

Approved AW Denville 3-7-88
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:08 a.m. ~~p.m.~~ on February 18, 1988 in room 526-S of the Capitol.

All members were present except:

Representative Bideau - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Department of Legislative Research
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

The purpose of this meeting was to allow committee members time to submit ideas for committee bills. The chairman reminded the members that any vote to recommend a bill as a committee bill was not an obligation to support the bill.

Representative O'Neal served on an ad hoc committee over the summer which was organized by Fletcher Bell, Commissioner of Insurance. Members of that committee were:

Dick Brock, Insurance Department
Chris Cowger, Insurance Department Attorney
Julie Straeter, General Motors
Wade Harrell, Liberty Mutual Insurance
H. Wayne Powers, Defense Attorney
Bill Curtis, Kansas Association of School Boards
John Lawson, Kelly Lyn Figure Spas
Robert L. Kennedy, Workers' Compensation Fund Attorney
Michael Unrein, Fund Attorney
Jim DeHoff, AFL-CIO
Wayne Maichel, AFL-CIO
Rob Hodges, KCCI
Dennis Taylor, Secretary, DHR
Charles Baxter, Kansas Farm Bureau
Ken Robinson, National Council on Compensation Insurance
Bob Ream, Boeing
Tom Slattery, Kansas Association of Contractors
John Rathmel, Director Worker's Compensation
Jerry Donaldson, Staff

The recommendations of that committee are attachment #1 and were submitted to the committee for introduction as committee bills. Representative O'Neal made the motion to introduce, it was seconded by Representative Green and the motion carried. When printed, there will be seven separate bills.

Attachment #2 is a proposal submitted by Representative Webb. It is based on Colorado law and aimed at employing more Kansas workers. Representative Acheson moved to introduce the bill as a committee bill. Representatives Buehler and Webb seconded the motion which carried.

Chairman Douville referred to a memo dated February 4, 1988, to which he had attached three proposals from the Kansas Trial Lawyers. He moved to introduce them as committee bills, attachments #3, #4 and #5. The motion was seconded by Representative Patrick and carried.

The chairman stated he had received a complaint from a number of trial attorneys regarding insurance company payments. They pay by draft and the recipient is unable to collect the money for 10-14 days. He conceptually proposed a bill that would require payment by check except in settlements and permanent awards. Representative Patrick made the motion to introduce, it was seconded by Representative Empson. The motion carried.

The meeting adjourned at 9:40 a.m. Next meeting of the committee will be February 23, 1988, 9:00 a.m. in Room 526-S.

MICHAEL R. (MIKE) O'NEAL
 REPRESENTATIVE, 104TH DISTRICT—HUTCHINSON
 RENO COUNTY
 P.O. BOX 1868
 HUTCHINSON, KANSAS 67504-1868



TOPEKA

HOUSE OF
 REPRESENTATIVES

MEMORANDUM

COMMITTEE ASSIGNMENTS
 VICE-CHAIRMAN: JUDICIARY
 MEMBER: LABOR AND INDUSTRY
 PUBLIC HEALTH AND WELFARE

TO: Arthur Douville, House Labor & Industry Chairman
 RE: Request for introduction of committee bills
 FROM: Representative Michael R. (Mike) O'Neal
 DATE: February 15, 1988

1. Under current law where two carriers are involved in the same case where there is but one employer the statute does not provide for apportionment of liability between the carriers. Rather, case law has determined that liability is joint and several and the carriers must bring a separate action for contribution. I request that a committee bill be introduced to provide that the apportionment of liability between the two carriers be made by the administrative law judge in the workers' compensation action (Kuhn vs Grant 201 Kan.163)

2. Under current law, KSA 44-570, in cases where a death results from an accident and there are no dependants who are entitled to compensation under the Workers' Compensation Act, the employer pays the sum of \$18,500 to the Commissioner of Insurance for credit to the Workers' Compensation Fund. The Supreme Court has held that should there be a negligent third party involved, the employer can't recover the \$18,500 from the third party by way of subrogation. I request that a committee bill be introduced that would grant the employer subrogation rights in these cases (Farm Bureau vs. Commercial 5 Kan. App. 2d 127)

3. The Supreme Court has held that under current law if an employer overpays compensation in the form of medical benefits or temporary total disability benefits or other benefits and there are still payments due the claimant in the future those overpayments cannot be offset against future payments but instead can be collected by the employer from the Kansas Workers' Compensation Fund. I request a committee bill be introduced that would provide that an employer is entitled to a credit against future compensation payments due for any compensation in the form of medical benefits or temporary total disability benefits paid either voluntarily or pursuant to a preliminary award and which are determined to have constituted an overpayment (Johnston vs. Tony's 232 Kan. 848). Note that under KSA 44-510f if an employer voluntarily pays unearned wages to an employee in excess of any amount of disability benefits to which the employee is entitled the excess amount is allowed as a credit to the employer in any final lump sum settlement or may be withheld from the employee's wages.

HOUSE LABOR & INDUSTRY

Attachment #1
 02/18/88

4. I propose that a committee bill be drafted to amend KSA 44-503 to provide for the Workers' Compensation Fund to have a right to implead a principle in those cases where the claimant has brought the workers' compensation action against the sub-contractor. The problem lies in the fact that case law has held that the claimant may not bring an action against both the sub-contractor, the general contractor and/or a principle. In other words, the claimant must make his election and in most cases the claimant is not aware of a general contractor of a principle and brings his action against the sub-contractor who oftentimes is uninsured. Then the claimant turns to the Kansas Workers' Compensation Fund for payment of compensation pursuant to KSA 44-532a. The Workers' Compensation claimant should be entitled to bring an action for compensation against both the sub-contractor, general contractor or principle in those cases where his immediate employer, the sub-contractor, did not have the required insurance or is unable to pay compensation. The amendment should make it very clear that the worker could recover from only one of these parties but that all of the parties should be in the action so that the administrative law judge would be able to decide which party is able to pay the compensation. KSA 44-503 should be amended to provide that when the Kansas Workers' Compensation Fund is impleaded in an action pursuant to KSA 44-532a the Fund shall have the right to implead any sub-contractor, contractor or principle if it appears that they would have any liability to pay compensation under the provisions of this section. The act should be amended to provide that the Workers' Compensation Fund should have a claim in the Workers' Compensation action against not only an uninsured employer but as against a principle or statutory employer in the event there is one.

5. KSA 44-504 provides that where the claimant is able to sustain an action against the negligent third party the employer is subrogated in that action. This section should be amended to make it clear that in such circumstances when the Workers' Compensation Fund has paid compensation the Fund should have the same right of subrogation as the employer.

6. A chronic problem affecting the administration of the Workers' Compensation Fund is the fact that the fund is often brought into a case literally within a few hours of the scheduled hearing time. This causes undue delay and undue expense. I request that the committee introduce a bill amending KSA 44-566a (c)(1) providing that written notice impleading the Workers' Compensation Fund be served upon the Commissioner of Insurance within 90 days following the service of written claim for compensation upon the employer by the claimant or at least 10 days prior to the first regular hearing whichever date first occurs. There should also be a proviso that if that hearing is for settlement purposes that the party causing the Workers' Compensation Fund to be impleaded provide the Fund with copies of all records it has in its possession including settlement papers and medical records.

7. Pursuant to KSA 44-556 on judicial review to the district court the right to review includes the right to make no payments of compensation until the review has been decided by the district court except that commencement of an action for review does not stay a payment of compensation due for the 10 week period next preceding the director's decision and for the period of time after the director's decision and prior to the decision of the district court on review. If the reason for review does not include a challenge of the claimant's right to compensation, i.e., a dispute between the Workers' Compensation Fund and the employer on contribution, the claimant should not be penalized. I request that the committee introduce a bill amending KSA 44-556 to provide that in those cases where a review is taken on issues that do not include a challenge of the claimant's right to compensation the employer or the fund shall be required to continue paying compensation as ordered by the director.

HOUSE BILL NO. _____

AN ACT requiring the employment of Kansas labor on public works projects of the state or local governmental entities; prescribing guidelines and defining terms; declaring certain acts to be misdemeanors and prescribing penalties therefor.

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

Section 1. (a) Whenever any public works project is undertaken and is financed in whole or in part by moneys of the state of Kansas or any local governmental entity, Kansas labor shall be employed to perform the work to the extent of not less than 80% of each type or class of labor in the several classifications of skilled and unskilled labor employed on such public works project.

(b) All contracts let and entered into for a public works project financed in whole or in part by moneys of the state of Kansas or any local governmental entity with any corporation or person which may involve the employment of laborers or other workers shall contain a stipulation that Kansas labor shall be employed to perform the work to the extent of not less than 80% of each type or class of labor required under the contract in accordance with this section.

(c) Any officer or agent of the state of Kansas or a local governmental entity, any contractor or any other person who violates any provision of this section, upon conviction thereof, shall be deemed guilty of a misdemeanor and shall be punished by a fine in the amount of not more than \$500 or by imprisonment in the county jail for not more than 60 days, or by both such fine and imprisonment.

(d) As used in this section:

(1) "Kansas labor" means persons who are residents of the

state of Kansas at the time of employment and who are employed without discrimination as to race, color, creed, sex, age or religion, except when sex or age is a bona fide occupational qualification;

(2) "local governmental entity" means any county, city, unified school district, special district or other local governmental entity or instrumentality thereof; and

(3) "state of Kansas" includes any state agency or authority or any instrumentality thereof.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

AN ACT relating to worker's compensation; concerning interest to be paid during pendency of request for review by the director; amending K.S.A. 44-551(b) and repealing existing subsection.

Section 1. K.S.A. 44-551(b) is hereby amended to read as follows:
(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 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. Except when review is requested only by the claimant, all disability compensation payments due but stayed during the pendency of a request for review by the director shall bear interest at the rate mandated by K.S.A. 16-204(e) from and after the day the request for review was filed by the respondent or workers' compensation fund. The filing of such a request for review shall not be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto.

Section 2. K.S.A. 44-551(b) is hereby repealed.

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

AN ACT relating to workers compensation; concerning penalty for failure to pay compensation awarded; amending K.S.A. 44-512a (a) and repealing existing subsection.

Section 1. K.S.A. 44-512a (a) is hereby amended to read as follows: K.S.A. 44-512a. (a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the director and assessed against the employer or insurance carrier or workers compensation fund liable for such compensation, in an amount of not more than \$100 per week for each week any disability compensation is past due, and in the sum of \$25 for each past due medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier or workers compensation fund liable for such compensation, and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.

Section 2. K.S.A. 44-512a (a) is hereby repealed.

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

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Proposed Workers Compensation Legislation

AN ACT relating to workers compensation; concerning the interest rate on failure to pay compensation prior to the award; amending K.S.A. 44-512b and repealing the existing section.

Be it enacted by the legislature of the state of Kansas.

Section 1. K.S.A. 44-512b is hereby amended to read as follows: 44-512b. (a) Whenever the administrative law judge, director, or court finds, upon a hearing conducted pursuant to K.S.A. 44-523 and amendments thereto or upon review or appeal of an award entered in such a hearing, that there was not just cause or excuse for the failure of the employer or insurance carrier to pay, prior to the award, the compensation claimed to the person entitled thereto, the employee shall be entitled to interest at the rate ~~of eight percent (8%) per year on the amount of the disability compensation found to be due and unpaid~~ allowed by K.S.A. 1986 Supp. 16-204(e) and amendments thereto. Such interest shall be assessed against the employer or insurance carrier liable for the compensation and shall accrue from the date such compensation was due.

(b) Interest assessed pursuant to this section shall be considered a penalty and shall not be considered a loss or a loss adjustment expense by an insurance carrier in the promulgation of rates for ~~workman's~~ workers compensation insurance.

(c) This section shall be part of and supplemental to the ~~workman's~~ workers compensation act.

Sec. 2. K.S.A. 44-512b is hereby repealed.

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

Approved by Legislative Committee

October 28, 1987
08:28:18 AM

HOUSE LABOR & INDUSTRY
Attachment #5
02/18/88