

Written Testimony

To: Kansas Senate Commerce Committee

Fr: Bill Rich ^{BR}
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Re: Senate Bill 167

I appreciate this opportunity to submit testimony in support of the passage of Senate Bill 167 which would help to bring Kansas workers compensation law in line with the Kansas Constitution and with the expectations of original sponsors of the law that provides relief to injured workers. Enactment of this amendment to the Kansas Workers Compensation Act is needed to assure that Kansas workers who lose their jobs as a result of serious injuries will have a meaningful remedy needed to replace their lost wages.

Others will be able to do a better job than I of explaining why state reliance upon the 6th Edition of AMA Guides for the Evaluation of Permanent Impairment results in virtual elimination of relief for some workers who have suffered career ending, work-related injuries. My focus is on what appears to be an accidental state constitutional violation brought about by that change.

Section five of the Kansas Bill of Rights guarantees that "The right of trial by jury shall be inviolate." In spite of its absolute language, Section five does not guarantee a jury trial for every injured Kansan. The Kansas Supreme Court has repeatedly recognized the legislature's authority to modify compensation procedures if the state establishes reasonable alternatives. For example, Kansas Supreme Court Justice Biles recently noted that, when "the workers compensation system removed certain common-law remedies for injured workers, it also provided a statutory substitute for those changes." He went on to explain that "Over the years, the court has allowed the legislature to modify remedies when required by public policy . . . However, . . . when a common-law remedy is modified or abolished, *an adequate substitute remedy must be provided to replace it.*" (*Miller v. Johnson*, 295 Kan. 636, 652 (2012).) (Emphasis added.)

Because of changes made in the new edition of the AMA Guides, some injured workers no longer receive a "*quid pro quo*" (or adequate substitute) for their traditional right of recovery when they experience certain work-related injuries. As a result, the Kansas Workers Compensation Act no longer provides an adequate substitute for the lost right to a jury trial. Because no valid remedy at law remains for this category of injured workers, they will not receive the protection that the Kansas Bill of Rights guarantees.

I understand that the "fix" for this problem is relatively straightforward, and that interested parties recommend restoration of the 4th Edition of the AMA Guides as the point of departure for assessing work-related injuries occurring after January 1, 2015. I concur with that recommendation.

*Views expressed in this testimony are personal, and my position as a professor of law at Washburn University is noted solely for purposes of identification.