

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on February 10, 2003 in Room 243-N of the Capitol.

All members were present except: Representative Doug Patterson, Unexcused
Representative Rick Rehorn, Unexcused

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Rena Jefferies, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Representative Bob Bethell
Linda Berndt, Executive Vice President, Kansas Health Care Association
Sue Jackson, Coordinator of Safety & Human Resource, Nu Wa Industries, Inc.
William C. Welch, President, WCW Property Management, Inc., and Rental City.net, LLC
Terry Leatherman, Vice President, Legislative Affairs, Kansas Chamber of Commerce
Sandra Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc.
Don Greenwell, The Builders Association and Kansas City Chapter, Associated General Contractors
Larry W. Magill, Jr., Executive Vice President, Kansas Association of Insurance Agents
Wayne Maichel, Executive Vice President, Kansas AFL-CIO
Barb Conant, Kansas Trial Lawyers Association

Others attending: See attached sheet

The Chairman called the meeting to order at 9:00 a.m. and opened the hearing on: **HB 2129 - State Occupational Safety Plan.**

Staff gave a briefing on **HB 2129**. The bill establishes a state occupational safety plan. The act shall apply to all workplaces in the state covered by the workers compensation act except that nothing in this act shall apply to working conditions of employees with respect to which federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Representative Bob Bethell testified as a proponent to **HB 2129**, stating this bill would have three beneficial

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effects for employers and employees in the state; (1) Resources could be focused more efficiently in areas which directly impact Kansas (grain handling industry, airplane manufacturing, oil and gas Industry, etc. (2) Fines and penalties would remain in Kansas. (3) Appeals would be made through the state administrative procedures.

A major advantage of the State Plans is that fines and penalties stay in the state. In response to a Freedom of Information act request, OSHA disclosed that Kansas employers had been assessed fines which resulted in an average of over \$1 million dollars leaving the state each year in fines and penalties.

OSHA funds 50% of these enforcement programs and up to 90% of their consultation programs. Petitioning for OSHA funding can begin as soon as enabling legislation is passed by the state of Kansas.

In Section 10, line 40, strike "other" and change to "municipalities or quasi-municipalities" (See Attachment 1).

Linda Berndt, Executive Vice President, Kansas Health Care Association, testified as a proponent to **HB 2129**. Kansas Health Care Association represents 200-plus long-term-care facilities including professional nursing homes, assisted living facilities and long-term-care units of hospitals.

It has become increasingly challenging to meet both federal and state regulations. The Association has worked the Kansas Department of Human Resources volunteer safety and health consultations and have found this to be a true partnering and consultative relationship.

The Association has some concerns about the bill as written and propose amendments (Attachment 2).

Sue Jackson, Coordinator of Safety & Human Resource Nu Wa Industries, Inc., testified in support of **HB 2129**. Nu Wa is committed to providing a safe, healthy and environmentally responsible workplace for their employees and community. Nu Wa is resolved to pursue any reasonable course of action to ensure the achievement of these standards, including a pro-active application of all appropriate health, safety and environmental protection regulations.

The Kansas OSHA Plan would advance the safety of workers and has several advantages and objectives; (1) Kansas can better focus resources in areas that will improve the safety and health of Kansans. (2) Fines and penalties would remain in the state. (3) More frequent state plan inspections would result in more hazards being identified and abated, Kansas businesses would be assessed less in penalties. (4) Kansas could assume a national leadership role in safety and health. The Kansas OSHA Plan would provide the most efficient and effective means of administering all matters relating to the health and safety of Kansas workers (Attachment 3).

William (Bill) C. Welch, President, WCW Property Management, Inc., and Rental City.net, LLC, testified supporting **HB 2129**. Other states have experienced dramatic reductions in work place injuries and fatalities since implementing their state plan. State workers or facilities should not be exempt from regulations, enforcement or citations generated by the state run OSHA plan. The human and economic benefits are boundless for having a state plan (Attachment 4).

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Terry Leatherman, Vice President, Legislative Affairs, testified opposing **HB 2129**. First and foremost, **HB 2129** places financial burden for this new state bureau squarely on the backs of Kansas business. The bill authorizes program costs be paid for through a 1% assessment on workers compensation insurance companies and self-insuring employers. A maximum assessment would cost Kansas employers around \$4M annually to pay for the program. The bill would create an on-going multi-million dollar annual expense paid exclusively by Kansas employers.

The second concern would be the impact a State OSHA plan might have on today's safety consultation services offered by the Kansas Department of Human Resources. This program has been well received by employers to inform them of potential work safety problems. If the consultation service would be in the same office as the safety enforcement agency, the program's effectiveness and current business confidence in the service could be damaged.

KCCI contends **HB 2129** is not needed (Attachment 5).

Sandy Jacquot, Director of Law/Legal Counsel, League of Kansas Municipalities, testified in opposition to **HB 2129** based on public policy and the probable fiscal impact on Kansas cities.

Under current law, K.S.A. 44-636 gives the Kansas Department of Human Resources the authority to enter a workplace, including a municipal workplace, for the purpose of ensuring the safety of the employees and general public. A state plan would require that all public sector employers, as well as the private sector employers become subject to regulations at least as effective as the federal regulations, i.e., the OSHA regulations. Currently, government in Kansas is not investigated by OSHA, nor is there a requirement that OSHA regulations be followed. The fiscal note is of great concern to municipalities. Municipalities are concerned about the possibilities of additional fee requirements to finance the start-up costs and ongoing maintenance of the program (Attachment 6)

Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association, Inc.(KFDA), testified opposing **HB 2129**. Kansas funeral homes are heavily regulated by OSHA on the federal level. The KFDA believes the current system of federal regulation works and opposes creating a state OSHA plan. There is no need to change a system that works. It is assumed it is the bill's intent that regulations would be adopted on the state level that are at least as stringent as current federal regulations so that Kansas may opt out of the federal program. The state OSHA plan would be funded through workers compensation insurance premiums. Increasing premiums to pay for the program would be, in essence, a tax on business (Attachment 7).

Don Greenwell, The Builders' Association And Kansas City Chapter of the Associated General Contractors of America testified in opposition to **HB 2129**. There is no need for additional regulatory infrastructure at the state level. The safety of commercial construction work sites is a key objective and measure of success in the industry.

While The Builders' Association and Kansas City AGC do not cite any deficiencies in the federal program, it is our strong position that such deficiencies be addressed through the federal OSHA program and not by creating additional regulatory infrastructure. The proposed state plan would only drive insurance costs higher at a time when many contractors are struggling (Attachment 8).

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Larry W. Magill, Kansas Association of Insurance Agents, appeared in opposition of **HB 2129**. The principal concern with this bill is the fact that it funds the Kansas OSHA program with a 1% assessment on workers compensation claims payments. The cost is built in to the premium for workers compensation. The businesses in Kansas pay for it but don't know it. Anytime a tax is hidden from the ultimate payer, it's much easier to increase it (Attachment 9).

Wayne Maichel, Executive Vice President, Kansas AFL-CIO, stated the AFL-CO had no position on **HB 2129**. We are concerned about safety in the workplace. It is recommended that the Committee instruct the Secretary of Human Resources put together a task force of business and labor representatives and report their findings next legislative session (Attachment 10).

Barb Conant, Kansas Trial Lawyers Association (KTLA), testified safe working environments are an essential component of a productive economy and Kansas employees expect and deserve safe working conditions. KTLA supports any meaningful effort that protects workers from illness, injury or death and promotes a safer workplace. The establishment of a Kansas Occupational Safety Plan would have far-reaching implications. There are concerns that the state would be able to adequately fund such a new program. There are also concerns about the scope of a State Occupational Safety Plan. Current Kansas law exempts employers with payrolls of less than \$20,000 a year and agricultural employers from the Workers Compensation Act. KTLA recommends that the statutory establishment of such a program should not proceed without continued study of its feasibility and careful and deliberate consideration of the economic and enforcement options (Attachment 11).

Staff distributed the conclusions and recommendations of the 2002 interim on initiating a State Occupational Safety Plan (Attachment 12).

Ron Pomeroy, Kansas Castings, Belle Plaine, Kansas, provided written testimony in support of **HB 2129** (Attachment 13).

Don Greenwell said he would send further information on what other states have done regarding State Occupational Safety Plans.

Representative Grant requested that Research see how much money Kansas remits to OSHA.

Secretary Garner was in the audience and responded he had no position on this bill as he has not had time to digest the intricacies of switching from a federal to a state plan.

The Chairman asked if Secretary Garner thought a Task Force was needed?

Secretary Garner responded, yes, the employees and employers need to get together and work this out.

The meeting adjourned at 10:40 a.m.