

Approved: 2-19-93

Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:05 a.m. on February 12, 1993, in Room 526-S of the Capitol.

All members were present except: Representative Carmody (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Representative O'Neal
Representative Pauls

Others attending: See attached list

Fiscal notes for HB 2121, HB 2150, and HB 2151 were distributed. (Attachments 1, 2, and 3, respectively)

Representative Webb moved that four bills regarding public employer-employee relations be introduced as committee bills. Representative Lane Seconded. The motion carried.

Hearing on HB 2354 - Workers compensation reform.

Representative O'Neal appeared before the committee to explain HB 2354, a comprehensive workers compensation reform package. Many of the recommendations of the Commissioner's Task Force, Governor's Task Force, and the Interim Committee Report are contained in HB 2354. Many components of HB 3023 of last year are in this bill; however, this is a bigger package because the crisis has escalated since last year. (Attachments 4 and 5)

Hearing on HB 2375 - Workers compensation reform, medical benefits, vocational rehabilitation, prior injury, permanent partial general disability, fraud, attorney fees, procedures.

Representative Pauls addressed the committee to explain HB 2375 concerning workers compensation reform. This bill is the result of a Democrat Task Force of 15 to 20 members that met on a regular basis. She suggested changing Sections 10, 11, 12, and 13 of her testimony to Sections 11, 12, 13, and 14 so they would correspond to the section numbers in the bill for easier reference. (Attachment 6).

Chairman Heinemann informed the committee we would be meeting at 8:30 a.m. on Monday and, possibly, Tuesday of next week.

The meeting adjourned at 9:55 a.m. The next meeting is scheduled for 8:30 a.m. February 15, 1993.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY

DATE: 2-12-93

[illegible]

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

February 5, 1993

The Honorable David Heinemann, Chairperson
Committee on Labor and Industry
Statehouse, Room 112-S
Topeka, Kansas 66612

Dear Representative Heinemann:

SUBJECT: Fiscal Note for HB 2121 by House Committee on Labor
and Industry

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2121 is respectfully submitted to your committee.

HB 2121 would require the Division of Workers Compensation to work jointly with the Insurance Department to create and distribute informational materials that inform employers and employees of their rights and responsibilities under the Workers Compensation Act. The bill would require insurance companies and authorized group-funded workers compensation pools to copy the informational packet and distribute it to employers at the time a policy or contract is written or renewed. The Division of Workers Compensation would be responsible for providing copies to self-insured employers at the time a permit is issued or renewed. Employers would then be responsible for providing a copy of the information to an injured employee or legal beneficiary immediately upon notice of an employment related injury or death.

The bill also directs insurance carriers, self-insurers, health and vocational rehabilitation providers and other groups involved with the workers compensation system to cooperate with the Commissioner of Insurance and the Director of Workers Compensation in the development and coordination of informational materials and a continuing education process within the state. This act would take effect after its publication in the statute book. Within 180 days of the effective date of this act, the Director of Workers

House Labor and Industry
Attachment 1
2-12-93

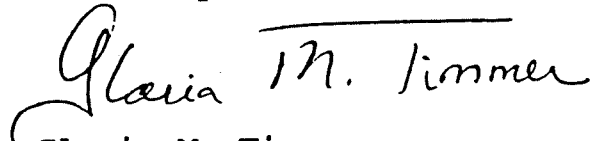
Compensation must submit the information required from that office to the Commissioner of Insurance.

For FY 1994, HB 2121 would increase expenditures from special revenue sources by \$123,344 above the amounts included in the FY 1994 Governor's Budget Report, as amended. This act would have no effect on State General Fund expenditures.

The Department of Human Resources reports that HB 2121 would result in \$98,729 in additional expenditures from the Workmen's Compensation Fee Fund for FY 1994. Because the Division of Workers Compensation would be responsible for providing sufficient quantities of the informational packets to self-insured employers, the Department anticipates the need for the following: (1) 50,000 packets printed at a cost of \$75,000; (2) \$1,380 to ship copies in bulk to employers; and (3) \$22,349 for the addition of 1.0 Office Assistant I and associated other operating expenditures, including \$2,500 in one-time capital outlay costs. The Department of Human Resources reports that in the absence of an approved Medical Fee Schedule, the need for an additional paraprofessional position to help coordinate the filling of informational requests would not be as great. However, enactment of HB 2121 would place an additional printing and distribution burden within the same time frame that the Division of Workers Compensation would begin distribution of the Medical Fee Schedule.

The Insurance Department states that HB 2121 would result in increased temporary salary expenditures of \$24,615 from the Department's Service Regulation Fund in FY 1994. The Insurance Department anticipates an initial increase in expenditures for 1.0 temporary Policy Examiner Trainee during the development of the informational packet, but afterwards distribution and duplication costs would be borne by the insurance carriers, group-funded workers compensation pools and employers.

Sincerely,



Gloria M. Timmer
Director of the Budget

cc: Sid Snider, Human Resources
Dick Brock, Insurance Department

2121.fn

STATE OF KANSAS



DIVISION OF THE BUDGET

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Joan Finney
Governor

Gloria M. Timmer
Director

February 10, 1993

The Honorable David Heinemann, Chairperson
Committee on Labor and Industry
Statehouse, Room 112-S
Topeka, Kansas 66612

Dear Representative Heinemann:

SUBJECT: Fiscal Note for HB 2150 by House Committee on Labor
and Industry

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2150 is respectfully submitted to your committee.

HB 2150 would define fraud as it applies to the Workers
Compensation Act and would create a class C misdemeanor for persons
who violate the provisions of the bill. Any person who has
benefitted monetarily from workers compensation fraud would be
liable to repay the full amount received.

This bill may result in increased State General Fund
expenditures above the amounts included in the FY 1994 Governor's
Budget Report, as amended, but the amount of increase is
indeterminable. The bill would likely increase caseloads of the
district courts; however, the exact fiscal effect is unknown. The
act may also result in repayment of fraudulent claims made against
the Workers Compensation Fund overseen by the Insurance Department,
but the amount of potential savings can not be determined.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer
Director of the Budget

cc: Sid Snider, Department of Human Resources

2150.fn

House Labor and Industry
Attachment 2
2-12-93

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
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Joan Finney
Governor

Gloria M. Timmer
Director

February 10, 1993

The Honorable David Heinemann, Chairperson
Committee on Labor and Industry
Statehouse, Room 112-S
Topeka, Kansas 66612

Dear Representative Heinemann:

SUBJECT: Fiscal Note for HB 2151 by House Committee on Labor
and Industry

In accordance with KSA 75-3715a, the following fiscal note
concerning HB 2151 is respectfully submitted to your committee.

HB 2151 would require the Commissioner of Insurance to approve all rates and rate modifications submitted for the Workers' Compensation Assigned Risk Plan, which by December 31, 1996, would result in an assessment rate of less than 10 percent. The bill also provides that if the reduction in the assessment rate or subsidy does not generate greater acceptance of risks by the voluntary market by reducing the premium volume of the plan to no more than 20 percent of the total workers compensation insured market by December 31, 1997, the minimum assessment rate requirement would no longer apply.

HB 2151, as introduced, would have no net impact on state revenues or expenditures. The bill would reduce the workers compensation insurance rates of those employers who purchase their coverage in the voluntary market and increase the rates of those employers covered through the Assigned Risk Plan. Consequently, the overall amount of premium paid by all employers would remain the same.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer
Director of the Budget

cc: Dick Brock, Insurance Department

House Labor and Industry
Attachment 3
2-12-93

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT

LEGISLATIVE HOTLINE
1-800-432-3924



CHAIRMAN:
JUDICIARY COMMITTEE

MEMBER:
KANSAS JUDICIAL COUNCIL
UNIFORM LAW COMMISSION
TRAVEL & TOURISM COMMISSION
NATIONAL CONFERENCE OF STATE
LEGISLATURES CRIMINAL JUSTICE
COMMITTEE

H.B. 2354
HOUSE LABOR & INDUSTRY COMMITTEE
FEB. 12, 1993

Chairman Heinemann and members of the House Labor & Industry Committee. I am pleased to appear before this committee to provide a summary of H.B. 2354, a comprehensive Workers' Compensation Reform package.

You are already acutely aware of why we are looking at workers' compensation reform. I testified before this committee last year on five consecutive days on the subject of workers' compensation reform and when the legislature was not successful in passing a reform bill last session I was involved in approximately 30 presentations on the subject before numerous interested groups statewide.

Needless to say, businesses both large and small are depending on us to help relieve them from the oppressive costs of providing workers' compensation benefits. For them, it is not a matter of passing a measure that will provide temporary relief or a reduction in proposed increases in costs. They need and expect a comprehensive reform package that will, over the next few years, result in rate decreases similar to those experienced in other states that have enacted reforms.

TOPEKA ADDRESS
STATE CAPITOL BLDG.
SUITE 426-S
TOPEKA, KS. 66612-1504
913-296-7679

House Labor and Industry
Attachment 4
2-12-93

HUTCHINSON ADDRESS
BOX 2977
HUTCHINSON, KS. 67504
(316) 662-0537

The package this committee recommends must give us the most "bang for the buck". H.B. 2354 represents that package, since it addresses all the various areas where cost drivers have been identified. The attached Summary illustrates a number of the broad based reforms in the bill. These reforms are in the following areas:

- 1. Administration**
- 2. Safety**
- 3. Vocational Rehabilitation**
- 4. Information & Data Collection**
- 5. Disability Determination**
- 6. Attorney Fees**
- 7. Fraud**
- 8. Rate Making**

Reforms in each of these areas is needed to bring the Act back into balance. To remove any of these reforms from the package will mean a reduction in the relief provided. I'll be happy to answer any question the Committee may have, either now or at any time during your consideration of needed reform. I will be providing you with a more detailed analysis of the bill within a few days. Thank you.

Rep. Michael R. O'Neal

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

MICHAEL R. (MIKE) O'NEAL

104TH DISTRICT

LEGISLATIVE HOTLINE
1-800-432-3924



CHAIRMAN:
JUDICIARY COMMITTEE
MEMBER:
KANSAS JUDICIAL COUNCIL
UNIFORM LAW COMMISSION
TRAVEL & TOURISM COMMISSION
NATIONAL CONFERENCE OF STATE
LEGISLATURES CRIMINAL JUSTICE
COMMITTEE

SUMMARY OF WORKERS' COMPENSATION REFORM LEGISLATION

1. Provides for mandatory information and education regarding employer and employee rights under the Act as a way of reducing litigation.
2. Replaces Director's Reviews and District Court appeals with a streamlined appeals procedure utilizing a 5-member Board of Review.
3. Significantly amends current vocational rehabilitation procedures to cap expenditures and target injured workers who will truly benefit from vocational rehabilitation services. Eliminates "mandatory" aspect of vocational rehabilitation.
4. Requires that all insurance carriers and group-funded pools maintain or provide accident prevention services.
5. Where written safety rules are implemented by the employer, no benefits will be payable where the employee willfully violates the safety policy
6. Enables Commissioner of Insurance to establish experience based rates for Workers' Compensation Fund surcharge based on success of employer safety programs.
7. Provides for denial of benefits where drugs and/or alcohol contributed to the accident or injury. Drug and alcohol testing standards are listed.

- 8. Establishes strict criminal and civil penalties for fraud on the part of employees, employers, doctors, attorneys, insurance carriers and vocational rehabilitation vendors. Assistant Attorney General position created within Division of Workers Compensation.**
- 9. Removes veto power of Medical Fee Advisory Panel and makes their recommendations advisory only. Director would have power to implement the medical fee schedule.**
- 10. Creates data collection statute to enable Director and Commissioner of Insurance to require companies to provide sufficient claims data to track various reforms and identify areas needing reform.**
- 10. Directs Commissioner of Insurance to implement rating plan that will have the effect of reducing the assigned risk plan assessment to 10% (from current 24%) by 12-31-96. Provides protection for small employer insureds in the plan who have premiums less than \$1000 and good claim experience.**
- 11. Requires that any attorney information published or broadcast contain a disclosure that employees have the right to benefits under the act whether or not they are represented by an attorney.**
- 12. Eliminates the requirement of knowledge on the part of an employer of an employee's handicap as a prerequisite for impleading the Workers' Compensation Fund, allowing more access to the Fund by small employers.**
- 13. Places all injuries to paired members (hands, feet, arms, etc.) under the schedule and adds 20% to the award.**
- 14. Injuries to two or more scheduled members other than pairs would be computed as separate scheduled injuries.**
- 15. Requires use of American Medical Association Guidelines for the Evaluation of Permanent Impairment with treating physician determining impairment thereunder in all scheduled injury and general bodily injury cases.**

- 16. Limits 10% healing period benefit to true amputations.**
- 17. Provides for Social Security retirement benefit set-off in cases of awards extending past 65th birthday. Terminates vocational rehab benefits at age 65.**
- 18. Establishes procedure whereby Claimant's Advisory office in the Division of Workers' Compensation would compute all scheduled injury awards. If neither employee or employer objects within 30 days, the award would become final. Eliminates need for attorney involvement for either party.**
- 19. Eliminates court-imposed rule that employers pay for an employee's pre-existing conditions in addition to work-related disability. Employers would be responsible only for that disability caused by the work-related accident.**
- 20. Redefines "accidental injury" to make it clear that it refers to a sudden, unexpected occurrence. Specifically eliminates disability due to the natural aging process and stresses to the body due to day-to-day living.**
- 21. Eliminates language in the current law calling for a "liberal" construction of the act by the courts.**
- 22. Grants employers the right to intervene in third-party cases to protect their subrogation rights under the act, and to participate in those proceeding.**
- 23. Increases to \$20,000 the current payroll exemption, below which an employer is not required to carry insurance.**
- 24. Adds a permissible exemption from the mandatory insurance provision for salaried management level executives.**
- 25. Specifically excludes from coverage injuries occurring at recreational, social, or promotional-type events where employee participation is voluntary.**

26. Modifies current "change of physician" procedure to provide that in the event the Director orders a change of treating physician, the employer would have the right to select three physicians from which the employee would pick one.
27. Increases unauthorized medical allowance to \$500 from \$350, but restricts funds to treatment only - not impairment rating exams.
28. Increases burial allowance in death cases from \$3200 to \$5000.
29. Amends permanent total disability statute to provide a medically objective test (no socio-economic factors) and increases maximum to \$200,000.
30. Tightens temporary total disability standard where there is a release with medical restrictions. No TTD will be payable unless the treating physician specifically addresses the employee's inability to perform his or her essential job functions.
31. Clarifies the Permanent Partial Disability standard to reverse the holding in the Hughes case. Standard will be ability to perform work at comparable wages in the open labor market. There will be no work disability award where the employee engages in work for comparable wage, subject to the employee's right to have the award reviewed and modified under current law.
32. Limits the maximum award in a functional impairment only general bodily injury case to \$50,000.
33. Provides for a strict notice of injury requirement. Employee must compensable injury to employer within 10 days of injury or claim is barred. If employee can show specific just cause for delay, period can be extended to no more than 30 days from injury date.
34. Shortens from 1 year to 6 months the amount of time a claimant has file a claim where the employer has failed to file an accident report.

- 35. Requires mandatory settlement conferences before any full hearing on the claim to limit issues and encourage settlements without additional litigation.**
- 36. Provides that an order of temporary total disability may not be entered in a contested claim until the employer has been given the opportunity to present evidence.**
- 37. Decisions at preliminary hearings on temporary total disability will be appealable where compensability is an issue.**
- 38. Attorney fees will be limited to the lesser of 25% of the award, a reasonable fee, or 50% of the amount by which the award exceeds the employer's last offer before attorney involvement.**
- 39. In post-award proceeding where no additional benefits are awarded, no attorney fees would be payable. Where benefits other than compensation are awarded, fees would be paid from the Workers' Compensation Fund - not the employer as under current law.**
- 40. Subjects workers' compensation benefits to lien for child support.**
- 41. Provides for expedited collection of civil penalties in District Court.**
- 42. Creates labor-management advisory council on workers' compensation. Would make recommendations to legislature for periodic changes to the law.**

JANICE L. PAULS
REPRESENTATIVE, DISTRICT 102

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
LABOR AND INDUSTRY
TRANSPORTATION
JOINT SENATE AND HOUSE COMMITTEE ON
ADMINISTRATIVE RULES AND REGULATIONS



TOPEKA

HOUSE OF
REPRESENTATIVES

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HUTCHINSON, KANSAS 67501
(316) 663-8961

HB 2375

February 12, 1993

Testimony Before the
House Labor and Industry Committee

by

Representative Janice L. Pauls
District 102
Hutchinson, Kansas

Section One and Section Two - Fraud

A new misdemeanor is created to cover knowingly false statements which are made by any person (workers, physicians, employers, insurance providers, etc.) to obtain, increase or decrease payment under workers compensation. Additionally a new position in the Attorney General's office is created to prosecute fraud cases in the workers compensation system. This section addresses fraud by:

1. Prosecuting those who do commit fraud;
2. Acting as a deterrent to others, and;
3. Creating a new Assistant Attorney General to help prosecute this new crime.

Section Three - Payroll Threshold

The payroll threshold is increased from \$10,000 to \$20,000 before Workers Compensation coverage is required.

Section Four - Maximum Fees for Health Care Providers

This portion of the bill allows the Advisory Panel to only *advise* the Director of Workers Compensation in setting a medical fee schedule for the treatment of injured workers under workers compensation. The present membership on the Advisory Panel would be increased by adding the Workers Compensation Director, another member representing the chamber and another representing the AFL-CIO. The final make-up of the panel would then consist of: four (4) medical members; two (2) AFL-CIO members; the Workers Compensation Director; the Commissioner of Insurance; two (2) Chamber Representatives; and one (1) member from entities providing rehabilitation services.

*House Labor and Industry
Attachment 6
2-12-93*

This attacks the heart of rising workers compensation insurance costs. Kansas workers compensation medical treatment costs are an average of 50% to 100% more than private medical costs. When the cost drivers of workers compensation are examined, the rising cost of medical care appears as one of the principle factors.

Section Four (12) (c)- Employee Choice of Physician

The injured worker is given the first choice of physician in workers compensation injuries. This avoids creating an immediate adversarial relationship between the employee and the attending physician. By allowing the employee to be treated by his or her own physician the employee will be more satisfied with the treatment given.

Section Five (b) - Prior Injury

Permanent partial disability is reduced by the percentage of functional impairment. This reduction would occur if there was a prior traumatic injury which occurred before employment with this employer and if medical treatment was sought.

Section Six - Work Disability With a Return to Work

Functional Impairment will be based on both competent medical evidence and the current edition of the American Medical Association Guidelines for Evaluation of Physical Impairment if the impairment is covered by those guidelines. There is a presumption of no work disability if the employer is engaging in any work which is not "make work". If the employer desires to preserve the right to claim work disability there shall be no hearing or lump sum settlement for six months following the employees return to work. The employee who refuses work with an employer would be unable to claim work disability unless certain factors are shown.

Section Seven - Vocational Rehabilitation

No vocational rehabilitation provider could be used by an employer if the employer's insurance company had a substantial interest in that vocational rehabilitation company. In House Bill 2375, the Vocational Rehabilitation Administrator will make referrals for two types of rehabilitation services. One is for job placement, the second referral is for an assessment for a vocational rehabilitative plan. The job placement referral is made if there is sufficient medical improvement for the employee to gain employment and the employee is unable to return to work for the former employer. This program of job placement can last no longer than 45 days. The referral for an assessment for a vocational rehabilitation plan occurs only after an adjudication of the extent of a scheduled impairment or work disability. Plans are not approved by the Vocational Rehabilitation Administrator unless: (1) the employer will be returned to work and receive at least 85% of the employee's prior wages, or (2) or if the employee cannot be returned to work at 85% of prior wages, the employee would receive substantially more than the employee would have received following the injury.

Section Eight (b) - Child Support Assignment

Child Support will be an exception to the nonassignability of workers compensation benefits. The assignment could be made voluntarily by the worker, or ordered by the district court which issued the original order for child support, but HB 2375 assignment does not include spousal maintenance.

Section Nine (d) - Pretrial Conferences

Pretrial conferences are required as a way of avoiding unnecessary continuances of hearings due to the failure to complete settlement negotiations.

Section Ten (e) - Attorney Fees

In addition to the present limitation of 25% of total compensation recovered, an attorney for an injured worker will only receive attorney fees in the amount of the lesser of: (1) a reasonable amount or (2) a fee equal to 25% of the amount of a written offer for settlement conveyed to the claimant prior to the time an attorney is retained.

Section Eleven - Data Collection

House Bill 2375 gives the ability to the Director of Workers Compensation to gather data to evaluate the Workers Compensation System, in order to address and assess the needs of the program. If this provision had been passed last year, the Kansas Legislature would have a clearer picture of the problems facing Kansas workers and business alike.

Section Twelve - Workers Compensation Deductible

Any insurer issuing workers compensation insurance in the state will be required to offer a deductible. Under current law the insurer may offer a deductible.

Section Thirteen - Second Injury Fund

The Second Injury Fund coverage will be increased to basically cover all pre-existing conditions. The liability of the fund would be established by a process in which the Commissioner of Insurance reaches an agreement with the employer seeking to be relieved of liability as to the proportion of the claim to be paid by the workers compensation fund. This will greatly reduce costs of attorney fees in case litigation as well as streamlining procedures.