

Approved March 27, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business

The meeting was called to order by Senator Alicia Salisbury at
Chairperson

1:00 ~~XXXX~~ p.m. on March 7, 19⁹¹ in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson, Legislative Research Department

Gordon Self, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Senator Marge Petty

Diane Barger, Emporia, representing the Kansas Trial Lawyers Association

Bill Morrissey, Division of Workers Compensation, Kansas Department of Human Resources

The Chairman announced the Committee would hear SB 274 and consider taking action on SB 270 and SB 220. The Committee will also consider HB 2087 which amends the Worker's Compensation Act. HB 2087 was introduced as a clean-up bill by the Revisor of Statutes. The Chairman also announced a request has been made to have SB 276 concerning the PEER act, rereferred.

Hearing on 274 Reimbursement of travel expenses under workers compensation act

Senator Marge Petty explained SB 274 sets in motion the availability of reimbursement for travel cost. Currently there is reimbursement for lodging and meals, but all transportation costs are not included under the workers compensation act.

Diane Barger, Emporia, representing the Kansas Trial Lawyers Association, testified SB 274 would allow the injured worker to be compensated by the insurance carrier for toll fees on the Kansas Turnpike as well as for parking fees, see Attachment I.

There being no other conferees, the hearing on SB 274 was closed.

COMMITTEE CONSIDERATION OF BILLS:

SB 270 Employment security, benefit amount, interest on overpayment, misconduct disqualifications, shared work program

A motion was made by Senator Petty and seconded by Senator Ehrlich to amend Sec. 2, page 6, line 21 by referencing the state drug schedules in place of the federal drug schedules. The motion passed.

A motion was made by Senator Ehrlich to add "or licensed by the Kansas Department of Health and Environment, Sec. 2 (D), page 6, line 36, before the word "except". Senator Petty seconded the motion, and the motion passed.

Senator Ehrlich moved to report SB 270, as amended, favorably for passage. The motion was seconded by Senator Petty. The motion passed.

SB 220 Deductible on employers' workers compensation insurance

Gordon Self, Revisor of Statutes office, explained amendments prepared by Robert Anderson, Jim Yonally and Larry Magill, see Attachment II. The amendments basically provide that the insurer first pays the deductible amount and then is reimbursed by the employer and that non-payment by the employer is grounds for cancellation; prevent an insolvent employer's failure to pay deductible amounts to the insurer from becoming a claim against the Workers Compensation Fund and that in no event will the injured worker pay the deductible; where it is a valid second injury claim, the deductible will be reimbursed by the Workers Compensation Fund; prevent the Kansas Workers Compensation Fund from requiring deductibles under the residual market plan since it is the market of last resort and substitute "Commission of Insurance" for "director" in line 37.

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.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
room 522-S, Statehouse, at 1:00 ~~xxx~~/p.m. on March 7, 1991

Bill Morrissey, Division of Workers Compensation, Kansas Department of Human Resources, testified that it is important to clarify that the assessment is on the insurance carrier, not the employer.

Senator Sallee made a motion to adopt the proposed amendments. Senator Strick seconded the motion, and the motion passed.

HB 2087 Workers compensation, coverage of persons

The Chairman explained HB 2087 was a clean up bill proposed by the Revisor's office. Staff informed the Committee the bill includes the term "conservation camp" within the Workers Compensation Act. The term was inadvertently omitted in the printing of 1990 HB 3069.

SB 220 Deductible on employers' workers compensation insurance

Senator Morris moved to amend SB 220 by including the language in HB 2087 as well as the amendments included in SB 274. Senator Petty seconded the motion. The motion passed.

A motion was made by Senator Petty to report SB 220, as amended, favorably for passage. Senator Sallee seconded the motion. The motion passed.

Senator Sallee moved to approve the minutes of February 27, 1991. Senator Strick seconded the motion. The motion passed.

The Committee meeting was adjourned at 1:30 p.m.



KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
SENATE LABOR, INDUSTRY AND SMALL BUSINESS COMMITTEE

March 7, 1991

SB 274 - Travel Expenses

The Kansas Trial Lawyers Association supports the proposed legislation in Senate Bill 274, regarding the changes in the Kansas Workers' Compensation Act. The changes are consistent with the legislative purpose of getting prompt and proper medical treatment for the injured worker.

SB 274 would allow the injured worker to be compensated by the insurance carrier for toll fees on the Kansas Turnpike as well as for parking fees. Employers have the right to choose the treating physician and most physicians selected by the employer have offices in Topeka, Wichita and Kansas City. Injured workers who reside in places such as Emporia, Madison, El Dorado, Council Grove, Eureka, as well as surrounding communities must travel by turnpike to receive medical treatment in Lawrence, Topeka, Wichita or Kansas City. Many of the physicians' offices do not provide parking and the injured worker sometimes pays several dollars just to park his vehicle while receiving medical treatment.

The toll fee between Emporia and Wichita is \$6.00 round trip. I had a client from Emporia who was treated by Mark Melhorn, M.D., who practices in Wichita. I had to advance my client \$6.00 to travel to Wichita for a treatment because she just did not have \$6.00 to pay. The injured worker is generally receiving limited income and several trips to the physician can become costly.

Expenses for toll fees and parking will not increase attorney's fees since attorney's fees are not recoverable for expenses such as these. These expenses will not greatly affect the costs for the employer's insurance carrier as the amounts will be minor for each claimant; however, these minor expenses can greatly affect the budget of the injured worker and he cannot refuse to go to the physician that the employer chooses. Refusal to go to a physician will terminate the medical treatment altogether.

We appreciate the opportunity to present testimony on this issue and encourage you to report it favorably for passage. Thank you.

*291 S.B.
3/7/91
Attachment I
1-1*

SENATE BILL No. 220

By Senators Brady, Bond, Francisco, Parrish, Petty, Salisbury and Yost

2-13

AN ACT concerning the workers compensation act; relating to insurance by employers; deductibles; amending K.S.A. 1990 Supp. 44-532 and repealing the existing section.

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

Section 1. K.S.A. 1990 Supp. 44-532 is hereby amended to read as follows: 44-532. (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501 and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways: (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas; (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; (3) by maintaining a membership in a qualified group-funded workers compensation pool. The cost of carrying such insurance or risk shall be paid by the employer and not the employee. Such coverage may be subject to an employer paid deductible of an amount not to exceed \$5,000 per employee per injury. Such deductible shall provide premium credits as approved by the director and losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees required in subsection (b) of this section is a class C misdemeanor.

(1) Every insurance carrier writing workers' compensation insurance for any employment covered under the workers compen-

FIRST DRAFT

R. G. A. B. 3/7/91 Attachment II 2-1

02:28:51 02:54 PM * IIA OF KANSAS

The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers compensation in the same manner as payment or nonpayment of premiums.

explanation: This clarifies that the insurer first pays the deductible amount and then is reimbursed by the employer and that non-payment by the employer is grounds for cancellation.

An employer's failure to reimburse deductible amounts to the insurer shall not cause the deductible amount to be paid from the Workers' Compensation Fund under KSA 44-532a, or any other statute. The Commissioner of Insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the worker.

explanation: These two changes prevent an insolvent employer's failure to pay deductible amounts to the insurer from becoming a claim against the Workers Compensation Fund. The second change clarifies that in no event will the injured worker pay the deductible.

The deductible amounts paid by an employer shall be subject to reimbursement as provided for under KSA 44-567 when applicable.

explanation: Where it is a valid second injury claim, the deductible will be reimbursed by the Workers Compensation Fund.

The deductible amounts paid by an employer shall be subject to assessments under KSA 74-713 and 44-566a

explanation: The Division of Workers' Compensation and the administration of the Workers Compensation Fund are paid for by assessments based on paid claims. This includes amounts paid under deductibles in paid claims subject to the assessments.

The Kansas Workers Compensation Plan under KSA 40- shall not require deductibles under policies issued by the plan. explanation: This prevents the Kansas Workers Compensation Plan from requiring deductibles under the residual market plan since it is the market of last resort.

Commissioner of Insurance