

Approved: 3/17/94  
Date

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 16, 1994 in Room 123-S of the Capitol.

Members present: Senators Downey, Feleciano, Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes, Salisbury and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department  
Jerry Ann Donaldson, Legislative Research Department  
Michael Heim, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Bob Nugent, Revisor of Statutes  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Bob Knight, Secretary, Department of Commerce and Housing  
Dennis Shockley, Undersecretary, Housing Division,  
Department of Commerce and Housing  
Jill Grant, Workers compensation fund, Insurance Department  
George Gomez, Director, Division of Workers Compensation,  
Department of Human Resources

Others attending: See attached list

### Department of Commerce and Housing response to K-Goal audit

Bob Knight, Secretary, Department of Commerce and Housing, responded to the K-Goal audit performed by the Legislative Division of Post Audit. During fiscal year 1993, the department registered 621,266 visitors at Tourist Information Centers; provided site location assistance that resulted in 3,200 new jobs and \$371 million in investment; provided workforce training assistance for 13,286 Kansas workers, sponsored 9 trade missions; responded to 5,100 First Stop Clearinghouse inquiries; certified 17 venture/seed capital companies; and provided over \$6 million in Economic Development Grants through the CDBG program. The department recognizes the need to measure and evaluate the impact of the programs it administers and has been engaged in identifying appropriate impact measures to fulfill this need. A year ago the department began the development of the Program Tracking System. The design of the Program Tracking Data base incorporates specific economic impact measures. The programs cited in the audit report will be included in the Program Tracking data base system when it is fully implemented.

Mr. Knight reported the audit recommends the merging of the Industrial Development and Existing Industry Divisions into one division that will administer programs aimed at business recruitment, development and retention. Kansas Inc. and the Department support this recommendation. HB 2760 has been introduced to achieve this reorganization, see attachment 1.

In response to Committee questions, Bill Thompson, Industrial Development Director, of the Department of Commerce and Housing, said the 3,200 new jobs were from the 16 or 17 projects where the department works directly with the client. The communities involved also play a major role. He emphasized the role of the Department as a facilitator. The number of new jobs were reported in the newspaper. The department helps select the communities. In regard to the kinds of jobs and wages, the department will gather the information together and submit it to the Committee. Mr. Thompson said they have been better at selling than following up afterwards.

A list of outcomes and accomplishments of the Division of Housing since July 1, 1992 when the division was created, was distributed to the Committee, see attachment 2.

Dennis Shockley, Undersecretary, Division of Housing, replied that being in the Department of

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 16, 1994.

Commerce has been a benefit. He said apart from the two federal programs they administer, they are doing a lot of economic development outreach programs with communities that have specific housing problems.

### **Hearing and possible action on SB 830-Workers compensation fund, extending period for fund liability of covered deaths and injuries**

George Gomez, Director, Workers Compensation, explained the oversight committee on Workers Compensation is asking for a nine month extension to change the date on page 2, line 35 and on page 3, lines 22 and 23 from July 1, 1994 to April 1, 1995.

Jill Grant, Workers Compensation Fund, Insurance Department, testified on behalf of the Workers Compensation Fund Oversight Committee and in favor of passage of SB 830. The Oversight Committee was unable to meet until February of this year due to a number of appointments to the Oversight Committee that were not made in a timely manner. At the most recent meeting, the Oversight Committee voted unanimously to recommend that the Fund "phase out" date be extended for a period of at least nine months, in order that the Oversight Committee may complete the tasks that it has been constituted to perform. Enactment of SB 830 is needed to facilitate the implementation of the extension recommended by the Oversight Committee, see attachment 3.

Senator Feleciano moved and Senator Reynolds seconded to recommend SB 830 favorably for passage. The motion carried on a roll call vote.

Senator Harris passed on voting on SB 830. He informed the Committee that he had a conflict of interest. The Insurance Department is and has been a client of his for fourteen years; and because of that conflict, he declined to vote.

Senator Gooch moved and Senator Steffes seconded to adopt the minutes of March 14 and March 15, 1994. The motion carried on a voice vote.

The Chairman adjourned the meeting at 9:00 a.m.

The next meeting is scheduled for March 17, 1994.

## GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 3/16/94

[illegible]

K-GOAL AUDIT RESPONSE  
MADE TO THE  
SENATE COMMERCE COMMITTEE  
BOB KNIGHT, SECRETARY  
MARCH 16, 1994

On behalf of the Kansas Department of Commerce & Housing, I am pleased to have the opportunity to respond to the Kansas Governmental Accountability Law (KGOAL) audit performed by the Legislative Division of Post Audit.

We welcome the opportunity for our programs to be evaluated by the Legislative Division of Post Audit. The audit report validates the effectiveness of the programs audited and confirms their support of the goals of the department.

The Department of Commerce & Housing is a very busy place engaged in the delivery of a wide ranging variety of economic development programs. During Fiscal Year 1993 the department registered 621,266 visitors at our TICs; provided site location assistance that resulted in 3,200 new jobs and \$371 million in investment; provided workforce training assistance for 13,286 Kansas workers, sponsored 9 trade missions; responded to 5,100 First Stop Clearinghouse inquiries; Certified 17 venture/seed capital companies; and provided over \$6 million in Economic Development Grants through the CDBG program.

*Commerce*  
*3/16/94*

*Attachment 1-1*

The department recognizes the need to measure and evaluate the impact of the programs it administers and has been engaged in identifying appropriate impact measures to fulfill this need. We have, working together, achieved the development of a complex and effective economic development delivery system in our state. The issue of how to assess the impact of a specific program in the economic development delivery system is complex. An example of this complexity would be in the recruitment of a new company to the state.

The company may have initially been contacted through one of the Regional Industrial Development Offices or a Kansas Calvary Mission. Company executives then participate in an Industrial Development Tour; meet with Field Staff from the Existing Industry Division and work with local economic development professionals. The firm eventually locates in a rural area and takes advantage of the enhanced incentives available in a non-metropolitan enterprise zone , uses the High Performance Incentive Program, receives technical consulting services through the Mid-America Manufacturing and Technology Center and secures a loan packaged by the Certified Development Company serving the region.

What was the impact of each of the programs on the company's decision to locate in Kansas and create new jobs and investment? How much investment, how many new jobs can be attributed to the individual programs? As you can see, the answer is not clear cut. KDOC&H acknowledges the recommendations made in the audit report as

they relate to the need to develop appropriate economic impact measures. The audit report accurately identifies the problems associated with developing economic impact measures for the programs administered by the department.

In his presentation yesterday, Mr. Green highlighted several findings in his summary of the K-GOAL Audit. I will take this opportunity to briefly address these findings individually.

As noted in the audit report the Marketing Promotion program of the Travel & Tourism Division reported a \$43 return for every \$1 spent on national advertising. This is an excellent return on investment.

Participants in the Kansas Secrets program spent over \$800 thousand dollars in Kansas that would have gone elsewhere, due to changes in travel plans. The Kansas Film Commission, which receives a relatively small level of funding, generated 34 productions in Kansas which resulted in over \$10 million in expenditures.

The three programs that were identified in the audit report as not having data on economic impact are currently in the process of collecting the data. The Media Promotions program has entered into a contract to complete an analysis of "free press" that will commence in June of this year. The Group Tour Promotions and Tourism Development Programs are also in the process of developing survey tools that will collect information on the impact of tourism related to these programs for Fiscal Year 1994.

The audit report identifies the difficulty in determining the result of program efforts by the Community Development Division.

The audit report includes some information about the Kansas Main Street Program that could use additional clarification. The Main Street program collects information from participating communities on new jobs created by firms expanding or relocating in the central business district. An apparent discrepancy in the number of new jobs reported by program administrators is the result of different areas of focus in the program.

The Kansas Partnership Fund does collect projected new job data. The verification of actual new jobs will be a part of scheduled work in Phase II of the data base project. Impact criteria for the program will be included in the data base and data on actual new jobs created will be collected.

The Kansas Trade Show Assistance Program(KTSAP) is designed to assist Kansas businesses open new markets for their products. The Trade Development Division will be revising the KTSAP survey instrument for FY94 to capture information that will indicate the importance of KTSAP funding in the participant's decision to attend specific trade shows. Operational guidelines for administering the program have been implemented to assure that companies are provided assistance in line with the program goals to encourage companies new to export, to attend trade shows and expand markets for Kansas products.

The audit report identifies the Kansas Industrial Training (KIT) and Kansas Industrial Retraining (KIR) Programs as effective programs which help businesses add jobs or retain new workers. The report found that more than two-thirds of the surveyed businesses responded that the KIT and KIR programs were important or very important in their decision to expand their business or retain current employees.

The same survey also revealed that the employee's average salary levels were higher after they received training. These measures show the effectiveness of the programs in both the creation and retention of jobs and the increased value of trained workers to the participating companies.

In response to the finding that the effectiveness of the KIT program may have declined, a point must be made. The survey responses provided to the audit team for FY 1992 were not complete. As survey information continues to be provided by participating firms a more accurate analysis will become available. Currently the responses indicate that 75% of the firms rated training as important or very important and 100% of the respondents rated trainees as either above average or equal to other workers. This indicates that the clients of the program find it extremely effective.

Program managers have been working with a subcommittee of the Industrial Development Advisory Committee to develop guidelines for KIR that will result in new criteria for participation in the program. The new guidelines will set a wage floor of \$6.00 per hour



for jobs in the program and initiate competitive rounds for application on a quarterly basis for FY95. The KIT program will continue to be used as a recruitment tool by the department.

The audit report targeted 7 programs in the Existing Industry Division. The FY 1993 expenditures for the division were identified as being \$1.1 million dollars. This funding provided for 1 division director, one secretary, five staff personnel to administer 10, not 7, programs and included \$850,000 in direct grants to CDCs, SBDCs, and KQIN.

The Kansas Match program is having problems verifying when matches have been made through the program. This is a data collection problem that is complicated by the nature of the program. We currently have no leverage to compel companies to provide this information. The department is investigating the possibility of including a memorandum of understanding in the Kansas Match application that will enable the department to request the data required for verification. Over 700 companies are participating in the program as suppliers or buyers.

The High Performance Incentive Program is a brand new program that has generated a substantial number of inquiries. By statute the department is required to make an annual report to the legislature on performance of the program. Since it is designed to be used in conjunction with other programs (i.e. KIT/KIR), it will also be problematic to measure the impact of this program.

The audit accurately characterizes the Clearinghouse, Steps to Success and Strongest Link as educational programs. Although there is currently no way to measure the impact of these programs on the Kansas economy, performance measures for these programs are tracked.

Performance measure for CDCs and SBDCs are also maintained by the department and provide the basis for allocation of state funding. The Venture Capital program is responsible for certification and decertification only, it has no direct involvement in capital placement. The agency does maintain information on the number of loans and the amount of capital investment.

Additional information on the Existing Industry Division and its programs is attached to this testimony.

A year ago the department began the development of the Program Tracking System. The design of the Program Tracking Data base incorporates specific economic impact measures. The programs cited in the audit report will be included in the Program Tracking data base system when it is fully implemented.

The Program Tracking System has been designed to provide a historical base of information which may be used to develop longitudinal studies of program effectiveness. When program areas are added to the system, impact data associated with the program is identified and included in the data base. As data is collected, it will be correlated with independent surveys, by the research

section, of economic impact in order to provide verification of the impact data collected by the program administrators. Economic information included in the data base will also be electronically available to our economic development partners throughout the state and to the general public.

The audit recommends the merging of the Industrial Development and Existing Industry Divisions into one division that will administer programs aimed at business recruitment, development, and retention. Kansas, Inc. and the Department support this recommendation. House Bill # 2760 has been introduced to achieve this reorganization and will be heard today in the Senate Government Organization Committee.

In conclusion we agree with the finding of the K-GOAL audit that the department is "accomplishing its goals" and "headed in the right direction to improve the measurement of program results." Many of the weaknesses related to the collection of impact information have been identified and are incorporated in the plans for the implementation of the Program Tracking System.

Thank you for the opportunity to respond to the audit report findings. If anyone has any questions we would be happy to respond at this time.

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**KANSAS DEPARTMENT OF COMMERCE & HOUSING**  
**DIVISION OF HOUSING**

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**MEMORANDUM**

**TO:** Legislative Post Audit Committee  
**FROM:** Dennis M. Shockley *MS*  
**DATE:** February 11, 1994  
**SUBJECT:** Outcomes and Accomplishments of Division of Housing

Attached please find a list of outcomes and accomplishments for the Division of Housing since July 1, 1992 (when the division was created), per the committees' request of February 10, 1994.

If you have any questions regarding this information please contact me at (913) 296-2686.

*Commerce*  
*3/16/94*  
*Attachment 2-1*

## **OUTCOMES AND ACCOMPLISHMENTS IN DIVISION OF HOUSING SINCE JULY 1, 1992**

- Completed hiring of full-staff complement for the Division.
- Completed statewide housing needs assessment per legislative directive and reported back to 1993 legislature.
- Received approval from HUD for the 1993 and 1994 Comprehensive Housing Affordability Strategy (CHAS).
- Established a Housing Clearinghouse function per recommendation of a 1991 Legislative Post Audit Report (Housing Hotline, Quarterly newsletter, video, brochure, and other publications; started work on a statewide housing services directory.
- Secured funding for the statewide Housing Hotline from Farmers Home Administration.
- Established working relationships with RTC, FmHA, FHLB, and HUD.
- Forged partnership with and staffed the Governor's Commission on Housing and Homelessness.
- Refunded 11-B bonds with KDFA generating \$3.8 million over 10 years to the State Housing Trust Fund.
- Received \$67,000 grant from the Robert Wood Johnson Foundation for an elderly supportive services grant for five Kansas communities.
- Restructured (with the Division of Existing Industry) Private Activity Bond allocations to generate additional revenues to the State Housing Trust Fund.
- Helped Topeka become a participating jurisdiction under the HOME program by infusing \$143,000 of State HOME monies. This leveraged an additional \$607,000 of housing money into the state and qualified Topeka as an entitlement city in HOME for the remainder of the federal program
- Commenced with the Johnson County Housing Authority the Rural Operation Homeless Program in Franklin, Douglas, and Miami counties.
- Granted \$100,000 in CSBG discretionary funding to Hutchinson, Salina, and Lawrence for a demonstration program to provide transitional housing for homeless families and children.

- Worked with Habitat for Humanity in the construction of three homes (volunteer time) and worked with Habitat conducting energy tests on their homes utilizing technical assistance provided by Western Resources.
- Developed a procedural manual to provide standards and procedures for evaluating Low Income Housing Tax Credit projects and developed a compliance monitoring manual for that same program.
- Brought the new federal HOME Program on line; as of September 1, 1993 Kansas had committed more of its first year allocation than thirty-eight other states.
- Conducted HOME Program delivery workshops statewide.
- Received National Council of State Housing Agencies Award for our efforts in creating the new division and our ongoing housing endeavors.
- Established statewide consortium of sixty-four lenders to participate in the First Time Homebuyer Program of HOME.
- Initiated the application process for special flood monies in the HOME Program.
- Received grant from Kansas Corporation Commission to develop a state plan for home energy ratings.
- Conducted the 1st Governor's Conference on Housing and Homelessness, 400 attended the three-day event.
- In the process of preparing the 1994 CHAS for submission to HUD.
- Assisted seventy-six families (230 persons) in the purchase of their first home with grants of \$672,000, leveraging an additional \$2.2 million in mortgage funding (1st year of Program).
- Awarded \$5.7 million in CSBG grants benefitting over 33,000 Kansans.
- Weatherized 2,600 homes (assisting 7,600 persons/with a 22% energy savings).
- Awarded \$282,000 to twenty local governments for thirty-six homeless shelters.
- Granted \$1.6 million in rent assistance to seven local housing authorities, benefitting 628 persons.
- Granted \$2.2 million to ten communities for homeowner rehabilitation, improving 248 homes and benefitting 748 persons.

- Certified ten Community Housing Development Organizations (CHDOs).
- Allocated \$6.5 million in federal tax credits for a ten year amount of \$65.3 million; this raised or leveraged \$60.9 million of permanent financing for 2,300 units of rental housing.
- Supported 410 Section 8 units.

**SENATE COMMITTEE ON COMMERCE**  
**Senate Bill 830**  
**March 16, 1994**

Testimony of Jill Grant

Workers Compensation Fund Oversight Committee

Madam Chair and Members of the Committee:

My name is Jill Grant, I am a member of the Workers Compensation Fund Oversight Committee, and I am here to testify in favor of the passage of S.B. 830.

Pursuant to legislation enacted during the 1993 Session (S.B. 307), the Kansas Workers Compensation Fund is currently scheduled to "phase out" as of July 1, 1994. See attached copy of K.S.A. 44-567(a)(1). At the same time that the legislature addressed the issue of a fund "phase out", it was determined that there were a number of very important and complex issues regarding the Fund that had yet to be resolved. Therefore, S.B. 307 also created the Workers Compensation Fund Oversight Committee.

This oversight committee is statutorily obligated to address these issues and to report annually to the legislative coordinating council. This annual report is to include recommendations to the legislature on the advisability of the continuation or termination of the Fund. See attached copy of K.S.A. 46-2401(b). Unfortunately, due to the fact that a number of appointments to the oversight committee were not made in a timely manner, the committee was unable to meet until February of this year.

As of today's date, it is my understanding that all appointments, with the exception of one, have been made. The oversight committee has currently held two meetings and has committed itself to addressing the very important and numerous issues regarding the Fund, and the role the Fund plays in the State of Kansas. At the most recent meeting, the oversight committee voted unanimously (with the exception of two members who were not present for the vote) to recommend that the Fund "phase out" date be extended for a period of at least nine months, in order that the oversight committee may complete the tasks that it has been constituted to perform. It should be understood that this

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**SENATE COMMITTEE ON COMMERCE**

**S.B. 830**

**March 16, 1994**

**Jill Grant**

**PageTwo**

recommendation is not a recommendation that the Fund should continue to exist for an unlimited period of time in its existing form. Rather, this is a recommendation based upon the oversight committee's commitment to research and formulate sound, fact-supported recommendations to the legislature regarding the future of the Fund. Enactment of S.B. 830 is needed to facilitate the implementation of the extension recommended by the oversight committee.

Therefore, I request that S.B. 830 be passed favorably from this committee.

(4) payment of the actual expenses of the commissioner of insurance which are incurred for administering the workers compensation fund, subject to the provisions of appropriations acts; and

(5) any other payments or disbursements provided by law.

(f) If it is determined that the workers compensation fund is not liable as described in subsection (e), attorney fees incurred by the workers compensation fund may be assessed against the party who has impleaded the workers compensation fund other than impleadings pursuant to K.S.A. 44-532a and amendments thereto.

(g) The commissioner of insurance shall provide for the implementation of the workers compensation fund as provided in this section and shall be responsible for ensuring the fund's adequacy to meet and pay claims awarded against it.

**History:** L. 1974, ch. 203, § 46; L. 1975, ch. 260, § 3; L. 1977, ch. 179, § 1; L. 1979, ch. 156, § 14; L. 1980, ch. 146, § 14; L. 1982, ch. 213, § 6; L. 1983, ch. 166, § 15; L. 1984, ch. 182, § 1; L. 1988, ch. 380, § 1; L. 1990, ch. 28, § 16; L. 1993, ch. 286, § 61; July 1.

**Revisor's Note:**

Section was amended twice in 1990 session, see also 44-566b.

**Cross References to Related Sections:**

Attorney fees in other workers' compensation cases, see 44-504, 44-512a, 44-536.

**Law Review and Bar Journal References:**

"Potential Federalization of State Workmen's Compensation Law—The Kansas Response," James C. Wright and James P. Rankin, 15 W.L.J. 244, 257, 258 (1976).

"Workmen's Compensation—Major Changes in Employments Covered, Benefits, Defenses, Offsets, and Other Changes," Alvin D. Herrington, 24 K.L.R. 611, 616 (1976).

"Workmen's Compensation—The Preliminary Hearing, the Workmen's Compensation Fund, and Civil Penalties for Failure to Pay Compensation When Due," Albert M. Ross, 24 K.L.R. 623, 624, 625 (1976).

"Workmen's Compensation—The Workmen's Compensation Fund," Charles J. Woodin, 24 K.L.R. 641, 642, 643 (1976).

"Survey of Kansas Law: Workers' Compensation," William A. Kelly, 27 K.L.R. 377, 386 (1979).

"Major Legislative Changes in Workers' Compensation Law," Gary L. Jordan, 3 J.K.T.L.A. No. 1, 14, 16 (1979).

"Worker Compensation; Attorney's Fees Under K.S.A. 44-536," Gary L. Jordan, Vol. 6, No. 6, J.K.T.L.A. 21 (1983).

**CASE ANNOTATIONS**

1. Substantial evidence to support award for disability resulting from second accident; liability of second injury fund. *Day and Zimmerman, Inc. v. George*, 218 K. 189, 190, 542 P.2d 313.

2. Appeal from award apportioning percentage to second injury fund; award upheld. *Blevins v. Buildex, Inc.*, 219 K. 485, 548 P.2d 765.

3. Sufficient competent evidence; apportionment of award to workmen's compensation fund proper. *Cody v. Jayhawk Pipeline Corporation*, 222 K. 491, 565 P.2d 264.

4. Section 44-567 construed and applied; failure of district court to apply "but for" rule requiring full payment from fund. *Barke v. Archer Daniels Midland Co.*, 223 K. 313, 317, 573 P.2d 1025.

5. Award of attorney fees is at discretion of court. *Baum v. Greyhound Corp.*, 3 K.A.2d 456, 458, 601 P.2d 6.

6. Liability of workmen's compensation fund derives from that of employer; settlement between claimant and employer precludes action against fund by claimant. *Arduer v. Daniel International Corp.*, 7 K.A.2d 225, 229, 230, 640 P.2d 329 (1982).

7. Second injury fund assessments exacted of Kansas companies by other states appropriately included in computation of retaliatory tax due under 40-253. *Twin City Fire Ins. Co. v. Bell*, 232 K. 813, 814, 658 P.2d 1038 (1983).

8. Cited; allowance of attorney fees within discretion of trial court; finding of frivolous joinder unnecessary. *Simmons v. Security National Bank*, 11 K.A.2d 1, 3, 711 P.2d 757 (1985).

9. Interplay of 44-503 and 44-532a examined and applied concerning fund liability for certain employers. *Workers Compensation Fund v. Silicone Distributing, Inc.*, 248 K. 551, 558, 809 P.2d 1199 (1991).

10. Insolvent employer's obligation under Kansas workers compensation act was nontax in nature; not entitled to tax priority in bankruptcy. *In Re Payne*, 27 B.R. 809, 810, 812 (1983).

**44-566b.**

**History:** L. 1974, ch. 203, § 46; L. 1975, ch. 260, § 3; L. 1977, ch. 179, § 1; L. 1979, ch. 156, § 14; L. 1980, ch. 146, § 14; L. 1982, ch. 213, § 6; L. 1983, ch. 166, § 15; L. 1984, ch. 182, § 1; L. 1988, ch. 380, § 1; L. 1990, ch. 28, § 16; L. 1990, ch. 350, § 6; Repealed, L. 1993, ch. 286, § 77; July 1.

**44-567.** Same; employment or retention of handicapped workers; relief from or apportionment of liability for subsequent injuries; knowledge of impairment; presumptions; commissioner of insurance to be impleaded. (a) An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and

the administrative law judge awards compensation therefor and finds the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers compensation fund; and

(2) subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

(b) In order to be relieved of liability under this section, the employer must prove either the employer had knowledge of the preexisting impairment at the time the employer employed the handicapped employee or the employer retained the handicapped employee in employment after acquiring such knowledge. The employer's knowledge of the preexisting impairment may be established by any evidence sufficient to maintain the employer's burden of proof with regard thereto. If the employer, prior to the occurrence of a subsequent injury to a handicapped employee, files with the director a notice of the employment or retention of such employee, together with a description of the handicap claimed, such notice and description of handicap shall create a presumption that the employer had knowledge of the preexisting impairment. If the employer files a written notice of an employee's preexisting impairment with the director in a form approved by the director therefor, such notice establishes the existence of a reservation in the mind of the employer when deciding whether to hire or retain the employee.

(c) Knowledge of the employee's preexisting impairment or handicap at the time the employer employs or retains the employee in

employment shall be presumed conclusively if the employee, in connection with an application for employment or an employment medical examination or otherwise in connection with obtaining or retaining employment with the employer, knowingly: (1) Misrepresents that such employee does not have such an impairment or handicap; (2) misrepresents that such employee has not had any previous accidents; (3) misrepresents that such employee has not previously been disabled or compensated in damages or otherwise because of any prior accident, injury or disease; (4) misrepresents that such employee has not had any employment terminated or suspended because of any prior accident, injury or disease; (5) misrepresents that such employee does not have any mental, emotional or physical impairment, disability, condition, disease or infirmity; or (6) misrepresents or conceals any facts or information which are reasonably related to the employee's claim for compensation.

(d) An employer shall not be relieved of liability for compensation awarded nor shall an employer be entitled to an apportionment of the costs thereof as provided in this section, unless the employer shall cause the commissioner of insurance, in the capacity of administrator of the workers compensation fund, to be impleaded, as provided in K.S.A. 44-566a and amendments thereto, in any proceedings to determine the compensation to be awarded a handicapped employee who is injured or disabled or has died, by giving written notice of the employee's claim to the commissioner of insurance prior to the first full hearing, where any evidence is presented on the claim.

(e) Amendments to this section shall apply only to cases where a handicapped employee, or the employee's dependents, claims compensation as a result of an injury occurring after the effective date of such amendments.

(f) The total amount of compensation due the employee shall be the amount for disability computed as provided in K.S.A. 44-503a, 44-510 through 44-510g and 44-511, and amendments thereto, and in no case shall the payments be less nor more than the amounts provided in K.S.A. 44-510c and amendments thereto.

History: L. 1945, ch. 221, § 2; L. 1947, ch. 290, § 1; L. 1955, ch. 250, § 12; L. 1957, ch. 293, § 8; L. 1961, ch. 243, § 9; L. 1967, ch. 280, § 13; L. 1970, ch. 190, § 11; L. 1974, ch. 203, § 47; L. 1977, ch. 179, § 2; L. 1979,

(h) The joint committee on gaming compacts may introduce such legislation as it considers necessary in performing its functions.

History: L. 1993, ch. 4, § 3; March 4.

**46-2304. Severability.** If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end the provisions of this act are severable.

History: L. 1993, ch. 4, § 4; March 4.

#### Article 24.—WORKERS COMPENSATION FUND OVERSIGHT COMMITTEE

**46-2401. Workers compensation fund oversight committee; composition; chairperson and vice-chairperson; duties; annual report; actuarial services; staff assistance; meetings; expense allowances.** (a) There is hereby created the workers compensation fund oversight committee to consist of eleven members as follows: (1) One member shall be the commissioner of insurance or the commissioner's designee, (2) one member shall be appointed by the president of the senate, (3) one member shall be appointed by the minority leader of the senate, (4) one member shall be appointed by the speaker of the house of representatives, (5) one member shall be appointed by the minority leader of the house of representatives, (6) two members shall be persons appointed by the legislative coordinating council, (7) three members shall be persons appointed by the governor, and (8) one member shall be the director of workers compensation or the director's designee. The four members appointed by the president and minority leader of the senate and the speaker and minority leader of the house of representatives shall be members of the legislature. The two members appointed by the legislative coordinating council shall be appointed in accordance with the following: One member shall represent employers having 25 or more employees and one member shall represent employers having 24 or less employees. The three members appointed by the governor shall be appointed in accordance with the following: One member shall represent employers having 25 or more employees, one member shall represent employers having 24 or less employees and one member shall be appointed from the public at large. None of the five members appointed by the legislative coordinating council and the governor shall be

members of the legislature. Each member serving on the workers compensation fund oversight committee shall serve at the pleasure of the officer or council that appointed the member.

(b) The legislative coordinating council shall designate a chairperson and a vice-chairperson of the workers compensation fund oversight committee from among the members thereof. The committee shall meet upon the call of the chairperson. The committee shall make an annual report to the legislative coordinating council on or before September 1 of each year and shall perform such additional duties as the legislative coordinating council shall direct. The report to the legislative coordinating council shall include recommendations to the legislature on the advisability of continuation or termination of the workers compensation fund or any provisions of the workers compensation act relating thereto, an analysis of the federal Americans with disabilities act and its effect on the workers compensation fund, recommendations on ways to reduce claim and operational costs of the workers compensation fund, and draft legislation which would implement recommendations of the committee.

(c) The commissioner of insurance, or the commissioner's designee, shall provide any consulting actuarial firm contracting with the legislative coordinating council with such information or materials pertaining to the workers compensation fund deemed necessary by the actuarial firm for performing the requirements of any actuarial reviews for the workers compensation fund oversight committee notwithstanding any confidentiality prohibition, restriction or limitation imposed on such information or materials by any other law. The consulting actuarial firm and all employees and former employees thereof shall be subject to the same duty of confidentiality imposed by law on other persons or state agencies with regard to information and materials so provided and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality. Any reports of the consulting actuarial firm shall be made in a manner in which will not reveal directly or indirectly the name of any persons or entities or individual reserve information involved in claims against the workers compensation fund. Information provided to the actuary shall not be subject to discovery, subpoena or other means of legal compulsion in any civil proceedings

and shall be returned by the actuary to the commissioner of insurance.

(d) The staff of the legislative research department, the office of the revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the workers compensation fund oversight committee and to the extent authorized by the legislative coordinating council.

(e) Members of the workers compensation fund oversight committee attending meetings of the committee, or attending a subcommittee meeting thereof authorized by the committee, shall be paid compensation, travel expenses and subsistence expenses or allowances as provided in K.S.A. 75-3212 and amendments thereto.

History: L. 1993, ch. 286, § 21; July 1.