

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 8:30 a.m. on March 3, 2011, in Room 548-S of the Capitol.

All members were present.

Senator Emler – excused

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant

Mr. Ken Wilke, Office of the Revisor of Statutes

Mr. Reed Holwegner, Kansas Legislative Research Department

Ms. Dorothy Noblitt, Kansas Legislative Research Department

Conferees appearing before the Committee:

Mr. Fred Greenbaum, Attorney, McAnany, Van Cleave & Phillips

Mr. John Ostrowski, Attorney, McCullough, Wareheim and LaBunker

Others attending:

See attached list.

Hearing on Substitute for HB2134 – an act concerning workers compensation

Upon calling the meeting to order, Chairperson Wagle announced we have some information on a bill that has come to our Committee from the House on worker compensation and since this is the first worker compensation bill we have seen in a number of years, and since a lot of negotiations took place before the session started, she wanted to have both business and labor explain some background information on the bill, their negotiations, and what was originally placed before the House and what changed. She went on to say Mr. Fred Greenbaum, Attorney, McAnay, Van Cleave & Phillips is here representing business and Mr. John Ostrowski, McCullough, Wareheim & LaBunker is representing labor.

Mr. Greenbaum offered the Committee proposed Kansas Legislative changes including:

1.) If the presumption is functional impairment, work disability is available only if certain thresholds are met:

A.) The wage loss is greater than 10%;

B.) Functional impairment is greater than 75% or equal to or greater than 10% of preexisting impairment.

He said, any wage or task, in order to be compensable, has to be work related.

2.) Two components have been redefined:

A.) “Task loss” equals lost ability of claimant to perform work tasks, performed in the last five years of employment. “Last five years” is a reduced look-back from 15 years.

B.) On page 3, Mr. Greenbaum defined “wage loss” as the difference between the Average Weekly Wage (AWW) employee earned before injury and AWW employee capable of earning after injury. Referring to page 6, he stated what now will be the standard prevailing factor, injury must arise out of and in the course of employment and the “prevailing factor equals the primary factor in relation to any other factor. Some of the exclusions to this include:

A.) Triggering/precipitating factors;

B.) Aggravations/accelerations/exacerbations;

C.) Natural aging process or normal activities of daily living;

D.) Neutral risks, including direct or indirect results of idiopathic causes;

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on March 3, 2011, in Room 548-S of the Capitol.

3.) Page 9 refers to the Bilateral Extremity cases and

A.) Allows bilateral scheduled injuries in opposing extremities to be compensated as general bodily injuries;

B.) Combines and rates multiple injuries in a single extremity to the highest scheduled member actually impaired.

4.) Page 10 covers caps for death benefits, permanent total and partial. Functional impairment cap is \$75K. What was the death benefit cap before? (\$250K)

5.) He offered definitions on page 13, including wages and average weekly wage.

6.) The statute on page 14 changed, the strict 30-day notice requirement was 10-day, 30-days was the compromise. Also, the good cause extended to 75-days.

7.) Page 17 offers two changes, the first is to future medical and the second, presumption that future medical not needed if not used within two year period.

As they were running out of meeting time, the Chair said they will meet next Tuesday. A copy of the testimony is (Attachment 1) attached and incorporated into the Minutes as referenced.

She recognized Senator Longbine who would like to have a side by side comparison of the bill as passed by the House, the original compromise and what the current law is.

Adjournment

The meeting was adjourned. The time was 9:30 a.m.

The next meeting is scheduled for March 8, 2011.