

Approved February 12, 1992
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business

The meeting was called to order by Alicia L. Salisbury at
Chairperson

1:30 ~~xxx~~ p.m. on January 29, 1992 in room 254-E of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Jerry Palmer, Kansas Trial Lawyers Association
John Ostrowski, Kansas AFL-CIO
Tom Slattery, Associated General Contractors
Will Larson, Legal Counsel for Associated General Contractors of Kansas, Inc.
Stu Entz, Associated Builders and Contractors of Kansas
Terry Leatherman, Kansas Chamber of Commerce and Industry
Patti Bossert, Society for Human Resource Management
Ron Anderson, General Contractor
Pat Salisbury, Kansas Association of Defense Counsel
Vaughn Burkholder, Legal Counsel, The Boeing Company, Wichita
Steve Jones, Government Affairs Manager, The Boeing Company, Wichita
Janet Stubbs, Executive Director, Home Builders Association

HEARING ON SB 284 - Remedy against negligent third party under Workers Compensation Act

Jerry Palmer, Kansas Trial Lawyers Association, testified in support of SB 284. SB 284 would permit the employee of a subcontractor the common law remedy for personal injury against a principal or general contractor who was liable for the injury, and the workers compensation carrier for the subcontractor or employer would have subrogated rights against the principal or general contractor to recover back its payments if there was wrongdoing by that principal or general contractor or its employees, see Attachment I.

John Ostrowski, Kansas AFL-CIO, stated that the principal or general contractor that is responsible for the injury should not have workers compensation immunity.

Tom Slattery, Associated General Contractors, appeared in opposition to SB 276. He introduced Will Larson.

Will Larson, Legal Counsel for Associated General Contractors of Kansas, Inc., explained that the way SB 284 is written it appears that the injured employee could bring a workers compensation claim directly against his employer, the independent contractor, not the statutory employer, and also sue the statutory employer for his injuries. He said that no third party who may be subject to a suit by an employee for injuries as a result of that third party's fault has the obligation to act as a statutory employer. As long as the statutory employer has the obligation to provide compensation coverage to the employees of its independent contractors who aren't even its own employees, it should be protected under the exclusive remedy provision of the Workers Compensation Act, which is immunity from a liability lawsuit, see Attachment II. He also stated this bill could lower workers compensation premiums due to the right of subrogation. The money which subrogates the workers compensation carrier comes from liability insurance. The amount of recovery in court could far exceed the benefits that could be obtained under workers compensation and would impact the insurance industry much more in liability claims.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,
room 425-E, Statehouse, at 1:30 ~~am~~ p.m. on January 29, 19 92

Stu Entz, Associated Builders and Contractors of Kansas, testified the general contractor does have to provide workers compensation insurance. He said SB 284 will increase the cost of liability insurance and encourage litigation. Mr. Entz opposed SB 284.

Terry Leatherman, Kansas Chamber of Commerce and Industry, testified SB 284 will permit employees protected by workers compensation to file lawsuits to be further compensated for their workplace injury. He stated there is no need for this new avenue for lawsuits in Kansas, see Attachment III.

Patti Bossert, Society for Human Resource Management, explained she owns a temporary service which employed 1,800 employees last year with an annual payroll of \$1,500,000. They cover the employees with workers compensation which is passed on to the firms that hire the temporary employees. SB 284 would also allow the injured employee to sue the firm that hires them as a temporary employee. She said this bill would serve to diminish or even eliminate the hiring of contract labor or temporary employees due to the increased liability. She also stated small businesses would be hurt by this bill.

Ron Anderson, General Contractor, stated he opposed SB 284. Any modifications in the Workers Compensation laws which would create an adversarial environment and encourage additional litigation would be unacceptable, see Attachment IV.

Pat Salsbury, Kansas Association of Defense Counsel, testified SB 284 should not be passed because it has the effect of doing away with the statutory employer rule, set forth in K.S.A. 44-503. The proposed amendment to K.S.A. 44-504 would give the employee the right to elect not to take workers compensation benefits and to pursue a claim in court against the general contractor on the theory of negligence. The amendment would also result in increased litigation, which is likely to be more protracted and more expensive than the administrative proceedings contemplated by the Workers Compensation Act, see Attachment V.

Steve Jones, Government Affairs Manager, The Boeing Company, Wichita, introduced Vaughn Burkholder.

Vaughn Burkholder, Legal Counsel, The Boeing Company, informed the Committee the basic premise of workers compensation is a "give and take" between employers and employees. In exchange for "giving" the employer immunity from civil action, the employee "takes" a guarantee of medical care and reasonable compensation regardless of whether the employer is at fault or not. SB 284 would upset the balance of this arrangement and would burden industry not only with obligations under the Workers Compensation Act, but also the increasingly overwhelming costs of civil liability, see Attachment VI.

Janet Stubbs, Executive Director, Home Builders Association of Kansas, submitted written testimony in opposition to SB 284, see Attachment VII.

The Committee meeting was adjourned at 2:30 p.m. The next meeting will be Thursday, January 30, 1972, at 1:30 p.m. in room 254-E.

GUEST LIST

COMMITTEE: LABOR, INDUSTRY & SMALL BUSINESS

DATE: Jan. 29, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Hubert Mason	Topeka	KTCA
William A. Larson	Topeka	ABC
Tom Slattery	Topeka	AGC of Ks
Rev Andersen	Topeka	P.D. Andersen Inc
Steve Cook	Topeka	ABC
Judy Olson	Topeka	MA Kansas
Edmund Saluby	Topeka	KADC
HARRY B. HELSER	Wichita	Ks. AFL-CIO
Jim De Hoff	LAWRENCE	" " "
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Bill Morrissey	Topeka	KDHR/Workers Comp
Wayne Maisher	Top	Ks. AFL-CIO
John Ostrowski	Topeka	" " "
BRAD SMOOT	"	AIA
Ann C. Peterson	"	KDNR
JERRY LONERGAN	"	KSTA KBOC
Art Brown	KC	KS LBR Dealers
BILL HENRY	TOPEKA	KADC
Laurie Hartman	"	KBA
Trudy Racine	Topeka	KDOT
Bob Mann	"	Key Temp.
Bick Liby	"	Gehrt & Roberts
Steve Jones	Wichita	Boeing
VAUGHN BURKHOLDER	Wichita	Boeing
Terry Leatherman	Topeka	KCCP
Hatti Bossert	Topeka	Key Temporary



KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

**TESTIMONY OF THE KANSAS TRIAL LAWYERS ASSOCIATION
RE: S.B. 284 AMENDMENTS TO K.S.A. 44-504
REDEFINING EMPLOYER FOR PURPOSES OF
"THE EXCLUSIVE REMEDY DOCTRINE"**

The Kansas Trial Lawyers Association is composed of approximately 900 Kansas attorneys. Many of our members represent injured workers in their Workers' Compensation claims and also those same persons and others who make claims against persons responsible for the injuries because of wrongdoing.

A Summary of the Historical Problem:

When the Workers' Compensation Act was adopted in 1927 a basic trade-off (quid pro quo) was provided by the Legislature for injured workers. Under the common law if a worker was injured in order to recover for any loss, ie. medical expense, lost time from work, pain and suffering, the worker was required to sue his employer. This created disharmony in the workplace. There were defenses which prohibited the worker from making any recovery, such as the doctrine of assumption of risk. The compromise between labor and management resulting in the nearly universal acceptance of workers' compensation laws was that the workers would give up a fuller remedy which would include economic and non-economic damages for the certainty of recovering something for a workplace injury. The something that was recovered was medical expenses, temporary total and permanent partial disability benefits and the only requirement to recovery was that the injury arise out of and in the course of employment. The forfeiture of the lawsuit against the employer in exchange for the workers' compensation remedy is shorthanded among practitioners as "the exclusive remedy doctrine." This doctrine is embodied in K.S.A. 44-504 which statute

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Attachment 1-1

provides a tort remedy against everyone "other than the employer or any person in the same employ."

The common conception of this statute is, and the interpretation in most states is, that the "employer" is equivalent to the person who must pay the workers' compensation premium to the insurer who compensates the worker for the worker's injury.

K.S.A. 44-503 deals with subcontracting arrangements and in a situation where a principal or a general contractor hires a worker's employer who does not carry the insurance, the general contractor or the principal becomes liable for the payment of workers' compensation benefits.

The resulting situation then is that the immunity of the "exclusive remedy" becomes applicable to a principal or general contractor even in the case where the subcontractor carries the workers' compensation insurance for his employee. Thus, if the principal or the general contractor is negligent and injures the employee, even though it has no responsibility under the law to pay, nevertheless the general or principal is immunized from liability under the operation of the Act as interpreted in Hollingsworth v. Fehrs Equipment Co., 240 Kan. 398, (1986).

The leading treatise on workers' compensation is **Larson's** and in Section 72.31(b) they discuss the situation as it exists in most states in the country.

The cases denying immunity to the general contractor whose subcontractor is insured proceed on the theory that the general contractor status should be tested by his actual relation to the

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subcontractor's employee on the given facts and at the specific moment of the accident, not by his potential liability, if for example, the subcontractor failed to carry insurance.

Object of the Amendment:

The object of the amendment then is to restore reality to the relationships between the principal, contractor, subcontractor and employee. Thus, if a principal or a general contractor in fact provides the coverage, then they are entitled to the defense. If they do not provide the coverage for the incident, then they are not immunized. In other words, the general contractor or principal doesn't get something (immunity) for nothing, but if they do in fact provide the coverage and that is measured by whether the workman has made a claim for benefits under the act against them.

Statutory Wording:

In order to clarify the intent of the Legislature and do the least violence possible to the total Act, K.S.A. 44-504 has a new definition and that is a special definition of "employer" for that section which reads,

As used in this section, "employer" does not include a "principal" or a "principal contractor" as defined in K.S.A. 44-503 unless such "principal" or "principal contractor" has actually had a claim for benefits made under this Act because the "contractor" or "subcontractor" was uninsured.

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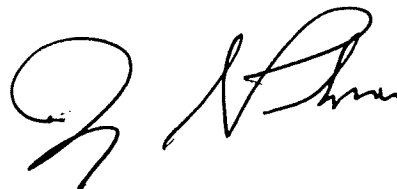
This will accomplish two things -- (1) it will permit the worker the common law remedy for personal injury against a person actually injuring them that is not in the true workers' compensation loop; and (2) the workers' compensation carrier for the "subcontractor" has a subrogated rights against the principal or general contractor to recover back its payments if there was wrongdoing by that principal or general contractor or its employees.

The goal of tort law is to compensate the victim and to deter wrongdoing which injures or kills people. The goal of workers' compensation is to cause as little disruption in the workplace over a workplace injury and to bring about compensation on a no-fault basis for the injured employees. When, though, the employer is burdened to pay for an injury that it did not cause and would not have occurred but for the negligence of a third person (such as the agents of a principal or a general contractor), the employee has lost a valuable right and the employer and its insurer have lost the right to be compensated through subrogation for the payments they have had to pay.

Conclusion:

Since this minor modification of a statute will bring about a fair result for Kansas employees and their employers and remove an immunity from those who have paid no consideration in the workers' compensation system, we would urge the Legislature to pass this statute to rectify this unintentional benefit to potential wrongdoers.

Respectfully submitted,



JERRY R. PALMER

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TESTIMONY IN FRONT OF THE
SENATE LABOR AND INDUSTRY COMMITTEE

SENATE BILL 284

William A. Larson
Gehrt & Roberts, Chartered

Legal Counsel for Associated General Contractors of Kansas, Inc.

January 29, 1992

The Workers' Compensation Act provides for what is popularly called a statutory employer. When a business, referred to as the principal or principal contractor under the Act, hires an independent contractor to perform work for it which is accomplished on the premises where it is conducting its work, or which it has the right to manage and control, and the job is work the business normally engages in or has contracted to do, the business hiring the independent contractor is responsible to pay workers' compensation benefits to injured employees of the independent contractor. The way the statute works is that the injured employees can sue either the independent contractor or the principal. If the employee sues the principal, the principal has the right to implead and seek indemnity from the independent contractor. The purpose of the statutory employer provision is to prevent employers from contracting away their responsibilities to injured employees to independent contractors and to protect employees of independent contractors who for one reason or another did not purchase workers' compensation insurance or are not in the position to pay workers' compensation benefits.

The Workers' Compensation Act imposes a significant burden on the principal or principal contractor. Clearly in most cases where an action for workers' compensation

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will be brought against the statutory employer, the independent contractor will either be bankrupt or in some other way incapable of indemnifying the statutory employer. Workers' compensation provides benefits to any employee injured in the course of his employment irrespective of the fault of the employer. As a consequence, in the situation of a statutory employer, not only is it responsible for paying benefits to an injured employee under circumstances that may not arise through any fault of the statutory employer whatsoever, but it is also responsible for paying benefits to one who is not even its employee.

The benefit the statutory employer receives is that because it is an employer under the Workers' Compensation Act, it is protected from a liability suit by an injured employee of its independent contractor by reason of the exclusive remedy provision of the Workers' Compensation Act.

The effect of Senate Bill 284 would be to retain the burden but do away with the benefit. The bill would give an injured employee of an independent contractor the choice of whether to seek workers' compensation benefits from the statutory employer or bring a lawsuit against the statutory employer for his injuries. The lawsuit would subject the statutory employer to the possibility of paying damages to the injured employee far in excess of what would be available under workers' compensation benefits. It is important to note that the way this bill is written it appears that the injured employee could bring a workers' compensation claim directly against his employer, the independent contractor not the statutory employer, and also sue the statutory employer for his injuries.

The bill flies in the face of the compromise that was supposedly struck when workers' compensation was enacted. The compromise was quite simply to limit benefits to

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injured workers to those provided under the Workers' Compensation Act, but to extend the liability of the employer to all injuries of an employee acting within the course of his employment regardless of whether those injuries were caused by some act of the employer.

The proponents of Senate Bill 284 will undoubtedly argue that under the Workers' Compensation Act a third party who is neither the employer nor the statutory employer of an injured worker may be sued by an injured worker for his personal injuries caused by the fault of the third party. We anticipate that proponents of the bill will claim that there is no reason a statutory employer should be in any different position than any other third party where an employee of an independent contractor chooses not to bring a workers' compensation claim against the statutory employer.

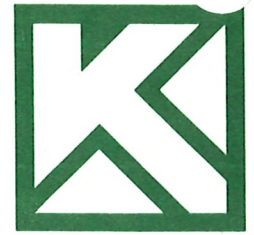
Our response is that no third party who may be subject to a suit by an employee for injuries as a result of that third party's fault has the obligation to act as a statutory employer. As long as the statutory employer has the obligation to provide compensation coverage to the employees of its independent contractors who aren't even its own employees, it should be protected under the exclusive remedy provision of the Workers' Compensation Act.

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LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 284

January 29, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
Senate Committee on Labor, Industry and Small Business
by
Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to express the reasons why the Kansas Chamber is opposed to the passage of SB 284.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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Attachment 3-1*

If you believe in the fundamental principle of workers' compensation, you cannot support SB 284. Workers' compensation removes the element of fault when a workplace injury or illness occurs. The employee receives prompt and effective medical care and fair compensation, regardless of cause. In addition, an employer is protected from damaging lawsuits, because the employer has accepted the responsibility to provide care and compensation, regardless of fault.

Approval of SB 284 would abandon this fundamental rule by carving out an exception for certain workers. Employees who can identify a "principal" or "principal contractor" would have an open door to filing lawsuits for huge damage awards, while maintaining their right to workers' compensation from their immediate employer. Employees who fall under the umbrella of a "principal" or "principal contractor" arrangement will maintain the benefit opportunities workers' compensation provides, but not yield the exclusive remedy right workers' compensation promises employers.

It is clear SB 284 swings open the door of lawsuit opportunity. However, it is unclear how many Kansas workers will be permitted to go through this open door to litigation. Before acting on SB 284, it is critical to know exactly how broadly Kansas courts would interpret a "principal" or "principal contractor" arrangement.

It is apparent that SB 284 would heavily affect the construction industry, where contractors often hire subcontractors to perform work. However, would SB 284 apply to the following employment arrangements.

1) A temporary service employee suffers an injury. Would they be permitted to claim the client of the temporary service company where the injury occurred to be a "principal" or "principal contractor?" If their injury was cumulative, would they be permitted to sue all the clients they were assigned to by the temporary service company?

2) An individual contracts with a company for a service which leads to an injury. Would the worker be permitted to receive workers' compensation from their employer and file a legal action against the individual where the work was performed?

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Att 3-2

3) A worker is injured at a fast food franchise. After pursuing workers' compensation from the franchise owner, can the employee file a lawsuit against the parent company, claiming they are a "principal?"

4) A local manufacturer is a subsidiary of a major corporation. Would a worker be permitted to pursue workers' compensation from a manufacturer and pursue a lawsuit against the major corporation as a "principal?"

SB 284 is not an attempt to improve workplace safety. The legislation will not improve the health care delivery to an injured worker or increase the likelihood they will return to work following an injury. However, SB 284 will permit employees protected by workers' compensation to file lawsuits to be further compensated for their workplace injury. The Kansas Chamber would urge you to agree with the conclusion there is no need for this new avenue for lawsuits in Kansas.

I would be happy to attempt to answer any questions.



r. d. andersen, inc.
general contractor

box 2457 / topeka, kansas 66601 / 913-267-3722

January 29, 1992

Senator Salisbury and Members of the Committee:

My name is Ron Andersen, and I am the president of R.D. Andersen, Inc., a Topeka-based general contractor. I have worked in the construction industry for more than 25 years, and have employed hundreds of Kansans during that time. Because Senate Bill 284 is bad for business and opens a Pandora's Box of new litigation, I am opposed to the bill.

First, the proposed changes in Senate Bill 284 are confusing...I would have to say however, that any modifications in the Workers' Compensation laws which would create an adversarial environment, and thus encourage additional litigation, is unacceptable.

One of the many reasons the United States is having the problems it's having in the world market place today is the cost for excess litigation. Senate Bill 284 if passed will create excessive litigation and benefit trial lawyers and not the employees.

If I understand Senate Bill 284 correctly, principals or principal contractors would retain the responsibility for providing Workers' Compensation insurance but would lose the statutory benefits normally provided the employer. Senate Bill 284 would allow an employee to either collect Workers' Compensation benefits from the principal, or collect Workers' Compensation from his employer and then sue the principal. In either case, the principal is required to provide Workers' Compensation and is not afforded the protection established by the Workers Compensation Act. Senate Bill 284 loses sight of the original purpose of the Workers Compensation Act.

The proposed changes are written to benefit trial lawyers and if passed will create an intolerable environment for employers.

Thank you for your consideration.

R.D. Andersen, Inc.



Ronald D. Andersen

RDA:kdf

fax: 913-267-0409

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1/29/92*

Attachment #

TESTIMONY BEFORE THE SENATE
LABOR AND INDUSTRY AND SMALL BUSINESS COMMITTEE

Wednesday, January 29, 1992

By Patrick M. Salsbury
On Behalf of the Kansas Association of Defense Counsel

SUBJECT: SENATE BILL NO. 284

It is the position of the Kansas Association of Defense Counsel that Senate Bill No. 284 should not be passed because it has the effect of doing away with the statutory employer rule, which is set forth in K.S.A. 44-503. K.S.A. 44-503 permits an injured employee of a subcontractor to make claim for workers compensation benefits either against his immediate employer (the subcontractor) or against the general contractor. In exchange for the right of the employee to pursue a workers compensation claim against the general contractor, the general contractor has been given the protection of the Exclusive Remedy Rule, which stands for the proposition that the injured employee of the subcontractor can only recover workers compensation benefits from the general contractor, but he cannot bring a civil suit for damages against the general contractor.

The proposed amendment to K.S.A. 44-504, as set forth in Senate Bill No. 284, would give the employee the right to elect not to take workers compensation benefits and to pursue a claim in court against the general contractor on the theory of negligence.

To permit such an election by the employee would severely undermine the basic theory of the Workers Compensation Act, which is to provide immediate medical treatment to the injured employee

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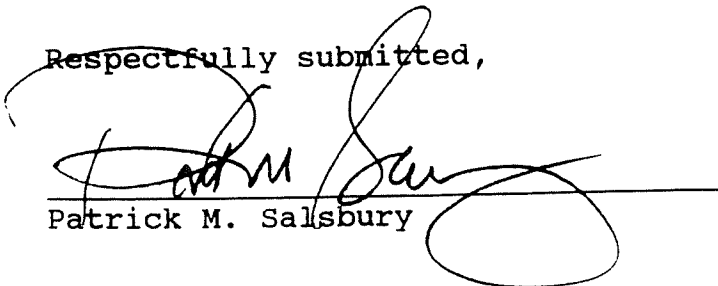
Attachment 5-1

and to provide immediate compensation to the injured employee to maintain the employee's economic viability, all at the expense of the employer. The basic intent and purpose of the Workers Compensation Act is to provide necessary medical treatment to the injured worker and to get the injured worker back to work as soon as possible.

If an employee were able to elect not to accept workers compensation benefits and make a civil claim directly against the general contractor, the employee would not receive the immediate medical benefits and weekly compensation which was contemplated by the Workers' Compensation Act.

In addition, the proposed amendment would result in increased litigation, which is likely to be more protracted and more expensive than the administrative proceedings contemplated by the Workers Compensation Act. One of the basic purposes of the Workers Compensation Act was to provide medical and monetary benefits to the injured employees without the necessity of extended and expensive litigation and without the necessity of proving fault on the part of the employer. Those basic principles are severely undermined if an employee were allowed to elect to pursue a civil remedy based upon negligence against the general contractor.

Respectfully submitted,



Patrick M. Salsbury

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Testimony Before the
Senate Committee on Labor, Industry and Small Business
by
Vaughn Burkholder
Attorney at Law
Foulston & Siefkin

Madam Chairperson and members of the Committee:

I am Vaughn Burkholder. I represent The Boeing Company - Wichita with regard to its workers compensation claims. Thank you for this opportunity to express the reasons why Boeing is opposed to the passage of SB 284.

SB 284 seeks to amend K.S.A. 44-504, which is the statutory provision dealing with employer subrogation rights arising out of workers compensation claims. However, the real effect of SB 284 is on K.S.A. 44-503, the statutory employment provision.

The statutory employment provision is as old as the Kansas Workers Compensation Act itself. Its purpose is to protect employees of irresponsible and uninsured subcontractors by imposing ultimate liability on the principal. This furthers the policy and purpose of the Act, which is to provide an established source of benefits to the employee for work related injuries, and to shift from the employee to the industry economic burdens incidental to the modern work place.

As a *quid pro quo* for the increased exposure of the principal, the principal is insulated from civil liability for injuries to the subcontractor's immediate employees. The legislature has previously determined that the specter of civil tort litigation for bodily injuries, with its threat of huge, unpredictable verdicts based on sympathy and prejudice, is an unwelcome visitor in the work place. Accordingly, it decreed that fellow employees, traditional employers and statutory employers all should be free from concerns about civil liability for work injuries, so that the work place can be kept free for work.

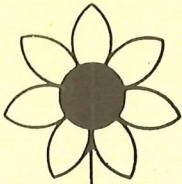
The only civil actions for on-the-job injuries that have been or should be allowed are those against parties far removed from the work environment who do not interact with workers on a regular basis, such as manufacturers of defective equipment or negligent drivers on public highways. However, SB 284 would permit a subcontractor's injured employee to not only claim workers compensation against the subcontractor, but to also bring a separate tort action against the principal. Only where the principal actually pays workers compensation benefits to the subcontractor's employee would the worker be precluded from suing the principal in tort.

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Attachment 67

The basic premise of workers compensation is a "give and take" between employers and employees. In exchange for "giving" the employer immunity from civil action, the employee "takes" a guarantee of medical care and reasonable compensation regardless of whether the employer is at fault or not. This has always been deemed to be a fair trade-off. SB 284 would upset the balance of this arrangement and would burden industry not only with obligations under the Workers Compensation Act, but also the increasingly overwhelming costs of civil liability.

In an economic climate where many employers are staggering under the ever-spiraling costs of workers compensation, adding another layer of economic burden could well be the last straw. Therefore, SB 284 should not become law.

*SB 284 + SB
1/29/92
Attachment 6-2*



HOME BUILDERS ASSOCIATION

OF KANSAS, INC.

Executive Director
JANET J. STUBBS

TESTIMONY SENATE LABOR AND INDUSTRY COMMITTEE SENATE BILL 284

OFFICERS

President
VERNON WEIS
P.O. Box 314
Salina, Ks. 67401
913-827-9169

Vice President
GILBERT BRISTOW
1916 Bluestem Terrace
Manhattan, Ks. 66502
913-539-4779

Treasurer
JIM PETERSON
P.O. Box 171
Hutchinson, Ks. 67501
316-662-7616

Secretary
TOM AHLF
7247 Oxford Ct.
Wichita, Ks. 67226
316-685-2025

H.B.A. ASSOCIATIONS
Dodge City
Hutchinson
Junction City
Manhattan
Montgomery County
Salina
Topeka
Wichita

PAST PRESIDENTS
Lee Haworth 1965 & 1970
Warren Schmidt 1966
Mel Clingan 1967
Ken Murrow 1968
Roger Harter 1969
Dick Mika 1971-72
Terry Messing 1973-74
Denis C. Stewart 1975-76
Jerry D. Andrews 1977
R. Bradley Taylor 1978
Joel M. Pollack 1979
Richard H. Bassett 1980
John W. McKay 1981
Donald L. Tasker 1982
Frank A. Stuckey 1983
Harold Warner, Jr. 1984
Joe Pashman 1985
Jay Schrock 1986
Richard Hill 1987
M.S. Mitchell 1988
Robert Hogue 1989
Jim Miner 1990
Elton Parsons 1991

Madam Chair and Members of the Committee:

My name is Janet Stubbs, Executive Director for the Home Builders Association of Kansas, appearing in opposition to SB 284.

As we understand the amendment to K.S.A. 44-504 contained in this bill, an injured employee of a subcontractor, an independent contractor, would have the choice of whether to seek compensation for any injury received on the job from the worker's compensation insurance of that subcontractor, as he is currently able to do, AND/OR bring a lawsuit against the prime contractor.

Currently, prime contractors are able to verify that the subcontractors acting as independent businesses have worker's compensation insurance covering their own employees. If they do not verify this fact and it is found during an audit that the sub did not carry W.C., they are responsible for paying insurance for those employees which have worked on that job. Now SB 284 is saying that in addition to this the general contractor would be subject to liability for injuries which would be covered under his general liability insurance. If that double exposure should exist, there would certainly be additional insurance premium required thus adding to the cost of doing business. If it is determined this exposure should exist, then the prime should not be responsible for providing W.C. insurance for the uninsured sub's employees.

This legislation appears to contradict the understanding currently in effect which permits the employee to collect for his injuries sustained on the job under the Worker's Compensation insurance whether or not the injury was caused through the negligence of the employer. How many employees would be willing to amend the Worker's Compensation Act to remove their ability to recover costs for injuries sustained on the job which were not the result of negligence of the employer?

The Home Builders Association of Kansas opposes SB 284 and ask that you continue to give protection to the prime contractor under the exclusive remedy provision of the Worker's Compensation Act.



*SB 284 + SB
1/29/92*

Attachment 7