

Approved March 19, 1992
Date

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

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

1:30 ~~am~~/p.m. on February 26, 1992 in room 254-E of the Capitol.

All members were present except:

Members present: Senators Daniels, Ehrlich, Feleciano, Martin, Morris, Oleen, Salisbury, Sallee, Strick and Thiessen

Committee staff present:

Jerry Donaldson, Legislative Research Department

Gordon Self, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Representative Michael R. O'Neal

Review of SB 666 - Workers compensation, accidental injuries, defenses, limits, exclusions procedures, impairment and administrative appeal panels

Representative Michael R. O'Neal reviewed SB 666, see Attachment 1. He explained SB 666 is a comprehensive revision of the Kansas Workers Compensation Act. The need for this bill follows the latest round of workers compensation rate increases, and is in anticipation of another requested rate increase in excess of 30% that will be announced by the National Council on Compensation Insurance. He also reported NCCI is in the process of pricing SB 666 to determine its potential impact on rates.

Representative O'Neal informed the Committee the 1987 Workers Compensation reform bill was created, among other reasons, by liberal court interpretations of the Kansas Act which was reflected in the spiraling costs of obtaining workers compensation insurance. However, cost experience following enactment of 1987 reforms has been disappointing because of the appellate court interpretation of work disability in the Hughes case, the increase in medical expenses generally, and much greater than anticipated costs of vocational rehabilitation. SB 666 contains 35 provisions which make procedural and technical changes to address these three problem areas which are driving up costs in Kansas. Representative O'Neal stated SB 666 does not enact across the board reductions in benefits to injured workers, but addresses the affordability of workers compensation by focusing on particular types of claims. He indicated that huge premium increases and employee layoffs have gone hand in hand in jurisdictions where workers compensation crisis exists; and if we are going to keep the workers compensation system afloat in Kansas, it is important that we pass a comprehensive package of reforms this year that will accomplish significant premium reductions.

A Summary of Workers Comp. Reform Bill (SB 666) was distributed to the Committee,

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

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HOUSE OF REPRESENTATIVES

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S.B. 666 Workers' Compensation Reform Act

February 26, 1992

Senate Labor, Industry & Small Business Committee

Chairman Salisbury, and members of the Committee:

I appreciate very much the opportunity to appear before you today on S.B. 666, a comprehensive revision of the Kansas Workers' Compensation Act. As a former member of the House Labor & Industry 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 wish I didn't have to be here today discussing another reform bill. It is certainly not out of a desire to arbitrarily reduce benefits that this package is being proposed. 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

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S.L. & S.B.
2/26/92

Attachment 1-1

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.

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%, representing a \$70 million increase in premiums. 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. Premiums have doubled in the past seven years. 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. As you know, we are fortunate to have Sen. Alicia Salsbury chairing a blue-ribbon task force on workers' compensation through the National Council of State Legislatures. I had the pleasure of hearing 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.

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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.

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 significant premium reduction. This package, if passed, will accomplish that goal. 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. Huge premium increases and employee layoffs have gone hand-in-hand in jurisdictions where the crisis exists.

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. Nobody wants 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.

JLGB
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Attachment 1-3

SUMMARY OF WORKERS' COMP. REFORM BILL (S.B. 666)

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.
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.

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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. Creates Disability Impairment panels to resolve disputes re: disability
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.

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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. Creates Workers' Comp. Appeal Board to hear all appeals, streamlining and making more consistent the current appeals process.

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Attachment 1-6