

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 18, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Legislative Research
Susan Kannarr, Legislative Research
Helen Pedigo, Revisor of Statutes
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Mike Peck, Vice President for Investments and Portfolio Management, KTEC
Michael Farmer, KTEC
Terry Leatherman, KCCI
Wil Leiker, AFL-CIO
Jeff Cooper, Kansas Coalition for Workplace Safety

Others attending:

See Attached List.

Chairperson Brownlee opened the public hearing on:

SB 480—An act concerning incoming taxation; relating to tax credits for investment in qualifying businesses; powers and duties of the Kansas technology enterprise corporation.

Mr. Peck provided testimony in favor of the bill. (Attachment 1)

Mr. Farmer spoke to the committee in favor of the bill. He stated that in his own experience with the invention of a new product, it had been difficult to raise initial capital, however, his company was eventually able to locate an angel investor who made the decision to invest because of a New York state tax credit. He stated that in the past twelve months, they had received advise on advisory board formation and intellectual property issues.

Chairperson Brownlee closed the public hearing on **SB 480**.

Ms. Sparks provided the committee with a sheet entitled, "Tax Year 2001 Kansas Department of Revenue Tax Credits". (Attachment 2)

The committee was provided with a fiscal note on the bill. (Attachment 3)

The committee discussed the particulars of the bill regarding those who are defined as qualified investors and other specific questions. In regard to a question from Senator Barone regarding the inclusion of retail shops, Senator Jordan stated that the goal of the bill was to facilitate high growth entrepreneurs in the state and to help mid-sized businesses, rather than being directed at retail facilities. Senator Jordan went on to say that although the bill sought to leave some flexibility, it was not directed at small retailers on mainstreet Kansas.

Following further discussion, Senator Jordan stated that the problem with specifically excluding retail is that there was no way to know what might come along in the future. He stated that regardless, to qualify for the bill a business would have to first be certified by KTEC as high-growth, and, second, have an angel investor who thinks that the business is high-growth, both of which are very difficult decisions.

Senator Kerr moved the bill favorable for passage. Senator Jordan seconded. The motion passed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on February 18, 2004 in Room 123-S of the Capitol.

Chairperson Brownlee opened the public hearing on:

SB 441—An act concerning workers compensation; relating to the date of accident

Ms. Pedigo provided the committee with a summary of the bill. (Attachment 4)

Mr. Leatherman testified in favor of the bill. (Attachment 5)

Mr. Leiker testified in opposition to the bill. (Attachment 6) He also provided the committee with the "Report of Subcommittee: Paula Greathouse, Kip Kubin, John Ostrowski." (Attachment 7)

The committee discussed the subcommittee report. Chairperson Brownlee stated that the Legislature is not bound by what comes out of the Workers Compensation Advisory Council.

Mr. Cooper testified in opposition to the bill. (Attachment 8)

Senator Barone asked if Mr. Cooper could help him clarify a seeming discrepancy in the bill in which an accident was defined at one point as an undesigned, sudden event, and at another point as a result of a series of events. Mr. Cooper replied that the former was a more typical definition and that the latter described a different type of injury.

The committee discussed when the clock on the injury begins running. Senator Barone asked what the ramifications would be of changing the word "earliest" to "latest" in line 22. Mr. Cooper stated that it would be better on behalf of employees. Mr. Leatherman stated that all three would have to occur with "latest". Following further discussion, Chairperson Brownlee suggested the committee continue work on the bill with the participation of those who testified.

The committee was provided with the publication entitled "Kansas Workers Compensation: 29th Annual Report 2003 Fiscal Year" published by the Kansas Department of Human Resources in January 2004. The principle author of the publication is David Sprick, Technology and Statistics Section, Kansas Division of Workers Compensation.

Chairperson Brownlee adjourned the meeting at 9:30 a.m. The next meeting will be at 8:30 a.m. on February 19, 2004 in Room 123-S of the Capitol.

**Senate Commerce Committee
Testimony on SB 480
Michael Peck, Vice President of Investments
Kansas Technology Enterprise Corporation (KTEC)**

February 18, 2004

Madam Chair, Mr. Vice Chair, Mr. President, Members of the committee,

My name is Michael Peck, Vice President of Investments with the Kansas Technology Enterprise Corporation. I am here today, on behalf of KTEC and KTEC's President, Tracy Taylor, to speak in strong support of the Kansas Economic Growth Act legislative package, and specifically, SB 480, the Kansas angel investor tax credit.

Over the last four months, KTEC has worked closely with the Legislature, Lt. Governor Moore and the Department of Commerce on this issue. The Department of Commerce has indicated full support and agreement, and we greatly appreciate their collaboration.

My charge at KTEC is to make investments in seed and early-stage technology companies in Kansas. On an annual basis, KTEC invests approximately \$1.5M in the Kansas companies that will create higher-paying jobs and bring innovative technologies to market. The KTEC investment process includes reviewing business plans, market research and analysis by KTEC staff, due diligence of the company management team, and analysis of business potential. The process also involves a private-sector investment committee that includes successful entrepreneurs, experienced investors, and intellectual property experts.

Throughout this investment process, I have come to know firsthand the pioneers of tomorrow, our entrepreneurs. I have also come to know the value of angel investors and their importance to these entrepreneurs and to Kansas. Whereas the state of Kansas does much in the way of supporting our entrepreneurs, we can do more. We can ask our successful pioneering entrepreneurs who have gone before to support our budding entrepreneurs of today. Who better to insure the success of a start-up business than, say, Gene Bicknell or a Ross Beach; someone who knows how to be successful in a start-up?

Is this possible? This is a question that has been answered by many states. A number of states, including our neighbors Iowa and Oklahoma, have learned that all their state governments had to do was ask. In the state of Oklahoma, the Angel Investor network is over 300 strong. These groups of successful businesspersons are willing to invest in companies within their state. Nationally, these groups of individuals, commonly referred

to as “Angel Investors”, have indeed answered the call. In these states, entrepreneurs are helping entrepreneurs providing this valuable support is in the form of financial investment and mentoring.

Various studies and new initiatives indicate that angel investors are a key component of early-stage growth companies.

According to the Center for Venture Research, in 2002, Angels invested \$15.7 billion dollars in entrepreneurial businesses in the United States. Angels are the major source of the critical seed and start-up equity capital for entrepreneurial ventures. The latest research indicates that more than two-thirds of all of Angel investments are in the seed and start-up stage. In 2002, these business angels invested in 36,000 ventures. Compare this to less than 5,000 venture capital deals and less than 150 seed and start-up venture capital investment in 2002. Almost 100% of angel’s investments are in new venture versus 66% of venture capital deals that are in existing portfolios.

In 2000, the MIT Entrepreneurship Center commissioned the Venture Support System Project. Some of the key angel investor findings of this study indicated that:

1. The motivations and operations of experienced angel investors are typically different than those of venture capitalists. First-time entrepreneurs can benefit from approaching experienced angel investors.
2. Experienced angel investors are becoming increasingly systematic in their operation. Systematic evaluation and analysis help reduce risk, improve returns, and increase the number of investments considered.
3. The recent rise in angel groups is an important new development in venture creation. These groups provide the fastest way for entrepreneurs to find angels and provide a way for angels to leverage their combined skills, time, expertise and networks.

The Ewing Marion Kauffman Foundation recently noted the value of angel investors across the country. In late 2003, the Kauffman Foundation of Kansas City agreed to sponsor the new Angel Capital Alliance (ACA). The ACA has been endorsed by 46 angel capital organizations throughout the U.S. and Canada with many other angel groups interested in membership. According to the foundation, the ratio of potential to active angel investors is estimated at five to one, and angel investors traditionally become more involved as “active” investors to assist start-ups. Furthermore, local angel investors provide the bulk of seed capital prior to institutional venture funds.

Kansas’s entrepreneurs **need** this valuable group of investors to invest in their companies:

- Total seed capital raised from 1995 through Q1 '03 in the State of Kansas represented less than .09 of 1 percent of the seed venture capital raised in the United States.¹

¹Price Waterhouse Cooper/National Venture Capital Assoc. *MoneyTree*™ Survey, 2003

- Total equity capital invested in the State of Kansas per \$1,000 of the Kansas Gross State Product (GSP) was only \$.54, which ranks Kansas 32nd in United States.²
- The National Governors Association³ found in its 2000 study on state entrepreneurial growth that a lack of capital formation is a significant impediment to aspiring entrepreneurs. The size of the investment and the risk inherent in entrepreneurs' ventures limit their ability to raise the necessary capital from traditional sources of funding, resulting in a "capital gap." Estimates of the gap vary, but it is generally believed to be significant. This amount typically is beyond the means of personal and family sources and too high a risk for traditional lenders and most state business loan programs.

KTEC supports Senate Bill 480, because it not only encourages investment, but it perhaps more importantly encourages an incredible group of individuals to become involved as mentors, advisors, and coaches for our Kansas start-ups. The purest definition of an "Angel investor" is not just a high-net worth individual, rather it is someone who brings critical risk capital, experienced advice, and visionary guidance to the entrepreneur. Angel investors are spread out across the state of Kansas; these individuals reside in metropolitan and rural Kansas. In the previous example of the two potential angel investors, one lives in Hays, Kansas, and the other in Pittsburg, Kansas. KTEC has identified potentially more than 100 individuals from all Kansas industry sectors including aviation, agriculture, biosciences, energy, information technology and retail to name a few.

Under SB 480, angels will continue to assert their role as value-added, patient investors in entrepreneurial companies. Angels will continue to invest in Kansas. Angels and entrepreneurs will strive to build companies with real value, good jobs, and sustainable growth opportunities for our state.

Thank you.

² US Dept. of Commerce, 2003

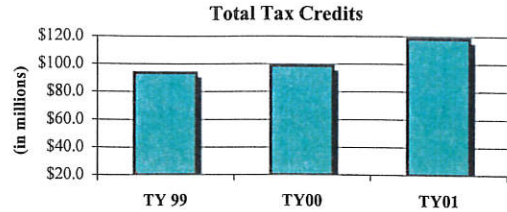
³ National Governor's Association (2000), Nurturing Entrepreneurial Growth in State Economies

Tax Year 2001 Kansas Department of Revenue Tax Credits

Kathie Sparks, KLRD

Tax Credits Allowed on Returns in Tax Years

	TY 1999	TY 2000	TY 2001
Corporate Income Tax	\$ 29,514,524	\$ 35,757,489	\$ 52,473,608
Individual Income Tax	\$ 63,335,778	\$ 61,914,436	\$ 64,899,438
Privilege Tax	\$ 726,875	\$ 1,002,553	\$ 762,560
Total Tax Credits	\$ 93,577,177	\$ 98,674,478	\$ 118,135,606



Adoption Credit - \$179,557

K.S.A. 79-32,202

Residents of Kansas who adopt a child can receive a credit of 25% of the adoption credit allowed against the federal income tax liability on the federal return.

Agricultural Loan Interest Reduction Credit - Amount withheld for confidentiality.

K.S.A. 79-32,181a; 79-1126a

A state bank, national banking association, production credit association, or agricultural credit association chartered by the Farm Credit Administration which extends or renews an agricultural production loan to an eligible agricultural production borrower at an interest rate which is at least one whole percentage point (1%) less than the lowest interest rate made on loans with equivalent collateral or which reduces the rate of interest being charged on any outstanding agricultural production loan to an eligible agricultural borrower by at least one whole percentage point (1%) shall receive a credit against their tax liability.

Alternative-Fuel Tax Credit - \$3,881

K.S.A. 79-32,201

A credit is allowed for any person, association, partnership, limited liability company, limited partnership, or corporation who makes expenditures for a qualified alternative-fuel fueling station or who makes expenditures for a qualified alternative-fueled motor vehicle licensed in the state of Kansas.

Business and Job Development Credit (carryover) - *\$8,980,231

K.S.A. 79-32,160a

Any manufacturing or nonmanufacturing business which invests in a qualified business facility and hires a minimum number of employees as a result of that investment may be entitled to a tax credit.

**This total does not reflect credits allowed and entered into new credit database.*

Business and Job Development Credit (noncarryover) - \$5,927,003

K.S.A. 79-32,153

A taxpayer who invests in a qualified business facility and hires at least two employees as a result of the investment may be eligible for a credit.

**This total does not reflect credits allowed and entered into new credit database.*

Business Machinery and Equipment Credit - \$20,320,187

K.S.A. 79-32, 206

A taxpayer may be allowed a credit in an amount equal to 15% of the personal property tax levied and timely paid on commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas Constitution in subclass (5) or (6) of class 2 and machinery and equipment classified for such purposes in subclass (2) of class 2.

Child Day Care Assistance Credit - \$403,457

K.S.A. 79-32,190

A taxpayer may be eligible for a credit if they pay for child day care services for its employees, located child day care services for its employees, or provide facilities and necessary equipment for child day care services to its employees.

Child Dependent Care Credit - \$7,882,503

K.S.A. 79-32,111a

This credit is available only to residents and part-year residents filing as residents. The credit is equal to 25% of the federal credit allowed.

Community Service Credit - \$3,237,453

Any business firm which contributes to an approved community service organization engaged in providing community services may be eligible to receive a tax credit of at least 50% of the total contribution made.

Disabled Access Credit - \$232,414

Individual and business taxpayers who incur certain expenditures to make their property accessible to the disabled; or to employ individuals with a disability may be eligible to receive a tax credit.

Earned Income Credit - \$23,801,122

K.S.A. 79-32, 205

The credit is available to resident taxpayers in an amount equal to 10% of the earned income tax credit allowed against the taxpayer's federal income tax liability.

Food Sales Tax Refund - \$25,621,048

K.S.A. 79-3635

The credit is for sales tax paid on food. There is a \$60 credit per exemption claim for a Kansas Adjusted Gross Income of \$0 to \$25,000; and a \$30 credit per exemption claim for a Kansas Adjusted Gross Income of \$12,500 to \$25,000.

Habitat Management Credit- Amount withheld for confidentiality.

K.S.A. 79-32,203

An income tax credit is allowed for a property owner who pays property tax on property designated as a critical habitat or who incurs expenditures for managing a habitat.

High Performance Incentive Program - \$20,419,749

K.S.A. 74-50,132; K.S.A. 79-32,160a(e)

A qualified firm making a cash investment in the training and education of its employees may be eligible to receive a tax credit. A credit may also be available for those qualified firms that make an investment in a qualified business facility.

Historic Preservation Credit - Amount withheld for confidentiality.

K.S.A. 79-32, 211

An income tax credit is allowed for expenditures incurred in the restoration and preservation of a qualified historic structure.

Plugging of an Abandoned Oil or Gas Well Credit - Amount withheld for confidentiality.

K.S.A. 79-32, 207

Taxpayers who make expenditures during the tax year to plug an abandoned oil or gas well on their land in accordance with the rules and regulations of the Kansas Corporation Commission shall be allowed a credit in the amount of 50% of the expenditures made for taxable years beginning after 12/31/97 and before 1/1/01.

Research & Development Credit - \$899,213

K.S.A. 79-32,182

A taxpayer with qualifying expenditures in research and development activities conducted within Kansas may be eligible to receive a credit of 6 1/2% of the amount expended for the research.

Small Employer Health Insurance Credit - \$98,566

K.S.A. 40-2246

An income tax credit is allowed for any two or more employers who establish a small employer health benefit plan for the purpose of providing a health benefit.

Swine Facility Improvement Credit - Amount withheld for confidentiality.

K.S.A. 79-32,204

A credit is allowed for the costs incurred to make required improvements to a qualified swine facility.

TAF Family Contribution Credit - Amount withheld for confidentiality.

K.S.A. 79-32,200

Any individual, corporation, partnership, trust, estate and other legal entity required to pay income tax under the Kansas Income Tax Act who enters into an agreement with the Secretary of Social and Rehabilitation Services to provide financial support to a person who receives Temporary Assistance for Families (TAF) is allowed a credit against their Kansas tax liability.

Venture and Local Seed Capital Credits - \$14,261

K.S.A. 74-8205, -8206, -8304, and -8316

A credit may be deducted from a taxpayer's income or privilege tax liability if the taxpayer invests in stock issued by Kansas Venture Capital, Inc.; and a credit may be deducted from a taxpayer's income tax liability if the taxpayer invests in a certified Kansas venture capital company; and a credit may also be deducted from a taxpayer's income tax liability if the taxpayer invests in a certified local seed capital pool. The amount of credit will be 25% of the total amount of cash investment in such stock.

Amounts are withheld for confidentiality if there are four or fewer filers within any given tax area of a credit.

February 17, 2004

The Honorable Karin Brownlee, Chairperson
Senate Committee on Commerce
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Brownlee:

SUBJECT: Fiscal Note for SB 480 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 480 is respectfully submitted to your committee.

SB 480 would create the Kansas Angel Investor Tax Credit Act. The purpose of the act would be to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas business by granting tax credits to investors. The Kansas Technology Enterprise Corporation would administer the act.

The credit would equal up to 50.0 percent of an investment in a qualified Kansas business. To be qualified, a Kansas business would have to be in operation for at least five years, have less than \$5.0 million in annual gross revenues in the most recent tax year of business, and not primarily engaged in various enterprises listed in the bill. KTEC would designate Kansas businesses as qualified.

The Secretary of Revenue would limit tax credits per investor to \$50,000 of investments in a single business or in more than five Kansas businesses each year. The cumulative amount of tax credits allowed could not exceed \$20.0 million. Investors would be able to keep all tax credits claimed under the act.

The Secretary of Commerce would conduct an annual review of tax credits issued to make sure the credits are in compliance with rules and regulations developed by the Department

Senate Commerce
02/18/04
Attach # 3

The Honorable Karin Brownlee, Chairperson
February 17, 2004
Page 2—480

of Commerce or KTEC. KTEC would pay the costs of the annual review. The state could not be held liable for any damages to investors as a result of an investment in a Kansas qualified business.

SB 480 would authorize up to \$20.0 million in new tax credits beginning in FY 2006 for 11 years. The Department estimates that \$1,818,000 in tax credits would be authorized each year from tax year 2006 through 2016. The immediate effect of authorizing the credits would be a reduction in tax revenues to the State General Fund by the same amount. However, it is expected that the tax credits would increase investments in new companies. Expansion in businesses from the investments would generate new jobs, thus benefiting the state with increased tax revenues. However, there is not information available upon which to base revenue projections for this portion of the fiscal effect. Therefore, the net effect on the State General Fund cannot be determined.

SB 480 would also abolish the Kansas Certified Capital Formation Company Act, which authorizes \$2.0 million in tax credits each year from FY 2006 to FY 2015. These tax credits are issued to taxpayers who invest in certified capital formation companies. The abolishment of these tax credits would restore State General Fund revenue by a like amount each year until FY 2015. The abolishment of the act would also put an end to tax revenues indirectly generated by investments in certified capital formation companies.

The Kansas Technology Enterprise Corporation indicates that it could implement SB 480 within its existing resources. The bill would require the agency to review applications for businesses to receive the tax credits. KTEC would purchase software for tracking and reporting procedures. SB 480 would not have a net effect on the Department of Commerce. Because the bill would allow the agency to charge a fee for reviewing tax credits issued, the fee could be set to cover whatever costs occur. Any fiscal effect associated with SB 480 would be in addition to amounts in *The FY 2005 Governor's Budget Report*.

Sincerely,

Duane A. Goossen
Director of the Budget

cc: Steve Neske, Revenue
Matt Jordan, Department of Commerce
Kevin Carr, KTEC

NOELMAN J. FURSE, ATTORNEY

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ON INTERSTATE COOPERATION
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EDITING AND PUBLICATION
LEGISLATIVE INFORMATION SYSTEM

EDITOR OF STATUTES
WILLIAM L. EDDS, ATTORNEY

COMPUTER INFORMATION STAFF
RICHARD M. CHAMPNEY, B.S.
VALERIE F. CARTER, B.A.

To: Senate Commerce Committee

From: Helen Pedigo, Assistant Revisor

Date: February 18, 2004

Re: SB 441

This is a workers compensation bill that defines date of accident when there are:

- 1) multiple events;
- 2) repetitive use;
- 3) cumulative traumas; or
- 4) microtraumas.

Date of accident in these situations is defined as the earliest of the following:

- 1) Date the employee gives notice of injury to the employer;
- 2) Date the condition is diagnosed as work-related providing such fact is communicated to the injured worker;
or
- 3) The first day the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition.

Senate Commerce
02/18/04
Attach #4

Legislative Testimony

SB 441

February 17, 2004

Testimony before the Kansas Senate Committee on Commerce By Terry Leatherman, Vice President – Public Affairs

Madam Chairperson and Committee Members:

My name is Terry Leatherman. I am the Vice President of Public Affairs for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear this morning in support of SB 441.

SB 441 proposes a clarifying change to the Kansas workers compensation system which the Kansas Chamber has advocated in support of for many years. The bill would establish a date of accident in workers compensation cases where an injury develops over time, rather than in a sudden accident. Establishing a date of accident is useful in these cases because it "starts the clock" on the workers compensation process.

It is my understanding some questions have arisen in this Committee regarding the progress of this issue before the Workers Compensation Advisory Council, which I serve on as a business representative. The issue addressed in SB 441 has been before the Council for many years. In fact, the language in the bill was largely developed in a Subcommittee of the Council. I believe it would be fair to say business and labor representatives agree the language in this bill would appropriately address an employer concern about the date of accident in non-traumatic injuries. However, there is no Workers Compensation Advisory Council recommendation on this matter.

The Advisory Council membership represents employers and employees. The date of accident issue concerns employers, but the change would provide no tangible advantage to employees. In the dynamic of the Advisory Council, that makes the date of accident issue one where labor's support needs to be negotiated. Labor representatives have raised issues we could "trade" for their support of date of accident change, but the employer representatives have not felt the deal proposed was supportable. In short, that is how you can have SB 441, with language largely developed in the Workers Compensation Advisory Council, but without the support of the Advisory Council.

Madam Chairperson, thank you for the opportunity to express the Kansas Chamber's support for the bill before you and to explain about Advisory Council consideration of this topic. I would be happy to answer any questions.

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.

Senate Commerce
02/18/04
Attach #5



**THE KANSAS
CHAMBER**

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Emil Ramirez
Bruce Reves
Steve Rooney
Debbie Snow
Wilma Ventura
Betty Vines
Dan Woodard*

Testimony Presented to the
Senate Commerce Committee
by the
Kansas AFL-CIO
in opposition of SB 441
by Wil Leiker, Executive Vice President

Thank you Madam Chairperson and committee members, my name is Wil Leiker. I appear before you on behalf of the Kansas AFL-CIO regarding SB 441.

I have only recently been appointed to the Workers' Compensation Advisory Council in replacement of Wayne Maichel. As such, I am not completely familiar with the entire history of negotiations that have gone on before me including what is known as the "date of accident." The date of accident is, of course, the subject of SB 441.

The date of accident refers to a "series of traumas" which result in a worker's ultimate disability. The most typical case is carpal tunnel, affecting workers such as meat cutters and word processors. Obviously, a meat cutter who performs repetitious activities 12 hours a day, 6 days a week, is not able to "pinpoint" a particular moment when a particular cow caused the problem in his wrist. It is simply not the same situation as if a cow fell from a rack and crushed his leg. If that happened, the meat cutter could tell you to the minute and hour when the accident occurred.

In cases like carpal tunnel, it is my understanding that the law must "pick a reasonable date" and call that date the date of accident. This has led to confusion and litigation, and Labor agreed that this problem could be fixed and simplified within the system.

The intent of the subcommittee from the Advisory Council was to reduce litigation. THE INTENT OF THE SUBCOMMITTEE WAS NEVER TO EXCLUDE VALID CLAIMS DUE TO TECHNICAL TIME LIMITS. Therefore, in conjunction with clarifying the "date of accident", Labor and Business in the subcommittee also agreed to certain time limit changes. These included abolishing written claim, extending notice, and changing the date for filing an Application for Hearing. Attached as Exhibit A is a copy of the Subcommittee Report setting forth under Section D what was the agreement of the subcommittee to the Advisory Council.

By making these changes, workers validly injured would not be excluded from the system. Without these changes, some workers would be tricked by the timelines. Labor stands by its agreement relative to fixing the date of accident problem with the additional changes. Labor opposes SB 441 in its present form which excludes these other changes.

Thank you for your attention.



Senate Commerce
02/18/04
Attach # 6



REPORT OF SUBCOMMITTEE
PAULA GREATHOUSE
KIP KUBIN
JOHN OSTROWSKI

DRAFT

The subcommittee met and discussed various topics. The subcommittee makes the following recommendations "as a package" with the recognition that some portions are beneficial to different players in the system, and others can be viewed as detrimental. The goal of the subcommittee was to improve the overall system without any increase in litigation.

A. *ADVISORY COUNCIL*

In an attempt to respond to criticisms, the subcommittee feels any of the following changes would be appropriate:

1. Change the voting requirements to three votes "from each side of the table" to make recommendations to the legislature, or
2. Add members to the Advisory Council, making the Council similar in makeup to the Unemployment Insurance Council, or
3. Make the Advisory Council a body of four lawyers and an active Administrative Law Judge. Members would be selected by KADC, KCCI, KTLA, and AFL-CIO. The Administrative Law Judge would be selected by a majority of the four attorneys with approval of the Governor.

B. *PREEXISTING CONDITIONS*

Drafting appropriate language to rectify any perceived problems with the treatment of preexisting conditions proved difficult. The "devil appeared to be in the details." The subcommittee would recommend either or both of the following:

1. Reestablish the Workers Compensation Fund to be responsible for a portion of payments "from dollar one." This would give the employer reimbursement for medical, TTD and PPD on a percentage basis. The reimbursement would be decided administratively, *and without any litigation*. An example would be that the Director's office would issue a decision within a range of choices (e.g. 0%, 33.33%, 66.67% or 100%). One review could be requested by the ALJ.
2. Abolish use of the AMA Guidelines. This would solve the problem of multiple editions of the AMA Guides, incomplete historical medical data, etc.

Exhibit A

Senate Commerce
02/18/04
Attach # 7

C. *ECONOMIC LAYOFFS*

It was unclear to the subcommittee how large of a problem exists with regard to economic layoff. It is suggested that the recent case of *Tallman v. Case Corporation* codifies some of the issues presented by the economic layoff situation in accepting the 1997 decision of *Watkins v. Food Barn*.

D. *DATE OF ACCIDENT*

The previous definition for date of accident in repetitive use cases is acceptable with the following modifications:

- a) The requirement of written claim is abolished.
- b) An Application for Hearing must be filed within two years from the date of accident or two years from the last payment of medical whichever is later.
- c) Notice is extended to 30 days with 75 for just cause.

E. *BENEFITS*

The following changes are suggested for benefits paid to workers:

1. Change the 75% figure to 100% as contained in K.S.A. 44-510e, and
2. Strike the \$50,000 limitation for functional impairment cases.

F. *REINSURANCE FUND*

Create a state-run Reinsurance Fund for pools such that the market is more accessible to pools.

**TESTIMONY BEFORE
THE SENATE COMMITTEE ON COMMERCE
SENATE BILL 441**

February 18, 2004

JEFF K. COOPER #12477
COOPER & LEE, L.L.C.
ATTORNEYS AT LAW
COMMERCE BANK BUILDING
100 S.E. 9TH STREET, 3RD FLOOR
TOPEKA, KANSAS 66612

MADAM CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

My name is Jeff Cooper, and I practice law here in Topeka, Kansas. I am also an Adjunct Professor of Law at Washburn University School of Law and have taught workers compensation for approximately 12 years. I am also a Pro Tem Appeals Board Judge which means I fill in when one of the Board Members has a conflict or is unavailable. I represent the Kansas Workers Compensation Fund and have represented them for at least the last 15 years. I also represent injured workers, as well as defending claims for self-insured employers, such as the City of Topeka, Shawnee County, the State Self-Insurance Fund, and I also defend claims on behalf of insurance companies.

I am appearing before you today on behalf of the Kansas Trial Lawyers Association regarding Senate Bill 441.

Workers compensation claims have three **statutes of limitation**. All of which begin to run or begin with the date of accident.

1. **Notice:**

Notice of an accident must be given to the employer within 10 days of the date of the accident. Notice may be extended due to just cause to 75 days; however, past 75 days no proceeding may be maintained. K.S.A. 44-520.

2. **Written Claim:**

No proceeding for workers compensation shall be maintainable under the Workers Compensation Act unless written claim for compensation is served on the employer within 200 days after the date of accident. K.S.A. 44-520a.

*Senate Commerce
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Attach # 8*

3. Application for Hearing:

No proceeding for compensation shall be maintained under the Workers Compensation Act unless an Application for Hearing is on file with the Office of the Director within three (3) years of the date of accident, or two (2) years from the date of last payment of compensation, whichever is later. K.S.A. 44-534.

As you probably all know, the employee has the burden of proof on all issues, including meeting all the statute of limitation periods. If the employee fails on any one of the three, the employee is not entitled to benefits.

The problem is, by forcing the employee to use an accident date which is the earliest of the three options, in Senate Bill 441, a trap is set for the hardworking employee. An employee who notifies his employer of an injury and keeps on working, keeps on doing his job for seven months, and his condition continues to worsen to the point he can no longer keep working, would miss that 200 day statute of limitations if he does not file a written claim.

Unscrupulous employers could manufacture "notice" from the employee to potentially avoid a claim all together. The company doctor/company nurse could testify "I told the employee his condition was work related a year ago" when maybe that information was not clearly relayed to the worker. Perhaps the worker is not sophisticated enough to know what to do and simply just keeps working.

Obviously, there are serious consequences of the change as made in Senate Bill 441. Certainly, I do not believe the framers of this proposed amendment, nor this Committee, purposely intend to exclude valid claims due to technical time limits. However, as worded without additional changes to the statutes of limitation noted previously, the effect will be to exclude otherwise valid claims due to technical time limits.

A Subcommittee of the Advisory Council, made up of the Director of Workers Compensation and attorneys representing both labor and industry, met and made various recommendations which I believe Mr. Leiker has presented in his testimony. That Committee recommended that the date of accident be clarified, as well as changes made to the statutes of limitation, including abolishing written claim, extending notice, and changing the dates for filing an Application for Hearing on repetitive trauma cases.

Without changes to the statutes of limitation, the date of accident language contained in Senate Bill 441 will serve to either inadvertently, or purposely, set a trap for hardworking Kansans, and otherwise valid claims will be barred based upon the statutes of limitation.

The Kansas Trial Lawyers Association opposes Senate Bill 441 based upon the effect it will have on honest hardworking Kansas employees.