

Approved February 12, 1992

Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business *Joint Meeting with*

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

1:30 ~~am~~/p.m. on January 27, 1992 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Dr. Peter Barth, NCSL Consultant
John Lewis, NCSL Consultant
Jerry Donaldson, Legislative Research Department

Senator Alicia Salisbury called the Joint meeting of the Senate Labor, Industry and Small Business, Senate Financial Institutions and Insurance, House Labor and Industry and the House Insurance committees to order. She announced the meeting was called for the purpose of gaining a national perspective on Workers Compensation and examining problems in Kansas. She stated several concerned groups in Kansas had convened task forces to address escalating costs in the Kansas system. The National Conference of State Legislatures also created a task force on workers compensation of which she is the Chairman and Representative Larry Turnquist, Chairman of the House Insurance Committee, is also a member. The NCSL additionally created a Blue Ribbon Advisory Panel which is composed of major stakeholders of the workers compensation system. The NCSL contracted with two consultants to assist the advisory panel and Legislators in developing some consensus reports and positions on the workers compensation system.

Senator Salisbury introduced the consultants Dr. Peter Barth and John Lewis. Dr. Peter Barth was the Executive Director of the National Commission on Workmans Compensation in 1972. He is currently a professor of Economics and the former head of the Department, at the University of Connecticut. John Lewis served in 1972 as Chief Legal Counsel for the National Commission on Workmans Compensation. He is a former trial lawyer and was an assistant to Arthur Larson who wrote the premier treatise on Workers Compensation. Mr. Lewis currently serves as a consultant to governments in several states.

Dr. Peter Barth presented a historical overview of Workers Compensation. Workers Compensation began in the United States in 1911. Between 1911 and 1920 almost all of the states enacted workers compensation laws. It was viewed by both labor and employer groups as a significant reform. The previous tort system was viewed as no longer doing the job it was intended to do. Until 1970 Workers Compensation was an obscure, murky system. In 1970 the federal government passed the Occupational Safety and Health Act. With the passage of OSHA the federal government decided to look at the states' workers compensation laws. The National Commission on Workmans Compensation reported that the states' workers compensation systems were inadequate, inequitable and inefficient. The Commission made 84 recommendations for state workers compensation systems. The states made dramatic changes in their systems between 1972 and 1980 and costs rose dramatically. During the period 1980 to 1983 employer groups influenced state governments to curb the costs of workers compensation and costs began to decline. Since that time costs have begun to grow rapidly in most states. He stated the worker compensation system goals should be to provide adequate benefits, broad coverage, medical and rehabilitation services, a safe and healthy

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workplace and an effective administration. He attributed the rising cost of workers compensation to health care costs, litigation and payroll taxes.

Dr. Barth listed five areas on which the Blue Ribbon Advisory Panel agreed to focus. (1) administration. (2) medical care and medical costs (3) permanent partial disability (4) work place health and safety and (5) insurance economics.

John Lewis informed the Joint Committee the Blue Ribbon Advisory Panel listed the important administrative functions as (1) data collection (2) education (3) well written, concise law (4) penalties that are enforced.

Dr. Barth stated impairment based system, wage loss approach and wage loss capacity are three fundamental approaches used to compensate people with permanent partial disabilities. Kansas uses both functional impairment and wage earning capacity, a hybrid approach.

General injuries have two techniques for compensating. Kansas takes whichever is the highest, either functional impairment or the disability based on what the impact will be in the future in the labor market. The class of injury, which is loss of wage earning capacity, is where the bulk of Kansas's problems are, and causes most of the litigation.

The general consensus of the Blue Ribbon Panel reflects a preference for scheduled injuries, namely to move toward an impairment based method of compensating workers, and in some cases, with serious economic loss, supplemental income awards when the impairment based benefits have expired.

Jerry Donaldson, Legislative Research Department, reviewed the workers compensation holdover bills, see Attachment I.

The Committee requested Mr. Lewis express to the Committee his views of the holdover bills.

HB 2459 - He said a single employer could not be a group health insurer. He stated the IRS had already dealt with that issue.

HB 2154 - He stated Kansas is one of the few states that still has a cap on permanent total disability benefits. New Mexico took the economic permanent total out of the statute. It is dealt with under the permanent partial segment of the statute and those people who had catastrophic injuries would have lifetime benefits.

HB 2156 - This bill would put fault back into the system. He said there has not been much activity in this area. Labor and management have been working on safety programs and education, rather than the penalty approach.

HB 2313 - Premium insurance discounts. He said when you give someone a discount you are increasing the cost to someone else. Financial incentives would not mean much to a small employer.

HB 2196 - Whether the employer or employee has initial choice of health care provider was not considered by the Blue Ribbon Panel to be a significant issue so long as a change could be made quickly in instances when the injured worker is receiving inappropriate treatment. Doctor shopping should be restricted and the system should not award the use of extremists on either side.

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HB 2414 - He would rather see the assigned risk pool carry their own weight instead of forcing other people to bear the assessment.

HB 2523 - There are a few states that are the only providers of workers compensation insurance. There are 17 states that have competitive state funds. Some state funds are terrible and some are excellent. Washington has an exclusive state fund that is excellent. New Mexico's state fund is also very good. He said one philosophical position is people should not make money off of the workers compensation system.

In regard to repetitive use conditions, the bigger problem lies in proper diagnosis and proper treatment. How the injury is compensated is a matter of philosophy and how much money you want to put in the system.

Mr. Lewis recommended Kansas should have some process to monitor how well the system is delivering benefits and identifying and enforcing compliance of those carriers and self insurers that aren't paying benefits the way they should. He also said Kansas needs to make better decisions on how to handle medical issues. He reaffirmed his preference for a function impairment benefits system for all injuries. He suggested some kind of income supplement might be appropriate for those with significant problems economically as a result of the injury, but recommended the use of A.M.A. guidelines in the impairment ratings and the use of Independent Medical Examiners to prevent disputes. He also said to pay the benefits and get out of the system. On vocational rehabilitation, Kansas needs a better defined statute on who to help and more authority given to the workers compensation agency to make those decisions as to how, when and how much. He also recommended they have their own budget. He stated he was not impressed with second injury funds. Kansas's second injury fund is fairly expensive in terms of administrative costs; and unless Kansas is different from other states, it is not accomplishing its intent, that is, to encourage employers to hire workers with previous disabilities. He recommended Kansas not have a second injury fund. He emphasized the importance of a commitment of labor and management. Let collective bargaining do what they want, within limits, with alternative disputes, resolutions, medical delivery and safety.

The joint committee meeting was adjourned at 5:00 p.m.

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Guest list

Richard Watson	Topeka	KTVA
Sam Oliver	TOPEKA	PIAK
Leland Smith	Wichita	WIBH
Don Brown	Wichita	St. Joseph Medical
Tom Lancher	Wichita	St. Jos. Med. Ctr
John M. Ostrowski	Topeka	AFL-CIO
George Welch	Topeka	Self Insurance Trust
Billie Hunt	Topeka	DHR
Jennie Harris	Kansas City	The Woodsmall
Jeff Cox	Kansas City	Woodsmall Co's Co's
George PUCKETT	WICHITA/TOPEKA	KS RESTAURANT & HOSPITY ASN
L M CORNISH	Topeka	Ko Assn P/C Ins Co's
Martha Hodgesmith	Topeka	KS Assoc of Rehabilitation Facility
Michael Baker	KC, Mo	Lumbermans Underwriting
Art Brown	KC Mo	KS CBR Dealers
Keith Roney	KC, Mo.	Lumbermans Underwriting
Kurt Carlson	Topeka	DHR/Work Comp
Bill Schreckle	KCMO	KCPH
Dan Haas	Overland Park	KCPH
Don Callahan	Topeka	KAMMO
Terry Leatherman	Topeka	KCCI
Jacki Summeron	Topeka	Manpower
Sue Schutte	Topeka	NAK
Bob Starburne	Topeka	Legislation
Mary E. ...	Topeka	Ks Motor Carrier Assn
Bob Totten	Topeka	Ks Contractors Association

Pam Somerville	TOPEKA	KS Motor Car Dir.
KENT ERWIN	ST. LOUIS	ROLLING BURDICK HUMB.
Tom Bell	Topeka	Ks. Hosp. Assn.
Rick Liby	Topeka	Gehrt & Robert
Dean Schwanke		ICIOGA
JOE L. CASHRENI	Topeka	NECA
Bill Dempsey	Topeka	Ks. Work Comp. Fund

MEMORANDUM

Kansas Legislative Research Department

Room 545-N – Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

January 27, 1992

To: House and Senate Labor and Industry Committees
and House Insurance Committee

Re: Workers Compensation Holdover Bills

H.B. 2154 would remove the workers compensation benefit cap of \$125,000, thereby, allowing payments indefinitely. The bill has had a hearing, but remains in the House Labor and Industry Committee.

H.B. 2156 would increase workers compensation benefits by 25 percent whenever death of an employee is caused by conduct of an employer who fails to provide designated safety protection for employees. The bill would also allow for the pursuit of civil remedies, in addition to workers compensation benefits when an employer acts in a willful or wanton manner to cause injury or death. The bill has had a hearing and remains in the House Labor and Industry Committee.

H.B. 2157 would allow for unauthorized medical, physical, or vocational rehabilitation evaluations up to \$500. The bill has had a hearing, but remains in the House Labor and Industry Committee.

H.B. 2196 would amend the Workers Compensation Act to allow an injured worker to select, in the first instance, the health care provider to provide medical compensation benefits. If the worker is dissatisfied with the health care provider, the worker can use a health care provider furnished by the employer. The bill has passed out of the House Labor and Industry Committee and is currently in the Senate Labor and Industry Committee.

H.B. 2401 would amend the Workers Compensation Act regarding the Workers Compensation Fund. Contracts for legal services on behalf of the Fund would be subject to negotiated bids. The process would be based on criteria developed by the Commissioner of Insurance, who also would be a member of the Negotiating Committee to Obtain Legal Services. The bill also requires advertising for such legal services before negotiating can begin. The bill passed out of the House Labor and Industry Committee and is in the Senate Labor and Industry Committee.

H.B. 2414 would tighten regulation of group-funded workers compensation pools by subjecting such entities to assessments levied by the workers compensation assigned risk plan, pursuant to K.S.A. 40-2109; by adding language to mandate that the required specific and aggregate excess insurance could be provided only by an insurer authorized to do business in Kansas; by stipulating that proposed (as well as licensed) pools would be subject to the Unfair Trade Practices Act; and by stipulating that persons soliciting business for proposed (as well as existing) pools would

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be required to be licensed pursuant to K.S.A. 40-240 to 40-243. The bill has had a hearing and is currently in the House Insurance Committee.

H.B. 2459 would allow SINGLE employers who have been in business for at least five years and have five or more operating locations within the state to form group-funded workers compensation pools. Under current law, only groups of five or more employers in a trade or professional association in existence for at least five years, who are engaged in the same or similar type of businesses may form the pools. The bill is in the House Insurance Committee.

H.B. 2523 would create a nonprofit state Workers Compensation Liability Insurance Fund as a nonprofit, independent public corporation, for the purpose of insuring employers against liability for personal injuries for which their employees may be entitled to benefits under the Workers Compensation Act. The bill has not had a hearing and remains in the House Labor and Industry Committee.

H.B. 2620 would amend the Workers Compensation Act as follows:

Self Insurers. Under the bill, in order to be eligible to apply for self-insurance, a private company, unless in business for five consecutive years, who purchases an existing self-insuring Kansas firm, plant, or facility may qualify for application if the preexisting business:

1. has been in continuous operation in Kansas for at least ten years;
2. has generated an after-tax profit of at least \$1 million annually for the preceding three years; and
3. has a ratio of debt to equity of not greater than 3.5 to 1.

Repetitive Use Conditions. The bill would remove the disability for repetitive use conditions occurring in opposite upper extremities, known as carpal tunnel syndrome, which occurs in both arms, from the scheduled injury category. Such removal would then allow recovery for such a disability as a general body injury.

Insurance Deductibles. The bill would authorize insurers writing workers compensation to offer optional deductible policies for benefits payable under the Workers Compensation Act. Insurers providing such coverage would be required to pay the entire amount to the person or medical provider entitled to the benefits and seek reimbursement from the insured employer for the applicable deductible amount. Insurers would be authorized to require "adequate security" to provide for reimbursement of paid deductible amounts.

The provisions regarding self insurers and insurance deductibles were passed by the 1991 Legislature in H.B. 2457. The bill remains in the Senate Labor and Industry Committee.

H.B. 2645 would create a Workers Compensation Fund in the State Treasury. The Commissioner of Insurance would be responsible for administering the Fund. The duties of the

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Commissioner are contained in the bill. The bill was passed by the House Committee of the Whole and is now in the Senate Labor and Industry Committee.

H.B. 2753 would make a minor change in the group-funded workers compensation law to change the date for submission by the pools of their certified independent, audited financial statement from "on or before March 31 of each year" to "no later than 90 days after the end of the pool's fiscal year." This change was recommended by the Insurance Commissioner. The bill is in the House Insurance Committee.

S.B. 284 clarifies that principal contractors, when negligent, can be sued for an employee injury or death, in addition to any workers compensation benefits an employee may receive. The bill has not had a hearing and remains in the Senate Labor and Industry Committee.

S.B. 274 would allow the reimbursement of travel expenses incurred in the pursuit of workers compensation benefits. The bill is still alive in the Senate Labor and Industry Committee, although the issue was passed in 1991 H.B. 2457.