

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 22, 2006 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Others attending:

See attached list.

Chairperson Brownlee stated the Committee would be working **SB 461--Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation.** Chairperson Brownlee called the Committee's attention to the sheet she passed out on her letterhead which is a part of the Work Comp Act and two definitions which would be helpful. (Attachment 1) Chairperson Brownlee called the Committee's attention to the definition of "Accident" pointing out the first part; accident means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. Also stating that it goes on to say that the employer bear the expense of the accidental injury to a worker caused by the employment. She stated this is current statute. She then called the Committee's attention to the last sentence of the definition of personal injury; an injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living. She stated the two definitions which are current statute shed a lot of light on the bill they are trying to work. What they are trying to do in the first section of the bill on preexisting conditions, is try to make sure the injury was caused by the employment and not the aging process. She made reference to incidents of work comp cases that were claimed in a fraudulent manner with injuries not caused by employment. She asked the Committee to refocus on the intent of the bill. She called the Committee's attention to **Workers Compensation Benefits Comparison as of 1/1/2005.** (Attachment 2) She stated compared to Nebraska, Missouri, Colorado and Oklahoma, the Kansas worker has not done that badly.

Chairperson Brownlee recognized Senator Emler to explain his proposed amendment to the bill. He stated the bill still has economic downturn and preexisting issues but added language dealing with the part of the body that was injured in the particular accident. The rest of the amendment deals with eliminating the functional disability and putting back language that was stricken in the original bill. He also stated the look back was changed from 15 years which is in the statute, to 5 years.

Senator Emler made a motion to accept the Emler amendment to the bill. Senator Wagle seconded.

A discussion followed the motion regarding the 5 year look back and the 15 year look back and the original language of the bill. The layoff provision of the bill was also discussed along with the economic layoff provision of the bill. The definition of economic reasons for a layoff were discussed. The intent of the bill is to make sure a layoff does not occur because of the injury.

Chairperson Brownlee called for a vote on the motion to accept the Emler amendment to the bill. Motion carried with two no votes made by Senator Kelly and Senator Reitz.

Chairperson Brownlee recognized Senator Emler. Senator Emler made a motion to move the bill out favorably as amended. Senator Jordan seconded.

Chairperson Brownlee asked for discussion on the motion by Senator Emler. Senator Barone has concerns, he feels there is fraudulent activity on both sides and the bill does not address these issues. He further stated there is a problem with the work comp system. Chairperson Brownlee recognized Senator Reitz. He stated, given his background as a Physician, he has concerns with the bill and doesn't believe this is a fair bill. He

CONTINUATION SHEET

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feels there are a lot of folks that will fall through the cracks with this bill; therefore, he cannot support the bill. Chairperson Brownlee recognized Senator Kelly. She stated the information they received this morning from the Chair suggest that what the bill is doing is already on the books and maybe the problem is with Administrative Law Judges enforcing the law. She believes the Committee should be working on the entire system. She has concerns that the bill will be decreasing the compensation available for the military returning home from the war and would also effect volunteer fireman and nurses and many others. She stated you can be pro business and pro employee at the same time and thinks they need to address the work comp issue much more deeply. Chairperson Brownlee recognized Senator Wagle. Senator Wagle stated she would like to thank Senator Emler for working on the amendment. She thinks the bill is fair and she supports it.

Chairperson Brownlee called for a vote on the motion on the floor to move the bill out favorably as amended. Motion carried by a show of hands with "no" votes from: Senator Reitz, Senator Kelly, Senator Barone and Senator Schodorf.

Chairperson Brownlee called the Committee's attention to **SB 518--Payment of compensation; payment methods; electronic transfer, electronic deposit, payroll card.** Chairperson Brownlee recognized Senator Wysong. Senator Wysong offered an amendment on the bill to change the start date from July 1, 2006 to July1, 2007 and have quarterly seminars during the transition period on the process. The entire Committee discussed Senator Wysong's amendment and are in agreement. **Senator Wysong made a motion to accept his amendment to the bill as a new section three. Senator Emler seconded the motion. Motion carried.**

Chairperson Brownlee recognized Senator Emler. Senator Emler made a motion to accept the amendment offered by Via Christi which adds language stating at least one withdrawal per pay period shall be allowed at no cost to the employee who uses payroll cards. Senator Kelly seconded the motion. Motion carried.

Chairperson Brownlee recognized Senator Emler. Senator Emler made a motion to pass the bill out favorably as amended. Senator Jordan seconded the motion. Motion carried.

Meeting adjourned at 9:20 a.m. with the next scheduled meeting for March 1, 2006 at 8:30 a.m. in room 123S.

Senate Commerce Committee Guest List

Date: Feb 22, 2006

Jim Lubbers	Kansas State Firefighters
Jan Romine	Kansas State Firefighters
J. KEVIN JONES	CANUTE FIRE DEPT.
Kevin Flory	KSFFA
Dwaine Simpson	KGFA - KARA
Mike Brink	Ironworkers Lo 10
Wil Lech	Ks AFL-CIO
Beth Forster	AFL-CIO
adrian A	KSFFA
MARK BORANYAK	CAPITOL STRATEGIES
Kiel Brunner	inform
Bill Curtis	Ks Assoc of School Bds
Jeff Cooper	KTCA
Dennis Phillips	KSCFF
Ed Redman	KSCFF
Jim Wehaff	Ks AFL-CIO
Richard Thomas	KDCLWC
Ron Soelner	Hinkley K. Co
Jeff C... ..	KS Chamber
Scott Heidner	KSIA
Mike Murray	Sprint
Ashley Guerd	Genexa Chamber
Lang K...	P&C ASSN.
Tom Roberts	Kansas State Nurses Assn.

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SENATOR KARIN BROWNLEE
ASSISTANT MAJORITY LEADER

COMMITTEE ASSIGNMENTS
COMMERCE, CO-CHAIRPERSON
FEDERAL & STATE AFFAIRS
FINANCIAL INSTITUTIONS & INSURANCE
INTERSTATE COOPERATION

JOINT COMMITTEES:
ADMINISTRATIVE RULES & REGULATIONS
ECONOMIC DEVELOPMENT
CORRECTIONS AND JUVENILE JUSTICE

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44-508

**Chapter 44.--LABOR AND INDUSTRIES
Article 5.--WORKERS COMPENSATION**

44-508. Definitions. As used in the workers compensation act:

(d) "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

(e) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

Senate Commerce Committee
February 22, 2006

Attachment 1-1

WORKERS COMPENSATION BENEFITS COMPARISON

(As of 1/1/2005)

Assume: A 35 year old worker who earned \$15.00 per hour or \$600.00 per week. TTD rate 2/3 of wage or \$400.00 per week. Low back injury with a 10% impairment rating.

Employee now earns \$7.50 per hour for a 50% wage loss. Due to 50 pound lifting restriction, the worker has a 50% task loss.

KANSAS

Functional impairment - 415 weeks x .10 or 41.5 weeks x \$400/wk = \$16,600.00

Work disability (Permanent partial general disability as currently defined by

K.S.A. 44-510e(a)) - 415 weeks x .60 or 249 weeks x \$400/wk = \$99,600.00

MISSOURI

Functional impairment only allowed unless worker is totally unemployable

400 weeks x .10 or 40 weeks x \$400/wk = \$16,000.00

NEBRASKA

Functional impairment only allowed with possible vocational rehabilitation

\$400/wk x .10 = \$40/wk

Functional impairment 300 weeks x \$40 = \$12,000.00

Assume TTD during vocational rehabilitation for 2 years or 102 weeks x \$400/wk = \$40,800.00

\$12,000.00 + 40,800.00 = \$52,800.00

COLORADO

Functional impairment only allowed

\$400/wk x 1.5 age factor x .10 x 400 weeks = \$24,000.00

OKLAHOMA

Functional impairment

500 weeks x .10 x 264/wk = \$13,200.00

Kansas Employers Want the Work Comp System Fixed

1. **Kansas' rate of new job creation is in the bottom 10% of the US.**
2. **Kansas' business climate is merely in the middle of the pack;** this is not good enough.
3. **Work comp costs just keep going up** for Kansas employers.
4. **Attorney involvement** in work comp cases is higher in Kansas and **creates a costly tangle** for workers and employers. **This slows down settlements** for workers, increases transaction costs, drives up claim costs and siphons off money that should rightfully go to workers. (NCCI)

The Kansas Chamber's legislative solution – **SB461** – **restores the legislative intent of earlier Workers Comp reforms subsequently undermined by the decisions of ALJs.** Work disability rules should be changed so that employees receive compensation under a supplemental income formula instead of the current work disability formula. It's time to fix a broken system.

SB 461 directly addresses Kansas employers' high-level concerns about the **costs of doing business** in Kansas, frustration with **unfair** government Workers Comp **regulations**, and it provides needed government **help for small businesses**. These are all top five issues for Kansas businesses across the state identified in recent polling.

Workers Comp rates really don't matter when the costs **for employers are skyrocketing**. In a recent 5-year period, the total **cost per claim** for a large Kansas employer **increased** from \$3,838 to \$14,532, more than a **whopping 350%**. (The company wishes to remain anonymous for fear of retribution from labor and the trial lawyers.)

According to the Missouri governor, Workers Comp **changes that went into effect Jan. 1, 2006 in Missouri are attracting more employers and jobs** because the work comp system in that state is seen as fairer and more business-friendly. (St. Louis Post Dispatch, 12/26/05)

Let's not penalize today's employers for injuries and disabilities that their employees previously incurred while working for someone else.

"Part of the culprit is medical inflation; the other part is that workmen's comp in Kansas is in a crisis. **It is trying to compensate injured employees for the aging process, and certain aspects of the law are asking employers to pay for injuries and also pre-existing conditions.** Also, the claims are running longer and that plays a part when you consider medical inflation." – Bill Curtis, Kansas Association of School Boards, June 10, 2004, *Johnson County Sun*.

JEFF GUNDERBLOG
KANSAS CHAMBER