

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 22, 2006 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Bev Beam, Committee Secretary

Conferees appearing before the committee:

Clint Patty, Attorney, Kansas Aggregate Producers Association
Callie Denton, Kansas Trial Lawyers

Others attending:

See attached list.

The Chair called the meeting to order.

Final Action

(SB 512) - An act enacting the silicosis claims act

Following discussion on **(SB 512)**, Senator Barone asked that in addition to silicosis, a list stating what other product liability exclusions there are be provided to the committee as soon as possible.

The Chair gave the proponents and opponents three minutes each to state their case.

Clint Patty, Attorney, appeared on behalf of the Kansas Aggregate Producers Association representing them both as an attorney and as an advocate. Mr. Patty said the main crisis at hand is the inability to obtain insurance coverage. Mr. Patty said the other benefit that is realized from this is the prevention of the kind of frivolous litigation seen in other states from making its way to Kansas. I don't know if there is any data about how many silica cases have actually been filed in Kansas. There may have been quite a few, actually, but you just haven't seen them appealed so you don't get a published opinion to show you proof of it, he said. In fact, I would venture to say there probably have been some silica exposure cases although, certainly, no one is going to argue that there has been the kind of litigation you see in Texas and Florida. It is our contention, however, that this may only be a matter of time and this is kind of a preventive to keep that from happening while at the same time really having a very minimal effect on the way these claims would actually be filed.

I think the balloon that has been offered addresses many of the issues that were initially raised. What I want to emphasize is, I think we get the immediate benefit as far as the ability to obtain insurance coverage and the long term benefit and that is good public policy that would provide both a long term and short term gain. There is nothing unique about this, we have seen four other states enact this kind of policy. It is entirely constitutional. The expanded deadlines provide claimants more time, greater ease of obtaining merely a medical opinion saying they have a diagnosis. That is all they need. The ultimate protection in this case is, if they can't get it in 60 days, we address what happens next, and that is it is dismissed without prejudice. They can come back, the court maintains jurisdiction, and nobody is harmed. As long as they can eventually get that diagnosis, they are going to get into court and then it is simply a matter of being able to prove your case, Mr. Patty said. (Attachment 1)

The Chair called on Callie Denton, Kansas Trial Lawyers Association. I want to emphasize how very complicated this bill is, she said. In looking at this large global policy question on behalf of some people having trouble getting insurance coverage, this is not the answer. This is a very complicated and convoluted bill that will have a negative impact on the state. I appreciate that there may be some problems getting insurance, but I have talked with some of our members who have indicated that a number of these policies

CONTINUATION SHEET

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for years have had these environmental exclusions. They have never covered silica and now what is happening, people are sort of figuring it out and the insurance companies are saying we are not going to cover that and you need to get it fixed by taking immunity or putting up barriers for people that could bring this type of claim. Then we might try and write the coverage, maybe. But what I heard Mr. Moses say is, there is no guarantee. In Ohio they are not writing it, they are saying they might. I think it is impossible to say what a business is going to do as a result of this type of legislation. In the meantime, you are cutting off the rights of people who could have legitimately been injured and have a legitimate claim. We are interpreting this bill as pretty much closing the door on anybody ever being able to bring a claim just because of the medical authority required to make the diagnosis.

I want to encourage this committee that there is not a tort problem in this state in general or specifically related to silicosis. Only two percent of the cases brought in this state were court actions and that's the kind of cases you would be filing if you had product liability or exposure to silica, only 2%. That's all the court action. There is no litigation crisis, no silicosis crisis. This bill is just a house of cards with a lot of catch 21's in it. I think we have time to look at the experience of other states. I urge you to delay action on this bill and give it more attention, she said. (Attachment 2)

Senator Brownlee moved (SB 512) with the balloon be passed with the correction. Senator Barnett seconded. Motion passed. Senator Wilson abstained.

Senator Brownlee moved for favorable passage of (SB 512). Senator Barnett seconded. Senator Steineger said he would rather wait for an interim study.

Senator Barone and Senator Steineger voted against passage of the bill. Senator Wilson abstained.

Motion passed.

Chair called for action on (SB 547) - An act enacting the pharmacy benefits manager registration act. The Chair said one of the things agreed on was to take out new Section (6a) which would leave only Section (6).

Senator Schmidt asked if the chair had talked to the Insurance Commissioner. The Chair responded that she talked to the Insurance Department representative, Jarrod Forbes. The Chair asked Mr. Forbes to make a statement on the Insurance Department's position. He said he would simply say that they have no objection to this bill.

Senator Schmidt moved to move out (SB 547) favorably for passage. Senator Brungardt seconded. Motion passed.

Meeting adjourned at 10:15 a.m.