

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on March 6, 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  
Renaë Jefferies, Office of Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee:

Ron Laskowski, Fisher, Patterson, Saylor and Smith  
John Alstedt, Auth-Florence Corporation  
Criss Mayfield, Abbott Workholding  
Steve Rothrock, Whiteleys  
Kari Clark, Surgical Specialists, Wichita  
Gus Meyer, Rau Construction, Overland Park  
Larry Karns, Kansas Self Insurers Association  
Duane Simpson, Kansas Agribusiness Retailers Association  
Jeff Glendening, The Kansas Chamber

Others attending:

See attached list.

The Chairman opened the hearing on **SB 461: Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation.**

Staff gave a briefing on **SB 461.**

Ronald J. Laskowski, testified as a proponent to **SB 461.** **SB 461** is intended to assure that the original intent of the Workers Compensation Act is recognized by both employers and employees. The bill represents good public policy that would have a positive impact on the business climate in Kansas. The bill provides positive reform of work disability laws in Kansas (Attachment 1).

John Altstadt, Vice President of Operations for Auth-Florence, Manhattan, testified as a proponent to **SB 461.** Auth-Florence moved from the Chicago area in 2003 in the hope of finding a work environment that was more conducive to efficiency, productivity and growth. Individuals injured on the job should be compensated when an injury leads to permanent disability.

Workman's compensation laws were originally created to curb the abuses of companies who would carelessly allow their employees to work in unsafe conditions, and then not take any responsibility for care due to injuries or financial responsibility for the long term consequences of the injuries. Workman's compensation continues to serve a good purpose. Now the table has turned. It is now structured so that pre-existing conditions can continue to cost unsuspecting companies and abusers can take advantage. This bill is one step towards getting back control of the workers compensation system (Attachment 2).

Criss Mayfield, Director of Administration, Abbott Workholding Products, Manhattan, testified in support of **SB 461.** The Workers Compensation Plan was intended to provide a no-fault protection for employee and employer alike. It was to be the exclusive remedy for medical and lost-wage expense from injury or illness directly resulting from job related tasks. The question of pre-existing conditions have been one of the most frustrating elements of the system. Many employers have felt victimized by growing disregard or misinterpretation of the significance of pre-existing condition in a claim. How functional disability and impairment are defined and treated has long needed refinement. This element often results in a long, unresolved situation that is confusing and frustrating for all parties (Attachment 3).

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Steve Rothrock, Whiteley's Pallet and Industrial Supply, testified as a proponent to **SB 461**. Workers Compensation and overall insurance costs have become a major expense for the company. Seven years ago the over-all insurance expense was \$13,000 per year. In 2004 the insurance expense was over \$26,000 a year. There have been two claims to go against our experience mod and drove up the cost of insurance very quickly. These claims affected our workman's compensation insurance premiums in a very negative manner (Attachment 4).

Kari Clark, Administrator, Wichita Surgical Specialists, Wichita, testified as a proponent to **SB 461**. The workers compensation current system is not equally fair to both the employer and employee. The system is stilted, but **SB 461** would help level out the preexisting portion while clearly continuing to protect the employee. Our attorney informed us that under Kansas law if an employee suffers aggravations of preexisting conditions caused by work activities, then those claims are compensable. **SB 461** would not change weekly payments; however, it would affect the amount of functional impairment and/or work disability amount (Attachment 5).

Gus Rau Meyer, President of Rau Construction Company, testified as a proponent to **SB 461**. Rau Construction is a family owned firm since 1870. Our Workers Compensation Premiums would be in the top 11% of vendors with \$107,891 in premiums in 2005; with premiums that average slightly over \$1/man hour worked. We work hard to control all costs including Workers Compensation Premiums. Accidents do happen and we never deny an employee treatment. It is believed this bill would stop one of the major abuses (Attachment 6).

Larry G. Karns, Attorney, Kansas Self-Insurers Association, testified in support of **SB 461**. A major change in the Kansas Workers Compensation law was intended by the 1993 overhaul of the Kansas Works Compensation Act. The 1993 amendments to K.S.A. 501c stipulate that the employee shall not be entitled to recover for the aggravation of a preexisting condition except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting. The 1993 changes also eliminated the Kansas Workers Compensation Fund. Physicians often testify that a claimant's preexisting arthritis or degenerative condition was the cause of the resulting impairment. If that preexisting condition is not rateable under the AMA Guides 4<sup>th</sup> Edition, the employer pays the entire cost of the claim.

The payment of medical expenses incurred by the aggravation of a preexisting condition due to an on the job injury would not be affected by the proposed amendment. If an employee suffers an injury as defined by the Act, the employer is required to provide "reasonable and necessary medical treatment to the employee to treat the effects of the injury." As the definition of accidental injury includes the aggravation of a preexisting condition, the employer's duty to provide medical treatment in such cases is unchanged. The proposed bill only addresses the amount of money the employee is to be paid for permanent impairment. The employee would not be paid for that portion of permanent impairment contributed to by the preexisting condition (Attachment 7).

Duane Simpson, Vice President of Government Affairs of the Kansas Grain and Feed Association (KGFA) testified as a proponent to **SB 461**.

Starting in 2000 agribusiness in Kansas began to see their work comp rates increase dramatically. In 2005 rates began to flatten out and there was an actual reduction in 2006. Rates for a grain elevator employee in 2000 was \$6.59 per \$100 of salary for the average company. By 2004, that rate had hit \$17.92; an increase of 172% in only four years. The rates have dropped in the past year to \$12.62 per \$100 of salary which is still an increase of 91.5% since 2000. Since 2000 farm machinery employee rates are up 63.8%, feed mill employee rates are up 92.7%, and refined fuels/LP employee rates are up 32.7%.

**SB 461** restores the original intent of the 1993 workers compensation reform bill with respect to preexisting conditions. It's important to note that if **SB 461** becomes law an employer would still pay all medical bills for work related injuries, whether or not there is a preexisting condition. The bill reforms the way Kansas pays for work disability and attempts to bring it into line with other states. Kansas is the only state with a 15-year rule that determines what the extent of the disability is. This rule causes an employer who hires someone to

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pay for physical capabilities that may have been lost after a work place accident at another employer, or perhaps even to pay for the effects of aging (Attachment 8).

Jeff Glendening, Vice President of Political Affairs, The Kansas Chamber, testified in support of **SB 461**. Workers compensation has been a growing concern to many Chamber members. Although insurance rate costs have been lower than surrounding states, there has recently been a price surge. In many cases, Kansas was much higher than surrounding states when factoring all components of the work comp system. Recent trends suggest that Kansas is becoming a safer place to work. Even so, NCCI indicates that average work comp costs in Kansas continue to increase. This bill is intended to restore the original legislative intent of the 1993 workers compensation reform bill as it relates to pre-existing condition. Unfortunately, recent court rulings have undermined the current system making it nearly impossible for an employer to receive credit for an employees preexisting condition. This bill would reduce workers compensation rates for employers. Currently, they must pay 100% of the indemnity for injuries unrelated to the workplace and this measure would exempt that practice. The award was reduced by the percentage of lost use that existed prior to the workplace injury based on the opinion of the physician. There is opposition to this bill from the trial lawyers because it reduces the portion of the award they are eligible to receive contingency fees on (Attachment 9).

The following written testimony was distributed in support of **SB 461**: Jeffery R. Brewer, Powell, Brewer & Reddick, Wichita (Attachment 10); Natalie Bright, Wichita Independent Business Association (Attachment 11); and Wes Ashton, Overland Park Chamber of Commerce (Attachment 12), Doug Hobbs, Kansas Self-Insurers Association (Attachment 13).

The meeting adjourned at 10:57 a.m. The next meeting will be March 7, 2006.