

Approved: March 19, 1998
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 17, 1998 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Gooch, Jordan, Ranson, Steffes, Steineger and Umbarger.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Terry Leatherman, Kansas Chamber of Commerce and Industry
Representative Michael R. O'Neal
Sam Crawford, President, Crawford & Kinder, Inc.
David M. Reynolds, Lawrence
Donald P. Schnacke, Kansas Independent Oil & Gas Association
Brad Smoot, American Insurance Association
Dawn Atwell, Atwell Fence & Deck Co.
Tony Plunkett, President, Dakota, Inc.

Others attending: See attached list

Upon motion by Senator Barone, seconded by Senator Jordan, the minutes of the March 16, 1998 Meeting were unanimously approved.

HB 2591 - Exempting self-employed subcontractors from workers compensation

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), testified on **HB 2591**, stating the bill addresses problems resulting from last year's amendment regarding the workers compensation responsibilities of self-employed subcontractors, defining them as a boss and not an employee. Mr. Leatherman stated if subcontractors are considered workers, they should be required to have workers compensation insurance; however, if they are viewed as independent from a general contractor **HB 2591** returns to law that the subcontractor is not compelled to be insured. Passage of **HB 2591** corrects the problem caused by the passage of HB 2011, but does not correct the situation of when a self-employed subcontractor is hurt or address concerns about whether the subcontractor has a workers compensation claim against a general contractor, a civil case, or whether it is the responsibility of the general contractor to cover the subcontractor on the general's policy.

Mr. Leatherman submitted an amendment which extends the theory that a self-employed subcontractor is a boss by inserting the following language in KSA 44-503(a) at the end of the paragraph: "For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor." (Attachment 1)

Representative Michael O'Neal, testified on **HB 2591** stating the 1997 law accomplished sound public policy that all workers should come under the workers compensation act, and that self-employed subcontractors should be responsible for their own risk just as contractors are responsible for their own risk. The Workers Compensation Advisory Council endorsed the legislation unanimously last year and endorsed it again this year. **HB 2591**, which repeals present law, is not sound policy as the current law has been in place for less than a year and has not been fully implemented. A major problem will result if **HB 2591** is effective upon publication in the Kansas Register due to the time lag between when a report of an accident is filed and when the claim is made. Claims may well be made and adjudicated after the July 1, 1998 sunset or date of publication in the Kansas Register. Representative O'Neal stated the issue is not repeal, but a question of affordability for those who can't afford to buy a traditional policy of workers compensation coverage. To address the issue of affordability, the Kansas Building Industry Association (KBIA)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 17, 1998.

amendment narrows the applicability of the sub-contractor provisions to the "contracting trades"; provides the mechanism by which a self-employed person can "opt out" of the provisions of KSA 44-543, and places a moratorium on files from July 1, 1997 to the effective date of these amendments. (Attachment 2)

In response to a question from the Chair regarding the amendment submitted by KCCI, Representative O'Neal raised the question as to whether there is a civil tort remedy available.

Sam Crawford, President, Crawford & Kinder, Inc., testified in support of the Kansas Building Industry Association (KBIA) amendments to **HB 2591**. Mr. Crawford stated he is a small home builder in Johnson County, employs numerous subcontractors and is concerned with the increase in the price of homes as a result of the passage of HB 2011. Mr. Crawford stated he requires all subcontractors to have a certificate of insurance as he cannot afford to hire a subcontractor who is not insured. Mr. Crawford stated there has been an increased in prices from subcontractors due to the passage of HB 2011 and there will be additional increases if **HB 2591** is not passed with the amendments submitted by (KBIA). (Attachment 3)

Davis M. Reynolds, Lawrence, testified in opposition to **HB 2591** stating it repeals HB 2011 requiring all subcontractors to be responsible for carrying their own workers compensation coverage. Mr. Reynolds stated if a general contractor is responsible for all workers compensation then subcontractors with good experience ratings will be penalized and have their costs increased because they will be charged based on the "experience rating" and a compounding "assigned risk" surcharge assigned to the general contractor. Subcontractors will be further penalized because their "total invoice" will be assessed at the rate of 33 1/3%, 50%, or 90% by each general contractor they work for. Subcontractors would end up losing money because accumulated invoices, per general contractor, could easily exceed today's individual limit of \$26,800 on premiums. By not purchasing insurance and renegotiating their contracts, the subcontractor could lose income and will lose a business deduction. Mr. Reynolds stated passing **HB 2591** can lead to abuse, as there is no incentive for subcontractors to manage their own safety because their own costs are not directly impacted by their behavior. Mr. Reynolds stated he does support the amendments to **HB 2591** submitted by Kansas Building Industry Association. (Attachment 4)

Donald P. Schnacke, Kansas Independent Oil & Gas Association (KIOGA), testified in support of **HB 2591** stating oil and gas operators are business entities employing many independent contractors who perform various services. The oil and gas industry has been impacted by this legislation as it has created great confusion and contradictory interpretation. KIOGA supports passage of **HB 2591** as originally introduced without "New Section 4" and does not support the KBIA proposed amendments. KIOGA also supports **HCR 5043** creating a task force on workers compensation. (Attachment 5)

Brad Smoot, Legislative Counsel, The American Insurance Association (AIA), testified in opposition to New Section 4 of **HB 2591** which requires the Kansas Insurance Department to implement experience rating for all employers and establishes a program of premium discounts for employers who develop a "safety plan." The costs of insurance coverage should be determined by actual results of an employer's safety efforts and not just the paper work of preparing a "safety plan". Mr. Smoot stated he knew of no state which experience rates all employers; however, if a universal experience rating is established in the state, many small employers will suffer if they have had a single claim; and all such employers will pay more for the services of rating organizations to produce experience information previously not required. Mr. Smoot stated the cost of coverage for most employers is determined by the actual experience of that employer, which under this provision, would impact costs if there is not an individual experience factor considered. (Attachment 6)

A document entitled "Cost of Work Comp to Building Industry" submitted by Dawn Atwell, was distributed to members of the Committee. (Attachment 7)

A letter from Tony Plunkett, President, Dakota, Inc., supporting **HB 2591** was distributed to members of the Committee. (Attachment 8)

The hearing on **HB 2591** was concluded.

The Chair appointed a Subcommittee of Senators Ranson, Brownlee and Barone to study **HB 2591** and report back to the Committee with their recommendations on **HB 2591** and **HCR 5043**.

The meeting adjourned at 9:00 a.m.

The next meeting is schedule for March 18, 1998.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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HB 2591 March 16, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Committee on Commerce

by
Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to comment on the subject of the workers compensation insurance responsibilities of self-employed subcontractors.

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 46% of KCCI's members having less than 25 employees, and 77% 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.

Permit me to begin my testimony with a dangerous assumption. That assumption is that the Senate will view this issue the same as the Kansas House of Representatives. In a nutshell, by passing HB 2591, the Kansas House said clearly that significant problems have resulted from last year's amendment regarding the workers compensation responsibilities.

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subcontractors. The House also said when they see a self-employed subcontractor, they are looking at a boss, not an employee.

This has the potential of being a very confusing issue. However, no matter where this issue may veer, please keep in mind it always comes back to one question you must answer as policy makers. That question is "is the self-employed subcontractor his/her own boss, or a worker? This question is key because we are trying to decide if the subcontractor must get coverage under the workers compensation act. If your answer to this question is the self-employed subcontractor is a worker, then it is time to throw away HB 2591. If subcontractors are workers, they should be required to have workers compensation insurance, and today's debate should center on who should be required to pay the policy and how the policy might be made more affordable.

However, that's the reason for my assumption that this Committee, like the Kansas House, views the self-employed subcontractor as independent from a general contractor, not their worker. With this conclusion, HB 2591 returns to law that the subcontractor is not compelled to insure himself or herself for workers compensation. However, it also leaves a question which the Kansas House refused to answer in HB 2591. What is going to happen when that self-employed subcontractor gets hurt on the job?

More than anything else, that is KCCI's main problem with HB 2591. Passing this bill takes care of the problem caused by passing HB 2011 last year, but you also return the old questions HB 2011 proposed to resolve. When a self-employed subcontractor is hurt, will they have a workers compensation claim against a general contractor? Do they instead have a civil case they could file? When an uninsured subcontractor is hired, should the general contractor be required to cover the subcontractor on the general's policy?

As a result, if the Committee is inclined to recommend HB 2591, the Kansas Chamber would urge you to further amend the bill to make clear the self-employed subcontractor will not be able to claim workers compensation against a general contractor, if they get hurt on the job.

This amendment is intended to produce the following results.

HB 2591 embraces the idea the self-employed subcontractor is their own boss, not a worker. With KCCI's amendment, this theory is extended by making clear that if the subcontractor gets hurt, they will not be able to claim compensation from the general contractor.

* From the general contractor's perspective, the amendment should mean they will not have any "after the fact" exposure to a workers compensation claim or additional insurance premium expenses.

* From the subcontractor's perspective, they will not be forced to buy workers compensation insurance. However, as a boss, they could elect to purchase coverage.

Thank you for permitting KCCI to comment on HB 2591 and to present some alternatives for your consideration. I would be happy to answer any questions.

of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(h) If the employee is receiving retirement benefits under the federal social security act or retirement benefits from any other retirement system, program or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment.

44-502. Reservation of penalties. Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

44-503. Subcontracting. (a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal; and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed.

(b) Where the principal is liable to pay compensation under this section, the principal shall be entitled to indemnity from any person who would have been liable to pay compensation to the worker independently of this section, and shall have a cause of action under the workers compensation act for indemnification.

(c) Nothing in this section shall be construed as preventing a worker from recovering compensation under the workers compensation act from the contractor instead of the principal.

(d) This section shall not apply to any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken to execute work or which are otherwise under

-----For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor

**TESTIMONY BEFORE SENATE COMMERCE COMMITTEE
H.B. 2591
MARCH 17, 1998**

Michael R. O'Neal

In considering the sub-contractor issue, it is important to keep in mind the public policy established by last year's legislation. The Kansas Workers Compensation Act is designed to afford benefits on a no-fault basis to Kansas employees involved in work-related accidents. In the case of sub-contracting, the protection for workers is there even if the sub-contractor employer fails or refuses to provide coverage. In past years, the burden of providing benefits and the cost of providing coverage has fallen disproportionately on Kansas contractors.

The 1997 law accomplished sound public policy that all workers should come under the workers compensation act and that self-employed sub-contractors should be responsible for their own risk just as contractors are responsible for their own risk. The 1997 law addresses the risk of general liability for Kansas contractors and allocates the risk to the appropriate parties. That the policy established last year is sound is demonstrated by the fact that the Workers Compensation Advisory Council endorsed the legislation unanimously last year and endorsed it again this year.

Repeal, therefore, should not be considered from the standpoint of sound public policy. Public policy aside for the moment, repeal is not a practical option for another reason. The current law has been in place for less than a year and has not been fully implemented. Workers compensation claims have a tail that, depending on when the report of accident is filed and claim is made, can extend well beyond July 1, 1998. Therefore, in the first year of the law there will be a considerable number of incurred but not reported claims. These claims will mature and be adjudicated well after July

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1, 1998. If the law is repealed, how will they be administered? Most, if not all workers compensation policies are "occurrence" policies as opposed to "claims made" policies. In other words, claims will be handled under the policy in place when the occurrence happened as opposed to when the claim was made. Changing the law back to the way it was before July 1, 1997 would shift exposure for injuries between July 1, 1997 and July 1, 1998 back to contractors under circumstances where no premium was collected from them for the risk. Contractors would be faced with premium audits and premium adjustments long after the loss. Imagine how they will react when they learn what the legislature did to them in 1998 after addressing their problem successfully in 1997.

The issue, then, is not repeal, but rather the question of affordability for those who, arguably, can't afford to buy a traditional policy of workers compensation coverage. Subs apparently object to a policy of insurance that will cover them 24 hours a day, 7 days a week. These are apparently individuals who don't carry workers compensation presently, whether they serve in the capacity of a contractor or sub-contractor. Contractors have always borne the risks of sub-contractors disproportionately. Since self-employed individuals didn't have to carry comp, most didn't. If their work consisted of doing both contracting and sub-contracting, their injuries tend to be reported while they are performing work as a sub-contractor. Why? Because they would have coverage through the contractor under K.S.A. 44-503.

For subs who, honestly, don't make more than \$26,800 (the NCCI minimum imputed annual payroll) annually from all sources, the cost of a traditional workers compensation policy is too steep. The real issue, then, is how do we address these individuals without retreating from good public policy of coverage by the Act. The balloon amendment would address the concerns of all the players. The essential elements of the amendment are:

a. Narrow the applicability of the sub-contractor provisions of the 1997 law to the "contracting trades" as defined by the NCCI. (See attached class codes).

b. Add individual employers, limited & general partners and self-employed persons to the "opt out" provisions of K.S.A. 44-543, currently limited to corporate employees who own 10% or more of the stock of the corporation.

c. Retain the amendment in H.B. 2591 that places a moratorium on fines from July 1, 1997 to the effective date of these amendments.

The effect of these amendments would be to avoid the administrative headaches a repeal would create by addressing the concern that most small sub-contractors have about obtaining coverage. Employees of subs would still be covered by their employer but individual employers, limited & general partners and self-employed persons doing sub-contracting in the "contracting trades" could file an "opt out" election and avoid the expense of coverage on themselves. Their rights would be governed by existing law under K.S.A. 44-545, pertaining to certain defenses available to the employer of someone who has "opted out".

Kansas Contracting Class Codes and Descriptions - Sorted by Class Description

<u>Class Code</u>	<u>Class Description</u>
9549	ADVERTISING CO. & DRIVERS
5536	AIR CONDITIONING DUCT FABRICATION AND INSTALLATION & DRIVERS
5473	ASBESTOS CONTRACTOR-NOC & DRIVERS
5472	ASBESTOS CONTRACTOR-PIPE AND BOILER WORK EXCLUSIVELY & DRIVERS
5188	AUTOMATIC SPRINKLER INSTALLATION & DRIVERS
9545	BILL POSTING & DRIVERS
3726	BOILER INSTALLATION OR REPAIR-STEAM
5703	BUILDING RAISING OR MOVING & DRIVERS
5403	CARPENTRY NOC
5645	CARPENTRY-DETACHED ONE OR TWO FAMILY DWELLINGS
5651	CARPENTRY-DWELLINGS-THREE STORIES OR LESS
5437	CARPENTRY-INSTALLATION OF CABINET WORK OR INTERIOR TRIM
5020	CEILING INSTALLATION-SUSPENDED ACOUSTICAL GRID TYPE
5610	CLEANER-DEBRIS REMOVAL
6222	CONCRETE CONSTRUCTION IN CONNECTION WITH BRIDGES OR CULVERTS
5213	CONCRETE CONSTRUCTION NOC
5221	CONCRETE OR CEMENT WORK-FLOORS, DRIVEWAYS, YARDS OR SIDEWALKS-& DRIVERS
5215	CONCRETE WORK-INCIDENTAL TO THE CONSTRUCTION OF PRIVATE RESIDENCE
6325	CONDUIT CONSTRUCTION-FOR CABLES OR WIRES-& DRIVERS
8227	CONSTRUCTION OR ERECTION PERMANENT YARD
5606	CONTRACTOR-EXECUTIVE SUPERVISOR OR CONSTRUCTION SUPERINTENDENT
6017	DAM OR LOCK CONSTRUCTION: CONCRETE WORK-ALL OPERATIONS
6018	DAM OR LOCK CONSTRUCTION: EARTH MOVING OR PLACING-ALL OPERATIONS & DRIVERS
5102	DOOR, DOOR FRAME OR SASH ERECTION-METAL OR METAL COVERED
6204	DRILLING NOC & DRIVERS
7538	ELECTRIC LIGHT OR POWER LINE CONSTRUCTION & DRIVERS
5190	ELECTRICAL WIRING-WITHIN BUILDINGS & DRIVERS
5180	ELEVATOR ERECTION OR REPAIR
6217	EXCAVATION & DRIVERS
0050	FARM MACHINERY OPERATION-BY CONTRACTOR-& DRIVERS
6400	FENCE ERECTION-METAL
5146	FURNITURE OR FIXTURES INSTALLATION-PORTABLE-NOC
6319	GAS MAIN OR CONNECTION CONSTRUCTION & DRIVERS
5462	GLAZIER-AWAY FROM SHOP & DRIVERS
5402	HOTHOUSE ERECTION-ALL OPERATIONS
5479	INSULATION WORK NOC & DRIVERS
5057	IRON OR STEEL: ERECTION NOC
5069	IRON OR STEEL: ERECTION-CONSTRUCTION OF DWELLINGS NOT OVER TWO STORIES IN HEIGHT
5040	IRON OR STEEL: ERECTION-FRAME STRUCTURES
5059	IRON OR STEEL: ERECTION-FRAME STRUCTURES NOT OVER TWO STORIES IN HEIGHT
6229	IRRIGATION OR DRAINAGE SYSTEM CONSTRUCTION & DRIVERS
6006	JETTY OR BREAKWATER CONSTRUCTION-ALL OPERATIONS TO COMPLETION & DRIVERS
0042	LANDSCAPE GARDENING & DRIVERS
5443	LATHING & DRIVERS
6045	LEVEE CONSTRUCTION-ALL OPERATIONS TO COMPLETION & DRIVERS
5478	LINOLEUM, CARPET, VINYL, ASPHALT, OR RUBBER FLOOR TILE INSTALLATION
3724	MACHINERY OR EQUIPMENT ERECTION OR REPAIR NOC & DRIVERS
5022	MASONRY NOC
9534	MOBILE CRANE AND HOISTING SERVICE CONTRACTORS-NOC-ALL OPERATIONS-INCLUDING YARD EMPLOYEES AND DRIVERS
6216	OIL OR GAS LEASE WORK NOC-BY CONTRACTOR & DRIVERS
6233	OIL OR GAS PIPELINE CONSTRUCTION & DRIVERS
6206	OIL OR GAS WELL: CEMENTING & DRIVERS

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Kansas Contracting Class Codes and Descriptions - Sorted by Class Description

Class Code	Class Description
1322	OIL OR GAS WELL: CLEANING OR SWABBING OF OLD WELLS HAVING PREVIOUSLY PRODUCED GAS OR OIL-BY CONTRACTOR-NO DRILLING-& DRIVERS
6235	OIL OR GAS WELL: DRILLING OR REDRILLING & DRIVERS
6236	OIL OR GAS WELL: INSTALLATION OR RECOVERY OF CASING & DRIVERS
6237	OIL OR GAS WELL: INSTRUMENT LOGGING OR SURVEY WORK & DRIVERS
6214	OIL OR GAS WELL: PERFORATING OF CASING-ALL EMPLOYEES & DRIVERS
6213	OIL OR GAS WELL: SPECIALTY TOOL OPERATION NOC-BY CONTRACTOR-ALL EMPLOYEES & DRIVERS
3719	OIL STILL ERECTION OR REPAIR
5474	PAINTING OR PAPERHANGING NOC & SHOP OPERATIONS, DRIVERS
5037	PAINTING: METAL STRUCTURES-OVER TWO STORIES IN HEIGHT-& DRIVERS
5491	PAPERHANGING & DRIVERS
6003	PILE DRIVING & DRIVERS
5480	PLASTERING NOC & DRIVERS
5183	PLUMBING NOC & DRIVERS
7855	RAILROAD CONSTRUCTION: LAYING OR RELAYING OF TRACKS OR MAINTENANCE OF WAY BY CONTRACTOR-NO WORK ON ELEVATED RAILROADS-& DRIVERS
5551	ROOFING-ALL KINDS & YARD EMPLOYEES, DRIVERS
5705	SALVAGE OPERATION-NO WRECKING OR ANY STRUCTURAL OPERATIONS
9529	SCAFFOLDS OR SIDEWALK BRIDGES-INSTALLATION, REPAIR OR REMOVAL-& DRIVERS
6306	SEWER CONSTRUCTION-ALL OPERATIONS & DRIVERS
6252	SHAFT SINKING-ALL OPERATIONS
6538	SHEET METAL WORK-SHOP AND OUTSIDE-NOC & DRIVERS
5606	STREET OR ROAD CONSTRUCTION: PAVING OR REPAVING & DRIVERS
5608	STREET OR ROAD CONSTRUCTION: ROCK EXCAVATION & DRIVERS
5507	STREET OR ROAD CONSTRUCTION: SUBSURFACE WORK & DRIVERS
5223	SWIMMING POOL CONSTRUCTION-NOT IRON OR STEEL- & DRIVERS
7612	TELEPHONE OR CABLE TV LINE INSTALLATION-CONTRACTORS, OVERHEAD & DRIVERS
7611	TELEPHONE OR CABLE TV LINE INSTALLATION-CONTRACTORS, UNDERGROUND & DRIVERS
7601	TELEPHONE, TELEGRAPH OR FIRE ALARM LINE CONSTRUCTION & DRIVERS
5348	TILE, STONE, MOSAIC OR TERRAZZO WORK-INSIDE
6251	TUNNELING-NOT PNEUMATIC-ALL OPERATIONS
6260	TUNNELING-PNEUMATIC-ALL OPERATIONS
5445	WALLBOARD INSTALLATION WITHIN BUILDINGS & DRIVERS
3365	WELDING OR CUTTING NOC & DRIVERS

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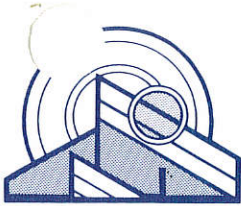
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CRAWFORD & KINDER, INC.

SAM CRAWFORD
CUSTOM BUILDER

KURT NIEMACKL
SUPERINTENDANT

KYLE NIEMACKL
SUPERINTENDANT

7409 ALLMAN • SHAWNEE MISSION, KS 66217 • FAX/PHONE 913-268-7205

16 MAR 98

Re: HB 2591

Ladies and Gentlemen,

I am Sam Crawford, President of Crawford & Kinder, Inc., a small home building company in Johnson County that employs numerous subcontractors which are affected by last year's passage of HB 2011. We are very interested in supplying affordable housing to the public and are concerned with the increase of several hundred to several thousand dollars that this bill will add to the price of a home.

We have always required all of our subcontractors to have a certificate of Insurance on file with us (a fact that has limited our choices and increased our expenses). The unincorporated sub can no longer opt out of workmen's compensation. There is considerable confusion on the interpretation of this new law and how it is to be applied.

Several scenarios are possible, all resulting in substantial increases in Work Comp coverage, increases which will be passed from subcontractor to general contractor to homebuyer.

Our company deals with at least 12 (twelve) subcontractors who are affected by this law. Assuming an average rate of 12%, the increases in premiums will result in an increase in the amount of approximately \$1680 per house. In many instances, the rate will be considerably higher and could even force some small companies to cease doing business.

Should the contractor be required to pay on total earnings (one of the points not clearly defined), the increase per year for our company on only our painter would be approximately \$14,400. Multiply this times the 12 subcontractors and you are in excess of \$170,000, or approximately \$14,167 per home. In addition to these very real, calculatable costs, both those already expended and those to be e:

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to revise records, obtain montly certificates and determine which interpretation of the law will be used.

Following is how we arrived at our figures on the painter:

Prior cost of work comp \$750

New cost 12% x \$24,900 x 2 persons = \$5976

Difference \$5976 - \$750 = \$5226/year

80% to Crawford & Kinder, Inc = \$4180

\$4180 divided by 30 houses/year = \$140/house

\$140/house x 12 subs = \$1680/house

If pay on entire earnings:

\$150,000/year x 12% = \$18,000/year

80% labor x \$18,000 = \$14,400/year

\$14,400 divided by 30 = \$480/house

\$480/house x 12 subs = \$5,760/house

We have seen prices increase from our subs due to the passage of HB 2011, will see more if HB2591 is not passed. No one has been able to provide me with specific examples within the construction industry that will be corrected by HB 2011. Many of us in the housing industry would be pleased to have our legislators helps us control inflation and continue to provide affordable housing by passing HB 2591.

Thank you.

Sam Crawford, President
Crawford & Kinder, Inc.

Sen. _____ I respectfully request you vote "NO" on repeal of HB-2591 which would totally repeal the law of 1997 requiring all subcontractors to be responsible for carrying their own workers compensation coverage.

The legislation overwhelmingly passed by the legislature last year produced a "no fault" system in which all contractors working for another contractor must be covered by workers compensation & required the sole proprietor to buy coverage. As you know, this has caused a furor among the sole proprietor subcontractors saying they cannot afford the coverage.

I WOULD SAY THEY CAN'T AFFORD TO NOT PURCHASE THEIR OWN WORKERS COMPENSATION COVERAGE!

Shifting the responsibility for the cost of insurance does not solve the problem of costs associated with coverage. Small Sub-contractors, who do not currently carry insurance, and allege they are being "put out of business" by the existing law will not be helped by repealing the law. In fact they could be hurt by repealing the law. Let me explain:

1. If the General Contractor is responsible for all Workers Compensation Insurance then Sub-Contractors with GOOD "Overall Experience Ratings (I.E.; "O" or "negative" = "get credits") will be penalized and have their costs increased because they will be charged based on the "Experience Rating" and a compounding "Assigned Risk" surcharge assigned to the General Contractor. This impact will vary between each General Contractor they work for.

2. Sub-Contractors will be further penalized because their "TOTAL INVOICE" will be assessed at the rate of 33-1/3%, 50%, or 90% by each General Contractor they work for. Most Sub-Contractors would end up losing money because accumulated invoices, per General Contractor, could easily exceed today's individual limit of \$26,800.00 on premiums. Thus they could end up paying some multiple exceeding today's limits because there is no way to manage payments, let alone between General Contractors. Additionally, General Contractors (especially "Small" ones) cannot keep track of "payrolls" for each subcontractor & their employees.

3. By not purchasing insurance and renegotiating their contracts the Sub-contractor could lose income and will lose a business deduction which would help them.

Repealing HB-2591 Can lead to increased abuse:

1. Sub-contractors work for many different General Contractors. If a Sub-contractor gets hurt they could file a claim against any of their General Contractors. There is nothing to keep a person from getting hurt at home and claiming they got hurt on a job as well. There are many small General Contractors that could easily be put out of business thru fraud of this nature. Keeping the Sub-contractor responsible for their own insurance helps control this problem.

2. There is no incentive for a Sub-contractor to help manage their own safety because their own costs are not directly impacted by their behavior.

3. Sub-contractors have the incentive to help manage fraud & abuse of the system if they are responsible for their own insurance. This will help lower costs.

Repealing HB-2591 negatively impacts the attractiveness of doing business in Kansas.

1. Repeal changes the definition of an "Employee". From my personal experience other implied responsibilities could accrue to the General Contractor. An example is responsibility for state and federal taxes if they are not paid by the Sub-contractor. I have also heard of a case where a General Contractor was held partially responsible for the wages of a Sub-Contractor when that Sub-Contractor did not pay his employees and the General had documented evidence of full invoice payments.

2. A mechanism to help keep loss ratios & thus premiums from rising will be lost.

3. Affordable housing in Kansas would also be impacted by increased costs of insurance.

Repealing HB-2591 creates significant problems at date of effect.

1. What happens with and who is financially responsible for "Incurred" but not reported claims as of the date of repeal?

2. What happens to "Client" contracts existing before or contracts signed on the day of repeal? Many contracts can last for a year or longer.

Rather than shifting responsibility for premiums we must find viable options for a sole proprietor owner of a sub-contracting company to provide their own economical insurance. An option to consider is the amendment offered by the Kansas Building Industry Association. Some key points of that amendment are:

1. Limits the subcontractor coverage to the construction industry as defined by NCCI.

2. Permits the owners of a sole proprietorship, LLC or partnership to opt out of coverage by filing the proper form with the Division of Workers Compensation. This is the same authority an owner of a corporation has currently. Any employees of the owner would be required to be covered by Workers Compensation.

3. Tort action against the General contractor would still be allowed in limited circumstances, but would remove the liability for the General Contractor for Workers Compensation coverage and premiums.

We must fully evaluate this matter before we rush to change the law. We cannot accept the position "we don't have time". The stakes are too high.

Even the Workers Compensation Advisory Council recommends leaving the current law in place.

Again, I respectfully request vote "NO" on HB-2591. Thank you for your time.

DAVID M. REYNOLDS, 1017 Wildwood Dr., Lawrence, Kansas (785) 832-1414

Senate Commerce Committee

Date 3-17-98

Attachment # 4



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 S. BROADWAY • SUITE 500 • WICHITA, KANSAS 67202-4262
(316) 263-7297 • FAX (316) 263-3021
800 S.W. JACKSON • SUITE 1400 • TOPEKA, KANSAS 66612-1216
(913) 232-7772 • FAX (913) 232-0917

Before the Senate, Commerce Committee
March 17, 1998
HB 2591

The Kansas Independent Oil & Gas Association (KIOGA) is a 60 year old organization representing the voice of the Independent oil and gas operators and supporting industry in Kansas. There are about 3,000 KCC licensed operators doing business in Kansas. We support HB 2591, without the House floor amendment and we do not support the proposed amendment by the Kansas Building Industry Association.

When HB 2011 (1997) was enacted we began getting many calls and complaints as to its application. Oil and gas operators are business entities that employ many "independent contractors" to perform various services. They include pumpers, roustabouts, casing crews, rework crews, backhoe and dozier operators, erection and construction crews, frac and acid contractors. All independent contractors. When HB 2011 (1997) was passed the term "self-employed sub contractors" was the emphasis.

We did not feel HB 2011 (1997) extended to "independent contractors", but the lay attitude was that a self-employed subcontractor, was a self employed independent contractor, and the confusion continued.

We examined the Division of Workers Compensation bulletin on this subject as well as that of the Commissioner of Insurance. Confusion in our industry continued. We asked for clarification and none was delivered.

We finally began telling oil and gas operators that HB 2011 (1997) does not disturb the "independent contractor" relationship, and that those contractors must cover their own workers compensation insurance.

We hope you clarify last year's law by passing HB 2591 and authorize further study. As a goal we hope you will include a clarifying statement indicating independent contractors are not to look to those with whom they do business to cover their insurance. The bottom line for our industry is that "independent contractors" that come on a working oil and gas lease to perform services should have their own workers compensation insurance.

Donald P. Schnacke

DPS:sm

Senate Commerce Committee
Date 3-17-98
Attachment # 5

BRAD SMOOT

ATTORNEY AT LAW

EIGHTH & JACKSON STREET
MERCANTILE BANK BUILDING
SUITE 808
TOPEKA, KANSAS 66612
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**STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL
THE AMERICAN INSURANCE ASSOCIATION
TO
KANSAS SENATE COMMERCE COMMITTEE
REGARDING 1998 HOUSE BILL 2591
March 16, 1998**

Madam Chair and Members of the Committee:

I am Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), a trade association representing more than 270 companies providing a variety of insurance products to Kansans and across the nation. AIA member companies provide approximately one half of the workers compensation insurance coverage available in Kansas. We are pleased to have this opportunity to comment on House Bill 2591, as amended.

AIA was not involved with the legislative changes last session affecting subcontractors. Likewise, we have not expressed any position on House Bill 2591, as introduced or advanced by the House Business, Commerce & Labor Committee. The fundamental issue of this bill is one of defining which workers should be covered by workers compensation laws and who should be required to provide benefits. Such coverage issues are matters of pure public policy for the legislature to decide.

However, House Bill 2591 was amended on the floor of the House to include a provision requiring the Kansas Insurance Department to implement experience rating for all employers and a program of premium discounts for employers who develop a "safety plan." See page 10, lines 2-9. By its terms, it affects all workers compensation policies; not just those covering subcontractors. This amendment was not considered during the summer study of the subcontractor issue. Neither was it a part of the extensive House committee and subcommittee hearings. To the best of my knowledge, this issue has not been discussed since the comprehensive workers compensation legislation of 1993, when it was rejected as part of the reform act.

Senate Commerce Committee

Date *3-17-98*

Attachment # *4-1 thru 6-2*

I know of no state which experience rates all employers. Currently, Kansas employers are subject to experience rating only if they generate a premium of \$2,250 annually. This is one of the lowest thresholds in the country. While we cannot tell you in advance who the winners and losers would be under universal experience rating, we can tell you that many small employers will suffer if they have had a single claim and that all such employers will pay more for the services of rating organizations to produce experience information previously not required.

As members of this committee are aware, the current workers compensation laws and insurance industry practices recognize the wide variety of risks in the work place. Possibly more so than any other type of insurance, the workers compensation insurance system attempts to make employers bare the costs of coverage appropriate to their individual risk. That is accomplished by detailed classification codes which distinguish various jobs and the risks associated with each. In addition, the costs of coverage for most employers is determined by the actual experience of that employer. That is, of course, the purpose of employer experience modification factors or E-Mods.

The costs of insurance coverage should be determined by actual results of an employer's safety efforts and not just the paperwork of preparing a "safety plan." A person's New Year's resolution to lose weight is admirable but isn't worth much unless the person actually drops the pounds. Likewise, safety planning is good, but we must not reward employers unless their plans actually create a safer work environment resulting in a reduction in claim frequency and severity. We see little merit in rewarding intentions when we already have a system in place that rewards results.

We would urge the committee to remove the House floor amendment, Section 4, and address the subcontractor issue which has caused so much confusion and concern. Thank you for consideration of our views.

Cost of Work Comp to Building Industry.

"Deck Construction" Sub Contractors
2 MAN PARTNERSHIP
1997 WC expense = \$750.
1998 WC expense = \$6398.

"Atwell Fence & Deck Co."
HUSBAND & WIFE PARTNERSHIP
Increase passed from 3 sub companies = \$24415.00
Co-Owner's rates increase by = \$3877.00
Cost of P.T. Secretary ins. = \$678.64
Total Increase to Contractor = \$28979.00

(New Requirement)

PLUS

Increases by ALL Sub Contractors Required to Build a Home.
31 Others from Classification list.

\$70,289.14

(Increase based on Sole Proprietorships, and NO part time secretary.)

"Sunrise Builders"
HUSBAND & WIFE PARTNERSHIP
Total Cost to be passed up to Builders/ General contractors: \$99268.81
Average # of houses completed in a year by Sub contractors: 50
\$99268.81 -- 50 = \$1,985.37 Total Increase per House

Cost Passed on to **YOU** and **Your Constituents**, by Builder.

Senate Commerce Committee

Date *3-17-98*

Attachment # *17-1 thru 7-2*

Commerce Committee
Hearing Date: March 16, 1998
Testimony by: Dawn Atwell

Sub Contractor's Classifications
and Rate Increase per \$100.

Classification:	Ins. Code	Rate /\$100	x \$24,950.	x .01=	Increase
Owner / Operator	5645	12.82	\$24,950	0.01	\$3,198.59
Secretary	8810	0.28	\$24,950	0.01	\$69.86
Superintendent	5606	2.72	\$24,950	0.01	\$678.64
Excavation	6217	4.97	\$24,950	0.01	\$1,240.02
Foundation Installation	5213	13.98	\$24,950	0.01	\$3,488.01
Water Proofing	5474	8.45	\$24,950	0.01	\$2,108.28
Flat Work/ Concrete Labor	5221	7.68	\$24,950	0.01	\$1,916.16
Framers	5645	12.82	\$24,950	0.01	\$3,198.59
Roofers	5551	31.37	\$24,950	0.01	\$7,826.82
Electrician	5190	4.88	\$24,950	0.01	\$1,217.56
Plumber	5183	6.50	\$24,950	0.01	\$1,621.75
Drywall	5445	6.41	\$24,950	0.01	\$1,599.30
Phone/Cable wiring	5190	4.88	\$24,950	0.01	\$1,217.56
Heat/AC Installation	5538	6.66	\$24,950	0.01	\$1,661.67
Trim Carpenter	5437	6.71	\$24,950	0.01	\$1,674.15
Painter	8474	8.45	\$24,950	0.01	\$2,108.28
Insulation Installer	5479	14.41	\$24,950	0.01	\$3,595.30
Cabinet Maker/installer	5437	6.71	\$24,950	0.01	\$1,674.15
Tile Installer	5348	4.70	\$24,950	0.01	\$1,172.65
Marble Craftsman	5348	4.70	\$24,950	0.01	\$1,172.65
Window Scraper	5474	8.45	\$24,950	0.01	\$2,108.28
Carpet Installer	9521	5.78	\$24,950	0.01	\$1,442.11
Hardwood Installer	9521	6.71	\$24,950	0.01	\$1,674.15
Construction Clean Up	5610	8.28	\$24,950	0.01	\$2,065.86
Stone/Brick Mason	5022	13.25	\$24,950	0.01	\$3,305.88
Landscaper	0042	9.17	\$24,950	0.01	\$2,287.92
Garage door Installer	5645	12.82	\$24,950	0.01	\$3,198.59
Gutter Installer	5538	6.66	\$24,950	0.01	\$1,661.67
Locksmith	8010	1.85	\$24,950	0.01	\$461.58
Deck /Fence Construction	5645	12.82	\$24,950	0.01	\$3,198.59
Sign Maker/ advertising	9545	7.18	\$24,950	0.01	\$1,791.41
Final Clean Up	9014	4.70	\$24,950	0.01	\$1,172.65
Wallpaper hanger		8.45	\$24,950	0.01	\$2,108.28
Decorator	9521	5.78	\$24,950	0.01	\$1,442.11
Total Workman's Comp Increase among Sub Contractors.					\$70,359.00

SENATE COMMITTEE

HOUSE BILL 2011 PASSED IN MARCH, 1997, HAS HAD AN ADVERSE EFFECT ON SMALL BUSINESS OWNERS. OWNERS OF SUBCONTRACTOR FIRMS CAN NO LONGER ELECT OUT AND MUST COVER THEMSELVES ON WORKMAN'S COMPENSATION COVERAGE. HB 2011 ALLOWS THE BUSINESS OWNER TO ELECT OUT IF HE IS INCORPORATED. THIS DISCRIMINATES AGAINST THE SMALL BUSINESS OWNERS WHO ARE NOT INCORPORATED.

THE WORKMAN'S COMPENSATION REQUIREMENTS FOR SUB-CONTRACTOR BUSINESS OWNERS ON HB 2011 HAS HAD AN ADVERSE EFFECT ON MY BUSINESS OF BUILDING NEW HOMES AND THE EFFECT COULD RAISE THE PRICE OF NEW HOMES SEVERAL THOUSAND DOLLARS ON A \$150,000 HOME. THIS COULD MEAN FEWER HOMES SOLD AND THAT MORE PEOPLE WILL NOT BE ABLE TO AFFORD THE AMERICAN DREAM OF HOME OWNERSHIP.

SMALL BUSINESS OWNERS, WHETHER WE ARE SOLE PROPRIETORSHIP, PARTNERSHIP, OR INCORPORATED, SHOULD HAVE THEIR CHOICE AS BUSINESS OWNERS TO ELECT IN OR OUT ON WHETHER WE PROVIDE WORKMAN'S COMPENSATION ON OURSELVES.

THIS IS AN UNNECESSARY COST TO THE BUSINESS OWNER THAT ADVERSELY AFFECTS HOME PRICES AND ONLY BECAUSE INTEREST RATES HAVE FALLEN SINCE THIS LAW HAS BEEN IN EFFECT; WE HAVEN'T FELT THE NEGATIVE IMPACT OF THESE UNINTENDED CONSEQUENCES OF INCREASED COSTS.

I ASK THAT YOU CONSIDER REPEALING, AS RECOMMENDED BY THE JOINT INTERIM COMMITTEE, HB 2011, THAT REQUIRES THE SUB-CONTRACTOR BUSINESS OWNER TO PROVIDE WORKMAN'S COMPENSATION ON HIS OR HER SELF.

TONY PLUNKETT, PRESIDENT
DAKOTA, INC.

Senate Commerce Committee

Date 3-17-98

Attachment # 8