

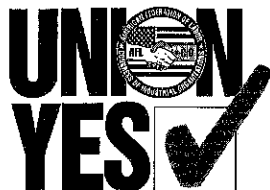
Kansas AFL-CIO

2131 S.W. 36th St.

Topeka, KS 66611

785/267-0100

Fax 785/267-2775



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SENATE BILL 73 TESTIMONY OF KANSAS AFL-CIO IN OPPOSITION FEBRUARY 4, 2013 SENATE COMMERCE COMMITTEE

Madam Chairperson and Members of the Committee:

The Kansas AFL-CIO opposes the passage of Senate Bill 73 in its present form. There are three areas of concern to the Kansas AFL-CIO.

A. Undocumented Workers

SB 73 at page 7 states that undocumented workers shall receive less compensation than documented workers. In our opinion, the difficulty is that in its present form the provision benefits the employer who hires undocumented workers. In other words, there is no duty by the employer to show that the worker was hired "unknowingly", and there is no penalty for the hiring. The unscrupulous employer will receive a competitive edge by having lower insurance premiums.

We believe the bill should be amended to show that the employer took some minimal action to insure the hiring of legal residents (e.g. e-verify) before the penalty is imposed. Alternatively, some penalty should be imposed on the employer. It seems unconscionable that an employer can accept the fruits of the worker's labor for years and then be benefitted with "unclean hands."

B. Recusal

The Kansas AFL-CIO is concerned about the appeal going to the Kansas Court of Appeals prior to full litigation of the claim. The way the statute is written, it could take three or four years before it is even determined who the judge should be in the case in chief. In short, an interlocutory appeal from the Board of Appeals should not be permitted. Our research does not disclose that this presents constitutional problems.

Delay over determining who the judge should be is more detrimental to the injured worker than the respondent/insurance carrier.



C. AMA Guidelines - 6th Edition

The bill proposes mandatory use of the 6th Edition of the AMA Guidelines as opposed to the 4th Edition (present law). This presents several problems.

First of all, by definition, any rating system is arbitrary in nature. There is nothing scientific about a certain shoulder injury representing a 10% loss of function. Why not 8%, or 12%, or 15.2%? The Guides merely attempt to establish some consistency from doctor to doctor, and patient to patient. "Newer" does not necessarily mean "improved" or "more scientific."

The 6th Edition of the Guides was published in 2007. Currently, it is believed that 19 states (including Missouri) do not use the Guides at all. Twelve states apparently use the 6th Edition, and 19 states use either the 3rd Revised, 4th, or 5th Edition. The bottom line is that no one claims the 6th Edition is the "Holy Grail."

In addition, there are these issues:

- a) Workers compensation laws are fixed by the date of accident. Thus, every time there is a legislative change, an entire new set of rules applies. Kansas underwent a major change in May 2011. The changes made previously have caused increased litigation and uncertainty. Additional changes will add to litigation and uncertainty. There have still been no decisions interpreting changes which took place two years ago.
- b) The Ad Hoc Committee which negotiated and presented to the legislature the changes in 2011 discussed and rejected a change from the 4th Edition. In part, the framework for the "new act" was premised around the 4th Edition.
- c) Doctors do not like providing impairment ratings. Doctors in Kansas are comfortable with the 4th Edition as it has been used for many years. It is difficult to have doctors give ratings currently, and a change will cause more doctors to avoid involvement in workers compensation. They are not anxious to learn a new system of ratings when they do not want to be involved in the first instance.
- d) Changing from the 4th to the 6th will cause an increase in litigation costs for all parties due in part to the uncertainty of the Guides; and the doctors' investment of time.

In short, there is no pressing need to move to the 6th Edition, and most states have not adopted use of the 6th Edition.

Respectfully submitted,

John M. Ostrowski
1507 SW Topeka Blvd.
Topeka, KS 66612
785-233-2323

Bruce Tunnell