

Approved June 18, 1992

Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley

Chairperson

1:37 ~~xx~~ p.m. on April 29 1992 in room 526-S of the Capito.

All members were present except:

Committee staff present:

Jim Wilson, Revisor

Jerry Donaldson, Principal Analyst

Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Terry Leatherman, Exec. Dir., Kansas Industrial Council, KCCI

Joe Furjanic, Kansas Chiropractor Assn.

John Ostrowski, representing AFL-CIO

Senator Alicia Salisbury

The meeting was called to order at 1:37 p.m. by chairman, Anthony Hensley.

Rep. George Gomez moved to approve the minutes of March 23, 24, 25, 26 and 27, 1992.

Rep. Darlene Cornfield seconded the motion. Motion carried.

The chairman handed out a letter from Richard Mason, Kansas Trial Lawyers, to each member each of the committee members in opposition of SB 666. (attachment #1). The first conferee on SB 666 was Terry Leatherman, Exec. Dir., Kansas Industrial Council, Kansas Chamber of Commerce and Industry. Mr. Leatherman expressed his support for this bill and pointed out some changes he would like to see in the bill (attachment #2).

Joe Furjanic, Kansas Chiropractor Association, stated that the word examining and diagnosis were omitted from SB 666. He explained you can't treat without examining and a diagnosis.

John Ostrowski, AFL-CIO representative spoke in opposition of SB 666.

Senator Alicia Salisbury testified as a proponent on SB 666.

Jim Wilson, Revisor, handed out a proposed House Substitute for SB 666. (may be obtained at the Revisors office).

Chairman Hensley asked the committee to compare a memo dated April 11, 1992 with the Proposed Substitute SB 666 (attachment #3).

Rep. Darrel Webb moved to adopt proposed House Substitute for SB 666. Rep. Eloise Lynch seconded the motion. Motion carried.

Meeting adjourned 2:55 p.m.

GUEST LIST

COMMITTEE: Labor and Industry

DATE: April 29, 1992

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Bill Curtis	Topeka	Ks. Assoc. of School Bds
Terry Leatherman	Topeka	KCCI
Robert Elliott	Wichita	WFT
Michelle Hunter	Topeka	Ks. Soc. Accounting
Gary Anderson	Topeka	AAA Kansas
Robert Traxler	"	Rsgov't Consulting
Mary E. Tunney	Topeka	Ks. Motor Carriers Assn
Tom Whitaker	Topeka	Ks. Motor Carriers Assn
Joe Deek	Topeka	DHR
Jim DeHoff	Topeka	KS AFL-CIO
Harvey Pelser	Wichita	" " "
ARAW ANDERSON	TOPEKA	TOBACCO ENST.
J.P. SMALL	TOPEKA	KOCH ; LEARJET
Don Bruner	TOPEKA	KDHR
William Mann	"	KTEA
BILL HENRY	TOPEKA	Philip Morris
Art Bram	KE	KS Lumber Dealers
Lisa Unruh	Topeka	DOB
RICHARD THOMAS	TOPEKA	DHR/WORKCOMP
Jacky Jankiewicz	Topeka	KMS
Joe Jankovic	Topeka	KCA
Elm. Dabrowski	Russell	KCA
Bill Morrissy	Topeka	DHR/Work Comp
John Ostrowski	Topeka	AFL-CIO

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RICHARD H. MASON
 EXECUTIVE DIRECTOR



KANSAS TRIAL LAWYERS ASSOCIATION

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 (913) 232-7756 FAX (913) 232-7730

April 30, 1992

Rep. Anthony Hensley, Chairman
 House Labor and Industry Committee
 300 SE 10th, Room 278-W
 Topeka, KS 66612

Dear Rep. Hensley:

Since others have provided detailed testimony in opposition to SB 666, we have chosen to submit our statement in writing only.

Our members' interest in this bill is based upon their role as legal representatives of injured workers seeking compensation for their damages.

SB 666 regrettably brings to mind Yogi Berra's famous line, "It's deja vu all over again". From our point of view, the great compromise of 1987 has had the effect of taking monetary benefits away from claimants and replacing it with vocational rehabilitation, which everyone now seems to agree has not worked. Indeed, HB 2186 was referred to in the House Committee as "the problems we created in 1987".

You now have before you "son of 2186". Again you are being asked to pass a law which professes to lower workers compensation insurance premiums by taking away benefits from Kansans hurt on the job.

At a minimum, it is premature to act on SB 666 unless and until you are given sufficient data to gauge its impact. John Lewis and Peter Barth, speaking before your joint hearing with the Senate January 27, cautioned Kansas not to fall into the all too familiar pattern of restructuring its workers compensation system without first knowing exactly where the premium dollar is being allocated. Having participated in the Department of Insurance's Study Commission hearings on this very question last fall, it is clear to me we don't have such data for Kansas. Commissioner Todd's October 4, 1991 letter to the President of NCCI would indicate he agrees.

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 Attachment #1

Rep. Anthony Hensley
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Page 2

You have been told that NCCI is in the process of "pricing" the specific provisions of SB 666. Again, these are the same "experts" who are unable to tell the Insurance Commissioner how the premium dollars taken in by insurance companies are ultimately spent. They could say with certainty in early 1991 that a 30% rate increase was needed, but six months later they just couldn't tell us exactly where that new money was spent.

You have been told quite candidly that SB 666 "is a bill to cut down on payouts". You may recall nothing was said with regard to the bill's effect from the worker's perspective. Sponsors have admitted "the safety side is not addressed in this bill", in spite of the fact that William Haggard told all of you last Wednesday that "injury prevention is where we ought to begin". A further concession was made in the House Committee to the effect that Kansas historically has only given lip service to safety. SB 666 doesn't even contain the lip service.

SB 666 asks Kansans hurt on the job to give up some of their promised benefits so employers may be given the false expectation their insurance premiums will go down, again the same rationale employed in 1987. As attorneys representing injured workers, we think this is a cruel and entirely unfair trade-off. While it appears almost everyone involved in workers compensation is dissatisfied with the way it's working, any bill offered in good faith to "reform" our system should address the concerns of those most affected, the claimants. This bill does not meet that test. We encourage you to reject it.

Sincerely,



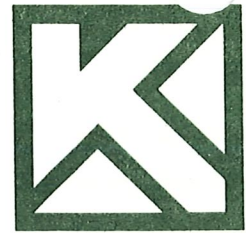
Richard H. Mason
Executive Director

RHM/11

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 666

April 29, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear today in support of SB 666.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

When considering legislation of this magnitude, it should not be surprising that the Kansas Chamber's support for this legislation would be accompanied with several amendment suggestions. Those amendment suggestions are:

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1) On page 14 - line 4 begins language concerning a medical fee schedule and utilization review process for workers' compensation. SB 666 retains current law requiring an advisory panel to develop and annually review a medical fee schedule.

Before this Committee, KCCI supported HB 3039, which authorized the Workers' Compensation Director to develop a medical fee schedule. While KCCI maintains its support for that concept, we suggest this Committee attempt to bridge the differences which have developed between the House and Senate on this issue with a compromise approach. That compromise would be to amend the membership on the advisory panel (page 14 - line 31) to include the Workers' Compensation Director as a ninth member of the panel.

2) On page 19 - lines 5 through 8 contain a provision for selection of alternate health care providers in workers' compensation cases. When situations arise where an injured worker desires a change in health care provider, SB 666 calls for the Workers' Compensation Director to authorize the change and the employee to select the new provider from a list of three provided by the employer.

The Kansas Chamber has consistently opposed legislative attempts in recent years to strip employers of the right to select the initial health care provider in workers' compensation cases. In support of our position on this issue, KCCI has pointed out a "checks and balance" approach exists in the current physician selection system, and works well.

The SB 666 provision would probably reduce employer costs in Kansas, if approved. However, since this provision would undoubtedly disturb the current "checks and balance" approach, KCCI would suggest this provision be deleted.

3) Beginning on page 30 is SB 666 reforms to vocational rehabilitation in Kansas. The following changes are suggested.

a) On page 48 - beginning on line 17 is a section which removes an employer's right to select the initial vocational rehabilitation vendor. KCCI urges current Kansas law which permits employers to make this selection be retained.

b) On page 49 - beginning on line 14 is a section detailing preliminary hearing appeal rights. This section restricts an employer's right to apply for preliminary review

to issues of compensability. KCCI supports amending this provision to permit all issues involving the process to be appealable.

c) On page 50 - line 3 demands an employer pay temporary total disability compensation from the referral of an employee for evaluation to the full execution of a vocational rehabilitation plan. To encourage prompt execution of the plan, KCCI suggests this period of compensation be limited to four weeks.

d) On page 50 - line 25, vocational rehabilitation plans calling for training programs are permitted to take up to 72 weeks. Current law limits training programs to 36 weeks, with an additional 36 weeks permitted following department review. KCCI would urge the current law be retained in this area.

e) On page 51 - lines 30 through 36 require an employer to pay a stipend to employees who are undergoing vocational rehabilitation training outside their home county. SB 666 calls for the stipend not to exceed an average of \$150 a week, or a maximum of \$5,500. Since employers are paying temporary total compensation during this period, KCCI suggests this stipend be limited to a maximum of \$150 weekly, and \$5,500 overall.

4) On page 64 - lines 17 through 23 contain language limiting attorney fees. KCCI suggests language in Substitute for HB 3039 (page 41) replace the SB 666 provision.

5) On page 74 - beginning on line 7 is a section requiring the Workers' Compensation Director to gather data on the workers' compensation system in Kansas. KCCI suggests the Committee consider replacing this provision with language developed by the Director since the passage of SB 666.

6) KCCI suggests a provision from Substitute for HB 3039 (page 52) which calls for the term for the Workers' Compensation Director to coincide with the term of a Governor, be amended into SB 666.

Thank you for the opportunity to suggest these changes to SB 666 and urge Committee approval of this important legislation. I would be happy to attempt to answer any questions.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N – Statehouse

Phone 296-3181

April 11, 1992

TO: Representative Anthony Hensley
Representative Al Lane

Office No. 278-W
446-N

RE: Workers Compensation Changes as Contained in Substitute for H.B. 3039
as Amended by the House Committee of the Whole

Substitute for H.B. 3039, recommended by the House Committee on Labor and Industry, contains major changes to the Kansas Workers Compensation Act. An analysis of the bill is as follows.

Section 1 – Fraud. The bill creates new crimes for (1) knowingly making false statement or knowingly failing to disclose a material fact to obtain or increase or to prevent a reduction in any workers compensation benefit or payment and (2) knowingly making a false statement or representation or knowingly failing to disclose a material fact to prevent or reduce any benefit under the Workers Compensation Act to any worker or other person. The crimes are classified as class C misdemeanors.

Any person who receives any benefit or payment under the Workers Compensation Act as a result of committing such crime is made liable to repay the amount so obtained plus interest at the rate prescribed for judgments. The employer may pursue a cause of action to recover moneys paid for which liability has accrued under this section.

Section 2 – Subrogation. Existing law provides that in a scenario in which an employee or his or her dependents receive benefits from any other person, the employer has the right to recovery from such person for compensation and medical aid provided to the employee. The bill provides the employer shall receive notice of any such action and shall have the right to intervene and participate. It would be up to the court to decide the extent of the participation, including the apportionment costs and fees.

Section 3 – Collective Bargaining. According to the bill certain issues such as a list of health care providers, how to utilize such health care providers, resolution of differences over the list and utilization procedures, and programs for returning injured workers to employment including light duty, modified work, return to work programs and retraining programs are matters that can be covered by a collective bargaining agreement. Any

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such agreement could not, however, reduce an injured worker's benefit, as set forth in the Workers Compensation Act.

The bill also raises the payroll threshold for coverage from \$10,000 to \$20,000 total gross annual payroll.

Section 4 – Definition of Collective Bargaining and Exclusive Bargaining Representative. "Collective bargaining" means an agreement between an employer and an exclusive bargaining agent as authorized by the Kansas Employee and Employer Relations Act, Kansas Agricultural Labor Relations Act or the Kansas Public Employee-Employer Relations Act or federal labor law under the National Labor Relations Board's jurisdiction. "Exclusive bargaining representative" means a recognized or certified organization representing an appropriate unit of employee for purposes of meeting and conferring, collective bargaining or negotiating under such state and federal laws.

Section 5 – Medical Compensation v. Collective Bargaining Agreement; Maximum Fees. Provisions of the medical compensation statute K.S.A. 44-510, which conflict with provisions of a collective bargaining agreement, will not apply to employees governed by such a collective bargaining agreement.

With regard to maximum fees for medical compensation services, the advisory panel will only advise the Director of Workers Compensation in establishing a plan for approving maximum fees. The maximum fees are subject to approval by the Director. Providers are to receive the usual and customary charge for the community in which the services are rendered or the maximum fees approved by the Director.

The injured worker is given the right to choose a health care provider in the first instance. If the services are unsatisfactory to the employee, he or she shall be entitled to services of a health care provider furnished by the employer.

Section 6 – Reduction in Compensation. Reduction in compensation regarding permanent partial disability for a prior injury is to be reduced by the percentage of functional impairment that was caused by traumatic origin for which prior medical treatment was sought. Such an occurrence and treatment must have taken place before the employee obtained work with the employer and suffers a later injury for which the claim is now made.

Section 7 – Permanent Partial General Disability. An employee would not be able to receive compensation for a permanent partial general disability above the percentage of functional impairment while the employee is engaged in any work for wages that are comparable to the average gross weekly wage as computed under the Act subject to the provisions of K.S.A. 44-528 and amendments.

Section 8 – Maximum Liability. The maximum benefit available for permanent partial disability for functional impairment only would be \$62,500 except that an employee may be awarded medical compensation under K.S.A. 44-510.

Section 9 – Vocational Rehabilitation. The restated purpose of the Act would be to restore to an injured worker the ability to perform work at a comparable wage. Current law includes a two-prong test of performing work in the open labor market and to perform work at a comparable wage. Also under this provision the vocational rehabilitation director, under the approval and direction of the Director, will direct and audit the vocational rehabilitation of injured workers. The Director will be charged with approving individual rehabilitation vendors in addition to any facility, institution, agency, or employer. Approval requires physical facilities to be staffed with specifically trained and qualified personnel.

Section 10 – Formal Offer of Settlement. After providing the certifying letter required by Section 12 and waiting 60 days, the claimant may make a formal offer of settlement regarding the nature and extent of disability. Upon final disposition of the claim, if the nature and extent of disability meets or exceeds the formal offer which was not adopted, the opposing parties are made responsible for all expenses incurred by the claimant after the date of the formal offer. These provisions would not apply where the compensability of the claim is at issue, unless it is found to not be a valid issue.

Section 11 – Assignment for Child Support. An exception to the nonassignability of compensation benefits is made for child support orders. Procedures for voluntary and nonvoluntary assignment of a portion of compensation are set forth. Any such assignment is specifically made subject to liens for attorney fees under the Act.

Section 12 – Date for Hearing , Claimants Certifying Letter. The claimant will be required to submit a certifying letter to the administrative law judge, stating that the claim is ready for regular hearing. The hearing will be held within 120 days of the date of the certifying letter, but not earlier than 60 days after the date the certifying letter was mailed unless the parties certify that the Workers Compensation Fund will not be impleaded.

Section 13 – Suitability of Work; Review and Modification of Awards. Notwithstanding the provisions of Section 7 regarding permanent partial general disability, an employee may be found, either on review of an award or on initial hearing, to have a work disability upon showing that the work being performed for a comparable wage is not suitable work. In determining suitability, the administrative law judge shall consider the following elements: (1) the physical requirements and modifications proposed; (2) the number of hours to be worked per week and the rate of pay; (3) when the work is to be performed; (4) comparison of fringe benefits; and (5) the opportunity for advancement.

An application for a review and modification hearing would be permitted in cases of lump-sum settlement, except that no such proceeding would be initiated more than one year after the date the lump-sum settlement agreement was entered into and approved.

Section 14 – Attorney Fees. In cases where the compensation to be paid exceeds the offer to settle made prior to representation by an attorney, attorney fees are limited to 25 percent of the amount recovered which shall not exceed the greater of: (1) a reasonable amount for such services; or (2) the amount equal to 25 percent of the amount of compensation recovered and paid which exceeded the amount offered prior

to the employee's attorney involvement, subject to an overall maximum of 25 percent total compensation recovered, as in current law.

Section 15 – Open Records, Exception. Current law specifies that records of the Division are open to public inspection. The amendment provides an exception when information or refunds are made confidential under Section 16.

Section 16 – Data Gatherings. This new section requires the Director of Workers Compensation to gather data and conduct studies to evaluate the workers compensation system in Kansas. The Director is to independently evaluate insurance industry data for workers compensation and other data for a thorough evaluation of the system's effectiveness. The Director is authorized access to certain confidential information of the Division of Employment Security, the Insurance Department, and the Department of Revenue and has the same duty of confidentiality as such other agency and is subject to the same penalties for violation thereof.

Section 17 – Second Injury-Negotiating Attorney Contracts. This section requires the Commissioner of Insurance to establish a negotiating committee to obtain legal services for the Workers Compensation Fund (Second Injury Fund) through a negotiated bid process. Prior to negotiating for legal services, the committee shall advertise for proposals.

Section 18 – Workers Compensation Fund. The section is amended to prescribe statutory percentages of the cost of an award which would be attributable to the employee's preexisting condition and the corresponding liability of the fund.

Failure to implead the fund within 15 days of the date of receipt of claimant's certifying letter under Section 12 will bar any reimbursement from the fund to the employer or insurance carrier. Within 30 days of receipt of the certifying letter, the employer or insurance carrier impleading the fund must provide the Commissioner of Insurance or the appointed attorney with copies of the affidavit or statements which are the basis for impleading the fund along with all medical records and reports.

Within 45 days of the date of the certifying letter under Section 12, the employer or insurance carrier must submit an offer of judgement proposing settlement of the issue of the percentage of fund liability at one of the statutory percentages. If no such offer is made, the fund is to be dismissed from the proceeding with prejudice. Within 60 days of such date, the fund is required to accept or reject any such offer. If the offer is rejected and the liability of the fund is found to be equal to or greater than the liability proposed in the offer, the fund is obligated to pay the expenses and attorney fees incurred by the employer or insurance carrier after 60 days from such date. If the fund rejects the offer and the liability of the fund is less than that proposed in the offer, the employer and insurance carrier are obligated to pay the reasonable costs, expenses, and attorney fees incurred by the fund after the offer was made.

If the employer and Commissioner of Insurance reach agreement regarding the percentage of liability of the fund, then from the time of the agreement onward, the employer's attorney alone will defend the claim if the fund's liability is 50 percent or less. If the liability of the fund exceeds 50 percent, the fund's attorney alone shall defend the claim.

New Section 19 – Occupational Safety and Health Consultation Program, Reduced Workers Compensation Insurance Premiums. To qualify for reductions in workers compensation insurance premium charges, employers must successfully participate annually in a comprehensive and unlimited consultation under the Occupational Safety and Health Consultation, Education and Training program administered by the Secretary of Human Resources.

Successful participation is defined in the bill as:

1. undergoing a safety and health hazard survey of the workplace, including evaluation of the employer's safety and health program;
2. correcting identified hazards within a reasonable time;
3. establishing and implementing an effective workplace safety program;
4. reducing by one-third or more the employer's lost work day rate if that rate is above the national average for the employer's industry, or maintaining a rate below the national average; and
5. for renewal, continuing to reduce the employer's lost work day rate by annual increments of one-third until such rate is at or below the average national rate for the industry or maintaining such rate below such average national rate.

The premium rate reduction is to be an appropriate reduction in accordance with a rate filing which is required by the section to be made with the Commissioner of Insurance and which is to provide for appropriate reduction in premium charges for insured employers who successfully participate in the program.

The program under this section is modeled after the "SHARP" program that was implemented in Oklahoma pursuant to a 1988 Oklahoma enactment.

Section 20 – Director of Workers Compensation, Term of Office. The amendment provides for the Director's term of office to end with the current term of the person serving as Governor when the Director is appointed.

Section 21 – Access to Data of the Department of Revenue. This is a conforming amendment which is technical in nature to allow access to income tax reports and returns for the purposes of data collection, as provided in Section 16.

Section 22 – Repealer.

Section 23 – Effective Date; Statute Book.

We hope this information is useful to you. If we may be of further assistance, please let us know.

Jerry Ann Donaldson
Principal Analyst
Kansas Legislative Research Department

Jim Wilson
Senior Assistant Revisor
Revisor of Statutes Office

92-1901/JAD