

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 23, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Norm Furse Revisor of Statutes  
Renaë Jefferies, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee: Representative Candy Ruff  
Representative Ted Powers  
Rebecca Rice, Kansas Chiropractic Association  
Kenny Clark, Kansas Coalition for Workplace Safety  
Terry Leatherman, Kansas Chamber of Commerce  
Brad Smoot, The American Insurance Association  
Representative Tom Holland  
Paul Rodriguez, Rodriguez Mechanical Contractors  
Roy Chaney, Chaney, Inc.

Others attending:

See Attached List.

The Chairman announced the committee would meet Tuesday, February 24 to work some bills.

The Chairman opened the hearing on **HB 2847 - Workers Compensation, choice of physician by injured employee.**

Staff gave a briefing on **HB 2847**, stating in line 16 there was new language "designated by the injured employee". There was new language in lines 24 through 33 "If the injured employee is dissatisfied with the services rendered by the initial designated health care provider, the injured employee may designate a different health care provider to provide medical services once without showing just cause. Any other changes in the injured employee's designated health care provider must be for just cause and by order of the director following a preliminary hearing in accordance with K.S.A. 44-534a and amendments thereto. Medical case managers are allowed to attend medical appointments only with prior written approval of both the designated health care provider and the injured employee.

Representative Candy Ruff, author of **HB 2847** stated this topic was before the interim committee. This bill basically turns the tables for employees whereby they would be able to choose their own physician. In twenty-seven other states the employer does not choose the physician.

Representative Ted Powers, author of **HB 2527** which is similar to **HB 2847**, testified as a proponent, stating twenty-two states allow injured workers to seek out the best, most qualified medical care to provide the injured worker maximum satisfaction with the recovery. In doing so these workers have confidence that everything that can be done to promote healing is being performed. Three states allow for choice from a list compiled by a state agency. Three more states allow for choice from a list maintained by the employer. Five additional states allow for the injured workers to have freedom of choice after a specified amount of time if the employer's selection fails to satisfy the injured worker. In two Midwest states a state agency may change physicians on behalf of the injured worker if the agency believes it to be in the worker's best interest. Kansas has the most restrictive law of all, giving the entire choice to the employer of the injured worker (Attachment 1).

Rebecca Rice, Legislative Counsel, Kansas Chiropractic Association, a proponent to **HB 2847**, asked consideration of the unorthodox possibility that a patient that is treated in a manner that the patient does not want, by a health care provider the patient does not trust, is not the best approach to health. Kansas should not force workers to choose a health care provider they don't want and don't trust especially at a

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 23, 2004 in Room 241-N of the Capitol.

time when a worker may feel extremely anxious, confused and concerned about their future employment. Kansas patients want chiropractic care when they have the choice. The myth of "over-billing" or "run away costs" continues to be repeated to legislative committees as reasons for retaining employer control over provider choice despite the protections of Kansas' fee schedule and peer review provisions. Denying workers the choice of non-invasive, non-prescription drug treatment, however, is an assurance that costs will not be contained (Attachment 2).

Kenny Clark, business agent for Teamsters Local 696 and a representative of the Kansas Coalition for Workplace Safety, a proponent to **HB 2847**, testified Local 696 believes in the old adage that an ounce of prevention is worth a pound of cure. We strive to keep our members safe on the job. Accidents happen and when they do we want the option to seek medical care from a known doctor that can be trusted.

According to a recent report by the Docking Institute, "Kansas is one of a minority of states where employees do not have initial choice of medical provider or the option to change the treating doctor." If an injured worker chooses to consult with his or her physician, the employer would only pay up to \$500 in medical charges. Given the price of medical care today, that's not really a choice unless you have a very minor injury. The current work comp system forces injured workers to see a doctor who is selected by the insurance carrier and paid by the insurance carrier (Attachment 3).

Terry Leatherman, Vice President, Public Affairs, Kansas Chamber of Commerce, testified as an opponent to **HB 2847**, stating this would strip from employers the right to select the initial health care provider in workers compensation cases. Selection should remain with the party that pays the bill. Employees make no contribution to workers compensation insurance premiums, pay no deductible or pay a co-payment for medical care they receive. Since Kansas requires employers to pay all the cost for a system for employees, it is essential that employers provide the best coverage at the best price. One of the ways an employer can control the costs in workers compensation is employer choice of the treatment by the health care provider.

Employee choice of the health care provider would significantly increase workers compensation cost. The National Council on Compensation Insurance indicated the change would produce significant insurance premium increases. The 1997 estimate suggests workers compensation medical costs would increase 10 to 20%, while indemnity costs would soar 10 to 20%. That would prompt insurance premium increases in excess of \$40 million, with tens of millions more spent by employers who self-insure their workers compensation exposure.

The current system encourages the delivery of quality health care. Employee choice of the health care provider would undercut current preferred provider programs. Employee choice of the health care provider would promote litigation. Employee safeguards exist in the current system (Attachment 4).

Brad Smoot, Legislative Counsel, The American Insurance Association, testified as an opponent to **HB 2847**. This bill would reverse Kansas' longstanding practice of "employer choice of physician" for the workers compensation system. Based on the NCCI analysis of **HB 2527**, which is similar, the estimated increase in Kansas workers compensation medical costs would range between 3% and 6%, or \$14.6 million to \$29.1 million. An additional cost to the system could be expected on the indemnity side of the cost structure up to 4% or \$19.4 million. Studies cited by NCCI in **HB 2527** analysis indicate that states with unrestricted employee choice have higher medical costs than those where the employer selects the initial health care provider. This is probably due to the ability of employers or their carriers to negotiate better prices and control utilization (Attachment 5).

Representative Pauls requested that NCCI provide pricing comparison on **SB 181**.

Mr. Smoot said he would get that information.

The Chairman stated that he had just received a fiscal note that stated the Department of Administration estimated that **HB 2847** would result in an additional expenditure of \$868,164 in FY 2005 and asked if Mr. Smoot had an idea of how they arrived at that?



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HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 Environment  
 Ethics & Elections  
 Taxation  
 SPECIAL CLAIMS AGAINST THE STATE

TESTIMONY OF REPRESENTATIVE TED POWERS  
 TO THE HOUSE COMMERCE & LABOR COMMITTEE  
 HB 2847  
 FEBRUARY 23, 2004

Chairman Dahl and members of the committee,

Thank you for the opportunity to address the committee on the issue of Workers Compensation, specifically on the issue of the selection of health care providers.

Twenty-two states allow injured workers to seek out the best, most qualified medical care to provide the injured worker maximum satisfaction with the recovery. In doing so these workers have confidence that everything that can be done to promote healing is being preformed.

Three states allow for choice from a list compiled by state agency.

Three more states allow for choice from a list maintained by the employer.

Five additional states allow for the injured workers to have freedom of choice after a specified amount of time if the employer's selection fails to satisfy the injured worker.

In two states here in the Midwest, a state agency may change on behalf of the injured worker if the agency believes it to be in the workers best interest.

In Puerto Rico, the state makes all selections of providers.

Remarkably, Kansas has the most restrictive law of all, giving the entire choice to the employer of the injured worker. Even the Department of Human Resources cannot invoke a change.

New procedures are common place today in health care. Newer more successful ways of treating patients are being developed all the time. While the worker with the injury is very personal with their condition, it is not as likely that the employer will always be counted on to seek out the latest care.

Comm & Labor  
 2-23-04  
 Atch #1

**Physician Selection Provided by Workers' Compensation Statutes**

Employee Choice of Physician			Employer Selection of Physician	Employer Initial Selection		State Agency selects Physician
Initial choice	Selection from list prepared by State Agency	Selection from list maintained by employer		May be changed by State Agency	After Specified periods stated in law, employee has free choice	
No	No	No	<b>Yes</b>	No	No	No

**NOTE:** Selection of initial physician may be made by either the employer or employee for physical rehabilitation.

TABLE 5b. METHODS OF PHYSICIAN SELECTION PROVIDED BY WORKERS' COMPENSATION STATUTES

<u>Employee Choice of Physician</u>		<u>Employer Selection of Physician</u>	<u>Employer Initial Selection</u>		<u>State Agency Selects Physician</u>
Initial Choice	Selection from list prepared by State Agency	Selection from list maintained by employer	May be changed by State Agency	After specified periods stated in law, employee has free choice	
Alaska	District of Columbia	Georgia	Alabama 1/	Arkansas	California
Arizona 2/	New York	Tennessee	Florida	Colorado	Maine
Connecticut 3/		Virginia 8/	Idaho		Michigan
Delaware			Indiana		New Mexico
Hawaii			Iowa		Pennsylvania
Illinois			Kansas		
Kentucky			Missouri		
Louisiana			New Jersey		
Maryland 4/			North Carolina		
Massachusetts			South Carolina		
Minnesota 5/			Utah		
Mississippi			Vermont		
Montana 6/					
Nebraska					
Nevada					
New Hampshire					
North Dakota					
Ohio					
Oklahoma					
Oregon					
Rhode Island					
South Dakota					
					Puerto Rico

TABLE 5b. METHODS OF PHYSICIAN SELECTION PROVIDED BY WORKERS' COMPENSATION STATUTES (cont.)

Initial Choice	Employee Choice of Physician	Selection from list maintained by employer	Employer Selection of Physician	Employer Initial Selection	State Agency Selects Physician
	Selection from list prepared by State Agency			May be changed by State Agency	After specified periods stated in law, employee has free choice
Texas 7/ Virgin Islands Washington West Virginia Wisconsin Wyoming United States*: FECA LHWCA					

- 1/ Alabama - Selection of initial physician may be made by either the employer or employee for physical rehabilitation.
- 2/ Arizona - If employer is self-insured, employer may choose physician, except in emergencies.
- 3/ Connecticut - An employee has initial choice of physician only if employer does not have a managed care plan established.
- 4/ Maryland - Employer selection of physician is also allowed.

TABLE 5b. METHODS OF PHYSICIAN SELECTION PROVIDED BY WORKERS' COMPENSATION STATUTES (cont.)

- 5/ Minnesota - However, if there is a managed care plan in effect, employee is obligated to see a physician under the plan, unless a relationship has developed with a physician outside plan by which employee has seen the physician twice within a two-year period.
- 6/ Montana - If employee is subject to a certified managed care plan, the MCO chooses the physician.
- 7/ Texas - Employee must make a selection from a list of physicians prepared by the Workers' Compensation Commission.
- 8/ Virginia - Employer's list of physicians may also include chiropractors for treatment of employee's injuries.
- \* Federal Employees Compensation Act; Longshore and Harbor Workers' Compensation Act.





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### TESTIMONY PRESENTED TO THE HOUSE COMMERCE AND LABOR COMMITTEE

re: HB 2847

February 23, 2004

by: Rebecca Rice, Legislative Counsel  
Kansas Chiropractic Association

Mr. Chairman and members of the committee, my name is Rebecca Rice and I appear before you today on behalf of the Kansas Chiropractic Association in support of HB 2847. KCA has supported similar legislation in the past and appreciates this committee's consideration.

We are asking this committee to consider the unorthodox possibility that a patient that is treated in a manner that the patient does not want, by a health care provider the patient does not trust, is not the best approach to health. Kansas should not force workers to choose a health care provider they don't want and don't trust especially at a time when a worker may feel extremely anxious, confused and concerned about their future employment.

Unlike many - if not most - states, Kansas' relevant insurance carriers and some health care providers used by those carriers, continue to erect unreasonable barriers against chiropractic care. Kansas patients want chiropractic care when they have the choice

Artificial barriers, based on ignorance or fear of market share, are difficult to prove but they exist. Why an insurance company - with its primary obligation to stockholders - would deny chiropractic care to a patient, remains an unsolved mystery. We know insurance records would prove the cost-effectiveness of chiropractic care but we are unable to obtain access to company records to provide that proof to you.

The myth of "over-billing" or "run away costs" continues to be repeated to legislative committees as reasons for retaining employer control over provider choice despite the protections of Kansas' fee schedule and peer review provisions. Denying workers the choice of non-invasive, non-prescription drug treatment, however, is an assurance that costs **will not** be contained.

We believe Kansas workers should have the option, without unreasonable barriers, to seek treatment from the provider they choose. While this legislation does not go that far, HB 2847 could be a small step in the right direction.

Thank you, Mr. Chairman. We will be available for any questions.

Comm + Labor  
2-23-04  
Atch #2

# Kansas Coalition for Workplace Safety

## Coalition Members:

- AARP Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance -- KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council/Roofers Local #20
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

## Testimony Before House Commerce & Labor Committee

February 23, 2004

Kenny Clark

Chairman Dahl and members of the committee, I am Kenny Clark, the business agent for Teamsters Local 696 and a representative of the Kansas Coalition for Workplace Safety. I appreciate this opportunity to speak in support of HB 2847.

When it comes to workers compensation in general, the members of Local 696 believe in the old adage that an ounce of prevention is worth a pound of cure, and we strive to keep our members safe on the job. But accidents do happen, and when they do, we want the option to seek medical care from a doctor we know and trust.

According to a recent report by the Docking Institute, "Kansas is one of a minority of states where employees do not have initial choice of medical provider or the option to change the treating doctor." If an injured worker chooses to consult with his or her physician, the employer will only pay up to \$500 in medical charges. Given the price of medical care today, that's not really a choice unless you have a very minor injury.

The truth is, the current work comp system forces injured workers to see a doctor who is selected by the insurance carrier and paid by the insurance carrier. This naturally places the doctor in a conflict of interest between providing the injured worker with the best care and providing the insurance carrier with the "best price." Worse, it places injured workers in the position of not knowing whether they are receiving the appropriate medical care or simply the cheapest medical care.

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2-23-04  
Atch #3

In addition, many insurance companies require that the injured worker be accompanied to medical appointments by a medical case manager. The presence of a medical case manager further undermines the doctor-patient relationship and reinforces the injured worker's perception that the doctor is looking after the best interests of the insurance company, *not* the patient. An uninhibited exchange of information between the doctor and the patient is essential to good medical care, but it is very difficult to discuss intensely personal information with a medical case manager looking on.

Kansas has a workers compensation medical fee schedule in place and statutes to crack down on fraud and abuse. According to the Docking Institute report, the vast majority of work comp fraud is perpetrated by employers, *not* employees. Perhaps the medical case manager should be watching the employer not the employee.

Ironically, the medical case manager is actually costing the insurance company more money. In addition to attending the doctor's appointment with the injured worker, the medical case manager often also meets separately with the doctor. The doctor then bills for the injured worker's appointment and for the visit with the medical case manager—two bills instead of one.

In the end, the Kansas work comp system unnecessarily sacrifices the patient-doctor relationship by allowing the employer's insurance company—not the injured employee—to select the treating physician. I urge the committee to give workers the freedom to choose their own doctor when they are injured at work.

Thank you.

# Legislative Testimony

HB 2847

February 23, 2004

Testimony before the Kansas House Commerce and Labor Committee  
By Terry Leatherman, Vice President – Public Affairs



**THE KANSAS  
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I am Terry Leatherman with the Kansas Chamber of Commerce. Thank you for the opportunity to explain why the Kansas Chamber opposes HB 2847, which would strip from employers the right to select the initial health care provider in workers compensation cases.

The concept of taking away from employers the right to select the primary health care provider in workers compensation has been raised many times in the Kansas Legislature. Each time, close legislative inspection has revealed a long list of reasons why the idea should be rejected.

**1. Selection should remain with the party that pays the bill.**

Workers compensation is a state-mandated program where an employer pays all the cost to ensure their worker receives medical care and compensation if they suffer a work place injury. Employees make no contribution to workers compensation insurance premiums, pay no deductible or pay a co-payment for medical care they receive. Since Kansas requires employers to pay all the cost for a system for employees, it is essential that employers provide the best coverage at the best price. One of the ways an employer can control the costs in workers compensation is employer choice of the treating health care provider.

**2. Employee choice of health care provider will significantly increase workers compensation cost.**

In 1990, 1991, 1992 and in 1997, the National Council on Compensation Insurance was asked to estimate the cost impact of changing to employee choice of health care provider in Kansas. In each instance, the NCCI indicated the change would produce significant insurance premium increases. The 1997 estimate suggests workers compensation medical costs would increase 10 to 12%, while indemnity costs would soar 10 to 20%. That would prompt insurance premium increases in excess of \$40 million, with tens of millions more spent by employers who self-insure their workers compensation exposure.

**3. The current system encourages the delivery of quality health care.**

The employer choice process provides prompt, quality medical care for an injured worker. Besides valuing their employees, an employer can also best control their workers compensation exposure by quickly providing medical services to treat the medical condition and return the employee to work.

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**4. Employee choice of health care provider would undercut current preferred provider programs.**

A change to an employee choice process would kill current "preferred provider" arrangements which provide health care cost containment.

**5. Employee choice of health care provider would promote litigation.**

Employee choice of health care provider is an invitation to litigation. In litigated cases, it will become a common occurrence for employers to seek court permission to have an employee examined by a doctor of their choosing, to determine the degree of impairment.

**6. Employee safeguards exist in the current system.**

It is critical to remember today's system is far from a blanket "employer choice" process. The employee has several options available if unsatisfied with medical care, including a \$500 unauthorized medical allowance that is paid by the employer. In addition, there is a physician change process within the legal system of workers compensation when an employee is compelled to change the treating health care provider in their case.

Mr. Chairman, thank you for the opportunity to explain why the Kansas Chamber strongly opposes HB 2847. If there are any questions, I would be happy to answer them.

*The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.*

# BRAD SMOOT

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Statement of Brad Smoot  
Legislative Counsel  
The American Insurance Association  
House Commerce and Labor Committee  
Regarding 2004 House Bill 2847

February 23, 2004

Mr. Chairman and Members:

On behalf of the American Insurance Association (AIA), we are pleased to have the opportunity to comment on House Bill 2847. AIA is a trade association of more than 420 companies offering property and casualty insurance in all fifty states. Our members provide homeowners, auto, workers compensation and general liability for hundreds of thousands of Kansas families and businesses.

House Bill 2847 would reverse Kansas' longstanding practice of "employer choice of physician" for the workers compensation system. Based on the NCCI analysis of H 2527, a similar employee choice bill, the estimated increase in Kansas workers compensation medical costs would range between 3% and 6%, or \$14.6 million to \$29.1 million. An additional cost to the system could be expected on the indemnity side of the cost structure up to 4% or \$19.4 million. Studies cited by NCCI in the H 2527 analysis indicate that states with unrestricted employee choice have higher medical costs than those where the employer selects the initial health care provider. This is probably due to the ability of employers or their carriers to negotiate better prices and control utilization. A copy of H 2527 is attached.

At a time when health care costs are growing rapidly anyway, we believe our customers, Kansas employers, would rather not see even more of their employee benefit dollars consumed by health care due to this proposed statutory change. If there are lawmakers who are inclined to believe the Kansas workers compensation system should spend more dollars, they might want to consider other proposals affecting indemnity benefits, including modification of various benefit caps or increasing the salaries of administrative law judges. One would think these proposals might be preferred by workers and provide better use of additional employer dollars than pouring more money into the health care system which already accounts for roughly 60% of workers compensation costs.

In addition, Kansas workers compensation laws do give employees some say in the selection of their treating physicians. K.S.A. 2003 Supp. 44-510h(b)(1) gives an injured employee the right to apply to the Director of Workers Compensation for a different provider. He or she may pick from a panel of three different doctors offered by the employer and if he or she is still dissatisfied, the Director can choose a provider from lists submitted by either the employee or employer. Moreover, Kansas law gives the employee the right to seek treatments from a practitioner of his or her choice with the burden falling on the employer to pay for such services up to \$500. See K.S.A. 2003 Supp. 44-510h(b)(2).

Finally, since Kansas governments of all shapes and sizes must use taxpayer dollars to provide workers compensation benefits, one can expect H 2847 to have a substantial fiscal note for the state of Kansas and various tax-supported municipalities, whether they are insured or self-insured entities.

For these reasons, the American Insurance Association and its members serving employers and employees in Kansas must respectfully urge you to reject 2004 House Bill 2847.

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2-23-04  
Atch # 5



## NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.

### ANALYSIS OF KANSAS HB 2527

**NCCI estimates that overall system costs could increase between 3.0% (\$14.6 million) to 6.0% (\$29.1 million) due to the impact on medical costs if HB 2527 is enacted in its current form. Up to an additional 4.0% (\$19.4 million) in costs are possible due to the indirect impacts on indemnity costs.**

#### Summary of Proposal

House Bill 2527 provides the employee with the right to choose the initial health care provider, as well as the right to switch to a provider of the employer's choosing if the initial provider is not satisfactory.

#### Actuarial Analysis of Proposal

Under current law it is the duty of the employer to provide the services of a health care provider and all medical services. Under the proposal, the injured employee will have the right to choose the initial health care provider. The studies below have indicated that medical costs are higher for states that provide unrestricted employee choice of physician. Possible reasons are that employers are able to negotiate lower prices and to control the utilization of services with the panel of physicians they select.

- (1) According to "Provider Choice Laws, Network Involvement, and Medical Costs" by Victor, et al, Workers Compensation Research Institute (WCRI) (2002), medical costs are 7% to 10% less in states where the employer controls the selection of medical providers.
- (2) According to "The Impact of Fee Schedules and Employer Choice of Physician" by Durbin and Appel, NCCI (1991), medical costs are 5% to 8% higher in states that permit the employee to select the initial provider.
- (3) According to "How Choice of Provider and Recessions Affect Medical Costs in Workers' Compensation", Victor, et al, WCRI (1990), average medical costs increased between 8% and 11% in Illinois and between 7% and 29% in Texas when these two states changed from employer to employee choice of initial physician.

Based on the results of these studies, we expect medical costs will increase by 5% to 10% in Kansas if the injured worker has the right to choose the initial healthcare provider, with the option of switching to an employer's choice of provider. Since medical costs represent approximately 60% of the overall losses in Kansas, the estimated impact on overall system costs is an increase of 3.0% to 6.0%.

In addition to the increase in medical costs, we expect upward pressure on indemnity costs and on litigation. Indemnity costs may rise because the treating physician selected by the injured worker may lack the emphasis of returning the worker to work or because the injured workers are given the option to change their health care provider. Previous analysis indicates that the indirect effects on indemnity can be as large as the impacts on medical. Since indemnity costs represent 40% of the overall losses, the additional impact may be up to 4.0% (=10% x 40%). In addition, litigation may rise if the employers and insurers do not agree on the assessment of the treating physician chosen by the injured worker. This could also have an upward pressure on system costs.

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TOPEKA  
HOUSE OF  
REPRESENTATIVES

February 23<sup>rd</sup>, 2004

Chairman Dahl and Committee Members:

Good morning! My name is Tom Holland and I am the State Representative for the 10<sup>th</sup> District serving southern Douglas and northern Franklin counties. I am here today to ask for your support of House Bill 2818, the 2004 Kansas Patriotic Employer Act. This bill strengthens existing penalties for any employer knowingly employing illegal immigrants or using them as independent contractors. The bill also establishes a hotline within the Kansas Attorney General's office for receiving tips from the Kansas public regarding potential employer violations and redirecting these calls to local authorities for follow-up investigation and possible prosecution.

My intentions in introducing this legislation are three-fold: 1) to protect honest Kansas small businesses who are having to compete on an unlevel playing field, 2) to protect Kansas citizens and legal immigrants with skills in these affected trades from suffering wage erosion and job losses, and 3) to stop the resulting exploitation of illegals who are used in these situations.

I have received complaints from business owners both within and outside my district regarding the ever-expanding use of illegal labor throughout our state. Small businesses, particularly in the residential and commercial building sectors, are being squeezed by an ever growing number of unscrupulous operators who knowingly employ illegal immigrants typically in an independent contractor relationship and are thus able to provide much lower bids for contractor services. Businesses that play by the rules are thus unable to keep their existing employees working, let alone expand for new business opportunities. What is the impetus for ANY Kansas business to pay worker compensation insurance and unemployment taxes, let alone fair wages that drive our economy, when no one will hold the "bad apples" accountable for their actions? By providing a practical enforcement mechanism and imposing harsher consequences, this legislation will force those who skirt the law to change their employment practices and better control their subcontractors.

I want to be particularly clear regarding the following points concerning this legislation:

- This bill is a small business protection bill; it is not an anti-immigration bill.
- The bill's focus is on employers who **knowingly** employ illegal aliens. This legislation is not intended to entrap employers who unknowingly may have directly or indirectly employed illegals;
- This bill, if implemented, would not impose any additional administrative or paperwork requirements on businesses;
- This bill provides a workable method of enforcement that at present is woefully lacking at both the Federal and State level.

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Today you will hear testimony from a number of small businesses who deal with these issues on a daily basis. Their stories are compelling, and their struggles cry out that we as fair-minded Kansas citizens no longer keep our heads buried in the sand on this most serious matter.

I thank you for your thoughtful and considerate deliberation on this most urgent matter. I sincerely hope that through your favorable consideration of HB 2818 we can begin to honestly confront this destructive practice which is destroying Kansas small businesses and hurting our state's economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Holland". The signature is fluid and cursive, with a large initial "T" and "H".

Tom Holland  
State Representative – 10<sup>th</sup> District



**RODRIGUEZ**  
MECHANICAL CONTRACTORS

House Commerce and Labor Committee  
Representative Don Dahl  
Room 241 N  
HB 2818  
February 23, 2004

Chairman Dahl and Committee Members,

I am Paul Rodriguez, owner of Rodriguez Mechanical Contractors located at 541 South 11<sup>th</sup>, Kansas City, Kansas. I am not anti immigrant and I am not anti immigrant worker.

I spoke earlier in support of HB 2479 and I am here in support of HB2818. To me this bill helps to level the playing field in providing a livable wage and providing for a quality of life, for those who choose to work in the construction industry, in the State of Kansas.

This bill addresses a quality of life and a livable wage issue, much like the State of Kansas addressed in 1891.

As I previously stated in testimony for HB2479, some of my competition chooses to exploit the immigrant workforce by not paying a livable wage and with no benefits. In some cases the contractor hires the workforce by means of misclassifying them as Independent Contractors and escapes the paying of taxes.

When this scenario occurs, the misclassified worker is paid no benefits and is likely to not pay taxes, acquire a business license, trade license, and will not pay into the workers compensation program. The worker is simply an employee and not a contractor. At the end of the year the contractors obligation is to file and send the misclassified contractor a 1099 form, with no real business address and certainly no way to collect taxes and or a way to contact them.

If this practice is allowed to continue unchecked my business as well as others will suffer. I cannot compete in the industry and pay taxes, against someone who operates by capitalizing on the loopholes and escapes the paying of all taxes due.

This issue is truly complex and requires more comment than a simple paragraph. I reaffirm that I will make myself available to you or whomever for further discussion, in order to move HB2818 forward.

It has been said that if not for the immigrant worker, our industry would have been challenged to fill trade positions and said that our projects would not have been built with out them.

I ask you, what has been said about those on the unemployment lines? They will continue to be unemployed, until we pass laws to protect them as well.

Workforce development money can be utilized to retrain those seeking opportunity in the construction industry, rather than import the workforce from other states.

I have read the briefings (opposition to HB2479) from the Kansas Chamber of Commerce and Industry, The Kansas Advisory Committee on Hispanic Affairs and The Kansas Contractors Association Inc. Who voiced in opposition of HB2479.

I am concerned that those organizations do not support any measure that would stop any effort from exploiting the immigrant workforce and supporting any effort to employ those who are currently on the unemployed lines.

There is an organization that does, The Immigrant Workers Rights Organization, based in Nebraska. This organization is in the process of assisting Nebraska and Iowa in passing similar legislation, in addition to establishing a presence in Kansas.

This is a type of organization that deals directly with these types of issues and certainly deals with the aftermath, in relationship to the hardships after the worker is exploited and is left with paying taxes as an employer, when the worker assumed that he was an employee, and assumed that he had no further obligations, such as tax debt.

I plea to you and urge you to move HB2818 forward for passage. And again level the playing field for me to compete as a Contractor in Kansas.

Respectfully Voiced and Submitted,

  
Paul Rodriguez



Roy G. Chaney — President  
(913) 843-1691  
Fax: (913) 843-4247

CONTROLLED SYSTEMS SPECIALISTS

February 16, 2004

Plumbing

Dahl & Members  
Kansas House Representatives

Dear Representatives,

Heating

I would like to voice my support of House Bill 2818 concerning the use of illegal aliens working on construction projects. I believe that the use of illegal aliens is not only unfair to the citizens of this state but also exploitation of the illegal workers by the contractors and owners that use this type of labor. I have worked on several projects where other contractors used illegal aliens and I have been very frustrated at our governments' lack of desire to enforce the current labor laws.

Air Conditioning

These people are worked six to seven days a week, ten to twelve hours a day with no overtime compensation because they are treated as subcontractors. The IRS has specific guidelines for subcontract labor and these people do not qualify as subcontract labor. I truly believe that our government has no real interest in enforcing their own rules concerning the employment of illegal aliens. The I.N.S. comes to the job sites, announces who they are and stands by watching the aliens leave. They make no attempt to detain these people or even return to the job site to see if these people came back. The illegal workers usually wait about a week and then return to the job site like nothing ever happened.

Refrigeration

I feel that if the illegal aliens are going to work here taking our jobs then they should have to pay taxes to help support our government and schools. I pay my employees a fair wage, fringe benefits, workman's compensation insurance, and match their social security. It is very difficult as a contractor to compete with companies that get away with paying illegal aliens as subcontractors so that they don't have the same expenses as their competitors. I would also like you to consider that the people I employ all pay their taxes and spend their money here instead of sending it back to their families in other countries. I am very concerned that if this trend of looking the other way is not stopped now then most if not all construction work will go to companies that employ illegal

Process Piping

Comm labor  
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aliens. If this happens where will our schools get their funding? I can assure you that there is no need to allow these illegal aliens to continue working in the construction trade taking jobs from American citizens. I have served on the Apprenticeship Board of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada for this area for 30 years and we have never had any problems getting good applicants. In my opinion the problem lies in the greed of the contractors and the only way to stop this problem is with legislation such as this being passed and strictly enforced.

I strongly believe that if the State passes your Bill and enforces it as they should that this will prove to be an excellent piece of legislation. Kansas needs to take care of the workers that are paying the taxes here and spending their money here.

Respectfully,

A handwritten signature in cursive script, appearing to read "Roy G. Chaney".

Roy G. Chaney  
President

**Cornerstone Construction Company of Lawrence Inc.**  
**2004 East 23<sup>rd</sup> Street Lawrence Kansas 66044**  
**Phone: 785-841-4528 Fax 785-841-1298**

Date: 23<sup>rd</sup> of February, 2004

To: House Committee on Labor & Commerce

Reference: House Bill HB2816

I am Kenneth Hayes, Co-owner of Cornerstone Construction, and a general contractor with 12 years of experience in the field of construction. My experience covers a wide range of projects from residential to commercial job sites.

I have been asked to give testimony on the aforementioned House bill dealing with penalties to be applied to employers that knowingly hire illegal aliens. My stance is that the current penalties under law by the State of Kansas are too low in their deterrence of these hiring practices. Stated simply the penalty of \$500.00 for employment of an illegal alien does not work. I put forth the following reasons as to why our current penalties are ineffective.

1. Current penalties do not outweigh the benefits of hiring illegal aliens. The penalty cost of \$500.00 is roughly the savings an employer will garner for employing an illegal for on month of labor at \$8.00 an hour versus employment of a resident of this country at \$10.00 an hour. The economic reality of cheaper labor is attractive to those that do not respect the law.
2. An employer will utilize the use of the 1099 independent contractor method of payment or simply pay cash to an illegal alien to circumvent participation in the normal employment programs and forms of employment taxation.
3. Illegal aliens are replacing citizens in the work force. The use of illegal aliens can mean less expense on an employers payroll. They also do not have any recourse to complain about unfair or unsafe working conditions. Without the benefit's a worker of this country has, they are easier to deal with and less expensive to unscrupulous employers.
4. The use of illegal labor eliminates the necessity of contributions to Medicare programs, unemployment insurance, social security, and many other programs designed for the benefit of workers. This places more burdens on those of us that play by the rules and employ citizens.
5. Use of illegal labor significantly drops the costs of employers to operate, and therefore greatly enhances the ability of contractors that use this form of labor to successfully bid and win contracts. Simple math of less labor and benefit costs means lower bid amount for a contractor which generates more jobs for this contractor. The side effect is that contractors who employ legal labor lose jobs and therefore employ less people.

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6. Illegal labor establishes a virtual "underground economy". Many illegal aliens send large amounts of their income home to their nations of origin. This money is not taxed. Makes no contribution to any employee benefit programs. It flows out of our country with no return for our economy.

In my years of being a business owner in construction I have witnessed the use of illegal aliens in what would seem extreme forms. Illegal aliens have no rights that most legal employees take for granted. They can be terminated without cause. They are paid less in wages. They live under the threat of deportation. They garner no long term benefits established to shield the working individual.

I personally have witnessed a contractor that took this system to a level that included housing these illegal aliens in rental property that he owned. These people and their families worked for their housing. In essence, I would describe this situation as "indentured servitude". Their ability to complain or try to improve themselves was controlled by this individual, and of course the threat of deportation by our government.

The loss of jobs is detrimental to our country. The exploitation of these people who are seeking a better life, just as our ancestors did when coming to this nation is in my estimation, shameful. I am not opposed to the immigration of people to this nation. In some ways these illegal aliens are some of the hardest working individuals you will find. But we must protect our legal employees, and hold those that seek to destabilize the system with illegal labor, responsible for their actions.

I am wholeheartedly supportive of this House bill, HB2816.

Thank You

Ken Hayes  
Vice-President of Cornerstone Construction.

House Commerce and Labor Committee Testimony

**HB 2818**

Elias L. Garcia, Executive Director, Ks. Advisory Committee on Hispanic Affairs  
February 23, 2004

Mr. Chairman and honorable members of the Committee, my name is Elias L. Garcia, Executive Director of the Kansas Advisory Committee on Hispanic Affairs and I thank you for the opportunity to speak in opposition to HB 2818.

This legislation proposes to place responsibility on employers to:

- ◆ investigate the residence status of prospective employees
- ◆ precludes employers from hiring illegal aliens

Employers found in violation will be penalized for doing so by:

- ◆ ineligibility for award of state agency public works or purchase contracts
- ◆ forfeiture of amounts equal to the totals value of state benefits received for five years leading up to date of guilty judgement

Ladies and Gentlemen of the committee, we oppose this legislation for various reasons, foremost is which is that we already have current Federal Laws in place, specifically, Title 8 USC Sec. 1324a that addresses this issue, and, while theoretically, the intent of HB 2818 would be to serve as an added layer of deterrent regarding this practice, pragmatically, the fact is, employers and workers alike will continue to conduct business as usual, irrespective of this bill.

Honorable committee members, over 200,000 companies in our society hire undocumented workers. Like it or not, acknowledge it or not, we are talking about a culture that has been in place for as long as anyone can remember. The President of the United States Chamber of Commerce recently was quoted as saying that "...if all the immigrant labor in this country decided to pack up and go home, the United States would have to shut down...".

It's always been a matter of survival, both from the companies standpoint and from the workers standpoint. In 2004, perhaps more than ever, employers are facing a tremendous and overwhelming challenge in just trying to find enough people to fill a work-crew. In fact, its been my experience that more often than not, companies (at least in the construction industry) usually work one man short on each crew and work longer hours to meet production goals. The reality is that employers simply cannot find temporary workers, part-time workers, good workers, qualified workers, or any workers to fill job openings. The truth is that dilemma is only going to get worse. Therefore, before we add the burden of yet another layer of law upon our business community we encourage you to give this initiative reconsideration and further study.

We also oppose HB 2818 because, intended or un-intended, it targets a group of people in Kansas that invariably and mainly consist of Hispanic and Latino individuals who we know that in the not to distant future, will assimilate, acculturate and integrate into our Kansas communities. Also, it is common knowledge that the individuals described as "illegal aliens" in HB2818 are an invaluable and irreplaceable resource to the business community, a community that has had a common and longstanding industry practice of utilizing this human capital. We will not pass judgement on undocumented immigrants as we can only respect their efforts to work and provide for their families.

In earlier testimony to this respective committee, I discussed a collective vision for the future of Kansas that included embracing the fact that Kansas needs all the hard working people we can attract to help maintain our communities and more importantly to help contribute to and maintain our local, state and federal tax bases. This includes non-native populations, specifically the Kansas Hispanic and Latino community.

While we appreciate the legislative efforts behind this initiative, we find that HB 2818 is not consistent with the collective vision for Kansas that is inclusive of the Hispanic community, it proposes additional enforcement responsibilities and un-funded mandates to the Department of Human Resources Department, is not sensitive to the plight of the present day Kansas business community and it is redundant to federal law that currently exists. The Kansas Hispanic and Latino American Affairs Commission appreciates the opportunity to voice our position before this committee, and for reasons as stated, we ask you to oppose HB 2818 and thank you.

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