

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 a.m./p.m. on Tuesday, March 22, 1988 in room 527-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Dennis Horner—representing Kansas Trial Lawyers Association  
Ron Gaches, Public Affairs Manager—representing Boeing of Wichita  
Representative Mike O'Neal  
Representative Edwin Bideau  
Chris Cowger, Staff Attorney in Charge of Worker's Comp Fund, DHR

Chairman Thiessen called the meeting to order at 1:30 p.m. and asked Jerry Ann Donaldson, Research Department if she would review HB3004, HB3060 and HB3062 for the committee.

HB3004:as amended alters the Worker's Compensation Law to provide that interest on compensation payments that are stayed pending review by the director shall be calculated at 4 percent above the discount rate the same as the interest rate on civil judgements.

Jerry Ann Donaldson reviewed HB3004 and said those amendments are found in lines 42 through 48, and the rate of interest is described in section (e)(1) of K.S.A. 16-204.

HB3060:as amended alters the Worker's Compensation Act so that when an employer has paid more in compensation benefits than an employee is ultimately determined to be entitled to, the employer would receive a credit equal to the amount of over-payment.

Jerry Ann Donaldson reviewed HB3060 and said the amended version is a copulation of the original version of HB3060 and also HB3058, both of which amended the same section of K.S.A. 44-556, and that the over-payment in the above amendment would be applied to the last payment due, and if this doesn't cover payment then retrogressively applied to the next to last payment and so on until full credit has been satisfied. Under current law, overpayment such as this comes out of the worker's compensation fund.

Chairman Thiessen asked if this is compatible with SB341 that we passed earlier out of this committee? That was the payment of quicker benefits.

Jerry Ann Donaldson said I believe so, but the Revisor could answer that, better than I.

There is one other change in the bill, and that is when a review is taken by the district court, and the review would not challenge, the claimant's right to compensation, that compensation shall be continued to be paid either by the employer or the fund.

Senator Werts asked if SB341 is passed and appeal goes to court and goes against the employee, then this would apply? Jerry Ann answered, Yes.

HB3062:as amended would amend the Workers Compensation Act to provide written notice impleading the Workers Compensation Fund must be served on the Commissioner of insurance by the 10th day before the 1st scheduled date of the 1st regular hearing on the claim.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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If the first regular hearing is for settlement purposes a copy of each record regarding the claim, which includes all medical records and settlement papers, must be given to the Commissioner along with the written notice.

Jerry Ann Donaldson said backing up a little bit, that at least two of these bills came out of the ADHOC committee that met during the interim and chaired by Representative O'Neal to address the problems of the Worker's Compensation Law. HB3060 and HB3062 for sure, and maybe HB3004.

Chairman Thiessen called upon PROPONENTS of HB3004, recognizing Dennis Horner, representing Kansas Trial Lawyers Association.

Dennis Horner said The Kansas Trial Lawyers Association was in favor of the bill, with a one line exception, and that would be to insert the word "only" on line 42, between the words "made and by". This bill is basically designed to make interest payable on warrants, and often times these things are appealed and it takes a substantial amount of time to handle. It was initially designed to where they would have to pay interest on it while it was being appealed. We asked the bill to be amended to have the word "only" put back into the bill on line 42. It has been stricken from the bill, but we would like it back in. (Attachment 1) and (Attachment 2)

Ron Gaches representing Boeing of Wichita an opponent of HB3004 said he had distributed some written testimony to HB3004 and HB3062 (Attachment 3) and next to the last paragraph of the prepared statement, speaks of HB3004 would require the payment of interest on disability compensation payments which are found to be due and which are stayed during the pendency of review by the director when that review was filed by the respondent or the workers' compensation fund. This proposal will have the affect of increasing the cost of some disability claims to the respondent and the fund. This increased cost will apply to those cases that the respondent or the fund attorney believes warrants appeal. This proposed change in the rules would shift the balance of equity that currently exists between the parties and would serve as a financial deterrent to legitimate appeals to the director.

Given these considerations we ask that you not support enactment of HB3004.

Senator Kerr asked Ron Gaches you described the present system as being in balance. Does it ever happen today, that appeals are made simply in order to delay payment and therefore save the earnings of the money that is held as opposed to paid?

Ron Gaches said that he did not know, because he does not work himself, in the Worker's Compensation area.

Chairman Thiessen concluded hearings on HB3004, and turned attention to HB3060 calling upon Dennis Horner.

Dennis Horner, a proponent of HB3060 told the members in his written testimony (Attachment 1) that HB3060 is somewhat at odds with a bill previously considered and designated in SB341, which was passed and voted on and passed 40 to 0. We supported that bill, and the portion that I am mostly concerned about is Section B of the statute. In HB3060 starting at the top of page 2, line 48. What is involved in SB341, previously passed, makes a provision whereby the injured worker is entitled to receive compensation when ordered by the ALJ. Our recommendation is that you take the language from your SB341 and put it in place of the language in HB3060. That would make those two bills compatible, and would place the injured worker in a position of having the right to receive compensation at the time that the ALJ rules.

We strongly support your SB341, and propose that your section (b) from SB341 be put into section (b) of HB3060.

Representative Mike O'Neal said that Representative Douville, Chairman of the House Labor and Industry Committee, asked that I appear today, to answer any questions that may come up on HB3060, particularly the parts as they relate to SB341 that you passed in this committee.

I would like to give a background from the workers compensation perspective as to why we have the law, that we have now and why we made the proposed changes

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In any civil action, where you have a judgement pending against somebody, that individual has the right to have execution on that judgement stayed, until they exercise all their appellate rights in workers compensation, it is a little bit different, although there is a provision where a respondent can stay a portion of the award, that has been entered against a favorable plaintiff. The law has always given protection to that particular plaintiff, by saying that does not apply to the 10 week period, immediately proceeding the day of the ALJ award, so you get that money no matter what, and in one lump sum, if necessary. While that review is pending in front of the director or in front of the district court, weekly benefits that have been awarded, continue to be paid on a weekly benefit. It is only the lump sum amount that is past due, for compensation that is not being contested. This is why we took the approach, we did in the House.

Chairman Thiessen concluded hearing on HB3060, turning attending to HB3062, and recognized proponents of the bill, and called upon Dennis Horner.

Dennis Horner said HB3062 merely provides that if the funds be made a party, they are brought in 10 days before the scheduled trial date, it provides for the forwarding of records, regarding the claim, and must be given to the Commissioner along with the written notice.

I have been practicing for 13 years, and I used to represent the fund. I have received a call telling me the case is going to be tried on Monday, now what happens when this occurs, is the judge has set aside an hour to hear the case and what happens is, he has lost this time, and the claimant has taken the time to come to the trial, and they may have to bring in a lawyer, who knows nothing about the case, so he has to find out about it, between 5:00 p.m. Friday evening, and 8:00 a.m. Monday morning.

All we want is to move along and not be bogged down, and The Kansas Trial Lawyers Association supports HB3062. (See Attachment 1)

Representative O'Neal said this is one of the important bills that came out of the ADHOC committee, and I think we have resolved the language to address the various problems. The statute is chalked full of deadlines, the claimant has at least 3 deadlines or they lose their claim. The respondent has to have 20 days notice, so we are giving him 10 days at least to evaluate the claim.

I feel the only one's that would be opposed to this bill, are the one's that look at the files too late.

Representative Edwin Bideau said I have stood on all three sides of this issue, and I have also been a claims adjuster, prior to law school. I want to emphasis that the information more often than not, of 90% of the cases is sitting in the insurance carriers file, they have an investigation staff that have the medical reports, so it is not something that is discovered at the last minute. There are many good claims staff, that will write the firm a letter before it ever gets to the hearing stage, so I don't think we are creating a burden on any people that are handling these cases properly.

Chairman Thiessen recognized Ron Gaches, an opponent of HB3062.

Ron Gaches said HB3062 would require a minimum of 10 days notice to implead the workers' comp fund, and we believe this requirement would impose a hardship on employers and prevent impleading of the fund in legitimate cases. 2 examples.

1. pertains to preliminary hearings requested by the claimant. A preliminary hearing can be scheduled anytime convenient to all parties once the hearing has been placed on the docket. Sometimes, there is insufficient time to implead the fund and still meet the claimant's and the employer's desire to move matters forward by holding a prompt preliminary hearing.

2. pertains to what I will call friendly hearings, where the claimant is willing to accept the employer's offer to settle provided that offer can be made in the next few days. Where the employer recognizes its liability, it can be in the best interest of both parties to facilitate the immediate settlement of the claim. (See Attachment 3)

Chris Cowger, Staff Attorney in Charge of Worker's Compensation said basically we have belated clears on a daily basis and just on the standpoint of the administrative operation of the fund. I guess a good way to describe it, it is a poor way to run a ship. We get calls daily saying we need to have an attorney at a hearing at 11:00 a.m., and it is 9:00 a.m., so somebody has to scramble around, and call all the attorney's that are on our list, and find one who can

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appear at that hearing. Regrettably there are many instances, where a respondents attorney has called up, and advised us, I really don't want to have this hearing, I am not ready for it, let's go ahead and get you involved, and have your attorney request a contingency. So I guess we have been made a pawn, in a number of instances, on this leader basis.

During the ADHOC committee study, we were just searching for ways to better administer funds, and this was just one specific that we thought would help us in maintaining that goal.

Chairman Thiessen concluded hearings on HB3062, turning attention to HB2960, and reminded the committee this was the bill we discussed and had an amendment on it yesterday, and the Chairman recognized Senator Morris.

Senator Morris moved to reconsider our action on HB2960 yesterday, seconded by Senator Kerr.

Chairman Thiessen said all in favor to reconsider HB2960 say aye, opposed no. The motion to reconsider action on HB2960 carried.

Chairman Thiessen said we are back on the original motion to pass the bill favorably, and asked if there was any further discussion on the motion.

Senator Morris said one of the reasons, I supported that motion yesterday was, what we are really doing, is putting a floor under the motion, the least capable worker, many times the decision of the employer is to do without that worker and provide some other type of method for either self service or like in a gas station. I hope that doesn't happen here. We are getting awfully close to the Federal minimum wage, when you consider that employer, employs students, and it is almost automatic they have to apply for certificate or permission, but it is granted almost automatically, at 85% of the federal minimum wage, which brings the wage down to \$2.85, and we are raising this to \$2.65, and there is no provision in this to employ the students at a lesser wage, but Kansas wants to keep it's image.

Senator Werts said when I offered an amendment yesterday, it was not a frivolous motion, it was in all sincerity. I am satisfied and convinced that establishing a minimum wage is also a disservice to those underage, overage, sex, color, etc. and I can't in good conscious vote for something that will escheaturate, what I consider preempt service.

Gordon Self, Revisor's Department said this puts us back to the substitute motion.

Chairman Thiessen said the original motion yesterday was to pass the bill favorably and the motion had a 2nd.

The substitute motion yesterday was to strike sections 1 and 2 of the bill, and that had a 2nd.

Now we have voted to reconsider our action, and it puts us back to the substitute motion, and we have to vote on it again.

Chairman Thiessen said all of those in favor of the substitute motion, to strike section 2 from HB2960 say aye, opposed no. The motion failed.

Chairman Thiessen said we are now back to the original motion to pass the bill favorably as we have it before us, all in favor of the motion, say aye, opposed no. The motion to pass favorably carried.

Chairman Thiessen adjourned the meeting at 2:25 p.m.



March 22, 1988

Honorable Dan Thiessen  
Chairman  
Committee on Labor, Industry  
& Small Business  
Kansas State Senate  
Capital Building  
Topeka, Kansas

RE: House Bill No. 3004  
House Bill No. 3060  
House Bill No. 3062

H.B. No. 3004

Kansas Trial Lawyers Association supports this bill.

H.B. No. 3060

There are currently two pending bills relating to K.S.A. 44-556. H.B. 3060 currently before you proposes that the employer or Workers' Compensation Fund need not comply with an award from the administrative law judge if a review by the director is requested. H.B. 3060 does provide an exclusion where the review does not challenge the claimant's rights to compensation. From a practical standpoint, virtually all director's reviews and district court appeals include issues relative to the claimant's right to compensation. Accordingly, the proposed exclusion found at line 0067 has no practical application.

The transcripts and files of workers' compensation claims are voluminous and becoming more complex with the 1987 amendments. The transcripts in many litigated cases are voluminous. A careful reading and analysis by the director and assistant directors place a tremendous workload and burden on the office. There are many times when director's reviews may be under advisement for 6 to 8 months because of the time required to adequately review the transcripts. This time lapse creates a tremendous hardship for claimants who have been injured and off work, often for extended periods of time.

Attachment 1 March 22, 1988  
Senate Labor, Industry and  
Small Business

Senate Bill No. 341 recognized the tremendous hardships on injured workers and dealt with the delays by requiring awards to be paid immediately. KTLA supported Senate Bill No. 341 specifically dealing with Section b of K.S.A. 44-556.

KTLA respectfully suggests that this committee's language in Senate Bill No. 341 relating to paragraph (b) of the statute be inserted into H.B. 3060 as a substitute for the proposed language.

This substitution would be consistent with Senate Bill No. 341, would be a fair method to handle awards to workers and would be similar to the handling of post judgment awards in civil cases.

H.B. 3062

The Kansas Trial Lawyers Association supports this bill.

Respectfully submitted.

Dennis L. Horner  
Vice President of  
Kansas Trial Lawyers Association  
for Membership

DLH/da

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.

ATT 2  
3-22-88

Testimony before  
Senate Labor, Industry and Small Business  
regarding HB 3062 and HB 3004  
presented by Ron Gaches  
Boeing Public Affairs Manager

Thank you Mr. Chairman for this opportunity to express the concerns of the Boeing Company regarding these proposed changes in the workers' compensation law. Boeing is opposed to enactment of HB 3062 and HB 3004.

HB 3062 would require a minimum of 10 days notice to implead the workers' compensation fund. This proposal was discussed but never acted upon by the Insurance Commissioner's Task Force this past year. We believe this requirement would impose a hardship on employers and prevent impleading of the fund in legitimate cases. Two types of cases illustrate the possible hardship on employers that this bill would impose.

The first case pertains to preliminary hearings requested by the claimant. A preliminary hearing can be scheduled anytime convenient to all parties once the hearing has been placed on the docket. In some instances there is insufficient time to implead the fund and still meet the claimant's and the employer's desire to move matters forward by holding a prompt preliminary hearing.

The second case pertains to what I will call friendly hearings, hearings where the claimant is willing to accept the employer's offer to settle provided that offer can be made in the next few days. This situation frequently occurs when the claimant has a job opportunity out of state and is in a hurry to settle their affairs to make themselves available for the new job. Where the employer recognizes its liability, it can be in the best interest of both parties to facilitate the immediate settlement of the claim.

The requirements of HB 3062 could restrict the legitimate rights of the employer to implead the workers' compensation fund in the types of cases described.

HB 3004 would require the payment of interest on disability compensation payments which are found to be due and which are stayed during the pendency of review by the director when that review was filed by the respondent or the workers' compensation fund. This proposal will have the affect of increasing the cost of some disability claims to the respondent and the fund. This increased cost will apply to those cases that the respondent or the fund attorney believes warrants appeal. This proposed change in the rules would shift the balance of equity that currently exists between the parties and would serve as a financial deterrent to legitimate appeals to the director.

Given these considerations we ask that you not support enactment of HB 3062 and HB 3004.