

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 8, 1993 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Jr., Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

Staff briefing on SB 215: Workers compensation reform

Jim Wilson, Revisor of Statutes, reviewed the provisions of **SB 215** for the Committee. He reviewed the following:

1. Pre-existing conditions: provides compensation for pre-existing injuries to the point they are aggravated by current employment, but eliminates practice of awarding benefits for injuries that existed prior to current employment and not caused by current employment.
2. Amends work disability definition to clarify intent of 1987 legislative act prior to court interpretation (Hughes). Work disability does not exist if the employee returns to work for comparable wages.
3. Prohibits a claimant from accumulating more than 100% permanent partial disability in a lifetime. However, once limit is reached, claimant may continue receiving necessary medical.
4. Establishes a medically objective definition of permanent total disability (only impairment of function to the body), and ends practice of considering sociological, educational or economic factors as obstacles to employee's ability to obtain employment. (PTD has been inappropriately awarded for as little as 25% permanent impairment of function.) Increases permanent total award from \$125,000 to \$200,000.
5. Requires use of AMA guidelines for the evaluation of permanent impairment of function for the evaluation of physical impairment.
6. Provides a cap on "white collar" recoveries where there has been no wage loss at one-half current limit for permanent partial disability.
7. Restricts use of unauthorized medical allowance to treatment only, but increases allowance from \$350 to \$500.
8. Reduces work disability benefits by the amount of retirement benefits a claimant receives, but continues to award functional impairment benefits as a benefit floor.
9. Makes vocational rehabilitation discretionary rather than mandatory and delays the trigger until after the claimant has reached maximum medical improvement and the employer has determined whether he can reasonably accommodate the employee's limitations. Terminates vocational rehabilitation after age 65. Disallows attorneys' fees on vocational rehabilitation.
10. Clarifies definition of accident to disallow compensation for disabilities developed over time and are a result of the natural aging process or the stresses of day-to-day living.
11. Strengthens the current requirement that accidental injuries on the job be reported within 10 days. Compensable by requiring the claimant to show that the claimant's failure to file within 10 days was

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due to just cause which may qualify the claimant for up to 60 days to give notice of a work place accident

12. Attorney fees: prohibits fees on vocational benefits, just as in medical expenses. Limits attorney fees to 25% of the amount of compensation which is in excess of the compensation offered by the employer prior to the attorney's entry, i.e. limits attorney fees if the employer had previously made a written offer of settlement to the employee.
13. Fraud: for any party knowingly or intentionally making a false statement; misrepresenting or concealing material facts; fabricating and altering, concealing or destroying a document - Class C non-person misdemeanor creates a crime for conspiracy to commit fraud: level 9 non-person felony (Class
14. Medical fee schedule: gives full authority to Director; removes requirement for advisory panel approval.
15. Allows employer to present evidence as to the compensability of the claim and allows greater review by the appeals panel of additional jurisdictional issues.
16. Precludes recovery by employees who knowingly and willfully do not follow an employer's written policy relating to safety. This only pertains to written policies of which the employer must show that the employee had actual knowledge; does not pertain to oral instructions or written instructions of which the employee had no knowledge.
17. Safety: The Insurance Commissioner's Task Force recommendation on Accident Prevention Services states that insurance companies and group funded insurance plans must maintain and provide accident prevention. The Secretary of Human Resources may conduct inspections. Insurance company plans must be submitted annually to Secretary.
18. Prohibits recovery by claimants whose use or consumption of alcohol or drugs contributed to the injury. There is a conclusive presumption of impairment if there is an alcohol concentration of .08 or more.
19. Allows a principal contractor who may be responsible under the Workers Compensation Act for the employees of a subcontractor to seek indemnity from the subcontractor under the Act. This should cut down on litigation. Currently, disputes must be resolved in an action separate and apart from the Workers Compensation Act.
20. Allows employer to participate in a 3rd Party action against an individual responsible for the workers compensation injury by giving the employer legal standing in the 3rd Party action. Would clarify current law where the employer's ability to participate in 3rd Party action has been a source of litigation. Also clarifies current law to allow an employer lien to apply to recoveries for loss of services to a spouse.
21. Clarifies that social and/or recreational injuries where there is no duty or instruction by the employer that the employee attend are not compensable.
22. Procedure for change of physician...allows the employer to submit 3 names of doctors to the Director from which the claimant may select the authorized health care provider.
23. Deletes presumption that a full-time hourly employee should have their disability calculated at a 40-hour week if in fact the work week is less than 40 hours.
24. Clarifies that the healing period for an injury for which additional compensation is available is only awarded in cases of amputation.
25. Requires that prior to an award of temporary total disability, the employees ability to perform the actual job duties with the employer be considered. Employee whose doctor considers him able to perform job duties with accommodation would not be entitled to TTD.
26. Sec. 23 defines injuries to arms and shoulders as scheduled injuries, eliminating constitutional problem with carpal tunnel and eliminating work disability in such cases.
27. Sec. 14 establishes an Ombudsman and Benefit Review Conference to assist claimants. Purpose is to provide non-litigious opportunity for dispute mediation. If party fails to attend without good cause, forfeits any subsequent administrative right to present evidence and arguments.

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28. Establishes a five member Administrative Appeals Board to replace appeals to Director and District Court. Purpose to streamline and make more consistent the current appeals process. Appeals will be de novo on the record so that the panel will weigh the facts in the record (just as the District Court currently does) and will also review on issues of law.
29. Advisory Panel: 10 members, 5 each appointed by the KCCI and the AFL-CIO. The Director of Workers Compensation and a representative of the Department of Insurance are non-voting members. Unanimous votes are required; and any caucus of labor or management is not subject to open meetings.
30. Provides for garnishment of disability benefits for child support and spouse maintenance on a weekly basis not to exceed 25% of workers gross compensation.
31. Data Collection prescribed by Director up to 10 open and 10 closed claims monthly.
32. Sec. 15 (e) would require the state insurance commissioner to approve workers' compensation insurance rates and rate modifications which would reduce the assessment to offset losses by the assigned risk plan to less than 10% of insurance premiums by December 31, 1996. Insurance Commissioner's Task Force recommendation.
33. Informational materials pertaining to employers and employees rights and responsibilities: Insurance Commissioner's Task Force recommendation.
34. Amends death benefits to provide that non-resident alien dependents of deceased worker draw full compensation rather than \$750 presently allowed.

Senator Salisbury appointed Senator Harris, Chairman, and Senators Salisbury, Kerr, Reynolds, Downey and Hensley as a subcommittee to study **SB 215** and other workers compensation reform legislation.

The Committee meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for February 9, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/8/93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<i>Bob Totten</i>	<i>Topeka</i>	<i>Ks Contractors Assoc</i>
Jim Allen	Topeka	PRM
Bill Curtis	Topeka	Ks Assoc. of School Bds
FRANCES KASTNER	"	Ks Food Dealers Assn
Mr George Gomez	"	Ks Ind. Man. Res.
Bill Morrissey	"	DHR/Work Comp
GEORGE WELCH	"	DYA-Self Ins.
Bill Wempe	"	Ks. Ins. Dept
Rolin Lockman	"	Ks. Gov. Consulting
RICHARD THOMAS	"	DHR/WORK COMP
Cameron Brewer	"	KTZA
Hal Hudson	Topeka	NFIB/Kansas
Roger Wendt	"	Ks Gov Consulting
BRAD SMOOT	"	AIA
LARRY MAGILL	"	PIIAK
ALBY SLAUGHTER	"	Ks. Medical Society
Dick Souter	"	Oxford Health Care
JANET STUBBS	"	NBA of Ks.
TOM WHITAKER	"	Ks Motor Carriers Assn
Lisa Unruh	Topeka	DOB
Joe Furganic	Topeka	KCA
Art Brown		Ks. Car Dealers Assn.
L. Boggan	Top	Sen. Karrs Office
ALAN COBB	WICHITA	Ks Assoc. For Small Business
Mark Baragliana	Topeka	KDCA
Jenny Shelton	Topeka	Professorial Club