

Approved Arthur Douville 4-22-86
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:00 a.m./~~p.m.~~ on February 27, 1986 in room 526-S of the Capitol.

All members were present except:

Representatives Snowbarger and Cribbs, both excused.

Committee staff present:

All present.

Conferees appearing before the committee:

Mr. Beldon Daniels, Pres. of the Council for Community Development
Boston, Mass.

The committee took up H.B. 2891. The chairman stated that there were some problems with the bill and Jim Wilson passed out to the committee members proposed amendments. (See attachment #1) The chairman said that there were two basic problems that they had to consider. The concept is tremendous and the committee should encourage the concept. As to the two problems they are "Who is the employer?", and, "How do you compute the wage?" The problem about the employer can be solved by the entity that elects to take the coverage. Jim Wilson has been working on the wage problem and his suggestions are on attachment #1. Mr. Wilson started to go over the amendments with the committee when the guest speaker arrived. H.B. 2891 will be taken up at another time.

Mr. Beldon Daniels is currently serving as a consultant for the state of Kansas on economic development. Mr. Daniels spoke on economic development and answered questions from the committee members.

Meeting adjourned at 10:00 a.m.

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HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List

Date 2-27-86

Name City Representing

Bill Morrissey Topeka DHR/WC

John Rattner " " " "

Marjorie Van Buren " Office of Judicial Administ

Wayne Maubee " K. AFL-CIO

Harry D. Kelsey " "

Kh. [unclear] " KCCI

Mark [unclear] " Rep. Broder

Marie Hough Silver Lake, Mo. Nurses' Organization

TFH [unclear] Boston CCA, INC

DRAFT COMMITTEE REPORT

"AN ACT concerning workers' compensation; relating to coverage of persons performing public or community service under certain circumstances; amending K.S.A. 1985 Supp. 44-508 and repealing the existing section."

Be amended:

On page 2, in line 57, by striking "an employer" and inserting in lieu thereof the following: "the entity receiving the benefit of such public or community service"; in line 58, preceding the period by inserting the following: ", which entity shall be construed to be the employer of such persons for purposes of the workmen's compensation act";

On page 4, following line 138, by inserting the following material to read as follows:

"Sec. 2. K.S.A. 44-511 is hereby amended to read as follows:
44-511. (a) As used in this section:

(1) The term "money" shall be construed to mean the gross remuneration, on an hourly, output, salary, commission or other basis, at which the service rendered is recompensed in money by the employer, but it shall not include any additional compensation, as defined in this section, any remuneration in any medium other than cash, or any other compensation or benefits received by the employee from the employer or any other source.

(2) The term "additional compensation" shall include and mean only the following: (A) Gratuities in cash received by the employee from persons other than the employer for services rendered in the course of his-or-her the employee's employment; (B) any cash bonuses paid by the employer within one (1) year prior to the date of the accident, for which the average weekly value shall be determined by averaging all such bonuses over the period of time employed prior to the date of the accident, not to exceed ~~fifty-two~~(52) 52 weeks; (C) board and lodging when furnished by the employer as part of the wages, which shall be

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Att. #1

valued at a maximum of ~~twenty-five-dollars-(\$25)~~ \$25 per week for board and lodging combined, unless the value has been fixed otherwise by the employer and employee prior to the date of the accident, or unless a higher weekly value is proved; (D) the average weekly cash value of remuneration for services in any medium other than cash where such remuneration is in lieu of money, which shall be valued in terms of the average weekly cost to the employer of such remuneration for the employee; and (E) employer-paid life insurance, health and accident insurance and employer contributions to pension and profit sharing plans. Additional compensation shall not include the value of such remuneration until and unless such remuneration is discontinued. If such remuneration is discontinued subsequent to a computation of average gross weekly wages under this section, there shall be a recomputation to include such discontinued remuneration.

(3) The term "wage" shall be construed to mean the total of the money and any additional compensation which the employee receives for services rendered for the employer in whose employment the employee sustains an injury by accident arising out of and in the course of such employment.

(4) The term "part-time hourly employee" shall mean and include any employee paid on an hourly basis: (A) Who by custom and practice or under the verbal or written employment contract in force at the time of the accident is employed to work, agrees to work, or is expected to work on a regular basis less than ~~forty-(40)~~ 40 hours per week; and (B) who at the time of the accident is working in any type of trade or employment where there is no customary number of hours constituting an ordinary day in the character of the work involved or performed by the employee.

(5) The term "full-time hourly employee" shall mean and include only those employees paid on an hourly basis who are not part-time hourly employees, as defined in this section, and who are employed in any trade or employment where the customary number of hours constituting an ordinary working week is ~~forty~~

~~(40)~~ 40 or more hours per week, or those employees who are employed in any trade or employment where such employees are considered to be full-time employees by the industrial customs of such trade or employment, regardless of the number of hours worked per day or per week.

(b) The employee's average gross weekly wage for the purpose of computing any compensation benefits provided by the workmen's compensation act shall be determined as follows:

(1) If at the time of the accident the money rate is fixed by the year, the average gross weekly wage shall be the yearly rate so fixed divided by ~~fifty-two~~ ~~(52)~~ 52, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime as computed in paragraph (4) of this subsection.

(2) If at the time of the accident the money rate is fixed by the month, the average gross weekly wage shall be the monthly rate so fixed multiplied by ~~twelve~~ ~~(12)~~ 12 and divided by ~~fifty-two~~ ~~(52)~~ 52, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection.

(3) If at the time of the accident, the money rate is fixed by the week, the amount so fixed, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime as computed in paragraph (4) of this subsection, shall be the average gross weekly wage.

(4) If at the time of the accident the employee's money rate was fixed by the hour, the employee's average gross weekly wage shall be determined as follows: (A) If the employee was a part-time hourly employee, as defined in this section, the average gross weekly wage shall be determined in the same manner as provided in paragraph (5) of this subsection; (B) if the employee is a full-time hourly employee, as defined in this section, the average gross weekly wage shall be determined as follows: (i) A daily money rate shall first be found by

multiplying the straight-time hourly rate applicable at the time of the accident, by the customary number of working hours constituting an ordinary day in the character of work involved; (ii) the straight-time weekly rate shall be found by multiplying the daily money rate by the number of days and half days that the employee usually and regularly worked, or was expected to work, but ~~forty--(40)~~ 40 hours shall constitute the minimum hours for computing the wage of a full-time hourly employee; (iii) the average weekly overtime of the employee shall be the total amount earned by the employee in excess of the amount of straight-time money earned by the employee during the ~~twenty-six--(26)~~ 26 calendar weeks immediately preceding the date of the accident, or during the actual number of such weeks the employee was employed if less than ~~twenty-six--(26)~~ 26 weeks, divided by the number of such weeks; and (iv) the average gross weekly wage of a full-time hourly employee shall be the total of the straight-time weekly rate, the average weekly overtime and the weekly average of any additional compensation.

(5) If at the time of the accident the money rate is fixed by the output of the employee, on a commission or percentage basis, on a flat-rate basis for performance of a specified job, or on any other basis where the money rate is not fixed by the week, month, year or hour, and if the employee has been employed by the employer at least one ~~(1)~~ calendar week immediately preceding the date of the accident, the average gross weekly wage shall be the gross amount of money earned during the number of calendar weeks so employed, up to a maximum of ~~twenty-six--(26)~~ 26 calendar weeks immediately preceding the date of the accident, divided by the number of weeks employed, or by ~~twenty-six--(26)~~ 26 as the case may be, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. If the employee had been in the employment of the employer less than one ~~(1)~~ calendar week immediately preceding the accident, the average gross weekly wage shall be determined

by the director based upon all of the evidence and circumstances, including the usual wage for similar services paid by the same employer, or if the employer has no employees performing similar services, the usual wage paid for similar services by other employers. The average gross weekly wage so determined shall not exceed the actual average gross weekly wage the employee was reasonably expected to earn in ~~his-or-her~~ the employee's specific employment, including the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. In making any computations under this paragraph (5), workweeks during which the employee was on vacation, leave of absence, sick leave or was absent the entire workweek because of illness or injury shall not be considered.

(6) (A) The average gross weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, an ambulance attendant, mobile intensive care technician, fireman or fire fighter, or any other volunteer under the workmen's compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers.

(B) The average gross weekly wage of a person, who is performing public or community service as a result of a contract of diversion, assignment to a community corrections program or suspension of sentence or as a condition of probation or in lieu of a fine and who receives no wages for such public or community service, shall be computed on the basis of the usual wages paid by the entity receiving the benefit of such public or community

service to employees who are not performing such services under such circumstances, or, if such entity has no employees who are not performing such services under such circumstances and who are receiving wages therefor, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not performing such services under such circumstances.

(7) The average gross weekly wage of an employee who sustains an injury by accident arising out of and in the course of multiple employment, in which such employee performs the same or a very similar type of work on a part-time basis for each of two (2) or more employers, shall be the total average gross weekly wage of such employee paid by all the employers in such multiple employment. The total average gross weekly wage of such employee shall be the total amount of the individual average gross weekly wage determinations under this section for each individual employment of such multiple employment.

(8) In determining an employee's average gross weekly wage with respect to the employer against whom claim for compensation is made, no money or additional compensation paid to or received by the employee from such employer, or from any source other than from such employer, shall be included as wages, except as provided in this section. No wages, other compensation or benefits of any type, except as provided in this section, shall be considered or included in determining the employee's average gross weekly wage.

(c) In any case, the average yearly wage shall be found by multiplying the average gross weekly wage, as determined in subsection (b) ~~of this section~~, by ~~fifty-two~~ (52) 52.

(d) The state's average weekly wage for any year shall be the average weekly wage paid to employees in insured work subject to Kansas employment security law as determined annually by the secretary of human resources as provided in K.S.A. 44-704 and amendments thereto.

(e) Members of a labor union or other association who

perform services in behalf of the labor union or other association and who are not paid as full-time employees of the labor union or other association and who are injured or suffer occupational disease in the course of the performance of duties in behalf of the labor union or other association shall recover compensation benefits under the workmen's compensation act from the labor union or other association if the labor union or other association files an election with the director to bring its members who perform such services under the coverage of the workmen's compensation act.

The average weekly wage for the purpose of this subsection shall be based on what the employee would earn in ~~his-or-her~~ the employee's general occupation if at the time of the injury the employee had been performing work in the employee's general occupation. The insurance coverage shall be furnished by the labor union or other association.";

And by renumbering sections accordingly;

Also on page 4, in line 139, preceding "K.S.A." by inserting the following: "K.S.A. 44-511 and"; also in line 139, by striking "is" and inserting in lieu thereof "are";

On page 1, in the title, in line 19, preceding "K.S.A." by inserting the following: "K.S.A. 44-511 and"; in line 20, by striking "section" and inserting in lieu thereof "sections";

And the bill be passed as amended.