

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:09 A.M. on March 17, 2005 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Marlee Carpenter, Kansas Chamber of Commerce & Industry (KCCI)
Terri Roberts, Kansas Coalition for Workplace Safety
Tuck Duncan, Kansas Occupational Therapy Association
Scott Heidner, Kansas Self Insurers Association (KSIA)
Paul Silovsky, Kansas Physical Therapy Association

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by calling on Kathie Sparks, Legislative Research to explain **HB 2142**. Ms. Sparks stated that the Substitute for **HB 2142** would amend the Workers Compensation Act as it relates to the date of accident. The bill would provide that in cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or micro traumas, the date of the accident shall be the date 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. In the event the worker is not taken off work or restricted as above described, then the date of the injury be the earliest of the following: the date upon which the employee gives written notice to the employer of the injury or the date the condition is diagnosed as work related, provided such fact is communicated in writing to the injured worker.

In cases where none of the above criteria are met, then the date of accident shall be determined by the administrative law judge based on all evidence and circumstances; and in no event shall the date of accident be the date of, or the day before the regular hearing. These provisions would not preclude a worker's right to make a claim for aggravation of injuries under the Workers Compensation Act.

Chairperson Brownlee opened the hearing in **HB 2142** by introducing Marlee Carpenter, KCCI, to give her testimony as a proponent on **HB 2142**. Ms. Carpenter offered written testimony. (Attachment 1) Ms. Carpenter stated the language of **HB 2142** is agreed language between the Kansas Chamber and the Kansas Trial Lawyers Association and sets out a test for a date of accidental non-traumatic injury cases. Ms. Carpenter urged the Committee to support **HB 2142**.

Chairperson Brownlee introduced Terri Roberts, Kansas Coalition for Workplace Safety, to give her testimony as a proponent of **HB 2142**. Ms. Roberts offered written testimony (Attachment 2) and made a brief summary of her written testimony stating that they did not support this bill originally but through the work of the KCCI Chamber and the Kansas Trial Lawyers Association a fair compromise has been made. The Kansas Coalition for Workplace Safety can now support this bill.

Chairperson Brownlee called the Committee's attention to the written testimony of the Kansas Trial Lawyers Association. (Attachment 3)

Upon completion of the testimonies Chairperson Brownlee called for questions. Being none, Chairperson closed the hearing on **HB 2142**. Senator Barone moved to pass the bill out favorable. Senator Kelly seconded. Motion Carried.

Chairperson Brownlee opened the hearing on **HB 2299** by stating the bill was self explanatory and introducing Tuck Duncan, Kansas Occupational Therapy Association to give his testimony as a proponent of the bill. Mr. Duncan offered written testimony (Attachment 4) and gave a brief summary of his testimony. He urged the Committee to support **HB 2299**.

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:09 A.M. on March 17, 2005 in Room 123-S of the Capitol.

Chairperson Brownlee introduced Scott Heidner, KSIA to give his testimony as a proponent to **HB 2299**. Mr. Heidner offered an amendment to the bill. (Attachment 5) He stated the amendment he offered would add two more members, one from labor and one from business to be appointed by the Secretary to keep a balance on the panel. Upon completion of Mr. Heidner's explanation on the amendment, a discussion of questions and answers occurred.

Senator Wysong asked the question on how many members were on the board now. Mr. Heidner stated that the board was made up of 7 members at the present time. **HB 2299** would add two more, one from physical therapy and one from occupational therapy and his amendment would add two more; one from business and one from labor. At the present time there is one from labor and one from business and his amendment would add in addition to what is on the panel. A discussion followed on the number of members and if any additional were actually needed. There was also a discussion on the responsibilities of the Work Comp Advisory Panel. Dick Thomas representing the Workers Compensation Division, was recognized and he entered the discussion. Mr. Thomas stated that the Panel suggests the medical fees for the work comp schedules. The discussion shifted to the fiscal note on this bill. Mr. Thomas stated the members could charge mileage up to \$100.00 per year but in the past years only \$100.00 had been paid out. Most members do not charge the mileage. Next the Committee discussed that how adding more groups would open the door for next year more groups to ask to be added to the Panel. The point was made by Senator Reitz that a panel could get too big to function properly. More people make the meeting much longer. Senator Reitz asked about the attendance to these meetings. Mr. Thomas stated the Committee did not meet very often and sometimes the meetings were done by conference calling. He also added the schedules were redone every other year. Senator Brownlee suggested combining the two groups to just add one person. That idea was discussed among the Committee.

Chairperson Brownlee does not think it will be very difficult to add the people to a panel already established. Senator Barone asked about the participation. Mr. Thomas stated again they don't meet very often but when they do the participation is very good. Senator Barone asked how the medical fee schedules measure up to others such as BCBS. Mr. Thomas stated he did not have information for local comparisons just comparisons with other states.

Chairperson Brownlee introduced Paul Silovsky, Kansas Physical Therapist Association, to testify as a proponent of **HB 2299**. Mr. Silovsky offered written testimony. (Attachment 6) Mr. Silovsky stated that having members of the KPTA and Kota added the advisory panel will provide more comprehensive and improved representation as the state continues in its efforts toward evaluating workers compensation cost containment and effective fee schedule utilization.

The discussion continued upon the conclusion of Mr. Silovsky's testimony regarding the proposed amendment by Mr. Heidner. Senator Kelly suggested one category for rehab and then only one person representing instead of two. Chairperson Brownlee recognized Bud Burke who stated the issue was trying to hold down the size. This panel is not a major panel of work comp, it is just for fee schedules. He stated the occupational therapist and physical therapist are not the same and could not be lumped together. This panel just makes recommendations for the fee schedules of work comp. Senator Wagle entered the discussion. She wanted to know why we need this bill. Mr. Duncan joined the discussion stating they were asking because in some states the therapists have been left out so they are trying to prevent that from happening in Kansas.

Upon completion of the discussion Senator Reitz moved to accept the amendment from Mr. Heidner. Senator Jordan seconded. Motion carried.

Chairperson Brownlee closed the hearing on **HB 2299**.

Chairperson Brownlee turned the Committee's attention to **HB 2141**. She stated there had been a lot of correspondence and dialog with the beer distributors regarding this bill. Chairperson Brownlee stated that the .04 blood level comes from the Federal Department of Transportation standard for a commercial drivers licenses. Chairperson Brownlee recognized Senator Schodorf. Senator Schodorf had questions on if an employee has permission to drink alcohol on the job such as a sales person entertaining a customer/client what would happen if they were in an accident. Senator Brownlee stated she emailed her beer distributor and told

CONTINUATION SHEET

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him his drivers would have to comply with the federal law. The discussion continued on some of the beer/liquor distributors' concerns regarding this bill. Senator Jordan joined the discussion stating he felt there was a lot of confusion with this bill. There are a lot of sales people that take clients/customers out to dinner and have a drink and they are on the job. The question is they are on the job and what is the liability under this bill with that kind of situation. The .04 has been on the books for quite a while and hasn't seemed to be a problem until this bill came up. Senator Jordan doesn't think it is a problem and would like to have discussion. Senator Brownlee stated the liquor lobby has distorted the intent of this bill. The purpose of this bill is to make sure that if someone was drinking on the job and that impaired their judgment and caused them to have an accident that evidence could be used in a work comp hearing. Senator Emler joined in the discussion stating there were some things about the amendment that bothered him and he was confused and had not decided which way to go yet. Senator Kelly entered into the discussion and stated she shared in Senator Emler's confusion and feels the Committee needs to think it through. Upon the conclusion of this discussion.

Senator Jordan moved this bill out favorably. Senator Wysong seconded. Motion carried with one no vote from Senator Reitz.

Meeting adjourned at 9:00 a.m. with the next meeting scheduled for tomorrow, March 18, 2005 at 8:30 a.m. in room 123S.

Legislative Testimony

HB 2142

March 17, 2005

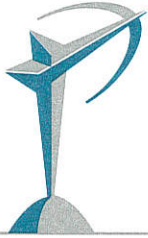
**Testimony before the Kansas Senate Commerce Committee
By Marlee Carpenter, Vice President of Government Affairs**

Co-Chairman Brownlee and Jordan and member of the committee;

The Kansas Chamber and its over 10,000 small, medium and large businesses support passage of HB 2142. This bill was originally requested by our organization in the House Commerce Committee. Since its introduction, several elements have been stripped out and the date of accident language is all that remains.

The current HB 2142 is agreed to language between the Kansas Chamber and the Kansas Trial Lawyers Association and sets out a test for a date of accident in non-traumatic injury cases. Similar language was passed by the Senate last year in SB 441. We believe that there need to be some guidelines set forth in non-traumatic injury cases, not to trap the injured worker, but to help move the rehabilitation and compensation process along.

The Kansas Chamber supports HB 2142 and urges your support it as well. Thank you for your time and I will be happy to answer any questions.



**THE KANSAS
CHAMBER**

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Senate Commerce Committee

3-17-05

Attachment 1-1

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.

Kansas Coalition for Workplace Safety

Promoting Economic Security Through Workplace Safety for Kansas Workers and their Families.

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
- Roofers Local #20
- 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
- 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

H.B. 2142 Date of Accident: Workers Compensation

March 17, 2005

Good Morning, my name is Terri Roberts R.N., J.D., and I am the Executive Director of the KANSAS STATE NURSES ASSOCIATION and Chairperson of the KANSAS COALITION FOR WORKPLACE SAFETY.

The KANSAS COALITION FOR WORKPLACE SAFETY testified on H.B. 2142 in the House in opposition to the originally proposed language. Recommended changes were added to the definitions and timeline for “date of accident” that the Coalition believes to be a fair compromise. Many parties including the Coalition and the Kansas Chamber of Commerce were part of supporting the amended language.. We are pleased to be able to support H.B. 2142 in its current amended form.

Thank You.

Terri Roberts J.D., R.N.
Chairperson
Kansas Coalition for Workplace Safety
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cell: 785-231-9511
e-mail: troberts@ksna.net

Senate Commerce Committee

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Attachment

2-1



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Co-Chairs Karin Brownlee and Nick Jordan and the Senate Committee on Commerce

From: Terry Humphrey of the Kansas Trial Lawyers Association

Date: March 17, 2005

Re: HB 2142

KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. I appreciate the opportunity to present written testimony on HB 2142.

HB 2142 is a workers compensation bill that deals with determination of the date of accident. Determining the date of accident is important and often complicated in workers who suffer repetitive-use injuries, such as carpal tunnel syndrome. KTLA, as a member of the Kansas Coalition for Workplace Safety, worked with the proponents of the bill and were able to craft compromise language that was added to the bill in the House. With these amendments, KTLA is pleased to support HB 2142.

Thank you for the opportunity to present testimony on HB 2142, and I respectfully request your support of the bill without further amendment.

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Attachment 3-1

Terry Humphrey, Executive Director



**Kansas Occupational Therapy Association
212 SW 87th Avenue, Suite 202
Topeka, Kansas 66603**

To: Senate Committee on Commerce
From: R.E. "Tuck" Duncan, KOTA
RE: HB2299

HB 2299 amends a provision in the Workers Compensation Act regarding the Medical Fee Schedule Advisory Panel. The bill adds two (2) members to the panel as follows: a physical therapist; and an occupational therapist. The additional members would raise the number on the Advisory Panel from the current level of 7 to 9 members. The bill is supported by the Kansas Physical Therapy Association and the Kansas Occupational Therapy Association. The fiscal note on the original bill indicated that the bill is expected to have no fiscal effect on the budget of the Kansas Board of Healing Arts and that passage of the bill would have negligible effect on the budget of the Department of Labor because of travel expenses for the additional panel members. Physical Therapists and Occupational Therapists, both licensed allied health professions, provide important clinical services for rehabilitation. Attached please find additional information regarding occupational therapy and occupational therapy services in work rehabilitation. We respectfully request your support. *Thank you for your attention to and consideration of this matter.*

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Attachment

4-1



Every day, children and adults have or develop health conditions that significantly affect their ability to manage their daily lives. With the help of occupational therapy, many of these individuals can achieve or regain a higher level of independence. When skill and strength cannot be developed or improved, occupational therapy offers creative solutions and alternatives for carrying out daily activities. Occupational therapy is skilled treatment that helps individuals achieve independence in all facets of their lives. It gives people the "skills for the job of living" necessary for independent and satisfying lives. Services typically include:

- Customized treatment programs to improve one's ability to perform daily activities
- Comprehensive home and job site evaluations with adaptation recommendations
- Performance skills assessments and treatment
- Adaptive equipment recommendations and usage training
- Guidance to family members and caregivers

About Occupational Therapy Practitioners Occupational therapy practitioners are skilled professionals whose education includes the study of human growth and development with specific emphasis on the social, emotional, and physiological effects of illness and injury. The occupational therapist enters the field with a bachelors, masters, or doctoral degree. The occupational therapy assistant generally earns an associate degree. Practitioners must complete supervised clinical internships in a variety of health care settings, and pass a national examination. Most states also regulate occupational therapy practice.

Who Benefits From Occupational Therapy? A wide variety of people can benefit from occupational therapy, including those with:

- work-related injuries including lower back problems or repetitive stress injuries
- limitations following a stroke or heart attack
- arthritis, multiple sclerosis, or other serious chronic conditions
- birth injuries, learning problems, or developmental disabilities
- mental health or behavioral problems including Alzheimer's, schizophrenia, and post-traumatic stress
- problems with substance use or eating disorders
- burns, spinal cord injuries, or amputations
- broken bones or other injuries from falls, sports injuries, or accidents
- vision or cognitive problems that threaten their ability to drive

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Attachment 4-2

OCCUPATIONAL THERAPY SERVICES IN WORK REHABILITATION: WORK HARDENING/WORK CONDITIONING

Work rehabilitation is a structured program of graded physical conditioning/strengthening exercises and functional tasks in conjunction with real or simulated job activities. Treatment is designed to improve the individual's cardiopulmonary, neuromusculoskeletal (strength, endurance, movement, flexibility, stability, and motor control) functions, biomechanical/human performance levels, and psychosocial aspects as they relate to the demands of work. Occupational therapists use work-related activities in the assessment, treatment, and management of individuals whose ability to function in a work environment has been impaired by physical, emotional, or developmental illness or injury.

Work rehabilitation provides a transition between acute care and return to work while addressing the issues of safety, physical tolerances, work behaviors, and functional abilities.

What Are the Benefits of Work Rehabilitation?

- Injured individuals return more quickly and safely to employment with greater physical endurance/human performance levels and ability to meet and perform the job requirements.
- Injured individuals gain a clear knowledge of their capabilities and prepare them for reentry into the community and work force.
- Employers receive assurance that the employee is physically competent to perform the essential functions of the job and has the necessary work readiness skills. The employer may realize a reduction in lost work days, lost productivity, workers' compensation claims and associated costs.
- Insurance carriers receive rapid case resolution and a decrease in the administrative costs of case management.
- Physicians receive objective documentation of physical abilities on which to base return to work clearance, impairment rating or disability determination.
- Rehabilitation case managers gain a clearer picture of the individual's physical capacities, which aids in focused program planning and vocational exploration.

Who Should Be Referred for Work Rehabilitation?

- Individuals whose physical or behavioral tolerances interfere in return to work.
- Individuals who require modifications and/or reasonable accommodations to maximize safe and functional return to work following an illness or injury.
- Individuals who seek to re-enter the job market but require assistance in overcoming physical or behavioral barriers.
- Individuals who need to document their physical capabilities to perform specific job demands.

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Attachment 4-3

What Are the Goals of Work Rehabilitation?

- To insure a smooth, rapid, safe transition into the work force
- To develop physical tolerance for work, including flexibility, strength, and endurance
- To develop safe job performance to prevent re-injury
- To develop and reinforce appropriate work behaviors
- To provide data concerning a worker's physical and psychological tolerances that are essential to the vocational planning process
- To determine if tool or job site modifications, ergonomics, or assistive technology will remove barriers to return to work
- To promote patient responsibility and self-management

Where is Work Rehabilitation Provided? Industry (at the job-site), Community based health centers , Outpatient rehabilitation facilities, Individual or group practices, Hospital based programs

Who Pays for Work Rehabilitation? Workers' compensation insurance plans, Self-insured employers, Individual insurance plans, State and/or local agencies, Managed care plans

What Specialized Education and Experience Do Occupational Therapy Practitioners Bring to Work Rehabilitation?

- Occupational therapists hold bachelor's or master's degrees and occupational therapy assistants have associate degrees. Occupational therapy practitioners must complete supervised clinical internships in a variety of health care settings and are required to pass a national certification examination. Individual states also regulate occupational therapy practice. Occupational therapy education includes the study of human growth and development with specific emphasis on the social, emotional, and physiological implications of illness and injury.
- Occupational therapy practitioners are also skilled in developing and guiding a job-specific program of graded activity for the individual, job task analysis, and job station and tool modification, and in identifying and remediating behaviors inappropriate to the work environment.
- Occupational therapy practitioners use their knowledge of the structure and function of the human body, the effects of illness and injury, and the components of activity to increase the individual's involvement in productive activity and safe practices.



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Attachment 4-4

1 sure availability of such reasonably necessary treatment, care and attend-
2 ance to each injured employee to cure and relieve the employee from
3 the effects of the injury. The schedule shall include provisions and review
4 procedures for exceptional cases involving extraordinary medical proce-
5 dures or circumstances and shall include costs and charges for medical
6 records and testimony.

7 (2) In every case, all fees, transportation costs, charges under this
8 section and all costs and charges for medical records and testimony shall
9 be subject to approval by the director and shall be limited to such as are
10 fair, reasonable and necessary. The schedule of maximum fees shall be
11 revised as necessary at least every two years by the director to assure that
12 the schedule is current, reasonable and fair.

13 (3) Any contract or any billing or charge which any health care pro-
14 vider, vocational rehabilitation service provider, hospital, person or insti-
15 tution enters into with or makes to any patient for services rendered in
16 connection with injuries covered by the workers compensation act or the
17 fee schedule adopted under this section, which is or may be in excess of
18 or not in accordance with such act or fee schedule, is unlawful, void and
19 unenforceable as a debt.

20 (d) There is hereby created an advisory panel to assist the director in
21 establishing a schedule of maximum fees as required by this section. The
22 panel shall consist of the commissioner of insurance and ~~seven~~ ~~eight~~ ~~nine~~
23 members appointed as follows: One person shall be appointed by the
24 Kansas medical society; one member shall be appointed by the Kansas
25 association of osteopathic medicine; one member shall be appointed by
26 the Kansas hospital association; one member shall be appointed by the
27 Kansas chiropractic association; *one member shall be appointed by the*
28 *Kansas physical therapy association, one member shall be appointed*
29 **by the Kansas occupational therapy association** and ~~three~~ members
30 shall be appointed by the secretary. Of the members appointed by the
31 secretary, ~~one shall be a representative of employers recommended to~~
32 ~~the secretary by the Kansas chamber of commerce and industry; one shall~~
33 ~~be a representative of employees recommended to the secretary by the~~
34 ~~Kansas AFL-CIO; and one shall be a representative of providers of voca-~~
35 ~~tional rehabilitation services pursuant to K.S.A. 44-510g and amend-~~
36 ~~ments thereto. Each appointed member shall be appointed for a term of~~
37 ~~office of two years which shall commence on July 1 of the year of ap-~~
38 ~~pointment. Members of the advisory panel attending meetings of the~~
39 ~~advisory panel, or attending a subcommittee of the advisory panel au-~~
40 ~~thorized by the advisory panel, shall be paid subsistence allowances, mile-~~
41 ~~age and other expenses as provided in K.S.A. 75-3223 and amendments~~
42 ~~thereto.~~

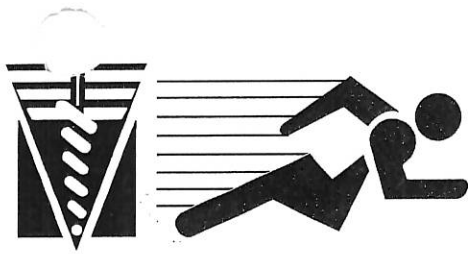
— eleven

five

two shall be representatives

two shall be representatives

43 (e) All fees and other charges paid for such treatment, care and at-



KANSAS PHYSICAL THERAPY ASSOCIATION

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Testimony to the Senate Commerce Committee

HB 2299- Workers Compensation Advisory Panel Membership Thursday, March 17, 2005

Good morning Chairpersons Jordan and Brownlee and members of the Commerce Committee, I represent the Kansas Physical Therapy Association (KPTA) and its support of HB 2299 as amended in the House Commerce and Labor Committee.

HB 2299 simply stated, allows for the inclusion of an appointee from both the Kansas Physical Therapy and Occupational Therapy Associations on the workers compensation fee schedule advisory panel. Currently, there is no representation within the panel by a licensed provider of physical rehabilitation services. There is however, regular and essential participation by Physical and Occupational Therapists within the regular prevention, education and treatment of injured workers. Both of these groups are consistent and significant providers of health care to injured workers within the State of Kansas.

Having members of the KPTA and KOTA added the advisory panel will provide more comprehensive and improved representation as the state continues in its efforts toward evaluating workers compensation cost containment and effective fee schedule utilization. Representation including the Physical and Occupational Therapist's would add a unique viewpoint in that they are the providers that regularly practice within a diversity of settings that have a direct impact upon the workers comp system. This advisory activity does have a significant financial impact upon the states employers, providers, workers and public at large and the inclusion of both a Physical and Occupational Therapist will help enhance this process.

We would appreciate your favorable consideration of HB 2299.

**Paul Silovsky PT
Kansas Physical Therapy Association**

Senate Commerce Committee

3-17-05

Attachment 6-1