

M I N U T E S

SPECIAL COMMITTEE ON LABOR AND INDUSTRY

November 16, 1977  
Room 510-S, State House

Members Present

Representative Eugene F. Gastl, Chairman  
Senator John Vermillion, Vice-Chairman  
Senator Don Allegrucci  
Senator Paul Feleciano, Jr.  
Senator Bill Morris  
Representative Denny Burgess  
Representative Samuel Sifers  
Representative John Sutter  
Representative Darrell Webb  
Representative Lynn Whiteside  
Representative Bill Wisdom

Staff Present

Mike Heim, Kansas Legislative Research Department  
Sherman Parks, Jr., Revisor of Statutes Office

Conferees and Others Present

Hamp Fairleigh, Department of Human Resources  
Jim Yount, AFL-CIO  
Dave Watkins, United Auto Workers  
R.J. Soptic, United Auto Workers  
Tim Brazil, Kansas Insurance Department  
Mark L. Bennett, American Insurance Association  
Jim Wampler, Kansas Farm Bureau  
Bryce Moore, Director, Division of Workers' Compensation  
Richard Smelser, Division of Workers' Compensation  
Kathleen Sebelius, Kansas Trial Lawyers Association

November 16, 1977  
Morning Session

Proposal No. 45 - Workers' Compensation

The Special Committee on Labor and Industry was called to order by the Chairman, Representative Eugene F. Gastl, at 10:00 a.m.

Chairman Gastl called on Mr. Mike Heim, Kansas Legislative Research Department, to discuss the draft Committee report. Mr. Heim said that the Special Committee on Labor and Industry was directed to determine whether the Kansas Workmens' Compensation Law should be brought into full compliance with the 19 essential recommendations of the President's National Commission on State Workmen's Compensation Laws with particular attention to the possibility of eliminating the \$50,000 maximum death benefit limit or instituting an automatic cost-of-living factor for these benefits and to review provisions of the Kansas law which prohibit payment of benefits in certain coronary and cerebrovascular cases. A copy of the draft report is available in the Kansas Legislative Research Department.

Chairman Gastl asked for comments and suggestions from Committee members concerning the report. Senator Morris suggested that on page 3, under the heading of The Nature of Workmen's Compensation the following idea should be added -- that

workmen's compensation is in lieu of bringing a tort action. He also suggested that on page 4 in paragraph 2 that the words "will be paid" be inserted after the word "benefits" and the word "or" be changed to "of."

Senator Morris suggested that on Page 11 in the last paragraph that an addition should be made to say that the Workmen's Compensation Fund was formerly called the Second Injury Fund.

A discussion was held by the Committee concerning the earlier statement by a representative of the Kansas Cooperative Extension Service at Kansas State University that nothing had been done to comply with a 1974 interim Committee suggestion that the Extension Service embark on an educational program to inform farmers of the benefits and risks of carrying or not carrying workmen's compensation, liability and health and accident insurance. Senator Feleciano suggested that the Committee re-affirm the earlier decision that the Extension Service embark on a suitable education program and that the staff be directed to see that the appropriate people of the Extension Service be sent a copy of the recommendation.

Senator Morris said that he had received a letter from Mr. Charles J. Woodin of Wichita concerning items 18 and 19 on pages 20 and 21 of the Committee report (see Attachment I). Mr. Bryce Moore, Director, Division of Workers' Compensation, gave an explanation of the statutes involved, K.S.A. 44-528 and K.S.A. 44-510(a), and the changes proposed in the letter from Mr. Woodin. Senator Morris moved that the Committee reconsider its previous action on items 18 and 19 on pages 20 and 21 of the Committee report. The motion was seconded by Representative Sifers and the motion carried.

Senator Morris moved that the Committee accept the recommendations of the Workers' Compensation Advisory Council on items 18 and 19 on pages 20 and 21 of the Committee report and that these items be incorporated in the Committee report and be included in the bill draft. Item 18 reads as follows: "An amendment should be made to prohibit the review and modification of settlement awards (K.S.A. 44-528)." Item 19 reads as follows: "An amendment should be made to K.S.A. 44-510(a) to reflect that the percentage of the contribution for a prior injury shall be applied against the money rate paid for the prior injury." The motion was seconded by Representative Sifers and the motion carried.

Chairman Gastl asked if the Committee wished to reconsider its' recommendation on item 13 on page 20 of the Committee report concerning job security for the five Workers' Compensation examiners. Representative Wisdom moved that the Committee reconsider its' action on item 13. Representative Burgess seconded the motion and the motion carried.

Representative Wisdom moved that a provision be included in the bill draft and incorporated in the Committee report to provide job security for the Workers' Compensation examiners, providing for a six-year term for the examiners. Representative Burgess seconded the motion. Senator Morris made a substitute motion that a provision be included in the bill draft and incorporated in the Committee report to provide job security for the Workers' Compensation examiners by providing a ten-year term subject to the provisions for dismissal included in item 13 on page 20.

Senator Allegrucci seconded the substitute motion and the substitute motion carried. Senator Vermillion voted no.

Senator Morris moved that the Committee report on Proposal No. 45 - Workers' Compensation be adopted as amended. Senator Feleciano seconded the motion and the motion carried. Representative Burgess voted no.

Chairman Gastl asked Mr. Sherman Parks, Jr., of the Revisor of Statutes Office to explain the proposed bill for Proposal No. 45. A copy of this bill is available in the Legislative Research Department.

It was the consensus of the Committee that on page 10, line 22 that the words "the dollar amount nearest" be inserted before the words "seventy-five percent (75%)."

Representative Burgess moved that the agricultural exemption be re-instated in the law. Representative Whiteside seconded the motion and the motion failed.

Senator Vermillion moved that the permanent total disability maximum benefit be increased from \$50,000 to \$100,000. The motion was seconded by Senator Allegrucci and the motion carried.

Senator Vermillion moved that the Committee adopt the proposed bill as amended. Senator Feleciano seconded the motion and the motion carried. Representative Burgess voted no.

Senator Vermillion moved that the Committee reconsider the Committee report. Senator Allegrucci seconded the motion and the motion carried. It was the consensus of the Committee that the bill be pre-filed as a House Bill.

Senator Vermillion moved that the Committee Report include the changes incorporated in the proposed bill by the Committee. Senator Feleciano seconded the motion and the motion carried.

#### Afternoon Session

#### Proposal No. 46 - Employment Security

The meeting was called to order by Chairman Gastl at 1:15 p.m.

Representative Whiteside moved that the minutes of the October 19 and 20, 1977 meeting be approved. Senator Vermillion seconded the motion and the motion carried.

Chairman Gastl called on Mr. Mike Heim to explain and discuss the Committee Report on Proposal No. 46 - Employment Security. A copy of the draft report is available in the Legislative Research Department. Mr. Heim said that the Special Committee on Labor and Industry was directed to review the adequacy of the Kansas Employment Security Law and the impact of the 1977 amendments on employers, employees and local units of government.

It was the consensus of the Committee that item 2 on page 16 be changed to read, "Benefits would be denied to persons who voluntarily quit without good cause, are discharged for misconduct or refuse to apply for and to accept suitable work, until the person again becomes employed and has had earnings of at least eight times his or her weekly benefit amount."

Senator Vermillion moved the adoption of the Committee Report. Representative Sutter seconded the motion and the motion carried.

Chairman Gastl asked Mr. Sherman Parks, Jr., to review the two proposed bill drafts, copies of which are available in the Legislative Research Department.

Senator Morris moved that the proposed bill draft (RS 1759) be adopted. Representative Whiteside seconded the motion and the motion carried.

A discussion was held on the second bill draft (RS 1761). Representative Whiteside moved that the staff be instructed to clarify the language in Section 2 (K.S.A. 1977 Supp. 44-704) to include the one-half offset for social security retirement benefits. Senator Vermillion seconded the motion and the motion carried.

Senator Feleciano moved that on page 27, line 32 of the bill draft that the comma be deleted after the word "resources" and the word "or" be inserted in lieu thereof. Senator Morris seconded the motion and the motion carried.

Representative Whiteside moved that the Committee approve the bill draft (RS 1761) as amended and that the bill be pre-filed as a Senate Bill. Representative Sutter seconded the motion and the motion carried.

Chairman Gastl informed the Committee of the receipt of a letter from Mr. Patrick Brazil, Chairman of the Advisory Council on Employment Security, concerning some additional recommendations to the Special Committee by the Advisory Council (see Attachment II). Chairman Gastl asked each member to review these recommendations for consideration by the standing Committees on Labor and Industry in the House and Senate.

Senator Morris moved that the Committee amend the Committee report to include the changes incorporated by the Committee in the bill drafts and delete the reference to tax assessments in the bill summary included in the Committee report. Representative Whiteside seconded the motion and the motion carried.

The meeting adjourned at 2:45 p.m.

Prepared by Mike Heim

Approved by Committee on:

Dec 5, 1997  
Date

MH/aem

Attachments

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MICHAEL KIM MOORE  
JAMES M. ARMSTRONG  
MARY KATHLEEN BASCOCK  
CHARLES P. EFFLANDT  
GERALD L. GREEN  
JAMES D. OLIVER

November 15, 1977

Senator Bill Morris

Re: Worker's Compensation Advisory Committee -  
Legislative Recommendations

Dear Senator Morris:

I offer the following information relative to the recommendations of the Joint Advisory Committee regarding changes in K.S.A. 44-528 and K.S.A. 44-510(a). These proposed changes are contained in items 6 and 7 on page two of the summary of recommendations from which Representative Gastl's committee worked in October. These same items were numbered 12 and 13 in the letter to Representative Gastl from James A. McCain dated October 12, 1977.

18 ( K.S.A. 44-528. This is the statute which allows modifications in prior awards. At the time of the massive compensation changes which were effective in 1974 some of the language previously contained in this statute was omitted for reasons totally unknown to anyone. The result of the omitted language is to raise questions as to the finality of awards which are issued at the time a case is settled. We now have some Supreme Court language suggesting that the settlement would not be final. It's to the mutual advantage of both claimants and respondents that proper cases be finally and forever settled. This was the unanimous feeling and recommendation of the committee. The previous language should simply be included once again.

19 ( K.S.A. 44-510(a). This statute is the so-called "Apportionment Statute." This provision applies when a worker has a prior compensation award and then receives a later injury and award. Without the statute, it is possible that a worker could receive

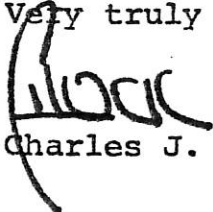
Atch. I

Senator Bill Morris  
November 15, 1977  
Page Two

the same dollar payments for the same elements of disability. For example, we have reported cases of workers receiving multiple serial back injuries for which he would receive dual and sometimes treble payments. Therefore, this statute was enacted in 1967. However, once again, through inadvertence as best anyone can ascertain, the statutory language was altered to the extent that it is possible to interpret this statute as completely disqualifying the worker from later compensation. This was never the intention of the statute, which was simply to eliminate duplicative dollar payments. The Director and representatives of labor and management unanimously agree that this change be made.

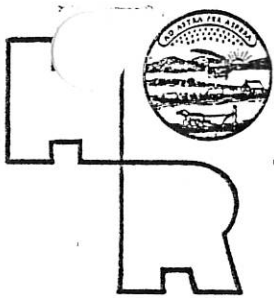
As I mentioned to you by telephone, both of these proposals are necessitated by inadvertent changes previously made. Both changes are to the mutual benefit of the worker and the employer and there were no trade-offs involved. Please let me know if I can be of any further help. Best regards.

Very truly yours,

  
Charles J. Woodin

of FOULSTON, SIEFKIN, POWERS & EBERHARDT

CJW/jm



KANSAS DEPARTMENT OF  
*Human Resources*  
DIVISION OF EMPLOYMENT

401 TOPEKA AVENUE TOPEKA, KANSAS 66603  
913-296-5000

November 14, 1977

Eugene F. Gastl, Chairman  
Legislative Interim Committee  
on Labor and Industry  
Statehouse  
Topeka, Kansas 66612

Dear Mr. Chairman:

In its October 6, 1977 report to the Interim Committee, our Advisory Council suggested no action be taken on recommendations of a change in K.S.A. 44-717(d) and K.S.A. 44-717(f) until the Council's study had been completed.

These suggested changes were incorporated in Item 9 of the report. Both subjects were discussed before the Committee by Paul Bicknell of our staff on October 12 as the report was presented item by item. At the last meeting the Committee adopted a motion to "take no action on the issues pending a specific proposal by the Advisory Council" (minutes of October 19, afternoon session).

During a meeting on Thursday of last week the Advisory Council agreed to fully endorse the recommendations.

Attached are these recommendations in draft form. With each is a brief explanatory memorandum as prepared for Council review by Mr. Bicknell. It is, in essence, what he told the Committee.

As both items were a part of the October 6 Advisory Council report, and had been discussed before the Committee, we wanted you to be aware of the support given them by the Council. You might want to include them as a part of the Interim Committee's presentation.

As a point of information, we have very recently (within days) received the Federal review of conformity amendments passed by the last Legislative session. Several changes are recommended to bring Kansas law into absolute conformity. Our staff is now working on these changes and will have them in draft form for consideration by the forthcoming session.

The Advisory Council meets again December 14 to continue their study as set forth in their report to you.

Sincerely,

Patrick Brazil, Chairman  
Employment Security Advisory Council

*Atch. II*



Use for intra-agency communications. Prepare 3 copies: 1 and 2 to addressee; 3 retained by originating office. Addressee replies by endorsement; retains copy 2 and returns copy 1 to originating office. Further reply by originator employs copies 1 and 3. Originator retains copy 1 and sends further reply by copy 3.

Subject: Proposed changes to 44-717(d)  
Assessments

Suspense: \_\_\_\_\_

| TO                          | MESSAGE   | FROM  |
|-----------------------------|---|---|
| Advisory Counsel<br>Members | <p>Date: 9-27-77</p> <p>The assessment provision in the law is only used when an employer is delinquent in filing a quarterly contribution and wage report and the field representative has tried to locate the employer and his records without success. In a large majority of cases the employer has skipped the state without leaving a forwarding address.</p> | Paul B. Bicknell<br>Acting Chief of<br>Contributions<br><br>b |

The way the Statute currently reads has been interpreted by our legal staff to mean that the employer must have actually received the assessment, as evidenced by his signature on the return receipt, before we have anything upon which to base a lawsuit for recovery of taxes. If contact could have been made with the employer the contribution and wage report would have been secured and the assessment provision would never be used since it does not establish individual wage credits needed for benefit purposes.

The proposed changes to the statute are to set forth a basis for notifying an employer, in writing by certified or registered mail, of an assessment. This is accomplished by mailing the notice to the latest address furnished us by the employer. This change thus places the burden on the employer to keep the agency informed of his current address, and receipt of notice is presumed by the law. Thereafter, the assessment coupled with the notice is used for the purpose of making a claim in a lawsuit. The employer may defend the suit and litigate the issue of correctness of the assessment if he disagrees with it.

We feel that the attached changes to 44-717(d) will clarify the assessment provision and allow us to administer the law as it was intended.



Assessments. If any employer fails to file a report or return required by the Secretary for the determination of contributions, or payments in lieu of contributions, the Secretary may make such reports or returns or cause the same to be made, on the basis of such information as he may be able to obtain and shall collect the contributions or payments in lieu of contributions as determined together with any interest thereon due under this act. The Secretary shall immediately ~~notify the employer of the assessment, in writing, by registered mail, in the usual course~~ forward to the employer a copy of the assessment by registered or certified mail to the employer's address as it appears on the records of the Agency, and such assessment shall be final unless the employer protests such assessment and files a corrected report or return for the period covered by the assessment within fifteen (15) days after the mailing of the notice copy of assessment. Failure to receive such notice shall in nowise invalidate the assessment. Notice in writing shall be presumed to have been given when deposited as certified or registered matter in the United States mail, addressed to the person to be charged with notice at his address as it appears on the records of the Agency.



Use for intra-agency communications. Prepare 3 copies: 1 and 2 to addressee; 3 retained by originating office. Address replies by endorsement; retains copy 2 and returns copy 1 to originating office. Further reply by originator employs copy 2 and 3. Originator retains copy 1 and sends further reply by copy 3.

Subject: Proposed changes to K.S.A. 44-717(f)  
Warrants

Suspense: \_\_\_\_\_

| TO                       | MESSAGE   | FROM  |
|--------------------------|---|---|
| Advisory Council members | <p>Date: 9-27-77</p> <p>A warrant upon its filing with the court becomes a judgment against the employer the same as any other judgment. However, notice must be given to the employer before the warrant may be filed. At the present time the only way notice may be given is by registered mail and there are problems inherent in this procedure.</p> | <p>Paul B. Bicknell<br/>Acting Chief of Contributions</p> <p><i>B</i></p> |

The purpose of the proposed amendment to the statutes is to provide additional and alternative methods of service of the warrant beside those prescribed by mail. In general the types of service are those which are available in the traditional law suit. Service may be effected by the sheriff, deputy sheriff, or some person specially appointed by the secretary of human resources or by the secretary's designee. It is proposed that the person appointed by the secretary or designee may make service anyplace in the state.

The proposal would provide for personal service upon individuals, corporations and partnerships. The provisions are similar to those being used in the code of civil procedure.

Refusal to accept service would have the same effect as actual service. This also follows the code of civil procedure.

Every officer who would be serving final notice would have to make a return of service and this is an affidavit that the employer has indeed been served with the final notice.

It is felt that these additional types of service actually give the employee more notice and a better type of notice than can be achieved simply by service by mail. Since the warrant is a judgment, it is felt that procedure leading to this judgment should have the dignity of judgments obtained through conventional lawsuits.

Service by mail is still being retained as an alternative procedure, but it is felt that the other types of service are preferable, and generally should be attempted before service by mail is used.

:) WARRANT In addition or as an alternative to any other remedy provided by this section and provided that no appeal or other proceeding for review permitted by this law shall then be pending and the time for taking thereof shall have expired, the secretary of human resources or an authorized representative of the secretary may issue a warrant certifying the amount of contributions, interest, and penalty, and the name of the employer liable for same after giving fifteen (15) days prior notice ~~by registered mail~~.

Upon request, service of final notices shall be made by the sheriff within his or her county, by said sheriff's deputy or some person specially appointed by the secretary of human resources for that purpose, or by the secretary's designee. A person specially appointed to serve final notices by the secretary or his designee may make service anyplace in the State.

The final notice shall be served as follows:

- (a) INDIVIDUAL Upon an individual other than a minor or incapacitated person, by delivering a copy of the final notice to the individual personally or by leaving copies thereof at such individual's dwelling house, usual place of abode with some person of suitable age and discretion then residing therein, by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, or by delivering a copy of the final notice to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall

be given. If service as prescribed above cannot be made with due diligence; the secretary or his designee may order service to be made by leaving a copy of the final notice at the employer's dwelling house, usual place of abode or business establishment.

- (b) CORPORATION AND PARTNERSHIPS Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such by delivering a copy of the final notice to an officer, partner, or resident managing or general agent, or by leaving the copy at any business office of the employer with the person having charge thereof or by delivering copies to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and the law so requires, by also mailing a copy to the employer.
- (c) REFUSAL TO ACCEPT SERVICE In all cases when the person to be served, or an agent authorized by such person to accept service of Petitions and Summonses shall refuse to receive copies of the final notice thereof, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such notices.
- (d) PROOF OF SERVICE (1) Every officer to whom a final notice or other process shall be delivered for service within or without the State, shall make return thereof in writing stating the time, place and manner of service of such writ, and shall sign his name to such return.

(2) If service of the notice is made by a person appointed by the secretary or his designee to make service, such person shall make an affidavit as to the time, place and manner of service thereof in form prescribed by the secretary or his designee.

- (e) TIME FOR RETURN The officer or other person receiving a final notice shall make a return of service promptly and shall send such return to the secretary or his designee in any event within ten (10) days after the service is effected. If the final notice cannot be served it shall be returned to the secretary or his designee within thirty (30) days after the date of issue with a statement of the reason for the failure to serve the same. The original return shall be attached to and filed with any warrant thereafter filed.
- (f) SERVICE BY MAIL Upon direction of the secretary or his designee, service by mail may be effected by forwarding a copy of the notice to the employer by registered or certified mail to the employer's address as it appears on the records of the agency. A copy of the return receipt shall be attached to and filed with any warrant thereafter filed.