

## MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 8:39 a.m. on February 15, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Packer (excused)

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

Conferees appearing before the committee:

Representative Pauls  
Representative Nichols  
George Gomez, Director, Division of Workers Compensation  
Dick Santner, Kansas Association of Vocational Rehabilitation Professionals

Others attending: See attached list

**Continuation of Hearing on HB 2375 - Workers compensation reform, medical benefits, vocational rehabilitation, prior injury, permanent partial general disability, fraud, attorney fees, procedures.**

Representative Pauls answered questions regarding HB 2375, workers compensation reform, that she had explained to the committee on Friday. This bill is the result of a Democrat Task Force on Workers Compensation.

**Hearing on HB 2376 - Workplace safety, providing safety incentives.**

Representative Nichols addressed the committee to explain HB 2376, a proposal of the Democrat Task Force on Workers Compensation. Rather than a mandatory OSHA type program, this bill would create an optional state safety program offering businesses several incentives to improve safety at their job sites. (Attachment 1) Kansas ranks 47th out of the 50 states in job site safety according to an analysis by the National Safe Workplace Institute. (Attachment 1a)

**Hearing on HB 2432 - Workers compensation reform.**

George Gomez, Director, Division of Workers Compensation, appeared before the committee to explain HB 2432, referred to as the Director's Proposals for Workers Compensation Reform. A synopsis of his proposals was included with his bill request on February 5, 1993. (Attachment 8, Minutes of 2-5-93)

**Public Hearing on workers compensation reform proposals - Vocational Rehabilitation and Medical Compensation Issues.**

Dick Santner, Oxford Health Care, representing the Kansas Association of Vocational Rehabilitation Professionals, testified before the committee in support of vocational rehabilitation. He didn't feel vocational rehabilitation was a major contributor to the skyrocketing costs in workers compensation. (Attachment 2). Mr. Santner distributed information regarding Common Myths Relative to Vocational Rehabilitation according to the Kansas Association of Vocational Rehabilitation Professionals. (Attachment 3) He also provided a copy of the Insurance Carrier Status Report to the Division of Workers Compensation. (Attachment 4)

The meeting adjourned at 9:54 a.m. The next meeting is scheduled for February 16, 1993.

## GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: 2-15-93

[illegible]

ROCKY NICHOLS

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TOPEKA

HOUSE OF  
REPRESENTATIVES

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PUBLIC HEALTH & WELFARE  
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House Bill 2376

February 12, 1993

Testimony Before the  
House Labor and Industry Committee

by

Representative Rocky Nichols

**Work place Safety**

The "Carrot, Carrot, Carrot/Stick Approach"

This proposal offers businesses several incentives to improve safety at their job sites. Those that fail to participate in the optional safety program and have unsafe work places, will remain a drain on the Workers Compensation system. Employers with safe work places will reap the benefits.

According to the National Safe Workplace Institute, an independent research institute, Kansas ranks 47th out of 50 states in job site safety. The Task Force believes that this is totally unacceptable. Almost all of the players in the workers compensation debate agree that work place safety is an integral part of the road to reform. Unsafe work places increase injuries, and injuries create more workers compensation claim, which in turn increase the cost. For those reasons we gave special attention to job site safety. The Democratic Task Force proposal is as follows:

**Optional State Safety Program**

We will create an **optional** state safety program. If employers choose to participate they may lower their workers compensation rates by 15 to 20%. This will be established under the Occupational Safety and Health Consultation, Education and Training program administered by the Department of Human Resources. The program is similar to the SHARP program in Oklahoma. To qualify for reductions in workers compensation insurance premium charges, employers must successfully participate annually in a comprehensive and unlimited consultation, Safety and Health Consultation, Education and Training program administered by the Secretary of Human Resources.

*House Labor and Industry  
Attachment 1  
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Successful participation is defined in the bill as:

1. Undergoing a safety and health hazard survey of the work place, including evaluation of the employer's safety and health program;
2. Correcting identified hazards within a reasonable time;
3. Establishing and implementing an effective work place safety program;
4. Reducing by one-third or more the employers lost work day rate if that rate is above the national average for the employer's industry, or maintaining a rate below the national average; and
5. For renewal, continuing to reduce the employer's lost work day rate by annual increments of one-third until such rate is at or below the average national rate for the industry or maintaining such rate below such average national rate.

#### **Unemployment Insurance Rate Reduction**

Employers that receive a clean bill of health from the voluntary safety program will also receive up to a 20% reduction in their Kansas Unemployment Insurance rates. Kansas currently has nearly \$600 million in our Unemployment Insurance pool that is collecting dust and interest. Last year a bill passed the House and died in the Senate that would have cut unemployment insurance rates for all Kansas businesses by 10% across the board. The reduction in unemployment insurance rates provides another incentive for Kansas employers to provide safe job sites.

#### **Reduction in Benefits Due to Safety Fails**

Job site injuries that are caused by the failure of the employer to comply with providing safe working conditions shall be compensated to the injured employee at a rate of one and a half times the normal rate. Additionally, injuries that are due to an employees flagrant violation of work place safety codes will be compensated at one half of the normal rate.

For example: If an employer takes the safety guard off of a jigsaw, or if an employer forces the employee to take off the guard, then the accident caused will be compensated at one and a half times the normal rate. However, if the employee takes the safety guard off (without pressure from the employer to do so) compensation will be half the normal rate for the injury caused by the removal of the safety device.



# Job safety study slams Kansas

Wich. 1/1/92

## Lack of state law, poor workers' comp listed as problems

staff and wire reports

Kansas ranks as one of the worst states in the country in preventing on-the-job hazards, according to a study by a non-profit group that campaigns for worker safety.

The study released Tuesday by the National Safe Workplace Institute also gave the federal government poor marks in protecting workers on the job.

Arkansas was ranked by the group as having the worst safety laws, followed by Wyoming, New Mexico and Kansas. California had the best safety laws, followed by New Jersey, Illinois, New York and Massachusetts, according to the report.

"It really is an indictment. . . . Looking at some of the states, it was so feeble," said Joseph Kinney of Chicago, who founded the group in 1987 after his brother was killed in a work-related accident.

The states were ranked according to a formula that considered such factors as the generosity of their worker compensation systems and a review of documents at the federal Occupational Safety and Health Administration. Also considered was whether states had laws

### THE BEST AND THE WORST

Here are the best and worst states, ranked by job safety laws, enforcement and workers' compensation systems, according to an analysis by the National Safe Workplace Institute. A (T) indicates a tie.

BEST	WORST
1. California	40 (T). Hawaii
2. New Jersey	40. South Dakota
3. Illinois (T)	41. Mississippi
3. New York	44. Idaho (T)
5. Massachusetts	44. Tennessee
6. Texas	46. North Dakota
7. Maine	47. <b>Kansas</b>
8. Connecticut	48. New Mexico
9. Minnesota	49. Wyoming
10. Michigan	50. Arkansas

limiting toxins used in manufacturing. Kansas has no such law.

Joe Dick, who took over as secretary of the Kansas Department of Human Resources in July, said he had not seen the report, but he expressed concern that Kansas would be viewed so poorly. Job safety, he said, is the department's No. 1 priority.

In some ways it is no surprise that Kansas laws would

rank so low, based on the group's formula. Kansas relies on OSHA for enforcement of all job safety laws. The state assumes responsibility for education and training of employers.

In addition, workers injured in Kansas receive some of the lowest weekly workers' compensation payments, according to the U.S. Bureau of Labor Statistics. A worker in Kansas can receive a maximum of \$289 a week in compensation insurance. Only seven states pay less. One of Dick's first acts as secretary was to form a task force to review the workers' compensation system. The task force's report is due in mid-January.

Mark Cowan, a former OSHA official who is a corporate consultant on job safety, said it was unfair to blame the states for not having tougher job safety laws.

"The states have traditionally looked to Washington in those areas," he said. "That's why (OSHA) is a federal law. To turn around and say that the states are doing a lousy job is unfair."

Kansas employers reported 74 deaths and nearly 90,000 injuries and accidents during the year ended July 31. That means that about one out of every 10 Kansas workers suffered a job-related illness or injury, higher than the national average of 8.6 percent.

Organized labor in Kansas has called for increased enforcement of safety regulations and tougher penalties against companies that do not provide safe workplaces.

**Contributing:** Jean Hays of The Eagle; Associated Press

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Attachment 1a  
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## VOCATIONAL REHABILITATION

Vocational rehabilitation is not a major contributor to the skyrocketing cost in the workers compensation industry:

- There were 89,815 job related accidents reported Fiscal Year 1992. Of these 89,815 accidents, 40,104 experienced lost time. Of the lost time cases, 1,523 received vocational assessments. Therefore, only 3.8% of lost time accidents were assessed for the need for vocational rehabilitation services.
- Of the \$325 million dollars spent in the workers compensation system in fiscal year 1992, approximately \$15 million was spent on vocational rehabilitation (this amount includes temporary total benefits). Of the \$15 million dollars, \$6 million was paid directly to the rehabilitation vendors. This means only between four and five cents of the benefit dollar goes towards vocational rehabilitation.
- In Fiscal Year 1992 the Division reported that the average case cost from opening of the case, developing a vocational assessment, developing a plan if necessary and closing the case was \$3,703. For the first six months of FY 93, the Division reports an average case cost of \$3,300. In addition, the first 6 months this fiscal year reflects only \$2 million dollars being paid to the rehabilitation vendors.

The proposed change in eliminating work disability if the employee engages in any work for wages comparable to the average gross weekly wage at the time of injury, will result in making vocational rehabilitation more effective by returning more people to work, which will result in more cost savings to the system.

The consensus within the Rehabilitation Community is that eliminating the 90 day trigger will not result in cost savings to the system by reducing the number of injured workers being provided services and re-entering the work force. It is appropriate to note that the longer a person remains off work the greater their expectations for financial recovery. A trigger upon attaining MMI and obtaining an FCA may be appropriate if the worker is aware of his/her options in a timely manner.

There needs to be some type of transferrable job skills assessment component built into the job placement referral process. This assessment is necessary in order to determine an appropriate job placement plan. The fact that the job placement referral shall be made prior to the adjudication of PPD should streamline the vocational process a great deal.

The 45 days for job placement is not realistic. The average length of time reported by DHR Employment Security for all individuals receiving unemployment benefits for FY 92 was 14.5 weeks and 13.7 weeks for FY 91, for the most part, these are not people with disabilities, especially not newly acquired disabilities. It would be better to state the time period in weeks to coincide with the weeks of benefits. We strongly recommend a minimum of 12 weeks. No where is the most effective job placement tool addressed and that is On-The-Job-Training.

Based on research of several Kansas Board of Regents' schools performed by the Rehabilitation Administrator's office, it is recommended that \$7,500 be allotted for a two year program, particularly if transportation is to be included.

As a Fee Schedule will soon be adopted by the Director's office, it does not appear that a cap on job placement is necessary.

*House Labor and Industry*  
*Attachment 2*  
*2-15-93*

# Kansas Association of Vocational Rehabilitation Professionals

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## COMMON MYTHS RELATIVE TO VOCATIONAL REHABILITATION

**Myth:** Vocational rehabilitation is a major contributor to the skyrocketing cost in the workers compensation industry.

**Fact:** There were 89,815 job related accidents reported Fiscal Year 1992. Of these 89,815 accidents, 40,104 experienced lost time. Of the lost time cases, 1,523 received vocational assessments. Therefore, only 3.8% of lost time accidents were assessed for the need for vocational rehabilitation services.

**Fact:** Of the \$325 million dollars spent in the workers compensation system in fiscal year 1992, approximately \$15 million was spent on vocational rehabilitation (this amount includes temporary total benefits). Of the \$15 million dollars, \$6 million was paid directly to the rehabilitation vendors.

**Fact:** In fiscal year 1992 the Division reported that the average case cost from opening of the case, developing a vocational assessment, developing a plan if necessary and closing the case was \$3,703. For the first six months of FY 93, the Division reports an average case cost of \$3,300.

**Myth:** Vocational rehabilitation is synonymous with Rehabilitation Hospital.

**Fact:** Vocational rehabilitation services are more often than not provided after the injured worker has completed physical restoration, reached maximum medical improvement and is strong enough physically to return to work.

**Myth:** Most rehabilitation providers are owned by insurance companies.

**Fact:** Of the 34 qualified vendors, only 4 are affiliated with insurance companies. Of the 34 vendors, 8 vendors provide 80% of the vocational rehabilitation services.

**Myth:** Allowing employers/insurance companies to refer to a provider of their choice creates a beholden relationship with the provider to the insurance company.

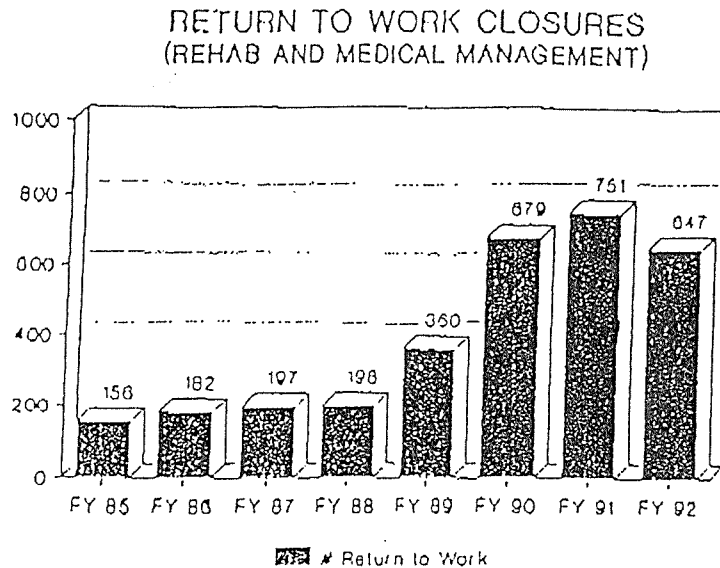
**Fact:** All of the recommendations submitted by a vocational counselor come under strict review by an Assistant Administrator with the Division of Workers Compensation. The recommendations must be found to be reasonable and objective prior to approval by the Division of Workers Compensation. This level of accountability is unparalleled by any other provider, i.e. doctors, physical therapists, attorneys, etc., in the system. Referrals from the employers/insurance companies promotes competitiveness which enhances the quality and timeliness of a product.

**Myth:** Vocational rehabilitation in Kansas is a "Cottage Industry" with no oversight.

**Fact:** To our knowledge Kansas has the most stringent certification process of any state in the U.S. for professionals who want to practice as a vocational counselor in the private sector. In lieu of this and the provided accountability information, it would not seem that vocational rehabilitation is being provided with no oversight. Furthermore, vocational rehabilitation is nothing new; it has been practiced since World War I. It was primarily practiced on a public level. However because Federal and State mandates require that priority for service dollars be targeted for the severely disabled, the available service dollars for the industrially injured are frequently limited. Therefore vocational rehabilitation transitioned into the private sector to reach a population that the public sector could not serve due to Federal and State constraints.

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Attachment 3  
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The graph below is a comparison of the successful return to work closures for the past eight years. This includes vocational rehabilitation and medical management closures for each of the eight years.



**Myth:** Vocational rehabilitation has done nothing to decrease settlement cost.

**Fact:** If the original law was allowed to work as intended, good vocational rehabilitation would significantly decrease settlement cost. However, precedent was established that in the event that an injured worker went through the vocational rehabilitation process and was consequently placed in comparable wage and suitable employment the same was entitled to a work disability above and beyond their physical impairment disability. The language of the law needs to be changed from the presumption of no work disability when comparable wage employment is secured to Irrebuttable presumption of no work disability when suitable/comparable wage employment is secured.

**Myth:** Vocational rehabilitation would be more successful if the injured worker or employer opted into the system on a voluntary basis, rather than automatically entering the system after 90 days of being off work.

**Fact:** In part, this would be an accurate assumption based on the potential of less litigation. However, many needy injured workers would fall through the cracks and become tax burdens. Furthermore, procrastination by busy employers or insurance adjustors could significantly increase the time an individual receives workers compensation benefits by several weeks or months before rehabilitation is initiated. This would hurt business in increased premium costs.



KANSAS DEPARTMENT OF HUMAN RESOURCES  
DIVISION OF WORKERS COMPENSATION

INSURANCE CARRIER STATUS REPORT

TO: Division of Workers Compensation  
Rehabilitation Administration  
600 Merchants Bank Tower  
800 SW Jackson  
Topeka, KS 66612-1227

From (Insurance Carrier): \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State: \_\_\_\_\_ ZIP \_\_\_\_\_  
Ins Ca File No \_\_\_\_\_  
Adjuster: \_\_\_\_\_ Phone ( ) - \_\_\_\_\_

Re: Claimant: \_\_\_\_\_ SSN: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State: \_\_\_\_\_ ZIP \_\_\_\_\_  
Phone: ( ) - \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Description: \_\_\_\_\_  
Accidents Date: \_\_\_\_\_

Claimant has lost \_\_\_\_\_ days as of \_\_\_\_\_ 199\_.  
(DATE FORM COMPLETED)

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We have referred claimant on \_\_\_\_\_ 199\_ to \_\_\_\_\_  
(vendor) for medical management to assist  
claimant in obtaining maximum medical improvement.

We have referred claimant on \_\_\_\_\_ 199\_ to \_\_\_\_\_  
(vendor) to determine whether  
vocational rehabilitation services are needed.

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We have not made referral because:

- \_\_\_\_\_ Claimant returned to work on \_\_\_\_\_ 199\_.  
\_\_\_\_\_ The claim is being denied as not compensable.  
\_\_\_\_\_ Claimant's medical condition has not stabilized.  
Prognosis as to when condition will stabilize \_\_\_\_\_ 199\_.  
\_\_\_\_\_ Temporary total compensation (is) (is not) being paid. (Circle one)  
\_\_\_\_\_ Claimant will return to work for the same employer when released  
by attending physician. Estimated return to work date \_\_\_\_\_.  
\_\_\_\_\_ Other \_\_\_\_\_

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*Attachment 4*  
*2-15-93*