

MINUTES OF THE House COMMITTEE ON Labor and Industry

Held in Room 521-S, at the Statehouse at 9:30 a. m. ~~p.m.~~,

on February 15, 1983.

All members were present except:

All members were present.

The next meeting of the Committee will be held at 9:30 a. m. ~~p.m.~~,

on February 16, 1983.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.


Chairman

The conferees appearing before the Committee were:

Mr. Mark Burghart, Research Department
Mr. Tom Slattery, AGC of Kansas
Mr. Glenn Coulter, Kansas Contractors Assoc.
Mr. James L. Hutton, Jr., Builder's Assoc.
Mr. Bill Sneed, Kansas Insurance Dept.
Ms. Janet Stubbs, Home Builders Assoc. of Kansas
Mr. Homer Cowan, The Western Insurance Companies
Mr. Harry D. Helser, Kansas State Federation of Labor

Chairman Douville called the meeting to order at 9:30 a.m.

Mark Burghart gave an overview of S.B. 8.

Mr. Tom Slattery then gave his testimony, attachment #1.
A discussion followed.

Chairman Douville called Mr. Glen Coulter to the speakers stand.
Mr. Coulter requested the committee to vote in favor of S.B. 8.

Chairman Douville then called Mr. Jim Hutton to the speakers stand. Mr. Hutton gave testimony and requested the committee to vote in favor of S.B. 8. A discussion followed.

Mr. Bill Sneed was called to the speakers stand. Mr. Sneed answered committee members question in regard to S.B. 8.

The Chairman called Janet Stubbs to the speakers stand. Ms. Stubbs gave a brief testimony and requested the committee to vote in favor of S.B. 8.

Mr. Harry Helser spoke. The group that he represents wanted to be on record as supporting S.B. 8.

Chairman Douville then called Mr. Homer Cowan to the speakers stand. The group that Mr. Cowan represents is opposed to S.B. 8. A discussion followed.

The committee was then given attachments # 2 and 3. Both are proposed bills. It was moved that these proposed bills be introduced as House bills for consideration. The motion was seconded by Representative Herman Dillon. The committee voted in favor of the motion.

Chairman Douville adjourned the meeting at 10:35 a.m.

2-15-83

Guest List

Harry W. Nelson	Wichita, Ks	AFL-CIO
Ralph Mc Gee	KC, Ks	"
Arroy Carter	Topeka	Amenkey
LARRY MCGILL	"	I.I.A.K.
Bill Sneed	TOPEKA	Ks. Ins. Dept.
Glenn Coulter	Topeka	Ks. Contractors Assoc.
James L. Hutton Jr.	Olathe, Kan.	Builder's Assn.
Tom Slattery	Topeka	AGC of Ks
H. Berman	Topeka	DHR
J. Stubbs	"	IBAK
Bill Brunk	OLATHE	CWA
Vern Horton	Topeka	CWA
Peggy H. Little	Junction City	CWA
Homer Cowan	FT SCOTT, Ks	THE WESTERN INS. CO'P
Loretta Smith	FT SCOTT, Ks	THE WESTERN
Jan Moxey	Topeka	AGC of Ks
Ed. Johnson	"	Kan. Assn of POC Ins. Co's.
Robert Frank	Topeka	AIA
Bob Hays	Topeka	ISAAC
Jane & Lynn	Wichita	AFL-CIO - ^{CWA} Local 6402
Joe Collier	El Dorado	AFL-CIO CWA Local 6402
Blanche Rose	Wichita	CWA Local 6402 AFL-CIO
Ray Scofield	Wichita	CWA Local 6402
Mim Jones	Wichita	CWA Local 6402
Larry Wolgast	Topeka	DHR



TESTIMONY BEFORE THE HOUSE LABOR AND INDUSTRY COMMITTEE
ON SENATE BILL 8
2/15/83

Mr. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS TOM SLATTERY. I AM EXECUTIVE VICE PRESIDENT OF THE ASSOCIATED GENERAL CONTRACTORS OF KANSAS. THE AGC OF KANSAS REPRESENTS APPROXIMATELY 200 COMPANIES IN THE BUSINESS OF GENERAL COMMERCIAL CONSTRUCTION OR IN RELATED INDUSTRIES. FOR SEVERAL YEARS WE HAVE BEEN INTERESTED IN, AND SUPPORTIVE OF, THE CONCEPT OF GROUPS OF EMPLOYERS HAVING COMMON INTERESTS IN THE SAME INDUSTRY FORMING A TRUST AND POOLING THEIR LIABILITIES UNDER THE WORKER'S COMPENSATION ACT, THUS BECOMING A SELF-INSURED GROUP.

CURRENT KANSAS LAW PROVIDES THAT A SINGLE EMPLOYER MAY FULFILL THE OBLIGATION TO HIS EMPLOYEES UNDER THE KANSAS WORKER'S COMPENSATION ACT BY SELF-INSURING IF THE EMPLOYER IS LARGE ENOUGH AND ABLE TO PROVIDE SUFFICIENT PROOF OF FINANCIAL RESPONSIBILITY ACCEPTABLE TO THE WORKER'S COMP. DIRECTOR.

THERE ARE OVER 200 SUCH SELF-INSURED EMPLOYERS IN THE STATE OF KANSAS AT THIS TIME.

SENATE BILL 8 PROVIDES THAT GROUPS OF EMPLOYERS CAN BECOME SELF-INSURED, PROVIDING THEY ARE ABLE TO MEET STRINGENT

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FINANCIAL AND TECHNICAL REQUIREMENTS AS PROVIDED IN THE BILL. THESE GROUPS WILL BE AUTHORIZED AND REGULATED BY THE COMMISSIONER OF INSURANCE. THERE ARE CURRENTLY 22 STATES, PLUS THE DISTRICT OF COLUMBIA, THAT AUTHORIZE SUCH GROUP SELF-INSURANCE POOLS.

THE REQUIREMENTS TO BECOME AUTHORIZED ARE SET FORTH IN LINES 0039 THROUGH LINES 0088 OF THE BILL. WITHOUT GOING INTO DETAIL THESE REQUIREMENTS ADDRESS SUCH CONSIDERATIONS AS THE NEED FOR:

- (1) FINANCIAL STATEMENTS OF MEMBERS OF THE POOL
- (2) A MINIMUM NET WORTH OF THE POOL OF AT LEAST \$1,000,000
- (3) MINIMUM PREMIUM COMMITMENTS OF AT LEAST \$250,000
- (4) PROCEDURES OF HANDLING CLAIMS
- (5) AN INDEMNITY AGREEMENT JOINTLY AND SEVERALLY BINDING EACH MEMBER OF THE GROUP, AND
- (6) PROOF OF SUFFICIENT EXCESS AND SPECIFIC AGGREGATE INSURANCE.

THE BILL ALSO:

- * PROVIDES THAT THE POOL BE LIABLE FOR ACTIONS BROUGHT AGAINST IT
- * PROVIDES FOR RENEWAL OF CERTIFICATE OF OPERATION
- * GIVES POWER TO THE COMMISSIONER TO EXAMINE THE AFFAIRS OF THE POOL AND SUSPEND OR REVOKE THE AUTHORITY FOR A POOL TO OPERATE
- * REGULATES THE TRANSACTION OF BUSINESS OF THE FUND AND

OUTLINES PROVISIONS FOR TAXING AND FINANCING THE POOL

THESE NEW PROVISIONS OF THE LAW ARE CONTAINED IN THE BILL THROUGH PAGE 8. FOLLOWING THAT, PAGES 9 THROUGH 18, ARE CURRENT STATUTORY LANGUAGE WITH THE NECESSARY TECHNICAL AMENDMENTS TO IMPLEMENT THE NEW SECTIONS.

MEMBERS OF THE COMMITTEE, SENATE BILL 8 IS SAFE, SOUND AND WORKABLE AND WILL PROVIDE A MUCH NEEDED AID TO SOME EMPLOYERS IN OUR STATE ENABLING THEM TO:

- (1) PROVIDE A SAVINGS IN THE OPERATION OF THEIR BUSINESS,
- (2) PROVIDE ACCURATE AND TIMELY INFORMATION TO HELP MANAGERS REDUCE JOB RELATED ACCIDENTS.
- (3) PROVIDE FOR PROMPT CLAIMS PAYMENTS,
- (4) PROVIDE FOR CONTROL OF CLAIMS AND ADMINISTRATION WITH THE MEMBERS OF THE POOL.

THE BILL IS THE RESULT OF INTERIM STUDY AND IS BASED ON THE MOST SUCCESSFUL AND COMMONLY USED LEGISLATION IN OTHER STATES, PLUS A TREMENDOUS AMOUNT OF INPUT FROM MEMBERS OF THE INSURANCE INDUSTRY HERE IN KANSAS AND THE KANSAS DEPARTMENT OF INSURANCE. I ASK YOU TO PLEASE GIVE FAVORABLE CONSIDERATION AND RECOMMEND PASSAGE OF SENATE BILL 8.

PROPOSED BILL NO. 2

For Consideration by House Committee on Labor and Industry

AN ACT concerning workers' compensation; relating to liability of workers' compensation fund; compensation for special local administrative law judges; amending K.S.A. 44-551 and K.S.A. 1982 Supp. 44-532a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 44-532a is hereby amended to read as follows: 44-532a. (a) If an employer ~~fails~~ has no insurance to secure the payment of ~~workmen's~~ compensation as ~~required~~ provided in subsection (b) of K.S.A. 44-532 and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workmen's compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers' compensation fund. If the director is satisfied as to the existence of the conditions prescribed by this section, the director may make an award, or modify an existing award, and ~~set-ferth~~ prescribe the payments to be made from the workers' compensation fund as provided in K.S.A. 44-569 and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payment to be made to the employee in accordance therewith.

(b) The commissioner of insurance, acting as administrator of the workers' compensation fund, shall have a cause of action against the employer for recovery of any amounts paid from the workers' compensation fund pursuant to this section. Such action shall be filed in the district court of the county in which the

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accident occurred or where the contract of employment was entered into.

Sec. 2. K.S.A. 44-551 is hereby amended to read as follows: 44-551. (a) The duties of the assistant directors of workers' compensation shall include but not be limited to acting in the capacity of an administrative law judge and the conducting of director reviews, provided the director shall be the final approving authority for such director reviews.

(b) Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts and papers, and under the direction of the director, may conduct an investigation, inquiry, or hearing in the same manner and with like effect as if done by the director. All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge, shall be subject to review and approval by the director upon written request of any interested party within ~~ten-(10)~~ 10 days and if no such request is made, then the director shall approve such actions, findings, awards, decisions, rulings or modifications of findings or awards of the administrative law judge. The filing of such a request for review shall not be a prerequisite to an appeal as provided for in K.S.A. 44-556 and amendments thereto.

(c) Each assistant director and each administrative law judge or special administrative law judge shall be allowed all reasonable and necessary expenses actually incurred while in the actual discharge of official duties in administering the workmen's compensation act, but such expenses shall be sworn to by the person incurring the same and be approved by the secretary.

(d) In case of emergency the director may appoint special local administrative law judges and assign to them the examination and hearing of any designated case or cases. Such special local administrative law judges shall be attorneys and admitted to practice law in the state of Kansas and shall, as to

all cases assigned to them, exercise the same powers as the seven ~~(7)~~ regular administrative law judges provided for in this section. Such Special local administrative law judges shall receive ~~a per diem compensation at the rate of fifteen dollars (\$15) per day per case for their services but shall not be paid more than fifty dollars (\$50) for any one case~~ a fee commensurate with the services rendered as fixed by rules and regulations adopted by the director. The fees prescribed by this section prior to the effective date of this act shall be effective until different fees are fixed by such rules and regulations.

(e) All special local administrative law judge's fees and expenses shall be taxed as cost in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.

Sec. 3. K.S.A. 44-551 and K.S.A. 1982 Supp. 44-532a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. 1

For Consideration by House Committee on Labor and Industry

AN ACT concerning the workers' compensation fund; relating to financing the expenses of administration; amending K.S.A. 1982 Supp. 44-566a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1982 Supp. 44-566a is hereby amended to read as follows: 44-566a. (a) There is hereby created in the state treasury the workers' compensation fund. ~~The--workmen's compensation--fund--created--by--this--section--is--hereby--abolished, and--on--July--1,--1982,--the--director--of--accounts--and--reports--shall transfer--all--moneys--in--the--workmen's--compensation--fund--to--the workers'-compensation--fund.~~ All amounts which are required to be paid out of the abolished workmen's compensation fund for liability arising from injuries occurring prior to July 1, 1982, whether reduced to award or not, shall be paid out of the workers' compensation fund. The commissioner of insurance shall be responsible for administering the workers' compensation fund, and all payments from the workers' compensation fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner. The commissioner of insurance annually shall report to the governor and the legislature the receipts and disbursements from the workers' compensation fund during the preceding fiscal year.

(b) (1) Each September the commissioner of insurance shall certify, with the commissioner's annual budget request, the amount of state general fund entitlement of the workers' compensation fund for the ensuing fiscal year. Such entitlement shall be equal to the sum of the amounts paid from the workers' compensation fund during the preceding fiscal year in payment of

awards made to handicapped employees in accordance with the provisions of K.S.A. 44-569 and amendments thereto, including attorneys' fees, less the sum of the amounts deposited during the preceding fiscal year to the credit of the workers' compensation fund in accordance with the provisions of K.S.A. 44-570 and amendments thereto, except that no state general fund entitlement for a fiscal year shall be more than \$4,000,000. For the purpose of providing funds to meet and pay awards made to handicapped employees, within appropriations therefor, there shall be transferred not later than July 1 each year, or more frequently by appropriation acts of the legislature, from the state general fund to the workers' compensation fund, the amount certified by the commissioner of insurance to be the entitlement of the workers' compensation fund from the state general fund, or a part thereof followed by supplemental certifications to complete the entitlement for each such fiscal year, subject to the limitation of a total amount of \$4,000,000 for any such fiscal year.

(2) On July 1 each year, the commissioner of insurance shall impose an assessment against all insurance carriers and self-insurers insuring the payment of compensation under the workmen's compensation act, the proceeds of which shall be credited to the workers' compensation fund. The total amount of each such assessment shall be equal to an amount sufficient, in the opinion of the commissioner of insurance, to pay all amounts, including attorneys' fees and costs, which may be required to be paid from such fund during the current fiscal year, less amounts required to be transferred from the state general fund to the workers' compensation fund. The total amount of each such assessment shall be apportioned among those upon whom it is imposed, such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workmen's compensation claims by such insurance carrier or self-insurer in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year. Not later than September 1 each year, the

commissioner of insurance shall notify all such insurance carriers and self-insurers of the amount of each assessment imposed under this subsection on such carrier or self-insurer, and the same shall be due and payable on the October 1 following.

(3) The commissioner of insurance shall remit all moneys received by or for such commissioner under this subsection to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the workers' compensation fund.

(c) Whenever the workers' compensation fund may be made liable for the payment of any amounts in proceedings under the workmen's compensation act, the commissioner of insurance, in the capacity of administrator of such fund, shall be impleaded in such proceedings and shall represent and defend the workers' compensation fund. The commissioner of insurance shall be deemed impleaded in any such proceedings whenever written notice of the proceedings setting forth the nature of the liability asserted against the workers' compensation fund, is given to the commissioner of insurance. The commissioner of insurance may be made a party in this manner by any party to the proceedings. A copy of the written notice shall be given to the director and to all other parties to the proceedings.

The director or administrative law judge shall dismiss the workers' compensation fund from any proceeding where the director has determined that there is insufficient evidence to indicate involvement by the workers' compensation fund.

(d) The commissioner of insurance, in the capacity of administrator of the workers' compensation fund may make settlements of any amounts which may be payable from the workers' compensation fund with regard to any claim under the workmen's compensation act, subject to the approval of the director.

(e) The workers' compensation fund shall be liable for:

(1) Payment of awards to handicapped employees in accordance with the provisions of K.S.A. 44-569 and amendments thereto;

(2) payment of workmen's compensation benefits to an employee who is unable to receive such benefits from such employee's employer under the conditions prescribed by K.S.A. 44-532a and amendments thereto;

(3) reimbursement of an employer or insurance carrier pursuant to the provisions of K.S.A. 44-534a and amendments thereto, subsection (d) of K.S.A. 44-556 and amendments thereto, subsection (c) of K.S.A. 44-569 and amendments thereto and K.S.A. 44-569a and amendments thereto; and

(4) payment of the expenses of the commissioner of insurance incurred for administering the workers' compensation fund; 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) of this section, attorneys' 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 legislature 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.

Sec. 2. K.S.A. 1982 Supp. 44-566a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.