

Approved May 1, 1992
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley
Chairperson

8:12 a.m./p.m. on March 31, 1992 in room 526-S of the Capitol

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

The meeting was called to order at 8:12 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley stated that the purpose of the meeting was to discuss and take final action on Substitute for House Bill No. 3039. He said the committee would discuss and consider amendments to the proposed draft section by section.

The chairman commented that section 1 of the bill is new law intended to address the policy question of workers' compensation "fraud" which was contained in House Bill No. 2872, introduced by the committee at the request of the Kansas Chamber of Commerce and Industry (KCCI). He noted that the subcommittee has recommended that the provisions of this section apply to any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact.

In section 1, Rep. Jan Pauls moved to amend the bill on page 1, lines 11 and 12, and on page 2, lines 11 and 12, to add "class c" before the word "misdemeanor", and to delete, "and shall be punished as provided in subsection (e)", and on page 1, lines 12-15, and on page 2, lines 12-15, to delete, "Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense and each day of any such failure shall constitute a separate offense." Further, on page 2, to delete subsection (e), lines 16-18. The motion was seconded by Rep. Bob Grant. Motion carried.

The chairman stated that section 2 of the bill is an amendment to K.S.A. 44-504 intended to address the issue of subrogation which the committee heard on House Bill No. 2871, introduced by the committee at the request of Rep. Arthur Douville. Rep. Douville stated he was satisfied with the subcommittee's recommendation in section 2. Therefore, the subcommittee's recommendation in section 2 is adopted without amendments.

Chairman Hensley stated that section 3 of the bill is K.S.A. 44-505, subsection (a) of which provides for exceptions to certain employers covered under the Kansas workers' compensation act. He noted that one of the amendments contained in House Bill No. 3023 was that coverage under the act should not apply to employers who have a "total gross annual payroll" for all employees of \$20,000. He pointed out that under current law the threshold is \$10,000.

In section 3, Rep. Pauls moved to amend the bill on page 5, lines 9, 12 and 22, to delete "\$10,000", and insert in lieu thereof, "\$20,000." The motion was seconded by Rep. Garry Boston. Motion carried.

The chairman stated that on page 6, beginning at line 33, the subcommittee recommended adding a new subsection (d) to K.S.A. 44-505 to incorporate the provisions of House Bill No. 3116, an act authorizing an employer and exclusive bargaining representative, during the collective bargaining process, to negotiate workers' compensation issues involving selection of health care providers, use of preferred provider systems, and programs for returning injured workers to employment. He noted the committee introduced this bill at the request of the Kansas AFL-CIO.

Rep. Darlene Cornfield moved to amend the bill by striking all of the language on page 6, lines 33-35, and on page 7, lines 1-33. The motion was seconded by Rep. Garry Boston. Motion failed.

Rep. Douville expressed concern that subsection (B) would allow a collective bargaining agreement to supersede state law regarding the workers' compensation director's jurisdiction to fix maximum medical fees, to resolve disputes regarding such fees, and to require utilization and peer review of medical services. Rep. Douville moved to amend the bill by striking all of the language on page 7, lines 11-19. The motion was seconded by Rep. Al Lane. Motion failed.

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Rep. Lane moved to amend the bill on page 5, line 15, and on page 18, line 29, by deleting "including", and inserting in lieu thereof, "excluding". The motion was seconded by Rep. Douville. Motion carried.

Chairman Hensley explained that section 4 of the bill is K.S.A. 44-508, the definition section of the Kansas workers' compensation act. He noted that due to the subcommittee's recommendation to incorporate the provisions of House Bill No. 3116 in the bill, it is necessary to add to K.S.A. 44-508 new subsections (p) and (q), the definition of the terms "collective bargaining agreement" and "exclusive bargaining representative". The subcommittee's recommendation in section 4 is adopted without amendments.

The chairman noted that section 5 of the bill is K.S.A. 44-510, the medical compensation statute. He explained that the subcommittee had not addressed the medical fee schedule issue. He noted that House Bill No. 3039, in its original form, and House Bill No. 3023 would have authorized the director to implement the medical fee schedule without the approval of the medical fee schedule advisory panel. He pointed out that House Bill No. 3039 would have abolished the advisory panel, while House Bill No. 3023 would not.

In section 5, Rep. Denise Everhart moved to amend by incorporating into Substitute for House Bill No. 3039 the provisions of section 7 of House Bill No. 3023, with the following exceptions: do not delete the terms "cure and relieve" wherever they appear in that section of the bill, and do not include the sentence, "In any such case, the employer shall submit the names of three health care providers and the injured employee may select one from the list who shall be the authorized treating health care provider". The motion was seconded by Rep. Pauls.

Rep. Don Smith made a substitute motion to amend by incorporating into the bill the provisions of section 5 of House Bill No. 3039. The motion was seconded by Rep. Darrel Webb. Motion failed.

After discussion, Rep. Everhart renewed her motion to amend. Motion carried.

Rep. Everhart moved to amend the bill on page 15, line 14, to add "the usual and customary charge for the community in which the services are rendered..." The motion was seconded by Rep. Diane Gjerstad. Motion carried.

The chairman then asked Bill Morrissey, acting Director, Kansas Division of Workers' Compensation, to explain his recommendation to delete from the bill subsection (10), page 17, lines 34-35, and page 18, lines 1-7. Director Morrissey stated that this subsection would require him to close certain records kept in his office which he has routinely kept open.

Rep. Everhart moved to amend the bill by striking subsection (10), page 17, lines 34-35, and page 18, lines 1-7. The motion was seconded by Rep. Gjerstad. Motion carried.

Chairman Hensley commented that section 6 of the bill is K.S.A. 44-510a, the prior injury statute. He noted that the subcommittee recommended amending this section to provide that if an employee receives compensation "for functional impairment as defined by K.S.A. 44-510e, within 10 years after receiving such compensation, suffers a later injury which is alleged to have aggravated the same condition for which such compensation was paid, no compensation shall be paid for that portion of the functional impairment which was preexisting and was previously compensated."

In section 6, Rep. Pauls moved to amend the bill on page 21, line 20, by adding before "44-510e" the words, "44-510d and". The motion was seconded by Rep. Grant. Motion carried.

Rep. Tim Carmody moved to amend the bill, on page 21, lines 15 and 16, by inserting after the word "compensation", the phrase, "or if compensation is collectible." The motion was seconded by Rep. Lane. Motion failed.

The chairman then called for a ten minute recess.

After the recess, Chairman Hensley announced that the committee would return to discussion on and possible amendments to sections 6 and 7 of the bill at its next meeting. He opened the floor for discussion on section 8.

Rep. Pauls commented that she supported an amendment to K.S.A. 44-510f, contained on page 27, lines 13-19, of House Bill No. 3023, which would set a limit for permanent partial disability. Rep. Pauls moved to amend the bill by adding a new section 8, incorporating the following amendment to K.S.A. 44-510f: "(4) for permanent partial disability, (A) where functional impairment only is awarded, \$50,000 for an injury or aggravation thereof, and (B) in no case shall an employee receive an award which increases the total of all awards of permanent partial disability during the employee's lifetime to more than 100% permanent partial disability, except that in any case, such employee may be awarded compensation pursuant to K.S.A. 44-510 and amendments thereto." Further, that the sections of the bill be renumbered accordingly. The motion was seconded by Rep. Everhart. Motion carried.

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The chairman commented that even though Rep. Paul's amendment would renumber the sections he would continue to refer to the sections as numbered in the bill draft. He noted that section 8 of the bill is K.S.A. 44-510g, the "return to work" statute. He asked acting Director Morrissey to explain the proposed amendments to this section recommended by the subcommittee.

Mr. Morrissey stated that the proposed amendments in section 8 of the bill would authorize him to: (1) set qualification standards for vocational rehabilitation providers, (2) monitor the quality and timeliness of services provided, (3) disallow vocational rehabilitation benefits to an employee if the employer has offered the employee a specific job which reasonably accommodates the employee's limitations and pays a comparable wage, (4) allow an employee to choose a vocational rehabilitation provider from a list of three qualified vendors provided by the employer, and (5) establish a maximum fee schedule on fees for services provided by vocational rehabilitation vendors. The subcommittee's recommendation in section 9 is adopted without amendments.

The chairman announced the committee would reconvene at 12:00 noon or on first adjournment of the House, in Room 526-South. The meeting was adjourned at 9:55 a.m.

GUEST LIST

COMMITTEE: House Labor and Industry

DATE: March 31, 1992

NAME	ADDRESS	COMPANY/ORGANIZATION
Larry Magill	Topeka	I.I.A.K.
Art Brown	Ke	KS USA Dealer
Whitney Darnaps	Topeka	McGill's Associates
Jim McHaff	Topeka	ICS AFH-CIO
Harry Helser	"	"
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
J.P. Small	Topeka	learjet / KOCH
Bruce Smoot	"	AIA
Quincy	"	KDHR
Don Bruner	"	"
B. Troy	"	RTLA
U. Masu	"	"
Gary Anderson	"	AIA Kansas
Joe Furjanic	"	KCA
George Welch	"	St. Self Ins. Fund
Bill Morrissey	Topeka	DHR / Work Comp
John Ostrowski	Topeka	AFL-CIO
Wayne Maubert	Top	KS AFL-CIO
Lupe Alexander	Derby	AFSCME Local 2777
Jessie Cornejo	Winfield, Ks	AFSCME - Local 2777
FERRY LEATHERMAN	Topeka	KCCT
Julie Sumner	Topeka	Mapower
Kay Taylor	Topeka	OJA
Dick Thornton	Topeka	DHR / WORK COMP