Approved: March 3, 2005
Date

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 2, 2005 in Room 241-N of the Capitol.

All members were present except:
Patricia Kilpatrick- excused

Committee staff present: Norman Furse, Revisor of Statues
Renae Jefferies, Office of Revisor of Statutes
Jerry Ann Donaldson, Kansas Legislative Research Department
June Evans, Committee Secretary

Conferees appearing before the committee:
Tom Whitaker, Executive Director, Kansas Motor Carriers Association
Douglas C. Hobbs, Wallace, Saunders, Austin, Brown & Enochs, Chtd.
Pat Shelley, President, Teague Electric
Duane Simpson, Kansas Grain and Feed Association (KGFA) and Kansas Agribusiness Retailers Association (KARA)

Others attending:
See attached list.

The Chairman opened the meeting and asked if there were any bill introductions?

Representative Ruff requested three bills: (1) Benefits for injured workers increased from $125,000 to $250,000 for permanent disability and increase the average wage bill benefits from 100% to 200%. (2) Employer liability. (3) Physicians choice.

Representative Burgess requested two bills: (1) Reduce the number of members on the Workers Compensation Advisory Council from four to three on each side and repeal the $50,000 cap on disability. (2) Pay raise for Workers Compensation Administrative Law Judges and alter the nomination process.

Vice Chairman Todd Novascone requested a prompt payment act bill.

Terri Roberts, Kansas Coalition for Workplace Safety, requested a bill providing for competitive bidding process pursuant to which the Insurance Commissioner shall seek, and any insurer seeking to qualify as the residual market insurer may submit, rates at which the insurer will agree to insure any employer who is in good faith entitled to but who is unable to procure workers compensation insurance through ordinary methods. The insurance commissioner shall establish an interactive internet site which shall enable any employer licensed in this state to obtain a quote from each workers compensation insurer licensed to write the coverage sought by the employer.

The Chairman said tomorrow, February 3rd, would be the last day for bill introductions.

The Chairman opened the hearing on **HB 2141 -Workers compensation; burden of proof for admission of chemical test result into evidence.**

Tom Whitaker, Executive Director, Kansas Motor Carriers Association, testified as a proponent to **HB 2141,** stating they appeared before the Workers Compensation Advisory Council requesting support to include certain drug levels under the conclusive presumption of employee impairment in the workers compensation statutes. The Advisory Council approved the request and the 1999 Legislature approved **SB 219** which included the drug concentration levels which are the same as those levels found in the Federal Motor Carriers Safety Administration's drug testing levels which are the same as those levels found in the Federal Motor Carrier Safety Administration's drug testing rules and regulations.

HB 2141 clarifies that a positive post-accident drug test performed in accordance with federal and state laws would be conclusive evidence of impairment. The Kansas Motor Carriers Association supports mandatory drug and alcohol testing for truck drivers (Attachment 1).

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 2, 2005 in Room 241-N of the Capitol.

Douglas C. Hobbs, Wallace, Saunders, Austin, Brown & Enochs, Chtd., appeared in support of **HB 2141**. Mr. Hobbs testified on behalf of the Kansas Self-Insurers Association (KSIA), a not-for-profit organization comprised of more than one hundred firms, businesses, corporations, group-funded pools and other private and public entities who operate as self-insurers in Kansas. **HB 2141** amends K.S.A. 44-501 making it easier for employers to utilize the so-called "intoxication defense" in the workers compensation statutes which bars recovery to employees who are injured on the job when their own intoxication or illegal drug use contributed to their injuries. Under the current statutory framework set forth in K.S.A. 44-501(d)(2), the employer (respondent) has the burden of proof to establish that the claimant's injury, disability or death "was contributed to by the employee's use or consumption of alcohol and/or drugs." In order for the employer to successfully utilize this defense it must prove two elements: that the injured worker was under the influence of alcohol AND that there was a nexus between the drug use and the accident. Intoxication is most commonly proven through drug tests. K.S.A. 44-501(d)(2) provides, "it shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that at the time of the injury the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above levels shown on the chart".

Judicial interpretation of K.S.A. 44-501(d)(2) has made the requirements of the introduction into evidence of intoxication tests so onerous that the intoxication defense has been rendered essentially useless.

HB 2141 attempts to align the probable cause requirements in the Workers Compensation Act with the law in criminal cases. New legislation should condemn, rather than encourage, drug use in the workplace (Attachment 2)

Pat Shelley, President, Teague Electric Construction, Lenexa, testified in support of **HB 2141**. Mr. Shelley stated he had personal experience dealing with the provisions of **HB 2141**. An employee was injured on the job. The company has had a substance abuse program for years, so when this employee went for medical treatment, a drug screen was automatically part of the procedure. The employee tested positive – so the employee was terminated. The employee was denied insurance benefits, attorneys got involved on both sides and it is not yet resolved. The statute is pretty clear what the original intent was, but its specific wording says "The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met: (A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working."

When a workers compensation insurance carrier has an open claim, they analyze the situation and they calculate a 'worst case scenario' for medical, legal and compensation, then they maintain a reserve fund equal to that 'worst case' amount. When a case remains open for a long period of time, that reserve shows up on the company's claims history just like a closed and paid claim. When the workers compensation insurance in renewed, the premiums are based on an experience modification factor that reflects a reserve amount that might never be paid out (Attachment 3).

Duane Simpson, testifying on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA) as a proponent for **HB 2141**. Between 2001 and 2004, agribusiness has seen workers compensation increases ranging from 17% to 105%. Workers have had to lay off workers to keep their doors open. One of the big cost drivers of workers compensation in Kansas is the cost of litigation. **HB 2141** will not solve the workers compensation problems our industry faces, but it will be a small step in the right direction and restore some common sense to the system.

All **HB 2141** does is lower the legal hurdle to establish probable cause when testing employees for the use of alcohol or drugs when they have workplace related injuries (Attachment 4).

The Chairman closed the hearing on **HB 2141.**

The following written testimony was distributed by proponents to **HB 2141:** Janet Stubbs, Administrator, Kansas Building Industry Workers Compensation Fund (Attachment 5) and Leslie Kaufman, Governmental Relations Director, Kansas Cooperative Council (Attachment 6).

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 2, 2005 in Room 241-N of the Capitol.

The Chairman asked if there were any more bill introductions.

Bud Burke requested a bill that would add one member to the Medical Directory Advisory Committee.

The Chairman asked if it were tied to Commerce and Labor and Mr. Burke replied it did.

Representative Yoder requested a bill to eliminate the Workers Compensation Advisory Council.

The Chairman stated that without objection all the bill requests would be accepted for introduction.

The meeting adjourned at 10:40 a.m. The next meeting will be February 3, 2005.

COMMERCE AND LABOR COMMITTEE

Date February 2, 2005

NAME	AGENCY
Nancy Pierce	KHCA
Roger Mills Sr.	Reg of Kansas
Wil Leiker	Ks. AFL-CIO
Jim Klaff	KS AFL-CIO
Tom Whitaker	KS Motor Carrier Assn.
Janet Stubbs	KBIWCF
Terri Roberts	Ks. State Nurses Assn.
RUHAMO THOMAS	KDOL-WC
LANA NICOL	KDOL-WC
John M. Ostrowski	KS AFL-CIO
Ron Seeber	Hein Law Firm
Marlee Carpenter	KS Chamber
Pat S Dalley	Teague Electric
Duane Simpson	KGFA - KARA
Tom Tunnell	Kansas Assn of Ethanol Processors
Bill Curtis	Ks Association of School Bds
Ashley Sherard	Lenexa Chamber of Commerce

KANSAS MOTOR CARRIERS ASSOCIATION

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Trucking Solutions Since 1936

Legislative Testimony
before the`
House Commerce and Labor Committee
Representative Don Dahl, Chairman
Wednesday, February 2, 2005

In Support of House Bill No. 2141

MR. CHAIRMAN AND MEMBERS OF THE HOUSE COMMERCE AND LABOR COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our 1,200 member companies in support of House Bill No. 2141.

In 1998, KMCA appeared before the Workers Compensation Advisory Council to request their support to include certain drug levels under the conclusive presumption of employee impairment in the workers compensation statutes. The Advisory Council approved our request and the 1999 Legislature approved Senate Bill No.219 which included the drug concentration levels which are the same as those levels found in the Federal Motor Carrier Safety Administration's drug testing rules and regulations.

Since December of 1989, FMCSA has required motor carriers to implement drug and alcohol testing programs for all drivers of commercial vehicle. Motor carriers must perform pre-employment, random and post accident drug tests. The positive test rate for the trucking industry is 1.5% of those tested.

HB 2141 clarifies that a positive post-accident drug test performed in accordance with federal and state laws would be conclusive evidence of impairment. The Kansas Motor Carriers Association supports mandatory drug and alcohol testing for truck drivers and we support HB 2141.

We thank you for the opportunity to appear before you today and would be pleased to respond to any questions you may have.

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Atch # 1

TESTIMONY FOR THE HOUSE COMMITTEE ON COMMERCE AND LABOR ON HB 2141

Douglas C. Hobbs
Wallace, Saunders, Austin, Brown & Enochs, Chtd.

February 2, 2005

Mr. Chairman and members of the committee, thank you for allowing me to appear before you in support of HB 2141. I am testifying on behalf of the Kansas Self-Insurers Association (KSIA), a not-for-profit organization comprised of more than one hundred firms, businesses, corporations, group-funded pools and other private and public entities who operate as self-insurers in Kansas. House Bill 2141 proposes to amend K.S.A. 44-501 to make it easier for employers to utilize the so-called "intoxication defense" in the workers compensation statutes which bars recovery to employees who are injured on the job when their own intoxication or illegal drug use contributed to their injuries. Under the current statutory framework set forth in K.S.A. 44-501(d)(2), the employer (respondent) has the burden of proof to establish that the claimant's injury, disability or death "was contributed to by the employee's use or consumption of alcohol and/or drugs." In order for the employer to successfully utilize this defense it must prove two elements: that the injured worker was under the influence of alcohol AND that there was a nexus between the drug use and the accident. Intoxication is most commonly proven through drug tests. K.S.A. 44-501(d)(2) provides, "[i]t shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that at the time of the injury the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above levels shown on the

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following chart for the drugs of abuse listed" (see chart located in K.S.A. 44-501(d)(2)). There are several statutory requirements for the admissibility of chemical drug testing to prove impairment:

a. There was probable cause to believe the employee used, had possession of, or was impaired by the drug or alcohol while working;

b. [T]he test samples collected at a time contemporaneous with the events establishing probable cause;

c. [T]he collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional;

d. [T]he test was performed by a laboratory approved by the United States Department of Health and Human Services or licensed by the Department of Health and Environment, except that a blood sample may be tested for alcohol content by a laboratory, only used for that purpose by state law enforcement agencies;

e. [T]he test was confirmed by gas chromatography - mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

f. [T]he foundation evidence must establish, beyond a reasonable doubt, that the tests were from the sample taken from the employee.

Judicial interpretation of K.S.A. 44-501(d)(2) has made the requirements of the introduction into evidence of intoxication tests so onerous that the intoxication defense has been rendered essentially useless. In the Kansas Court of Appeals case of *Evans v. Frakes Trucking*, 31 Kan. App. 2d 211 (2002), the Kansas Court of Appeals ruled that blood alcohol testing showing an alcohol concentration of .05% was inadmissable as the respondent did not have probable cause for taking of the blood test. The deceased worker, a commercial truck driver, drove his truck off the road for no apparent reason. Federal law mandates drug testing when a commercial driver is involved in a fatal accident. The drug sample, collected by the coroner, was taken pursuant to Federal law, and

not as a result of any type of probable cause. As a result, the blood sample was excluded from evidence, and the claimant's dependents were awarded benefits.

Amazingly, the standard for admission of intoxication testing in workers compensation cases is even more stringent than for criminal cases, such as DUI or other related offenses. In *Foos v. Terminix*, 277 Kan 687 (2004), the Kansas Supreme Court agreed to review the lower court's decision which recognized a "normal course of medical treatment" exception to the admissibility of blood alcohol testing. The claimant in this case, who suffered injuries from a single car accident, had consumed nine alcoholic beverages in the hours prior to the accident. The claimant's blood sample which was taken at the hospital, showed his blood contained opiates and an alcohol concentration of .13%, far in excess of the conclusive presumption of 0.04%. The Kansas Court of Appeals relied on cases interpreting the probable cause requirements for admission of intoxication testing in DUI cases, which held that if the blood sample was taken in the ordinary course of medical treatment, test results would be admissible. The Appeals Court held that the same standard applied to the admission of drug tests in workers compensation cases. The Appeals Court found that if blood samples were taken in the ordinary course of medical treatment of a workers compensation claimant's injuries, rather than at the request of an officer, they would be admitted into evidence.

The Kansas Supreme Court, however, overturned the lower court's decision relying on the premise that "the Workers Compensation Act is the legislature's creation of an adequate substitute remedy for the legislatively abolished common-law rights of employees to sue employers for injuries. Accordingly, the Workers Compensation Act undertook to cover every phase of the right to compensation and of the procedure for obtaining it, which is substantial, complete and exclusive, and we must look to the procedure of the act for the methods of its administration" (see *Foos*).

Despite the obvious intoxication of the claimant while performing work for the employer, the court noted that the employer could not rely on the "normal course of medical treatment exception to the admissibility of the blood tests since such an exception was not written into K.S.A. 44-501(d)(2)." The Supreme Court noted **"any such exception to the legislature's scheme must come from the legislature, not the court."** (see *Foos*).

HB 2141 attempts to align the probable cause requirements in the Workers Compensation Act with the law in criminal cases. Moreover, it attempts to correct the situation where employers cannot use the intoxication defense if they are subject to mandatory drug testing or have a voluntary drug testing policy in place. Employers have attempted to create safe work environments for all workers by having policies in place which drug test injured workers. In such situations where an employer either is subject to mandatory drug testing (as seen in the *Evans* case) or drug tests after every workers compensation accident, the probable cause element of the statute cannot be met. In those situations, employees know they will not be denied benefits for their alcohol or illegal drug use while on the job. The affect of the court's current interpretation of K.S.A. 44-501(d)(2) is to punish employers for attempting to maintain a drug-free, safe workplace, and rewarding workers compensation claimants who come to work under the influence of drugs or alcohol. Kansans deserve the safety and security of working in an atmosphere free from drugs and alcohol. New Legislation should condemn, rather than encourage, drug use in the workplace.

HB 2141 will still provide adequate safeguards for employees:

a. The proposed amendments to 44-501 are merely exceptions to the establishment of probable cause. The statute continues to require respondent to prove the sample was collected by a health care professional or someone under the supervision of such professional; the test was performed by a laboratory approved by the United States Department of Health and Human Services or licensed by the Department of Health

and Environment; the test was GCMS confirmed; and chain of custody must still be proved beyond a reasonable doubt.

b. Chain of custody under K.S.A. 44-501(d)(2)(F) continues to be more stringent than that required for the admission of evidence in a criminal case.

i. *State v. Bright*, 229 Kan. 185 (1981) - In prosecution for sale of cocaine, cocaine exhibit was admissible even though there was a break in the chain of custody during transfer of exhibit from one drug safe to a safe at the testing laboratory. The Court stated, any deficiency in chain of custody should go to weight rather than to admissibility of evidence.

ii. *State v. Crawford*, 223 Kan. 127 (1977) - In prosecution for various offenses including rape, rape kit containing specimens taken by a physician was properly admitted despite the fact that the prosecution could not locate the nurse who carried the exhibit from the examination room to a waiting messenger; any deficiency in the chain of custody went to the exhibit's weight rather than to its admissibility.

Again, thank you for the opportunity to appear before this committee, and we urge your favorable disposition of HB 2141. Thank you very much.

Mr. Chairman, members of the committee, thank you for allowing me the opportunity to address you today.

My name is Pat Shelley, I am President of Teague Electric Construction in Lenexa – we are electrical contractors and we have about 170 employees.

I am here today to speak in support of HB 2141 – an act relating to workers compensation and chemical testing.

Unfortunately, I have personal experience dealing with the provisions of this bill.

A couple of years ago we had an employee injured on one of our jobs wiring a new home. Our company has had a substance abuse program for years, so when this employee went for medical treatment, a drug screen was automatically part if the procedure. He tested positive – so based on the provisions of our substance abuse policy, he was terminated and based on their understanding of Kansas law, our insurance carrier denied all benefits. Attorneys got involved, on both sides, and it is still unresolved.

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When you read this statute, I think it's pretty clear to all of us what the original intent was – but its specific wording says – The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met:

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

No employer, in his right mind, would allow an employee on a job using power tools if he had reason to believe that employee was impaired by drugs or alcohol. Yet, I'm told that the courts have ruled that for this provision to apply as it is now written, that is pretty much what would have to happen.

We probably have very little chance of prevailing in our situation - even though our long standing substance abuse policy required the drug test and it was positive.
This is a perfect example of why the changes contained in this bill are necessary.

Drugs and alcohol abuse in the work place can have devastating effects – I think it is important that our laws reflect that we have no tolerance for such abuse.

I would also like to express to you the importance of passing this revised language for implementation as soon as possible. We need to do everything we can to clarify our work comp laws so that claims can be resolved in a timely manner.

When there are areas that are unclear and are subject to dispute – claims can drag on for years. When that happens, you can have a situation where employees that truly deserve benefits can't get them for a long time or you can get a situation like I was talking about today, where the employer is penalized.

You might say – if the benefits aren't being paid out, what do you care?

When a work comp insurance carrier has an open claim, they analyze the situation and they calculate a 'worst case scenario' for medical, legal and compensation – then they maintain a reserve fund equal to that 'worst case' amount. When a case remains open for a long period of time, that reserve shows up on our claims history just like a closed and paid claim. Then, when I renew our work comp insurance every year, our premiums are based on an experience modification factor that reflects a reserve amount that may never be paid out.

It doesn't seem fair, but that's how the system works. All the more reason to clarify the intent of the statute.

STATEMENT OF THE

KANSAS GRAIN & FEED ASSOCIATION

AND THE

KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

SUBMITTED TO THE

HOUSE COMMERCE AND LABOR COMMITTEE

IN SUPPORT OF HOUSE BILL 2141

REP. DON DAHL, CHAIRMAN

FEBRUARY 2, 2005

KGFA & KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

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Atch #4

Chairman Dahl and members of the House Commerce and Labor Committee, I am Duane Simpson testifying on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. On behalf of these organizations, I am testifying in support of House Bill 2141.

Between 2001 and 2004, agribusiness has seen work comp increases ranging from 17% to 105%. In order to keep their doors open, our members have had to lay off workers. One of the big cost drivers of work comp in Kansas is the cost of litigation. Make no mistake about it, House Bill 2141 will not solve the work comp problems our industry faces, but it will be a small step in the right direction and restore some common sense to the system.

All House Bill 2141 does is lower the legal hurdle to establish probable cause when testing employees for the use of alcohol or drugs when they have workplace related injuries.

Opponents to the bill have stressed the simple fact an injury occurred on the job does not rise to the level of 'probable cause' to test that employee. Some will even argue if those tests show intoxication, they should not be admitted as evidence and the employer should still have to pay workers compensation benefits. Is that fair to the employer? The fact that a workplace accident occurred should be probable cause to test for chemicals. House Bill 2141 provides that mechanism if certain criteria are met. Once

those factors are satisfied, the test results should be fully admissible. What is the purpose of requiring probable cause before testing? Although the idea may be well intentioned, it is clearly being misapplied under current law allowing some intoxicated employees to make it through the system and receive benefits to which they are not entitled.

Opponents also argue that this is a public policy decision the Legislature will have to make. Either the employer will pay for the injured worker or the state will have to pick up the tab. We agree that this is a public policy decision that must be answered by this Legislature. We disagree on the question. Is Workers Compensation a system to pay compensation to injured workers arising out of the course of employment, or is it a welfare system to provide benefits to people that injure themselves? Business does not disagree with our responsibility to pay for on the job accidents or cases when an employer is negligent. We do not believe we should ever be required to pay when an injury is clearly the fault of the injured party. That is how the statute actually reads, unfortunately, the probable cause hurdle has become a haven for trial attorneys to force employers to pay benefits to intoxicated employees.

Making this minor change in the Workers Compensation program will not have a dramatic impact on the costs of workers compensation insurance. It will, however, restore an employer's right to not have to pay compensation when they are not responsible for an injury, and it will reduce the cost of litigating whether or not a chemical test should be admitted.

We urge the committee to support HB 2141. Thank you for your time and I will stand for questions.

TESTIMONY

HOUSE COMMERCE AND LABOR COMMITTEE
HB 2141
FEBRUARY 2, 2005

Mr. Chairman & Members of the Committee:

My name is Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund. We insure approximately 900 companies which are providing services for the residential and light commercial construction industry. We appear in strong support of HB 2141.

The construction industry has always been considered a high risk for workers compensation coverage by the insurance carriers and, although I have no hard data to support me in the percentage of workers in this field which use illegal drugs, I am sure I can safely say that it is greater than 7%.

We strongly encourage all companies which we insure to have a strong drug policy which is strictly enforced by management. Those workers not using do not want to work beside someone who is impaired because it puts everyone at risk of injury or death, not just the person with the impairment. We do drug testing in our office in Topeka for not only our member companies but for other businesses in the area that have entered into a contract with us. I disagree that to test an employee is invading their privacy due to a prescribed medication which they are taking. The employer is not privy to the information given to the testing company. I have attached a copy of a 5 panel DOT test report with the names and SS# erased to show you the report that goes to the employer.

I encourage you to pursue more information on this issue from an individual professional with the knowledge to answer your detail questions. This is not a simple issue and I am not qualified to address it in detail. As an example, there was an example given you yesterday about a construction worker who had a beer watching Monday night football. That would be picked up on a different test either a Blood Alcohol Test or a different urinalysis. Technology has brought forth many testing methods either showing a recent drug usage by use of the oral swab or the urinalysis, etc.

Our Fund had just under 1,200 claims reported in 2004. My staff attorney tells me he knows of no case under current law in which we have been able to deny payment because of a drug test. Prior to 2004, we have had many instances of drug use on the job. Falling 2 floors off a roof while trying to ride an air conditioner to the ground is a primary example. The claimant had 3 types of illegal drugs shown in his test at the hospital.

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In addition, the statement was made that we will be putting the burden of payment onto the State if the workers compensation insurance carrier does not pay and the individual is fired from his job. It has been our experience that IF there is health coverage, they will pay if the W.C. carrier denies coverage. Secondly, when does the individual take some responsibility for the ramifications of the use of **illegal** drugs? The key word is **"illegal"**. We agree that the employer should take responsibility for adoption and enforcement of a drug policy but there is a limit to the employer's ability to know all employees' physical well being every minute of the working day. Every employee is responsible for his/her own actions and taking illegal drugs should have some consequences.

I ask your favorable consideration of HB 2141. Thank you.

LabOne

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KS BLDG INDUST WRKS COMP FND
1321 BROADWAY
SCOTTSBLUFF, NE 69361
ATTN:A.A. ARMSTRONG, JR., M.
MEDICAL REVIEW OFFICER
308-632-7411

SPECIMEN ID:
SOC SEC NO:
EMPLOYEE ID #: ?
NAME:
LOCATION: NOT GIVEN
DATE COLLECTED: 11/10/2004 08:35 AM
DATE RECEIVED: 11/10/2004 10:51 PM
ORIGINAL DATE: 11/11/2004
CURRENT DATE: 11/11/2004
TEST REASON: PRE-EMPLOYMENT

COLLECTION SITE INFORMATION
PAM J BLACK
KS BLDG INDUST
2206 SW 29TH TERR
TOPEKA KS 66611
7852664540

TESTS	TOXICOLOGY RESULTS	SCREEN CUTOFF	CONFIRM CUTOFF
AMPHETAMINES	NEGATIVE	1000 NG/ML	500 NG/ML
COCAINE METABOLITE	NEGATIVE	300 NG/ML	150 NG/ML
MARIJUANA METABOLITE	NEGATIVE	50 NG/ML	15 NG/ML
OPIATES	NEGATIVE	2000 NG/ML	2000 NG/ML
PHENCYCLIDINE	NEGATIVE	25 NG/ML	25 NG/ML

TESTING PERFORMED BY LABONE, INC., 10101 RENNER BLVD. LENEXA, KS 66219. THE RESULTS FOR THIS SPECIMEN HAVE BEEN TESTED IN ACCORDANCE WITH THE SCREEN AND CONFIRMATION LEVELS LISTED ABOVE. ALL DRUGS OF ABUSE ARE CONFIRMED BY GAS CHROMATOGRAPHY/MASS SPECTROMETRY AND ETHANOL IS CONFIRMED BY GAS CHROMATOGRAPHY. IF YOU HAVE ANY QUESTIONS, PLEASE CALL OUR CLIENT SERVICE DEPARTMENT AT 1-800-728-4064.

Reviewed by: PETERSON, MARK
END OF REPORT FOR

KANSAS
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House Commerce & Labor Committee

February 2, 2005
Topeka, Kansas

HB 2141 – probable cause for admissibility of drug test results on an injured employee in a work comp case.

Chairman Dahl and members of the Committee, thank you for the opportunity to share comments on behalf of the Kansas Cooperative Council in support of HB 2141. I am Leslie Kaufman and I serve the Council as Governmental Relations Director. The Kansas Cooperative Council includes more 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans.

Many members of our association can benefit from the changes proposed in HB 2141, but probably none more than our grain storage and agribusiness supply members. Increasing workers' compensation rates in the agribusiness sector are a serious concern to the Council's members. The Kansas Cooperative Council will support efforts to slow the increase or reduce these costs to agribusinesses and reduce fraud and abuse of the worker's comp system. Additionally, we support efforts to encourage business development and promote growth in the Kansas economy. The change proposed in HB 2141 is a tool we hope will help achieve these goals.

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HB 2141 will help ensure that in work comp cases relevant evidence as to an injured worker's drug/alcohol use is put before the tryer of fact. Then, it can be evaluated along with, and in light of, other evidence.

It is important that the workers' compensation program maintain its integrity. Safe guards must be included that help insure that those seeking benefits did not cause or contribute to their own injury through alcohol or drug use. Otherwise, the program ceases to be about work comp and becomes an equivalent to welfare, but with a twist – that being only employers, not the entire state, bear the cost burden.

As such, we respectfully encourage this committee to act favorably on HB 2141. Thank you.

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