

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on February 14, 2006 in Room 123-S of the Capitol.

All members were present except:

Susan Wagle- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department

Audrey Dunkel-Kansas Legislative Research Department

Helen Pedigo, Revisor of Statutes

Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Ron Laskowski-Kansas Chamber

Steve Rothrock-Whiteley's Inc.

Kari Clark-Wichita Surgical Specialists, PA

Criss Mayfield-Abbot Workholding Products

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **SB461--Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation.**

Chairperson Brownlee introduced Kathie Sparks to review the *Kansas Department of Labor, Division of Workers Compensation 31st Annual Statistical Report. (Attachment 1)* Ms. Sparks stated the Kansas Department of Labor Division of Workers' Compensation assisted a great number of businesses and employees in navigating the Workers' Compensation Act during FY 2005. The Business and Accounting Self-Insurance Section approved 234 qualified employers to be self-insured. Eight new employers were accepted during 2005. The Fraud and Abuse Unit investigated over 300 cases and collected fines and assessments totaling \$139,750.44 which is up 83% from FY 2004. The Annual Seminars held in Overland Park and Wichita provided an educational outlet for over 660 professionals in the State. Upon the conclusion of Ms. Sparks review, there was discussion with the Committee. Chairperson Brownlee asked Ms. Sparks what kind of information the ombudsmen provide. Ms. Sparks stated she thinks they negotiate with the carriers, the injured parties, and provide basic information. Senator Wysong entered the discussion with a question for Ms. Sparks. He asked if she would describe the difference between an unscheduled permanent partial and a scheduled permanent partial. Ms. Sparks stated she did not know but would get that information and present it back to the Committee. Secretary Garner, Department of Labor entered the discussion at the request of the Chair. Secretary Garner stated that in the statute there is a schedule of injuries with a certain amount of time assigned for recovery and those are scheduled injuries. General body parts are unscheduled injuries. Secretary Garner also stated the ombudsmen provide a wealth of information to the employee, the employers, the insurance carriers. Chairperson Brownlee asked if they provide information to the worker that hopefully would prevent having to bring attorneys into the work comp process. Secretary Garner referred that question to Dick Thomas representing the Department of Labor Division of Workers' Compensation. Mr. Thomas stated they give information to anyone that calls in. They try get the employee and employer together and get them to reach a compromise. Senator Barone entered the discussion with a question on the table on Page 6 regarding total costs and overhead. Mr. Thomas stated the costs on page 6 are just the cost of the medical.

Chairperson Brownlee introduced Helen Pedigo from the Revisors office to explain the bill. Ms. Pedigo stated the bill was an act concerning workers compensation; relating to preexisting condition;

CONTINUATION SHEET

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permanent partial general disability; supplemental functional disability compensation; amending K.S.A. 44-510e and K.S.A. 2005 Supp. 44-501 and repealing the existing sections.

Chairperson Brownlee introduced Ron Laskowski representing the Kansas Chamber to give his testimony as a proponent of **SB 461**. Mr. Laskowski presented written testimony. (Attachment 2) Mr. Laskowski stated **SB 461** is positive workers' compensation reform designed to resolve inequities in existing workers' compensation law regarding an employer's responsibility for preexisting conditions and injuries resulting in loss of employment. The bill is intended to assure that the original intent of the Workers Compensation Act is recognized by both employers and employees. The bill addresses two workers compensation issues. The first is the issue of the employer's responsibility to provide compensation for preexisting conditions and the second involves the definition of what is a work disability under the Workers Compensation Act. Mr. Laskowski cited examples of abuse of the preexisting conditions which he had encountered in his field as an attorney for work comp insurance carriers. In closing, Mr. Laskowski stated **SB 461** is consistent with the theory of Kansas workers' compensation, which requires an equitable adjustment of injuries under a system, intended largely to eliminate controversies and litigation.

Chairperson Brownlee introduced Steve Rothrock representing Whiteley's Inc. to give his testimony as a proponent of **SB 461**. Mr. Rothrock presented written testimony. (Attachment 3) Mr. Rothrock stated he owned a small pallet company located in North Topeka. He stated Whiteley's employs from 4 to 8 people, depending on the work load. Because he has a limited payroll he is automatically put into the "assigned risk pool" and he pays a higher fee for his workers compensation insurance. Mr. Rothrock stated he had two experiences in dealing with pre-existing conditions with Workers' Comp. In both cases he feels he paid for injuries that were pre-existing old injuries; one incurred on another job before being hired by Whiteley's and the other incident resulted in a total knee replacement, after the injury on the job had been repaired it was discovered that the knee was filled with arthritis which resulted from a car accident in years past. Mr. Rothrock feels that he had to pay in both cases for injuries which he was not responsible for. As a result of these two claims, his workers' compensation insurance premiums have gone up 55%. In closing, Mr. Rothrock urged the Committee to please consider changing the pre-existing conditions part in the Workers' Compensation laws to help small and large businesses survive. He also stated he feels he should only pay for the injuries that occur at his work place and the extent of damage that they cause and not damages that already exist.

Chairperson Brownlee introduced Kari Clark representing the Wichita Surgical Specialists, PA to give her testimony as a proponent of **SB 461**. Ms. Clark presented written testimony. (Attachment 4) Ms. Clark stated that she is not an owner but an employee. Wichita Surgical Specialists is a surgical office in Wichita consisting of 30 surgeons and 75 staff members. In the last year and half she has learned more about the Kansas workers' compensation laws regarding preexisting conditions. She cited a preexisting claim that Wichita Surgical Specialists is involved in. They hired a staff person for their medical records department. She started having absences, after one month of commencing employment, for various reasons. Through out all of her absences she never indicated that her job duties aggravated any current medical conditions or caused her medical conditions. One day she came to work limping but could not explain what had happened only that it did not happen at work. They sent her home. A few days later they received notification by a work comp attorney requesting the employee receive benefits for degenerative back problems aggravated by repetitive work activities. It has been two years since the claim was made and it remains open and amounting to \$362,000, in addition to a \$350.00 weekly payment. **SB 461** recognizes that the current preexisting laws and benefits need reform by providing more of a balance to both the employer and employee. In closing, Ms. Clark encouraged the Committee to continue to reform the work comp system so that it will be equally fair to all.

Chairperson Brownlee called the Committee's attention to a written only testimony Ms. Clark

presented to the Committee from Jeffery R. Brewer, Legal Counsel for Wichita Surgical Specialists. (Attachment 5)

Chairperson Brownlee introduced Criss Mayfield, Director of Administration for Abbott Workholding Products in Manhattan, Kansas to give his testimony as a proponent of **SB 461**. Mr. Mayfield presented written testimony. (Attachment 6) Mr. Mayfield stated he represented a small manufacturing firm. His associations allow him to frequently interact with peers from many other similar companies. A very common topic of discussion is the Workers' Compensation system; the expense and difficulties in administering the program for their companies and the need for clarification and reform. The question of pre-existing conditions has been one of the most frustrating elements of the Workers' Compensation system. He stated that many of his peers feel victimized by a disregard, or overly liberal interpretation, of a preexisting condition in a claim. He stated that employers have become more defensive in their hiring practices. His company sends all new-hires through a thorough physical, a drug screen and a Physical Capacity Profile. He feels that their hiring practices will help provide a balanced and fair treatment of preexisting condition issues as defined in **SB 461**. He also stated that how functional disability and impairment are defined and treated has always been a complex issue. This element too often results in a long, unresolved situation that is confusing and frustrating for all parties. The refined definitions proposed in the bill offer a needed clarity, and improve the possibility of effective closure in these claims. The need to provide a safe and healthy work environment is a must for Employers. A fair and balanced workplace insurance system is also essential to survive. In closing, he urged the Committee to pass **SB 461**.

Upon the conclusion of Mr. Mayfield's testimony, Chairperson Brownlee announced that because of the time limitation the other proponents would be able to testify on **SB 461** on Thursday.

The meeting was adjourned at 9:30 a.m. with the next scheduled meeting on February 15, 2006 at 8:00 a.m. in room 123 S.