

Approved April 12, 1991
Date

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

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

1:00 ~~xxxx~~ p.m. on April 4, 1991 in room 527-S of the Capitol.

All members were present except:

Senators Daniels, Feleciano and Strick

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Bill Morrissey, Assistant Director, Workers Compensation, Department of Human Resources, Topeka
Larry W. Magill, Jr., Executive Vice President, Independent Insurance Agents of Kansas, Topeka
Lori M. Callahan, American Insurance Association, Topeka
Eric J. Oxfeld, Counsel, American Insurance Association, Washington, D.C.

Review of SB 425 Workers compensation, qualification as self-insurer for new owners

Senator Sallee informed the Committee some changes to SB 425 are going to be proposed that will change the bill substantially.

Jerry Donaldson, Legislative Research Department, explained every employer is covered by the Workers Compensation Act and is required to have coverage by obtaining a policy of insurance, or becoming a self-insurer, or belonging to a group of self-insurers. SB 425 amends K.S.A. 1990 Supp. 44-532 relating to self-insurance. The ultimate goal is to make sure that an employee that is injured will always have coverage to pay medical expenses and other attending expenses involved in an injury. The Department of Human Resources is concerned, due to the number of bankruptcies, that there be provisions to cover workers injuries.

Bill Morrissey, Assistant Director, Workers Compensation, Department of Human Resources, Topeka, testified since 1977 there has been a working policy in Workers Compensation that, for a company to apply for self insurance, they must have a five year audited financial statement so Workers Compensation can judge the strength, size and quality of the company. This bill was brought about by an applicant who has no history. The five year policy precluded them from applying to become self-insured. However, the wording in SB 425 would disqualify the applicant from applying for an exemption. Workers Compensation talked to the new company about drafting a proposed new amendment in lieu of the amendment in SB 425 which would substitute other qualifications for the five year rule. The five year rule would exist in the statutes with the exceptions listed in the amendment. The new wording would replace subsection (f) on pages 2 and 3 of SB 425. The Department's position on this bill is neutral.

H.B. 2313 Workers compensation, insurance premium discounts

Bill Morrissey, Assistant Director, Workers Compensation, Department of Human Resources, Topeka, said whether there should be an experience modification granted to every policy is a question of basic insurance principle. Workers Compensation has no problem with this concept. Presently a policy less than \$1,750 over three years does not get an experience rating. If an experience rating was done in that category, then the minimum premium would have to change due to discounting.

Larry W. Magill, Jr., Executive Vice President, Independent Insurance Agents of Kansas, Topeka, stated he had an amendment that he would propose to HB 2313.

Lori M. Callahan, American Insurance Association, Topeka, informed the Committee she has testimony on HB 2313 she would deliver to the individual Committee members.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
room 527-S, Statehouse, at 1:00 ~~xxx~~/p.m. on April 4, 1991.

The Chairman announced before action was taken on HB 2313 the Committee should hear further from the Insurance Department and Workers Compensation.

Review of states workers compensation laws

The Chairman introduced Eric J. Oxfeld, Counsel, American Insurance Association, Washington, D.C. Mr. Oxfeld has a long time involvement in workers compensation issues nationwide. He is responsible for legal analysis and policy development relating principally to workers compensation issues. In January 1989 he was named secretary to AIA's workers compensation policy committee and in 1990 he was named secretary to a special task force on workers compensation. Mr. Oxfeld would be addressing workers compensation issues.

The Chairman asked Mr. Oxfeld to address the following:

1. How does the state of the economy affect workers compensation claims?
Specifically, how does an increase in unemployment affect workers compensation claims?
2. Will our medical fee schedule have an affect on cost containment?
3. What is happening in other states with regard to the erosion of workers compensation as an exclusive remedy?
4. How do the components of frequency and severity affect rates?
5. What workers compensation programs have states enacted to save money, but, in fact, have not worked?

Eric J. Oxfeld informed the Committee the organization he represents is an advocacy organization and a long time supporter and active in workers compensation legislative public policy issues. Their basic principle is to support a workers compensation system that will provide adequate and equitable benefits to workers who are injured on the job at a fair, stable and affordable price for the employers.

He informed the Committee the state of Wisconsin enacted the first Workers Compensation law that was upheld by the courts in 1911. Workers compensation has changed over the years to keep pace with modern times. The focus around the country for the past few years has been the cost of the system to employers. Insurance rates have been rising at a rapid rate. This year there have been rate requests of 10% or higher in 25 of the 37 NCCI jurisdictions. In 12 of the states the rate requests are 30% or more. Oklahoma has filed for a 44% rate increase and Colorado is filing for a 39% increase. He explained rates are rising due to the frequency and severity of the claims during the last decade. The average cost of claims around the country has more than doubled from 1980 to 1989, as well as an increase in the number of claims filed. He listed as factors to the rising cost of workers compensation the rising cost of medical care and lifetime medical benefits. Currently, occupational diseases generally represent a small percent of workers compensation claims and do not produce most of the cost increases states have been experiencing. Psychological conditions have also been recognized as work related and compensable and are much more costly on the average than other kinds of claims and more prone to abuses. How do you distinguish the legitimate claim from the fraudulent claim where there is no physical injury? This type of claim is a growing problem in California and New York. Heart attacks are a problem to distinguish whether they are work related or nonoccupation related. It is difficult to determine compensability. He said Kansas law is the model other states should follow on heart attacks.

Mr. Oxfeld said workers compensation costs rise in periods of economic downturn. When there is high unemployment and uncertainty over the stability of employment, utilization of workers compensation increases. People who exhaust their unemployment benefits may turn to workers compensation which provides a higher level of wage replacement and for a much longer period of time. Also, people who haven't lost their jobs tend to file for workers compensation more often during a recession. During large layoffs, claims may be filed due to hostility and revenge. Benefit levels were improved in the 1970's. One of the effects of higher benefit levels is that utilization goes up which contributes to rising costs. In many states administrative improvements were not made which would control the higher benefits.

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In answer to a Committee question, Mr. Oxfeld replied each state has a different administrative system. He said there isn't a perfect example. The ideal system would have a dispute avoidance function. He suggested the new Texas law is worth taking a look at. It has an objective of avoiding litigation, and resolving cases that do get disputed, as quickly as possible, without going to court. He said he would be willing to supply the Committee with more information about the new Texas law.

Mr. Oxfeld stressed Workers Compensation system is meant to be self-executing. Workers compensation is the original alternative dispute resolution. It took cases out of the courts and established an administrative system so claimants would not have to pay out part of their benefit dollars in tort litigation.

Mr. Oxfeld stated the majority of cash dollars are paid to people with permanent disabilities. This is where reform efforts in other states have focused. In some states a permanent partial disability is like a mini-tort system where it is litigated and there is no clear legal standard of what the settlement is. This causes a lot of litigation. He said one of the areas states have been looking at is the definition of wages. Some definitions inflate what is counted as wages. If health insurance and other kinds of employer contributions for fringe benefits are counted as wages you may produce a benefit for some individuals that is more than their net take home pay was when they were working. Kansas is one of the states that counts health insurance contributions as wages.

He recommended vocational rehabilitation not be mandated. Mandating vocational rehabilitation is very expensive. Both California and Florida have cut back on the rehabilitation requirements. Colorado and New Mexico repealed their vocational rehabilitation entirely. Vocational rehabilitation is still available in Colorado and New Mexico but only on a voluntary basis with the insurance carriers.

In regard to exclusive remedy, Mr. Oxfeld informed the Committee Workers Compensation is premised on a no fault benefit system only paid for by the employer even if the employee is at fault for causing the injury. The employer is liable only for the cash and medical benefits that are prescribed in the Workers Compensation Act. There is no pain and suffering or punitive damages. The employer has a defined obligation. If you take away the no fault system and allow the worker to get workers compensation and sue the employer for damages, you have taken away the underpinning of the system. You will not have a workers compensation system very long if you take away the exclusive remedy concept.

Mr. Oxfeld suggested Kansas should look at what other states have done if there is interest in studying the Workers Compensation System. The states of California, New Mexico, Oregon, Alaska, New Hampshire, Texas and Florida have within the past three years enacted comprehensive reforms to their Workers Compensation Acts. Colorado is in the process of passing a comprehensive reform bill. He also said Colorado has a \$200 million unfunded liability in their state fund.

Mr. Oxfeld said medical fee schedules and mandating peer utilization reviews can have a positive effect on costs if done properly.

The Committee discussed recommending an interim study of the Workers Compensation system.

Senator Morris moved to recommend an interim study of the Workers Compensation system. Senator Thiessen seconded the motion. The motion passed.

Senator Morris moved to approve the minutes of March 27, 1991. The motion was seconded by Senator Oleen. The motion passed.

The Committee meeting adjourned at 2:30 p.m.

