

Approved: February 12, 1999
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 11, 1999 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Jerry Donaldson, Legislative Research Department
Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Philip S. Harness, Director, Workers Compensation Division
Roger Aeschliman, Acting Director, Department of Human Resources
Bill Wempe, Office of the Insurance Commissioner

Others attending: See attached list

SB 219 - Workers Compensation administrative changes

The Committee commenced its deliberations on **SB 219**.

The Committee considered additional amendments submitted by the Division of Workers' Compensation in response to the Legislative Post Audit Report.

Fraud and Abuse Unit of the Division of Workers' Compensation. The amendment to Section KSA 44-5,122 would allow the assistant attorney general in the Division to prosecute a criminal case rather than forwarding a case to a county prosecutor.

Senator Brownlee moved, seconded by Senator Umbarger, that SB 219 be amended to include KSA 44-5,122, (a) by striking the word "shall" and inserting the word "may". The Committee further conceptually endorsed a provision that if the county attorney returned a case, the assistant attorney general be directed to prosecute such case if it is believed the facts support prosecution. The voice vote was in favor of the motion. (Attachment 1)

Fraud and Abuse Unit: the amendment to Section KSA 44-5,125, lengthens the statute of limitations to five years in which a claim for benefits under the workers compensation system can be filed.

Senator Steffes moved, seconded by Senator Brownlee, that SB 219 be amended to include KSA 44-5,125 and amending said section to add a new subsection (h) with language as follows: (h) Prosecution for any crime under this section must be commenced within five years after its discovery, which shall not include any time period set forth in K.S.A. 1998 Supp. 21-3106(8) and amendments thereto." The voice vote was in favor of the motion. (Attachment 2)

The Committee considered a proposed amendment to KSA 44-557a, which would penalize insurance companies for noncompliance with the current data reporting law. Mr. Wempe, Insurance Department stated the Insurance Commissioner has summary order authority and the authority to penalize insurance companies who do not comply with reporting requirements. The Division of Workers' Compensation does not have the authority to penalize self-insured employers, group-funded workers compensation pools, insurance carriers or vocational rehabilitation providers who fail to supply statistical information required by this section.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE, Room 123-S of the Statehouse, at 8:00 a.m. on February 11.

Senator Barone moved, seconded by Senator Steffes, that SB 219 be amended to include KSA 44-557a, and amending said section by adding a new subsection (e) with language as follows: “(e) If a self-insured employer, group-funded workers compensation pool, insurance carrier or vocational rehabilitation provider fails to supply the information required by this section, the director shall issue and serve upon such person a summary order or statement of the charges with respect thereto and a hearing shall be conducted thereon in accordance with the provisions of the Kansas administrative procedure act. An administrative penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report of other information is not provided to the director shall be imposed”. A voice vote was in favor of the motion. (Attachment 3)

The Committee considered two proposed amendments relating to accident prevention programs to be provided by insurers. One proposal would be a mandatory requirement ; the second would be discretionary. The Committee determined the “mandatory” requirement is expensive and would not be the best use of personnel. The Committee determined the concept of random sampling and employer complaint based amendment contained in the “discretionary” document to be preferable and a step forward in obtaining the information deemed necessary by the Legislative Post Audit Report..

Senator Brownlee moved, seconded by Senator Feleciano, that SB 219 be amended to include KSA 44-5,104, and amending said section in subsection (a) following the word “maintain and” by striking the words “may offer and insert the word “shall”, following the word “programs,” insert the following: “upon request of the covered employer, with or without an additional fee,”, strike the word “business” and insert “industrial hygiene”; following the word “professions” add the following: “who has attained the designation from the board of certified safety professionals”; following the word “hygienist” under “(4), add the following “who has attained the designation from the American Board of Industrial Hygiene”; striking 10 and inserting “5”; subsection (b), following the word “Kansas”, insert the following: “including but not limited to, random inspections and those based upon employer complaints. Documented employer complaints shall be appropriately investigated and the results reported to the insurance commissioners office. The secretary shall not be required by this section to inspect each insurance company or group-funded self-insurance plan”; (d)(2) by adding the word “names”; subsection (e) at the end of the subsection by inserting the following language: “The secretary shall send the information and results obtained from subsection (d) to the insurance commissioner who shall widely disseminate information about the program”; at the beginning of subsection (f) insert “Within appropriations therefor, Ft”; and further in subsection (f) strike the words “and at the locations of and insert the words “and may audit” A voice vote was in favor of the motion. (Attachments 4)

The Chair informed the Committee a final vote on **SB 219** will be taken after reviewing the revisors drafting of amendments.

Upon motion by Senator Donovan, seconded by Senator Ranson, the Minutes of the February 10, 1999 Meeting were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 12, 1999, in Room 527-S.

44-5,122. Same; acts or practices constituting crimes, procedure; reporting alleged violations; review and investigation. (a) If the director or the assistant attorney general assigned to the division of workers compensation has probable cause to believe a fraudulent or abusive act or practice or any other violation of the workers compensation act is of such significance as to constitute a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of workers compensation which relates to such act, practice or violation shall *may* be forwarded to the prosecuting attorney of the county in which the act or any of the acts were performed which constitute the fraudulent or abusive act or practice or other violation.

(b) Any person who believes a violation of the workers compensation act has been or is being committed may notify the division of workers compensation of the department of human resources immediately after discovery of the alleged violation. The person shall send to the division of workers compensation, in a manner prescribed by the director, the information describing the facts of the alleged violation and such additional information relating to the alleged violation as the director may require. The director shall cause an evaluation of the facts surrounding the alleged violation to be made to determine the extent, if any, to which violations of the workers compensation act exist, which shall include a review and investigation by the assistant attorney general assigned to the division to the extent as may be deemed necessary to determine whether there has been a violation of the workers compensation act.

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Attachment # 1

44-5,125. Workers compensation fraud and other acts or practices constituting crimes; penalties; repayment of certain amounts, interest; cause of action, certain monetary damages.

(a) (1) Any person who obtains or attempts to obtain workers compensation benefits for such person or another, or who denies or attempts to deny the obligation to make any payment of workers compensation benefits by knowingly or intentionally: (A) Making a false or misleading statement, (B) misrepresenting or concealing a material fact, (C) fabricating, altering, concealing or destroying a document; (D) receiving temporary total disability benefits or permanent total disability benefits to which they are not entitled while employed, or (E) conspiring with another person to commit any act described by paragraph (1) of this subsection (a), shall be guilty of:

(i) A class A nonperson misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result of such act or the amount that the person otherwise benefited monetarily as a result of a violation of this subsection (a) is \$500 or less; (ii) a severity level nine, nonperson felony, if such amount is more than \$500 but less than \$25,000;

(iii) a severity level 7, nonperson felony, if the amount is more than \$25,000, but less than \$50,000;

(iv) a severity level 6, nonperson felony if the amount is more than \$50,000, but less than \$100,000; or

(v) a severity level 5, nonperson felony if the amount is more than \$100,000.

(b) Any person who knowingly and intentionally presents a false certificate of insurance that purports that the presenter is insured under the workers compensation act, shall be guilty of a level 8, nonperson felony.

(c) A health care provider under the workers compensation act who knowingly and intentionally submits a charge for health care that was not furnished, shall be guilty of a level 9, nonperson felony.

(d) Any person who obtains or attempts to obtain a more favorable workers compensation insurance premium rate than that to which the person is entitled, who prevents, reduces, avoids or attempts to prevent, reduce or avoid the payment of any compensation under the workers compensation act, or who fails to communicate a settlement offer or similar information to a claimant under the workers compensation act, by, in any such case knowingly or intentionally: (1) Making a false or misleading statement; (2) misrepresenting or concealing a material fact; (3) fabricating, concealing or destroying a document; or (4) conspiring with another person or persons to commit the acts described in clause (1), (2) or (3) of this subsection shall be guilty of a level 9, nonperson felony.

(e) Any person who has received any amount of money as a benefit or other payment under the workers compensation act as a result of a violation of subsection (a) or (c) and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) or (c) shall be liable to repay an amount equal to the amount so received by such person or the amount by which such person has benefited monetarily, with interest thereon. Any such amount, plus any accrued interest thereon, shall bear interest at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment of such amount, plus any accrued interest thereon. The interest shall accrue from the date of overpayment or erroneous payment of any such amount or the date such person benefited monetarily.

(f) Any person aggrieved by a violation of subsection (a), (b), (c) or (d) shall have a cause of action against any other person to recover any amounts of money erroneously paid as benefits or any

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other amounts of money paid under the workers compensation act, and to seek relief for other monetary damages, for which liability has accrued under this section against such other person. Relief under this section is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-5,120 and amendments thereto.

(g) Nothing in this section shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

(h) Prosecution for any crime under this section must be commenced within five years after its discovery, which shall not include any time period set forth in K.S.A. 1998 Supp. 21-3106 (8) and amendments thereto.

44-557a. Compilation and publication of statistics; database of information; submission of data; contracts for actuarial or statistical services. (a) The director shall: (1) Compile and publish statistics to determine the causation of compensable disabilities in the state of Kansas and (2) compile and maintain a database of information on claim characteristics and costs related to open and closed claims, in order to determine the effectiveness of the workers compensation act to provide adequate indemnity, medical and vocational rehabilitation compensation to injured workers and to return injured workers to remunerative employment. The commissioner of insurance shall cooperate with the director and shall make available any information which will assist the director in compiling such information and statistics and may contract with the director and the secretary of the department of health and environment to collect such information as the director deems necessary.

(b) Each self-insured employer, group-funded workers compensation pool, insurance carrier and vocational rehabilitation provider shall submit to the director the disposition of a statistically significant sample of open and closed claims under the act and, in connection with the closing of each claim in which payments were made, the following: (1) The dates, time intervals, amounts and types of weekly disability payments made, (2) the dates and gross amounts of payments made to each type of medical compensation provider, (3) the dates and type of service for which payment was made and the gross amounts paid to each vocational rehabilitation provider, and (4) the dates and types of fees paid as claim costs. Each self-insured employer, group-funded workers compensation pool, insurance carrier, vocational rehabilitation provider, health care provider, or health care facility shall submit medical information, by procedure, charge and zip code of the provider in order to set the maximum medical fee schedule. The director of workers compensation may adopt and promulgate such rules and regulations as the director deems necessary for the purposes of administering and enforcing the provisions of this section.

(c) The director may contract for professional actuarial or statistical services to provide assistance in determining the types of information and the methods of selecting and analyzing information as may be necessary for the director to conduct studies of open and closed claims under the workers compensation act and to enable the director to make valid statistical conclusions as to the distribution of costs of workers compensation benefits.

(d) The director shall obtain such office and computer equipment and employ such additional clerical help as the director deems necessary to gather such information and prepare such statistics.

(e) If a self-insured employer, group-funded workers compensation pool, insurance carrier or vocational rehabilitation provider fails to supply the information required by this section, the director shall issue and serve upon such person a summary order or statement of the charges with respect thereto and a hearing shall be conducted thereon in accordance with the provisions of the Kansas administrative procedure act. An administrative penalty of up to \$500 for each violation or act, along with an additional penalty of up to \$100 for each week thereafter that such report or other information is not provided to the director shall be imposed.

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Attachment # 3

44-5,104. Accident prevention programs; requirements and reports; inspections; duties of secretary of human resources; failure to maintain, penalties. (a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and ~~may offer to~~ shall provide accident prevention programs, *upon request of the covered employer, with or without an additional fee*, as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is (1) a college graduate who has a bachelor's degree in science, ~~business~~ industrial hygiene, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional *who has attained the designation from the board of certified safety professionals*, (4) a certified industrial hygienist *who has attained the designation from the American Board of Industrial Hygiene*, (5) an individual with ~~to~~ 5 years of experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of human resources, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of human resources. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations imposed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

(b) The secretary of human resources may conduct such inspections as the secretary deems necessary to determine the adequacy of the accident prevention services required by subsection (a) for each insurance company and group-funded self-insurance plan providing workers compensation insurance coverage in Kansas, *including but not limited to, random inspections and those based upon employer complaints. The secretary shall not be required by this section to inspect each insurance company or group-funded self-insurance plan.*

(c) A notice that accident prevention services are available to the policyholder from the insurance company shall appear in no less than ten-point boldface type on the front page of each workers compensation insurance policy delivered or issued for delivery in this state.

(d) At least once each year, each insurance company or group-funded self-insurance plan providing workers compensation insurance in Kansas shall submit to the director of workers compensation detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

(1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;

(2) the *names*, number and qualifications of field safety representatives employed;

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(3) the number of site inspections performed;
(4) any accident prevention services made available under a contractual arrangement;
(5) a specification and listing of the premium size of the risks to which accident prevention services were actually provided;

(6) evidence of the effectiveness of and accomplishments in accident prevention; and

(7) any additional information required by the director of workers compensation.

(e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of workers compensation shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125 and amendments thereto. *The secretary shall send the information and results obtained from subsection (d) to the insurance commissioner who shall widely disseminate information about the program.*

(f) *Within appropriations therefor,* The secretary of human resources shall employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other work places ~~and at the locations of~~ *and may audit* the accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

(g) The insurance company or group-funded self-insurance plan, and any agent, servant, or employee thereof, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection or other activity or by a service undertaken or not undertaken by the insurance company or group-funded self-insurance plan for the prevention of accidents in connection with operations of the employer. This immunity shall not affect the liability of the insurance company or group-funded self-insurance plan for compensation or as otherwise provided in this act.