

Legislative History for Connecticut Act

SB 813 P.A. 83-297 1983

Labor - 286-290 5p.

Senate - 201-62, 2123-25 6p.

House - 4724, 5074 3p.

13p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

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JOINT
STANDING
COMMITTEE
HEARINGS

LABOR &
PUBLIC
EMPLOYEES
PART 1
1-410

1983
INDEX

MR. DaDDONE: (continued)

Senate Bill 813, an Act Concerning Fellow Employee Immunity Under Workers' Compensation is unnecessary legislation.

Current State law provides that where an employee is injured by the negligence of a fellow employee, the sole remedy is under the Workers' Compensation Act except where the negligence is in the operation of a motor vehicle. In addition, the statutory definition of motor vehicle excludes any vehicle not suitable for operation on a highway. We understand that the intent of Bill 813 is to expressly incorporate in state statutes, the results of court decisions interpreting and applying these laws. Our opposition is based on concern that in future litigation, undue credence may be given the brief language of a legislative amendment such as Bill 813, casting aside previous reasoned in depth discussions by the courts, all of which the legislation intended to, but cannot fully, articulate.

We oppose House Bill 6911 an Act Concerning Interest Charges on Workers' Compensation Awards on several grounds. Imposing a mandatory 6% interest penalty upon delayed compensation adjustments where the employer or insurer is not at fault for such delay is entirely unreasonable. Mandating an 18% interest penalty in favor of the current discretionaly 12% for delayed payments where the employer is at fault for the delay is excessive, punitive and inconsistent with the compensatory nature of the workmens compensation statutes. Mandatory interest penalties and attorney's fees, which this bill also provides, improperly removes from the commissioner, the discretion to use such provision as is most appropriate according to each specific instance.

House Bill 6912, an Act Preserving Employees Rights to Medical Aid Under Workers' Compensation inappropriate seeks to diminish the Workers' Compensation Commissioner's ability to fairly evaluate and approve voluntary final settlements of claims. Prohibiting the final settlement of certain elements of a claim would discourage such settlements. This bill would create an unnecessary continuing dependency on the Workers' Compensation Commission to administer claims resulting in undue delays and increased overall workers' compensation costs.

MR. DaDDONE: (continued)

House Bill 6933, an Act Establishing a Rebuttable Presumption Under Workers' Compensation for Occupational Disease Caused by Asbestos would substantially and inequitably increase the potential liability of employers for workers' compensation benefits.

Shifting the burden of proof to an employer requiring him to disprove a claim is contrary to workers' compensation statutes and basic legal theory. Present workers' compensation hearings are unburdened by strict statutory rules of evidence and procedure, permitting full investigation and consideration of claims. Enacting a presumption of liability would encourage unfounded claims resulting in an improper decisions based on legislative mandate rather than objective factual evaluation.

In summary, we ask you to reject these bills which would impose a particularly severe burden on construction employers who in most cases are committed to long term, fixed price contracts. The consequences of such proposed increases go beyond employers, inflating users' costs for construction services as well as inhibiting economic development and job creation.

Yes?

REP. FAVREAU: Sir, I would like to bring your attention to Bill 6911 about interest charges on workers' compensation where there have been delays. I am having some trouble coming up with some situations where there are delays in benefit payments where no one is at fault and there is no negligence and I'm just wondering if you can clear that up and explain to me where there would be delays at no fault of the employer or the insurer?

MARK SHOUCHER: My name is Mark Shoucher and I'm General Counsel for the AGC. I am not clear on instances where that would arise also but that's what the legislation expresses and I'm concerned that because of fault other than the employers, the employer suffers the exposure to being subject to interest penalties. I think if the fault is somewhere, we should look to that and address smoothing over the administrative processes, but imposing the penalty upon the employer who may not have any control over the reason for the delay just I think is inappropriate.

REP. KINER: Any other questions from the Committee members?
Thank you gentlemen.

Maural Melley followed by John Anderson.

MAURAL MELLEY: Good morning, my name is Maural Melley and I am Vice President of the Insurance Association of Connecticut. This Association is a trade association comprised of all of Connecticut's home based insurance companies and in representing them I would like to comment on some of the workers' comp bills before you today.

I am going to be going through in numerical order and, for your convenience, and not necessarily in any order of importance.

Starting with Committee Bill 221, this bill provides for the establishment of a workers' compensation asbestos account to provide a fund for payments of benefits to workers with compensable diseases caused by asbestos, and thereby to facilitate greater ease and timeliness of the payments to deserving recipients.

We believe that if the criteria for eligibility for compensation payments are not unreasonably liberalized by an enactment of a bill like 783, then the existing system is capable of absorbing the costs and providing compensation.

As the scope of the occupational disease problem becomes more evident, adjustments in the system can be made as needed. And it may well be that it's necessary in the future to create a pay as you go fund like the second injury fund to at least assist in the payment of claims. However, we believe at this time, the creation of the special fund is premature and unnecessary.

Committee Bill 783. We strongly oppose this bill which would expand, in very vague terms, the definition of injury. One could almost argue that almost any change, however subtle, in one's body occurring during the course of one's working life, would be a compensable injury. For example, if this new job of mine gives me grey hair, I could possibly obtain workers' comp benefits because to me it would be a horrible change.

The bill will invite a substantial increase in litigation and costs. It was unreasonable liberalizations such as

MS. MELLE: (continued)

this which have bankrupt the federal Black Lung Program.

If the Committee decides to act further on the bill, we request that it also be sent to the Appropriations Committee for a fiscal note on the impact of the State of Connecticut's self-insurance on your workers' comp benefits.

Committee Bill 820, 812. Under current law, if a claimant prevails and the Commissioner finds that the employer or the insurer has unreasonably contested liability, he may award to the claimant a reasonable attorney's fee. This bill would require the Commissioner to award attorney's fees to the prevailing party, whoever that is, in any and every contested case.

By allowing for such an award, this regardless of whether anyone was exercising reasonable judgment in contesting liability, this bill contradicts its own statement of purpose which is to discourage unreasonable contests. We oppose this bill because it would discourage reasonable early settlements, thereby, encouraging litigation, and it would take away the discretion of the Commissioner in awarding an attorney's fee limiting his flexibility under the law.

Bill 813. We support this bill which would clarify the doctrine of fellow employee immunity to include workers injured by large heavy contractor's equipment.

Under current law, there is much confusion over the definition of a motor vehicle as it pertains to workers' comp. Numerous court cases have had to decide in this state whether a crane is a motor vehicle, a backhoe is a motor vehicle, a forklift is a motor vehicle. We believe that the law needs to have clarification. We also believe that the long standing policy in this State is to recognize injuries caused solely by heavy contractor's equipment is a workers' comp issue.

The motor vehicle definition should be restricted to licensed vehicles which drive on the roads and highways and should not include off-the-road heavy equipment.

We urge the Committee to act favorably on this bill and we

MS. MELLEY: (continued)

also recognize the need to better define in this bill the definition of mobile equipment and to use some of the dicta from the many court cases so we can be consistent.

With respect to 6911, the Insurance Association believes that it is in the public interest to speed up the process on deciding workers' comp claims.

We also believe that it is entirely, we support the idea of having some type of a sanction to prohibit or to stop any unreasonable delays for the workers' comp recipients. But we support the current law which allows the Commissioner to make the determination in each case as to whether delay is reasonable or unreasonable. We believe that this current system works well.

We also believe that the 50% increase in the rate of interest from 12% to 18% is unreasonable and unjustified. The General Assembly established a 12% figure as recently as 1979. And we believe that nothing has transpired to justify this increase.

Raised Committee Bill 6912 would prohibit the settlement of any claim if the agreement did not leave open the questions of how much the claimant should receive to cover his medical expenses. This bill will discourage reasonable settlements, be contrary to medical cost containment efforts, encourage litigation and take away some of the Commissioners flexibility.

Typical of many cases involved in a settlement would be one in which there is a legitimate dispute as to whether the injury or disease was work-related. And yet the parties have already agreed upon a lump sum award rather than to incur the added expense of litigation.

If the bill were enacted the employer and his insurer would have an open-ended liability for medical expenses. This unreasonable provision would guarantee unnecessary litigation and would increase the cost to all parties. The settlement figure is the agreed-upon, best estimate of the parties as to what the employers obligation should be. The Commissioner already has the authority to approve or disapprove these agreements. And we believe that this provision provides the necessary protection.

S - 209

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1983

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1849 - 2133

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 3, 1983

114
LFU

THE CLERK:

On page 13, Calendar 413, File 548, Favorable Report of the Committee on Labor and Public Employees, Substitute for Senate Bill 813, AN ACT CONCERNING FELLOW EMPLOYEE IMMUNITY UNDER WORKERS COMPENSATION.

THE CHAIR:

Senator Harper.

SENATOR HARPER:

Thank you Mr. President. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

THE CHAIR:

Remark Senator?

SENATOR HARPER:

Yes Mr. President. Members of the Circle, Substitute Senate Bill 813 would clarify the doctrine of fellow employee immunity under the workers compensation laws by including injuries caused by the operation of contractors' equipment at a job site within the workers compensation system. Section 31-293(a) prohibits an employee from suing a fellow employee for injuries caused by simple negligence on the job. The injured employee's exclusive remedy in this instance is under the workers compensation

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 3, 1983

115
LFU

system. The statute allows suits against a fellow employee where the injury is the result of willful and malicious conduct or the result of the operation of a motor vehicle. The legislative intent of the latter exclusion was that the risk of a motor vehicle accident is a common danger and the employee at fault should not be protected from suit.

Under this section, however, much confusion exists over the definition of motor vehicle. Numerous court cases in this state have had to look at this issue and have resulted in a divergence of opinion as to whether a crane is a motor vehicle or a backhoe is a motor vehicle etc. This Bill would clarify the definition of a motor vehicle by excluding contractor's equipment designed primarily for use off public roads where the injury occurs at the worksite. Injuries caused by such equipment would be subject to full compensation under workers compensation.

If there is no objection, I move the item to the Consent Calendar.

THE CHAIR:

Is there any objection to placing the item on Consent? Hearing none, the matter will go on the Consent

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 3, 1983

116
LFU

Calendar.

THE CLERK:

Calendar 417, File 554, Substitute for Senate Bill 947, AN ACT CONCERNING THE DEFINITION OF ELIGIBLE FACILITIES UNDER THE URBAN JOBS PROGRAM, Favorable Report of the Committee on Planning and Development.

THE CHAIR:

Senator Wilber Smith,

SENATOR WILBER SMITH:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and for passage of the Bill.

THE CHAIR:

Remark Senator?

SENATOR WILBER SMITH:

Yes Mr. President. This Bill is introduced on behalf of the Department of Economic Development. It would simply extend to research and development facilities directly related to manufacturing and incentives currently available under the Urban Jobs Program to manufacturing projects. If there is no objection, Mr. President, I would move this Bill to consent.

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 3, 1983

177
LFU

Actions, Calendar 139 was marked as a pass retain. However, actually the Speaker of the House is now indicating that the Bill had left the Clerks' office down there too early as their deadline for reconsideration is tomorrow and the Bill is not in our possession and was returned to them earlier in the day. The Clerk will make the announcement for a Roll Call and then call the Consent Calendar.

THE CLERK:

Immediate Roll Call has been called for in the Senate. Will all Senators please take their seats. An immediate Roll Call has been called for in the Senate. Will all Senators please be seated.

THE CHAIR:

The Clerk will proceed with the Consent Calendar. Would you give close attention. It is quite lengthy.

THE CLERK:

The following are listed as the items on today's Consent Calendar. On page 2, Calendar 227, 229; on page 4, Calendar 304; page 5, 325 and Calendar 327. Page 7, Calendar 382; page 8, Calendar 384, 386; page 9, Calendar 389, 391, 392, 393, 394. Page 10, Calendar 395, 396, 400, page 11, Calendar 404. Page 12, Calendars 408, 409; page

SB1063, SB396,
SB1100, SB1061,
SB891, SB168,
SB1123, SB8,
SB888, SB943,
SB945, SB976,
SB1053, SB1106,
SB134, SB752,
SB942, SB477,
SB548

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 3, 1983

178
LFU

13, Calendars 413, 417; page 14, Calendar 422; page 15, SB813, SB947,
Calendar 427, 430; page 16, Calendar 432, 433, 435, 436. SB511, SB430,
On page 17 Calendar 442. On page 18, Calendar 443, 444 HB6657, HB6977,
445, 446 and 448. And that completes the list of items HB7116, HB6095,
HB5558, HB6287,
HB5499, HB7104,
HB7087, HB5549,
SB505
on today's Consent Calendar.

THE CHAIR:

Senator Schnelller.

SENATOR SCHNELLER:

I just want to check on one item Mr. President. On
page 10, Calendar 399.

THE CHAIR:

That I believe was passed 33 to 2. It really
doesn't belong.

SENATOR SCHNELLER:

Okay. That was a Roll Call vote. I have it marked
Consent. Thank you.

THE CHAIR:

Are there any other questions or requests for re-
moval from the Consent Calendar? If not, the machine is
open. Have all Senators voted? All Senators have voted.
The machine will be closed and locked.

1983 GENERAL ASSEMBLY

SENATE

TUESDAY
MAY 3, 1983

179
LFU

TOTAL VOTING	34
NECESSARY FOR PASSAGE	18
VOTING YEA	34

The Consent Calendar is adopted. Senator
Schneller.

SENATOR SCHNELLER:

Mr. President, if there is no further business and no further announcements to come before the chamber, I'd like to announce that the Senate will convene tomorrow at 2:00. I think that many of us would like to work late tomorrow evening and hopefully we will not have to come in on Thursday. So that I think we might plan on--when I say late, maybe 7:00 - 8:00 because I don't think we have that much on the Calendar. But that's what I call late for this time of the year but I would like to ask the Minority Leader if he would have any serious objection to that.

THE CHAIR:

Senator Robertson.

SENATOR ROBERTSON:

Mr. President, my only objection would be that I

H-347

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1983

VOL. 26
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House of Representatives

Tuesday, May 17, 1983

DEPUTY SPEAKER FRANKEL:

Rep. Balducci.

REP. BALDUCCI: (27th)

Mr. Speaker, at this time I'd like to put that Calendar No. and several other bills before us on the Consent Calendar for action tomorrow.

DEPUTY SPEAKER FRANKEL:

Please proceed.

REP. BALDUCCI: (27th)

Thank you, Mr. Speaker. On page 9, Calendar 584, Substitute for Senate Bill 813, AN ACT CONCERNING FELLOW EMPLOYEE IMMUNITY UNDER WORKERS' COMPENSATION. File 548.

On page 11, Calendar 617, Substitute for Senate Bill 810, File 640, AN ACT CONCERNING CERTAIN LICENSES ISSUED BY THE DEPARTMENT OF CONSUMER PROTECTION.

On page 14, midway down the page, Calendar 637, File No. 769, Substitute for House Bill 7274, AN ACT CONCERNING THE NOMINATION AND APPOINTMENT OF JUDGES AND COMPENSATION COMMISSIONERS.

On page 19, the middle of the page, Calendar 667, File No. 833, House Bill 6936, AN ACT ELIMINATING THE THIRTY-ONE DAY PROVISION FOR PROPERTY TAX PARTIAL PAYMENTS AND REQUIRING USE OF CALENDAR MONTHS IN COMPUTING INTEREST.

House of Representatives

Wednesday, May 18, 1983

on today's Consent Calendar? Is there objection? Seeing
no objection, the Consent Calendar is adopted.

JUDICIARY. Substitute for H.B. No. 7274 (COMM)
(File No. 769) AN ACT CONCERNING THE NOMINATION AND APPOINT-
MENT OF JUDGES AND COMPENSATION COMMISSIONERS.

FINANCE, REVENUE AND BONDING. H.B. No. 6961 (COMM)
(File No. 837) AN ACT CONCERNING THE TAKING OF CONCHS.

LABOR AND PUBLIC EMPLOYEES. Substitute for S.B. No.
813 (COMM) (File No. 548) AN ACT CONCERNING FELLOW EMPLOYEE
IMMUNITY UNDER WORKERS' COMPENSATION.

JUDICIARY. S.B. No. 189 (COMM) (File No. 667) AN
ACT CONCERNING THE INCORPORATION OF INVESTMENT INSURANCE,
INC.

JUDICIARY. Substitute for S.B. No. 453 (COMM) (File
No. 705) AN ACT CONCERNING THE USE OF PRESSURIZED GASES AS
MOTOR VEHICLE FUELS.

APPROPRIATIONS. S.B. No. 903 (COMM) (File No. 717)
AN ACT CONCERNING THE COPARTICIPANT'S OPTION IN THE TEACHERS'
RETIREMENT SYSTEM.

JUDICIARY. S.B. No. 1127 (COMM) (File No. 643) AN
ACT VALIDATING THE NOTICE OF CLAIM OF THE ESTATE OF
MADELINE A. CARSON.

JUDICIARY. S.B. No. 402 (COMM) (File No. 662) AN ACT
CONCERNING ENFORCEMENT OF ORDERS OF THE STATE BOARD OF LABOR
RELATIONS.

EDUCATION. S.B. No. 584 (COMM) (File No. 730) AN ACT
CONCERNING VOTING PROCEDURES ON REGIONAL SCHOOL DISTRICT
BUDGETS.

JUDICIARY. S.B. No. 1059 (COMM) (File No. 741) AN
ACT CONCERNING THE MAXIMUM FINE FOR VIOLATION OF REGULATIONS
CONCERNING MOTOR VEHICLES AND MOTOR VEHICLE DEVICES AND
ACCESSORIES.