Legislative History for Connecticut Act

Public Act 97-205

AN ACT RESTORING WORKERS COMPENSATION COST-OF-LIVING ADJUSTMENTS FOR WIDOWS, WIDOWERS, ORPHANS AND TOTALLY DISABLED WORKERS AND INCLUDING CERTAIN ACTIVITIES WITHIN THE DEFINITION OF INJURY UNDER WORKERS COMPENSATION

Act Number:	205	**Year:**	1997
Bill Number:	SB 0976		
Senate Pages:	1096, 1636-1637, 2821-2834, 2836-2838		(20)
House Pages:	5174-5198		(25)
Committee:	Labor: 28, 30-31, 40-41, 105, 109, 136-138 **NOTE: See HB 6627**		(10)
		Page Total:	(55)

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

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S-406

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1997

VOL. 40
PART 4
1083-1433

SEN. JEPSEN:

Page 5, Calendar 120, File 138, SB1113, I move referral to the Committee on Finance.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 121, File 139, is a PR.

File 122, I'm sorry, Calendar 122 is a PR.

Calendar 123, File 145, Substitute for SB899, I move to the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SEN. JEPSEN:

Calendar 124 is PR'd.

Calendar 125 is a PR.

Page 6, Calendar 126 is PR.

Calendar 127, File 146, Substitute for SB976, I move referral to the Committee on Insurance.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 128, File 147, SB983, I move referral to the Committee on Insurance.

THE CHAIR:

S-407

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1997

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PART 5
1434-1795

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 374, Substitute for SB655 I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 375 is PR.

Page 22, Calendar 376 is marked Go.

That concludes our Favorable Reports. Turning now to Page 25, Calendar 51 is PR.

Calendar 65 is PR.

Page 26, Calendar 70 is PR.

Calendar 107 is PR.

Calendar 109 is PR.

Calendar 116, Substitute for SB1114, I move referral to the Committee on Public Health.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 119 is marked Go.

Calendar 122 is PR.

Page 27, Calendar 127, Substitute for SB976 I move referral to the Committee on Appropriations.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 129, Substitute for SB1207, I move referral to the Committee on Finance.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 131 is marked Go.

Calendar 140 is PR.

Calendar 141 is PR.

Calendar 150, Substitute for SB1074 I move referral to the Committee on Appropriations.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 28, Matters Returned from Committee, Calendar 166 I move referral to the Committee on Judiciary. SB 1187

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Calendar 167 is PR.

Calendar 171 is PR.

Calendar 172, Substitute for SB548 I move referral to the Committee on Commerce and Exports.

S-410

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1997

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2517-2846

SEN. KISSEL:

Yes, Madam President, I'd like to thank Senator Bozek, Senator Daily, and the Senate leadership for working with myself in ironing out this compromise, it's excellent. It allows for local control regarding the collection of water, either through springs or wells, and therefore addresses concerns raised by many constituents in my district, and I urge its passage. Thank you.

THE CHAIR:

Will you remark further on Senate Amendment A?

SEN. BOZEK:

Madam President, I'd like to pass temporarily on this measure, and, on the Amendment. And pass temporarily on the bill.

THE CHAIR:

We will pass this item temporarily, without objection.

SEN. BOZEK:

Thank you.

THE CLERK:

Turning to Calendar Page 20, Calendar 127, File 146, Substitute for SB976. AN ACT RESTORING WORKERS' COMPENSATION COST-OF-LIVING ADJUSTMENTS FOR WIDOWS, WIDOWERS, ORPHANS AND TOTALLY DISABLED WORKERS.

Favorable Report of the Committee on Labor, Public Employees, Insurance and Real Estate, and Appropriations. Clerk is in possession of five Amendments.

THE CHAIR:

Senator Prague.

SEN. PRAGUE:

Thank you Madam President. Madam President, I move the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Question is on passage. Will you remark?

SEN. PRAGUE:

The Clerk has in his possession LCO-8408. Will he please call, and I ask permission to summarize.

THE CLERK:

LCO-8408 which will be designated Senate Amendment Schedule A. It is offered by Senator Prague of the 19th District, et al.

THE CHAIR:

Senator Prague, the Amendment is in your possession.

SEN. PRAGUE:

I move adoption of the Amendment, Madam President, and ask permission to summarize.

THE CHAIR:

Question is on adoption. Please remark.

SEN. PRAGUE:

Madam President, as so often happens up here, there are errors made. This bill rectifies one of those errors that was made in 1993, when the Workers Compensation bill was passed. That bill at that time changed the system.

Some how or other people like widows, widowers, surviving children, and totally disabled workers, were inadvertently eliminated from a COLA. What this bill does is restore the COLA's to those people who fall in those categories.

At the public hearing that we held, even the business industry acknowledged the fact that this was not their intention. That these people need to get COLA's, and this bill does that.

In addition, this bill will pay retroactively, the COLA amounts that these people were denied from 1993 to 1997. And from 1997 on, anybody who falls within those categories will get their COLA's.

In addition to that, in Section 1 of the bill, we have language that provides workers compensation for school personnel, teachers particularly who go to a school sponsored activity, authorized by a principal or

a superintendent, to chaperone that activity. If they are hurt while chaperoning a school activity, they will be able to be eligible for workers compensation.

A teacher at a school dance, or any school function, is part of their employment. And, therefore, eligible for workers comp if they are injured. The language on line 56 talks about not including an injury incurred while going to or from such activity.

However, if traveling with the students as a chaperone is part of that activity, and that teacher is hurt, that travel is considered part of the responsibility of being a chaperone, and therefore it will be covered under workers comp if that teacher is injured.

Section 2 of the bill deals with the workers comp Commissioner, Mister whoever he might be at any given time, and it says, that all the workers comp commissioners shall serve for one year in the district, and may be reassigned once a year, except that when there is a vacancy due to illness or other emergency, or when an unexpected case load increases require the chairman may reassign compensation commissioners more than once a year.

Ladies and gentlemen of this Chamber, another significant part of the bill that deals with someone

who is totally disabled being able to collect retroactively or going forward from October 1, 1997, a COLA as part of their workers comp benefit, will depend on the total disability, if it is, if that person is totally disabled for five years, they will be considered to be totally disabled, but will not collect their workers comp, a COLA, until they have been disabled for five years, and will collect a retroactive lump sum, and then can go forward with their COLA.

One of the things that we need to make it clear for legislative intent, is that during that period, if somebody tries to go back to work and works for what ever length of time they can, and then finds that medically they can no longer continue to work, and have to drop off of their job and go back to collecting workers comp benefits, that amount of time will be included in the five year calculation, so that the calculation computation for being disabled is in the aggregate.

This is so we will not discourage people from going back to work, and give them the opportunity to do so without the risk of losing their benefits. This is a very good piece of legislation that rights a wrong. Madam President, I would open the floor to a discussion. I think there are some Amendments.

THE CHAIR:

It is the Amendment, Senator Prague. Will you remark further on Senate Amendment A? Will you remark further? Senator Nickerson.

SEN. NICKERSON:

Thank you Madam President. A question, if I may, through you to the proponent.

THE CHAIR:

Please proceed.

SEN. NICKERSON:

The question relates to the interrelationship to the extent there is one between the major second injury reform we passed, what was it, a year or two ago, and the extent to which that relates to the Amendment before us.

The question is this. While I certainly understand as the Senator has explained, the change and the important change in the COLA for those whose claims were covered by the Second Injury Fund prior to the change in the structure of that fund.

My question is, would it be correct to say that this Amendment, this bill, does not reopen the Second Injury Fund to new claims, and thus run contrary to the Second Injury Reform we passed a year or two ago? Would that be a correct statement? Through you Madam

President.

THE CHAIR:

Senator Prague.

SEN. PRAGUE:

Through you Madam President to Senator Nickerson, yes.

THE CHAIR:

Senator Nickerson.

SEN. NICKERSON:

Thank you very much, that's all I need to know.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Thank you Madam President. A while ago, as Senator Prague has indicated, the Senate and House Representatives did pas a series of sweeping changes in Connecticut's Workers Compensation, and Second Injury Fund system, most of which at the time made sense.

And, today makes sense as well. A major ingredient of that action to many people in this Circle, many people in the House, and more importantly many injured workers, simply did not make sense.

And what Senator Prague brings here to the Senate today is an important change to undo an extreme act that I think resulted because people, including this

Senator, were not paying as close attention to what we did when we did the overriding bill. I remember Senator Upson, in particular, speaking at some length on this particular issue, and raising concerns at that time.

I'm only pleased that a couple of years later we are able to be here, in what I hope will be a very strong vote of this Senate to correct what I think is a continuing unfair burden and expectation for those, not those who choose not to work, not those who are temporarily out of work, but those who for all intents and purposes are not going back to work.

Obviously in the case of decedents, it is those who have survived employees and workers who have been killed, who have lost their lives on the job. And, who without this legislation will forever be left with the declining value of a benefit.

So, I thank Senator Prague for bringing that part here. As to those who are permanently disabled or temporarily totally disabled for longer than five years, I would respectfully suggest that for all intents and purposes, that too is the functional equivalent of not going back to work.

And so, leaving those individuals without the opportunity to have any adjustment in the value of

their benefit over time, also guarantees that people out of work will receive a lesser and lesser, and lesser benefit over time. So I also thank Senator Prague for bringing that issue here as well.

There are many, I suspect, in this Circle, and downstairs, who may say that this shouldn't be done. More should be done on the equities, on the merits, on fairness, and on heart. And the other day we had another conversation about sometimes voting with our heads and our hearts together.

This is one of those occasions where I think we have a chance to vote both with our heads and our hearts. I support this Amendment. I think it is a responsible step that keeps faith with workers compensation reform, but also addresses an over extension and an injustice that I think is on the books, and we have a chance to change today.

THE CHAIR:

Thank you sir. Will you remark further? Senator Colapietro.

SEN. COLAPIETRO:

Thank you Madam President. I stand here before you respectfully reminding you that I was one of those that did not support the taking away of COLA's. And, you know, every once in a while I like to say I told

you so. But I think I've got the record now. How quick we forgot LaBiance. And we have a tendency to scurry around trying to help people, in the meantime forget who we are hurting.

And we definitely were hurting those widows and children who were left without fathers because of being killed on a job, or maimed. I don't like the Amendment because I can't imagine somebody waiting five years before they finally decide that they can't go back to work any more.

They're already totally and permanently disabled, and now they're going to get a back pay. If they live that long, it's a great Amendment. But it's better than nothing, and I would wholeheartedly support it, and commend you Senator Prague, for bringing the bill forth. Thank you Madam President.

THE CHAIR:

Thank you sir. Will you remark further? Will you remark further on Senate Amendment A? Senator Prague.

SEN. PRAGUE:

Thank you Madam President. Madam President, the Amendment becomes the bill. I would, if there's no objection, ask that it be put on the Consent Calendar.

THE CHAIR:

First, let's adopt the Amendment.

SEN. PRAGUE:

Thank you Madam President, I move adoption.

THE CHAIR:

You did, and now we will.

SEN. PRAGUE:

Thank you.

THE CHAIR:

I'd like to try your minds. May we try your minds? All those in favor of adoption of Senate Amendment A? Please indicate by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed nay. Aye's have it. Senate A is adopted. Senator Prague.

SEN. PRAGUE:

Thank you Madam President for that guidance. If there's no objection, I'll move it to the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered. Excuse me, Senator Genuario, before we order that.

SEN. GENUARIO:

Madam President, before this goes to the Consent

Calendar, I would just enquire whether or not the fiscal note indicates that this will pose a burden on municipalities?

THE CHAIR:

Senator Prague.

SEN. PRAGUE:

Through you Madam President, I will read you, Senator Genuario, what the fiscal note says about municipalities. It says, municipalities as employers pay assessments to the Second Injury Fund, either directly as a self-insurer, or through their insurance carrier. Therefore, there will be an increase in Second Injury Fund costs to municipalities as a result of providing COLA's for injuries after July 1, 1993.

THE CHAIR:

Senator Genuario.

SEN. GENUARIO:

Thank you Senator Prague. Madam President, I believe the fiscal note makes clear that this Amendment, or the bill now as amended, will have an impact on municipalities. In fact, the impact of the Second Injury Fund is $5 million, according to the fiscal note, a part of which will be passed on to municipalities as employers of the teachers who will be entitled to the benefits that are conferred as a result

of the Amendment with regard to school-sponsored events. And accordingly, I think it's appropriate that this matter be moved to the Appropriations Committee, and I would so move.

THE CHAIR:

Motion is to refer this item to the Appropriations Committee. Will you remark? Senator Prague.

SEN. PRAGUE:

Thank you Madam President. Through you to Senator Genuario, number one, the bill has already been to the Appropriations Committee. And, number two, as part of the fiscal note it says, this Amendment eliminates the origin of the Amendment would result in minimal cost to municipalities from the expansion of workers comp coverage in local and regional school districts to include injuries incurred at school-sponsored social and recreational events.

Since few additional claims are anticipated, minimal costs are expected. If you would like a copy of this Senator Genuario, through you Madam President, I'd be happy to share this with you.

THE CHAIR:

Senator Genuario.

SEN. GENUARIO:

Yes, Madam President. And I apologize, I thought

I remembered this bill, but I didn't see a note in the file indicating that it had been to Approps. But if it has been to Approps, then my motion is inappropriate and I'll withdraw it.

THE CHAIR:

Without objection we'll withdraw that motion to refer this item to Appropriations. The motion before us, before I recognized Senator Genuario, was a motion to place this item on the Consent Calendar. Without objection, so ordered.

SEN. PRAGUE:

Thank you.

THE CLERK:

Madam President.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Clerk is in possession of Senate Agenda No. 3, for Wednesday, May 28th 1997, copies of which have been distributed.

THE CHAIR:

Senator Jepsen.

SEN. JEPSEN:

Thank you Madam President. I move that all items on Senate Agenda No. 3, dated Wednesday, May 28, 1997,

minutes for the preparation of a new Go list.

THE CHAIR:

Thank you Senator. Would the Clerk please announce a roll call vote and call the Consent Calendar.

THE CLERK:

Immediate roll call has been ordered in the Senate on the third Consent Calendar. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate on the third Consent Calendar. Will all Senators please return to the Chamber.

Madam President, third Consent Calendar begins on Calendar Page 13, Calendar 521, Substitute for HB6950.

Calendar Page 20, Calendar 127, Substitute for SB976.

Calendar 150, Substitute for SB1074.

Calendar Page 24, Calendar 296, Substitute for HB6923.

Calendar 304, Substitute for HB6823.

Calendar Page 25, Calendar 332, Substitute for SB1178.

Calendar 386, Substitute for SB1126.

Calendar Page 26, Calendar 391, Substitute for SB1124.

Calendar Page 29, Calendar 184, Substitute for SB1026.

Calendar Page 30, Calendar 456, Substitute for HB5061.

Madam President, that completes the third Consent Calendar.

THE CHAIR:

Thank you sir. Would you once again announce a roll call vote, the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate on the third Consent Calendar. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate on the third Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? Have all members voted? If all members have voted, the machine will be locked. Clerk please take a tally.

THE CLERK:

Motion is on adoption of the third Consent Calendar.

Total Number Voting	35
Those Voting Yea	35

Calendar Page 29, Calendar 184, Substitute for SB1026.

Calendar Page 30, Calendar 456, Substitute for HB5061.

Madam President, that completes the third Consent Calendar.

THE CHAIR:

Thank you sir. Would you once again announce a roll call vote, the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate on the third Consent Calendar. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate on the third Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? Have all members voted? If all members have voted, the machine will be locked. Clerk please take a tally.

THE CLERK:

Motion is on adoption of the third Consent Calendar.

Total Number Voting	35
Those Voting Yea	35

Those Voting Nay 0

Those absent and not voting 1

THE CHAIR:

The Consent Calendar is adopted. Senator Jepsen.

SEN. JEPSEN:

Thank you Madam President. I move that the Chamber stand in recess until approximately 7:30.

THE CHAIR:

Without objection, the Chamber will stand in recess subject to the Call of the Chair.

(Recess subject to Call of the Chair)

THE CHAIR:

Would the Senate please come to order. At this the Chair will recognize members for points of personal privilege or announcements. Are there any announcements or points of personal privilege? Senator Crisco.

SEN. CRISCO:

Thank you Madam President. For purpose of an announcement.

THE CHAIR:

Please proceed.

SEN. CRISCO:

H-772

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1997

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4976-5353

SPEAKER RITTER:

If all members have voted please check the machine to make sure your vote is properly cast, if it has the machine will be locked. The Clerk will please take a tally. The Clerk will please announce that tally.

CLERK:

HB6778 as amended by Senate "A" in concurrence with the Senate.

Total Number voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	9

SPEAKER RITTER:

Bill passes. Clerk please call Calendar 664.

CLERK:

On page twenty-two, Calendar 664, substitute for SB976. AN ACT RESTORING WORKERS' COMPENSATION COST OF LIVING ADJUSTMENTS FOR WIDOWS, WIDOWERS, ORPHANS AND TOTALLY DISABLED WORKERS. The Senate adopted Senate "A" total number voting. Favorable report of the Committee on Appropriations.

SPEAKER RITTER:

That was a nice cover up, it's only a quarter of two. The honorable chair of the Labor Committee,

Representative Donovan.

REP. DONOVAN: (84th)

Good afternoon Mr. Speaker.

SPEAKER RITTER:

Good afternoon sir.

REP. DONOVAN: (84th)

Mr. Speaker I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER RITTER:

Motion on acceptance in concurrence with the Senate, please proceed.

REP. DONOVAN: (84th)

Yes, Mr. Speaker, the Clerk has in his possession, LCO 8408, that was adopted in the Senate. I ask that the Clerk please call and I be allowed to summarize.

SPEAKER RITTER:

Clerk has LCO 8408 if you may call and Representative Donovan would like to summarize.

CLERK:

LCO 8408, Senate "A" offered by Senator Fonfara, et al.

SPEAKER RITTER:

Representative Donovan.

REP. DONOVAN: (84th)

Yes, Mr. Speaker. Mr. Speaker, this amendment, Senate amendment "A" becomes the bill. And this bill makes several changes in the worker compensation law and briefly one section--the bulk of the section--deals with providing a cost of living increase on an annual basis to widows, widowers, orphans and totally disabled workers. As from '93 on, and I move adoption.

SPEAKER RITTER:

Questions on the adoption of Senate "A" will you remark further?

REP. DONOVAN: (84th)

Yes, Mr. Speaker. Mr. Speaker, the whole issue of cost of living increases is an important one for the workers in the state. I don't know if very many people know that when there is a death that occurs in the work place. I don't think people are very sure what the compensation is to the survivors of that worker who died.

Basically what the law allows is that the survivors receive a compensated weekly benefit which replaced that worker's lost wages. And the average benefits of those workers is $300.00 a week in our state. The survivors don't receive anything else, they can't sue anyone, there is a set amount that the widow or widower or the defendants receive.

Should their survivor spouse marry, there is no longer any benefit to the family. Mr. Speaker, since 1993, that benefit has been frozen. And so since 1993, that actual benefit since there have been rises in the consumer price index and other indicators, that amount as has been frozen for those survivors of a spouse who died on the job that actually weekly benefit has decreased in real dollars every year.

And Mr. Speaker, this amendment restores a measure to increase those payments on a very modest amount so that those survivors receive some kind of compensation that is just and will replace to some extent the lost wages of their loved one.

I think this is an important issue for our Chamber, because it deals with the question of what is just in terms of someone who died on the job. Some of the workers comp reform in the past guarded the issue of whether or not the worker comp benefits were so good as an incentive, a disincentive to return to work.

Well, certainly if someone dies or is totally disabled, they cannot return to work. The question then is, how do we compensate the survivors of that loved on in terms of lost wages? Again to repeat if the survivor for some reason, if the spouse decides to remarry they no longer get the benefit.

If the children, if the children are the sole benefits of the dying worker. Once they reach 18 they no longer get any benefits. So it's a very modest payment and I think a fair payment to those workers. Also at the same time, actually if you remember our history in 19, I believe it was 1987 when we had the tragedy of the La'ambiance Plaza, we as a people as members of the great state of Connecticut saw how meager the payment to those survivors was.

And as a General Assembly we voted to increase that payment. Because we saw those widows looking at--young widows, in most cases they were young men who died--and they saw what the compensation was at that point I believe it was 66% of their gross wage.

And there was a cap on that. So for some people who made a lot money it was less, they received less than 66%. We raised that in 1987. Well in 1993 we dropped that to a lower level, and with out a COLA that compensation to those people who lost a loved ones has decreasingly going down, down, down.

And unless there is a change, it will get so low in real dollars that for some people they may seek other forms of assistance from the state such as food stamps and other assistance. All because their loved one died, or was killed on the job, or totally

disabled.

And Mr. Speaker, I've had people come into my office. I've had a woman crying over the loss of her husband who died in 1961, she never remarried, she was left with kids, and her compensation has gone down every year. I had a young woman who had an accident where her lungs were destroyed by chlorine gas. Her benefits have gone down every year.

And also at a time when the worker compensation industry has enjoyed record profits, we have an average profit over the last couple of years some where around 25%, this is such a small amount of payment to these people that again it is just. Some parts of this bill also I just want to elaborate on besides the COLA. Again, just to remind everybody the COLA is for widows, orphans or totally disabled individuals only. The other two aspects of this bill deal with some minor changes.

One is a clarification of volunteer work within a school system. If you're asked to volunteer at a school function and you get injured there you should be covered by workers compensation. The other one is that such as a chaperon at a dance.

The other one is it restricts the workers comp commissioner from moving commissioners around on more

than a yearly basis. Currently the commissioner has been moving people, we heard reports that it was somewhat arbitrary. Again, there's a minor change. It says once the workers comp commissioner sets the places the commissioners in their geographic spot they'll remain there unless there's an emergency or an illness where they can move. Mr. Speaker, I move adoption.

SPEAKER RITTER:

Questions on the adoption of Senate "A" thank you sir for your summary. Will you remark further? Representative Powers.

REP. POWERS: (151st)

Thank you Mr. Speaker. Through you a question to the proponent of the amendment. Do you have a fiscal note on this amendment? As the file had a fairly significant fiscal impact and I'm wondering what the new amendment does, through you.

SPEAKER RITTER:

Representative Donovan.

REP. DONOVAN: (84th)

Yes Mr. Speaker there is a fiscal impact. The main impact is to the second injury fund. Because a lot of these individuals will actually be compensated through the second injury fund. The second injury fund which isn't receiving new cases, there is an estimate

that it will cost the second injury fund approximately $5 million, that is out of an annual assessment of about $114 million which would be about a--I'm estimating--about a 2% increase to the second injury fund. There is, given the projection of second injury fund payments, this will fall within the project decreases in the second injury fund. So even with this change there will not be an increase in the second injury fund. Through you Mr. Speaker.

REP. POWERS: (151st)

Thank you Mr. Speaker. And through you, one final question, is there any municipal impact? Through you.

SPEAKER RITTER:

Representative Donovan.

REP. DONOVAN: (84th)

Mr. Speaker, again, according to the OLR report in as much as a municipality pays an assessment to the second injury fund, there would be. Again, we're talking about cases where there's only about 35 deaths or fatalities in the course of a year. A lot of those individuals choose not to accept the COLA and actually--what they call stipulate--they just get a cash settlement, so those people want to be included there would never be any COLA for those individuals.

So again, it depends on the municipality. If you

had a lot of people who died in a particular accident you may have a minor impact, but it shouldn't be that much of an impact. Through you Mr. Speaker.

SPEAKER RITTER:

Representative Powers.

REP. POWERS: (151st)

Thank you Mr. Speaker. I'm a little concerned about the municipal impact and through you Mr. Speaker, what was the input from the municipalities if any?

SPEAKER RITTER:

Would you state your question again please madam?

REP. POWERS: (151st)

I'm a little bit concerned about the municipal impact even though you say it is minimal. Through you Mr. Speaker was there any input from municipalities on this particular amendment? Through you.

SPEAKER RITTER:

Question was there any input from the municipalities?

REP. DONOVAN: (84th)

Excuse me I missed the last.

SPEAKER RITTER:

Was there any input from municipalities into this legislation.

REP. DONOVAN: (84th)

Through you Mr. Speaker, on this particular issue I don't recall any particular input. Actually the amendment that's before us was discussed by a lot of different parties. And it was pretty much a consensus that this is pretty much a consensus from the parties--some parties wanted more, some parties wanted less--but this was certainly a consensus among some of the parties. Municipalities may have participated in that, I'm not sure.

SPEAKER RITTER:

You still have the floor madam.

REP. POWERS: (151st)

Thank you Mr. Speaker.

SPEAKER RITTER:

Thank you madam. Representative Winkler.

REP. WINKLER: (41st)

Thank you Mr. Speaker. A question through you to Representative Donovan.

SPEAKER RITTER:

Please proceed madam.

REP. WINKLER: (41st)

Thank you. Representative Donovan would this legislation cover any of our local police officers that were killed in the line of duty? Would their widows benefit from this particular legislation?

REP. DONOVAN: (84th)

Through you Mr. Speaker. Yes, certainly anyone killed in the line of duty it's a work place injury. And as of, just, as of 1993, anyone who died since 1993, those widows or widowers have received a set amount that hasn't changed from year to year. And it's been about since 1993--four years have gone by--it's been about an 8% change in the consumer price index.

So in real dollars those individuals lost benefits as the years have gone on. So this would restore and adjust on a yearly adjustment for those individuals.

SPEAKER RITTER:

Representative Winkler.

REP. WINKLER: (41st)

Thank you Mr. Speaker. Even, through you sir, even though a settlement was reached at the time of death they would be covered by this?

REP. DONOVAN: (84th)

Through you Mr. Speaker, if the surviving spouse--instead of saying widow or widowers every time--if the surviving spouse chose to receive a lump sum payment in lieu of a weekly benefit they're not affected by this bill in any way what so ever, because they wouldn't receive a COLA, they received a set sum, that's it, they've settled, it's over. This only addresses those

individuals who chose to receive the weekly benefit.

REP. WINKLER: (41st)

Thank you Representative Donovan, thank you Mr. Speaker.

SPEAKER RITTER:

Thank you Madam. Representative Tercyak.

REP. TERCYAK: (26th)

Thank you Mr. Speaker. Mr. Speaker, I rise in support of this bill. You know if this body can vote a gift of almost $5 million after a person spends a dollar for a lottery ticket and a breech of contract we certainly should support this bill dealing with restoring workers' compensation cost of living adjustments for widows, widowers, orphans and totally disabled workers. I will support and I ask this body to join me in support of this bill. Thank you Mr. Speaker.

SPEAKER RITTER:

Thank you Representative Tercyak. Representative Hammers.

REP. HAMMERS: (123rd)

Thank you Mr. Speaker, through you a question to Representative Donovan.

SPEAKER RITTER:

Please proceed.

REP. HAMMERS: (123rd)

Thank you. Representative Donovan, I just wanted to clarify one thing, the surviving spouses and the children are in these cases eligible for the social security survivor benefits are they not sir? Through you Mr. Speaker.

REP. DONOVAN: (84th)

Through you Mr. Speaker, yes they are.

REP. HAMMERS: (123rd)

And through you Mr. Speaker, then those do have a cost of living increase and even if the surviving spouse remarries, does it not continue for the children?

REP. DONOVAN: (84th)

Mr. Speaker, for the children yes.

REP. HAMMERS: (123rd)

Thank you sir. Thank you Mr. Speaker.

SPEAKER RITTER:

Representative Mazzoccoli.

REP. MAZZOCCOLI: (27th)

Thank you Mr. Speaker, a few questions to the proponent of the bill. Could he explain please, we had this problem recently that the supreme court came back with a decision a few months back saying the cost of living increases for those receiving benefits that go

back--I can't remember the number of years--they've reached sort of a middle ground. Can you give me a brief explanation of how that affects those who you say have been receiving benefits due to a death that may go back 15 years? For instance I have a constituent who was making $335 a month and was cut back to like $285, now it's going to be like $315. Can you give me an estimate as to what that does in a case like that?

SPEAKER RITTER:

Representative Donovan.

REP. DONOVAN: (84th)

Thank you Mr. Speaker. Mr. Speaker, this amendment does not address that. This amendment only deals with those individuals who were either totally disabled or surviving spouses after 1993.

REP. MAZZOCCOLI: (27th)

Okay, thank you. One other question Mr. Speaker. I thought we were in the process of phasing out the second injury fund. Can you clarify that for me?

SPEAKER RITTER:

Representative Donovan.

REP. DONOVAN: (84th)

Yes, Mr. Speaker, we are. There was, I guess by law we are phasing it out by not taking new cases. There are still a number of individuals who are on the

second injury fund and we continue the liability of those individuals. And these individuals again are many of them are on the second injury fund already.

REP. MAZZOCCOLI: (27th)

Okay, and for the benefit, my benefit of the Chamber for those of us who aren't understanding how the new mechanism works, what, how are we handling cases for second injuries? What's different? Those new injuries that are not going into the old second injury fund?

REP. DONOVAN: (84th)

Through you Mr. Speaker, the way we're handling new cases. When an injured--again Mr. Speaker to the second injury fund not the bill--but, not the amendment before us, in the second injury fund any new case of someone who would maybe in the past have been moved on the second injury fund is taken care of as a regular claim within the insurance policy.

REP. MAZZOCCOLI: (27th)

Thank you Mr. Speaker.

SPEAKER RITTER:

Representative Santa Maria.

REP. SANTA MARIA: (107th)

Thank you Mr. Speaker. Mr. Speaker, I rise in support of the amendment. I believe in some of the

reforms that we have enacted in past sessions, in past years, went a little bit too far. There will be obviously a slight increase to workers' comp. But I believe in our efforts to work with the Insurance Association of Connecticut and Business and Industry Association of Connecticut we've come up with a good compromise. I believe that this amendment does what needs to be done on behalf of the people affected by tragedy.

I believe it restores the necessary benefits to provide people with the care and adequate living wages that they'll need to carry on through their times and tragedies. Mr. Speaker, I urge both sides of the aisle to support this amendment. Thank you Mr. Speaker.

SPEAKER RITTER:

Representative Eberle, good afternoon madam.

REP. EBERLE: (15th)

Thank you Mr. Speaker. I too rise in support of this amendment. I was very involved in doing the '93 reforms. And this language is similar to issues that were included in the '93 bill up until the very end. They add a very small amount of costs and clearly target only those who have no possibility of returning to work and I would urge its adoption.

SPEAKER RITTER:

Thank you madam, will you remark further? Representative Caron, how are you sir.

REP. CARON: (44th)

I'm very well Mr. Speaker, and you?

SPEAKER RITTER:

Good.

REP. CARON: (44th)

Mr. Speaker, I would rise in support of the amendment. As someone who had this hit rather close to home a few years ago, in fact in 1993. I think this does correct a problem that existed, and like I said, I support the amendment and I urge my colleagues to as well.

SPEAKER RITTER:

Thank you sir, anybody else? Representative Gyle.

REP. GYLE: (108th)

Thank you Mr. Speaker. Mr. Speaker, a question through you to the proponent of the amendment.

SPEAKER RITTER:

Please proceed.

REP. GYLE: (108th)

Representative Donovan, this is an honest question, I mean it's not one I have any answer to so I'm not trying to set you up. If there was a legislator who fell down the stairs and got killed, a

full time male legislator, I believe that his widow would be entitled to workers' comp benefits, is that not true? Through you Mr. Speaker.

REP. DONOVAN: (84th)

Through you Mr. Speaker, yes.

REP. GYLE: (108th)

Would that widow, if this amendment passes, get a cost of living adjustment?

REP. DONOVAN: (84th)

Through you Mr. Speaker, yes.

REP. GYLE: (108th)

Even though we haven't had a raise for 10 years, their cost of living would keep going up even though our salary stayed completely stable? Through you Mr. Speaker.

REP. DONOVAN: (84th)

Through you Mr. Speaker, well first of all, the survivor spouse would get 75% of your net pay. So it would take quite a while to make where we are now, through you Mr. Speaker.

REP. GYLE: (108th)

Through you Mr. Speaker, that long huh? Who determines the cost of living? Is it the index that, the national index is that where we take it from.

REP. DONOVAN: (84th)

Through you Mr. Speaker, it is an annual determined wage based on the average production wage in the state.

REP. GYLE: (108th)

Thank you Mr. Speaker. Representative Donovan, another question through you Mr. Speaker. Representative Donovan, what other states do this? Are we finally catching up or are there any other states that don't do this or what?

REP. DONOVAN: (84th)

Through you Mr. Speaker, there are a number of, every state has various ways of establishing workers comp benefits. And we're one of about 15 states that have a, this particular measurement. But it's almost like setting the property tax rate, some people have low mills and high assessments, some people. It's more or less an equation and I think the question really comes down to--in terms of talking about actual dollars were saying to a widow or widower that on an average you're loosing your spouse who is bringing in the money and the average payout to Connecticut survivors is $300.00 a week.

That's not a whole lot of money, and this would make a slight adjustment for those individuals. They've lost someone, they can't sue, there's no suing

involved. What you get is determined by the General Assembly. We determine what the individual gets. Whether or not, and that's why again when La'Ambiance Plaza came we as a General Assembly were stunned by how little these spouses were getting and we made a change.

Those things don't happen every day, we tend to forget, we make changes without thinking and again that has decreased steadily ever since. Through you Mr. Speaker.

SPEAKER RITTER:

Representative Gyle.

REP. GYLE: (108th)

Through you Mr. Speaker, I'm stunned, $300.00 a week Representative Donovan is more than we make a week, quite frankly and I think it's a shame that we don't also have a cost of living adjustment in our own pay raises. But I still didn't get the answer to your question after what you said, which was very interesting, thank you very much. But how many other states do this?

REP. DONOVAN: (84th)

Through you Mr. Speaker, I said about 15, we're one of 15.

REP. GYLE: (108th)

Fifteen, that was really the number I wanted,

thank you very much Representative Donovan.

SPEAKER RITTER:

Will you remark further on Senate "A"? Representative O'Rourke, right in front of me. It's like our budget negotiation, anything in front of you, you can't handle it too well.

REP. O'ROURKE: (32nd)

I understand Mr. Speaker, a question through you to the proponent of the amendment. Representative Donovan, my experience with the cost of living adjustment issue is that what's said on the floor tends to become very important down the road as to the interpretation by the workers comp commission and the actual application of the adjustment, the calculations of the COLAs from on year to the next have changed many times, depending on the whims and the readings of the statutes by the chairman and the commissioners of the workers' comp commission.

So, one question on reading this, I noticed that our colleagues in the upper chamber have deemed to reinvent part of the previous COLA statute in terms that requiring that a person who is totally incapacitated now will have to wait a period of five years before receiving any cost of living adjustments.

They'll have to be, my reading of this, they'll

have to be out of work totally incapacitated for a period of five years. My reading of this is that if they were to try to go back to work for a short period of time that would not interrupt the clock on the five years. I notice that it does not say continuous. So I imagine that if they made an attempt and they had a relapse and they couldn't, they found out that they couldn't work, that having tried to go back to work would not stop the clock on their five years.

Is that your understanding and intent in adopting this amendment? Through you Mr. Speaker.

REP. DONOVAN: (84th)

Through you Mr. Speaker, yes. Previous language prior to '93 allowed for intermittent totally, people who were intermittently totally disabled. People who, for various reasons again, for instance the woman who had her lungs basically destroyed, she could work certain times, but then other times she would be totally disabled. Absolutely totally disabled, medical assessments would say, you're disabled.

This, the language is clear, totally incapacitated for a period of five years or more. So if someone is totally incapacitated for five years or more then they would receive any COLAs during that period. Through you Mr. Speaker.

SPEAKER RITTER:

Representative O'Rourke.

REP. O'ROURKE: (32nd)

Through you Mr. Speaker I thank the gentleman for his answer. I think that makes a lot of sense it makes me feel better about the five years. I still don't really see the reason for a five year waiting period on a cost of living adjustment. But I think having heard that answer I certainly feel better about it.

And I rise in support of the amendment. It is long over due. And ladies and gentleman this solves the egregious problem of the '93 reform which took away the cost of living adjustment for people who were killed or totally disabled on their job. When a person's livelihood is taken away from them, either through death or total injury, that has a tremendous value and a tremendous impact on their family.

And those workers are owed, they are owed, for their future earnings. And in the future those earnings have a greater economic value. And that's why the cost of living adjustment is so important and so just and so fair and it's why we need to pass this bill today, to restore that. For those of you who are worried, the impact is extremely low on workers' comp benefits--workers' comp insurance rates--excuse me.

And also as far as the impact which has been raised on the second injury fund, it is extremely important that we take this step today. Because every year that we wait to restor cost of living adjustments, that means more and more workers will ultimately have their COLAs paid by the second injury fund. And two years ago we took the step in this chamber to close that fund to future liabilities.

So were we to not pass this bill today, then we would leave that liability and future cost to the second injury fund to become larger and larger. So, really this is going to beneficial today to the second injury fund and to workers comp premiums in the state of Connecticut. But most importantly to the families of those workers who were killed or totally disabled on the job. Thank you Mr. Speaker I urge adoption of this amendment.

SPEAKER RITTER:

Thank you sir. Will you remark further on the adoption of Senate "A"? If not, I'll try your minds. All in favor signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed no. Senate "A" is adopted. Nice job.

Will you remark further on this bill as amended by Senate "A"? If not, staff and guests come to the well. The machine will be open.

CLERK:

The House of Representatives is voting by roll call, members to the Chamber. The House is voting by roll call, members to the Chamber please.

SPEAKER RITTER:

If all members have voted please check the roll call machine to make sure your vote is properly cast, if it has, the machine will be locked. The Clerk will please take the tally. The Clerk please announce the tally.

CLERK:

Senate Bill 976 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not voting	6

SPEAKER RITTER:

Bill passes. Clerk please call Calendar 669.

CLERK:

Page twenty-three, Calendar 669, substitute for

JOINT
STANDING
COMMITTEE
HEARINGS

LABOR
AND
PUBLIC
EMPLOYEES
PART 1
1-267

1997
INDEX

down family physicians as an approved medical specialty. He has said that he would provide other wording that other, he would provide an "other" category. The problem with the "other" category is that family physicians are not specifically listed. There's no way for the patient to know what "other" means. It's not published. It's not identified. There's no way of knowing that your family physician is on that list of approved medical specialties.

SEN. COLAPIETRO: Thank you, Doctor. Thank you, Mr. Chairman.

SEN. PRAGUE: I want to carry this a step further. Say you have a patient, Mr. Brown, who's covered under an HMO and you're in that network. Mr. Brown comes to you whenever he needs to come to you.

DR. MICHAEL KAZAKOFF: Right.

SEN. PRAGUE: Mr. Brown gets hurts on the job. And there's a different network for workers' comp providers. Mr. Brown has to go to somebody else. (Microphone went off)

DR. MICHAEL KAZAKOFF: Correct.

SEN. PRAGUE: Correct?

DR. MICHAEL KAZAKOFF: Correct.

SEN. PRAGUE: Thank you.

REP. DONOVAN: Thank you. Any other questions? Thank you very much. I'm going to ask Dr. Schoof to hold off for a minute. Actually probably more than a minute. We've been joined by Commissioner Jesse Frankl who is under the legislative and public officials. He was not here at the time, so I ask everyone's indulgence to let him speak now.

COMM. JESSE FRANKL: Thank you very much for allowing me to come at this time. Senator Prague, Representative Donovan, members of the Labor and Public Employees Committee, my name is Jesse Frankl, I'm a Commissioner and Chairman of the

I also should explain to you with regard to SB46 that we are the number one state in the United States that handle and settle cases at the informal hearing stage. We settle over 94% of all of our cases. I think that we've done a pretty good job. The next state is Rhode Island with approximately 90%. So I really don't think that there's any necessity to change anything that we're doing unless that's your wish and of course I'll implement whatever you want me to do.

The second bill I'd like to talk to deals with SB975. This is a bill to require the residual market, which is motor vehicle the assigned risk pool where you can't get insurance and you go into this pool and it's to require these employers that are in this pool to have managed care plans. I mean, you're in the pool for a reason. Their accidents are high, their medical costs are high and this would be a way to help them reduce their costs and get them out of residual pool, which they want to get out of.

So I think we should make it a requirement. Some states have that by the way. They get a requirement that they have managed care plans if they're in this residual market which is approximately, it's below 10% for the first time in a long time. I think it's at 9.7% of all the employers that are in this market.

The next bill is SB976. This is a bill that the Commission itself asked you to raise and you have done and it's a situation where if you're in a rehab program which is under the Commission, you go back and get a certificate of vocational condition to be filed with the Commission. So that it's asset to have the employer hire the handicapped.

Now there has to be some changes to this after reviewing this and discussing this with others, and I wasn't here for the testimony of the Connecticut Trial Lawyers. I've talked to them about this and I agree with their position that there has to be some changes in this bill but I think that the basic reason for the bill is a good one and I think we could make changes that would help and would

satisfy all. And I'm in favor of that bill.

The next bill that I'd like to testify on is SB977 which deals with the workers' compensation budget. The reason I'm concerned about this bill and its ramifications is that under the present law, I am allowed to assess up to 4% of all the payouts, indemnity and medical payouts for the preceding year, not counting the state and municipal employees' injuries and payouts. The trend has been that these costs have been going down significantly.

My budget, although I've reduced it over the last four years by approximately $9 million, there's only so much that I can reduce it by. I have a lot of fixed costs with leases and salaries and things of that nature and I'm concerned that I'm going to get to a point where I won't be able to assess enough monies to run the Commission.

There was a new statute passed last year requiring me to allocate at least monies that I had saved toward my budget, which I have done, and we have this year the lowest assessment in the United States of 1.21%, but that's because I had a lot of money in savings. I used some of it the year before and I used a lot of it this year. But next year, I don't know what's going to happen. I'm not going to have those savings and if costs are reduced overall and I'm only able to assess 4%, I may not be able to assess enough to run the Commission and what this bill asks is that I be able to assess up to the amount of the approved budget of the Legislature. I think that's a fair tool to look at and to measure what I can and cannot do. It gives me constraints because it's the Legislature that sets my appropriation.

The next bill that I'd like to testify on is HB6583 dealing with the cost of medical depositions. I am in favor of that bill. Basically what this bill says, if you have a contested case injured employee and you have to take a deposition and expend a lot of money and then you win the case, you're entitled to get reimbursed for that. I think this is a very fair bill and I would suggest that this Committee

COMM. JESSE FRANKL: Well, they're paying more money in being in the residual pool anyhow. I just think it's something to help them out and get them out of the pool.

REP. DONOVAN: I have another question. On SB976 you spoke about there's a need for changes and I guess my concern reading this is since we got rid of the Second Injury Fund and according to this bill the liability is, I guess the question is, where does someone who gets injured the second time, where do they go for, that's related to their original injury, is that where the changes need to be? Because --

COMM. JESSE FRANKL: Yeah, they would have to go back to their prior employer and this employer would not have to apportion the risk is what I'm saying.

REP. DONOVAN: What about, it also speaks about congenital problems. There is no prior employer on that.

COMM. JESSE FRANKL: That's something we have to work out. That's one of the things that has to be worked out.

REP. DONOVAN: (Inaudible-mike not on)

COMM. JESSE FRANKL: We need change to the way it's written. There's no question.

REP. DONOVAN: The other, on the, again just to clarify on the budget you say that, I guess the main reason was that, you're hearing you'll need more money, even though you have been saying money, you think you need money and maybe because you reduced payouts you don't think you'll be getting as much.

But I think some people feel that the cap is a good idea, certainly if you're leaving things up to the Legislature. Sometimes we see, we get very creative with budgets.

COMM. JESSE FRANKL: Make it an either or thing, then.

REP. DONOVAN: And so you'll be, what about just looking

at the cap itself. Do you feel there would be, would you be looking at increasing the percentage on the cap or --

COMM. JESSE FRANKL: Well, we have to do something. I mean, I'm very close to it right now.

REP. DONOVAN: What happens if you run out of money right now and what you need to do.

COMM. JESSE FRANKL: I'm going to have to write people off or take people off subsistence that I have in my rehab or make people stop going to school because that's the largest bulk of my money and I don't want to do that.

REP. DONOVAN: Is it possible that you would come back to the General Assembly under the deficiency and try to get money that way? Is that possible?

COMM. JESSE FRANKL: That was done once, you know. The Legislature and the Governor doesn't want me to go back to the general fund when they complain they don't have enough money in the general fund.

REP. DONOVAN: When was that done?

COMM. JESSE FRANKL: That was done before I became the Chairman, and they charged the Commission interest and everything else. I mean, we ended up borrowing something that I could see of like $5.6 million and paid back $6 million.

REP. DONOVAN: Okay, I have another question on a bill you submitted but you didn't testify on, that was HB6626 which dealt with workers' comp medical treatment.

COMM. JESSE FRANKL: These are merely check changes as I could see them.

REP. DONOVAN: Well, I guess I have one major concern with it and it deals with, I'm trying to find this first, HB6626. Under lines, under Section 2a, I believe it's line about 100. According to current statutes, I guess if an employee receives medical treatment that they pay the total amount, they

CAROL BENOIT: What I did want to say is, they did an article in the paper on me last year. There's a lot of women that aren't here and they range from ages 65, 76 to 92. And because my article was in, they wrote an article on me, I have been inundated with calls all through last year but because my father was dying of cancer I couldn't make it here. These women they can't make it here. They just can't, to testify.

REP. DONOVAN: We appreciate your speaking for them.

CAROL BENOIT: There's a lot of them out there.

REP. DONOVAN: Thank you very much.

CAROL BENOIT: Thank you.

REP. DONOVAN: The next speaker is Tom Carusello followed by Richard Husta.

TOM CARUSELLO: Good afternoon. I should have said good evening. Good evening, Chairman Donovan, members of the Committee. My name is Tom Carusello. I'm the political director of the AFL-CIO. I'm one of those employees that John Olsen talks about that he's paying that worker compensation insurance premium on.

I found the testimony from CCM representative interesting, talking about CRMA and how this insurance pool of CRMA that the municipalities have put together has actually substantially reduced worker compensation premiums for municipalities and it was good to see that Representative Esposito has actually had some experience with it because it actually has worked.

And CRMA is nothing more than a mutual insurance company. And that is why, on SB972 which would create a mutual insurance company for worker compensation, we strongly support that.

I submitted here, testimony from last year from Blaine Palmer who was the president of the American Association of State Compensation Insurance Fund. We had brought him here last year to talk about

group that were hurt in the 1993 so-called reforms were the injured workers. Attorneys are doing well. Doctors are doing well. Insurance companies are doing great. It's only the workers that have been hurt by what happened.

As far as scarring is concerned, there was this gentleman --

REP. DONOVAN: Are we close to summary here?

TOM CARUSELLA: Yes, I am, thank you. As far as scarring is concerned, there was a gentleman who came to testify here who had been in an accident at work where a torch blew up. His skin was burned from his neck down. He was able to cover it with clothes. If that had happened to him today, he would receive absolutely no benefits for scarring, but he could no longer enjoy his life with his wife because he couldn't bear the thought of being with her. He obviously could not go to the beach. His life as far as he knew it had changed dramatically. Today he would receive nothing. What would a jury have awarded this person if he had gone before a jury trial?

Now, I'm just going to go through a list of these things that we support and don't because you've got a whole bunch of bills here, okay. Quickly.

SB978 family physicians we support. SB975 on managed care risk pool we oppose. SB976 permanent vocational conditions we oppose. SB977 worker comp commission budget we oppose. HB5144 the reduction of benefits, actually changing the reduction of benefits we support. SB986 discretionary benefits we support. HB5087 police mental stress we support and HB6626 worker comp medical treatment we oppose. Thank you. HB6586

REP. DONOVAN: Thank you very much. Any questions? Thank you. Richard Husta, followed by Lindsay Spaltro.

RICHARD HUSTA: Good evening. My name is Dick Husta. Appreciate the opportunity to be here and members of the Committee.

The Connecticut Trial Lawyers Association **opposed** S.B. No. 976 (Raised) -- "AN ACT CONCERNING CERTIFICATES OF PERMANENT VOCATIONAL CONDITION"

On its face, this bill purports to relieve employers who hire injured workers under the terms of an approved "On-The-Job Training Program" from future liability for previous work-related and other physical conditions and disabilities.

The danger in this proposed legislation is how it will be applied and interpreted. Even though this revision effectively mirrors current law with respect to new injuries, it could well be interpreted by insurance carriers and the courts to allow an apportionment of temporary total disability benefits between the so-called "new or recurring" injury and the pre-existing compensable condition. Moreover, we fear that this bill, if passed, would ultimately invite extension to all injuries.

As was noted by a number of forward-looking speakers in last year's legislative session, when this body dealt with closing down the Second Injury Fund, it is our fear that efforts will be made in the legislature to eliminate any workers' compensation benefits for the effects of pre-existing conditions which contribute to disabilities. Such changes would overturn the basic principle of workers' compensation that the employer takes the worker as he finds him. It would be disastrous for injured workers faced with serious disabilities. It would also threaten the constitutionality of the Workers' Compensation Act. It would increase litigation tremendously.

Since the passage of workers' compensation in 1913 removed the employee's right to sue his employer for negligence, the rule has been that in determining eligibility for workers' compensation benefits, the employer take the employee as he finds him; that is, where the employee has a pre-existing condition which is made worse by an injury or disease incurred at work, the entire extent of the resulting disability has been determined compensable.

For example, where the claimant's optic nerve was previously damaged, and where an eye injury at work resulted in blindness in both eyes because of this pre-existing condition, the entire resulting disability was held compensable in Nicotra vs. Bigelow, Sanford Carpet Co., 122 Conn. 360 (1937). The court stated:

> "Under our law, compensation is not made to depend upon the condition of health of the employee or upon his freedom from liability to injury through a constitutional weakness or latent tendency. If the injury is the cause of the disability, it is compensable even though such an injury might not have caused the disability if occurring to a healthy employee or even an average employee."

Id. at p. 361. This has been the rule at all times in Connecticut since the Act was passed, and well before the beginning of the Second Injury Fund in 1945. See, e.g., Hartz v. Hartford Faience Co., 90 Conn. 539, 543 (1916); Richardson v. New Haven, 114 Conn. 389, 392 (1932); Saddlemire v. American Bridge Co., 94 Conn. 618 (1920); Cashman v. McTernan School, 130 Conn. 401 (1944).

The Second Injury Fund was created merely to redistribute the cost of paying for the effects of pre-existing conditions. It did not grant new benefits to claimants. Plesz v. United Technologies Corp., 174 Conn. 181, 185 (1978). The redistribution, however, has been done in an irrational and arbitrary manner. All benefits after the first 104 weeks are paid out of the Fund, whether the proportion of the resulting disability attributable to the pre-existing condition is small or large. Where the work-related injury is serious, resulting in permanent total disability, and the pre-existing condition minor, the Fund winds up paying a grossly disproportionate share of the lifetime of benefits.

If the effects of pre-existing conditions are not included in the disability, a person blinded in a work place accident whose blindness is caused in part by a latent defect would receive only a pittance, either in total or permanent disability benefits. Similarly, a worker with diabetes who lost a leg because of a minor injury to a toe in the workplace, which resulted in gangrene and amputation of the leg, would receive only a few weeks of workers'

compensation benefits despite the catastrophic physical loss. This result is unfair and has never been permitted under Connecticut law.

Workers' compensation acts have been held constitutional because of giving reasonable, certain and speedy benefits to injured workers, without regard to fault, in exchange for workers being deprived of their common law right to sue the employer for negligent acts. The constitutional basis of this bargain would be open to question if the employer could in essence blame the victim for his resulting disability and litigate in virtually every case whether the employee had some predisposition to the resulting disabling condition which would substantially deprive the injured worker of benefits. This would create much litigation, would deny benefits to workers on a pretext and would threaten the constitutional bargain which exchanged sure and reasonable benefits for the right to sue the employer.

We urge this committee to take a serious look at the implications of the proposed bill and the possible ramifications which it could well have for injured workers and the workers' compensation in general. If the committee does support this legislation, we would suggest the drafting changes noted on the attached bill.