

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 8, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Lew Ebert, President and CEO, Kansas Chamber of Commerce  
Duane Simpson, Kansas Grain & Feed Association (KGFA) and Kansas Agribusiness Retailers Association (KARA)

Others attending:

See attached list.

The Chairman opened the meeting and asked staff to give a briefing on **HB 2142 - Workers compensation, date of accident, employer's maximum liability for disability compensation, attorney fees.**

Staff briefed the committee on **HB 2142** stating there were three components to the bill: date of accident, employer's maximum liability for disability compensation, and attorney fees. There is new language on page 3, lines 21 thru 29. One key word on line 27 is "or". There would be no maximum award on permanent partial disability. The percentage paid to attorneys was changed from 50% to 25% of that portion of the amount of compensation recovered and paid. There is a repealer that would take effect and be in force from and after its publication in the statute book.

Lew Ebert, President and CEO, Kansas Chamber of Commerce, testified as a proponent to **HB 2142**. The Kansas Chamber does not want to cut benefits to injured workers, but has requested this measure because if **HB 2142** passes, more money would end up in the hands of Kansas' injured workers.

It is believed there needs to be some guidelines setting a date of accident in non-traumatic injury cases, not to trap the injured worker, but to help move the rehabilitation and compensation process along. The Chamber would be happy to work with Judge Moore on establishing some types of guidelines and remedies to cases such as *Kimbro*.

Last week NCCI showed that the frequency of claims in Kansas continues to decline as well as the incidence rates among all major industries in Kansas. This means there are less workers being injured on the job and it seems like Kansas workplaces are becoming safer. In addition, NCCI stated there was higher attorney involvement than in other states in which they collect data.

The Kansas Chamber polled 500 registered voters in Kansas in November 2004. Sixty-eight percent of the respondents believe that the workers' compensation system is plagued by the over involvement of lawyers and that this keeps legitimately injured workers' from receiving their fair share. Additionally, 57% of Kansans believe that the abundance of lawyers in the workers' compensation system keeps businesses from expanding in Kansas. Given this sentiment, it is not surprising that Kansans are very united in their desire to cap attorney fees at 20% (85% favor vs. 8% oppose). Sixty-seven percent of Kansas voters, cutting across all income, age and geographic groupings, strongly favor capping attorney fees.

Currently, an attorney can recover 50% above the settlement offer but **HB 2142** caps the attorney fee at 25%.

The third part of the bill would remove the \$50,000 cap on functional impairments. This is something that labor has been requesting for many years and is something the business community believes would help the injured workers (Attachment 1).

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 8, 2005 in Room 241-N of the Capitol.

Duane Simpson, on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA), testified as a proponent to **HB 2142**. Between 2001 and 2004, agribusiness has seen workers compensation increase between 17% to 105%. Workers have been laid off so businesses could stay open.

**HB 2142** addresses some of the issues that have been driving up the cost of workers compensation. The three major components of the bill would help the cost of litigation which is one of the major cost drivers within the current system. The first one is the removal of the \$50,000 cap on functional impairment. A small technical amendment needs to be made in the bill. On page 5, line 43: (3) strike "subject to the provisions of subsection (a) (4)". This proposal strikes all of subsection (a) (4) so it is unnecessary to make that exception to the \$100,000 permanent or temporary partial disability cap.

**HB 2142** sets the date of accident as the earliest of three dates. Opponents were concerned that this definition might somehow prevent an injured worker from receiving benefits they deserve due to deadlines associated with the date of injury. However, their concern is misplaced. Clearly, a worker who has met any of the three criteria has already progressed through enough of the process to satisfy the relevant deadlines.

The final provision of the bill is the most controversial. This provision reduces the attorney fees to 25%. Since the cap was removed, the gap between Kansas and the national average has grown wider. The question is whether or not attorneys would pass on cases where the settlement offer is fair (Attachment 2).

The meeting adjourned at 10:10 a.m. The next meeting will be February 9, 2005.

COMMERCE AND LABOR COMMITTEE

Date February 8, 2005

NAME	AGENCY
Nancy Pierce	KHCA
Doug Hollandsmith	DOA
Andy Shaw	Goodyear Tire & Rubber
Ashley Shepard	Lenexa Chamber
RICHARD TEMPS	KDOZ - WC
Ken Seibert	Hain Lau Firm
Scott Heider	KSTA
Duane Simpson	KGFA - KARA
LEW EBERT	KS CHAMBER



# Legislative Testimony

HB 2142

February 8, 2005

Testimony before the Kansas House Commerce and Labor Committee  
By Lew Ebert, President and CEO

Chairman Dahl and members of the Committee;

The Kansas Chamber and its over 10,000 small, medium and large businesses support passage of HB 2142. The Kansas Chamber does not want to cut benefits to injured workers, but has requested this measure because if HB 2142 passes, more money will end up in the hands of Kansas' injured workers.

The first part of HB 2142, setting a date of accident in non-traumatic injury cases was passed by the Senate last year in SB 441. We believe that there need to be some guidelines set forth in these types of cases, not to trap the injured worker, but to help move the rehabilitation and compensation process along. Judge Moore in his testimony yesterday pointed out some challenges with the date of accident language as written in HB 2142. We would be happy to work with Judge Moore on establishing some types of guidelines and remedies to cases such as *Kimbro*.

NCCI, the non-partisan group that contracts with the Kansas Department of Insurance to establish workers compensation rates in Kansas as well as 40 other states presented information before this committee last week. In the information presented, NCCI discussed the claim frequency in Kansas continues to decline as well as the incidence rates among all major industries in Kansas. This means that there are less workers being injured on the job and it seems like Kansas workplaces are becoming safer. In addition, NCCI stated that there is higher attorney involvement than in other states in which they collect data.

There were comments yesterday that referenced two studies that ranked Kansas as the best place in America to do business. The two studies that were referenced is in fact only one study that has been released by two different entities, the Wall Street Journal and Forbes magazine. Additionally, the study focuses primarily on property rights in Kansas, not what we are talking about here today, the Kansas business climate. Other independent studies do not rank Kansas so well, the Hudson Institute gives the Kansas business climate a "C-", the Small Business Survival Index ranks the Kansas business environment 31<sup>st</sup>, the Corporation for Enterprise

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Development ranked Kansas as a "C" and Site Selection magazine ranked Kansas as the 25<sup>th</sup> best state to locate. When you look at a broad basis of independent studies, there is room to improve the Kansas business climate.



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In November 2004, the Kansas Chamber polled 500 registered voters in the state. Fully 68% of the respondents believe that the workers' comp system is plagued by the over involvement of lawyers and that this keeps legitimately injured workers' from receiving their fair share. Additionally, 57% of Kansans believe that the abundance of lawyers in the workers' comp system keeps businesses from expanding in Kansas. Given this sentiment, it is no surprise that Kansans are very united in their desire to cap attorney fees at 20% (85% favor vs. 8% oppose). Most striking is the fact that 67% of Kansas voters – cutting across all income, age and geographic groupings – strongly favor capping attorney fees.

The attorney fee provision in HB 2142 does not cap attorney fees at 20% as we surveyed, but at 25% above the settlement offer. The Kansas Chamber does not want to cut benefits to the injured worker, but instead wants to encourage settlements and to get more money in their pockets. Currently, an attorney can recover 50% above the settlement offer. This amendment will still allow an attorney to recover, but more money will get to the injured worker and that is what the Kansas business community wants.

Finally, the third part of the bill would remove the \$50,000 cap on functional impairments. This is something that labor has been requesting for many years and is something the business community believes will help the injured workers.

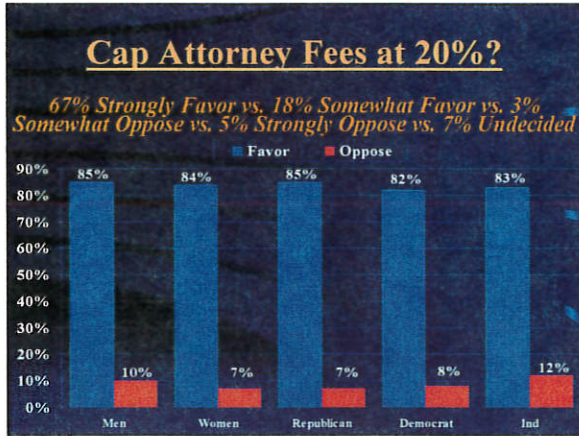
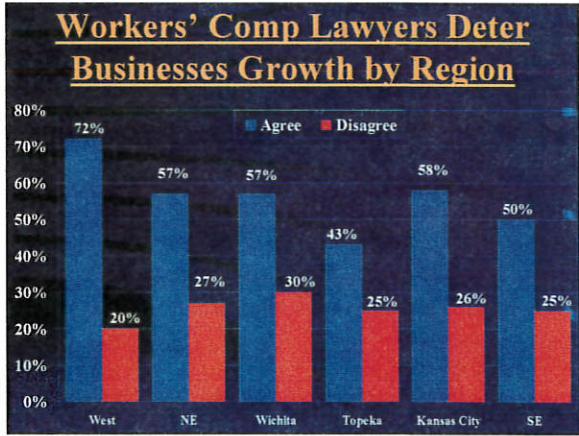
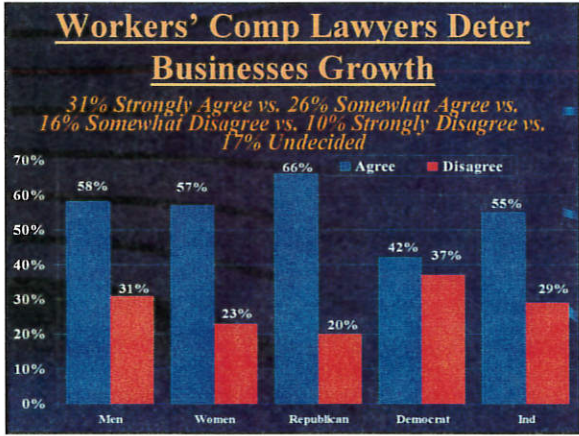
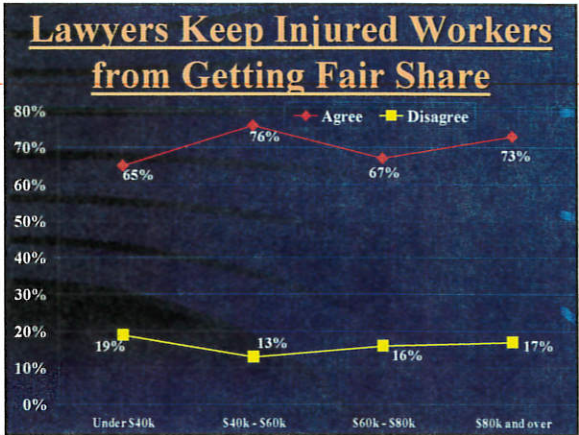
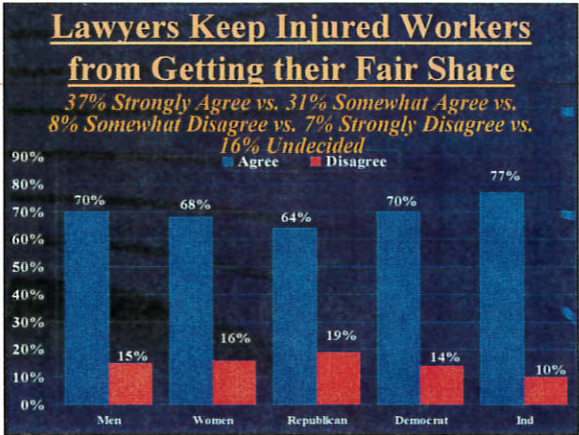
The Kansas Chamber believes that this is a balanced bill and will help both the employer and the employee. The bill helps clarify a time problem that has the attention of the employer thought the date of accident language and does not reduce benefits in any way but in fact puts more money in the injured workers pockets.

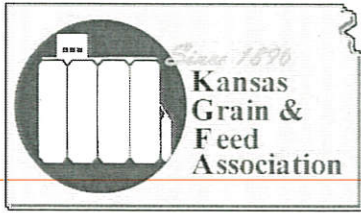
Thank you for your time here today and I will be happy to answer any questions.

*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*

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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 2142  
REP. DON DAHL, CHAIRMAN  
FEBRUARY 8, 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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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 2142.

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. HB 2142 addresses some of the issues that have been driving up the cost of work comp in Kansas. Will this bill have a dramatic effect on our industry's work comp rates? No, but HB 2142 has 3 major provisions that will help the cost of litigation which is one of the major cost drivers within the current system.

The first one is the removal of the \$50,000 cap on functional impairment. I do not know of a single case in our industry where the \$50,000 cap applied. Although this provision is relatively uncontroversial, there is a small technical amendment that needs to be made in the bill. On page 5, line 43: (3) strike ~~subject to the provisions of subsection (a) (4)~~. This proposal strikes all of subsection (a) (4) so it is unnecessary to make that exception to the \$100,000 permanent or temporary partial disability cap.

The second provision of this bill is setting the date of accident for non-traumatic injuries. As previous testimony has already noted, the



current system is often litigated and it is arbitrary. In some cases, both parties to the case can change the date of accident at will. The system is clearly broken. HB 2142 sets the date of accident as the earliest of three dates: 1) the date the employee gives the employer written notice of the injury, 2) the date the condition is diagnosed as work related and communicated in writing to the injured worker, and 3) the first day the injured worker is restricted or taken off of work by a physician due to the injury.

Opponents were concerned that this definition might somehow prevent an injured worker from receiving benefits they deserve due to deadlines associated with the date of injury. However, their concern is misplaced. Clearly, a worker who has met any of the three criteria in HB 2142 has already progressed through enough of the process to satisfy the relevant deadlines. For example, a worker has 10 days to notify an employer of a workplace injury after the date of accident. If the date of accident is the date the worker notifies the employer, how can he possibly miss the deadline to notify his employer? This language is designed to let the Legislature decide the date of injury rather than forcing both workers and employers to rely on ever changing judicial rules.

The final provision of the bill is clearly the most controversial. It is the one that once again reduces the amount of attorney fees to 25% above the settlement offer. We have experience in Kansas with this issue and we know it helps to reduce the cost of litigation in the system. Some opponents argue that limiting attorney fees will make it more difficult to find an attorney who will take the case. However, in 1997, the last year the 25% cap was in place, 15.5% of Kansas cases had attorney involvement compared with 13.8% nationally, according to the National Council on Compensation Insurance (NCCI). Since the cap was removed, the gap between Kansas and the national average has grown wider. The question is not whether or not an attorney will take the case of an injured worker who needs representation. Clearly, those cases will always have an attorney. The question is whether or not attorneys will pass on cases where the settlement offer is fair.

What percentage of an injury settlement is reasonable to give to the attorney? Under current law, attorneys get half. Is that good for the injured worker?

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If the goal of this committee is to have a work comp system that allows business to thrive while fairly compensating injured workers, does it not make sense to support legislation that puts a higher percentage of injury settlements in the pockets of the injured worker? HB 2142 protects injured workers from exorbitant attorney fees.

Opponents also noted that,

“inadequate workers compensation benefits have a direct impact on Medicaid. Workers who are impoverished due to workplace injuries, their last resort is Medicaid. Thus, the expense of an on-the-job injury is transferred from insurance companies and employers to state and federal government.”

This raises the obvious question, what about attorney fees? Do exorbitant attorney fees force impoverished workers to seek benefits from Medicaid at government expense?

There are many reasons that work comp rates in the agribusiness industry have skyrocketed over the past few years. HB 2142 will not solve all of the problems our industry faces, but it will help an industry that is in desperate need of assistance. KGFA and KARA support HB 2142 and urge the committee to do so as well. Thank you for your time and I will stand for questions.