

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Vice Chairman Scott Schwab at 9:00 A.M. on February 15, 2006 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:

Hal Hudson, National Federation of Independent Business
Ken Daniel, KS Small Biz.Com
Charlie Gregor, Executive Vice President, Leavenworth-Lansing Area Chamber of Commerce
Ross Markle, President, Harris Bros. Cleaners
Chris Tymeson, Wildlife and Parks
Steve Zink, Director, Industrial Safety and Health, Department of Labor
Terri Roberts, Kansas Coalition for Workplace Safety
Janet Stubbs, Kansas Building Industry Workers Compensation Fund
Larry Magill, Kansas Association of Insurance Agents
Brad Smoot, American Insurance Association
Dennis Carpenter, Kansas Restaurant and Hospitality Assn.

Others attending:

See attached list.

The Vice Chairman opened the hearing on **HB 2821 - Establishing the regulatory flexibility act, relating to small businesses.**

Staff gave a briefing on **HB 2821** concerning rules and regulations; relating to small businesses.

Hal Hudson, Kansas State Director, National Federation of Independent Business, testified as a proponent to **HB 2821**. In Kansas, there is a Joint Rules and Regulations Committee that oversees adoption of new rules and changes in existing rules. There are problems with this process. Some years ago the Kansas Supreme Court ruled that the Legislative branch had no authority over the Executive branch to approve or disapprove rules and regulations - their function is advisory only.

Second, because meetings of the Rules and Regulations Committee often are scheduled on the fly - when members of the House and Senate can find time to meet, affected members of the public, especially small business owners, may not receive adequate notice or may be unable to attend the meetings to voice their concerns (Attachment 1).

Kenneth Daniel, KsSmallBiz.com., testified as a proponent to **HB 2821**. The federal government has long recognized the need for legislation like this. The Office of Advocacy of the Small Business Administration has asked all states to enact this legislation, and the American Legislative Exchange Council has adopted this model (Attachment 2).

Charles H. Gregor, Jr., Executive Vice President, Leavenworth-Lansing Area Chamber of Commerce, testified as a proponent to **HB 2821**. The provisions of **HB 2821** are another critical step to maintain our ongoing effort to fix and improve the Kansas economy. 97% of Kansas businesses are small businesses by federal definition. 94.5% of Kansas businesses employ fewer than 100 workers. 85% employ fewer than 20 workers. They are the economic engine of the state (Attachment 3).

Ross Markle, owner, Harris Bros. Cleaners, Inc., testified in support of **HB 2821**. In 1994, I and five other small business owners (all dry cleaners) realized that EPA had decided our industry had a problem with hazardous waste and ground water pollution. No laws had been broken. No waste had been intentionally

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released into the Kansas environment. Local and state rules were followed for handling by-products. The Federal EPA decided that the major solvent used by our industry, Perchloroethylene, was a “possible” carcinogen, a fact that to this date has not been proven. The Kansas Department of Health and Environment and the small business owners worked together and have achieved phenomenal results in the past few years ([Attachment 4](#)).

Christopher J. Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks, testified in opposition to **HB 2821**. This would require each state board, commission, department or officer with regulatory authorization to prepare an economic impact statement, either separate or in conjunction with, the already required economic impact statement during regulatory promulgation, with a specific focus on small businesses, defined as fewer than full time employees or less than \$6,000,000 in gross annual sales. The Department is opposed to adding yet another layer of complication to a process that already contains procedural safeguards designed to allow small businesses more than ample opportunity for input, the opportunity for input, the opportunity to advocate for statutory change if necessary ([Attachment 5](#)).

The Chairman closed the hearing on **HB 2821**.

The Chairman opened the hearing on **HB 2202 - Workplace safety incentives**.

Steve Zink, Director, Division of Industrial Safety and Health, Kansas Department of Labor, testified in support of **HB 2202**. This would provide workers compensation premium discounts to employers who voluntarily request a work place safety consultation through the OSHA 21 (d) consultation program and who follow and implement the recommendations of the consultation report. Providing a credit through **HB 2202** would encourage employers throughout the state to both develop and maintain an effective safety and health program. Statistics through the Department of Labor have proven that those employers who have an effective safety and health program have fewer and less severe injuries ([Attachment 6](#)).

Terri Roberts, Kansas Coalition for Workplace Safety, testified in support of the concept of **HB 2202**. This allows employers to request a safety consultation and to receive premium discounts on their workers compensation insurance if they follow the recommendations made in the consultation. To the extent that the bill would improve the safety of the workplace and result in fewer injuries, it is believed that the bill would have a positive impact on Kansas workers ([Attachment 7](#)).

Janet Stubbs, Administrator of the Kansas Building Industry Workers Compensation Fund, testified in opposition of **HB 2202**. We are not opposed to safety training. Safety rewards are realized by the companies through other methods. This bill eliminates some of the controls underwriters have in rating and evaluating risks. Experience modification factors are given to companies based upon their loss experience ([Attachment 8](#)).

Larry Magill, Kansas Association of Insurance Agents, testified in opposition to **HB 2202**. The state should not determine rating plans and underwriting. The bill requires the Insurance Commissioner to develop a system of premium discounts for any employer who voluntarily requests a work place safety consultation under the state administered OSHA voluntary inspection program as long as they follow the recommendations. The Insurance Department only approves or disapproves rates filed by insurance companies and licensed rating organizations like the National Council on Compensation Insurance (NCCI) ([Attachment 9](#)).

Brad Smoot, on behalf of the American Insurance Association (AIA), testified in opposition to **HB 2202**. Workers compensation insurance is based on the concept of an “experience modifier” (commonly called an “ex-mod”) which raises or lowers an employer’s premiums depending on the employer’s actual workers compensation claims and cost experience. **HB 2202** proposes to add a new “discount” on top of actual experience, even though sufficient financial incentives already exist for employers to implement workplace safety measures ([Attachment 10](#)).

Dennis Carpenter, President/CEO for the Kansas Restaurant and Hospitality Association and its Self Insurance Fund (KRHASIF) testified in opposition to **HB 2202**. KRHA opposes **HB 2202** as the current Experience

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Modification Rating system the Kansas Insurance Department utilizes rewards members with good loss ratios as well as penalizes its members with poor loss ratio. Members currently qualify for a volume discount and elect to obtain yet another discount by choosing to go on a deductible program, which is also set forth in the Kansas Statutes Annotated administered by the Kansas Insurance Department (Attachment 11).

The Chairman closed the hearing on **HB 2202**.

The meeting adjourned at 10:55 a.m. The next meeting will be February 16, 2006.

KANSAS

**Statement by Hal Hudson, Kansas State Director
National Federation of Independent Business
Before the
House Commerce and Labor Committee
On H.B. 2821
Wednesday, February 15, 2006**

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to speak to you in support of H.B. 2821.

We've all heard the expression, "The devil is in the details." That's what this bill is about – the details. Often a disconnect exists between the laws you, as the legislature, enact and the rules promulgated by the agencies charged with administering those laws.

In Kansas, we have a Joint Rules and Regulations Committee that oversees adoption of new rules and changes in existing rules. But there are problems with this process. First, the Kansas Supreme Court, some years ago, ruled that the Legislative branch had no authority over the Executive branch to approve or disapprove rules and regulations. Their function is advisory only.

Second, because meetings of the Rules and Regs. Committee often are scheduled on the fly – when members of the House and Senate can find time to meet – affected members of the public – especially small business owners -- may not receive adequate notice or may be unable to attend the meetings to voice their concerns.

That's why we need H.B. 2821 to give small business owners an opportunity for input before regulations are adopted, or to cause them to be changed when appropriate.

HB 2821 is patterned after the federal regulatory flexibility law and contains the following five key elements:

- 1) a small business definition;
- 2) an economic impact analysis;
- 3) a regulatory flexibility analysis;
- 4) a periodic review of existing regulations; and
- 5) judicial review.

Small Business Definition

It is important for "small business" to be defined by statute and for the definition to be consistent with how other laws and/or permitting authorities within the state characterize "small." As drafted, HB 2821 defines small business as independently owned with fewer than 500 employees, and gross annual sales of less than \$6,000,000.

Economic Impact Analysis

Most Kansas agencies already are required to prepare some form of economic impact analysis to determine how the proposed regulation will affect the entities being regulated. Segmenting out the impact on small business is a necessary additional step in the analysis because small

businesses bear a disproportionate share of regulatory costs and burdens. By recognizing the cost of a regulation to small businesses and the differences in scale and resources of regulated businesses, agencies will be able to craft regulations that consider the uniqueness of small businesses. As a result, small businesses are better able to comply with agency rules and to survive in a competitive marketplace.

Regulatory Flexibility Analysis

Sometimes, because of their size, the aggregate importance of small businesses in the economy is overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them. The intent of H.B. 2821 to require regulatory agencies to consider small businesses when regulations are developed and particularly to consider whether there are alternative regulatory solutions that do not unduly burden small business but still accomplish the agency goal.

Tailoring regulatory proposals to the unique needs of small business saves small employers money that is better used to hire additional employees, provide health care, train existing staff, and upgrade their facilities and equipment. This can be accomplished without sacrificing health, safety, and welfare issues of major importance to state governments.

Judicial Review

The federal regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996.

The effect of the 1996 federal law was to give the RFA some “teeth” and to focus the heightened attention of regulatory officials on small business issues. Approximately 4,000 regulations are finalized in any given year. Only 12 to 13 lawsuits that cite noncompliance with the RFA have been filed per year since federal judicial review was enacted in 1996.

Allowing small businesses to challenge state agencies for failure to adequately consider ^{their} ~~there~~ impact on small business during the regulatory process is critical, as it provides an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis.

Periodic Review

Existing regulations may also unduly burden small businesses because the rule may no longer serve its purpose, may be duplicated by newer federal or state legislation, or may have been promulgated without consideration of the effects on small businesses.

Also, given the length of time that may have passed since the rule was promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rule. Therefore, it is critical that agencies review rules periodically to determine whether they should be continued without change, amended, or rescinded to minimize the economic impact of the rule on small businesses.

A clear example of how benefits can be derived from efforts to periodically review existing regulations comes from the Massachusetts Office of Consumer Affairs and Business Regulation. The State held a series of public hearings that gave affected small entities the opportunity to voice concerns about existing regulations and the proposed changes. The review is still in progress; however, approximately 50 pages of regulations have already been eliminated. Also as a result of this review process, the remaining rules are more precisely tailored, easier for regulated entities to understand, and less difficult for agency personnel to apply.

Exemptions

Even the strongest regulatory flexibility law has little value if most agencies and/or certain rules are exempt from it. Therefore, legislation should provide exemptions only to agencies or rules when it is absolutely necessary.

Fiscal Notes

During a time of tight state budgets, a common question is how much it will cost to implement regulatory flexibility for small businesses? The answer is that implementing a regulatory flexibility system can be accomplished at minimal to no additional cost to the state. In fact, the state saves money by getting input on costly or unnecessary regulation prior to implementation.

Requiring small business analysis, input, and consideration of less burdensome alternatives ensures that state agencies make good final decisions. On the other hand, if regulations are poorly written and do not consider small businesses, they may need to be rewritten, which is more costly to state government than doing a thorough analysis the first time.

Implementing regulatory flexibility for small businesses also does not require state agencies to incur excessive compliance costs for the preparation of the economic impact and regulatory flexibility analyses. Moreover, rules that are finalized without adequate impact analysis run the risk of being more costly to both citizens and state agencies.

And, it is not in the interest of state agencies to propose and finalize a rule that small businesses cannot comply with and causes widespread industry burdens resulting in layoffs and business closures.

Regulatory Flexibility Implementation

In states that have passed regulatory flexibility laws, the Small Business Administration Office of Advocacy works with the small business community, state legislators, and state government agencies to assist with implementation and to ensure its effectiveness. Small business owners are the greatest resource that agencies can use to understand how regulations affect small businesses and what alternatives may be less burdensome.

Mr. Chairman and Members of the Committee, I hope I have explained what the Regulatory Flexibility Act is about, and why we need it in Kansas.

I urge you to report H.B. 2821 favorable for enactment.

Hal Hudson, State Director
National Federation of Independent Business
3601 SW 29th St. – Suite 116-B
Topeka, KS 66614-2015
Phone: 785-271-9449
Fax: 785-273-9220
E-mail: hal.Hudson@nfib.org

HOUSE BILL No. 2821

By Committee on Commerce and Labor

2-6

9 AN ACT concerning rules and regulations; relating to small businesses;
10 establishing the regulatory flexibility act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act may be cited as the regulatory flexibility act.

14 Sec. 2. (a) For the purposes of this act:

15 (1) "Agency" means each state board, commission, department or
16 officer authorized by law to make regulations or to determine contested
17 cases.

18 (2) "Proposed regulation" means a proposal by an agency for a new
19 regulation or for a change in, addition to or repeal of an existing
20 regulation.

21 (3) "Regulation" means each agency statement of general applicabil-
22 ity, without regard to its designation, that implements, interprets, or pre-
23 scribes law or policy, or describes the organization, procedure or practice
24 requirements of any agency. The term includes the amendment or repeal
25 of a prior regulation, but does not include (A) statements concerning only
26 the internal management of any agency and not affecting private rights
27 or procedures available to the public, (B) declaratory rulings or (C) in-
28 traagency or interagency memoranda.

29 (4) "Small business" means a business entity, including its affiliates,
30 that (A) is independently owned and operated and (B) employs fewer
31 than 500 full-time employees or has gross annual sales of less than
32 \$6,000,000.

33 Sec. 3. (a) (1) Prior to the adoption of any proposed regulation that
34 may have an adverse impact on small businesses, each agency shall pre-
35 pare an economic impact statement that includes the following:

36 (A) An identification and estimate of the number of the small busi-
37 nesses subject to the proposed regulation;

38 (B) the projected reporting, recordkeeping and other administrative
39 costs required for compliance with the proposed regulation, including the
40 type of professional skills necessary for preparation of the report or
41 record;

42 (C) a statement of the probable effect on impacted small businesses;
43 and

1 (D) a description of any less intrusive or less costly alternative meth-
2 ods of achieving the purpose of the proposed regulation.

3 (2) The economic impact statement required by this section shall be
4 in addition to, and may be combined with, the economic impact statement
5 required by K.S.A. 77-416, and amendments thereto.

6 Sec. 4. (a) Prior to the adoption of any proposed regulation on and
7 after January 1, 2007, each agency shall prepare a regulatory flexibility
8 analysis in which the agency shall, where consistent with health, safety,
9 environmental and economic welfare, consider utilizing regulatory meth-
10 ods that will accomplish the objectives of applicable statutes while mini-
11 mizing adverse impact on small businesses. The agency shall consider,
12 without limitation, each of the following methods of reducing the impact
13 of the proposed regulation on small businesses:

14 (1) The establishment of less stringent compliance or reporting
15 requirements for small businesses;

16 (2) the establishment of less stringent schedules or deadlines for com-
17 pliance or reporting requirements for small businesses;

18 (3) the consolidation or simplification of compliance or reporting
19 requirements for small businesses;

20 (4) the establishment of performance standards for small businesses
21 to replace design or operational standards required in the proposed reg-
22 ulation; and

23 (5) the exemption of small businesses from all or any part of the
24 requirements contained in the proposed regulation.

25 (b) Prior to the adoption of any proposed regulation that may have
26 an adverse impact on small businesses, each agency shall notify the de-
27 partment of administration and the attorney general of its intent to adopt
28 the proposed regulation consistent with the rules and regulations filing
29 act in K.S.A. 77-415 et seq., and amendments thereto. The department
30 of administration and the attorney general shall advise and assist agencies
31 in complying with the provisions of this section.

32 Sec. 5. (a) For any regulation subject to this section, a small business
33 that is adversely affected or aggrieved by final agency action is entitled to
34 judicial review of agency compliance with the requirements of this act in
35 accordance with the Kansas judicial review and civil enforcement of
36 agency actions act, K.S.A. 77-601 through 77-627, and amendments
37 thereto.

38 (b) A small business may seek such review during the period begin-
39 ning on the date of final agency action and ending one year later.

40 Sec. 6. This act shall take effect and be in force from and after its
41 publication in the statute book.

Small Business Profile: KANSAS

In Kansas, small businesses are vital to the financial well-being of the state's economy. Their contribution is essential for economic growth since they make up almost all employer firms in the state. As entrepreneurs and innovators, small business owners represented a diverse group in 2004 and continued to keep the state's economy productive. The *Small Business Profile* provides information on the performance of small businesses in the state using the most current federal data available.

Number of Businesses. There were an estimated 229,776 small businesses in Kansas in 2004.¹ Of the 69,241 firms with employees, an estimated 96.9 percent, or 67,120, were small firms. In 2004, the estimated number of employer businesses increased by 1.7 percent. The number of self-employed persons (including incorporated) increased overall by 0.9 percent, from 173,590 in 2003 to 175,153 in 2004. Non-employer businesses numbered 162,656 in 2002, an increase of 2.1 percent since 2001, based on the most recent data available. (Sources: U.S. Dept. of Labor, Employment and Training Administration; U.S. Dept. of Commerce, Census Bureau; U.S. Dept. of Labor, Bureau of Labor Statistics.)

Women-Owned Businesses. In 2002 women-owned firms totaled 59,642, an increase of 9 percent from 1997, and generated \$7 billion in revenues. Firms owned jointly by women and men numbered 35,409 with revenues of \$8.5 billion. Women represented 35.2 percent of the self-employed persons in the state. (Sources: U.S. Dept. of Labor, Bureau of Labor Statistics; U.S. Dept. of Commerce, Census Bureau.)

Minority-Owned Businesses. In 2002, Hispanic-owned firms numbered 4,188, an increase of 18 percent from 1997. Black-owned firms numbered 4,468, an increase of 32 percent; Asian-owned firms numbered 3,568, an increase of 46 percent; American Indian and Alaska Native-owned firms numbered 1,727, a decrease of 25 percent; and there were 57 Native Hawaiian and other Pacific Islander-owned businesses.² (Source: U.S. Dept. of Commerce, Census Bureau.)

¹ The Office of Advocacy's estimate of the total number of state small businesses is based on the percent of small businesses (2002 Census Bureau firm size data) multiplied by the total number of employer businesses in 2004 (Employment and Training Administration). To this total is added the 2002 number of non-employer firms (Census Bureau). See *Business Estimates from the Office of Advocacy*, www.sba.gov/advo/research/rs258tot.pdf.

² Minority owners may be in more than one minority group.

Business Turnover. There were an estimated 6,742 new employer businesses in 2004, 11.6 percent less than the previous year. Business terminations numbered 7,250 in 2004, a decrease of 13.6 percent. Business bankruptcies decreased by 11.6 percent and totaled 268 in 2004. (Sources: U.S. Dept. of Labor, Employment and Training Administration; Administrative Office of the U.S. Courts; U.S. Dept. of Commerce, Census Bureau.)

Employment. Small firms with fewer than 500 employees numbered 59,082 in 2002 and employed 588,098 individuals, or 53.5 percent of the state's non-farm private sector (Table 1).³ Net job gains among firms with fewer than 20 employees totaled 7,032, while large firms with 500 or more employees lost 14,163 jobs between 2001 and 2002 (Table 2). (Source: U.S. Dept. of Commerce, Census Bureau, Statistics of U.S. Businesses.)

Small Business Income. Non-farm proprietors' income, a partial measure of small business income, increased by 23.9 percent, from \$6.3 billion in 2002 to \$7.9 billion in 2003. (Source: U.S. Dept. of Commerce.)

Finance. Commercial bank lenders are an important source of small business loans, and small firms usually rely on them for financing. Over the last 10 years the number of banks in Kansas has declined (Table 3). The Office of Advocacy has identified banks in each state that make the most loans to small businesses. This information is available in its banking studies at www.sba.gov/advo/research/lending.html.

To learn more about the Office of Advocacy's data and analyses of small business, visit www.sba.gov/advo/research, call (202) 205-6533 or email advocacy@sba.gov.

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³ The number of employers in Table 1 is not directly comparable to the figures in the *Number of Businesses* section due to different data sources.

Table 1. Firms and Employment in Kansas by Industry and Firm Size, 2002 (Thousands)

Industry	Non-employer firms	Employer firms			Employment		
		Total	< 100	< 500	Total	< 100	< 500
Total	162.66	60.95	57.61	59.08	1,098.89	418.8	588.1
Agriculture, forestry, fishing, and hunting	2.23	0.22	0.22	0.22	0.78	*	0.78
Mining	5.04	0.80	0.76	0.77	6.80	4.55	5.18
Utilities	0.1	0.12	0.10	0.10	6.61	*	1.57
Construction	17.48	7.45	7.34	7.40	63.65	47	55.4
Manufacturing	2.42	2.94	2.48	2.68	178.67	33.03	60.12
Wholesale trade	4.03	3.77	3.25	3.45	54.87	29.01	37.72
Retail trade	22.16	8.59	8.06	8.24	149.32	57.18	70.75
Transportation and warehousing	6.13	2.13	1.96	2.01	35.47	10.91	14.45
Information	1.59	0.83	0.69	0.72	46.99	6.04	7.57
Finance and insurance	7.26	3.62	3.32	3.41	55.56	19.29	27.11
Real estate; rental and leasing	14.95	2.44	2.33	2.38	15.23	8.72	11.59
Professional, scientific, and technical services	19.01	6.32	6.06	6.18	53.60	30.11	37.57
Management of companies and enterprises	N/A	0.46	0.18	0.30	23.75	1.33	5.91
Admin., support, waste mgmt. and remed. svces.	10.7	2.88	2.61	2.71	61.68	16.59	28.13
Educational services	2.89	0.61	0.55	0.58	18.18	6.88	13.39
Health care and social assistance	15.36	5.29	4.92	5.16	160.08	46.75	88.78
Arts, entertainment, and recreation	6.62	1.02	0.98	1.00	14.05	8.51	10.82
Accommodation and food services	1.88	4.20	3.95	4.07	93.97	48.13	62.13
Other services	23.92	8.04	7.89	7.96	54.07	42.44	48.16
Auxiliary, except corp., subsidiary, and regional managing offices	N/A	0.10	0.02	0.04	5.36	*	0.79
Unclassified	N/A	0.29	0.29	0.29	0.20	*	0.2

*Data suppressed to protect the confidentiality of individual firms.

N/A= not available

Source: U.S. Department of Commerce, Census Bureau, Statistics of U.S. Businesses.

Table 2. Non-farm Establishment Job Gains and Losses by Firm Size in Kansas, 2001–2002 (Thousands)

	Firm size (number of employees)			
	Total	1–19	1–499	500+
Job gains:				
New establishments	73.11	16.86	42.81	30.30
Expanding establishments	102.37	30.17	63.59	38.78
Job losses:				
Downsized establishments	-132.89	-22.84	-73.65	-59.24
Closed establishments	-58.74	-17.16	-34.74	-24.00
Net change in employment	-16.14	7.03	-1.98	-14.16

Source: U.S. Department of Commerce, Census Bureau, Statistics of U.S. Businesses.

Table 3. Number of Banks in Kansas by Asset Size, 1995–2004, Selected Years

Number of banks per year					Number of banks by asset size, 2004				
1995	2001	2002	2003	2004	Below \$100M	\$100M–\$500M	\$500M–\$1B	\$1B–\$10B	Over \$10B
449	376	368	362	360	274	70	10	6	0

Source: U.S. Small Business Administration, Office of Advocacy, from data collected by the Federal Reserve Board. The full list of small-business-friendly banks can be found on the Office of Advocacy website, www.sba.gov/advo/research/lending.

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KSSmallBiz.com

ADVOCATES FOR KANSAS SMALL BUSINESS

P.O. BOX 1246 • TOPEKA, KS 66601-1246 • 785.232.4590. x205

www.KSSmallBiz.com

Testimony to the House Commerce and Labor Committee

February 15, 2004

By Kenneth Daniel
CEO, Midway Wholesale, Topeka
Publisher, KsSmallBiz.com

Mr. Chairman and Members of the Committee:

My name is Kenneth Daniel. I am the publisher of KsSmallBiz.com. And, I am the Founder, Chairman and C.E.O. of Midway Wholesale, a building materials distributor headquartered in Topeka with branches in Salina, Manhattan, Lawrence, Elwood/St. Joseph, Kansas City, and Wichita.

I would like to testify in favor of House Bill 2821 on behalf of my businesses and on behalf of about 250,000 other small businesses and farms in Kansas.

The federal government has long recognized the need for legislation like this. We already have the federal Regulatory Flexibility Act, but it does not extend to the state level.

The Office of Advocacy of the Small Business Administration has asked all states to enact this legislation, and the American Legislative Exchange Council has adopted this model.

Although Kansas already has some protection in place for small businesses, it does not allow us the right to a day in court. And, there have already been instance of language in legislation along the line of "In spite of statute number so-and-so....".

Red tape is a huge burden for small businesses, and Kansas has not been kind to us in this regard. Even now there are two bills and new regulations before the legislature that would impose additional reporting burdens on small businesses and additional tax burdens on small business owners that live or operate in more than one state.

This bill is not overreaching, and it will not be overly burdensome on public officials in Kansas.

It is in the interest of the State of Kansas to make sure that our small businesses do not suddenly have huge burdens like destination sourcing dumped on us.

I strongly urge the committee to act favorably on this bill.

Comme Labor
2-15-06
Atch # 2



Leavenworth-Lansing Area Chamber of Commerce

**TESTIMONY OF CHARLES H. GREGOR, JR.
EXECUTIVE VICE PRESIDENT
LEAVENWORTH-LANSING AREA CHAMBER OF COMMERCE
HOUSE COMMERCE & LABOR COMMITTEE
HOUSE BILL NUMBER 2821
February 15, 2006**

Mister Chairman, members of the Committee, on behalf of the Board of Directors and approximately 500 members of the Leavenworth-Lansing Area Chamber of Commerce, I thank you for the opportunity to come before you to speak in support of House Bill 2821.

As we are all aware, the economy of Kansas is slowly recovering and growing from the recent recession. Obviously, this is good and Kansas is poised to continue its current growth. We have a lot going for us. But we have a problem. We are growing at a slower rate than most other states in the Midwest and the nation as a whole. A Wichita State University study found that Kansas businesses are expanding at a slower rate, creating jobs at a slower rate and increasing profits at a slower rate. This has the obvious implication that we are creating state revenue to improve our highways, infrastructure, education system and other public services at a slower rate than most of the states with which we compete.

The reasons our businesses and economy are relatively stifled are simple and hinge on the cost of doing business in Kansas. The biggest cost factors cited by Kansas businesses are costs related to government. These costs include taxes, fees, mandates and the costs of meeting the requirements of state regulations. The total effect of these costs does more than stifle the growth of Kansas businesses; it impedes efforts to recruit new and expanding business to Kansas.

We need to change that. We must change that. That change has begun and the strong bipartisan support for elimination of the business machinery and equipment tax is evidence of the recognition of the problem and its solution.

The provisions of HB 2821 are another critical step to maintain our ongoing effort to fix and improve the Kansas economy. When we speak of the Kansas economy we speak of small businesses. 97% of Kansas businesses are small businesses by federal definition. 94.5% of Kansas businesses employ fewer than 100 workers. 85% employ fewer than 20 workers. They are the economic engine of our state.

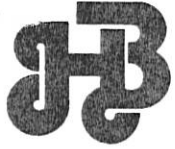
Small businesses that employ fewer than 20 workers now spend \$7,647 a year per employee, to comply with federal regulations. This is an astounding figure. Even more astounding is that it is 45% higher than the costs to larger businesses to comply with the same regulations. Why? Because significant economies of scale don't apply to small businesses; small businesses often must pay for the technical expertise to comply with regulations; and small businesses often must hire additional staff and/or purchase new equipment to comply with new regulations. There is little or no capability to absorb new

and expensive requirements within the existing business structure. The same cause and effect exists between Kansas regulations and Kansas small businesses.

HB 2821 codifies a common sense approach to the relationship between Kansas government and Kansas small businesses. It is understood that laws governing business are needed and that it is necessary to develop enforcing regulations. HB 2821 establishes a system whereby rules and regulations that are promulgated to execute state law are thoroughly examined to determine the economic impact on those entities being regulated. HB 2821 provides a systemic tool that gives state government the flexibility to modify law enforcing regulations to insure there are no unnecessary or unintended consequences produced by those regulations that will impede business and job growth, restrict the generation of revenue, or, in extreme cases, even force some businesses to close.

HB 2821, as written, contains those regulatory oversight provisions that have proven effective, both at the federal and state levels. Examples of that effectiveness at the federal level and in other states abound. The fiscal note for this bill is minimal. Its actual fiscal impact will be positive in that it provides safeguards against unnecessary and expensive regulations.

Only eight states and the District of Columbia have no regulatory flexibility statutes. Kansas is one of those and this bill gives us to opportunity to rectify that unfortunate fact. I urge your favorable consideration of HB 2821. Thank you. I will stand for questions.



Harris Bros. Cleaners, Inc.

501 South Fifth Street • Leavenworth, Kansas 66048 • (913) 682-3535

TESTIMONY OF ROSS E. MARKLE
SMALL BUSINESS OWNER
LEAVENWORTH, KANSAS
HOUSE COMMERCE AND LABOR COMMITTEE
HOUSE BILL NUMBER 2821
February 15, 2006

Mr. Chairman, Members of the Committee:

My name is Ross Markle. I along with my wife and son own a small business in Leavenworth, Kansas. Our business provides a dry cleaning and laundry service. We employ twenty-two people.

I am not here today to tell you horror stories about State Government regulations and their impact on small business. Instead, I am here to tell you about a unique example of a State agencies regulators working with industry in the State of Kansas.

Back in 1994, myself and five other small business owners (all dry cleaners) realized that EPA had decided that our industry had a problem with hazardous waste and ground water pollution. None of us had broken any laws or intentionally released waste into the Kansas environment. We had simply followed existing local and State rules for handling our by products. We thought we were good stewards of our environment. At a point in time prior to this, the Federal EPA had decided that the major solvent used by our industry, Perchloroethalene, was a "possible" carcinogen, a fact that to this date has not been proven. Without industry input, we were all subject to the "Super Fund" rules including retroactive and cradle to grave liability. These rules did nothing to clean up the Kansas environment. It only paid lawyers to put Kansas small business out of business. We were determined to change this outcome. We hired a lawyer and a lobbyist and began the process for drafting legislation that would fix the problem. Our goals were to protect our industry, protect the Kansas environment and provide a funding vehicle that would support those objectives without placing an undue burden on Kansas taxpayers. Early on, before we began our lobbying efforts, we realized that we needed to work with the State agency that would be tasked with implementing any laws that resulted from our efforts. That Agency was the Kansas Department of Health and Environment (KDHE). We found good partners. The resulting law called the Drycleaners Environmental Response Act was passed in 1995. That law included the establishment of a volunteer Dry cleaning Technical Advisory Committee. I currently serve on that committee and have done so since it's inception. Funding for the clean-up-program is provided by a 2.5% surcharge on all services provided by drycleaners, a \$6.00 fee on each gallon of solvent we use and an annual registration fee for all operators. The fund produces approximately one point two million dollars a year and is used to clean up dry cleaning contaminated sites in Kansas. We have achieved phenomenal results in the past few years. KDHE has done an exceptional job with this program with minimal administrative expense. Attached to my testimony is a

Comm Labor
2-15-06
Atch # 4

copy of the agenda and slides from a recent meeting of KDHE and our advisory committee. We meet twice a year. This should give you some insight into the information we share as we both move forward to protect and improve our environment in Kansas. There are many other aspects to this program including prevention and inspections that are too numerous to mention here, but that I would be happy to comment on.

One last point: Since our Kansas bill is considered by our industry as one of the best examples of government and industry working together, I, as a member of an eight State association, provided a copy of our law to the State of Texas. The result was a bill that in no way resembled ours after the legislature changed it and the State regulators put their hand print on it. Their rules did not consider any input from industry as we had suggested. It was not until they agreed to form a panel of industry representatives that they have begun the process that is making some progress in their State.

In closing, I urge you to support HB 2821 and would also urge you to consider a clause that would require State agencies to partner with industries affected by the laws that they regulate.

AGENDA

**Kansas Dry Cleaner Program - KDHE
Dry Cleaner Technical Advisory Committee Meeting
August 16, 2005, at 1:30 p.m.
Curtis State Office Building, 1000 SW Jackson, Suite 410
Fourth Floor, Meadowlark Conference Room**

- | | |
|--|---------------|
| 1. Welcome | Leo Henning |
| 2. Drycleaning Application Activity | Bob Jurgens |
| 3. Drycleaner Registrations | Rick Avila |
| 4. Fund Expenditures and Receipts | Rick Avila |
| 5. Drycleaning Inspections | Bob Jurgens |
| 6. Newsletter | Bob Jurgens |
| 7. Corrective Action Tracking/Measuring Objectives | Bob Jurgens |
| a. Expanded Sites Assessments | |
| b. Source Investigations | |
| c. Remedial Installations | |
| d. Potable Water Connections | |
| 8. Corrective Action Updates | |
| a. Emporia, Wamego, Hutchinson, Wichita,
& McPherson | Bob Jurgens |
| b. Salina, Hays, Wichita – Four Seasons | Joe Dom |
| c. Derby, Topeka, Downs, Smith Center,
Garden City, Manhattan, Atchison, Wichita - Lee's, Colby | Dan Nicoski |
| d. Goodland, Neodesha | Brian Baalman |

BREAK TIME

- | | |
|--|-------------------|
| 9. Open Discussion and Action Items | Henning & Jurgens |
| a. Work Order and O&M Tracking System (Austin) | |
| b. Database Design Update | |
| c. Indoor Air Intrusion Update | |
| d. On-line Registration Update | |
| e. New Sites | |
| i. Long-Term Funding | |
| ii. Prioritization/Eligibility Determination | |
| iii. Assessing: Non-application sites | |
| f. Information sharing with KDoR | |
| g. Miscellaneous | |

Dry Cleaner Technical Advisory Committee Meeting
Kansas Drycleaning Program
 August 16, 2005
 Curtis State Office Building
 Topeka, Kansas

Welcome

- Introductions
 - DTAC Members
 - KDHE
 - Guests

Trust Fund Application Activity
 100 Applications for 112 Facilities
 (15 facilities w/o applications)

DFRTF Applications
 (As of August 1, 2005)

Calendar Year Received	# of Applications
1996	18
1997	11
1998	13
1999	12
2000	7
2001	3
2002	11
2003	3
2004	12
2005	10

DFRTF Facility Distribution (as of 8/01/05)

Kansas Drycleaning Program Trust Fund Facilities

112 Facilities

New Trust Fund Applications
 January 1, 2005 – August 1, 2005

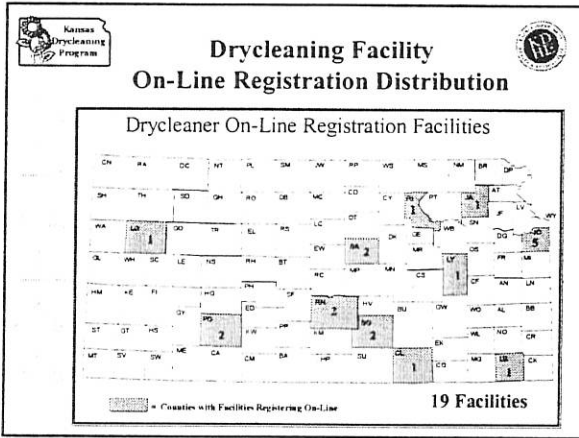
- Ideal Cleaners, 316 W. Main, Council Grove
- Taylor Cleaners, 320 W. Main, Council Grove
- One Hour Martinizing, 832 El Paso Village, Derby
- Scotch Cleaners, 611 Florida, Lawrence
- Fashion Care, 6620 Martway, Mission
- Warren & Sons Cleaners, 9044 Metcalf, Overland Park
- Village Cleaners, 202 SW Seabrook, Topeka
- Apparel Masters, 353 N. Indiana, Wichita (new owner)
- Dutchmaid Laundry, 3220 Seneca, Wichita (City application was rec'd in 2005, but noted at last DTAC mtg.)
- Jim Morgan's Fine Cleaners, 3108 W. 13th N., Wichita

2005 Drycleaner Registration (* as of August 1, 2005)

Year	Due date	2 wks after due	Final
2000	187	119	284
2001	100	138	195
2002	84	145	171
2003	84	158	199
2004	94	137	158
2005*	89	113	144

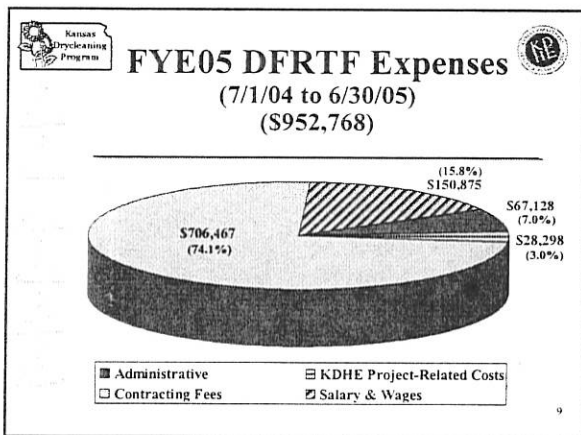
2005 6 not registered?

4-4



FYE05 DFRTF Expenses 7/1/04 to 6/30/05

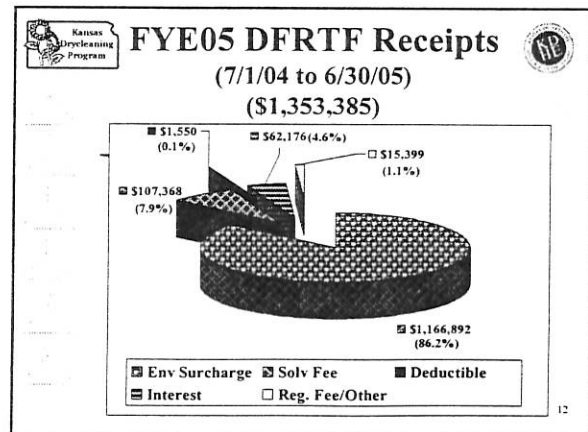
Item	FYE 03	FYE 04	FYE 05
Communications	\$4,847	\$5,735	\$8,022
Freight and Express	\$259	\$383	\$0
Printing and Advertising	\$776	\$403	\$603
Rents	\$13,944	\$14,297	\$13,780
Repairs and Servicing	\$1,195	\$481	\$591
Travel	\$4,633	\$2,983	\$3,918
Fees - Other services	\$4,610	\$5,967	\$320
Fees - Professional	\$741,782	\$898,603	\$706,467
Utilities	\$24,264	\$19,933	\$20,325
Other - Contract Serv	\$597	\$715	\$798
Maintenance	\$0	\$0	\$1,437
Auto Parts & Supplies	\$1,402	\$1,221	\$2,760
Prof. and Scient. Supply	\$4,293	\$3,251	\$4,056
Office Supplies	\$3,565	\$2,798	\$2,516
Other Supplies	\$3,298	\$4,936	\$2,964
Capital Outlay	\$2,872	\$1,482	\$2,937
Salaries and wages	\$124,027	\$137,315	\$150,875
Indirect Transfers		\$32,402	\$32,400
Totals	\$938,362	\$1,132,807	\$962,788
General and Admin.	\$157,605	\$203,224	\$218,004

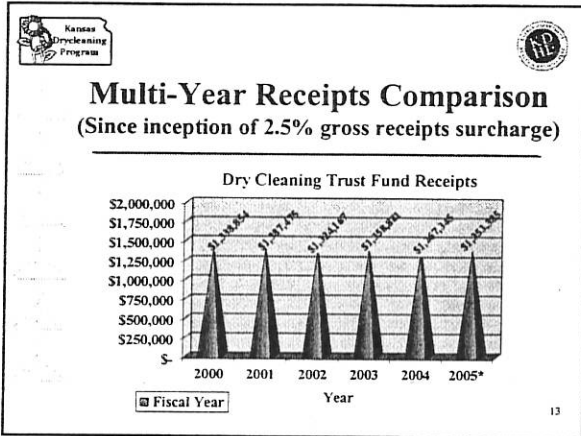


- ### DFRTF Planned Expenses
- Major Upcoming Work Orders
 - Wichita - Lee's: Assess. & Remed. - est. \$6,000
 - Wichita - Dutchmaid: Remed. - est. \$60,000
 - Wichita - Discount: Water hookup and assessment - est. \$100,000
 - Wichita - Jim Morgans: Water hookup and assessment - est. \$50,000
 - Ineeda: Remed. Install - est. \$800,000
 - Emporia: Drilling projects - est. \$50,000
 - Downs: Remediation install - est. \$450,000
 - Wichita - Best: Remed. Install - est. \$75,000
 - Wichita - Apparel Master: Remed. - est. \$75,000

FYE05 DFRTF Receipts 7/1/03 to 6/30/05

Item:	FYE02	FYE03	FYE04	FY 05
Environ. Surcharge	\$1,206,576	\$1,209,400	\$1,137,890	\$1,166,892
Solvent Fee	\$117,592	\$149,478	\$129,455	\$107,368
Deductible Pmts./Fines	\$12,020	\$26,037	\$6,596	\$1,550
Interest	\$70,382	\$38,808	\$31,966	\$62,176
DC registration fee	\$17,100	\$18,000	\$15,500	\$14,905
Other	\$0	\$0	\$0	\$494
Total	\$1,423,670	\$1,441,723	\$1,321,407	\$1,353,384



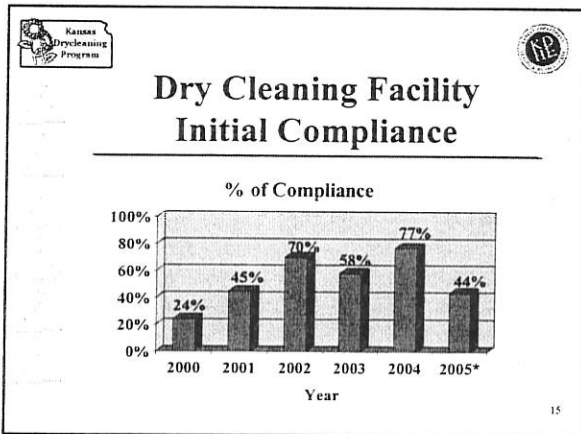


Kansas Drycleaning Program

Dry Cleaning Facility Inspections

- **2005: Inspect remainder of sites**
 - 45 Facilities inspected as of August 1, 2005
 - 20 Passed Inspection (44% compliance rate)
 - 25 Non-compliant at initial inspection
 - Follow-up inspections to be completed in Fall 05
- **2006 - Approximately 25 facilities remain to be inspected.**

14

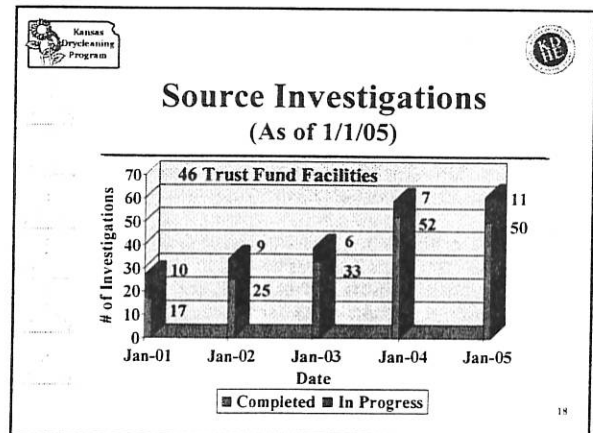
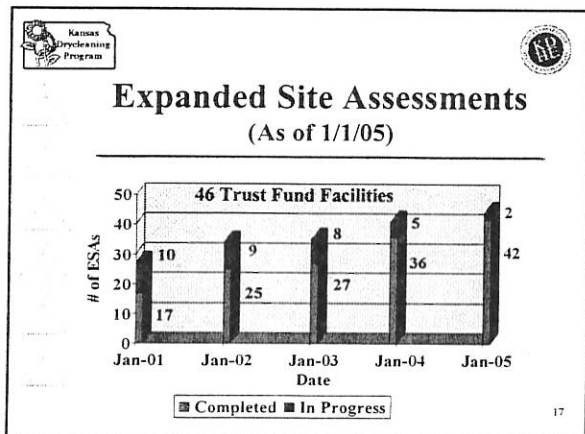


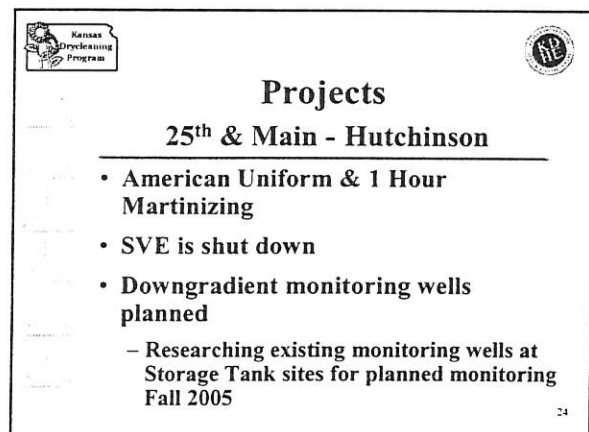
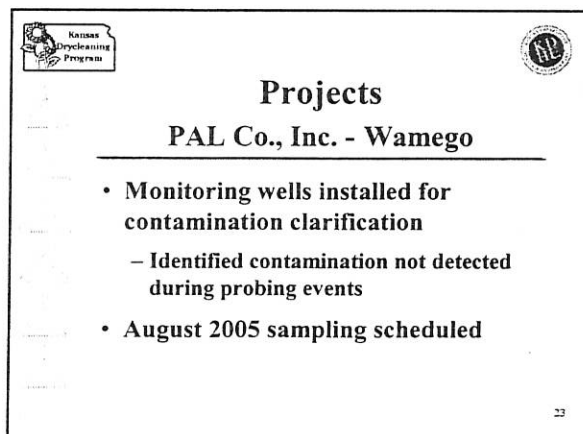
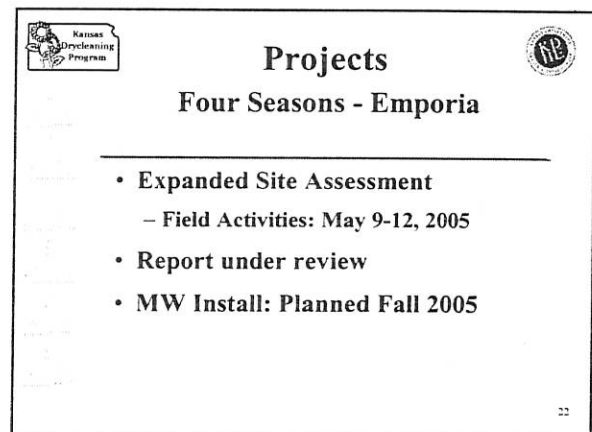
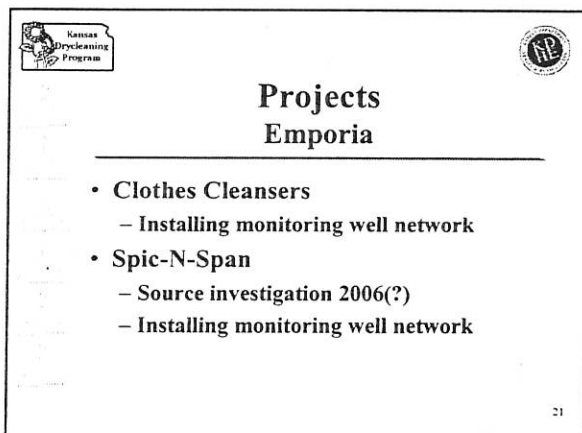
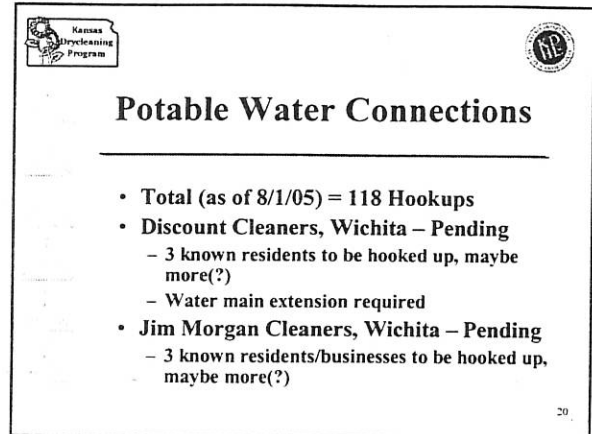
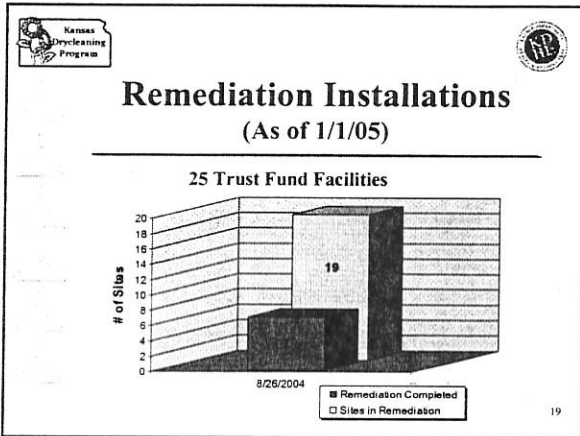
Kansas Drycleaning Program

Newsletter

- Spring 2005 - Done
- Fall 2005
 - Pending Oct-Nov. 2005
 - Fiscal Year End Financial
 - Continue remediation technology spotlight

16





Kansas Drycleaning Program

Projects

Ineeda Cleaners, 13th & Main - Hutchinson

- Source: SVE/AAS operational
- Granular Activated Carbon (GAC) remediation system design underway
 - Consultant - Burns & McDonnell
 - New plan will reduce to one pumping well and re-inject treated water back into the aquifer
 - Original design estimate came in over \$2 million!! Ouch!!
 - KDHE redesign: Reduce cost to below \$800,000?

25

Kansas Drycleaning Program

Projects

Ineeda - 13th & Main Hutchinson

26

Kansas Drycleaning Program

Projects

Wichita

- Quick & Easy/Former Artistic
 - Chemical oxidation injection beneath building floor slab (pending funding availability)
- Jet Cleaners
 - Source investigation and remediation (pending funding availability),
 - Groundwater monitoring.

27

Kansas Drycleaning Program

Projects

Apparel Master - Wichita

- SVE/AS pilot study
 - Installed August 2005
 - Final remediation installation planned November 2005
 - Public Meeting held on July 14, 2005
- Regional pump & treat system is operating - City of Wichita.

28

Kansas Drycleaning Program

Projects

Best Cleaners - Broadway, Wichita

- SVE/AAS Remediation pending
 - Using adjacent Tanks site pilot study data for final design
 - Public Meeting held on July 14, 2005
- Regional Pump & Treat is operating - City of Wichita

29


Kansas Drycleaning Program

Projects

McPherson

- Giant Wash
 - Drawdown test planned
 - Give project to new consultant
- Tidy Laundry
 - Two monitoring wells installed to help define plume,
 - These two wells will be used during the Giant Wash drawdown test.


30




Projects

Wardrobe Cleaners - Salina

- Micro-well installed 3/4/05
- Semi-annual groundwater sampling in September 2005




31




Projects - Salina

1-Hr Martinizing & Fast 1-Hour

- Co-mingled plume
- Monthly O&M on SVE system at 1-Hour Martinizing site
– 7,374 lbs removed
- Semi-annual groundwater sampling




32




Projects

Southgate Coin Laundry - Salina

- Micro-well installed 3/4/05
- PCE below MCLs in March 2005 groundwater sampling event (new well)
- Semi-annual groundwater sampling in September 2005




33




Projects

Express Cleaners – Salina

- Micro-well not installed – 3 attempts, hit foundation
- Monthly O&M on SVE System
- Quarterly groundwater sampling




34




Projects

Norge's Cleaners - Hays

- Monthly O&M on SVE system & semi-annual groundwater sampling
- 2,097 lbs removed SVE
- 36.5 lbs removed from groundwater
- Quarterly sampling of extraction well C-20TA
- Water Use Report submitted to Dept of Agriculture




35





Projects

Norge's Cleaners - Hays

- Draft Supplemental Site Assessment WP to determine if any cross- or up-gradient sources
- Expanded groundwater sampling event to coincide with SSA to evaluate current status of plume



36



 

Projects

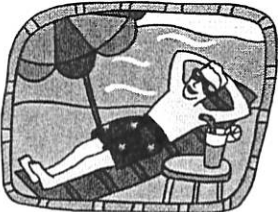
Four Seasons - Wichita

- Semi-annual groundwater sampling
- Last sampling in Nov 2004, next in Sept 2005



37

Break Time



38

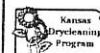

 

Projects

EZ Laundry - Derby

- Quarterly groundwater monitoring
 - PCE primary contaminant in discontinuous plume
- Source contamination reduction due to co-mingling with off-site gasoline contamination

39



 

Projects

Van's Laundry - Derby

- Monitoring well installation completed
- Source Investigation planned
- Three suspected sources in same strip mall (Van's, Lee's, and Best Cleaners)

40



 

Projects

Scotch - Topeka

- Source Investigation (SI) completed
- Corrective Action Study evaluating remedial alternatives
- Funds being accrued for future remediation project

41



 

Projects

Headley's - Downs

- Design plans finalized for GAC treatment system on PWS Well #9
 - Work Order: approx. \$400,000
- City of Downs/KDHE agreement for City operation of remedial system
- System start-up tentatively planned for December 2005

42






Projects

Easy Wash - Smith Center

- Down-gradient monitoring wells
 - PCE above RSKs
- Down-gradient contamination reduction due to co-mingling with BTEX

43






Projects

GC Laundry - Garden City

- Long-term monitoring
 - COCs below RSKs
- Contractor removed system and monitoring wells in March
- Two sets of nested wells remain for LTM

44






Projects

Cinderella/Stickel - Manhattan

- Biostimulation/Bioaugmentation study
- Injection wells installed August 15-17, 2005
- Biostimulants to be injected August 17-18, 2005
- Bioaugmentation product to be injected approx. 30 days after stimulants

45






Projects

Nestler's Cleaners - Atchinson

- Contractor completed work plan to install monitoring wells
- Well installation is pending Fall 2005
- Subsequent monitoring of groundwater

46






Projects

Lee's Cleaners - Wichita

- Multi-task work plan to include Source Investigation and Corrective Action Plan for remedial system upgrade
- SVE system operational but at limited capacity
 - Residential indoor air concerns appear to be decreasing

47

Projects

Careful Cleaners – Colby

- Work plan for field work
 - Gore Sorber technology to evaluate soil impacts at source,
 - Low flow sampling at select wells to evaluate PCE stratification
- Existing remediation systems at Ace Services (hexavalent chromium site) and LUST site possibly containing the plume.

48

Projects
KAM Kar Wash and Model Steam Laundry - Goodland

- Annual Monitoring
- Passive Diffusion Bags used for monitoring.
- Investigation in FY 2006 to see if PWS-5 is being affected

49

Projects
Bentley's Cleaners - Neodesha

50

Projects
Bentley's Cleaners - Neodesha

- Remediation system installed March 2004
- KDHE system modification in July 2004
 - March 2005 PCE removal efficiency (99.2%)
 - Influent – 130 ppb (6/22/05)
 - Effluent – ND (1) ppb (6/22/05)

51

Bentley's
PCE Influent vs. Effluent
 3/29/2004 through 6/22/2005

52

PCE Concentration 3/17/05

MW-BP/A-47 had a concentration of 21 ug/L

53

Bentley's Groundwater
Drawdown - Remediation System

3D View

54

4-12

Projects
Bentley's Cleaners - Neodesha

GAC Vapor Treatment System

Spurge Tank Transfer Tank

55

Projects
Bentley's Cleaners - Neodesha

- Weekly maintenance switched to monthly
 - Addition of anti-scaling agent into the influent line (blend of organo-phosphate and polymaleic acid)
- Semi-Annual Sampling Event (September 2005)

56

Projects
Bentley's Cleaners - Neodesha
 Calcium carbonate fouling in pipes

57

Projects
Long Term Monitoring

- Concordia - Riteway (W. 3rd & W. 6th)
- Garden City - Garden City Laundry
- Hugoton - Lamont
- Hutchinson - Ineeda-Northgate & Saylor's
- Manhattan - Coin-O-Matic
- Newton - Norms
- Pratt - Deluxe
- Salina - Fast One Hr., Southgate, Stewarts, Wardrobe
- Wichita - Dutchmaid (Hydraulic)

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Projects
FY 06 Newly Funded Sites



- Liberal - Quality Cleaners, 907 N. Kansas
- Wichita - Discount Cleaners, 248 N. West St.
- Wichita - Jim Morgan's Fine Cleaning, 3108 W. 13th N.

59

Kim Austin

Remediation Operation & Maintenance Coordination



60

O&M / LTM Tracking

- Periodic operation & monitoring (O&M)
 - Weekly or Monthly
- Long Term Monitoring
 - Quarterly (March, June, September, December)
 - Semi-Annual (March, September)
 - Annual (September)



61

Example

KDE Dry Clean Sites - 2005 O&M						July-05		August-05		September-05	
KDE PM	Site Name	City	File Number	Status	Due	Done	Due	Done	Due	Done	
Monitoring	Jurgens	Wichita	C2-487-70276	SP-LTM							
O&M				MOM	7/26/05	7/27/05	8/27/05	8/28/05	9/27/05	9/28/05	



62

Report Tracking

- Draft reports due 30 days after O&M or LTM event
 - January, April, July, October
- Final reports due 2 weeks after draft received



63

Example

Reports				July-05	August-05
KDE PM	Site Name	City	File Number	Due	Due
Jurgens	Quick and Easy	Wichita	C2-487-70276	07/29/05OM-D	08-05



64

Work Order Tracking

- Currently tracking all WO's
- Eventually only track WO's for O&M and LTM events
- WO's go out 1 month before event

65

Example

Norges	Norms Pick One Hour
SSA Review done by April 25	KDE Draft WO sent check on final end of May. Final sent.
Draft WO for Expanded Groundwater Monitoring out, waiting	MW Install will be done June 8th check with Joe June 13 to be sure
Final out for O&M July-Dec 2005	MW Install 06/21/05
Final out for O&M July-Dec 2005	Final report should be out by 7/05

66

4-14

Kansas Drycleaning Program

Application Tracking

- Application/Notification Letter
- Completed Application Received
- Dry cleaner Ranking
 - w/o Air & w/Air
- Notification of Prioritization Letter

67

Kansas Drycleaning Program

Future Tracking

- Working on developing a tracking database
 - Automatic notification and reminders of O&M, LTM, WO, reports and application status dates(?)

68

Kansas Drycleaning Program

Other Discussion Items Indoor Air Intrusion Update

- Evaluate remaining dry cleaner sites
 - Sample select sites to determine severity?
 - Determine if indoor air is a risk issue?
 - Evaluate prioritization system

69

Kansas Drycleaning Program

Other Discussion Items On-Line Registration Project

- Operational since December 2003
- 10 facilities registered on-line in 2004
- 19 facilities registered on-line in 2005
 - Print registration at checkout
 - Add electronic check payment option in 2006
 - KDHE pays convenience fee so on-line registration same cost as paper registration

70

Kansas Drycleaning Program

Registration Web Page

Kansas Drycleaning Program

Verification Web Page

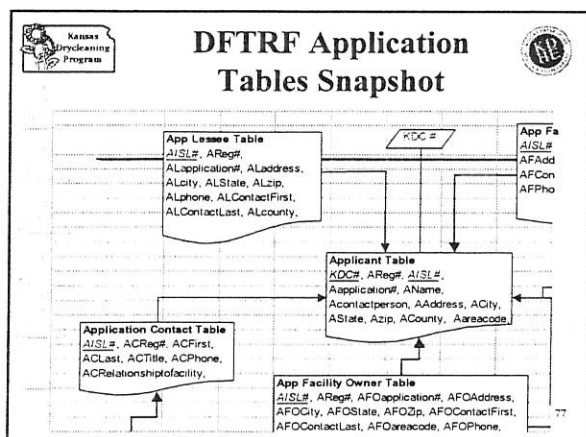
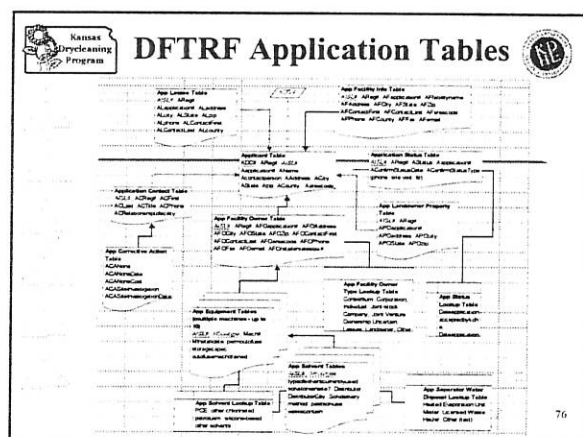
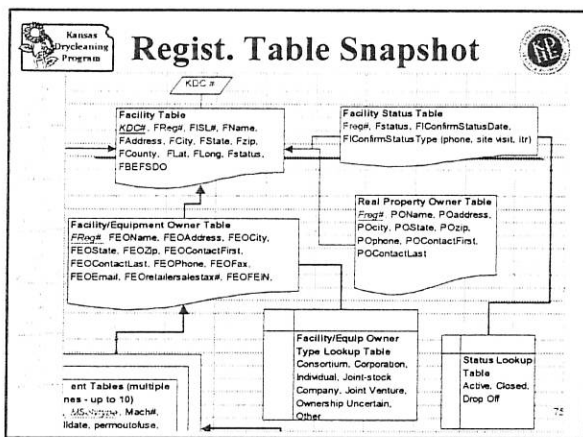
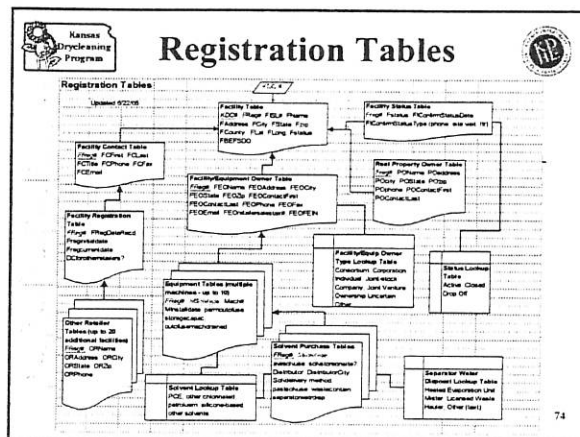
4-15

Kansas Drycleaning Program

KDHE Dry Cleaning Program Database

- KDHE internal design vs. outsourcing (\$100,000 savings?)
- Tracks:
 - Registration
 - Trust Fund applications
 - Trust Fund expenditures (financial data)
 - Trust Fund site activity progress
 - Facility compliance inspections

73



Kansas Drycleaning Program

Other Discussion Items

New Sites

- Long-term funding concerns
- Prioritization/eligibility determination
 - Facility application requirements
- Assessing sites to fully determine risk from contamination

78

H-16



Other Discussion Items
New bill (SB-13) allows sharing of
taxation information

- Kansas Department of Revenue - Share information regarding collection of taxes at dry cleaners
- KDHE can compare registered facilities to those paying taxes
- Identify non-compliance of gross receipts fee payment
- Identify underpayment is query solvent usage vs. tax payment(?)



KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2821 Relating to the Regulatory Flexibility Act
To
House Committee on Commerce and Labor**

**By Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks**

15 February 2006

HB 2821 provides for the creation of the regulatory flexibility act. It would require each state board, commission, department or officer with regulatory authorization to prepare an economic impact statement, either separate or in conjunction with, the already required economic impact statement during regulatory promulgation, with a specific focus on small businesses, defined as fewer than full time employees or less than \$6,000,000 in gross annual sales. The requirements for the EIS would include specific information on the impact of the regulation on small businesses, recordkeeping requirements, the probable effect on small businesses, and a description of less intrusive or costly methods of achieving the purpose of the regulation. In addition, each agency would be required to prepare a regulatory flexibility analysis to consider, without limitation, less stringent compliance requirements, less stringent schedules or deadlines for compliance, simplification of compliance requirements or exemptions from regulation. Finally, the bill substantially alters the Kansas Judicial Review and Civil Enforcement of Agency Actions Act, providing for a one year period to file for review by any small business that is adversely affected or aggrieved by final agency action. **The Department is opposed to this bill.**

Current regulatory promulgation has many legal requirements already in place including: stamped approval of draft regulations by the Department of Administration and the Attorney General's Office, submission of the approved regulation and an economic impact statement to the Secretary of State's Office for publication in the Kansas Register 60 days in advance of a public hearing for public comment, a hearing on the regulation by the Joint Committee on Administrative Rules and Regulations, the actual public hearing with comment from the public, additional review by the DOA and AG's Office if amended at the public hearing, submission of the approved regulation and affidavit of adoption to the Secretary of State for additional publication in the Kansas Register. Then, 15 days after publication in the Kansas Register, the regulation becomes effective. In addition, regulations classified as an environmental, such as dealing with

threatened or endangered species, require an additional and extensive environmental benefit statement prior to promulgation.

The Department of Wildlife and Parks promulgates regulations based on scientific and biological data as well as safety and societal concerns. These regulations are designed to allow for the sustainable harvest of fish and wildlife, proper use of public natural resource areas such as state parks, and safe recreational boating. Consequently, in amending these regulations, there are both positive and negative economic impacts on small businesses. By way of example, something that seems as simple as closing a hunting season a week earlier than the previous year can have a negative or adverse impact on any number of small businesses including but certainly not limited to gas stations, cafes, motels, hotels, bed and breakfast operations, guides, outfitters, ranching and farming operations, bait shops, sporting goods stores or restaurants, but may be a biological necessity for the benefit of the species as well as society as a whole. In addition, the Department currently goes beyond the legal requirements and considers such impacts by reviewing potential regulatory changes at three consecutive statewide public hearings prior to enactment, allowing more than ample opportunity for public comment.

Certainly the Department is concerned with the economic benefit derived by small businesses from hunting, fishing, park use and boating. However, the Department is charged with managing wildlife, parks and boating in the public interest and the public interest or the proliferation of the species does not always converge on the same path with the economic welfare of small businesses, particularly when managing species for their very existence.

In summary, the Department is opposed to adding yet another layer of complication to a process that already contains procedural safeguards designed to allow small businesses more than ample opportunity for input, let alone the opportunity to advocate for statutory change if necessary. Further, the provisions allowing for expanded judicial review beyond that offered to the average Kansas citizen is contrary to the judicial economy of an already burdened legal system.



KANSAS

DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony on House Bill 2202
House Commerce and Labor Committee
15 February 2006
Steve Zink
Kansas Department of Labor
Director, Division of Industrial Safety and Health

Mr. Chairman and Members of the Committee:

My name is Steve Zink, and I am the Director of the Industrial Safety and Health Division for the Kansas Department of Labor. Thank you for the opportunity to appear today and to allow me to share some thoughts on our work place safety program and the impact of House Bill 2202.

House Bill 2202 would provide workers compensation premium discounts to employers who voluntarily request a work place safety consultation through the OSHA 21(d) consultation program and who follow and implement the recommendations of the consultation report.

In order to more effectively administer the safety programs within the Department of Labor, all of the workplace safety programs have been reorganized. In July 2005 all of the safety programs at KDOL were organized under a new standalone division within the agency.

There are more than 70,000 private employers in our state. Professionals in the Kansas Department of Labor provide safety and health consultations. In addition, insurance companies and other private groups also provide much-needed consulting services.

The services in our agency are provided through a grant with the United States Department of Labor (OSHA), known as the 21(d) State Consultation program. Through this program, KDOL provides free safety and health visits to private employers in the state. A significant portion of the activities in our division are connected to the safety and health consultation program.

The program is delivered by well-trained safety and health professionals who can help establish or strengthen a company's safety and health program. A consultation may include a thorough, comprehensive audit of both the written programs and potential exposures to employee safety, or it may be a limited audit of a specific process or program. This is not an enforcement function, but strictly a voluntary consultation program.

As part of this program, the employer must request the service in writing, and must be willing to correct all of the hazards identified during the audit within a specific time frame (usually 60 days).

During the last Federal fiscal year, KDOL's Division of Industrial Safety and Health completed over 848 consultative visits to employers in the state through the OSHA 21(d) program. Through these visits, there were more than 2,600 serious hazards identified. Additionally, we provided more than 40 free safety and health seminars to employers in the state.

Ultimately, the goal of the 21(d) program is to assist employers with identifying unsafe conditions within their work environment and to prevent employee injuries. Statistics through the National Safety Council reflect that although the frequency of injuries has been reducing slowly over the past couple of years, the cost associated with those injuries has increased.

A focus on safer workplaces offers a true win-win-win scenario. Safer workplaces result in fewer injuries to workers. Safer workplaces reduce the number of claims paid by insurance companies. And safer workplaces should result in lower premiums charged to employers.

We are supportive of efforts to promote safer workplaces. Providing a credit through House Bill 2202 will encourage employers throughout the state to both develop and maintain an effective safety and health program. Statistics through the Department of Labor have proven that those employers who have an effective safety and health program have fewer and less severe injuries.

Finally, if you choose to work this bill we respectfully ask that you include language to authorize the Secretary of Labor to issue rules and regulations to implement this act and the provisions of K.S.A. 44-636.

Again, Mr. Chairman, thank you for the opportunity to appear today. I would be happy to stand for any questions you may have.

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
- 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/Roofers Local #20
- 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

Testimony on HB 2202 Workplace Safety Incentives House Commerce & Labor Committee February 15, 2006

The Kansas Coalition on Workplace Safety supports the concept of HB 2202, which allows employers to request a safety consultation and to receive premium discounts on their workers compensation insurance if they follow the recommendations made in the consultation. To the extent that the bill would improve the safety of the workplace and result in fewer injuries, we believe that the bill would have a positive impact on Kansas workers.

However, we note that Kansas employers already enjoy some of the lowest insurance premiums in the nation. While we support keeping premiums as low as possible, we believe there should be more focus on workers compensation benefit because nationally, Kansas workers receive some of the lowest benefits. This committee has received substantial testimony that Kansas' benefits are not keeping pace with the cost of living and have not been increased in nearly 20 years. While safety consultations might help us begin to make the changes we sorely need in Kansas, it is certainly not a cure for a broken benefits system, and we hope that the Legislature continues to review and ultimately passes much-needed workers compensation benefit increases.

Thank you for the opportunity to provide you with our input.

Terri Roberts J.D., R. N.
Executive Director
Kansas State Nurses Association
1208 SW Tyler
Topeka, KS 66612
785.233.8638

Chairperson of the Kansas Coalition for Workplace Safety

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Kansas Building Industry Workers Compensation Fund

2101 SW 36th Street • Topeka, Kansas 66611 • 785-266-4540 • FAX 785-266-7953

HOUSE COMMERCE COMMITTEE

February 16, 2006

HB 2202

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs and I am the Administrator of the Kansas Building Industry Workers Compensation Fund. KBIWCF is a homogeneous group fund for the residential and light commercial construction industry. We currently have approximately 875 companies insured and \$13,500,000 in premium and growing. Beginning January 1, 2001 to current date, we have increased our premium almost \$11 million dollars.

I am appearing in opposition to HB 2202, not because I am opposed to Safety Training but because safety rewards are realized by the companies through other methods. KBIWCF strongly supports and promotes safety training and workplace safety. We employ 2 full time loss control staff who do jobsite inspections for our members and free 10 hour OSHA training classes. We have a Safety video library for our members to enable them to do in-house safety training on a regular basis.

My point is that just because a company voluntarily asks for a jobsite inspection and "follows the recommendations of the consultation report" does not mean they will do so in perpetuity. If they believe they will receive a "safety discount" from the carrier, they will ask for an inspection.

This bill eliminates some of the controls underwriters have in rating and evaluating risks. Experience modification factors are given to companies based upon their loss experience. A good loss experience equates to a lower experience mod which equates to an approved discount of the premium. In the reverse, a poor loss experience increases the experience mod and causes them to receive little or no discount. Loss experience stays with the company for 3 years, much like a speeding ticket on your driver's license.

The statutes allow us to give a discount of 15% to our members. If we have a company with a good safety record with a low experience mod and we award them the full 15% discount, then this leaves no room for an additional "safety discount" for having a voluntary inspection. Yet a company who has an inspection but has a less than admirable loss ratio still gets a discount for having an inspection.

For a company to protect their loss experience/experience mod/premium discount, they must operate a safe jobsite and prevent accidents. Not only should they be interested in

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the expense of their insurance premium, they should be concerned about their most valuable asset, a good employee. In addition, for the type companies we insure, their experience mod is sometimes used to determine whether they are permitted to bid on a job somewhere. On some jobs, a mod greater than .85 disqualifies them from bidding.

I strongly support a workplace safety consultation as a means of safety education. I support OSHA training and special training for all of the various types of work safety. I do not support a discount mandated because a company makes a phone call requesting an inspection and "follows the recommendations". There is no time certain as to when or how long these recommendations will be followed.

I would urge the Committee to consider the fact that the reward for a safe work place is in the reduction or elimination of injuries which reduces the premium. KSA 44-5,104(a) states "Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and shall provide accident prevention programs upon request of the covered employer as a prerequisite for authority to provide such insurance or coverage." This section continues to spell out what a carrier is required to do and the State Consultation service could be a great asset in the Safety Training of the Kansas work force. However, I think it is wrong to dictate to coverage providers that they shall give a discount because of this one act.

8-2

Kansas Association of Insurance Agents



Testimony on House Bill 2202
Before the House Commerce & Labor Committee
By Larry Magill
February 15, 2006

Thank you mister chairman and members of the committee for the opportunity to appear today in opposition to of HB 2771, a measure introduced at the request of Representative Ward. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

HB 2202 raises a number of serious concerns. If I were a small business thinking of taking advantage of the offer, I would be concerned that it says I won't be directly charged with citations and penalties. I'm not sure if they can be indirectly charged, charged later if they don't comply with recommendations, or simply re-inspected at a later date. My guess is that will make a business nervous.

State Should Not Determine Rating Plans and Underwriting

The bill requires the Insurance Commissioner to develop a system of premium discounts for any employer who voluntarily requests a work place safety consultation under the state administered OSHA voluntary inspection program as long as they follow the recommendations. The Kansas Insurance Department only approves or disapproves rates filed by insurance companies and licensed rating organizations like the National Council on Compensation Insurance (NCCI). We are opposed to the state becoming involved in determining how insurance will be rated in Kansas, rather its workers compensation, auto insurance, health insurance or any other line of insurance. **The competitive marketplace determines rates and rating plans and it's a serious mistake for the state to begin dictating rating factors** to be used, rate credits to be applied, base rates or anything else about determining the premium charged to an individual business. The Insurance Department has the final say with their approval process of course.

All Businesses Over \$2,250

The current workers compensation market in Kansas has a number of ways of rewarding businesses for maintaining safe workplaces. The most important factor is the firm's **experience modification factor**. This is determined by their own losses plugged into a formula that compares their claims experience to the norm and comes up with either a credit experience modification or debit depending on their claims history. NCCI skips the most recent year and looks back three years beyond that to develop the factor. Experience modification factors can range from around .60 to over 2.0 depending on the payroll class codes that apply and the size of the business.

Voluntary Market

In the voluntary insurance market, a business may benefit from good experience by being eligible for a dramatically lower **loss cost multiplier**. The LCM's currently range from the

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lowest at .965 to a high of 2.156. Potentially that's a swing of over 100% based at least in part on loss experience.

Another incentive for good loss experience and attention to safety is the chance to be on a **participating or dividend plan**. If their loss experience is good enough and if the insurer declares a dividend, they can earn a return premium based on their loss ratio. There are lots of factors that determine whether an insurer offers a dividend plan including whether they are filed to offer them, whether it's a class of business that's desirable, and whether the individual risk has good loss experience. All group self-insurance pools offer the potential of dividends.

Even more dramatic swings in cost can occur under a **retrospectively rated plan** where the carrier basically takes the insured's claims experience, applies predetermined factors for taxes, claims adjustment expenses and overhead to pure losses and charges the result as the premium. The final cost isn't determined until years later once most of the claims are closed. The plan will set out the minimum and maximum factors which determine the minimum premium for the best loss experience and the worst case scenario if losses are worse than anticipated.

Assigned Risk Incentives

Further incentives for safety in the workers compensation market are found in the penalties for being in the assigned risk plan. If a businesses loss experience is sub par it may find that no willing market will provide its workers compensation coverage and its only alternative is the Kansas Workers Compensation Plan or assigned risk. Once in the assigned risk the business is subject to a **25% surcharge** on its premium over \$2,250/year, **loses its premium discount** which is 5% on premium over \$5,000, is subject to an additional or second experience modification factor called the **ARAP** that can be anywhere from 1.0 to 1.49 depending on loss experience and has no chance for a dividend.

If the business is large enough, over \$100,000 in annual premium, it may choose to take a voluntary retrospectively rated plan with a minimum factor of .60 and a maximum factor of 1.75. If the business is over \$200,000 the **LSRP** as it is called is mandatory.

On the incentive side, the assigned risk offers a **5% safety credit** for attending a safety seminar up to a maximum credit of \$250. Small employers, those under \$2,250 in annual premium, are also eligible for a **loss free credit of 5%** in the assigned risk plan.

No Guarantee That Safety Services Will Be Worth Discounts Given

Giving credits in advance of good claims experience is a dangerous proposition. The safety services may or may not reduce claims. If they don't, then the state has unfairly mandated a credit for one group of businesses at the expense of another group. The value of the safety services will depend greatly on the risk inherent in the businesses' operations. A clerical only risk has very little need for safety services while a dynamite manufacturer has almost an unlimited need. A small employer with simple operations needs less than a large, complex and spread out employer. Contractors who move from job site to job site have an ever-changing work environment.

Mandatory Safety Offer Now

Since the 1993 reforms, there has been a requirement on insurance companies and group self-insurers to offer safety services at least once each year found in K.S.A. 44-5,104. That statute establishes criteria for safety personnel, standards for safety services, requirements for notice to policyholders, provisions for the Secretary of Labor to inspect, required annual reports and more.



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Kansas' Safety Record Improving

We must be doing some things right because our number of claims is steadily decreasing. According to NCCI's 2005 State Advisory Forum, Kansas' permanent partial claim frequency at 583/100,000 workers is below the regional average of 642. Our claim frequency for all lost time claims has been on a steady decline in Kansas since 1996 going from 41 claims per million of premium to 30 claims in 2003.

According to the Kansas Dept of Labor, Division of Workers Compensation, Annual Report there were a total of 94,570 claims in 1995 compared to 64,761 in 2005 despite job growth over that span of time. The total injuries and illness rate per 100 FTE's has declined 39.6% over the last 11 years.

We feel there are ample incentives in the workers compensation system today to encourage safety and urge the committee not to act favorably on this bill. We would be happy to answer questions or provide additional information.



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BRAD SMOOT

ATTORNEY AT LAW

800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)
bsmoot@nomb.com

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206

Statement of Brad Smoot
Legislative Counsel
American Insurance Association
House Commerce and Labor Committee
Regarding 2005 House Bill 2202
February 15, 2006

Mr. Chairman and Members:

On behalf of the American Insurance Association (AIA), we are pleased to have an opportunity to appear in opposition to 2005 HB 2202. AIA is a trade association of 430 insurers providing business and personal insurance to customers in all fifty states. Our product lines include business, general liability, workers compensation, malpractice, homeowners and auto insurance.

Section 1 of the bill seems to allow the practice of voluntary work place safety inspections by the Kansas Department of Labor, in accordance with the federal Occupational Health and Safety Act (OSHA). The Department of Labor advised this committee earlier this year that it conducted 1033 such inspections under existing law, thus raising the issue of why Section 1 is necessary.

Section 2 of the bill then attempts to mix OSHA inspections with workers compensation by requiring the Kansas Insurance Department to establish a premium discount program based on whether a given employer follows the recommendations of the OSHA style inspection. One might assume that having an OSHA inspection and implementing its recommendations might have a beneficial impact on workplace safety. However, the premium discount called for in this bill is not tied to an actual improvement in workplace experience, and there is no evidence that such mandatory credits produce safer workplaces. By contrast, workers compensation premium pricing formulas tie premiums to an employer's actual workplace claim experience.

Workers compensation insurance is based on the concept of an "experience modifier" (commonly called an "ex-mod") which raises or lowers an employer's premiums depending on the employer's actual workers compensation claims and cost experience. HB 2202 proposes to add a new "discount" on top of actual experience, even though sufficient financial incentives already exist for employers to implement workplace safety measures. The classification system, experience rating, retrospective rating, and loss-sensitive dividend plans all create incentives to reduce losses, with the result that well managed companies are already receiving the benefit of reduced premiums. The ex-mod should be the best predictor of whether a given employer has a safe workplace. And, as with any insurance mechanism, if one customer pays less than he should because of an arbitrary discount, other customers will be required to pay for that discount in the form of higher premiums. We urge you to reject HB 2202. Thank you for considering our views.

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Testimony Re: HB 2202
House Commerce & Labor Committee
Presented by Dennis Carpenter
President/CEO
Kansas Restaurant and Hospitality Association
February 15, 2006

Mr. Chairman, Members of the Committee:

My name is Dennis Carpenter, and I am President/CEO for the Kansas Restaurant and Hospitality Association and its Self Insurance Fund (KRHASIF), which is a member owned 501(c)(6) nonprofit company and provides workers compensation insurance to members of the fund and our association. The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Education Foundation, the association works to represent, educate and promote the rapidly growing industry of hospitality in Kansas.

KRHA opposes HB 2202 as the current Experience Modification Rating system the Kansas Insurance Department utilizes rewards members with good loss ratios as well as penalizes members with poor loss ratios. In addition members can currently qualify for a volume discount and elect to obtain yet another discount by choosing to go on a deductible program, which is also set forth in the Kansas Statutes Annotated administered by the Kansas Insurance Department.

We agree totally that when a company is sincere about creating a safer work environment for their employees they should be rewarded in some way and the logical way would be through lower workers compensation insurance premiums. However there is a system that accomplishes this already in place. It is called the Experience Modification Rating through the National Council on Compensation Insurance "NCCI". This is based on the actual losses of the particular business for a three-year period, which is one year removed from the current year. We feel this system does a good job of rewarding good past performance with lower workers compensation insurance premiums and providing both self insurance funds and insurance companies the means to collect additional premiums when the companies past losses have been greater than normal.

The self-insurance funds and insurance companies alike have a financial interest in the companies they insure following reasonable safety recommendations to create a safer workplace. The insurance companies are aware of every claim because we have to pay them. A state or any other outside safety consultant does not have this information, without relying on the insured for it. At the Kansas Restaurant and Hospitality Association's Self Insurance Fund, the Loss Control Department receives, reads and electronically files every claim. This is so they can be easily retrieved and referenced in the future (other insurance providers probably do likewise). We also feel, since we specialize in our industry that we know the relative hazards better than more general practice safety professionals.



Currently if a company with a high experience modifier comes to us seeking workers compensation insurance, a portion of the increased risk is offset by additional premium, therefore many times we are willing to accept their business and work with them on their safety program to lower future losses. If we are forced to give a discount based on this company implementing safety practices recommended by an outside safety professional (whose recommendations we may or may not agree with 100%) this inevitably would mean we would not be able to offer workers compensation insurance coverage in some situations.

Our goal is to provide a good and stable value in the workers compensation insurance we provide relative to the cost of the premium. We feel we are doing this with the current system, but this additional level of discounts being mandated on us by HB 2202 could seriously impair our ability to do this. If proper safety recommendations and training procedures are being strictly adhered to, it has been my experience the business can keep their premium modifier lower than a "1", thereby receiving a discount for work place safety under the current guidelines.

Thank you for this opportunity to testify and I will be happy to try and answer any questions.

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