

Approved: 2/26/93
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 22, 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
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: R. J. Breidenthal, Jr., Bonner Springs
Murlene Priest, Auditor, Legislative Division of Post Audit

Others attending: See attached list

Confirmation hearing:

R. J. Breidenthal, Jr., Kansas Technology Enterprise Corporation Board of Directors, (KTEC), term expires April 13, 1995, testified his qualifications to serve on the KTEC Board of Directors, include more than twenty years in the financial industry, specifically banking. He stated he is currently responsible for the investment portfolios and asset/liability management of approximately \$1 billion of bank assets/liabilities for banks located in Kansas City, Lawrence and Topeka, see Attachment 1. In answer to Committee questions, Mr. Breidenthal stated his banking and financial experience would be helpful with venture capital proposals.

Senator Burke moved and Senator Ranson seconded to approve the minutes of January 27, 28 and 29, and February 10, 11 and 15. The motion passed.

Performance Audit Report:

Murlene Priest, Auditor, Legislative Division of Post Audit, reviewed the performance audit report dated February 1993, on selected issues related to workers compensation. She stated Kansas has had premium rate increases totaling about 65 percent for 1986 through January 1992, which is about the same level as premium adjustments nationally and less than adjustments made in 25 of the 45 comparison states. Kansas has had premium rate increases twice since January 1992. She said the level of benefits in a state do not appear to drive the premium costs in a state. States with lower premiums than Kansas should have lower benefits than Kansas, but generally this is not the case. Industry officials suggested attorney involvement, insurance coverage availability, assigned risk policies and the number and severity of accidents in the state have a much larger impact on premiums than just the benefit level within the state. Insurance company representatives, lawyers, and administrative law judges attribute the major increases in premiums to vocational rehabilitation and a bad definition of work-disability. There are five problem areas in Kansas: length of litigation, medical costs, vocational rehabilitation, fraud and workplace safety, see Attachment 2.

Legislative Post Audit made the following observations at the conclusion of the report:

1. Tinkering with the basic benefit levels will not control Workers Compensation Costs in Kansas.
2. Vocational Rehabilitation, on the other hand, is not a basic benefit and many people believe it is unnecessary and not cost-effective, nor does it get people back to work.
3. There does not appear to be a cause effect relationship between the level of benefits offered by a state and the amount of premiums in the state.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 22, 1993.

4. Some costs, like medical care, appear to be growing at a phenomenal rate and should be the focus of your attention if you want to attempt to control a cost area.
5. Nothing will truly control workers compensation costs, unless you start at the root of the problem--workplace safety. This is the only area where you can actually reduce claims and this translates into lower costs and eventually lower premiums.
6. There are no quick fixes here, and you lack the basic information system to assess the cost-benefits of any changes you do manage to make.

In response to questions, Ms. Priest replied improving workplace safety is the only thing that will stop a workers compensation claim. The medical fee schedule will probably not have a major impact on costs, unless utilization is controlled. A number of bills introduced this session address various issues discussed in the report, and **SB 215** would appear to address recommendations in the performance audit. However, Ms. Priest clarified that Post Audit staff takes no position on individual legislation.

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

The next meeting is scheduled for February 23, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 2/22/92

[illegible]

SENATE COMMERCE COMMITTEE

ALICIA SALISBURY, CHMN.

Senator Salisbury, Members of the Committee:

My name is R. J. Breidenthal, Jr. I am 45 years old, have lived in the State of Kansas all my life and attended Kansas schools -- graduating with a degree in Business from the University of Kansas. I have been nominated to serve as a member of the Kansas Technology Enterprise Corporation Board of Directors.

My qualifications to serve on this Board come from my 20 plus years in the financial industry -- specifically banking. In those 20 plus years, I have managed the Investment Division of a large Kansas bank, managed the Correspondent Division of a bank dealing with over 300 small Kansas banks on a day-to-day basis and have been a CEO and owner of Kansas banks. I am currently responsible for the Investment Portfolios and Asset/Liability Management of approximately \$1 billion of bank assets/liabilities for banks located in Kansas City, Lawrence and Topeka. I believe this type of background would be of help to the KTEC, especially concerning any investment and/or financial issues.

I would be happy to answer any questions.

Thank you.

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PRESENTATION:

REVIEWING SELECTED ISSUES RELATED TO WORKERS' COMPENSATION

TO: Legislative Post Audit Committee
Chairman: James Lowther
February 16, 1993

House Labor and Industry Committee
Chairman: David Heinemann
February 17, 1993

BY: Murlene Priest
Legislative Division of Post Audit

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Thank you Chairman, members of the Committee.

In this audit we were asked to answer the following questions:

1. How do Kansas' workers' compensation benefits and premiums compare with other states?
2. Have changes in federal or State law over the years contributed to the rising cost of premiums?
3. What cost-containment measures have other states enacted to help control the rising costs of workers' compensation insurance?
4. What types of management information systems have other states implemented to help identify and control workers' compensation costs?

Before I go into the answers to these questions, there are several important points about workers' compensation that need to be considered. The Kansas Legislature established the Workers' Compensation Act in 1911. Although the Act has been changed many times during the past 82 years, the basic intent of the Act is unchanged--it was and still is supposed to be a no-fault insurance plan for injured workers. The employee is supposed to receive prompt medical treatment and modest compensation for injuries without having to go through costly and time-consuming litigation. Today, nearly all employers in Kansas are required to provide some form of standardized workers' compensation coverage to their employees. The majority of workers' compensation insurance in Kansas is written by insurance companies which are regulated by the Kansas Insurance Department. Although the Department of Human Resources' Division of Workers' Compensation does collect information on the number of accidents in the State, the Division collects very little usable information about the number of workers' compensation claims in Kansas. The Division serves as an arbitrator in disputed workers' compensation cases but does not really serve in a management role.

Now to question one. How do Kansas' workers' compensation benefits and premiums compare with other states? Kansas' benefits are about the same as benefits offered in other states and premiums are somewhat less than premiums in other states. In general, our experience with workers' compensation is not greatly different than that of other states.

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Kansas, like all other states, offer some form of medical benefits, disability compensation, and death benefits. Each state defines the benefits available, the amount that will be paid, and how long benefits will be paid for work related injuries in different ways.

Every state pays medical costs related to on-the-job injuries; however, some states have instituted programs or provisions which limit the amount insurers have to pay, limit how long insurers have to pay for work-related injuries, or limit the amount a medical care provider can charge for services. There are 27 states which limit the amount doctors and hospitals can charge for services provided to injured workers. Six other states, Kansas included, are working on implementing similar charge restrictions.

Most of the states we contacted provide two types of disability compensation--scheduled and general. Scheduled disability compensation covers injuries that result in the loss, or loss of use, of a body part like a finger, hand, or foot. General disability compensation covers all other types of disabilities that are not so clearly defined, like back and knee injuries.

Disability compensation is generally paid for a period of weeks or years which is set out in state law and is subject to several restrictions. Many states further limit disability compensation to a set percent of the employee's pre-injury wage as well as a pre-established cap on total weekly compensation. An explanation of how these provisions work is in the bottom paragraph on page 8. Each state has specific provisions for allowing disability compensation. These provisions may include waiting periods, types of covered disabilities, or periods of disability. These types of differences, and the lack of complete information on the amount of disability compensation paid by the various states, made it difficult to develop concrete comparisons. We based our comparisons on the maximum dollar amounts, time periods, and methods of calculating weekly benefits, and found that Kansas' general disability compensation benefits are about the same as other states, or at least near the median. Complete information on general disability provisions in Kansas and other states is in the table on pages 9 and 10, and appendices A through D.

We also found that Kansas allowed slightly longer disability time periods for scheduled injuries than many other states. The table on page 11 compares the number of weeks Kansas allows for various injuries to the median number of weeks offered in other states. Appendix E shows the maximum dollar amounts states allow for the various types of scheduled injuries.

Death benefits in Kansas are very similar to benefits provided in other states. Nearly all

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states we contacted provided spouses with weekly compensation for a period of time--sometimes up to lifetime--and some form of compensation for children of the deceased worker. This compensation was generally about the same as an injured worker would have received under the general disability provisions I just described. Many states also offered a burial allowance.

It was rather difficult to find complete information on the level of premiums paid by Kansas employers and employers in other states. The National Council on Compensation Insurance has the best database of information, but that is generally limited to 38 states which provide information to the Council. Most other organizations that publish premium information use data collected by the Council. We looked at premiums from three different perspectives--if all states had essentially the same type of workforce what would premiums be; how have Kansas' premium rate adjustments compared with other states; and how much have total premiums paid in Kansas increased over the last several years.

Using the approach that attempts to make states comparable by pretending each state has about the same type of workforce resulted in Kansas having premium levels lower than 22 of the 38 states, and lower than the national median. The table on page 13 shows Kansas ranking compared with other states for \$100 in payroll.

Kansas has had premium rate increases totaling about 65 percent for 1986 through January 1992. This is about the same level as premium adjustments nationally, and less than adjustments made in 25 of the 45 comparison states. The table on page 14 shows the percent premium adjustments for 1986 to 1992. Appendix F shows rate adjustments for each state, year by year for the time period.

Finally, the increase in premiums paid by Kansas employers totaled 45 percent for 1985 through 1990, but this increase was less than the percent increase in actual and estimated losses for the entire period.

We found that the level of benefits in a state do not appear to drive the premium costs in a state. We expected states with lower premiums than Kansas should also have lower benefits than Kansas, but generally this is not the case. Insurance industry officials we talked with during this audit suggested other factors like attorney involvement, insurance coverage availability, assigned risk policies, and the number and severity of accidents in the state may have a much larger impact on premiums than just the benefit level within the state.

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To question two: Have changes in federal or state law over the years contributed to the rising cost of premiums? First of all, no federal law really covers workers' compensation in the states. Changes made in Kansas state law have increased benefit maximums, benefits, revised eligibility determinations, and such. These changes most likely did contribute to the cost of workers' compensation in Kansas, but the impact cannot be quantified because Kansas does not have adequate data to assess the cost of workers' compensation before and after these changes. In addition to these changes, the Kansas judicial system has also interpreted the Kansas laws governing workers' compensation.

In general, no state law change has increased the number of employees covered by workers' compensation in Kansas, nor has it directly increased the premiums. The laws which created higher maximum benefits have increased exposure of the program and thus probably increased premiums.

We spoke with a number of individuals active in workers' compensation in Kansas -- insurance company representatives, lawyers, and administrative law judges. All three groups attribute the major increases in premiums to vocational rehabilitation and a bad definition of work-disability.

Vocational rehabilitation was supposed to return injured workers to the labor market and thus reduce or eliminate disability payments. In practice, vocational rehabilitation has increased the cost of workers' compensation claims by as much as \$4,000 to \$6,000 per claim while not returning people to the workforce. Most officials we talked with indicated vocational rehabilitation was often used as a bargaining chip and was causing more litigation to settle claims. An official we contacted from Florida stated, based on her experience, vocational rehabilitation had been the most expensive and least effective way to return people to work.

Also, nearly every group we talked with in Kansas indicated the definition of work disability and the court's interpretation of it has been and will continue to be a problem. In 1987 the Legislature passed an amendment which stated the definition of disability to be both the ability to perform work in the open labor market and to earn comparable wages. The law did not specifically define how this new definition was to be used so the Supreme Court, in 1990, defined the provisions, how to calculate the benefits, and in turn may have increased the average payment

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some individuals with permanent partial disabilities may receive.

In completing our research of this question, we developed two recommendations for you to consider. They are listed on page 26.

Question three: What cost-containment measures have other states enacted to help control the rising cost of workers' compensation insurance? We found that increasing costs are a problem across the country; however we also found that many states have taken positive, sometimes innovative, steps to control costs.

There appear to be five problem areas in Kansas: length of litigation, medical costs, vocational rehabilitation, fraud, and workplace safety.

In the area of litigation, Kansas' system tends to encourage litigation because of the consideration of subjective evidence and inconsistent judicial rulings. The chart on page 29 shows the multiple levels of the workers' compensation process in Kansas. Many officials we talked with indicated at least two of those levels--the director's review and the district court--need to be removed from the process. The table on page 30 shows measures other states have taken to simplify and shorten the hearings process.

Medical costs have increased dramatically over the last several years. Although Kansas has adopted a fee schedule, it is not yet implemented and may be only one piece of the total program for controlling medical costs. Other methods include utilization review, bill review, prior approval of treatment, managed care programs, as well as others. The table on page 33 illustrates some methods other states employ and what they hope to accomplish.

Vocational rehabilitation is an option in many states rather than a mandatory provision. The State Self-Insurance Fund reviewed 28 cases and found only two injured workers went back to work after vocational rehabilitation. Other states used several methods to control these costs, including, using cheaper types of job training, excluding these charges from premium calculations, and making the benefits optional. The table on page 34 explains some of these vocational rehabilitation provisions and why other states have used them.

The New York Times once estimated that as much as 30 percent of all workers' compensation claims could be fraudulent. Kansas does not actively pursue fraud, but officials seem to think it may be a problem and suggested Kansas needs a fraud statute specifically directed

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to workers' compensation fraud, as well as an assistant attorney general dedicated to pursuing this type of fraud. Many states have taken similar approaches. At least 8 states have passed comprehensive workers' compensation fraud statutes in recent years. Page 36 illustrates some methods states have used as well as the purpose behind the changes.

The NCSL Blue Ribbon Task Force recently suggested that preventing accidents and illnesses in the workplace is a key element in achieving lower workers' compensation insurance costs. In Kansas this task is left largely to insurance companies and employers even though the state has a workplace safety program. The program, according to officials, does not have the staff or funding to take a proactive role in improving workplace safety in Kansas. As a result, a recent national study ranked Kansas 47th out of 50 for workplace safety issues. States have taken a number of steps including, requiring safety programs in businesses, targeting businesses with high accident rates for more thorough inspections, and not compensating employees for injuries resulting from substance abuse. Also, 23 out of the 50 states have chosen to administer their own occupational safety and health programs. The table on page 37 explains workplace safety steps other states have used.

So . . . What types of management information systems have other states implemented to help identify and control workers' compensation costs? The bottom line is Kansas does not have the basic information it needs to answer crucial questions related to workers' compensation. The NCSL Task Force stated "It is impossible for any workers' compensation agency to meet its responsibilities without having access to relevant, accurate, consistent, and timely data. Data also are necessary in order for the parties to the system to understand how the system is performing and what it costs."

In our recent audit of the Workers' Compensation Fund we indicated the Division of Workers' Compensation had several problems with their computer system: incomplete claims information, no expenditure information, and inaccurate information. As a result, the Division has very little information which will help them, or you, assess the true cost of workers' compensation in Kansas.

Many states have developed management information systems which collect claims data, as well as allow agency officials to use the data to monitor costs, develop policy, and monitor new

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programs and providers. Even the State Self-Insurance Fund has put together a small data base which allows the agency to accumulate claims information by types of injuries and agencies. The chart on page 42 illustrates the type of information some states collect. The chart on page 44 shows what types of questions the various types of data might answer. We also found that there is a national organization which is attempting develop standardized data collection techniques which could make claim comparison among the states more accurate and efficient.

Without good information, neither the Legislature nor the Division can determine what effect any changes within workers' compensation will have on the cost of insurance in Kansas. Without good management information and analyses, deciding which changes are cost effective or which ones will control costs is essentially a shot in the dark. We have developed two recommendations for the Legislature to consider in relation to this question, and they are on page 48.

You are probably wondering "so what is the bottom line of this 60-some page report--how do we control workers' compensation costs?" There are six thoughts Legislative Post Audit would like to leave you with about the report you have in your hands.

1. Tinkering with the basic benefits will not control Workers' Compensation Costs in Kansas.

2. Vocational Rehabilitation, on the other hand, is not a basic benefit and many people believe it is unnecessary and not cost-effective, nor does it get people back to work.

3. There does not appear to be a cause effect relationship between the level of benefits offered by a state and the amount of premiums in the state.

4. Some costs, like medical care, appear to be growing at a phenomenal rate and should be the focus of your attention if you want to attempt to control a cost area.

5. Nothing will truly control workers' compensation costs, unless you start at the root of the problem--workplace safety. This is the only area where you can actually reduce claims and this translates into lower costs and eventually lower premiums.

6. There are no quick fixes here, and you lack the basic information system to assess the cost-benefits of any changes you do manage to make.

A number of the bills you and your colleagues have introduced so far this session address the various issues discussed in this report.

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