Approved: 2-23-99
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR.

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on February 18, 1999 in Room 521-S of the Capitol.

All members were present except: All members were present

Committee staff present:
Darrell McNeil, Acting Revisor of Statutes
Dennis Hodgins, Legislative Research Department
Bev Adams, Committee Secretary

Conferees appearing before the committee:
Rep. Bob Bethell
Rep. Melany Barnes
Rep. Dale Swenson
Rep. Carlos Mayans
Tim Mosteller, father of injured employee
Tim King, KTLA
Sharyl Landes by Darrin Nugent
Wayne Maichel, AFL/CIO
Deb Goin, daughter of victim
Johnny Sutton, victim of explosion
Phil Harness, Director of Division of Workers Compensation, KDHR
Pat Bush, Ks Self-Insurers Assn.
Terry Leatherman, KCCI
Bill Curtis, Ks Assn. of School Boards
Alan Welden, Wichita Area Workers Comp Task Force
Joe Dukich, Wichita Area Workers Comp Task Force
Bob Totten, KS Contractors Assn.
John Sherwood, Sherwood Construction
Brad Smoot, Greater KC Chamber of Commerce
Stephen S. Richards, Yellow Corporation
Art Brown, Mid-American Lumbermens Assn.

Others attending: See attached list

A letter from Attorney General Stovall concerning **HB 2197** was passed out to the committee. (See Attachment 1)

Hearing on: HB 2287 - Exception to workers compensation exclusive remedy provision
Under current law, worker compensation insurance is the exclusive remedy for employees injured or killed on the job. The employee or their families do not have the option to file a civil lawsuit against the employers.

Rep. Bob Bethell, a proponent of the bill, gave some background on **HB 2287**. The bill was introduced as a result of the explosion at the DeBruce Grain Elevator and the resulting loss of lives and injuries to workers. He asks for the consideration of the bill on the basis of responsibility and accountability of the person or persons who direct the activity of the organization. They must be held responsible for their actions. (See Attachment 2)

Rep. Melany Barnes, came before the committee in the hope that the actions of the committee and the actions of the Legislature may make the changes necessary to prevent this kind of tragedy from happening to other workers. Attached to her testimony is a balloon with amendments that refines Rep. Bethell's bill and also establishes the worker's right to file both a worker compensation claim and a civil action. (See Attachment 3)

Rep. Dale Swenson spoke to the committee representing the parents of Lanny Owen, who was injured and later died as a result of the explosion at the DeBruce Grain elevator. Lanny was a neighbor and friend of

Rep. Swenson and they shared many things when they were younger. Although he hadn't seen him for a while, it was a shock to learn of his death. (See Attachment 4)

Rep. Carlos Mayans spoke on behalf of two families; the Jose and Daisy Duarte family and the Castenada family. Both of the fathers died in the DeBruce explosion, each leaving a widow and children. (See Attachment 5)

Tim Mosteller's son was severely injured in the explosion. He stated that the simple truth is that on June 8th, seven lives were taken from families that must endure the loss for the rest of their lives. Also ten people were injured and their lives and their ability to provide for themselves and for their families has forever been changed. He asks that an avenue be built that allows for just and fair treatment for those killed or injured by gross and willful negligence in a workplace that was unsafe by anyone's standards. (See Attachment 6)

Tim King, Kansas Trial Lawyers Association (KTLA), testified as a proponent of the bill. He stated that the bill would change the way the workers compensation law works for only a very small number of Kansas employers each year, those who injure their employees through either criminal conduct or gross and wanton negligence. (See Attachment 7)

Sharyl Landes, was represented by Darrin Nugent, who read her testimony. Her husband was killed in an accident while building a new school in Lansing, Kansas. After his death, they found there were many safety violations, both by the general contractor and subcontractor, and citations had been issued by OSHA. (See Attachment 8)

Wayne Maichel, AFL/CIO, testified that the main objection that he believes the members of the committee and others have is that it erodes the principles of workers compensation. It violates the trade off between labor and management by introducing salt into the system and into the act and generally upsets the balance of things. The AFL/CIO does not believe that it will do this. They believe that very few cases will fall into this category. There are other statutes concerning workers compensation that have exceptions for employees who do not follow safety rules and this bill would also make the same standard apply to employers.

Deb Goin's father died in the DeBruce explosion. His body was not found until 40 days later. The waiting was the hardest thing she ever did. She asked the committee to pass the bill in the name of her father and the others who died on June 8th. (See Attachment 9)

Johnny Sutton was injured in the June 8th explosion and is still undergoing treatment for his injuries. He cannot do his weightmaster job anymore. He testified about people being held responsible for their actions and being held accountable to the people they injure when engaging in gross negligence, intentional conduct or criminal conduct. He stated he had brought safety problems to the attention of his employers. (See Attachment 10)

Phil Harness, Director of the Division of Workers Compensation, KDHR, pointed out to the committee some possible statutory conflicts and/or ambiguities within the proposed amending language of **HB 2287**. (See Attachment 11)

Pat Bush, President, Kansas Self-Insurers Association, testified as an opponent of the bill. He testified that the bill would essentially wipe away the "no fault" intent of the current workers compensation law. Established federal safety laws and procedures are in place as the Occupational Safety and Health Administration (OSHA), and they should penalize Kansas employers who have total disregard for workplace safety. (See Attachment 12)

Terry Leatherman, KCCI, explained to the committee why KCCI opposes the bill. He pointed out that there will likely be 100,000 workplace injuries in Kansas this year. In all of these 100,000 cases, medical care and compensation is a right the injured worker will receive in a system where employers pay all insurance costs. A careful analysis of how the system works for all Kansas employees will show the workers compensation social experiment works. If the bill is passed it will alter this balance. (See Attachment 13)

Bill Curtis, Kansas Association of School Boards, furnished written testimony to the committee that asks them not to take action to pass out the bill favorably. (See Attachment 14)

Alan Welden, Wichita Area Workers Compensation Task Force, appeared as an opponent of the bill. They do not believe the changes proposed will solve safety concerns or benefit equity problems resulting from job-related injuries. He feels that the main result will be increased activity for the legal profession. (See Attachment 15)

Joe Dukich, Wichita Area Workers Compensation Task Force, testified against the bill. He feels that safety is a 24-hour practice, a lifestyle. It cannot be litigated into the workplace. The proposed legislation is not the way to change business methods and unsafe employee practices. (See Attachment 16)

Bob Totten, Kansas Contractors Association, appeared to tell the committee that his organization opposes **HB 2287**. He introduced John Sherwood, one of the association's members, to testify against the bill. (See Attachment 17)

John Sherwood, Sherwood Construction, gave the committee a little history of the workers compensation act and how it works. If the bill is passed, they believe that the only ones to benefit would be the plaintiff trial lawyers of Kansas. (See Attachment 18)

Brad Smoot, Legislative Counsel, Greater Kansas City Chamber of Commerce, appeared as an opponent of the bill. They feel that the workers compensation laws work very efficiently. Kansas employers spend $400 million per year to make this "no fault" administrative system work. They feel that **HB 2287** would undermine the system in costly and yet unknown ways and they urge the committee to refer the matter to the Workers Compensation Advisory Council for extensive study and response. (See Attachment 19)

Stephen S. Richards, Yellow Corporation and a member of the Workers Compensation Advisory Council, supplied the committee with written testimony that opposes the bill. (See Attachment 20)

Art Brown, Mid-American Lumbermens Association, testified in opposition to the bill. Their main concern is that the workers compensation act was founded on the premise of immediate treatment for injured employees on the work force. This system has served the Kansas worker well since its inception in 1912. They do not feel that the bill is going to be the answer to the overall picture for the protection of workers in the work place in Kansas. He recommends that it go to the Workers Compensation Advisory Council for their consideration and recommendations. (See Attachment 21)

Much discussion took place during the hearing with the conferees answering questions from the committee.

No others were present to testify for or against the bill, and Chairman Lane closed the hearing on **HB 2287**.

Chairman Lane adjourned the meeting at 10:34 a.m.

The next scheduled meeting will be February 19, 1999.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE February 18, 1999

NAME	REPRESENTING
Pat Bush	Western Resources, Inc.
J.P. Small	KOCH & LEARJET
Joe DURICH	PRISM OCC. HEALTH
Glen Walker	USD 259
Darin Nugent / Jim Shetlar	Sharyl Landers
Stacy Sexton	Hein & Weis Chtd.
DICK CARLSON	KSIA
[illegible]	MID - AM / UMPeterman
Martha Jane Smith	KMHA
Terry Leatherman	KCCI
RANDY VALDEZ	KAIA
NORM WILKS	KASB
JOHN OSTROWSKI	KS AFL-CIO
WAYNE MACHETS	KS AFL-CIO
Jolene M. Caldwell	KTLA
Brad Smoot	KCCC
Lori Lessmer	the wichita Eagle
Tom J. Fuller	Survivors of DeBruce Explosion
TIMOTHY L. KING	KTLA

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE February 18 (cont.)

NAME	REPRESENTING
~~Tony Hennyhan~~	FTLA
Johnny Sutton	
Georgia Sutton	
Deb Goin	Howard Goin, deceased
Cheri Mosteller	Scott Mosteller-victim Defense

State of Kansas
Office of the Attorney General
CONSUMER PROTECTION/ANTITRUST DIVISION
301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699 TTY: 291-3767

CARLA J. STOVALL
ATTORNEY GENERAL

CONSUMER HOTLINE
1-800-432-2310

February 16, 1999

The Honorable Al Lane
Chairperson, House Business, Commerce & Labor Committee
State Capitol, Rm. 115-S
Topeka, Kansas 66612

RE: HB 2197

Dear Chairperson Lane and Members of the Committee:

I am writing in response to questions from the hearing on February 12, 1999, regarding HB 2197. It is my understanding that Mike Murray, lobbyist for Sprint, expressed concern over the existing statute [K.S.A. 50-617], which makes the receipt of unordered goods or services an unconditional gift. Sprint personnel believe this could result in "unscrupulous" consumers fraudulently claiming they did not order a particular service, such as a pager, and subsequently receiving the service "in perpetuity" as a result of this statute.

First, I want to assure you and Members of the Committee that, to my knowledge, the Consumer Protection Division has never filed an enforcement action against a telecommunications company under the existing statute. Furthermore, my Division is not aware of any instance in which an "unscrupulous" consumer has attempted to inappropriately receive property or services as an unconditional gift under K.S.A. 50-617, let alone receive them "in perpetuity." I do not believe any court in Kansas would interpret the statute to require a supplier to continue providing services beyond any specified time period indicated. Perhaps as important, my Consumer Protection Division would not pursue such a result.

K.S.A. 50-617 was originally enacted in 1969. It was amended in 1991, to include "services," and in 1992, to make collecting on a bill for goods or services received as an unconditional gift a deceptive act or practice under the KCPA. Otherwise, its provisions have continuously provided that unordered items shall be deemed an unconditional gift. Additionally, under K.S.A. 50-617, it is the Office of the Attorney General which has the burden to prove the property or services were unordered. I believe the concern expressed by Sprint representatives to Mr. Murray was misplaced, given the long history of this law, its wording, and the absence of inappropriate consumer claims or Attorney General enforcement.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
2-18-99
Attachment 1

It has always been the policy of this office to treat businesses fairly as well as protect consumers from deceptive and unconscionable business practices. I support HB 2197 with the balloon amendments proposed by my Consumer Protection Division. Please let me know whether you or any Committee Member have further questions.

Very truly yours,

Carla J. Stovall
Attorney General

CJS/CSR/kb

STATE OF KANSAS

BOB BETHELL
STATE REPRESENTATIVE, 113TH DISTRICT
104 E. THIRD, P.O. BOX 186
ALDEN, KS 67512
(316) 534-3085
FAX 316-534-3086

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
HEALTH & HUMAN SERVICES
SOCIAL SERVICES BUDGET COMMITTEE

STATE CAPITOL—ROOM 175-W
TOPEKA, KS 66612-1504
785-296-7667

TOPEKA

February 18, 1999

Mister Chairman and members of the House Committee on Business, Commerce and Labor, I am Bob Bethell, Representative of District 113. I come before you today to give background concerning HB2287.

Several months ago, a happening near Wichita, Kansas caught the attention of the State of Kansas as well as the, I believe, entire world. This was the explosion of a grain elevator. This happening was especially poignant because of the difficulty in finding all of the victims. However, I do not come before you today to address that issue. Others who have requested to be heard will provide the details of the incident as it has personally effected them.

I come asking for your consideration of HB2287 on the basis of **responsibility and accountability** issues. As companies develop a process of selection is entered into that determines the person or persons to direct the activity of the organization. These persons are then charged with the responsibility operating the company while considering the personal safety of the workers. If decisions are made based upon appropriate criteria we have no problem. However if decisions are based on any of a number of self serving criteria there is potential for personal tragedy. It is under that situation that one must be held accountable for their actions.

The exemption for employers held under K.S.A. 44-501allows for unscrupulous employers to enter into poor decision making based on faulty criteria without consequence.

Mr. Chairman and Committee members I thank you for your attention to this matter and I will stand for questions.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
2-18-99
Attachment 2

KENT A. ROTH
ROTH LAW OFFICE

TEN NORTH MAIN ~ ELLINWOOD, KS 67526
Phone (316) 564-2090 ~ Fax (316) 564-2098 ~ Email kentr@greatbend.com

The Honorable State
Representative Bob Bethel
State Capital Building, Room 175-West
Topeka, KS 66612-1504

February 11, 1999

Re: House Bill No. 2287

Dear Bob:

The enclosed summary of a public exchange on the tragic DeBruce Grain Elevator explosion exemplifies the concern among the public on the need to prevent such disasters in the future. As you know, one of the victims of the explosion was not located during the official search. A late night television comedian displayed a lack of civility beyond politically incorrect conduct in joking how the remains might be located. The family of this slain worker reside in Lyons, Kansas. You are the duly elected State Representative, who represents the City of Lyons, and you requested introduction by the Committee on Business, Commerce and Labor at the urging of this constituent. More than anything else, I hope committee hearings on the proposal will give the families of the slain workers hope that changes will be made.

The committee hearing being scheduled so quickly on February 18, 1999, at 9 am in Room 521-South of the Statehouse is impressive. Please request a copy of this letter with enclosure be provided to the committee members as my testimony in support of House Bill No. 2287.

Very truly yours,

Kent Roth

Kent A. Roth

enc.

2-2

Published on 12/11/98, THE WICHITA EAGLE

WILLFUL

DEBRUCE APPEARS DESERVING OF RECORD FINE

If the safety violations are true - and there's little reason to believe otherwise – DeBruce Grain Inc. deserves its record fine and the civil lawsuits that are sure to come.

The Occupational Safety and Health Administration announced a $1.7 million fine Monday levied against the Kansas City-based company for 25 "willful" safety violations at its Wichita grain elevator. An explosion at the elevator on June 8 killed seven workers and injured 10 others...

Published on 01/18/99, THE WICHITA EAGLE

LAW WON'T ALLOW DEBRUCE CIVIL SUITS

As a member of the often maligned species referred to as "the trial lawyers," I was pleased to see The Eagle's editorial acknowledgment that some civil lawsuits are actually justified. The editorial "Willful" of Dec. 11, 1998 states that "DeBruce Grain Inc. deserves . . . the civil lawsuits that are sure to come." Unfortunately, that statement may be only partly true.

Although DeBruce may "deserve" some civil suits, our Kansas law will not allow any. In Kansas, an employee cannot sue his or her emp...

KENT A. ROTH
ROTH LAW OFFICE

TEN NORTH MAIN ~ ELLINWOOD, KS 67526
Phone (316) 564-2090 ~ Fax (316) 564-2098 ~ Email kentr@greatbend.com

February 11, 1999

Mr. Randy Brown
Editorial Board
Wichita Eagle
Wichita, KS 67202-3512

Re: House Bill No. 2287

Dear Randy:

I hope it is okay that I pulled the enclosed summaries off the eagle web site. I would have paid the $ 1.95 for the full text, but I have no password.

My schedule does not allow travel to Topeka for the committee hearing next Thursday. I understand a representative of the victim families has requested to speak to the committee members.

The enclosure is simply to let you know the editorial did play a part in the introduction of the bill. If you wish to cover the issue, I would suggest having someone attend the committee hearing, 2/18/99 at 9 am in Room 521-S.

Very truly yours,

Kent A. Roth

enc.
bc: Bob Bethel

2-4

'.ANY BARNES
R .NTATIVE, 95TH DISTRICT
1816 BURTON
WICHITA, KANSAS 67213
(316) 262-0800

STATE CAPITOL—RM. 284-W
TOPEKA, KANSAS 66612-1504
(785) 296-7673

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE A. .NMEN
MEMBER: BUSINESS, COMMERCE AND LABOR
KANSAS 2000 SELECT COMMITTEE
GOVERNMENT ORGANIZATION & ELECTIONS
LOCAL GOVERNMENT
WORKER'S COMPENSATION FUND OVERSIGHT COMMITTEE

Testimony before House Business Commerce and Labor Committee

HB 2287

Good morning Mister Chairman, Ranking Minority Member Ruff and committee members. Thank you for hearing HB 2287 and thank you to the survivors and families of the DeBruce grain elevator explosion. You have suffered trauma beyond what any of us can imagine. Yet, you come before us with nothing to gain except the hope that your actions today and the actions of this body may make the changes necessary to prevent this from happening to other workers.

Each day men, women, grandmothers and grandfathers and children get up and go to work, never thinking that they or their loved ones may never come home. We kiss our loved ones goodbye and can't imagine that before the end of the day our loved one could be burned beyond recognition or may never be able to walk, or dress themselves again. Most of us believe and hope that we will grow old together, see our children grown, and retire comfortably. The families here with us today, have had their hopes and dreams forever altered.

Workers and families I've spoken with do not believe that the Kansas Workers Compensation System could be so unfair. They cannot believe that if their employer knows of dangerous conditions and does nothing, the consequences are the same as with an ordinary accident that could not be prevented. The issue before us today is SAFETY, not money. These families are asking today that we pass legislation to make Kansas workplaces safe. The only way that we can do that, is to insure that the consequences for gross negligence or criminal conduct on the part of employers be the same as with any other person.

I offer today the attached friendly amendment that simply refines, yet respects the spirit of Representative Bethell's bill. There are two changes: on page one I've simplified the language and added the words "and wanton" and on the last page I've added a new sec. 2., which establishes the worker's right to file both a worker compensation claim and a civil action.

Please join me in passing this bill out of committee, favorably with my amendments. Thank you and I will stand for questions.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
2-18-99
Attachment 3

Session of 1999

HOUSE BILL No. 2287

By Committee on Business, Commerce and Labor

2-5

AN ACT concerning the workers compensation act, limiting the immunity of employers and other employees for intentional injuries and injuries caused by gross negligence or criminal conduct; amending K.S.A. 1998 Supp. 44-501 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1998 Supp. 44-501 is hereby amended to read as follows: 44-501. (a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

(b) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer. *unless such injury or death is caused intentionally or results from the gross negligence or criminal conduct of the employer or the other employee of the employer.*

gross and wanton negligence

(c) The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

(d) (1) If the injury to the employee results from the employee's deliberate intention to cause such injury; or from the employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer,

any compensation in respect to that injury shall be disallowed.

(2) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens. In the case of drugs or medications which are available to the public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months. It shall be conclusively presumed that the employee was impaired due to alcohol if it is shown that at the time of the injury that the employee had an alcohol concentration of .04 or more. An employee's refusal to submit to a chemical test shall not be admissible evidence to prove impairment unless there was probable cause to believe that the employee used, possessed or was impaired by a drug or alcohol while working. The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met:

(A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working;

(B) the test sample was collected at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of the test sample was performed by a licensed health care professional;

(D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

(F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee.

(e) Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion

of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

(f) Except as provided in the workers compensation act, no construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(g) It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections 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.

Sec. 3 ~~Sec. 2.~~ K.S.A. 1998 Supp. 44-501 is hereby repealed.

Sec. 4 ~~Sec. 3.~~ This act shall take effect and be in force from and after its publication in the statute book.

New Section 2

New Sec. 2. When the injury or death for which compensation is payable under the workers compensation act was caused under circumstances creating a legal liability against the employer or any person in the same employ to pay damages, and for which there is no immunity under subsection (b) of K.S.A. 44-501, and amendments thereto, the injured worker or the worker's dependents or personal representatives shall have the right to take compensation under the workers compensation act and pursue a remedy by proper action in a court of competent jurisdiction against the employer or person in the same employ.

3-4

STATE OF KANSAS

DALE A. SWENSON
REPRESENTATIVE, DISTRICT 97
TOPEKA ADDRESS:
STATE CAPITOL—431-N
TOPEKA, KANSAS 66612-1504
(785) 296-7683
HOME ADDRESS:
3351 S. McCOMAS
WICHITA, KANSAS 67217
(316) 945-5662

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
BUSINESS, COMMERCE & LABOR
JUDICIARY
HEALTH AND HUMAN SERVICES
JOINT COMMITTEE ON SPECIAL
CLAIMS AGAINST THE STATE

Testimony on HB 2287
House Business Commerce & Labor Committee
Rep. Al Lane, Chairman
February 18, 1999

As you know I am Rep. Dale Swenson I represent the 97th district in southwest Wichita. Among the many constituents I represent are the parents of Lanny Owen, who died tragically on June 8th, 1998. I am giving this testimony in support of HB 2287 on behalf of my friend Lanny.

Back in our early twenties, Lanny and I used to go gallivanting around together. His parents lived over on Vine, not far from me and I was over there several times. Lanny was good at working on cars, had a fast Camaro and loved to show it off. For a couple years or so, we had a lot of friends in common and shared a love of music. We liked to listen to Pink Floyd and Eagles, and I was motivating him to learn to play guitar. As things happen in life, we eventually went our separate ways.

Lanny's parents still live over on Vine St., but Lanny is gone. He worked at DeBruce Grain elevator, was severely burned in the explosion and died later at a Wichita hospital. That isn't the way we like to lose our friends. I would rather have my friends die of old age, than as a result of employers who place them in harm's way.

This bill carves out a very narrow exception to the workers compensation act that would address workplace injury and death like those that occurred in the DeBruce explosion. This will not affect many claims, only those where the employer was grossly negligence in the area of workplace safety. I would also like to point out that employees who violate safety rules are prohibited from getting workers comp Benefits.

The Jose and Daisy Duarte Family Story

Workers Name:	Jose Duarte
Employer:	DeBruce Grain, Inc.
Job Title:	Manager of Temporary Placement Workers
Injury:	Killed
Age:	41
Family Members:	Wife - Daisy, age 32 Children - Jacqueline, age 14; Andy, age 13; Luis, age 9; Jaime, age 6

Workers Compensation Benefits:

Jose's widow, Daisy, and their four children share $351 a week in death benefits which will be paid out until a maximum sum of $200,000 is paid. One half of that weekly benefit is for Daisy and one half of that weekly benefit is for the children to share. The children will receive their share of the benefits until they reach the age of 18 or until the age of 23 if they stay in school. If Daisy dies, her share goes to the children. If Daisy remarries her share of the benefits are terminated and a calculation is made to determine if she has 100 weeks of benefits left. If less than 100 weeks is left, she is paid a lump sum equal to the number of weeks of her share of the benefits left. If she has more than 100 weeks of benefits left, her lump sum payment is capped at an amount equal to her share for 100 weeks.

Family Background Jose Duarte was born on October 15, 1957 in Havana, Cuba. While living there, he attended school, played sports, and led the life of a normal Cuban youth. Upon completion of high school, he opted to forego university studies in order to help his mother and family subsist in Cuba's dilapidated economy. His good work ethic allowed him to be the primary caretaker and financial supporter of his family. However, in the late 1970's the economic troubles and government oppression that plagued his island nation began to worsen. This change in circumstances forced Jose and his family to make the most difficult decision of their lives. They agreed that Jose would come to the United States during the Mariel boat lift and hopefully, that he would earn enough money to help support his family. They also hoped that someday he would make enough money to bring them over to America. Jose settled in Wichita. Once again, he used his strong work ethic to find employment and succeed in a new country. As he promised, Jose provided financial support to his family back home.

In 1984, Jose's life took yet another turn when he met his first love and eventual wife Daisy. Together they worked hard and started a family. Jose now had new responsibilities and he cherished his role as husband and father. He never forgot, however the family he left behind and continued to provide financial assistance. At the same time, he endeavored to provide for his new family which consisted of four loving children: Jacqueline, age 14; Andy, age 13; and Luis and Jaime, ages nine and six respectively. Until his untimely death, Jose led his life as a good father, family man and friend. Although he never realized his dream of bringing his family to America, together with his wife and children he struggled, enjoyed, and pursued the elusive American dream. His kindness, love and support are missed by everyone who new him.

HOUSE BUSINESS, COMMERCE & LABOR COMM.
2-18-99
Attachment 5

MARIA CASTENADA

Workers Name: Victor Castenada

Employer: LSI

Job Title: Laborer

Injury: Death

Age: 29

Family Members:

Wife, Maria, age 27
Son, Jose, age 4
Daughter, Valeria, age 5

Workers Compensation Benefits:

Victor's widow, Maria, and their two children share a total of $241 a week in death benefits which will be paid out until a maximum sum of $200,000 is paid. One half of the weekly benefit is for Maria and one half of the weekly benefit is for the children to share. The children will receive their share of the benefits until they reach the age of 18 or until the age of 23 if the stay in school.

If Maria dies, her share goes to the children. If Maria remarries her share of the benefits are terminated and a calculation is made to determine if she has 100 weeks of benefits left. If less than 100 weeks is left, she is paid a lump sum equal to the number of weeks of her share of the benefits left. If she has more than 100 weeks of benefits left, her lump sum payment is capped at an amount equal to her share for 100 weeks.

Family Background

Maria and Victor were married in Zacatecas, Mexico on December 27, 1992. They immigrated to the United States about 6 years ago. Victor was a very hard working man and remained continuously employed since arriving here in the U.S. He had been working on assignment for LSI at the DeBruce elevator for about 6 months when the accident occurred. Their two children, Jose and Valeria, were born here in Wichita. Maria and the kids have other relatives here in Wichita and she intends on remaining here. In addition to losing her husband Maria lost her younger bother Jose Ortiz with whom she was very close.

Good morning, ladies and gentlemen and a big Kansas THANK YOU for allowing me the opportunity to speak to you this morning.

My name is Tom Mosteller. I am the father of Scott Mosteller, who was severely injured in the June 8th DeBruce explosion. I am also the father of five other sons and daughters.

Not only am I a family man but I am also a businessman. I was the first president of Botanica "The Wichita Gardens" and the co-founder of the Wichita Lawn, Flower & Garden Show, which is now presenting its 52nd annual show. I am the President of Sunnyside Nursery & Landscape Center, which was founded in 1927 by my late father and mother. It is a reputable business that I have vowed to continue. I am also a life-long Promise Keeper.

I was the middle child in a family of 15 in which 12 of us still survive. All 15 of us kids were born between 1924 and 1945. My family survived the Stock Market Crash of the 20s, the Great Depression and the Dust Bowl days of the 30s and, as some of you may also remember, the struggles of World War II. As our family grew in numbers we also grew in terms of our spirit of caring and appreciation for the lives and struggles of others. We learned that life, family and commitment to others must be valued. We learned the will to survive and to encourage others to survive.

I am telling you about my background because it has taught me the meaning and importance of integrity. Not just integrity as a husband, father and son, but also the type of integrity that is so necessary to any reputable business. When I was growing up, our family's life's lesson and motto was "RESPECT PEOPLE." RESPECT PEOPLE and respect each other because you never know the path a person has trod and where their tomorrows will lead them. Above all, "RESPECT PEOPLE" because none of us know what our own tomorrows hold. Will it be another beautiful, wonderful and productive day or will it be our own June 8th -- the kind of day that forever changed the lives of so many workers, their families and loved ones.

If it were within our power we most certainly would choose to undo that day. Without a doubt, if we could only have known what was going to happen that day those of us who have suffered and continue to suffer would not allow our sons, our fathers, our husbands to go to work as they have for months, for years and yes, even a lifetime.

We are here today in recognition of the simple truth that on June 8th seven lives were taken from families that must endure the loss for the rest of their lives. We must address the fact that because ten people were injured on June 8th their lives and their ability to provide for themselves and for their families has forever been changed. All of these families must make every effort to forge a life for this generation and for the generations that will follow.

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But our purpose today is not to judge how or why this explosion happened. Instead, we are here to focus on accountability for the deaths and injuries suffered by a team of dedicated workers. But who do we look to for this accountability?

As a start, we look to those who allowed this terrible tragedy to happen through gross and willful negligence while they were conducting their business. After all is said and done, it seems that so far the only thing good to come of June 8th is that it brought to light a serious problem that must be fixed.

So how can we make accountable those who participated in the destruction of the type of dedicated working team that is the greatest asset of any reputable company?

Well, for that solution, we have to look to you. We need your help to fix what came to light on June 8th only after a great price was paid by the loyal workers whose lives were shattered.

No, we are not the judge as to what happened on June 8, 1998. But we now have the opportunity to build an avenue that allows for just and fair treatment for those killed or injured by gross and willful negligence in a workplace that was unsafe by anyone's standards.

You have the power to help us. So we ask you to please help us respect and protect our fellow [redacted] people in the work place. Please do not allow June 8th to stand as the anniversary of the day that we chose to turn out back on human sacrifice.

We ask you to be bold, to be brave and to speak out for all Kansans so that future generations of loyal and dedicated workers can say "thank you" to you for a job well done.

My prayers are with you and yours.

Tom Mosteller
02/18/99

Testimony of Tim King, Attorney at Law
Kansas Trial Lawyers Association

House Business Commerce and Labor Committee, Rep. Al Lane, Chairman
House Bill 2287
February 18, 1999

Mr. Chairman, Rep. Ruff and members of the committee. My name is Tim King. I am a Wichita attorney, in the law firm of Speth, King and Reidmiller and am pleased to be here today representing the Kansas Trial Lawyers Association.

The Kansas Trial Lawyers Association is a group of over 800 attorneys across the state who represent the citizens in your communities on workers compensation issues and matters of civil justice. We appreciate this opportunity to testify in support of HB 2287 which will provide an important incentive for workplace safety. The Kansas Trial Lawyers Association also supports the amendments offered by Rep. Barnes and my comments will address those amendments as well.

House bill 2287 by Rep. Bethell would change the way the workers compensation law works for only a very small number of Kansas employers each year, those who injury their employees through either criminal conduct or gross and wanton negligence. Kansas employers are in total control of the work environment on their jobsites. We know that most Kansas employers operate responsibly and do their best to protect the safety of their employees. Those Kansas employers will not be affected by this bill in any way.

There is much concern about how this bill, if enacted into law, will affect the balance of interests so critical to the integrity of the Kansas Workers Compensation System. Let me first address that issue. The Kansas Trial Lawyers Association respects the integrity of the Kansas Workers Compensation Act and supports this legislation because it will restore balance to a part of the system which is wholly weighted on the side of the employer.

Please let me explain. If a worker chooses, on his own, to remove a safety guard from a piece of equipment he operates, and is injured as a result, he will be denied all benefits under the act, including medical care. If the employer is the one to remove the same safety guard and instructs the worker to operate the machine without the protection of the guard, perhaps to speed up production, and the employee is injured, the employer's protections under the act are not lost, but instead remain wholly in place. This clear imbalance in the treatment of safety issues in the workplace is at the core of this legislation.

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The workers' right to file a claim for workplace injuries is an exclusive remedy under Kansas law. Let me explain what the term "exclusive remedy" means. The Kansas workers compensation system provides workers who are injured on the job guaranteed coverage of their medical bills and modest financial compensation for some of the wages they lose as a result of the injury. In return for these guaranteed benefits, they give up their right to file a civil suit against their employer for their injuries. Employers are happy to make this bargain, because in return for the benefits they pay injured workers, they are protected from the larger financial exposure of a civil lawsuit.

The legislation before you would make one pinhole exception to this exclusive remedy provision of the Act. It would affect a very small number of Kansas employers - those who recklessly put the safety of their employees at risk out of gross negligence or criminal conduct. The Kansas Trial Lawyers Association believes that most Kansas businesses operate responsibility and do not, in fact, endanger the safety of their employees. For those who do, it is appropriate that those they injure be able to hold them accountable under the civil justice system.

To anyone who might worry that this change would open the floodgates to civil litigation for injured workers, let me put your fears to rest right now. The language in the Barnes amendment, "gross and wanton negligence" is a very high standard of proof. It is so very high, that only cases involving the most extreme circumstances and the most egregious cases of employer disregard for worker safety would be appropriate for a civil action under this pinhole exception to the act. Ordinary workplace accidents will not be subjected to this test. How can we be so sure? Because the "gross and wanton negligence" standard is well defined in existing case law. In conversations with my legal counterparts in other states where some form of this exception is in place I have heard of only a few cases ever being filed under the exception and many of those were not successful due to the high standard of proof required.

If this is such a high standard of proof and the requested change will impact so few employers then why put it into law? Because it will have an important impact on worker safety. KTLA believes that the existence of this pinhole exception will make employers think twice about disregarding the safety of their employees.

We urge you to pass House Bill 2287 with the Barnes amendments and provide the families you heard from today the accountability they seek. They only want future victims of workplace tragedies to have the right to be heard and to have a judge determine whether or not their employers contributed to the injuries resulting from such tragedies. It is the most basic request for justice, and should not be denied.

KTLA does not believe many Kansas businesses choose to risk the safety and even the lives of their employees, but we certainly believe those irresponsible few who do should be held accountable both for the injuries and lost wages they cause and also for the devastation the cause in the lives of injured workers and their families.

Thank you. I will be happy to answer any questions of the committee.

SHARYL LANDES

I, Sharyl Landes, through a representative want to give testimony concerning my deceased husband Tim Landes. I stand before you as a widow urging passage of legislation holding people responsible for violations of safety standards. Tim and I lived at 7111 West 72 Terrace in Overland Park. We had been married for 19 years. We have two older daughters, Julie and Jamie. Tim was a very good father, husband and provider.

Tim was working for his employer, K.D. Christian Construction Company who does sheet rock work. They were building a new school in Lansing, Kansas. Tim was considered the best employee and worker for K.D. Christian Construction Company. Those are not my words but the words of the owner of the company. On March 20, 1996 Tim fell through an unprotected hole to his death. At the time of his death Tim was age 45. His children were ages 17 and 13.

Subsequent to his death, we did learn that there were many safety violations. Many by the general contractor but also by the subcontractor. There were OSHA citations issued against the general contractor and subcontractor.

Much to my surprise, the general contractor that was in charge of safety did not have any responsibility for my husband's accident. I was subsequently told that because of the law in Kansas, we could not sue the general contractor for the fault. I was also advised that even the Workers' Compensation carrier was very frustrated since they could not recover what they had paid out due to the fault of the general contractor.

This was very frustrating to me since the party that I felt was really at fault had been granted immunity by the State.

I was fortunate in this case that I was successful in pursuing a claim in Missouri under a contract for hire versus being able to go forward under the limited recovery under the Kansas Workers' Compensation Act. This has put stress on my family but the financial stress would have been a lot more severe if I would have been under Kansas Workers' Compensation law.

I want to thank you for giving me the opportunity to tell about my family and specifically about my husband.

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CONFIDENTIAL AND PRIVILEGED ATTORNEY WORK PRODUCT

My name is Deb Goin. I live at 418 S. Millwood in Wichita, Kansas. I am here today to ask you to vote for these bills, House Bill 2287 and House Bill 2493. If you do vote for these bills my family and I will know that my father did not die in vain.

Dad died in the DeBruce Grain explosion on June 8th. He wasn't found until July 22nd. Forty days later. Those days when we waited at the school during the recovery operation and those weeks when we waited for any news at all about my dad were the worst time of my life. The waiting was the hardest thing I ever did.

I know you have a hard job, too. You have to decide what is fair and what to include in the laws of our state. But I believe that you need to know how the laws affect the families who live and work in our state.

Many people have asked us why dad went back to work during the 1998 harvest even though he had officially retired in August of the year before. That's an easy answer. Dad liked the guys at the company. Dad was part of the construction crew that built the elevator in the 1950s. He worked there for over 40 years. In all those 40 years, he only missed three (3) days from work. If there was work to be done at the company, Dad did it without complaint. Last year would have been the 42nd harvest he worked in the elevator.

Our family has been understandably devastated by the loss of a devoted father and husband. I believe that his death could have been avoided if the company he worked for had made his safety and the safety of his fellow workers a high priority. The change in law that is contained in HB 2287 and HB 2493 could make that happen and help keep other Kansas families whole by keeping their workers safe.

Nothing can bring my precious father back to me, but someone should be held accountable for his death. We know a lot about the working conditions at the elevator. That elevator and the workers there were an important part of our family's life for forty years. We watched our father work 18 and 20 hour days the last year before he retired, because that was what was expected of him. He didn't expect or want any special treatment because he was 64 years old. Dad wasn't a complainer. He was loyal to the end.

Every day I think about what happened. I don't want anyone else's life to be changed the way mine has been changed by such a needless tragedy. I know this doesn't happen every day. I know that most businesses operate ethically and take appropriate steps to protect the safety pf their employees. I am very proud to work as the Accounting Manager in a growing Wichita business. Our business operates ethically. I think all businesses should operate ethically.

But when a business operates unethically and starts to put profit before the safety of their own people, then the law should protect those workers. The workers compensation laws we have now don't protect the safety of workers. Right now the law only requires the employer to take care

of the workers' medical bills and provide a fraction of the former income, but only after the employees who served are injured, maimed or, in cases like ours, killed.

There should be some teeth in our Kansas law to protect lives. The law should motivate all businesses to operate ethically and motivate companies to protect the safety of their workers BEFORE something tragic happens. The changes that you see in these bills will do that.

I ask you, in my father's name – in the name of Howard Goin and the other men who died on June 8th -- to pass these bills and provide the incentive that businesses need to operate ethically and safely. Thank you.

Johnny P. Sutton
801 Faulkner
Wichita, Kansas 67203

My name is Johnny Sutton and I live in Wichita. Thank you for giving me a chance to talk to you about preventing serious accidents in Kansas workplaces. I am here to ask you to support House Bills 2287 and 2493.

Twenty four years ago I went to work for Garvey Grain elevator near Wichita. After the elevator was sold to Debruce Grain in 1996 I stayed on to work under the new management. I was the weighmaster and worked in the head house. That's where I was on June 8th of last year when the elevator exploded.

Today I know a lot more than I ever wanted to about unsafe work conditions, about the Kansas work comp system, and about how fast your life can change forever. I was severely burned in the explosion and was admitted to the St. Francis Hospital burn unit in critical condition where I stayed for two weeks. I am still enduring the slow process of recovery and will likely need future surgery. I've lost partial use of my arms, my hands, and a great deal of my strength. I can't do my weighmaster job anymore.

I am here today to talk about people being held responsible for their actions and being held accountable to the people they injure when engaging in gross negligence, intentional conduct or criminal conduct. This accountability would have been a strong incentive for my employer to have addressed safety concerns when they were expressed by employees. In short, I don't want anyone else to have to go through what I have been through.

Our work comp laws do not promote safety. In fact, the current system can be an inducement to the contrary because it protects the employer from civil lawsuits for serious injuries or deaths of employees. Employers know that.

Some unscrupulous employers may let knowledge of that protection guide their business decisions. They may decide it is cheaper to pay for work comp insurance coverage than to fix what they know to be a deadly condition in the workplace. They can hire temporary workers, whose work comp coverage will be paid for by a temporary employment agency. They can more easily make decisions that treat employees as disposable items, because they know they can't be held accountable in civil court for their conduct --even if it causes employees to die.

The payment of work comp insurance premiums by an employer can too easily be viewed as a safety net for the employer should he choose to take the more risky route with the safety of his employees: and in the more extreme, the payment of work comp premiums can be viewed by an employer to be the full extent of his responsibility for his own employees' workplace safety. And I'm talking about unscrupulous employers, not every employer.

If a fly by night, irresponsible employer is looking for a place to open shop where he will be "off the hook" for his actions towards employees, the Kansas law invites him to come here.

If the work comp law doesn't deal with employers who disregard the safety of their workers, then that same law encourages employers to indulge in gross negligence regarding the safety of their employees.

People who I speak with about this are absolutely dumbfounded that Kansas law protects employers by shielding them from being accountable for gross acts of negligence that injure employees. It is

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embarrassing to have to inform people what the Kansas law is regarding this issue because their first reaction is to not believe me. They are stunned.

Every day we try to teach our children to be responsible for their actions and to be good citizens. This law does not set a good example.

I don't know why the law is this way. In my experience, it shouldn't be. You can promote workplace safety and help prevent needless injury and death.

Don't do it for me. But I have a daughter who will soon be entering the workforce. She will be providing for herself with expectations of a bright future. I owe it to her and to fellow Kansans to try to make the workplace safe and to try to hold grossly negligent employers accountable to the people that they injure. I ask for your help.

TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE

By Philip S. Harness, Director of Workers Compensation
Thursday, February 18, 1999 - House Bill 2287

From an administrative standpoint, the Director of the Division of Workers Compensation would point out the following possible statutory conflicts and/or ambiguities within the proposed amending language of 1999 House Bill No. 2287.

In 1911, Kansas joined other states in "exchanging" the traditional remedy of a law suit by an employee against an employer for injuries for the (then) new remedy generically known as workers compensation, which was essentially a "no fault" system of administrative procedures whereby a worker's medical bills were paid by the employer, provision was made for income replacement, and an emphasis on return to work, if possible, all of which were the exclusive remedies an injured worker may maintain against the employer. House Bill 2287 represents a radical departure from Kansas law developed over the past 88 years.

The amending language is unclear in that it may infer that a plaintiff (or workers compensation claimant) may file both a civil action and a workers compensation action at the same time, for the same injury, but requesting different relief. Under the Workers Compensation Act, the claimant may request, and receive, a preliminary hearing pursuant to K.S.A. 44-534a for the purpose of addressing issues concerning medical benefits and temporary total disability benefits, which may be ordered by an administrative law judge at the expense of the employer. What the proposed amendment does not address is whether the filing of one action constitutes an immediate election of remedies by the plaintiff/claimant, or whether it is permissible to file both actions at the same time. Another issue is whether the filing of one action acts to toll the statute of limitations for the other action.

If both actions run at the same time, or one is filed after the first, an issue arises as to whether the plaintiff/claimant may choose the larger number (workers compensation award or jury verdict). Also, there may be an issue as to whether the decision in one matter acts as issue preclusion in the other matter since the burden of proof and the defenses in civil litigation, criminal litigation, and workers compensation are different.

Further, the amending language itself is unclear as to whether intentional acts, gross negligence, or criminal conduct of a co-employee would allow an action against the employer (under the theory of respondeat superior and then the employer would have an action against the co-employee [if the co-employee is solvent]) or whether the civil action would be confined solely to the co-employee. What the proposed amending language does not address is, if a civil action is allowed against the employer, whether this constitutes a de facto "election out" of the Workers Compensation Act pursuant to K.S.A. 44-543 and whether the defenses available pursuant to K.S.A. 44-545 would still be available since statutorily none of those defenses are available

"where the injury was caused by the willful negligence of the employer, managing officer, or managing agent of said employer." If not, what defenses are available (since the usual common-law defenses are not available in a workers compensation proceeding, would they still be allowed in a civil proceeding that is an exception to the Workers Compensation Act)?

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Testimony On Behalf Of
Kansas Self - Insurers Association
In Opposition Of House Bill No. 2287

Chairman Lane, members of the committee, good morning. My name is Patrick Bush. I am the Senior Manager of Safety & Workers Compensation for Western Resources, Inc. I am here before you today as President of the Kansas Self - Insurers Association and would like to take this opportunity to express the Association's opposition to House Bill No. 2287.

In 1911, the Kansas legislature passed the Kansas Workers Compensation Law. This was and is intended to serve as the exclusive remedy for lost wages and medical benefits for Kansas employees who sustain a work related injury or illness. This law required employers in the state of Kansas to provide medical services which may be reasonably necessary to cure and relieve the employee from the effects of the injury [K.S.A. 44-510(a)]. It also set out a very specific guide to compensate an injured employee for lost wages and for any functional impairment which may have resulted from the work related injury [K.S.A. 44-510c, K.S.A. 44-510d & K.S.A. 44-510e]. By assuring lost wages and medical expenses would be paid, the injured employee forfeited his/her right to sue the employer in civil court. The employer, by agreeing to assume the costs associated with the injury,

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gave up the assumption of risk and fellow servant rule defenses. It is clear, this law was developed as a "no-fault" method to make injured employees as reasonably whole as possible following a work related injury. House Bill No. 2287, as presented, would essentially wipe away the "no-fault" intent of our current Law. This bill proposes that injured workers have the right to pursue action against their employer in civil court in addition to collecting the benefits already provided under the current Kansas Workers Compensation Law. It goes on to provide for injured workers to bring suit against their employer even in circumstances where another employee's action caused the injury or death.

This proposed legislation has several flaws, I will mention only a couple. First, the Kansas Workers Compensation Law is not the avenue to penalize Kansas employers who have total disregard for workplace safety. The Occupational Safety & Health Administration, commonly referred to as OSHA, is the federal agency responsible for the oversight and enforcement of workplace safety and health programs. OSHA has in place established procedures to levy fines, and to refer to the attorney general for prosecution, employers who disregard or do not adhere to recognized safety and health standards. The Kansas Workers Compensation Law does not need to duplicate established federal safety laws and procedures.

Second, the purpose of the 1993 workers compensation reform was in part to help reduce costs associated with work related injuries. House Bill No. 2287 will result in increased costs in litigation. Claimants attorneys will want to pursue action in civil court, in addition to the remedy they seek through the workers compensation system, as each workers compensation case could potentially be argued to involve gross negligence. This will cause the employer to setup two separate defenses. Litigation costs associated with work related injuries will skyrocket.

Should this bill, which chips away at the "no-fault" system, be passed, industry would have to consider a means by which workers compensation benefits would be denied to a worker who, by his/her own action, contributes to or causes a work related injury. I do not believe this is the direction you want to take our workers compensation system.

In closing, I urge you to strongly weigh the long term ramifications House Bill No. 2287 will bring before considering passage of a bill that will totally destroy the workers compensation "no-fault" system this state has so carefully built.

Thank you!

Patrick Bush, President
Kansas Self - Insurers Association

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry
web: www.kansaschamber.org
835 SW Topeka Blvd. Topeka, KS 66612-1671 (785) 357-6321 FAX (785) 357-4732 e-mail: kcci@kansaschamber.org

HB 2287

February 18, 1999

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why KCCI opposes passage of HB 2287.

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 47% 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.

At its core, workers compensation is a tradeoff. The worker receives first dollar medical care, compensation dollars for the lasting affects of a work-related injury, and an administrative process designed to deliver prompt and fair justice to a claim. For an employer, workers compensation provides a shield against protracted legal action that could cripple a business. This is not a perfect

Ask nearly any employer and they will tell you a tale of a workers compensation claim that were responsible to pay which they felt was grossly unfair. There are certainly examples where the workers compensation shield is used by employers to protect them from their indefensible actions. However, that is the tradeoff. Passage of HB 2287 is tantamount to saying the deal is off.

Please carefully look at the legal right being granted in HB 2287. The phrase "injury or death" (page 1, line 32) means this legal right to sue exists in every workers compensation claim in Kansas. To be successful, the lawsuit must prove the injury was "caused intentionally or results from the gross negligence or criminal conduct" (page 1, line 33). This action could have been by "the employer or the other employee of the employer" (page 1, line 34). Here are a few observations:

- HB 2287 will explode workers compensation insurance costs. This will happen because it will become a common legal practice for a claimant's attorney to allege gross negligence and threaten legal action, which will be dropped only if the employer succumbs to the attorney's claim demands.
- The action of a fellow employee may prompt the filing of a lawsuit. However, since the deeper pocket belongs to the employer, the employer will be responsible in a lawsuit for the employee's action.
- Consider for a moment the employer's obligations. HB 2287 does not remove their workers compensation responsibilities. They will be paying the injured worker's medical bills and compensation benefits, and will be attempting to return the worker to their job (for practical, financial and legal reasons). All the while, their employee will be pursuing a legal action against them.
- HB 2287 is a radical departure from recent legislative efforts to promote employer/employee cooperation and return to work. Instead, it promotes open combat between boss and worker. It also promotes a brand new opportunity to sue.

KCCI would urge this Committee to not legislate on emotion. There will likely be 100,000 workplace injuries in Kansas this year. In all of those 100,000 cases, medical care and compensation

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s a t the injured worker will receive in a system where employers pay all insurance co. A careful analysis of how the system works for all Kansas employees will show the workers compensation social experiment works. Do not alter this balance by recommending HB 2287.

Thank you for the opportunity to comment on HB 2287. I would be happy to answer any questions.

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KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony before the
House Committee on Business, Commerce and Labor
on HB 2287
by
Bill Curtis
Kansas Association of School Boards
February 18, 1999

Mr. Chairman and members of the committee, we appreciate the opportunity to offer written testimony on HB 2287 today. The Kansas Association of School Boards strongly opposes this measure.

HB 2287, if enacted, could severely impact the "no-fault" principle of workers compensation. It would certainly lead to an increase in litigation as some claimants would attempt to prove that the injury was caused intentionally or due to gross negligence of the employer or another employee of the employer. Current workers compensation law adequately indemnifies an injured employee and protects the employer from litigation. The 1993 reform was a product of compromise by representatives of both employers and employees. HB 2287, in our opinion, distorts that balance and could have the consequence of, once again, creating significant increases in workers compensation rates. HB 2287 would most certainly lead to significant premium increases for employer liability coverage.

We ask that the committee not take action to pass this bill out favorably.

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Testimony On Behalf Of

The Wichita Area Workers Compensation Task Force

In Opposition to House Bills HB 2287 and HB 2493

Chairman Lane and members of the committee, thank you for allowing me to speak in opposition to the proposed attorneys job security bill, HB 2287 and 2493. I am Alan Weldon, the workers compensation supervisor for The Wichita Public Schools. As one of the larger employers in Sedgwick County, USD 259 is a member of the Wichita Area Workers Compensation Task Force.

The purpose of workers compensation is to provide compensation to injured workers, not to punish employers. Benefits are provided on a "no fault" basis so the system is not bogged down by having to establish legal liability for accidents. These two bills infringe on the original intent of the law and re-introduce the concept of negligence.

I understand that the proposed change addresses injury or death intentionally caused or resulting from gross negligence or criminal conduct. I am not aware of an employer who intentionally injured an employee; we usually terminate their employment before it ever reaches this point. So I am more concerned about gross negligence and criminal conduct.

When people hear the term "gross negligence," they may think about news grabbing headlines like the DeBruce Grain disaster. This was an exceptional event, and hopefully may not happen again. A much more common accident involved an employee who fell

on our stairs in the Education Management and Resource Center in Wichita. This was only a $3,000 workers compensation claim, yet our employee wanted to sue the school district because the stairs had not been swept before she fell. Of course, we avoided civil litigation because workers compensation was her exclusive remedy. Personally, I doubt if she could have proved gross negligence. "Gross negligence" is not a precisely defined legal term, and it may take a judge's decision to determine whether a specific act constitutes simple or "gross" negligence. The proposed law change would not prevent such a claimant from going to court, but to collect damages she would have to prove "gross negligence" on the part of the school district.

I can see many claims when there is a question of negligence, like the fall on our stairs, going to civil court, or at least the claimant's attorney threatening to go to civil court if his claim is not settled on his terms. This will cause a significant increase in our legal costs, even if we win most of our cases.

A disaster like DeBruce Grain is the rare exception, yet the statute applies to all claims for benefits. When you try to legislate for the exception, the result is most often bad law. Workers compensation is not the proper vehicle for addressing safety violations.

Also, the proposed change makes the employer liable for injuries resulting from criminal conduct. This opens up the whole area of workplace violence. HB 2493 does not specify the perpetrator of criminal conduct, so I assume the employer can be liable for tort damages resulting from injuries to employees committed by anyone. To the school district, this means we may have to pay civil damages as well as workers compensation benefits to a teacher or paraprofessional assaulted by a student, or the student's parent.

After all, assault is a criminal act. Most incidents of workplace violence involve criminal acts.

Even when criminal acts are limited to the employer and fellow employees, I still have a problem with being held legally liable for the acts of the 7,000 individuals who receive a paycheck from USD 259. I do not think we can reasonably be expected to monitor the emotional state of each of these employees so we can detect the one with severe emotional problems, who may be at risk for venting his or her frustrations on fellow employees. To do so is probably a violation of their right to privacy, and if we could terminate such a risk, we would have an ADA claim on our hands.

Why should taxpayers and insurance policyholders, on behalf of employers, be forced to pay tort damages to employees who are injured by their fellow employees?

I do not believe the change you propose will solve safety concerns or benefit equity problems resulting from job-related injuries. The main result will be increased activity for the legal profession. Therefore, I ask that you vote "no" on HB 2287 and HB 2493.

Thank you.

Alan Weldon

February 18, 1999

Testimony in Opposition to HOUSE BILL Nos. 2287 & 2493

Chairman Lane, Members of the Committee, my name is Joe Dukich. I am an Account Representative with the PRISM Occupational Health Network of Kansas. I sell Wellness Programs and injury prevention services to Kansas employers. Since 1992 I have been a member of the Employers Workers Compensation Task Force of Wichita. Today I come before you as a former Insurance claims professional to testify in opposition to the above House Bills and the remedy they purport to be in response to the "Safety Crisis."

In the early 1970's Workers Compensation paid up to $50 per week and came with a cap on medical benefits. I handled some of those cases and for the next 24 years investigated, evaluated and settled workers compensation, general liability, and product liability claims as a claim rep, a supervisor, and as a third party administrator.

I have been witness to the Malpractice Insurance Crisis, the Products Liability Insurance Crisis, the Auto Liability Insurance crisis, and the Workers Compensation Insurance Crises.

The insurance industry throughout each crisis endeavored to find order in the marketplace and bring certainty to the cost of risk for the Kansas insurance buying public. The Kansas legislature played their part with various Statutes of Limitations, Comparative Fault, No Fault, and assigned risk pools.

At no time did I witness any broad soul searching by the public during these crises, nor any change of heart stemming from civil litigation.

The marginal employers went out of business on their own, or threatened to do so if their policy limits were not sufficient for a settlement. The alcoholic assigned risk automobile owner went onto the next State mandated insurance company and the next accident.

What I did witness was a backlash by the insurance buying public against the insurance industry for the premiums levied and against the judicial system for the perceived endless litigation. - Discovery that disrupted their lives, liens against their property, and steep contingency fees all while the "enemy" continued business as usual.

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Today, if we allow an employee to sue their employer as a result of an occupational injury, we will generate litigation in the numbers none of the employers or employees of Kansas are prepared for. Nor should they be required to do so in the name of "Safety."

Rest assured the insurance industry will respond with coverages (priced to reflect the new exposures), the courts will gear up with additional staff, seminars on the new law will be sold, and courses will be added at Washburn and KU.

And the imagination of the wronged party will be the only limitation on the litigation theories presented.

Some examples:

- The ABC Company knows that repetitive use injuries can result from a certain manufacturing process. To limit this possibility they rotate employees 4 hours on and 4 hours off their workstations. Plaintiff's expert has studies from Canada that show this should be 2.0 hours on and 2.0 hours off. Did ABC intentionally and permanently disable their employee(s) because ABC's medical director disagrees with the plaintiff's expert? A jury will decide.

- A driver for the OVER NIGHT DELIVERY COMPANY has just had a bad night - traffic snarls, customer delays, rush deliveries. Before clocking out a secretary confronts the driver on a failed delivery. In anger and frustration, he takes a telephone receiver and severely beats the secretary. Is the company grossly negligent for the failure to administer psychological testing for all new hires, for failure to provide sensitivity training, or for their failure to distance administrative personnel from the drivers? A jury may be asked to decide.

- DEPENDABLE BUILDERS, a small residential contractor, allows his carpenters to take off early for pheasant hunting. DEPENDABLE's owner leaves to check on another job site and asks the crew to close off the roof before they leave to go hunting. They have closed many roofs, but to avoid taking up too much hunting time, they do not put up the necessary scaffolding. A worker falls off the second story and is killed. The widow is not impressed with the benefits of pheasant hunting. Is the owner of the business grossly negligent? The acts of the crew were intentional. Will the deceased worker's negligence be compared to the employer's negligence, to the deceased's co-workers? The Court of Appeals will most likely get this one.

Let's take another perspective:

- We have an employee who lost their hand in a press. The employee and the Workers compensation insurance company file a products liability suit against the press machine manufacturer for defective design. The machine manufacturer files an action back against the employer for inadequate training and poor maintenance. Is the manufacturer correct or just clouding the issue? Juries will be called upon to decide such cases, but will this new exposure for employers and the associated costs of defense frustrate the filing of such cases on their behalf and that of their employees?

  How will the employee respond when the crusade, right or wrong, turns against his or her employer? How will the employee fair if the employer must join forces with the manufacturer? Who wants to be that employee?

- Members, are you or your staff qualified to drive an automobile on Government business? Your surviving spouse may have an opinion on the topic. Is the State of Kansas grossly negligent for not requiring routine driver training, testing, random breath alcohol tests, and MVR reviews, before they allow you behind the wheel for legislative business? Should Kansas inspect your personal car for you?

Unfortunately, even with a new threat of litigation, the marginal employers and marginal employees will conduct business as usual. No new money will be spent for safety. The only expenditures that will be forthcoming from the marginal operators will be for new liability coverages or increased limits required to permit the conduct of business on the premises of others – a revised certificate of Workers Compensation Insurance with higher employer liability limits. But remember the insurance levy for this new exposure is Statewide for all employers.

In closing, Safety is a 24-hour practice, a lifestyle. You cannot litigate Safety into the workplace. The proposed legislation is not the way to change business methods and unsafe employee practices.

Thank you,

Joe Dukich

Joe Dukich, CPCU

THE KANSAS CONTRACTORS ASSOCIATION, INC.

316 SW 33RD ST • PO BOX 5061
TOPEKA KS 66605-0061
TEL (785) 266-4152
FAX (785) 266-6191
kca@ink.org

Testimony

By Bob Totten, Public Affairs Director for the Kansas Contractors Association

before the House Business, Commerce and Labor Committee

regarding HB 2287

February 18, 1999

Mr. Chairman and members of the House Commerce committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 contractor and associate members who are involved in the heavy, highway and utility construction industry.

I am here today to tell you our organization opposes HB 2287. This measure came to only recently and one of our members is with me today to give you our view on this matter. At this, I would like the committee to listen to Mr. John Sherwood of Sherwood Construction in Wichita.

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I have been requested to sp[illegible] against the passage of HB2287 and H[illegible]e Bill 2493 on behalf of the construction industry.

First, a little history into the Worker's Compensation Act. In the early 20th Century, employees who brought an action against their employers for injuries that occurred on the job were confronted with three defenses:

1. assumption of risk = meaning the employee assumes, by taking the job, that there was a certain risk involved

2. that the injury or death was caused in whole or in part by a fellow servant

3. that the injury or death was caused by the contributing negligence of the injured employee

These are referenced in K.S.A. 44-545. The Worker's Compensation laws allowed the employee to bring a claim for his injuries for a defined amount under an administrative system set up for this purpose but he could not sue in a court of law. As a trade-off, the employer was stripped of the common law defenses set out above and required to pay a defined amount no matter who was at fault.

If these bills are allowed to pass, you will re-establish the employees right to bring a claim for any amount but the employer no longer has the right to avail itself of these defenses. This is in direct conflict with K.S.A. 44-501(g) which states that the Worker's Compensation Act is to be liberally construed "to provide the protection of the Worker's Compensation Act to both." (employer and employee) The passage of either of these bills would leave employers without basic common law defenses.

These bills would also allow the employee "two bites out of the apple." The employee would be able to receive their normal worker's compensation payments while trying for the brass ring in hopes of receiving a much larger amount from the employer.

Second, this bill was introduced for the following purpose, "If you hit 'em in the back pocket, you might change their behavior" as quoted in the Wichita Eagle. This is why OSHA was established. In the same article, it was said that OSHA had proposed a fine of $1.7 million. If that's not being hit in the back pocket, I don't know what would be.

Third, don't kid yourself. If either of these bills are passed, there will be a trial lawyer who will allege in every worker's compensation case that "the injury or death is caused intentionally or results from the gross negligence or criminal conduct of the employer or the other employee of the employer."

Therefore, in conclusion, we believe that neither of the bills should be passed because if they are, the only ones to benefit would be the plaintiff trial lawyers of Kansas.

Respectfully submitted,

John D. Sherwood
Corporate Counsel
for Sherwood Construction Co., Inc.

THE CHAMBER
Greater Kansas City Chamber of Commerce

Statement of Brad Smoot, Legislative Counsel
Greater Kansas City Chamber of Commerce
To
Committee on Business, Commerce and Labor
Regarding House Bill 2287
February 18, 1999

The Chamber of Commerce of Greater Kansas City represents nearly 800 Kansas-based businesses in the Kansas City metro area. Our members, both large and small, employ tens of thousands of Kansans. We are pleased to have this opportunity to comment on 1999 House Bill 2287, which abrogates the exclusive remedy rule of our 88 year old workers compensation law.

As you know, workers compensation laws across the nation are based on the fundamental premise that a "no-fault" system to care for injured workers is beneficial to employees, employers and the public at large. Since our workers compensation system has been with us so long, we may tend to forget how hard it would be for an injured worker to prove an employer liable for workplace accidents. Or how expensive or time consuming it would be for an injured worker to successfully press such a claim through the courts. (Authorities report that before workers compensation laws, 70% of injuries were work related but only 15% of employees received damages.) Or how many more tort cases might be filed -- further burdening our tax-supported court system.

Fortunately, we don't have to think about those things because we have a workers compensation law which is self-initiating, promptly providing health care, temporary financial support and future income to those Kansans injured in the workplace. The Division of Workers Compensation reports that 100,000 accident reports are filed annually with 93,000 handled without any action by the government. Kansas employers spend $400 million per year to make this "no fault" administrative system work. What they get in return is the "exclusive remedy" rule (K.S.A. 44-501) which prohibits tort actions for which workers compensation benefits are available.

The Kansas City Chamber understands the impulse to react to reports of egregious acts or omissions in the workplace. That desire for accountability is understandable but misplaced in HB 2287, a bill which is both unnecessary and damaging to the entire system of workers compensation.

To begin with, HB 2287 exempts from the exclusive remedy of workers compensation claims based on intentional or criminal acts of the employer or employee. Kansas law already recognizes that some intentional or criminal acts resulting in injury or death do not "arise out of and in the course of employment," as covered by the workers compensation act. Such cases permit a tort action outside the confines of the workers

compensation law. In addition, K.S.A. 21-3206 imposes criminal accountability on corporations and their agents for illegal acts. Thus, for employers, co-workers and corporations themselves, there are fines and imprisonment which should serve as ample deterrent and accountability. And, of course, in criminal cases, restitution is also available.

What then is the purpose of HB 2287? The peanut here is the phrase "results from the gross negligence" of the employer or other employee. What constitutes "gross" negligence will be determined by the judge or jury when a case is tried. There is not, nor can there be, a clear line between "mere" negligence (still covered by workers comp) and "gross" negligence to be covered under this bill by tort laws. And nothing prevents an injured party from alleging the higher degree of negligence in order to go for the big payout. In other words, HB 2287 opens the litigation "barn door."

Where does HB 2287 leave the employee? Does the employee make an election of remedies? If he receives any benefits or files a work comp claim, has he waived his cause of action in tort? If he chooses a tort action, does he lose his right to recover under workers comp? Or does he get to claim work comp benefits if his tort action fails? (Have his cake and eat it too!) If he guesses wrong, does he go without medical treatment and financial support during the years of the suit and thereafter? Does he become a ward of the state?

And does the employer defend two actions simultaneously or just in sequence? Do the general liability carrier and the work comp carrier fight it out in court as to who defends the employer and who will pay the claim? HB 2287 does not tell us how all of this will work. All we know is that it is fraught with peril for workers, employers and, yes, even lawyers.

None of this sounds good to me. It can't sound good to employers or the public. And how could it be good for those tens of thousands of employees who are cared for under the current system. Only those few claimants lucky enough to win the "litigation lottery" and, of course, their attorneys will be winners. All the rest of us lose.

If it is accountability you seek, look to our current state and federal criminal laws and OSHA fines. There is much punishment that can be imposed already. And if that is not enough, why not amend workers comp fraud and abuse provisions to permit an administrative remedy (fine) with the proceeds going to the injured worker or his family without the attorneys fees taken off the top.

We understand the natural desire to react to tragedy. But we believe the best remedy for them and for all of us is the maintenance of a prompt, fair and efficient workers compensation system. HB 2287 undermines that system in costly and yet unknown ways. We urge the Committee to refer the matter to the Workers Compensation Advisory Council for extensive study and response. Thank you for your consideration of our views.

10990 Roe Avenue
Overland Park, KS 66211-1213
913 696-6121
913 696-6181 Fax
steve.richards@yellowcorp.com

Stephen S. Richards
Manager, Government Relations

YELLOW CORPORATION

Before the Kansas House
Business, Commerce and Labor Committee
House Bill 2287

Stephen S. Richards

February 18, 1999

Yellow is unable to appear before you today, but is strongly opposed to HB 2287. The proposed language that would allow an injured employee to sue the employer for workplace injuries undermines the founding principals of Workers Compensation.

Workers Compensation has been the exclusive remedy for employees to receive both medical treatment and temporary compensation when injured in the workplace. Employees receive benefits without question and in return, employers are protected from tort liability. To break that bond and grant the employee the ability to sue an employer for injuries resulting from gross negligence or caused by intentional acts or even conducts of other employees is inexcusable. Employers do have responsibilities to provide safe working environments, but they can not be subjected to litigation every time an accident occurs.

Employers faced with tort liability outside the workers compensation system will not only clog the court system, but settlements will be based on emotion, not facts. Employees will not receive immediate medical care or disability compensation while litigation proceeds. Imagine for a moment, similar injuries, one within the workers compensation system and one settled through litigation. The result will be radically different settlements and benefits to employees. As employees gravitate toward litigation in hopes of large settlements, employers will protect their assets. Disputes over defining gross negligence, intentional causes or employee actions will become the focus, not providing medical care to injured employees.

The competitive nature of today's' business demands that employers look for the best climate to locate new business opportunities. If Kansas holds its self out as a state allowing employee-employer litigation over workplace injuries, then business will look elsewhere. Companies, like Yellow, who have employees traveling through Kansas, yet are domiciled in other states will find Kansas a haven for injury litigation. Forum shopping in the workers compensation system will once again become a new avenue to plaintiff attorneys.

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As a member of the Kansas Workers Compensation Advisory Council, I find this proposal offensive. This Council works hard to review changes to the workers compensation system to improve the system for both employee and employer. However, the principal of exclusive remedy is the cornerstone of the program. If language as proposed in HB 2287 or HB 2293 were enacted, then the worker compensation system might as well be repealed.

We ask that you oppose provisions contained in HB 2287 and similar language in HB 2293.

Thanks you for your consideration.

6321 BLUE RIDGE BLVD. • KANSAS CITY, MO 64133
PHONE 816-313-2020 FAX: 816-313-1910
MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY

HOUSE BUSINESS, COMMERECE, LABOR COMMITTEE

February 18, 1999 House bill 2287

Mister Chairman, and members of the House Business, Commerece and Labor Committee. My name is Art Brown. I stand before you today representing the retail lumber and building material dealers in Kansas as an opponent to House Bill # 2287.

This is a real "lose -lose" issue to us. To testify against this bill makes us look like cold-hearted beasts, who look at employees like a disposable commodity. I want to assure you that is not the way we feel. To speak out against a bill which at first blush would assist people who have suffered a great heartship puts us in a terrible light. None the less, I would like to point out some concerns we have with this bill and its implementation.

The main concern is that theWorkers compensation Act was founded on the premise of immediate treatment for injured employees on the work force. This bill

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initiates a situation where Workers Comp. insurance was not available. Employees have access to a first dollar coverage system, funded by employers, which address most of the workplace injuries that occur in the workplace. To trade this off for the possible financial compensation of a trial, we don't think, is the direction most employees would want to persue. By strictly instituting a tort action, the employee would have to await the results of a trial and during this time period have to pay for any medical treatment out of their own pocket. Then they would have to hope they won their case. There is no guarantee here. That is a lot of uncertainity and expense for the employee. The system is here for a reason, and it has basically served the Kansas worker well since its inception in 1912. It is not a perfect system, but suing employers is certainly not a better remedy for what is now in place.

We feel the language in this bill works more towards a negative attitude between the employer and employees. Neither benefit in such a situation. The strong lanuage of the bill points out the subjects of gross negligence or criminal misconduct, and that the only remedy seems to be a tort action. Could not more than one employee spot such a situation in the work place? If so, nothing would stop that employee from calling O.S.H.A., a State regulatory agency , or bringing it to the attention of their union. In these cases, the situation would receive immediate attention and a swift remedy.

Another concern we have with this bill is a procedural one. For those of you who are not totally aware of the scope of the Workers Compensation Act, let me assure you it is a wide ranging piece of legislation. Attorneys, employers, employees,

insurance companies, health care providers are just some of the entities who have a large interest in any changes made to this law. In its wisdom, the 1993 act included an Advisory Council which is made up of employer and employee groups to recommend any changes to the law. Any part of the Workers Comp law can be brought before this group. It is chaired by the Workers Comp. director in this case Phil Harness.

We would just like to see this issue being addressed through the procedure in place and be discussed by the Workers Compensaton Advisory Council. One of the reasons this Council was formed was to keep groups impacted by the Workers Compensation system from forwarding their agenda by making an end run around the process in place. Other groups have their feet held to the fire in suggesting changes to the Workers Compensation act by having to bring them before the Advisory Council first. This Council is responsible for seeing that the Workers Compensation system is providing the services and enforcing the law as intended by the Legislature. From what we see in this bill, passing it into law would punch a huge hole in the Workers Compensation system, and would impact the entire Kansas work force in our State in a way that we are sure is not intended.

We don't feel that this bill is going to be the answer to the overall picture for the protection of workers in the work place in Kansas. Rather, we see this issue as one that would do major harm to an act that is better suited to protect workers in Kansas when they are injured on the job. Given these concerns we would ask that the Committee reject passage of House Bill 2287.