Approved: 3-24-93
Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Vice Chairman Al Lane at 9:07 a.m. on February 22, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Carmody (excused)
Representative Edlund (excused)

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

Conferees appearing before the committee:

Harriet Lange, Kansas Association of Broadcasters
John L. Francis, Francis Casing Crews, Great Bend, Kansas
Pat Nichols, Kansas Trial Lawyers Association

Others attending: See attached list

Harriet Lange, Executive Director of the Kansas Association of Broadcasters, appeared before the committee concerning advertising as it pertains to workers compensation. Although the Kansas Association of Broadcasters supports the reforms in HB 2354, they object to Section 35, paragraph (j), of the bill regarding advertising legal services by an attorney under the workers compensation act. Because of time limitations in radio and television advertising, she felt disclosure statements would put broadcasters at a disadvantage with their print competitors. (Attachment 1)

John L. Francis, Francis Casing Crews, Great Bend, Kansas, addressed the committee concerning the prohibitive costs of workers compensation. He and his father have a small business in western Kansas employing about 20 full and part-time employees. Workers compensation is the highest payroll tax they are paying at this time. They support the Kansas Chamber of Commerce and Industry's position on workers compensation reform. Mr. Francis asked the committee to consider the long range benefits of a workers compensation bill.

Pat Nichols, Kansas Trial Lawyers Association, testified before the committee providing their comments and comparisons on three major workers compensation reform proposals. He asked the committee to look to the Legislative Post Audit Report as the one reliable source of information in workers compensation reform. The KTLA feels that capping medical costs, workplace safety, and vocational rehabilitation are the areas where there would be the most cost savings. In his opinion tinkering with basic benefits would not lower workers compensation rates. (Attachment 2)

Chairman Heinemann indicated there could possibly be 5:00 p.m. meetings this week as subcommittees get their recommendations prepared for full committee consideration.

The meeting adjourned at 9:52 a.m. The next meeting is scheduled for February 23, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 2-22-93

NAME	ADDRESS	COMPANY/ORGANIZATION
JONATHAN D. LEAHEY	—	ICBA
Bill Bunten	Topeka	Fleming Co.
GEORGE WELCH	"	SELF INS FUND
Bill Morrissey	"	DHR/Work Comp
Jim DeHoff	Topeka	KS AFL-CIO
LARRY MAGILL	"	PROF. IND INS. AGENTS
Kerry Gomez	"	KS DHR
PATRICIA NICHOLS	" "	KTLA-SECF
[illegible]	"	KTLA
Terri Lubbs	Lawrence	Intern
RAY RATHERT	TOPEKA	KS. INS. DEPT.
Steve Richards	Overland Park	Yellow Freight System
Jim Allen	Topeka	PRAK Inc
RICHARD THOMAS MD	TOPEKA	DHR/WORKCOMP
Roger Fromme	Topeka	KS Gov Consulting
John & Plummer	Marysville KS.	VISITOR
Helen Waggett	Lakin	spouse
Dave Frankel	Lawrence	KTLA - Intern
[illegible]	Topeka	KABA
Brian Johnston	Topeka	Legislative Intern
Cameron Brewer	"	KTLA
[illegible]	Fort Bend	GBCC
Brad Smoot	Topeka	AIA

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TESTIMONY
Before the
House Labor and Industry Committee
February 22, 1993
by
Harriet Lange
Kansas Association of Broadcasters

Mr. Chairman, members of the committee, I am Harriet Lange, executive director of the Kansas Association of Broadcasters. The KAB is a trade association representing radio and television broadcast stations in Kansas.

We appreciate the opportunity to appear before you concerning workers compensation, and we support your efforts in attempting to develop meaningful reform. Our members have experienced increases in premiums, just as have other small businesses in the state.

Stations' profit margins are such that any increases in doing business detract from a station's ability to serve its local community. And since our only source of revenue is advertising revenue, laws or regulations which tend to drive advertising from our media into other competing media, are of concern to us.

We support the reforms in HB 2354. However we do have a concern with Section 35, paragraph (j), on page 74 of the bill, which states: "Any information published or broadcast by an attorney, in any print media or over radio or television or other broadcast media, regarding legal services of the attorney under the workers compensation act, shall include a statement which clearly discloses that an employee

(Over, please)

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who receives personal injury by accident arising out of and in the course of employment has the right to benefits in accordance with the workers compensation act regardless of whether or not the employee is represented by an attorney. Such statement shall be in such form and contain such language as may be required or approved by the director..."

Because of the time-bound nature of radio and television where most commercials are 30 seconds or less, adding such a disclosure statement will have the practical effect of driving this kind of advertising from broadcast into other media. It places broadcasters at a disadvantage with their competitors in print.

As a matter of policy, the Kansas Association of Broadcasters believes any "legal product or service sold should have the opportunity to be advertised on all available media without censorship or selective exclusion of any specific media".

Although paragraph (j) is not directed at broadcasters per se, we believe this provision will "selectively exclude" us because of the nature of our medium.

In lieu of advertising restrictions, this disclosure could more effectively be disseminated with the information going to claimants, as provided for in Section 2 of the bill.

Thank you for your consideration.

KANSAS
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TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
HOUSE LABOR AND INDUSTRY COMMITTEE
regarding
HB 2354, HB 2375, HB 2376 & HB 2432 - WORKERS COMPENSATION
February 22, 1993

The House Labor and Industry Committee has three major workers compensation "reform" packages to consider. We understand the Committee will construct its own package, based in large part on the best provisions of the four bills referenced above. This written testimony is designed to provide Committee members with an analysis of the numerous changes in the Act being recommended by Rep. O'Neal, et al, the House Democrats and the Director of Workers Compensation. Our comments are offered from the perspective of attorneys who represent injured workers seeking benefits under the Act to which they are entitled.

HOUSE BILL 2354

1. New Section 1: Consistent with our perspective that any "fraud" bill should be equally directed at all parties, we believe that lines 42-43 should be amended so as to criminalize the failure to communicate a settlement offer to an employer or insurance carrier. We also believe that the phrase "or similar information" on line 43 is probably unconstitutionally vague, and should be deleted.

2. New Section 3: Line 11 and 12 should be amended to read "Immediately on learning of an injury, disease or death of an employee, the employer shall.....". The purpose of these amendments would be to make certain that the employee-victims of occupational diseases should also receive the type of information designed to educate the injured worker, and would also emphasize that an employer who may not receive a verbal notice of injury from the injured worker, but which employer still understands that an injury, death or disease has occurred, is still obligated to remit the informational notice.

3. New Section 5: On page 5, line 7, it should be made clear that the notice of the availability of accident prevention services from the insurer shall be delivered to the policyholder at the time of any renewal of an existing policy, not just when a new policy is delivered.

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4. New Section 6: It may be inappropriate to allow only the Kansas Chamber of Commerce and Industry and the Kansas AFL-CIO to nominate members of the Advisory Council. We can think of a number of organizations who would have legitimate interests in participating on this Advisory Council. While we are not necessarily desiring to have a right to make such an appointment, we do think it would be appropriate to have the perspective of the consumer represented on the Advisory council, as well as the perspective of handicapped people. If the purpose of the Advisory Council is to recommend future changes in the Workers Compensation Act, we think it would be beneficial for the Advisory Council to represent as many different perspectives as possible. Additionally, since this committee will receive public funds to assist in its meetings and to defer its expenses, it is by definition subject to the provision of the Kansas Open Meetings Act. Therefore, New Sec. 13(e) is in conflict with that Act and should be deleted.

5. New Section 7: KTLA previously submitted written testimony on this issue as it regards HB 2116. The adage, "if it ain't broke, don't fix it" aptly expresses our attitude regarding the creation of a Workers Compensation Board. It may cost as much as $1 million every year to fund this new Board. Moreover, the current system works quite well handling workers compensation appeals. Our district courts are spread out over many, many counties, are already staffed, funded and operating, and our district courts do a fine job of efficiently resolving these disputes. If the jurisdiction of all these district courts is going to be removed to a single Board, a great potential for delay will result. This proposal creates an obvious bottleneck when you try to funnel the decision-making jurisdiction currently possessed by 148 district court judges into one five-person Workers Compensation Board.

6. Section 10, subsection (c): For decades, it has been the law of Kansas that an accidental injury which aggravates a pre-existing condition is compensable. The language at lines 33-38, on page 15, seeks to repeal a decades-old philosophy that the permanent loss of earning capacity is compensable, even if that inability to earn is contributed to by a pre-existing condition. When you consider that the maximum duration of a permanent work disability award is eight years, even under the current law a young person who permanently loses some portion of their earning capacity due to an occupational injury never is compensated for that portion of the permanent loss of earning capacity that lasts beyond eight years. This language would arbitrarily reduce an injured worker's permanent disability award, even if the pre-existing impairment resulted from a job injury 40 years earlier, resulted from a pre-existing condition that had previously never been diagnosed, never treated, or had never resulted in any type of lost earning capacity. This language is punitive in its breadth, and cannot be philosophically justified from the standpoint of public policy.

7. Section 10, subsection (d): The purpose of workers compensation insurance is to protect business from open-ended civil damage suits brought by workers

because of unsafe working conditions that lead to occupational injuries. In other words, it is supposed to be a no-fault system. The language on page 15, line 41 through page 16, line 3, seeks to void compensability in certain circumstances where the injury is caused or contributed to by the employee's negligence. The failure to "exercise.....ordinary care" is the definition of negligence, and this language would declare those types of accidents noncompensable. This is not good public policy.

8. Section 10, subsection (d): While we agree that there should not be coverage under the Workers Compensation Act for injuries sustained primarily or substantially because of an employee's use of alcohol or drugs, the language at page 16, line 11, goes too far when it states any injury that is merely "contributed to" by such consumption shall be noncompensable. Under this proposal, an accident would be noncompensable if it was caused 99% because of an employer's intentional removal of a safety guard designed to protect workers against unforeseen dangers in the workplace and 1% because the employee had a beer at lunch.

9. Section 10, subsection (g): We fail to understand the sponsors' desire to repeal this language, since many were proponents for passage of this language in 1987. What is inappropriate about this expression of legislative intent? We believe this statement in fact represents the policy citizens of Kansas expect and it should therefore remain in the law.

10. Section 13, subsection (a)(5): The danger presented by this proposal is that clever employers will require as a condition of employment a written election depriving that prospective employee of coverage under the Act. Moreover, how is a "management-level employee" or an "executive officer" going to be defined? Would that include the Assistant Manager of a fast food restaurant? Would that include a lead person on a manufacturing line?

11. Section 14, subsection (d): We oppose the recommendations for redefining the concept of a compensable "accident" appearing on page 24, lines 20-41. Kansas law on this subject is well defined after 80 years of litigation and there is no justification for changing it now.

12. Section 14, subsection (e): We object to the repeal of the language appearing on page 25, lines 3 and 4. If this language is repealed, it would be a noncompensable if the injury was sustained by an employee on the way home from work while driving an employer's vehicle, but off the clock, despite the fact that the injury was sustained because of negligent maintenance of the company vehicle by the company mechanic. Clearly, this type of injury should still be compensable, despite the fact that it occurred while the employee was off the clock.

13. Section 14, subsection (e): We do not feel it is necessary to redefining the concepts of "arising out of" and "in the course of the employment". Again, these phrases have been well defined by decades of litigation, and redefining these concepts will only spawn new lawsuits, more appeals, and more litigation. Moreover, the words "predominant factor" on line 17 are difficult to understand. How is the use of this phrase intended to change prior law?

14. Section 15, subsection (c): We oppose the language appearing on page 32, lines 1-4. Under current law, if the employee becomes dissatisfied with the treatment being provided by the employer, the employee has a right, subject to judicial approval, to request a change of physician. Under current law, the employer does not straight-jacket the employee in the selection of the physician from whom the second opinion is to be obtained. This language proposes to not only allow the employer to continue exclusive control over the right to designate the treating physician, but also expands that control to now allow the employer to limit the employee's options of health care providers from whom he or she can obtain a second opinion. Injured workers want more control, not less, over the selection of the physician from whom they will be receiving health care, and in whose health care recommendations the employee needs to be able to rely and trust.

KTLA also opposes the effort to change the use of the unauthorized medical allowance to "treatment only" as found on page 32, line 7. One of the key purposes of the current practice, i.e. using the allowance for evaluations, is to determine the nature of the claimant's condition and what can be done about it. Physicians cannot treat without a diagnosis, and diagnosis may in fact involve an evaluation. Unauthorized medical is intended to provide money to a claimant to be spent as deemed necessary by the injured worker.

15. Section 18, subsection (a): We object to any attempt to curtail the liability of industry and insurers for permanent total disability benefits by shifting the burden for such employee's disability benefits to the federal government. The purpose of workers compensation is to place the responsibility for work-related injuries on industry and, as a result thereof, to have those costs passed along to the consumer by increases in the cost of the product. It is not the responsibility of the federal government, whose debt is already overblown and at critical mass, to help foot the bill for workers compensation reform. Moreover, there are very few permanent total disability cases in Kansas, so the value of making this change will be negligible. Also, Social Security disability benefits are already required to be reduced because of the receipt of workers compensation benefits, so there is not a double recovering being made under the current system.

We also object to any changes being made in the definition of permanent total disability. Under the proposed definition, the only people that would be permanently and totally disabled will be the catastrophically injured. It makes no sense to pretend that a 50

year old construction worker who has no more than a high school education, and who has been performing manual labor for thirty years, is not permanently and totally disabled when he suffers the amputation of a lower leg. It can be argued that this construction worker would not be prevented from performing a desk job. While such a man might be capable of sitting at a desk and answering a phone, he is not going to be employable at such a position because of the lack of any skills as a secretary, or any experience. The test for permanent total disability must take into consideration these economic realities.

16. We object to any change in the definition of temporary total disability found on page 37, subsection (2). Under this proposal, the medical doctors are going to be required to investigate the "nature of the employee's essential job functions" before issuing a qualified or restricted work release. This is too much to expect of busy physicians. The current definition allows the parties to adjudge whether a certain set of medical restrictions is capable of being accommodated.

17. Section 19, subsection (a): We oppose any attempt to re-reclassify combinations of scheduled injuries as separate scheduled injuries instead of a general bodily disability. We have every reason to believe these proposals would be unconstitutional for the same reasons as the 1987 enactment which was declared unconstitutional in the Stephenson case.

18. Section 19, subsection (b): If the legislature intends to curtail the availability of "additional compensation", and limit the availability of "additional compensation" to only amputation injuries, it would appear to be fair to increase the amount of "additional compensation" to no more "than 20% of the total.....nor in any event for longer than thirty weeks".

19. Section 19, subsection (c): Again, we object to any proposal which shifts part of the liability for work-related disabilities to the federal government. Notwithstanding, we fail to understand how subsection (c) would work in the event scheduled disabilities are required to be computed pursuant to the AMA Guidelines.

20. Section 19, subsection (d): This proposal is poor policy as it is crucial to a correct calculation of the amount of a scheduled disability award that complete and accurate information regarding the worker's average weekly wage also be discovered and analyzed. In addition, what would happen to the worker's rights to future medical and vocational rehabilitation in the event the Claimants' Advisory Office issues such an award? How is the Claimants' Advisory Office going to know whether it has received "all medical information"? Enactment of this proposal will lead to serious abuses and miscalculations. Are injured workers going to be allowed to sue the State of Kansas for mistakes made by the Claimants' Advisory Office?

21. Section 19, subsection (e): KTLA cannot support proposals that will eliminate the compensability of pre-existing conditions under all circumstances and for all time.

22. Section 20, subsection (a): We oppose the language appearing on page 42, lines 15-24. It will deny work disability compensation if the injured worker returns to work for even for one day at comparable wages. If this language is enacted, it will be abused frequently by some employers. With respect to the rest of this proposed language, again, we object to proposals to declare noncompensable pre-existing conditions in all circumstances and for the entire lifetime of the injured worker.

23. Section 20, subsection (f): Again, we object to proposals to shift liability to the federal government for the cost of work-related injuries.

24. Section 21, subsection (a)(4): We do not support the creation of new limits on the amount of permanent disability compensation that can be recovered. There are already three limitations imposed under current law.

25. Section 22, subsection (h)(page 54): We object to the proposed language at lines 12-14 that will not permit an appeal to the administrative law judge of a denial by the vocational rehabilitation administrator of an application for a job placement referral. Since this is the only kind of vocational rehabilitation that is going to be permitted prior to an award of permanent disability benefits, we think there should be an opportunity to present evidence to the administrative law judge as a protection against arbitrary, uninformed or harsh decisions by the administrator in denying a job placement referral.

26. Section 22, subsection (j)(line 20): We believe that the word "scheduled" should be "functional".

27. Section 23, subsection (b)(page 58): KTLA is opposed to the proposal to repeal the 40-hour minimum for computing the average weekly wage for full-time hourly employees. This would encourage litigation, delay needed compensation and drive up transaction costs. While the change could have a serious impact on some claimants, any savings to the system would be negligible. We also feel such a repeal would unfairly reduce wage replacement benefits to those workers who, while not on the clock, are nevertheless on call or subject to being called into work on short notice.

28. Section 25: We question the public policy of limiting the liability of workers compensation insurance companies for penalties for failing to timely pay medical compensation. None of the proposed new language does anything to repair an injured worker's impaired credit worthiness that results from untimely payment of medical compensation, nor does the proposed new language prohibit a health care provider from "turning" an unpaid medical bill to a collection agency for collection. Most consumers

understand and appreciate the fact that credit reporting agencies collect information regarding the promptness with which health care billings are paid, regardless of whether an insurance company is supposed to be responsible for the debts. Consequently, the injured worker has a legitimate interest in preserving current law which allows a monetary penalty to be quickly assessed against the insurance company in the event a demand is not timely paid.

29. Section 27: This language proposes no guidelines on how conflicts between attorney fee liens and child support liens are to be resolved. Which lien will have priority?

30. Section 28: We question the creation of a new statute of limitations in so short a time after the date of injury. In no other area of law is there such a short statute of limitations. Moreover, there will be litigation over the issue of whether a foreman or supervisor was given a verbal notice of injury. We can assure you that certain employers and industries will routinely deny the receipt of verbal notice, and there will be many injured workers whose claims are denied because they continued to work under the mistaken belief they had satisfied the statute of limitations, even though they are not yet so bad off they need to be referred for medical care. What is going to happen to the victim of carpal tunnel syndrome who continues to work for six months or a year before realizing that they have contracted a serious disability and need medical care? This proposal is punitive, unfair and should not be enacted.

31. Section 34, subsection (a)(page 70): We oppose the language at lines 30-34 where the ruling upon which a review would be requested would be stayed during the pendency of the appeal. In other words, a worker who has been totally disabled as a result of an accidental injury, which injury is disputed for some reason, is going to be denied receipt of temporary total disability benefits to which he may have been deemed entitled by the administrative law judge, during the period of time that the review is under consideration by the Board. This type of opportunity for review by the Board will be abused by insurance carriers solely for the purpose of delaying the delivery to the injured worker of necessary benefits, and will result in "starvation" settlements. The opportunity to request a review would not be objectionable if it were understood that the stay on the payment of benefits would be unavailable when the request for review is from a decision issued under K.S.A. 44-534(a).

32. Section 35, subsection (3)(page 73): KTLA believes further limitation on attorney fees is unnecessary and will create problems where an injured worker needs to hire an attorney to pursue a post-award vocational rehabilitation claim, or has significant disputes over medical compensation issues. Even if there is no dispute over the amount of disability compensation owed, how is the injured worker going to be able to retain an attorney in circumstances such as these, if the attorney is not going to be allowed to

recover his or her fees from the amount of disability benefits being paid? This proposal will have the unintended effect of denying access to the administrative law judge for injured workers with these kinds of disputes.

33. Section 35, subsection (j)(page 74): We oppose the proposal to dictate the contents of advertising for legal services. As long as the advertisement complies with the detailed requirements of the Kansas Supreme Court, it should be sufficient.

34. Section 37: Our opposition to the Workers Compensation Board has already been articulated in testimony on HB 2116.

35. Section 42, subsection (a): KTLA cannot support legislation that will eliminate de novo district court review. There is nothing wrong with the current system of adjudicating rights and liabilities under the Workers Compensation Act, or conducting appeals on such rulings. The current system is inexpensive, competent, funded and already working.

36. Section 43, subsection (c): We oppose any proposal to shorten the amount of time that the injured worker has within which to file a written claim for compensation. The language proposed herein places an obligation on the injured worker to file an application for hearing with the Director within six months after the date of accident, date of the suspension of disability compensation or date of the last medical treatment authorized by the employer. In other words, this language proposes to amend K.S.A. 44-534(b) which currently allows the injured worker three years from the date of accident or two years from the date of the last payment of a compensation within which to file an application for hearing with the Director. Please understand that this is a separate statute of limitations from the obligations of the injured worker to file a timely written claim within 200 days. Under this section, if no benefits are ever paid, and a report of accident is not filed with the Director, the injured worker is going to be barred from access to the courts by a date earlier than the deadline for filing a written claim for compensation. Instead of allowing the injured worker a longer period of time within which to learn about the rights and liabilities imposed by the Act, where the employer fails to file a report of accident, this proposal would regard the employer who refused to file a report of accident (and incurred a slap-on-the-wrist fine for that failure) by imposing a statute of limitations that is even shorter a period of time than the worker's obligations to file a written claim for compensation. This proposal is punitive, unfair and should not be enacted.

HOUSE BILL 2375

1. New Section 1: The problems we identified with the "fraud" bill in HB 2354 do not appear in this proposal and we therefore support this section.

2. Section 5 Page 10): While we are still opposed to declaring pre-existing conditions to be noncompensable, at least this proposal is somewhat more limited in scope than the proposals in HB 2354. We would suggest that the phrase on line 36, "applying for employment" be changed so that it reads "becoming employed". Otherwise, applications for employment that were never acted upon, accepted, or which may be ten years old will still be relevant from the standpoint of determining what is "pre-existing".

3. Section 7, subsection (h)(page 23): This is the same language that appears in HB 2354. We oppose the language at lines 21-23 that will not permit an appeal to the administrative law judge of a denial by the vocational rehabilitation administrator of an application for a job placement referral. Since this is the only kind of vocational rehabilitation that is going to be permitted prior to an award of permanent disability benefits, we think there should be an opportunity to present evidence to the administrative law judge as a protection against arbitrary, uninformed or harsh decisions by the administrator.

4. Section 7, subsection (j)(page 23): On line 29, we think the word "scheduled" should be changed to "functional:". We identified this same problem to exist in HB 2354.

5. Section 8, subsection (b)(5): We support this subsection which resolves potential conflicts in determining the priority of attorney fee liens on the one hand, and child support liens on the other hand.

6. Section 9, subsection (d): We support the concept of a mandatory settlement conference in advance of a first full hearing. Claimants' attorneys and their clients have every reason to settle, not litigate their cases. This proposal, unlike the benefit review conference, is simple, can be implemented without an expensive bureaucracy and, we believe, will result in significantly more cases being settled.

7. Section 10, subsection (e)(page 30): We oppose this limitation for the reason that it is unnecessary, and will create problems where an injured worker needs to hire an attorney to pursue a post-award vocational rehabilitation claim, or has significant disputes over medical compensation issues. Even if there is no dispute over the amount of disability compensation owed, how is the poor, injured worker going to be able to retain an attorney in circumstances such as these, if the attorney is not going to be allowed to recover his or her fees from the amount of disability benefits being paid? This proposal will have the unintended effect of denying access to the administrative law judge for injured workers with these kinds of disputes.

HOUSE BILL 2376

KTLA supports this legislation because it is the only legislative proposal we have yet seen which provides for meaningful workplace safety incentives.

HOUSE BILL 2432

1. New Section 1, subsection (d)(page 2, line 23): We support this proposal, but recommend that it be clarified so as to recognize the legality of an attorney advancing the costs of litigation under a contingency fee contract. Under this proposal, would it be illegal to buy a bus ticket for an injured worker so that the client could travel outside their home town to meet with their lawyer, appear for a medical examination, or show up for court?

2. New Section 8, subsection (b): We do not oppose the benefit review conference proposal, as long as all parties to the worker's compensation claim are allowed to be represented in any such proceeding by an attorney of their choice.

3. Section 13, subsection (b): While we oppose proposals that are designed to declare noncompensable the pre-existing component of a compensable disability, at least this proposal is more limited in scope than the proposals found in HB 2354.

4. Section 14, subsection (a)(2): The new definition of permanent partial disability found on pages 26 and 27 may be appropriate, but we oppose that portion of the proposed new definition that appears on lines 5-9. If pre-existing functional impairment is going to be subject to a credit such as is proposed in this legislation on page 26, why is a pre-existing disability limitation also being proposed within the definition of permanent partial disability? If one of the objects of "reform" is to limit the numbers of issues over which litigation can occur, this proposal, together with Section 13 on page 26, defeats that purpose. We submit that one of these proposals or the other should be sufficient. In addition, we are concerned that on line 6 "functional impairment" is not defined so as to specify the functional impairment to have been aggravated by the compensable event. In other words, is it the intention of this language to reduce an injured worker's permanent disability award for a lower back injury because of a pre-existing visual or hearing impairment that had nothing to do with the occurrence of the compensable back injury?

5. Section 15, subsection (h)(page 38): We oppose the language at lines 8-10 that will not permit an appeal to the administrative law judge of a denial by the administrator of an application for a job placement referral. Since this is the only kind of vocational rehabilitation that is going to be permitted prior to an award of permanent disability benefits we think there should be an opportunity to present evidence to the administrative law judge as a protection against arbitrary, uninformed or harsh decision by the administrator.

6. Section 15, subsection (j)(line 16): We believe that the word "scheduled" should be "functional".

7. Section 16, subsection (b)(5)(page 41): We support this subsection which resolves potential conflicts in determining the priority of attorney fee liens on the one hand, and child support liens on the other hand.

8.. Section 17: We oppose the creation of new ninety-day statute of limitation that does not now exist under current law. This is the shortest statute of limitation of which we are aware under Kansas law. Moreover, this proposal will create all sorts of litigation over whether or not a verbal notice sufficient to comply with this proposal was given. We guarantee that certain employers will routinely deny the giving of verbal notice to a supervisor. What is going to happen when a supervisor to whom was given a verbal notice of injury is no longer in the employ of the respondent when the hearing arises, and cannot be consulted, subpoenaed into court or deposed in order to verify the delivery of such notice? The injured worker will lose their right to all benefits, even though they might have legitimately complied with the proposal.

9. Section 21, subsection (3)(page 48): KTLA opposes this further limitation on attorney fees for the reason it is unnecessary and will create problems where an injured worker needs to hire an attorney to pursue a post-award vocational rehabilitation claim, or has significant disputes over medical compensation issues. Even if there is no dispute over the amount of disability compensation owed, how is the poor, injured worker going to be able to retain an attorney in circumstances such as these, if the attorney is not going to be allowed to recover his or her fees from the amount of disability benefits being paid? This proposal will have the unintended effect of denying access to the administrative law judge for injured workers with these kinds of disputes.

Thank you for the opportunity to present our position on HB 2354, HB 2375, HB 2376 and HB 2432.