

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 20, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renaë Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Jamie McDonald, private citizen
Jeff Cooper, Kansas Trial Lawyers Association

Others attending:

See Attached List.

The Chairman opened the hearing on **HB 2809 - Workers compensation liability for death or injury resulting from drugs or alcohol.**

Staff gave a briefing on **HB 2809** stating there was new language starting on line 31 and ending on line 39, "except that an employer shall be liable where the injury, disability or death was contributed to by the employer'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 subject to the same standards, conditions and limitations which are applicable to employees under subsection (d) (2).

Representative Ruff asked if any other states had this law?

Staff said they would check on that.

Jamie McDonald and Darla Gore, sisters, testified as proponents to **HB 2809**, stating their mother was killed in a fatal accident that occurred on April 21, 2003 in Marion, Kansas. A company pickup operated by the plant manager struck the scale house in which their mother, Georgie Vogel, was working. The plant manager had suffered a seizure at the time of the accident and failed to control the truck he was operating. Since 1995 the plant manager had been under a doctor's care regarding prescribed medications for seizures. During the 5-month span prior to this accident the plant manager had been involved in two motor vehicle incidents while taking this medication and experiencing seizures. The employer had knowledge of these prior incidents and continued to permit the plant manager to drive this vehicle, endangering himself and others. These are direct quotes from the MSHA investigation conducted after their mother was run over while sitting at her desk working. MSHA has deemed this to be of high negligence and has issued a Class D1 citation to the employer. A "D1" citation is an "unwarrantable failure that could significantly and substantially contribute to a health or safety hazard." The Marion County Police Department has turned this case over to the Attorney General for consideration of criminal charges against the employee and the employer.

An employer should be held accountable for the safety of their employees while they are at work and it is believed that most Kansan's trust that an employer is taking measures to keep them safe. Very few workers are aware of the "Exclusive Remedy" clause under Kansas workers compensation (Attachment 1).

Jeff K. Cooper, Kansas Trial Lawyers Association, testified as a proponent to **HB 2809**, stating that it would change the current Exclusive Remedy Rule in Kansas. **HB 2809** holds an employer to the same standards as the employee on use of drugs or alcohol which contribute to an injury. This bill does not

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 20, 2004 in Room 241-N of the Capitol.

address all the issues on the Exclusive Remedy debate. It does, however, hold the employer to at least the same standards as the employee is required to comply with on the use of drugs, use of alcohol, or any drugs where those alcohol or drugs contribute to an injury. Under **HB 2809**, employers would not be shielded by the Exclusive Remedy Rule where the injury, disability, or death is contributed to by the employers' use or consumption of alcohol, drugs, chemicals, or other compounds or substances, the same as an employee cannot collect for workers compensation benefits if such alcohol or drug use contributes to the employee's injury. Under **HB 2809**, Georgie Vogel's employer would not be able to avoid responsibility for their actions as the Exclusive Remedy would not apply to shield them for liability (Attachment 2).

The Chairman closed the hearing on **HB 2809**.

The Chairman opened the hearing on **HB 2719 - Establishing manufactured home installation licenses and apprentice installation licenses and standards for the installation and siting of manufactured homes**.

An amendment from Martha Neu Smith, Kansas Manufactured Housing Association, brought forth an amendment that would make the effective date January 1, 2006, instead of January 1, 2005.

It was asked how many individuals were licensed?

Ms. Smith responded, between 50 and 70.

Representative Ruff said this subject matter would be good for an interim study.

Ms. Smith said the Board wants to move forward to show that the state has made progress regarding the Manufactured Housing Improvement Act.

The Chairman said the deadline for moving out House Bills is February 24 or the bills will die.

Representative Swenson moved and Representative Burgess seconded to adopt the amendment to change the date. The motion carried.

Representative Swenson moved and Representative Burgess seconded to move **HB 2719** out favorably as amended. The motion carried.

Representative Pauls said there was a technical amendment to page 3, line 34 to close with a second parenthesis. Representative Swenson and Representative Burgess stated they wanted this included in their motion on **HB 2719**.

The meeting adjourned at 10:50 a.m. The next meeting will be February 23, 2004.

Chairperson Dahl and Committee Members: Thank you for allowing us to testify today. I apologize for not having copies of our testimony available but we are new to this process. As a matter of fact, we have learned a lot in the last 10 months. For instance, we've learned that the

<i>Funeral Services for a loved one cost:</i>	\$9,000
<i>An Engraved Headstone cost's:</i>	\$6,000
<i>The Cost to a corporation for gross negligence is only:</i>	\$25,000
<i>But the loss of a loved one:</i>	is PRICELESS

We can no longer allow Corporate negligence to claim the lives of our loved ones while hiding under the "exclusive remedy clause" that our current work comp law allows. The current work comp law does not provide enough incentive to corporations to keep their employees safe. It is up to each of you as an elected official to protect Kansas workers.

A fatal accident occurred on April 21st, 2003 in Marion, Kansas when a company pickup operated by the plant manager struck the scale house in which my mother, Georgie Vogel was working. "The plant manager had suffered a seizure at the time of the accident and failed to control the truck he was operating. Since 1995, the plant manager had been under a doctor's care regarding prescribed medications for seizures. During the 5-month span prior to this accident, the plant manager had been involved in two motor vehicle incidents while taking this medication and experiencing seizures. The employer had knowledge of these prior incidents and continued to permit the plant manager to drive this vehicle, endangering himself and others." These are direct quotes from the MSHA investigation conducted after my mother was run over while sitting at her desk working. MSHA has deemed this to be of high negligence and has issued a Class D1 citation to the employer. A "D1" citation is an "unwarrantable failure that could significantly and substantially contribute to a health or safety hazard." The Marion County Police Department has turned this case over to the Attorney General for consideration of criminal charges against the employee and the employer.

An employer should be held accountable for the safety of their employees while they are at work and I believe that most Kansan's trust that an employer is taking measures to keep them safe. Very few workers are aware of the "Exclusive Remedy" clause under Kansas Worker's Comp. This statute entitles any non-financially-dependent dependents to collect a total death benefit of \$25,000 and a funeral benefit of \$5,000 regardless of the negligence on the part of the employer. In 1999 HB2287 and HB2493 were introduced that would exclude gross negligence from the exclusive remedy net. Both of these bills died on the House Business, Commerce and Labor Committee floor. If either of those bills had passed, chances are we would not be here today but our mother would be. It is our plea that you endorse HB2809. This bill would exclude gross negligence from the Exclusive Remedy safety net. Gross Negligence on the part of both the plant manager and his employer is the very reason my mother is no longer with us today.

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Atch # 1

In 2002, there were 89 workplace fatalities. Of those, 11 were due to heart attacks. Of the remaining 78 deaths, I can tell you if a person fell, was hit by a vehicle or was crushed but I can't tell you if it was negligence. Work Comp doesn't track this statistic, OSHA doesn't track this statistic and the Department of Labor doesn't track this statistic. I can tell you that in 2003, there was at least one fatality due to gross negligence and that was one too many. It is apparent that the current law does not provide enough incentive to corporations to keep their employees safe.

In closing, I would like to leave you with the following:

As we stand here today, my sister and I are without a mother and our children without their grandmother because our mother's co-worker continually made irresponsible decisions. While he should be held accountable for his actions, his employer should also be held responsible to ensure their worker's safety. Our mother's coworker suffered two seizures in the five months prior to the accident. Both of these seizures involved the company vehicle that he was driving the day our mother was killed. If the penalty for this type of gross negligence were unrestricted, an employer would be more inclined to ensure their worker's safety. You will hear from large corporations and small businesses that this type of penalty would be prohibitive and would encourage fraud and abuse. However, if they were not negligent, a change to the current work comp law would not affect them. I'm told that for every sorrowful circumstance that happens in life, something good will come of it. If the workers of Kansas aren't reason enough to endorse this bill, please do this for our mom, Georgie Vogel. You have the power to not let her death go by as another buried statistic but to let the result of her death ensure that every Kansas worker have what they would expect to have, a SAFE workplace. We would like to think that our mother's death could prevent future unnecessary accidents from occurring. Kansas Workers deserve more than the current law gives. HB 2809 is a true change for the people that have elected you to represent them. Please help us in getting this bill passed.

Sincerely

Jamie McDonald and Darla Gore
316-773-0638

TESTIMONY BEFORE
THE HOUSE COMMERCE & LABOR COMMITTEE

February 20, 2004

JEFF K. COOPER
COOPER & LEE, L.L.C.
ATTORNEYS AT LAW
COMMERCE BANK BUILDING
100 S.E. 9TH STREET, 3RD FLOOR
TOPEKA, KANSAS 66612

I am testifying here in support of House Bill 2809.

I am appearing before you today on behalf of the Kansas Trial Lawyers Association regarding House Bill 2809.

House Bill 2809 would change the current Exclusive Remedy Rule in Kansas. House Bill 2809 holds an employer to the same standards as the employee on use of drugs or alcohol which contribute to an injury.

HISTORY

The Kansas Workers Compensation Act was enacted in 1911 to deal with problems created by an increasingly industrialized economy. With industrial revolution in swing, the industrial economy was producing more and more disabling on-the-job injuries. Prior to the early 1900's, Kansas, as well as most other States, were primarily rural communities based on the traditional family farm. Injuries that occurred were taken care of by the family and close-knit communities. The advent of the industrial revolution changed the economy, and the dangers were significantly greater. Before workers compensation acts came into place, the employers simply discarded the injuries workers like worn out equipment, leaving the workers and their families destitute. As long as the employers could find new workers to replace those that were injured, there was little incentive for them to invest in workplace safety. Reform legislation was passed in Kansas in 1911, as the Kansas Workers Compensation Act.

Prior to the Workers Compensation Act being adopted, Kansas common law provided a legal remedy for some workers who could prove their injuries were caused by the employer's negligence. If the employee could prove negligence, the law allowed them to sue their employer and recover lost wages and medical expenses, as well as damages for pain and suffering, mental anguish, disability, and other losses. However, the majority of on-the-job injuries were simply due to unavoidable risks inherent in the work being performed and were no one's fault. Common law provided no remedy for those disabled workers or their families. Society was increasingly burdened by injured workers and their families.

Comms Labor
2-20-04
Atch #2

The Kansas Legislature determined that the economic loss to workers and their families should be borne by the industry that benefitted from the work producing the injuries as a cost of doing business, rather than by the injured workers and their families alone. As a quid-pro-quo, or trade-off, for the obligation to pay benefits under the Kansas Workers Compensation Act, employers covered by the Act were granted immunity from common law remedies for any injuries they negligently caused to their workers. Workers compensation benefits became the “exclusive” remedy for injuries covered by the Act. Through the years, the Workers Compensation Act has been expanded to cover most non-agricultural workers in Kansas, and many agricultural employers have voluntarily elected to come under the protection of the Act.

EXCLUSIVE REMEDY RULE

In Kansas, the Exclusive Remedy Rule protects an employer from any civil liability, not only when the employer negligently causes an injury, but also provides immunity for the employer for injuries resulting from gross negligence or wanton conduct of the employer, or where the injury results from the employer’s deliberate disregard of safety rules imposed by the law. In Kansas, the Exclusive Remedy Rule even protects an employer who intentionally injures a worker.

While most Kansas employers make a good faith effort to prevent on-the-job injuries to their employees, a small minority of employers consistently demonstrate a callous disregard for the health and safety of their workers. Those few employers cut corners to save money; they refuse to invest in workplace safety; they refuse even to comply with rules and regulations intended to protect workers from injury. In short, some employers still view their workers as being disposable, and as a result each year dozens of Kansas workers are severely disabled or killed in on-the-job injuries which were avoidable. The following illustrates the actions who are protected by the Exclusive Remedy Rule.

1. In 1998, the world’s largest grain elevator exploded killing seven and injuring 10 workers, because of “a deliberate DeBruce corporate decision to (a) allow massive amounts of fuel to continually be created and distributed throughout the elevator awaiting anyone of many possible sources of ignition; (b) forego repair and restoration of long-failed grain dust control systems, and (c) abandon preventive maintenance of elevator equipment—particularly the grain conveyor and grain dust control systems.” *Executive Summary of OSHA Special Report.*

2. In June, 1991, three workers were overcome by toxic fumes in a blood collection tank at National Beef in Liberal, and died due to what OSHA area director, Jeff Spahn, called “the worse case of corporate indifference to safety and health in my 20 years with OSHA.” Two workers had died from toxic fumes from the same tank in 1983, yet National Beef failed to restrict entry to the dangerous area, post warnings, or train workers, or even monitor the air quality. *Wichita Eagle Beacon, December 6, 1991.*

3. In July, 1998, two workers died when they were overcome by fumes in a similar incident at rendering plant in Wichita. National By-Products had failed to train its employees to use safety gear, despite the deaths of two other workers since 1992. *Wichita Eagle Beacon, July 12, 1998.*

4. In August, 2001, three workers died when a trench collapsed while installing a sewer line. Emerson Construction had been cited three months earlier, in May, for violating OSHA regulations designed to protect workers from such cave-ins. *Topeka Capital-Journal, August 30, 2001.*

Today you have heard testimony from Georgie Vogel's daughter, caused from the gross misconduct of an employer.

All these examples are clear examples of intentional disregard for the safety of workers. Does this State condone this type of activity by the employer? As the law stands currently, we are telling the employers that this type of activity is O.K., and not to worry about it, because you are protected by the Exclusive Remedy Rule.

House Bill 2809 does not address all the issues on the Exclusive Remedy debate. House Bill 2809 does, however, hold the employer to at least the same standards as the employee is required to comply with on the use of drugs, use of alcohol, or any drugs where those alcohol or drugs contribute to an injury. Under House Bill 2809, employers will not be shielded by the Exclusive Remedy Rule where the injury, disability, or death is contributed to by the employers' use or consumption of alcohol, drugs, chemicals, or other compounds or substances, the same as an employee cannot collect for workers compensation benefits if such alcohol or drug use contributes to the employee's injury. Under House Bill 2809, Georgie Vogel's employer would not be able to avoid responsibility for their actions as the Exclusive Remedy would not apply to shield them from liability.