

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 10, 2006 in Room 241-N of the Capitol.

All members were present except:

Mike Kiegerl- excused
Ty Masterson- excused

Committee staff present:

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

Conferees appearing before the committee:

Ron Laskowski, Attorney, Kansas Chamber of Commerce
Jeff Glendenning, Kansas Chamber of Commerce
Tina Williams, Kansas Self Insurers Association

Others attending:

See attached list.

The Chairman stated the Minutes of January 24, 25, 26, 30, 31 and February 1, 2, 6 and 7 were distributed.

Representative Grant moved and Representative Ruiz seconded without objections the Minutes be accepted. The motion carried.

The Chairman opened the hearing on **HB 2753 - Workers compensation, closing claims five years old.**

Staff gave a briefing on **HB 2753**. The new language is (f) *No proceedings for compensation under this section shall be maintained and the claim shall be dismissed if the hearing under this section has not been concluded and all evidence submitted within five years from the date of the filing of the application for hearing pursuant to K.S.A. 44-534, and amendments thereto, unless a timely motion has been filed to extend for cause the five-year period.*

Ronald J. Laskowski, Kansas Chamber of Commerce, testified as a proponent to **HB 2753**. The bill establishes a statute of limitations for the adjudication of workers compensation claims and is intended to promote the timely resolution of litigation involving work-related injuries. Pertinent portions of **HB 2753** reads as follows: "(f) No proceedings for compensation under this section shall be maintained and the claim shall be dismissed if the hearing under this section has not been concluded and all evidence submitted within five years from the date of the filing of the application for hearing pursuant to K.S.A. 44-534, and amendments thereto, unless a timely motion has been filed to extend for cause the five-year period."

The proposed reform of Kansas workers compensation law offers a procedural format consistent with existing public policy and will have positive effects on the administration of workers compensation in Kansas with no negative impact on a claimant's rights whatsoever. This is positive legislation for all parties concerned. The minimum of time for a claim is eight years (Attachment 1).

Jeff Glendenning, Vice President of Political Affairs, Kansas Chamber of Commerce, testified as a proponent to **HB 2753**. This measure would allow employers to close workers compensation claims if, and only if, the injured employee filed the claim for a preliminary hearing and then did not proceed to prosecute the claim over a period of five years (Attachment 2).

Tina Williams, Kansas Self-Insurers Association and Claims Director for the Kansas Restaurant and Hospitality Association, testified as a proponent to **HB 2753**. It becomes an extremely complicated process for claims management when carrying unknown liabilities forward. It restricts us from closing fund years and distributing available dividends to members as we issue dividends only when all claims in a fund year are closed and the fund year is subsequently closed. Many of the insured members are small independent

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 10, 2006 in Room 241-N of the Capitol.

businesses who could use the dividends to help offset other increasing costs in operating a business in Kansas. Currently our fund years are closed through 1997. **HB 2753** would allow to close a fund year with certainty a claim would not resurface with unknown liability in years to come. It is believed 5 years is more than enough time for all parties to present their case for final determination through the Courts (Attachment 3).

Jeff K. Cooper, Attorney, appearing on behalf of the Kansas Coalition for Workplace Safety, testified in opposition of **HB 2753**. Under this Bill, a hearing and all evidence must be submitted within five years of the date of the filing of the Application for Hearing unless a Motion For Cause has been filed. Kansas workers compensation laws already have three statutes of limitations in workers compensation. Kansas is the only state in the nation that has three. Does Kansas need to become the only state in the Union that has four statutes of limitations? In summary, this provision would, apparently, require all cases to go to a Regular Hearing Level in front of an Administrative Law Judge, or be dismissed. That result would create an enormous burden on an already overworked Administrative Law Judge Staff. As written, the amendment would dismiss cases with ongoing open medical, would not allow Settlement Hearings or Agreed Awards under the present system where any ongoing rights, i.e., future medical, review and modification, would be potentially available. This amendment would set traps for unwary workers and any legitimate reasons for this provision are greatly outweighed by the catastrophic effects it would have on many workers compensation cases, and urge this Committee to oppose **HB 2753** (Attachment 4).

Representative Ruff stated the Workers Compensation Council should work this out first.

Representative Garcia asked if the parties could come together and work out their differences before working the bill.

The Chairman said, yes, that could be done.

The Chairman closed the hearing on **HB 2753**.

The meeting adjourned at 10:45 a.m. The next meeting will be February13, 2006.

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LAWYERS

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Summary of Testimony in Support of House Bill No.2753
Presented to House Committee on Commerce
on February 10, 2006.

I. INTRODUCTION

House Bill 2753 establishes a statute of limitations for the adjudication of workers compensation claims and is intended to promote the timely resolution of litigation involving work-related injuries. Pertinent portions of House Bill 2753 reads as follows:

“(f) No proceedings for compensation under this section shall be maintained and the claim shall be dismissed if the hearing under this section has not been concluded and all evidence submitted within five years from the date of the filing of the application for hearing pursuant to K.S.A. 44-534, and amendments thereto, unless a timely motion has been filed to extend for cause the five-year period.”

The proposed reform of Kansas workers compensation law offers a procedural format consistent with existing public policy and will have positive effects on the administration of workers compensation in Kansas with no negative impact on a claimant’s rights whatsoever.

II. THE CURRENT STATUS OF KANSAS LAW REGARDING TIMELY ADJUDICATION OF CLAIMS.

Existing workers compensation law acknowledges certain statute of limitations. There is a statute of limitation regarding the reporting of accidental injury. (K.S.A. 44-520). Likewise, there is a statute of limitations regarding the filing of a written claim. (K.S.A. 44-520(a)). Pursuant to K.S.A. 44-534 in order to prosecute a claim before the Division of Workers Compensation, claimant must file an application for hearing within three (3) years of the date of the accident, or within two (2) years of the date of the last payment of compensation, whichever is later. It is well recognized that the statute of limitations that requires that a claim be filed within three (3) years from the date of the accident, or two (2) years from the last payment of compensation is intended to promote the public policy goal of finalizing litigation in a timely fashion. There is absolutely no authority in Kansas suggesting that any public policy goal is

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furthered by unlimited extension of the prospect of litigation between parties well into the remote future.

While Kansas recognizes a statute of limitations regarding filing of a claim with the Division of Workers Compensation, the same workers compensation statutes do not currently address the timeliness within which a claim must be prosecuted once filed. A claim filed with the Division of Workers Compensation can and often will remain open indefinitely. Existing Kansas law contains no provision encouraging the prompt adjudication of the claim once filed.

Closure of claims in Kansas is governed by K.A.R. 51-31-1. This regulation provides five (5) methods of terminating a claim:

1. Filing a final receipt of release of liability pursuant to K.S.A. 44-527;
2. By hearing and written award;
3. By joint petition and stipulation subject to K.A.R. 51-3-16;
4. By settlement hearing before an administrative law judge; or
5. By voluntary dismissal.

K.A.R. 51-31-1 does not provide a procedure for closing out a claim for failure to prosecute. Pursuant to K.A.R. 51-31-1, if the case is not decided by the administrative law judge, settled by an agreement of the parties, or dismissed by agreement of the parties, the employer, for all practical purposes, is left with no means of concluding the claim.

III. HOUSE BILL 2753 IS CONSISTENT WITH PUBLIC POLICY GOALS OF FINAL CLAIM ADJUDICATION.

There is certainly more than one reason to have a deadline for filing and timely prosecution of a claim. By analogy, a number distinct purposes for imposing deadlines for pursuing civil suits have been identified by Kansas courts:

1. To encourage diligence on the party whose rights have been effected. *Welch v. City of Kansas City*, 465 P2d 951 (Kan. 1970).
2. To protect parties from being prosecuted on stale claims. *Kimbrell v. ADIA*, 834 F.Supp. 1313 (D.Kan.1993).
3. To assure the availability of affordable liability insurance.

None of the above-stated goals can be achieved if there is no time limit requiring the

prosecution of a claim. Existing Kansas law which allows a claimant to file an application for hearing but yet take no action in definitively without penalty negates all of the aforementioned goals. To the contrary, House Bill 2753:

1. Promotes and encourages diligence on the part of the claimant in seeking recourse for his or her injuries.
2. Protects due process rights of both claimant and the employer by preventing courts from deciding issues where important evidence may have been lost over time.
3. Recognizes that limited exposure to liability over time permits a more rational calculation of risk by insurance companies while unlimited exposure promotes potential rate increases to reserve against incalculable future losses. Currently, employers face significant economic detriment for claims that are filed but not prosecuted timely. Unresolved claims reflect negatively on an employers experience rating as insurers are required to reserve for losses indefinitely.

From a practical standpoint, House Bill 2753 also serves the following purposes:

1. Reduction in administrative monitoring of unprosecuted workers compensation claims by the Division of Workers Compensation, insurance carriers, and employers.
2. Encourages claimants' counsel to actively prosecute a claim instead of allowing the it to lay dormant over time.
3. Allows the administrative law judges to more fairly determine the case to all parties when evidence is fresh.

IV. HOUSE BILL 2753 HAS NO NEGATIVE IMPACT ON CLAIMANT'S RIGHTS.

House Bill 2753 is positive reform for both claimants and employers. This proposed bill:

1. Has no negative impact on claimants. Proper adjudication of claims equates with receiving compensation faster.
2. Is designed to provide a very adequate period of time for a claim to be prosecuted. The five (5) year statute of limitation for the completion of evidence as contemplated by House Bill 2753 coupled with an outside statute of limitations for filing the claim in the first instance provides for a minimum of eight (8) years to resolve a claim. Once could hardly imagine

a set of circumstances that would justify waiting more than eight (8) years to have a claim finalized.

3. Does provide for extraordinary circumstances by allowing an extension for good cause shown. Thus, extraordinarily complicated claims are protected. Furthermore, claims that have been settled or otherwise resolved without regular hearing can be prosecuted simply by filing a motion to extend the five (5) year deadline.
4. Further, allows healthcare providers to collect unpaid medical bills and reduces unwarranted stay of proceedings as allowed by K.S.A.44-510j(h).

V. KANSAS STANDS ALONE FROM NEIGHBORING MIDWEST STATES.

When considering legislative reform, it is often worthwhile to consider how neighboring states handle similar situations. For example:

1. Nebraska Workers Compensation Rules of Procedure provide for dismissal, via a dismissal docket of all pending cases where no action has been taken for at least six months. (Rule 23).
2. Missouri allows for the dismissal of unprosecuted workers compensation claims.
3. Oklahoma workers compensation procedure by reference adopts rules of the District Court of Oklahoma allowing the court to dismiss actions without prejudice for lack of prosecution.
4. Colorado, Rule 7 of the Division of Workers Compensation Rules of Procedure provide a procedure for dismissal at the request of a party to close a claim because of a failure to prosecute after a period of six (6) months with no activity.
5. The Illinois Workers Compensation Commission provides for dismissal for want of prosecution.
6. The rules allowing for dismissal in the aforementioned states are similar to rules adopted by the Kansas District Court pursuant to K.S.A. 60-241 which allows a defendant to move for dismissal for failure to prosecute which can operate as an adjudication upon the merits. Unlike Kansas Workers Compensation, District Courts in Kansas do not allow cases to pend indefinitely without any activity.

Adoption of House Bill 2753 brings the Kansas Workers Compensation Act into conformance with the Kansas Rules of Civil Procedure governing District Courts.

VI. CONCLUSION.

Is House Bill 2753 absolutely necessary? Will the workers compensation system fail if House Bill 2753 is not passed? The obvious answer to these questions is no. Perhaps a better question is. Is House Bill 2753 good public policy that is fair and unprejudicial to all parties involved? The obvious answer to this question is yes for the following reasons:

1. House Bill 2753 promotes prompt adjudication of claims which is favored by the Kansas Courts.
2. House Bill 2753 prevents prejudice to employers and claimants from having claims decided based upon stale and/or missing evidence.
3. House Bill 2753 prevents prejudice and economic harm to employers that are required to carry large reserves on files that may never be prosecuted.
4. House Bill 2753 provides more than adequate time for claimants to prosecute their claims.

House Bill 2753 is certainly worthy of strong consideration and should be passed by this Committee.

Respectfully submitted,



Ronald J. Laskowski



Legislative Testimony

HB 2753

February 10, 2006

Testimony before the Kansas House Commerce and Labor Committee
By Jeff Glendening, Vice President of Political Affairs

The Force for Business

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Thank you Mr. Chairman, and members of the committee for this opportunity to testify in support to HB 2753. My name is Jeff Glendening, and I am representing the over 10,000 member businesses of The Kansas Chamber.

This measure will allow employers to close workers compensation claims if, and only if, the injured employee filed the claim for a preliminary hearing and then did not proceed to prosecute the claim over a period of five years.

With the recent passage of the Sarbanes-Oxley act in Washington, businesses are now required to carry forward their liability which includes workers compensation claims. Businesses need the ability to close these claims to avoid excess liability.

Thank you again for the opportunity to voice our support of this needed legislation.

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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Testimony Re: HB 2753
Committee on Commerce and Labor
Presented by Tina N. Williams
on behalf of
Kansas Restaurant and Hospitality Association
and
Kansas Self-Insurers Association
February 10, 2006

Chairman Dahl and Members of the Committee:

My name is Tina Williams and I am the Claims Director for Kansas Restaurant and Hospitality Association Self-Insurance Fund (KRHASIF). I am also on the Board of the Kansas Self-Insurers Association (KSIA). KRHA is the professional association for restaurant, hotel, lodging and hospitality businesses in Kansas and offers our members workers' compensation insurance through a self-insurance fund. Currently we insure approximately 500 employers who employ approximately 25,000 workers in the State of Kansas. We are a non-profit insurance fund and any premium dollars remaining after payment of benefits are returned to the members in the form of dividends when fund years are closed.

As Claims Director I oversee the claims from the initial injury, medical treatment, weekly compensation and, if entitled, settlement for permanent disability for compensable claims. I also work with employers to promote a safe work place in an effort to minimize work related injuries. It is our responsibility to handle all claims in a timely fashion on behalf of our members and their injured employees.

KRHASIF and KSIA support HB 2753. It becomes an extremely complicated process for claims management when carrying unknown liabilities forward. It restricts us from closing fund years and distributing available dividends to our members as we issue dividends only when all claims in a fund year are closed and the fund year is subsequently closed. Many of our insured members are small independent businesses who could use the dividends to help offset other increasing costs in operating a business in Kansas. Currently our fund years are closed through 1997.

HB 2753 would allow us to close a fund year with certainty a claim would not resurface with unknown liability in years to come.

Many times an injured worker retains an attorney, who files the Application for Hearing (E1). There is no litigation, the injured worker relocates with no forwarding information and our claim remains open indefinitely. Should an injured worker be allowed to file an Application for Hearing (E-1), move out of state, work for several years and come back

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to revive their Kansas Workers' Compensation claim merely because the appropriate form was filed? Although we may have defenses for additional benefits and / or extent of disability, it requires defense costs and expenses to defend such claims.

Many times KRHASIF will take Board action to close the claim on the books; however, currently it doesn't protect us from future liability.

We support HB 2753, as we believe 5 years is more than enough time for all parties to present their case for final determination through the Courts.

Thank you for allowing me the time to testify and I am available for any questions.

Tina N. Williams
Claims Director

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2753

BY
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February 10, 2006

Thank you Chairman Dahl and Members of the Committee. My name is Jeff Cooper. I am an attorney practicing law in the Commerce Bank Building, 3rd Floor, in Topeka, Kansas. I am appearing on behalf of the Kansas Coalition For Workplace Safety. I am here in opposition to House Bill No. 2753, which places another statute of limitations on injured workers in the Workers Compensation Act. Under this Bill, a hearing and all evidence must be submitted within five years of the date of the filing of the Application For Hearing unless a Motion For Cause has been filed.

Kansas workers compensation laws already have three statutes of limitations in workers compensation. Kansas is the only State in the Nation that has three. They are as follows:

1. 10 day notice of injury, which can be extended to 75 days for good cause. K.S.A. 44-520.
2. 200 day written claim requirement, which requires the employee to serve on the employer notice, in writing, that they intend to claim workers compensation benefits. K.S.A 44-520a.
3. An Application For Hearing must be filed within three years of the date of injury, or two years from the last date medical is provided, whichever is later. K.S.A. 44-534.

Does Kansas need to become the only State in the Union that has four statutes of limitations? Is there some compelling reason that we should have twice as many statutes of limitations as any other State?

This proposal would operate as a dismissal of an injured worker's claim unless a hearing is held under this section. K.S.A. 44-523. This section deals with Regular Hearings, so by operation every case must have a Regular Hearing within five years or the case would be dismissed. Additionally, all evidence would have to be completed within five years. This statute, as worded, would require a Regular Hearing and submission of evidence, which is usually done through deposition of the medical providers within five years.

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A dismissal, under this proposed amendment, presumably would mean that a worker can never come back and ever seek to receive more benefits under the Kansas Workers Compensation Act. In workers compensation law, many cases are resolved without a Regular Hearing under K.S.A. 44-523. Probably, more cases are resolved than ever have a hearing under the Regular Hearing Statute, K.S.A. 44-523. Many cases are resolved based upon an Agreed Award which does not require a hearing under K.S.A. 44-523. Many of those cases have future medical left open, as well as the right to review and modify the Award left open, which means that anytime in the future an injured worker can request the Court review the case for at least up to eight years (415 weeks) and medical treatment entitlement can go on for life. Many other cases are settled by Settlement Hearing which is a hearing that is not governed by K.S.A. 44-523, and presumably would not, therefore, meet the five year statute of limitation. Again, many cases have medical and other rights left open which would all be dismissed based on this proposed bill.

Unfortunately, there are cases that the medical treatment goes on for more than five years from the date of the injury and the worker has not reached maximum medical improvement. Mark Block, who testified yesterday from his wheelchair, told the Committee that he had not yet been released from the medical provider, and he was injured in 2001. Mr. Block has not had a Regular Hearing under K.S.A. 44-523, nor has all the evidence been submitted into his case, and under this provision, his case would be dismissed. If his case were dismissed, his entitlement to medical, including prosthetics, wheelchairs, etc., would end, as well.

The Bill, as you will note, does have a provision that would appear to extend the five year provision upon filing of a timely Motion. Unfortunately, this creates some technical difficulties since this amendment does not indicate who this Motion is filed with or what circumstances a Motion may be filed, nor does it indicate any provision for hearing or granting an extension. K.S.A. 44-523 deals with Regular Hearings; however, it does not deal with Motion Hearings or Preliminary Hearings, and, therefore, we have some unintended consequences and ambiguity as to how this provision would work.

This proposal would set a trap for unwary injured workers. Injured workers, who are not represented by counsel, might not know of the five year limit, or might simply forget to file some "Motion" to extend their case past the five years.

In summary, this provision would, apparently, require all cases to go to a Regular Hearing Level in front of an Administrative Law Judge, or be dismissed. That result would create an enormous burden on an already overworked Administrative Law Judge Staff. As written, the amendment would dismiss cases with ongoing open medical, would not allow Settlement Hearings or Agreed Awards under the present system where any ongoing rights, i.e., future medical, review and modification, would be potentially available. This amendment would set traps for unwary workers and any legitimate reasons for this provision are greatly outweighed by the catastrophic effects it would have on many workers compensation cases, and I would urge this Committee to oppose the Bill as it stands.

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