

Approved March 5, 1992  
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley at  
Chairperson

9:06 a.m./~~pm~~ on February 19, 1992 in room 526-S of the Capitol.

All members were present except:

Rep. Cornfield - excused  
Rep. Gomez - excused

Committee staff present:

Jerry Donaldson, Principal Analyst  
Jim Wilson, Revisor of Statutes  
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Rep. Michael R. O'Neal

The meeting was called to order at 9:06 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley announced that the corrected copy of House Bill No. 3023 had been placed in the notebook of each committee member. He opened the public hearings on the bill and introduced its author and primary sponsor, Rep. Michael R. O'Neal.

Rep. O'Neal distributed and read testimony in support of the bill. He described his involvement in the drafting and eventual enactment of 1987 House Bill No. 2186, which he said was intended to hold down the costs of workers' compensation insurance. He said that due to "continued liberal interpretation of the act and much greater than anticipated costs of vocational rehabilitation", the National Council on Compensation Insurance (NCCI) is expected to request a 30% increase in insurance rates this year. He commented that the problem with increasing rates is not unique to Kansas. He stated that House Bill No. 3023 proposes to "address the affordability crisis by focusing on particular types of claims without affecting the typical, straightforward claims of injured workers."

Rep. O'Neal informed the committee that he and representatives of the insurance industry have requested NCCI to estimate the bill's potential impact on rates. He admitted that, until further data is obtained, the bill's exact impact is unknown. He went on to say that he believes the problems in workers' compensation will become an issue during next fall's election campaign (attachment #1). He also distributed a summary of the proposed changes to the law contained in the bill (attachment #2). He then answered questions from several members of the committee.

The chairman announced that the hearings on House Bill No. 3023 would continue tomorrow.

The chairman informed committee members that he has had a bill drafted to reduce the rates for computing unemployment taxes paid by Kansas employers. He entertained a motion that the bill be introduced by the committee: Rep. Don Smith moved to introduce the bill. The motion was seconded by Rep. Dick Edlund. Motion carried.

The meeting was adjourned at 9:55 a.m.

GUEST LIST

COMMITTEE: House Labor and Industry

DATE: Feb. 19, 1992

NAME	ADDRESS	COMPANY/ORGANIZATION
Bill Morrissey	Topeka	DHR/Work Comp
HARRY D. HELSER	Wichita	Ks AFL-CIO
Don Bruner	TOPEKA	DHR/LMRTES
DICK THOMAS	TOPEKA	DHR WORKCOMP
George Welch	Topeka	St. Self. Ins.
Diana Buschardt	Topeka	McLullough, et al
FRANCES Kastner	topeka	Ks Food Dealers
JERRY DANLITZ	TOPEKA	KMS
Bill Curtis	Topeka	Ks. Assoc. of School Bds
Steve Winkler	"	KCA
ALAN COBB	Wichita	KS Assoc. For Sm Bus.
Miss Conlete	Topeka	Legis.
Bruce W. Kent	Topeka	KDHR Legal
Don Bruner	Topeka	KDHR Legal
KARAY MAGILL	"	IND. INS AGENTS
TERRY LEATHERMAN	Topeka	RCCI
Karen Kitchen	Hayward	
R D. Frey	Topeka	KTLA
George Ruckert	Wichita	KPHA

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT

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1-800-432-3924



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OFFICE OF MINORITY WHIP

**H.B. 3023 Workers' Compensation Reform Act**  
**February 18, 1992**  
**House Labor & Industry Committee**

**Chairman Hensley, and members of the Committee:**

I appreciate very much the opportunity to appear before you today to explain the provisions of H.B. 3023, a comprehensive revision of the Kansas Workers' Compensation Act. As a former member of this committee it wasn't that long ago that I participated in the compromise that substantially revised the Workers' Compensation Act in 1987.

Like most every member of this committee, I'd rather not be here today discussing another reform bill. It is certainly not out of a desire to arbitrarily reduce benefits that I am proposing this package. Instead, the need for this bill follows the latest round of workers' compensation rate increases, and is in anticipation of the requested rate increases that will be announced by NCCI shortly.

The need for the 1987 legislation was created, among other reasons, by court interpretations of our act that a majority of the legislature believed were too liberal. That liberality was reflected in the spiralling costs of obtaining workers' compensation insurance. As a result of the 1987 legislation, we were able to work with the Kansas Commissioner of Insurance's office in convincing NCCI that the Kansas legislative environment was now favorable and that environment should be recognized by holding down rate increases. Based on the legislation, NCCI, against its better judgment, repriced the package and the Commissioner held off substantial rate increases.

TOPEKA ADDRESS

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*Labor & Industry*  
*2-19-92*  
*Attachment #1*

HUTCHINSON ADDRESS

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Actual experience, however, since the legislation went into effect, has been disappointing, due, primarily, to continued liberal interpretation of the act and much greater than anticipated costs of vocational rehabilitation. As a result of these factors, NCCI requested increased rates last year of over 30% and the Commissioner was compelled by the numbers to approve average rate increases of 24%. The actual percentage increases for many Kansas businesses was much higher.

Nothing has occurred in the past year to change this trend and, consequently, it is expected that NCCI will be requesting another rate increase of around 30% for this year. In all, the Insurance Commissioner's approved rates are about 49% under the cumulative rates NCCI believes are necessary to adequately fund anticipated losses and this largely accounts for the fact that insurers are losing about \$1.21 for every \$1.00 of premium written. This trend can not continue without either forcing businesses to close or insurers to leave the state. As the Director of Workers' Compensation will quickly point out, having all businesses self-insure is not the answer, and the experience of state operated funds is nothing short of scary.

The rate increase of last year alone generated more funds than total premiums written 15 years ago. The problem is not limited to Kansas. Nearly every legislature in the nation has been struggling with the problem and has either recently addressed workers' compensation reform or are in the process. Our own Sen. Alicia Salsbury chairs a blue-ribbon task force on workers' compensation through the National Council of State Legislatures. I have had the pleasure of meeting with her committee in Orlando, Florida this past summer and in Portland, Maine last fall, and many of the proposals contained in H.B. 3023 came out of those meetings.

If we are to keep the workers' compensation system afloat in Kansas, we are going to have to respond by reducing costs that drive up premiums. While it would be easy to accomplish this by simply reducing benefits across the board, such a move is neither fair nor necessary. It is possible to address the affordability crisis by focusing on particular types of claims without affecting the typical, straightforward claims of injured workers. The premise of this reform bill is that cost savings can be achieved by addressing the more questionable claims while leaving traditional claims alone.

One disadvantage of having hearings on this bill this soon is that we are in the process of having NCCI "price" this legislation to determine its potential impact on rates. It's important that we pass a package of reforms this year that accomplishes premium reduction. This package will do that in a significant way. The exact extent of premium relief remains to be seen. Because substantive changes will apply only to injuries occurring after July 1, 1992, real premium relief will not be realized this year, but that is why that it is even more critical that we not delay passing these needed reforms. Failure to act positively on this package this session will not put us in good favor with our constituents, the businesses and wage-earners in the state.

The workers' compensation crisis has been an election issue in several states with at least one state devoting no less than two special sessions in the same year to the subject. The rate request for this year will come in the middle of this session and the full impact of the rate increases will hit before next fall's elections. I don't think any of us want to have to explain why it was that we knew the increases were coming, had the opportunity to do something about them, but didn't.

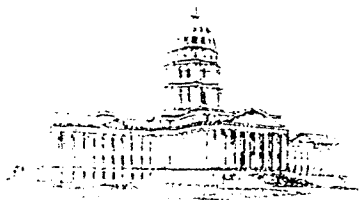
Attached is a detailed summary of the bill's contents. There are a number of technical changes and several substantive changes. I'd be happy to answer questions. Thank you.

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT

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**SUMMARY OF WORKERS' COMPENSATION REFORM BILL**

1. Provides compensation for injuries and aggravations of pre-existing conditions but eliminates current practice of awarding benefits for pre-existing conditions not caused by work.
2. Prohibits a claimant from accumulating more than 100% disability in a lifetime. Once limit is reached, claimant may continue receiving necessary medical.
3. Requires use of the American Medical Association's Guidelines For The Evaluation of Permanent Impairment to cut down on "dueling doc's" aspect of litigation.
4. Establishes a medically objective definition of permanent total disability and ends practice of considering sociological, educational or economic factors. Permanent total benefits have been awarded for injuries resulting in as little as 25% permanent impairment of function.
5. Provides a cap on "white collar" recoveries where there has been no wage loss, at one-half current limit for permanent partial disability.
6. Allows a waiver of coverage for salaried management-level employees and executives.
7. Amends work disability definition to clarify intent of 1987 Act that work disability does not exist if the employee returns to work for comparable wage and clarifies original intent of the law that there is no two-prong test of disability as suggested by court decisions.
8. Restricts use of \$350 unauthorized medical allowance to treatment only.
9. Adjusts benefits to take into account Social Security and other retirement benefits received at age 65.
10. Terminates vocational rehabilitation at age 65.

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*Attachment # 2*

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- 11. Clarifies definition of "accident" to disallow compensation for disability developed over time, such as the normal aging process and the stresses of day-to-day living. Many back cases are not the result of an identifiable work-related injury.**
- 12. Makes absolute the current requirement that accidental injuries on the job be reported within 10 days to be compensable.**
- 13. Makes vocational rehabilitation discretionary rather than mandatory and delays the trigger until after the claimant has been released and the employer has determined whether the employee is able to return to work.**
- 14. Prohibits attorneys from taking a fee on vocational rehabilitation benefits.**
- 15. Provides for a credit or refund of benefits from claimant upon a finding of fraud on the part of the claimant.**
- 16. Requires Director to adopt rules establishing plan for approving maximum medical fees. Preserves advisory panel but removes mandate that Director adopt a fee schedule approved by the panel. Places power over fee approval with Director.**
- 17. Allows employer to present evidence at any preliminary where claimant's right to benefits is disputed. Allows appeals to Director.**
- 18. Limits attorney fees to amounts obtained above written offer served on claimant prior to attorney involvement.**
- 19. Requires pretrial conferences to facilitate dispute resolution and settlement.**
- 20. Provides additional defense to employer where employee willfully fails or refuses to follow company policy regarding how a particular task is to be safely performed.**
- 21. Provides objective criteria for disallowing compensation in injuries where there has been alcohol and/or drug involvement.**
- 22. Allows employer involvement in third party suits where employer has subrogation rights. Employer involvement may be considered by the court in assessing attorney fees.**
- 23. Clarifies that employer's subrogation rights will be reduced by % of employer negligence applied against recovery - not damages. Recent case diluted employer's subrogation rights by computing employer set-off using gross damage award instead of actual recovery.**
- 24. Current payroll exemption of \$10,000 is doubled to \$20,000 for mandatory coverage under the act.**

- 25. Places further limits on coverage of out-of-state accidents.**
- 26. Clarifies that social and/or recreational injuries are not covered where employee participation is voluntary and does not involve performance of usual job duties.**
- 27. Provides that medical is to be furnished to "treat" the injury, replacing current "cure and relieve" language. Current language leads to over-utilization of services.**
- 28. Provides procedure for change of physician where Director finds cause for change. Employer picks three from which employee selects one.**
- 29. Limits awards for injuries to more than one scheduled member as the result of a single injury to the schedule - not whole body disability.**
- 30. Allows claimant option to have scheduled injury benefits computed by Claimant's Advisory Office without attorney involvement. If no objection, amount computed becomes award. Claimant's Advisory will advise claimant of rights under the Act upon receipt of report of accident.**
- 31. Prohibits continuation of temporary total benefits upon release to return to light duty unless medical opinion addresses claimant's job duties.**
- 32. Removes repetitive use conditions from the schedule and moves them to occupational disease statute where they once were.**
- 33. Deletes presumptive 40-hour week rule for full-time employees.**
- 34. Ends practice of pyramiding civil penalties for late payment of benefits.**
- 35. Subjects benefits to lien for child support enforcement.**