% of lump sum settlements to be attached for payment of child support.

8. 44-520 Provides that employee is excused from giving 10 day notice of injury if there is just cause for the failure but only for a total of 90 days from the date of the injury.

9. 44-528 If after an award:

a) the employee returns to work for the pre-injury employer at comparable wages the award shall be modified to reflect only compensation for functional impairment;

b) the employee acquires new task performing abilities through vocational rehabilitation provided by the employer the award shall be modified to reflect the diminished net loss of abilities;

c) the employee returns to work for a different employer at comparable wages the award may be modified to reflect the

diminished loss in earnings.

10. 44-529 Repealed. Deals with applying for lump sums if security of compensation is in doubt. Section is unused under current or proposed law.

11. 44-531 Prohibits lump sum awards if:

    a) case is in process of being tried on claim of work disability until issue decided;

    b) worker has applied for vocational training plan until entitlement decided;

    c) for 2 years after a worker has returned to work for the same employer if the worker is disqualified from claiming work disability because the employer has returned worker to work which pays a comparable wage.

12. 44-534a a) On receipt of application for preliminary hearing director will confer with parties to try to settle issues and avoid litigation;

    b) Parties will have opportunity for full presentation of evidence at a preliminary hearing that is held.

13. 44-536 Limits fees of attorney for injured worker who had been offered a settlement before retaining the attorney to a reasonable fee but not more that 50% of the improvement over the offer and not more that 25% of the compensation on which a fee may be charged.

14. 44-557 Changes criteria as to which accidents must be reported to the director from the present criteria of loss of time of "more than the day turn or shift" to criteria of loss of "more than seven days" lost time.

15. 44-557a Provides director with authority to collect data to measure disposition of benefit dollars.

16. 44-566a Provides new administrative method for resolving the issue of the proportionate share of compensation that the second injury fund should pay for pre-existing conditions. The new method would have the matter handled administratively outside the hearing process by the insurance commissioner's staff rather than by private attorneys.

17. 44-567 Removes the requirement that an employer have knowledge of an employee's pre-existing condition before being allowed to make claim against the second injury fund.

18. 44-569 Carries out the changes in 44-566a and 44-567.

19. New Section. a) Enumerates fraudulent and abusive practices which are prohibited;

    b) prescribes civil penalties for violations;

    c) gives parties right to sue to recover monies lost by prohibited practice;

    d) provides assistant attorney general for investigation and prosecution.

20. New Section. Requires self-insurers, insurance companies and group self-insurance pools to have programs of accident prevention, requires reporting details and costs of the programs to the director.

21. New Section. Establishes system for distribution of educational materials to employer and employee and provides for interests in workers compensation to participate in conducting educational seminars.

22. New Section. Provides that the director's office will become active in contacting, meeting with and counseling the parties to claims in an effort to effect amicable handling of claims and avoiding litigation where possible.