

Approved Monday, March 28, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at  
Chairperson

1:30 ~~am~~ p.m. on Monday, March 21, 1988 in room 527-S of the Capitol.

All members were present except:

Senator Joseph Norvell  
Senator Eric Yost

Committee staff present:

Marion Anzek, Committee Secretary  
Jerry Ann Donaldson, Research Department  
Gordon Self, Revisor's Department

Conferees appearing before the committee:

Representative Arthur Douville  
Jim Gartner, Southwest Bell Telephone  
Stan Lind, Counsel Secretary, KS Association of Financial Services

Chairman Thiessen called the meeting to order at 1:30 p.m. and asked Jerry Donaldson to review HB3016 and HB3017 for the committee.

HB3016: concerning the workers compensation act; relating to the manner of compensation payments.

Jerry Ann Donaldson said HB3016 passed out of the House Committee on Labor and Industry and basically it was to require workers compensation, temporary total disability payments be made by cash or check, and not by warrant or any other authorized payments, like some current employers are doing under the current law. The exception would apply to the director of accounts from the courts for warrants issued by the division of workers compensation or insurance funds. There have been no problems with warrants issued from these funds.

HB3017: concerning insufficient checks; providing for an insufficient check fee to be charged to the drawer by the payee when an insufficient check is given in payment, in whole or in part, for preexisting indebtedness.

Jerry Ann Donaldson said HB3017 came out of the House Agriculture and Small Business Committee and it would establish a definition of "insufficient check" to mean any check, order or draft drawn for the payment of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds. It would also allow the payee (the creditor) to have an insufficient check charge of \$10. from the individual who wrote the check, provided that the drawer has been given ample notice, oral or written notice of demand for the amount of the insufficient check. The bill would then permit the creditor to add to the check a \$10. charge for the outstanding balance of preexisting indebtedness, if the maker of the check has not paid the amount within a 7 day notice.

On page 2 of the bill, lines 53 and 54 refer to the consumer credit code, reference K.S.A. 16a-1-101 through 16a-9-102, virtually it is the entire consumer credit code.

This bill would by implication be amending the consumer credit code, without directly amending the code.

Following discussion by the committee members, Chairman Thiessen turned attention to HB3016.

Representative Douville, a proponent of the bill said HB3016 addresses a problem that has been around for a long time and this is when an employee gets injured, and his draft comes in, and then has to wait 5 or 10 days to even get it cleared and in this day and age there is fairly no reason for it with our modern technology.

I have passed out a copy of information that came to us in our committee by David Hills, Attorney at Law (Attachment 1) and I would like to point out

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that on page 4 of Mr. Hills statement a list of carriers and self employers, twenty-one pay by check and seventeen pay by draft.

We had no testimony against this bill in the House Committee that I recall.

Senator Werts asked Representative Douville if he would explain the mechanics of a draft?

Representative Douville said a draft is a promise to pay, and written by an adjuster for a company, where only the treasurer may be able to write a check. A draft only gives more float time, and another reason other than float time is because a lot of times they work through independent adjusters and they want to make sure when that independent adjuster writes a draft that they know about it, so they can make the check out and make sure it is the right amount.

Jim Gartner a proponent of the bill representing Southwestern Bell Telephone said this committee has discussed some of the impossible problems that our legal staff pointed out to us, in the bill concerning drafts. In the bill on line 43 and 44 it says "and shall not be made by warrant or any other written order authorization to pay".

We pay our workers comp and everything in a vehicle called a chamber draft, which is similiar to a cite draft. Our legal staff was concerned that if you say we can't pay any longer in a pay draft, then we are going to have to start paying all the employees in workers comp with check or cash.

This is our concern at Southwestern Bell Telephone Company. We are self insured and I am sure there are other companies that are in the same situation and possibly use a pay draft or cite draft.

I have a short amendment that I would offer. The way it is in the bill right now, we would be excluded. (Attachment 2)

We found out about this at the last minute and I believe that the bill went through Representative Douville's committee and we did not have enough time, and I talked to Representative Douville on the telephone one day, and told him the situation and we would try to take care of it when it came to the Senate.

Mr. Gartner said the proposed amendment is striking lines 42, 43 and part of 44 on page 1 of HB3016, and inserting "payments shall be made only in cash, check or in the same manner that the employee is normally compensated and not by any other means".

Senator Werts said you should not have "other means", you should have by "pay draft or check".

Chairman Thiessen said having no other questions regarding the proposed amendment that the committee would take it under advisement, and concluded the hearings on HB3016, and moved to HB3017, recognizing Stan Lind.

Stan Lind a proponent of HB3017, representing KS Association of Financial Services, said the bill relates to insufficient checks and authorizing a check charge of \$10. Under the present law there is a statutory authority to charge \$10. for a bad check, but the law is such that it is authorized under the criminal code. In order for one to make that charge, that charge can only be made if there is a present exchange of value, it is not authorized where there is a bad check given or a preexisting debt.

The meaning of present exchange of value, is when a person goes to a store and buys an item and pays for it with a check, that is a present exchange of value. The reason why it is relevant to that situation, is that under the criminal law, it is necessary to prove intent to defraud.

You can't prove intent to defraud, except in a present exchange of value where the value has already been given and you are only making payments on the indebtness owed. So there is the difference, and the need for this bill and the statute.

The other aspect is that the same seven day rule of notice given, as exist in the present criminal code statute, is set out here, and the provision for the addition to the contract is, that it is recognition to the fact, if an individual is not in a position to make the payment within the required time, of course the contract account card would be reduced by the amount of the insufficient check, and this would permit the addition of the \$10. incurred to the

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unpaid balance.

The only purpose of this proposed bill is, that with the universality of all banks making a charge for insufficient checks, this is merely an attempt to recover an expense item that is incurred by them with the insufficient check.

Chairman Thiessen concluded hearings on SB3017, turning attention to HB2960, and asked Ray Siehndel, with the Department of Human Resources if he had information on whether or not there are provisions for the handicapped, in the law?

Ray Siehndel said the committee on handicapped has said that they know of no provisions outside of types of facilities that are set up specifically to employ the handicapped and the handicapped person is employed by a section that is now a special provision.

Chairman Thiessen asked if there was any further discussion on HB2960, and if the committee members were ready to take action on the bill?

Senator Feleciano moved to pass HB2960 favorably, seconded by Senator Daniels.

Senator Werts offered a substitute motion on HB2960, to strike section 1 and section 2 from the bill and repealing K.S.A. 44-1203, seconded by Senator Morris.

Chairman Thiessen said the effect of the above substitute motion would be that we would not have a state minimum wage law.

Senator Werts said that was his intent, so my motion is to strike sections 1 and 2 from HB2960, repealing K.S.A. 44-1203.

Gordon Self said the minimum wage and maximum hours law has some other provisions in it, and did the motion include amending those provisions to conform with the repeal of the state minimum wage law?

Senator Werts said no the only thing he was interested in repealing, is the minimum wage, perse.

Gordon Self said then all you need for that is, you need to repeal 44-1203.

\* Senator Daniels said she was opposed to Senator Wert's motion.

Chairman Thiessen asked members all in favor of striking sections 1 and 2 from HB2960 repealing K.S.A. 44-1203, say aye, and opposed say no, then Chairman Thiessen asked for a show of hands vote, having 5 ayes and 4 nays. The motion carried.

Senator Morris moved to approve the minutes of March 15, 1988, seconded by Senator Werts. The motion to approve carried.

Chairman Thiessen told the members that the next meeting would be tomorrow, Tuesday, March 22, 1988.

The meeting adjourned at 2:30 p.m.

\* On March 30, 1988 Senator Feleciano requested a correction to these minutes be made. The correction is:  
Senator Feleciano and Senator Steineger wish to go on record as being opposed to Senator Werts motion to repeal HB2960.



TESTIMONY BEFORE THE HOUSE COMMITTEE ON LABOR AND INDUSTRY  
IN SUPPORT OF HOUSE BILL 3016 AMENDING K.S.A. 44-512  
PROVIDING FOR THE PAYMENT OF TEMPORARY TOTAL DISABILITY  
BENEFITS BY CHECK ONLY. GIVEN MARCH 3, 1988.

Mr. Chairman and Members of the Committee:

My name is David Hills. I have been a Kansas practicing attorney in Kansas City for twenty-one years. Ninety percent of my practice is in the field of workers' compensation. The last fourteen years, I have principally represented injured workmen. The seven years prior to that I exclusively represented employers and their insurance carriers in workers' compensation matters.

In my experience, one of the most crucial times for an injured workman and his family is the hiatus between the time of injury and the beginning of the payment of temporary total disability benefits. The length of that delay can mean the difference between survival or death in a real, not just economic, sense.

I am sure that in your collective experience over the years in listening to attorneys testify that have represented injured workmen you have heard the horror stories that can visit the injured workmen and their families when there is an undue delay in the payment of compensation benefits. Eviction, repossession, harrassment from bill collectors, are commonplace. Infrequently, there is the surrender of children to welfare authorities and suicide.

Attachment 1  
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I would hasten to say that the enactment of the preliminary hearing procedures in 1974 has lessened the frequency of these hardships, but they do still occur because delay is inherent in the administration of the Kansas Workers' Compensation Act.

First, there is the statutory seven day waiting period after the inability to work before compensation is due. That means the workman must be off work a full two weeks before he receives his first payment of temporary total disability benefits. But that is of small consequence compared to the delay that often occurs between the time of the accident and the employer's reporting of the accident to the insurance carrier so that the carrier can place in motion the machinery to investigate the claim. This investigation in and of itself takes time in the obtaining of medical reports verifying that the injured workman cannot yet return to work. This investigation alone can sometimes take up to four or five weeks.

Should a written demand be made pursuant to the preliminary hearing procedures that the respondent and insurance carrier pay temporary total and/or medical benefits, there is another seven day wait after that demand before there can be filed an application for a preliminary hearing. I might add that in eastern Kansas where the bulk of my practice is, the administrative law judges there try very hard to give as much priority as they can to preliminary hearings, but due to their already heavily scheduled caseload and scheduled matters for hearing, there is at least a two week wait for a preliminary hearing.

If as a result of a preliminary hearing, the employer and the carrier are ordered to pay temporary total disability, the machinery of the carrier normally takes another week in order to issue payment and most often that payment will include that last week.

Accordingly, under a best fact scenario, it can take up to at least five weeks after injury before the injured workman may receive his first temporary total disability payment. Imagine his surprise when he takes the payment instrument to his bank and is told that because the instrument is a draft and not a check, not only will he not get his money until the draft is paid at the drawee bank, he will also have to pay a collection fee ranging from ten to twenty dollars to his own bank for putting the draft in for collection through special handling procedures.

It has been my experience that the time between placing a draft in for collection and depositing of the payment in the workman's account is often a minimum of ten days and as long as fifteen to twenty days.

Since many insurance carriers have their origins back east, their banks are also located back east which lengthens the time between placing the draft in for collection and the payment on the draft. Even drafts drawn on banks in St. Joseph, Missouri or Booneville, Missouri, can take up to at least a week or longer before they are paid.

One large carrier with a large claims office in the Kansas City area writes drafts on the Commerce Bank of Kansas City. Until last August, their drafts could be presented in person at

the Commerce Bank in Kansas City, Missouri and generally paid that same day with the assistance of an attorney. However, last year, in August of 1987, that practice was discontinued and their drafts now have to be presented through the injured workman's bank or his attorney's bank which in turn sends them to Commerce Bank where thereafter the carrier approves or disapproves payment. This process can take up to five days.

Last year, in order to be able to fully advise our clients as to whether or not they could expect a delay in obtaining funds even after the carrier agreed or was ordered to pay compensation, my office began compiling a list of the carriers and self-insured employers that paid by check and draft. Of the thirty-eight companies listed below, twenty-one pay by check, while seventeen pay by draft, to wit:

Checks

Aetna Insurance Company  
American Manufacturers Mutual Insurance Company  
Argonaut Insurance Company  
CIGNA  
CNA  
Commercial Union Insurance Company  
Continental Insurance Company  
Employers Mutual Casualty Company  
Employers of Wausau  
Fireman's Fund Insurance Company  
The Hartford  
Iowa Beef Processors  
Kemper Insurance Group  
Liberty Mutual Insurance Company  
National Union fire Insurance Company  
Northwestern National Insurance Company  
Old Republic Insurance Company  
Royal Insurance Group  
Safeco Insurance Company  
St. Paul Fire & Marine Insurance Company  
The Travelers



### Drafts

Chubb Group of Insurance Companies  
Farmers Insurance Group  
Farm Bureau Insurance Company  
General Accident Insurance Company  
General Casualty Companies  
Great American Insurance Company  
Home Insurance Company  
Kansas Fire & Casualty Insurance Company  
Lumberman's Underwriting Alliance  
Maryland Casualty Company  
Ohio Casualty Company  
Ranger Insurance  
State Farm Insurance  
Southwestern Bell Telephone  
Tri-State Insurance Company  
USF&G  
Zurich Insurance Company

It is submitted that the draft is an anachronism, a product of commerce when there were not the means of rapid communication as there are today. In looking at this list of companies, there does not necessarily seem to be any correlation between size and whether or not they use checks or drafts. It is felt that those companies using drafts as a method of payment is probably more rooted in custom and practice from a by-gone era than a conscious selection.

Obviously, there are safeguards in the use of drafts. The person issuing the draft is not the person that approves the payment of the drafts, an obvious internal control. Yet in this day of computer accounting where the home office hundreds of miles away will know instantly when a check is issued at a remote claims office, the value of the draft as a payment control becomes minimal, particularly when compared to the hardship it visits on the injured workman by the delay of payment and the charges he must absorb for that payment. Even a collection

charge of \$10.00 a week over any period of time becomes a substantial loss to the injured workman since the applicable maximum temporary total rate, be it the present rate of \$256.00 a week or \$247.00 a week for last year, is substantially less than the wages of most skilled workmen. Of course, for those earning less, such as a minimum wage or barely above the minimum wage, the economic deprivation becomes much more acute.

In conclusion, it is submitted that House Bill 3016 is a very much needed change in the Kansas Workers' Compensation Act which I believe to be fair and reasonable to both the insurance industry and the injured workman and that the elimination of the hardships caused by the payment of temporary total disability benefits by drafts is in the best interest of the citizens of Kansas.

I thank you Mr. Chairman for your request that I appear today and to the members of the committee for their attention to this matter.

At this time, I will be pleased to respond to any questions that you may have. Thank you.

David R. Hills

ATT 2  
3-21-88

As Amended by House Committee

Session of 1988

HOUSE BILL No. 3016

By Committee on Labor and Industry

2-23

0018 AN ACT concerning the workers compensation act; relating to  
0019 the manner of compensation payments; amending K.S.A. 44-  
0020 512 and repealing the existing section.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 44-512 is hereby amended to read as fol-  
0023 lows: 44-512. ~~Workmen's~~ Workers compensation payments shall  
0024 be made at the same time, place and in the same manner as the  
0025 wages of the worker were payable at the time of the accident, but  
0026 ~~the director~~ upon the application of either party *the director* may  
0027 modify such requirements in a particular case as to the director  
0028 ~~may seem~~ *deems* just, except that (a) payments from the workers'  
0029 compensation fund established by K.S.A. 44-566a and amend-  
0030 ments thereto shall be made monthly only ~~and~~; (b) payments  
0031 from the *state* workmen's compensation self-insurance fund es-  
0032 tablished by K.S.A. 44-575 and amendments thereto shall be  
0033 made monthly, except that workers who were receiving pay-  
0034 ments from such fund more often than monthly prior to ~~the~~  
0035 ~~effective date of this act~~ *July 1, 1980*, shall be paid ~~workmen's~~  
0036 *workers* compensation payments from such fund to which they  
0037 are entitled at the times that the officers and employees of the  
0038 state agency, which employed the worker at the time of the  
0039 accident, are paid compensation after ~~the effective date of this~~  
0040 ~~act~~ *July 1, 1980*; and (c) *whenever temporary total disability*  
0041 *compensation is to be paid under the workers compensation act,*  
0042 ~~payments therefor shall be made by payment in cash or by check~~  
0043 ~~and shall not be made by warrant or any other written order or~~  
0044 ~~authorization to pay~~, except that any such compensation may be  
0045 paid by warrant of the director of accounts and reports issued for

payments shall be made only in cash, check or in the same manner that the employee is normally compensated and not by any other means

0046 payment of such compensation from the workers' compensation  
0047 fund or the state workmen's compensation self-insurance fund  
0048 under the workers compensation act.  
0049 Sec. 2. K.S.A. 44-512 is hereby repealed.  
0050 Sec. 3. This act shall take effect and be in force from and  
0051 after its publication in the statute book.