

My name is Denise Tomasic. I am an attorney in private practice in Kansas City, Kansas. My legal practice is limited to workers compensation law. Over my 32 years of practicing workers compensation law, I have represented employers, insurance carriers and injured workers. I am here today in support of Senate Bill 167 because the current workers compensation law is bad for everyone that I represent.

In order to explain my position, I will provide a brief history of the Kansas workers compensation law. Years ago, injured workers had a common law right to sue employers directly for injuries that were sustained on the job. Those lawsuits required proof of fault, were lengthy and the outcomes were inconsistent and unpredictable. Eventually, the common law right to sue employers directly was replaced by the Kansas Workers Compensation Act - a no-fault system that provided injured workers and employers a stream-lined procedure to adjudicate claims. The trade-off was seen to be good for all parties involved. Employees were given statutory assurance of fair and adequate benefits to compensate them for their injuries and employers enjoyed immunity from tort liability.

Effective January 1, 2015, the Kansas Workers Compensation Act was amended to require an injured employee's impairment to be determined under the 6th edition of the A.M.A. Guides to Permanent Impairment, rather than the 4th edition of the A.M.A. Guides. The 6th edition of the A.M.A. Guides significantly reduces the amount of benefits an injured employee is entitled to receive. The reduction is so significant that it is my legal opinion that the Kansas Workers Compensation Act is no longer an adequate remedy for injured workers. When a worker's common law right to sue an employer is replaced by a statutory remedy and the statutory remedy inadequately compensates the worker, employers have exposure for tort liability for workplace injuries.

How can an employer have exposure for tort liability when the Kansas Workers Compensation Act has an exclusive remedy provision which states that employers are immune from tort liability for on-the-job injuries? The exclusive remedy protection is subject to the constitutional requirement that the Kansas Workers Compensation Act provide an adequate substitute remedy for injured workers. Based upon the manner in which impairment is now computed, it is very likely that the courts will find that the Kansas Workers Compensation Act has been amended to the point that it is an inadequate remedy. If so, the Act will be found to be unconstitutional and employers will have tort liability for on-the-job injuries.

Why is potential tort liability a bad thing for employers? The Kansas Workers Compensation Act caps an employer's liability. Damages in tort actions are unpredictable, hard to budget and are likely to exceed the \$155,000.00 cap under the Act. This will impact current Kansas employers and is certain to be a factor that is considered by any employer who considering Kansas as a place to do business.

S.B. 167 addresses this problem by reinstating the 4th edition of the A.M.A. Guides as the method of determining an injured worker's impairment. For these reasons I strongly support S.B. 167.