

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:00 A.M. on February 16, 2006 in Room 123-S of the Capitol.

All members were present except:  
Jean Schodorf- excused

Committee staff present:  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:  
Jeff Glendening-Kansas Chamber  
Duane Simpson-KFRA & KARA  
Larry Karns-Kansas Self-Insurer Association

Others attending:  
See attached list.

Chairperson Brownlee announced the Committee would be continuing the hearing on **SB 461-Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation.**

Chairperson Brownlee introduced Jeff Glendening to give his testimony as a proponent for **SB 461**. Mr. Glendening presented written testimony. (Attachment 1) Mr. Glendening stated that work comp cost is an increasing concern for their members. The KCCI feels that **SB 461** is the first step in addressing their concerns. They feel the bill will restore the original legislative intent of the 1993 workers compensation reform bill as it relates to pre-existing condition. In closing, Mr. Glendening urged the Committee to vote for **SB 461**.

Chairperson Brownlee introduced Duane Simpson representing KFRA & KARA to give his testimony as a proponent of **SB 461**. Mr. Simpson presented written testimony. (Attachment 2) Mr. Simpson stated work comp agribusiness rates are out of control in the state of Kansas. In 2001 there was a dramatic increase in the agribusiness work comp rates. Mr. Simpson offered a comparison of the agribusiness work comp rates from the year 2001. Mr. Simpson stated, with the high rates combined with high energy prices, drought conditions in much of the state, government proposals to idle productive land, and doubling of the state franchise tax, it is a wonder that their members are able to keep their doors open at all. Many of the ones that have survived have done so by reducing the size of their work force. In closing, Mr. Simpson stated **SB 461** is absolutely necessary to keep jobs and businesses in rural Kansas.

Chairperson Brownlee introduced Larry Karns representing the Kansas Self-Insurers Association to give his testimony as a proponent for **SB 461**. Mr. Karns presented written testimony. (Attachment 3) Mr. Karns stated in 1993 the Legislature overhauled the Kansas Workers Compensation law. He stated prior to 1993, when the Workers Compensation Fund existed, physicians testified and stated their opinions regarding the percentage a preexisting condition, rateable or not, contributed to the disability or impairment resulting from a work injury. The current bill will continue to utilize the AMA Guides for rating impairments following a work injury. The bill will allow the physicians to testify as they did prior to 1993 regarding the percentage the preexisting condition contributed to the resulting impairment. Mr. Karns cited examples of preexisting conditions under the present law. He made reference to the case *Hanson v Logan USD 326*, that requires a preexisting condition to have been symptomatic and to have limited the employee's activities in order to be a rateable impairment under the AMA Guides 4<sup>th</sup> Edition. Unless a preexisting condition is a rateable impairment under the Guides, the Courts have held that no reduction or credit for the preexisting condition is appropriate. If a claimant stated that their preexisting condition did not bother them, the employer may be required to pay an award for which includes both the effect of the work injury and the preexisting condition. Mr. Karns stated that 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 bill. 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

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:00 A.M. on February 16, 2006 in Room 123-S of the Capitol.

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.

Upon the conclusion of Mr. Karns' testimony there was discussion with the Committee. Senator Wagle entered the discussion with concerns regarding a paper she received just before coming in the door to the Committee room which gives a list of preexisting conditions and saying these would prevent workers from getting benefits. Senator Wagle presented Mr. Karns with the paper and ask for his opinion. Mr. Karns stated that there were several conditions listed on the paper which he did not understand. Senator Wagle stated she feels that the work comp system is not to compensate for the aging process if it is the cause of an injury. She stated that there are problems with the Court System, which is very liberal in its interpretation of the law. Mr. Karns stated employers only want to pay for injuries caused by the job and on the job. Chairperson Brownlee entered the discussion calling on Dr. Reitz and discussing some of the conditions listed on the paper received before the meeting started. Senator Reitz stated some of the things on the list are things that most people are going to have. He stated they may set the stage but they don't cause the problem for the injury. Senator Barone entered the discussion asking Mr. Karns if he could present documentation regarding the evidence which he sited in his testimony. Mr. Karns stated he could get that information for the Committee. Senator Barone had concerns and asked Mr. Karns to explain his comments regarding the 1993 law. Mr. Karns stated **SB 461** would allow the physicians to testify as they did prior to 1993 regarding the percentage the preexisting condition contributed to the resulting impairment. Senator Barone asked if the driving force for the bill is to control work comp costs. Mr. Karns stated yes, and added, the secondary reason is fairness for the employer to not have to pay costs which they are not responsible for. Senator Reitz joined the discussion and stated he did not want to vote on the bill. He has had many people write him and ask him to vote against the bill. He is interested in the concept of fairness. He further stated that the rising costs of health care is of grave concern. Chairperson Brownlee called on Duane Simpson who represents KFRA and KARA with a question regarding his testimony on costs for knee injuries. She asked Mr. Simpson if he had looked at the work comp schedules and compared them with the schedules of Blue Cross the primary health carrier in Kansas. Mr. Simpson stated he had not. Senator Barone entered discussing the rising work comp insurance costs for agribusiness and the causes. Senator Wysong entered the discussion stating the bill, according to the Department of Labor, would increase the amount of litigation and hearings before the Administrative Law Judges. Senator Wysong had a question for Ms. Forrester, who is representing the Kansas AFL-CIO, regarding her testimony asking how it would be attainable for the employers and workers to stand together to improve the system. He asked her to come back to the Committee with a balloon to address that portion of her testimony. Chairperson Brownlee entered the discussion with Ms. Forrester concerning her testimony regarding the statement that the bill would cause an increase in litigation and arbitrarily reduce benefits for virtually every on the job injury. Ms. Forrester stated that the language in the bill was broad enough that attorneys representing the work comp insurance carriers could say that any contribution from a preexisting condition contributed to the injury. Ms. Forrester referred to Page 1, Section 1, line 38 through 41 of the bill. Chairperson Brownlee asked what language Ms. Forrester would offer to correct this issue. Ms. Forrester stated that current law allows for preexisting condition reductions and that current law corrects the issue. Mr. Karns entered the discussion with his response stating that there are times when they do get preexisting condition reductions and times when they don't. The problem is gathering the information on preexisting conditions having to go back 5, 10, 15 years. The discussion turned to the AMA guidelines which must be used for the workers in this bill and would not have to be used for determining preexisting. Ms. Forrester stated that with the current law both sides must use the AMA guidelines

Chairperson Brownlee closed the hearing on **SB 461** stating the Committee would be working the bill tomorrow morning.

Chairperson Brownlee opened the hearing on **SB 515-Workers compensation pool; group-funded; surplus funds; adequate surplus funds** by introducing Scott Heidner representing Kansas Self-Insurers Association to give his testimony as a proponent on **SB 515**. Mr. Heidner presented written testimony. (Attachment 4)

Mr. Heidner stated the bill addresses the difficulty self-insured pools are having obtaining aggregate excess insurance coverage by allowing them to appeal to the Insurance Commissioner to waive that requirement. All self insured pools are required by statute to carry aggregate excess insurance coverage.

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:00 A.M. on February 16, 2006 in Room 123-S of the Capitol.

Even though the private sector pools have the ability to appeal the Insurance Commissioner to waive that requirement, the private sector pools do not. They are asking for a change at this time because it is almost impossible to find an insurance company that will write an aggregate excess policy for private sector pools. The insurance companies that do write aggregate excess policies often require that the attachment point at which the insurance kicks in is so high that it could never realistically be reached. In closing, Mr. Heidner stated the bill will probably need a cleanup amendment. They had intended this bill only to apply to aggregate excess insurance, but the way it was drafted it would apply to both aggregate and specific excess insurance. Since that was not their intent he suggested that the bill be amended. Mr. Heidner also stated that they are opposed to the amendments which Mr. McGill is offering.

Chairperson Brownlee introduced Jeff Glendening representing the Kansas Chamber to give his testimony as a proponent for **SB 515**. Mr. Glendening presented written testimony. (Attachment 5) Mr. Glendening stated Self-Insured workers compensation pools are important for many Kansas businesses. They provide an excellent alternative to the traditional insurance marketplace and can increase employer involvement in claims management and workplace safety. Self-Insured pools must carry aggregate excess insurance coverage. The public sector pools can make an appeal to the Insurance Commissioner to waive that requirement. This bill would provide the same opportunity for the private sector pools, thereby increasing the opportunity for private sector pools to compete to provide workers compensation coverage to employees. In closing, Mr. Glendening urged the Committee to support the bill.

Chairperson Brownlee introduced Larry McGill representing the Kansas Association of Insurance Agents to give his testimony as an opponent to **SB 515**. Mr. McGill presented written testimony. (Attachment 6) Mr. McGill stated they think that changes need to be made in the bill. They feel the Department should have the clear authority to require a pool to provide an actuarial review of its claims reserves before the Department passes judgment on their request to waive excess. That would give an independent evaluation of the adequacy of the pool's reserving practices and is vital to analyzing their financial condition. They also, feel that the proposal should work both ways. Currently the Department does not have the clear authority to look at a pool's excess coverage and pass judgment on whether it is adequate or not. We have heard of one pool that has an aggregate attachment point around 400%. That dramatically increases their participants' exposure to assessments and to potentially much larger ones. When they analyzed pool financial results this year they found a number of pools with pending aggregate excess claims. The coverage is important. In closing, Mr. McGill stated with these two changes and the cleanup of the bill as Mr. Heidner suggested, they will support the bill.

Upon conclusion of Mr. McGill's testimony there was discussion. Mr. Heidner, representing the Self-Insurer Association, entered the discussion stating that they support the language change to clear up the intent of the bill to apply to aggregate excess insurance only. He also stated if the intent is only to allow the insurance commissioner the authority to request an independent audit as opposed to mandating she request an audit, they are comfortable with that but they still have a problem allowing the Insurance Commissioner review the market and apply a coverage level. Chairperson Brownlee closed the hearing on **SB 515** and stated both bills from today would be worked tomorrow.

Meeting was adjourned at 9:20 a.m. with the next schedule meeting February 17, 2006 at 8:30 a.m. in room 123S.