Legislative History for Connecticut Act

Public Act: 01-85

Bill Number: 1008

Senate Pages: 1863-1865, 1877-1878

House Pages: 3343-3347

Committee: Labor: 33, 51-52, 60-61, 127, 157, 160, 172

559

Page Total: 19

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

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S-457

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2001

VOL. 44
PART 7
1799-2156

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay"? The ayes have it. The amendment is adopted. Will you remark further on the bill as amended? Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. The bill simply states that a person that's retired that is working for a hospital under their plan today they could buy their prescription drugs through the plan that they have.

This allows them to do it and House "A" added their spouse too. I would move the bill.

THE CHAIR:

Will you remark further on the bill as amended? Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President. If there's no further objection, I would move this to the Consent Calendar.

THE CHAIR:

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

THE CLERK:

Calendar Page 23, Matters Returned from Committee, Calendar 110, File 62, Substitute for S.B. 1008 An Act

Requiring Direct Payment of Prescription Medication for Workers' Compensation Claimants. Favorable Report of the Committee on Labor, Insurance and Public Health.

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:

The question is on passage. Will you remark?

SEN. PRAGUE:

Thank you, Madam President. The bill before us would allow the managed care organizations representing our workers' comp insurance to pay pharmacies directly from prescriptions, rather than have the injured worker having to pay for the prescriptions and then filing the bills with the managed care organization.

I move passage of this bill, Madam President.

THE CHAIR:

The question is on passage. Will you remark further? Will you remark further? Senator Prague.

SEN. PRAGUE:

If there is no objection, I'd like to put this on the Consent Calendar.

THE CHAIR:

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

THE CLERK:

Calendar Page 24, Calendar 131, File 93, Substitute for S.B. 792 An Act Concerning Bank Transactions. Favorable Report of the Committee on Banks and Finance, Revenue and Bonding. The Clerk is in possession of two amendments.

THE CHAIR:

Senator McDermott.

SEN. MCDERMOTT:

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

THE CHAIR:

The question is on passage. Will you remark?

SEN. MCDERMOTT:

Thank you, Madam President. First I would like the Clerk to please call LCO57, no not that one first, LCO5829.

THE CLERK:

LCO5829 which will be designated Senate Amendment Schedule "A". It is offered by Senator McDermott of the 34th District.

THE CHAIR:

5861.

Calendar Page 18, Calendar 459, Substitute for H.B. 5654.

Calendar 460, Substitute for H.B. 6131.

Calendar Page 19, Calendar 468, Substitute for S. B. 1027.

Calendar Page 22, Calendar 480, Substitute for H.B. 6947.

Calendar Page 23, Calendar 107, Substitute for S.B. 1047.

Calendar 110, Substitute for S.B. 1008.

Calendar Page 22, Calendar 485, Substitute for H.B. 6763.

Calendar Page 27, correction, Calendar Page 24, Calendar 131, Substitute for S.B. 792.

Calendar Page 27, Calendar 189, Substitute for S.B. 1330.

Calendar Page 28, Calendar 244, S.B. 735.

Calendar Page 30, Calendar 298, S.B. 1250.

Calendar Page 31, Calendar 303, Substitute for S.B. 1011.

Calendar 336, Substitute for S.B. 1403.

And Calendar Page 34, Calendar 111, S.B. 1116.

And Calendar 310, Substitute for S.B. 1357.

Madam President, that completes the First Consent

Calendar.

THE CHAIR:

Thank you, Sir. Would you once again announce a roll call vote on the Consent Calendar. The machine will be opened.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber.

The Senate is now voting by roll call on the 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. The Clerk please announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total number voting 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

The Consent Calendar is adopted. Before we begin with the Calendar, I would once again ask if there are

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GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2001

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Please proceed.

REP. BEALS: (88TH)

I too would like to welcome this wonderful group from Saint Rita's that we have here in the back of the Chamber. Their school is in my district, but they come from many different districts. I hope they have a wonderful day here and I'd like to ask our colleagues to join us in our usual warm welcome.

APPLAUSE.

SPEAKER LYONS:

Are there additional announcements or points of personal privilege? Are there additional announcements or points of personal privilege? Will the Clerk please call Calendar 532.

CLERK:

The State of Connecticut House of Representatives Calendar for Wednesday, May 23, 2001. On page 19, Calendar 532, substitute for S.B. 1008, AN ACT REQUIRING DIRECT PAYMENT OF PRESCRIPTION MEDICATION FOR WORKERS' COMPENSATION CLAIMANTS. Favorable report of the Committee on Public Health.

SPEAKER LYONS:

Representative Donovan, good morning sir.

REP. DONOVAN: (84TH)

Good morning Madam Speaker, nice to see you.

SPEAKER LYONS:

Nice to see you. Please proceed.

REP. DONOVAN: (84TH)

Madam Speaker, I move the acceptance of the Joint Committee's favorable report and passage of the bill.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage, will you remark?

REP. DONOVAN: (84TH)

Thank you Madam Speaker. Madam Speaker, this just makes clear that when an employee is injured on the job and is in need of prescriptive aid, that those prescriptions be available and payment for those prescriptions be made directly. And I move passage.

SPEAKER LYONS:

The question before the Chamber is on passage. Will you remark, will you remark further on the bill that is before us? Will you remark further? Representative Cleary, I'm sorry sir.

REP. CLEARY: (80TH)

Madam Speaker, a question through you to Representative Donovan.

SPEAKER LYONS:

Frame your question sir.

REP. CLEARY: (80TH)

Through you Madam Speaker to Representative Donovan. What would happen if an employee went to a pharmacy for medication, thinking it was a compensable claim or injury, and it was later found to be a compensable injury. Who would be liable to that pharmacy for the bill? Through you Madam Speaker.

SPEAKER LYONS:

Representative Donovan.

REP. DONOVAN: (84TH)

Through you Madam Speaker, the -- I guess certainly that would be certainly be fraudulent. The idea of the bill, and also the practice, current practice for prescriptive aid, is that the employee would go to the pharmacy and the pharmacy would have some mechanism either through the employer or through the employer's, an agent of the employer to pay directly for that medication.

Certainly the individual would be liable for that, for trying to get medication that was not covered under the workers' compensation program.

SPEAKER LYONS:

Representative Cleary.

REP. CLEARY: (80TH)

Thank you Representative Donovan. And through you Madam Speaker, is it then the intent of this legislation

that those prescriptions from those pharmacies that workers might go to for workers' comp prescriptions, would be authorized by the employer prior to the filling of that script? Through you Madam Speaker.

SPEAKER LYONS:

Representative Donovan.

REP. DONOVAN: (84TH)

Through you Madam Speaker, yes.

REP. CLEARY: (80TH)

Thank you Representative Donovan, I just wanted to make sure that, that was clear. Because I think it was a little bit gray in the bill and wanted to make sure that we did have a situation where there were things being disclaimed for injuries down the road and medication and had pharmacists that were going to be out the money.

I think as long as employers are going to authorizing that and it streamlines the system, then I think it's a good bill.

SPEAKER LYONS:

Will you remark? Will you remark further on the bill that is before us? Will you remark? If not, staff and guests come to the well, members take your seats, 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 LYONS:

Have all members voted? If all members have voted? Please check the board to make sure your vote is accurately recorded. If all the members have voted, the machine will be locked and the Clerk will take a tally. The Clerk will please announce the tally.

CLERK:

S.B. 1008 in concurrence with the Senate.

Total Number Voting	128
Necessary for Passage	65
Those voting Yea	128
Those voting Nay	0
Those absent and not voting	22

SPEAKER LYONS:

Bill passes. Will the Clerk please call Calendar 538.

CLERK:

On page 20, Calendar 538, substitute for S.B. 1088, AN ACT CONCERNING THE CONNECTICUT STUDENT LOAN FOUNDATION. Favorable report of the Committee on Finance Revenue and Bonding.

SPEAKER LYONS:

JOINT
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one requiring direct payment of prescription medication, S.B. 1008.

There's this growing trend among the insurance industry to force the injured worker to first pay for their prescriptions and then, after a month, two months, three months, try to get reimbursed from the insurance companies.

Some of these cases, the prescriptions are running over $1,000 a month and often times the injured workers are only receiving $300 or $400 a week. It doesn't take a mathematician to understand the cash flow problem this is caused by.

When you go to hearings on these matters, the reaction from the insurance industry represented is, well you can't make us pay this, the Commissioner can't force us to have direct payment and we don't have to.

So you have hearings. You go to trials. You have formal testimony. A lot of money is wasted with the Workers' Compensation Commission because, simply placed, a number of insurance companies have taken the position, you can't make us set up a direct payment.

This will alleviate the problem. It's a very simply matter. They're responsible for paying the medical bills. There's no reason why they can't make arrangements with a number of large chain pharmacies to do this. And, in fact, CVS even has a program for Workers' Compensation to handle direct payments.

So, we think this is a no-brainer in terms of this should be passed to alleviate what I believe is an unnecessary strain on the Commission.

The last bill I'm going to comment on is S.B. 1009 which would adopt a statute of limitations provision for repetitive trauma claims.

In the late 40's Connecticut recognized repetitive trauma as a compensable injury under Workers' Compensation. And for years there was an adopted

NATHAN SHAFNER: Are you suggesting - just so I understand your question -- that could the collective bargaining agent such as the union be involved in some negligence action.

REP. BELDEN: Right. By allowing their workers to say, go up on the bridge while they, perhaps themselves, know there's no safety net there.

NATHAN SHAFNER: There's currently a case that's pending now in district court on specifically where there was an altercation at Electric Boat and a man died and the family of the man who was killed couldn't sue the employer. Workers' compensation was their sole remedy.

So they brought action against the unions for two reasons. Number one, the assailant was a union official. And number two, they claim that the union had a certain amount of knowledge and could have prevented this and so forth and so on.

So yes, it's possible. It's certainly possible they could. Again, that would be a factual case, but I don't know how well that will ultimately pan out.

But one thing's for certain in that scenario. In that scenario, there wouldn't be a double recovery because if the decedent's family was able to recover against the union, if you will, or the assailant, workers' compensation would get reimbursed. So there wouldn't be.

If there's a third entity that breaks the chain between the employer and the employee, then workers' compensation has a right to intervene and get their money back. But what we're talking about is something -- and this bill doesn't address that.

REP. BELDEN: One other question, if I might. In the prescription drug proposal, I'm assuming that along the lines that's current statute where we're adding prescription drugs, that these drug requirements would be only those related to the workers' compensation injury and not to the general health of the individual. Is that correct?

SB 1008

NATHAN SHAFNER: Yeah, in the statute you're entitled to medical care. That includes prescriptions as it's reasonably and necessary related to your workers' compensation injury. So we're not asking for, if you will, the workers' compensation system to pay for everyone's medication in the household. It's limited to those medications prescribed by the treating physician which are reasonable and necessary for the injury.

REP. BELDEN: And it's direct payment, that's what you're --

NATHAN SHAFNER: Yeah, and it's simply setting up a method which, for all intents and purposes, works to the insurance company's advantage for monitoring costs and what medication is given. Some of this medication is narcotic medication which is reasonable and it's prudent for them to keep track of what - how much medication is going out on certain cases. You would think they would like this, but unfortunately -- and I attached to our position, a decision of a Commissioner who actually had to try this case and I invite all of you to read it and her legal analysis about it because what it tells you is that a lot of time is spent litigating over something that we should never have to spend time litigating over.

REP. DONOVAN: Thank you. Representative Flaherty.

REP. FLAHERTY: Thank you, Mr. Chairman. Mr. Shafner, just a couple of questions. SB 121

In Section 2 of the bill, beginning on line 31 it says, "In any action brought under this section, the fact that the employer repeatedly violated the provisions of OSHA Act 1970, or Chapter 571 of the General Statutes or those regulations, shall be prima facie evidence of negligence on the part of the employer." Would that mean -- do you take that to mean any type of OSHA violation? Say you're back in the situation of the net on the bridge or something and there are violations, perhaps, in the past unrelated, in any way, to the circumstances that caused that accident.

REP. FLAHERTY: The way - without the language that's proposed, the current law, what types of cases are you finding with repetitive trauma that are being dismissed or thrown out?

NATHAN SHAFNER: Generally, the hearing loss cases and the carpal tunnels and this is how they come up.

A guy comes in -- the scenario you gave - three years after leaving the workforce, his wife is yelling at him, "Turn down the t.v. Don't you ever listen to me anymore? What's the matter?" It turns out the guy's got a 25 year hearing loss. He didn't know. He goes to his doctor, he gets the audiograms, finds out it's noise induced. He files a workers' compensation claim. He just learned that he had a workers' compensation related hearing loss. And guess what? He's out the door. He can't file a claim. Why? Because under the law it says from the last - a year from the last exposure.

Unless the Supreme Court in the (inaudible) case, but if you can show it's more like an occupational disease maybe you can get three years. But if you can show like it's an accidental injury, then it's one year.

So you have to try the case and hopefully, a commissioner in that scenario would find it's more like an occupational disease so the guy can get a hearing aid as opposed to no, it's more like an accidental injury and hearing losses are - this is the scenario that's really bad, that's coming down with the repetitive trauma cases. Not so much with the carpal tunnels because those are a recent phenomena, but it's the hearing loss claims which are really testing the inefficiency in the law right now.

REP. FLAHERTY: Thank you.

REP. DONOVAN: Any other questions from the committee? I just want to ask one. On the prescription -- currently if a claimant works out an agreement and they're getting medical care, are all other medical procedures paid directly to the providers?

SB 1008

NATHAN SHAFNER: Yes.

REP. DONOVAN: So it's only for prescriptions that they're not.

NATHAN SHAFNER: Right. And in the case I attached, just to kind of show you how the mindset of some of these carriers is, is this particular insurance company -- it was a particular adjuster because I've dealt with this adjuster on the same issue -- I think he honestly did it to tweak the claimant, just to harass him, just to harangue them. I honestly believe that. And yet, when they go to the doctor, it's not like the guy's got to pay his own doctor bill. If he has a surgery, I don't think he has to pay his own surgery. It's just this particular thing they just said, we don't have to do this.

And it's very simple to do. I invite you to read this because this really shows you - this really shows you that the Compensation Commission is doing its best to adapt to the problems in workers' compensation. But in this particular case, they could use the General Assembly's help because if you say direct payments, you know what? It ends this discussion. And I'm sure the Commission would feel glad about this too.

REP. DONOVAN: I just have one more story about that kid of mine. SB 121

The week after he finally got paid, they sent him up to the attic to get some warehouse stuff in the attic and as he lifted a box off there was a sign there that said, "Do not stand here" and he fell through the ceiling.

NATHAN SHAFNER: Oh, boy.

REP. DONOVAN: So I don't know where that falls in the ingredient, but once he found the box, that's what he went through, but he was okay.

NATHAN SHAFNER: One note on the exemption -- the exception to the newspaper distributors from

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One would think that employers would take the initiative to make safety the first priority, but unfortunately the trend dictates otherwise. Good employers who make it a goal to have an active safety committee will be served well by this bill for they can be assured that by taking reasonable steps to prevent fatal injuries they will enjoy the intended benefit of the workers compensation exclusivity provisions. However, the time has come to send a strong message to those group of employers who chose to deliberately ignore the well-being of their employees' lives.

S.B. NO. 187 AN ACT PROVIDING INJUNCTIVE RELIEF TO STATE EMPLOYEES EXPOSED TO SAFETY RISKS IN THE WORKPLACE.

CTLA supports S.B. No. 187 that allows for injunctive relief to state employees exposed to safety risks in the workplace.

S.B. NO. 332 AN ACT CONCERNING EMPLOYER RETENTION OF EMPLOYEE MEDICAL RECORDS.

CTLA supports S.B. No. 332 that requires an employer to retain the employee's medical records for at least three years following the termination of employment.

S.B. NO. 1007 AN ACT CONCERNING CONTINUATION OF HEALTH INSURANCE BENEFITS UNDER THE WORKERS COMPENSATION ACT.

CTLA supports S.B. No. 1007 which would require an employer to continue with health insurance benefits while the employee is receiving or is eligible to receive medical care under the workers' compensation act.

S.B. NO. 1008 AN ACT REQUIRING DIRECT PAYMENT OF PRESCRIPTION MEDICATION FOR WORKERS COMPENSATION CLAIMANTS.

CTLA supports S.B. No. 1008 which mandates the direct payment of prescription medication for injured workers. This bill serves to curb a growing and disturbing trend among workers' compensation providers who refuse to directly pay for prescription medication. While

CONNECTICUT AFL-CIO

56 Town Line Road, Rocky Hill, CT 06067
860-571-6191 fax: 860-571-6190

TESTIMONY OF LORI J. PELLETIER
Secretary-Treasurer
Connecticut AFL-CIO

Before the Labor and Public Employees Committee
February 1, 2001

Good afternoon Senator Prague, Representative Donovan and the members of the Committee. I am Lori Pelletier, and I serve as Secretary-Treasurer of the Connecticut AFL-CIO, with more than 900 affiliated unions throughout the state.

I am here to speak briefly on several bills raised for today's hearing:

S.B. No. 121, AN ACT CONCERNING EMPLOYERS' LIABILITY UNDER THE WORKERS' COMPENSATION ACT. We support this bill because it provides recourse to workers' families due to the negligence of employers.

S.B. No. 187, AN ACT PROVIDING INJUNCTIVE RELIEF TO STATE EMPLOYEES EXPOSED TO SAFETY RISKS IN THE WORKPLACE. We support this bill because people should have the right to sue when exposed to unsafe working conditions.

S.B. No. 1007, AN ACT CONCERNING CONTINUATION OF HEALTH INSURANCE BENEFITS UNDER THE WORKERS' COMPENSATION ACT. We support this bill because it would ensure injured workers receive the full range of benefits to which they're entitled.

S.B. No. 1008, AN ACT REQUIRING DIRECT PAYMENT OF PRESCRIPTION MEDICATION FOR WORKERS' COMPENSATION CLAIMANTS. We support this bill because it makes the process of securing pharmaceutical treatment less cumbersome at a time when injured workers' resources are already stretched thin.

S.B. No. 1009, AN ACT CONCERNING NOTICE OF WORKERS' COMPENSATION CLAIMS FOR REPETITIVE TRAUMA INJURIES. We support this bill because it strengthens current language enabling injured workers to file claims.

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SB 332 AAC Employer Retention Of Employee Medical Records extends from one to three years the time that an employer must retain a former employee's medical records. It similarly extends the period during which the former employee can inspect and copy such records. Such an extension is unduly burdensome and costly and should not be supported.

SB 1007 AAC Continuation of Health Insurance Benefits Under The Workers' Compensation Act would expand existing workers' compensation benefits to employees, as well as costs to employers. The proposal mandates that health insurance coverage be continued even after the injured employee has been fully compensated for an injury. The open-ended exposure of such a requirement has the potential to impose a significant and unjustified exposure to employers. The organizations cannot support the proposal.

SB 1008 AA Requiring Direct Payment Of Prescription Medication For Workers' Compensation Claimants requires employers to make direct vendor payments for pharmaceutical charges instead of requiring the employee to pay for such charges and then to seek reimbursement. This would impose another costly administrative function upon employers of all sizes. If such a practice would be justified regarding pharmaceutical charges, why wouldn't direct vendor payments to all providers be desirable? Employers are not in a position to process all of an injured employee's medical payments, nor should they be. The organizations oppose the proposal.

SB 1009 AAC Notice of Workers' Compensation Claims For Repetitive Trauma Injuries would establish an open-ended period for filing claims for repetitive trauma injuries. Allowing the claim to be filed within one year of the first manifestation of the injury makes it virtually impossible for an employer to determine whether the injury actually took place while the individual as under its employment. It also unjustifiably increases the exposure and cost to employers for their workers' compensation coverage. The organizations oppose the proposal.

HB 5215 AA Allowing Biweekly Payment Of Wages allows additional employer flexibility in the determination of an appropriate time period regarding wage payment. Inasmuch as it is more consistent with current employment practices, the organizations support the proposal.

HB 5315 AA Prohibiting The Disqualification Of Job Applicants On The Basis Of Juvenile Misdemeanor Convictions could possibly remove important employer discretion in the hiring practice. It is the employer that faces liability for the actions of an employee in the normal course of employment. Therefore, the employer should continue to have the right to disqualify applicants based on their criminal records. The organizations oppose the proposal.

S.B. 1008, "An Act Concerning Direct Payment of Prescription Medication for Workers' Compensation Claimants"

This bill would require employers or their insurers to pay for prescriptions, instead of requiring employees to pay for prescriptions, then be reimbursed for costs.

A significant amount of employers already provide a prescription drug program for workers' compensation. In addition, many pharmacies, like Walgreen's, provide direct service, so there's no need for a bill that casts such a wide net.

Also, the current system allows insurers to be certain that payment is made for prescriptions that are necessary.

S.B. 121, "An Act Concerning Employers' Liability Under the Workers' Compensation Act"

This effort to get rid of the exclusive remedy for the death of employees would significantly alter the nature of the Workers' Compensation Act.

Currently, the spouse and children of such persons are eligible to receive benefits under the Act.

S.B. 1009, "An Act Concerning Notice of Workers' Compensation Claims for Repetitive Trauma Injuries"

S.B. 1009 would, among other things, establish a special statute of limitations for repetitive trauma injuries. Claims would have to be filed not later than (1) one year after the manifestation of the condition, or (2) one year after the last such trauma.

CCM has concerns with S.B. 1009, in that it may have the effect of unnecessarily extending the statute of limitations for repetitive trauma injuries beyond the current three- year period.

The landmark workers' compensation reform enacted over the past several years should be allowed to continue to work. The reforms were enacted to restore balance to the system. The reforms have been instrumental in attracting and retaining business, and making Connecticut a more competitive state. The existing system retains fairness and equity in servicing injured workers. Let's continue working toward that end.

Thank you for your time and consideration.

# # #

If you have any questions, please call Ron Thomas, CCM's Senior Legislative Associate, at (203) 498-3000.