

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Commerce** recommends **Substitute for HB 2134**, as amended by House Committee of the Whole, be amended on page 2, by striking all in lines 13 through 38;

And by renumbering the remaining sections accordingly;

On page 2, in line 2, by striking "may" and inserting "shall";

On page 3, in line 38, by striking the semicolon and inserting a period; by striking all in line 39;

On page 4, by striking all in lines 1 through 14; in line 15, by striking "(c)" and inserting "(b)"; in line 37, by striking "for urine";

And by redesignating the remaining subsections accordingly;

On page 5, by striking all in lines 9 through 15; in line 22, by striking "(c)(1)(C)" and inserting "(b)(1)(C)"; and by striking all in lines 34 through 39;

On page 6, in line 20, by striking "(c)(2)" and inserting "(b)(2)";

On page 7, in line 5, by striking "by the"; and by striking all in lines 6 through 18; in line 19, by striking all before the period and inserting "and made available to the employee within 48 hours of a positive test";

On page 13, in line 7, by striking "at"; in line 8, by striking all before "symptoms" and inserting "produce at the time";

On page 14, in line 3, by striking all after "accident"; in line 4, by striking "disease" and inserting "or repetitive trauma"; by striking all in line 15 and 16; in line 18, by striking "(iii)" and inserting "(ii)";

On page 15, in line 7, by striking "owned or under the exclusive control"; in line 9, by striking all after "hazard"; by striking all in line 10; in line 11, by striking "exposed"; and by striking all in lines 21

through 39;

On page 16, by striking all in line 1 and inserting:

"the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

(g) The "prevailing factor" is defined as the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.";

Also on page 16, in line 5, by striking all after "record"; in line 6, by striking all before the period;

On page 22, in line 30, by striking all after the period; by striking all in lines 31 and 32; in line 33 by striking all before "A";

On page 23, in line 33, by striking "gross";

On page 26, in line 25, by striking "as follows" and inserting "by multiplying the payment rate by the weeks payable. As used in this section"; in line 26, by striking "Find the payment rate which" and inserting "Payment rate"; in line 30, by striking all after "(2)"; by striking all in lines 31 through 39;

On page 27, by striking all in lines 1 and 2 and inserting:

"weeks payable shall be determined as follows: (A) Determine the weeks of benefits provided for the injury on schedule; (B) determine the weeks of temporary compensation paid by adding the amounts of temporary total and temporary partial disability compensation paid and dividing the sum by the payment rate above; (C) subtract the weeks of temporary compensation calculated in (d)(2)(B) from the weeks of benefits provided for the injury as determined in (d)(2)(A); (D) Multiply the weeks as determined in (d)(2)(C) by the percentage of permanent partial impairment of function as determined under subsection (b)(23)." ;

Also, on page 27, in line 3, by striking "full";

On page 29, in line 5, after "thereto," by inserting "of at least"; in line 13, by striking "means" and inserting "shall mean"; in line 25, by striking "means" and inserting "shall mean";

On page 30, in line 7, by striking all after "to"; in line 8, by striking "510e" and inserting "K.S.A. 44-510e(a)(2)(E)"; in line 14, by striking all after "(F)"; by striking all in lines 15 through 39; and inserting:

"The amount of compensation for permanent partial general disability in excess of the percentage of functional impairment under this section shall be determined by multiplying the payment rate by the weeks payable. As used in this section: (1) The payment rate shall be the lesser of: (A) The amount determined by multiplying the average weekly wage of the worker prior to such injury by 66  $\frac{2}{3}$ %; or (B) the maximum provided in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be determined as follows: (A) Determine the weeks of temporary compensation paid by adding the amounts of temporary total and temporary partial disability compensation paid and dividing the sum by the payment rate above; (B) subtract from 415 weeks the total number of weeks of temporary compensation paid as determined in (F)(2)(A), excluding the first 15 such weeks; (3) multiply the number of weeks as determined in (F)(2)(B) by the percentage of permanent partial general disability as determined under subsection (a)(2)(C).";

On page 31, in line 2, by striking "full";

On page 35, in line 11, by striking all after "employer"; in line 12, by striking all before "may" and inserting "or insurance carrier";

On page 44, in line 29, by striking all after "examination"; in line 30, by striking all before the period;

On page 46, in line 7, by striking all after "employer"; by striking all in lines 8 through 13; in line 14, by striking all before the period and inserting "within 30 calendar days of the date of accident or the

date of injury by repetitive trauma"; in line 28, by striking ", witnesses, if any,";

On page 56, in line 12, by striking "accident or";

On page 60, by striking all in lines 9 through 14;

On page 62, after line 17, by inserting:

"Sec. 27. K.S.A. 2010 Supp. 44-555c is hereby amended to read as follows: 44-555c. (a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The board shall be within the division of workers compensation of the department of labor and all budgeting, personnel, purchasing and related management functions of the board shall be ~~administered~~ under the supervision and direction of the ~~secretary of labor~~ director of workers compensation. The board shall consist of five members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of four years, except as provided for the first members appointed to the board under subsection (f).

(b)(1) Each board member shall be an attorney regularly admitted to practice law in Kansas for a period of at least seven years and shall have engaged in the active practice of law during such period as a lawyer, judge of a court of record or any court in Kansas or a full-time teacher of law in an accredited law school, or any combination of such types of practice.

(c) Each board member shall receive an annual salary in an amount equal to the salary prescribed by law for a district judge, except that the member who is the chairperson of the workers compensation board shall receive an annual salary in an amount equal to the salary prescribed for a district judge designated as chief judge of a district court of Kansas. The board members shall devote full time to the duties of such office and shall not engage in the private practice of law during their term

of office. No board member may receive additional compensation for official services performed by the board member. Each board member shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as judges of the district court are reimbursed for such expenses.

(d) Applications for membership on the board shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for membership on the board prescribed in subsection (b). Qualified applicants for the board will be submitted by the director to the ~~workers compensation board nominating committee for consideration~~ secretary of labor.

(e) ~~There is hereby established the workers compensation board nominating committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation board nominating committee and shall give written notice of the selection to the secretary who shall appoint such representatives to the committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of labor within 30 days of such vacancy.~~

(f) (1) Upon being notified of any vacancy on the board ~~or of the need to appoint a member pro tem under subsection (i), the nominating committee~~, the secretary of labor shall consider all qualified applicants submitted by the director for the vacant position on the board ~~or the member pro tem position and nominate a person qualified therefor. The nominating committee shall be required to reach unanimous agreement on any nomination to the board. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the nominating committee to the position on the board for which the nomination was made or shall reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request~~

~~for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner.~~

(2) The first members of the board established by this section are hereby appointed as follows: Each person who was a member of the workers compensation board which was in existence on January 12, 1995, is hereby appointed, effective January 13, 1995, as a member of the board established by this section. The term of office of each person so appointed as a member of the board established by this section is for the period equal to the remainder of the term of office such person had as of January 12, 1995, as a member of the workers compensation board which was in existence on January 12, 1995.

(3) Each member of the board shall hold office for the term of the appointment and until the successor shall have been appointed. Successors to such members shall be appointed for terms of four years.

(4) If a vacancy should occur on the board during the term of a member, the ~~nominating committee secretary~~ shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term. ~~With respect to each person so nominated, the secretary either shall accept and appoint the person nominated to the board or shall reject the nomination and request the nominating committee to nominate another person for the position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for the position in the same manner.~~

~~(g)~~ (f) Following the completion of a term, board members who wish to be considered for reappointment to the board shall be deemed to have met the qualification requirements for selection to the board and shall be considered for renomination by the workers compensation board nominating committee.

~~(h)~~ (g) The members of the board shall annually elect one member to serve as chairperson.

~~(i)~~ (h) If illness ~~or other temporary disability~~, temporary disability, early retirement, death or

disablement of a member of the board will not permit the member to serve during a case or in any case in which a member of the board must be excused from serving because of a conflict or is otherwise disqualified with regard to such case, the director shall notify the workers compensation nominating committee of the need to appoint a member pro tem. Upon receipt of such notice, the committee shall act as soon as possible and nominate a qualified person to serve as member pro tem in such case in accordance with subsection (f). Each member pro tem shall receive compensation at the same rate as a member of the board receives, prorated for the hours of actual service as a member pro tem and shall receive expenses under the same circumstances and to the same extent as a member of the board receives. Each member pro tem shall have all the powers, duties and functions of a member of the board with regard to the case.

~~(f)~~ (i) The board shall maintain principal offices in Topeka, Kansas, and the board may conduct hearings at a courthouse of any county in Kansas or at another location specified by the board. The secretary of labor shall provide a courtroom and other suitable quarters in Topeka, Kansas, for the use of the board and its staff. When the board conducts hearings at any location other than in Topeka, Kansas, the director shall make suitable arrangements for such hearings. Subject to the provisions of appropriation acts, the director shall provide such supplies and equipment and shall appoint such support personnel as may be necessary for the board to fulfill the duties imposed by this act, subject to approval by the secretary.

~~(k)~~ (j) For purposes of hearing cases, the board may sit together or in panels of two members or more, designated by the chairperson of the board, except that an appeal from a preliminary award entered under K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one member designated by the chairperson. All members of the board shall determine each matter before the board. All decisions, reviews and determinations by the board shall be approved in writing by at least three board members. Whenever the board enters a final order in any proceeding, the board shall make

written findings of fact and conclusions of law forming the basis of the board's determination and final order. The findings of fact and conclusions of law of the board shall be made a part of the final order. The board shall mail a copy of the final order of the board to all parties to the proceeding within three days following the issuance of the final order.";

And by renumbering the remaining sections accordingly;

Also on page 62, in line 21, by striking "and 44-596" and inserting "and 44-555c"; in line 24, by striking "statute book" and inserting "Kansas register";

On page 1, in the title, in line 5, by striking "and 44-552" and inserting ", 44-552 and 44-555c"; in line 6, by striking "and K.S.A. 2010 Supp. 44-"; in line 7, by striking "596";

And the bill be passed as amended.

Senator \_\_\_\_\_