

## TESTIMONY

FROM: Tony Andersen  
Kansas Self-Insurers Association

TO: Senate Commerce Committee

RE: Opposition to SB 361

DATE: March 8, 2022

Established in 1994, KSIA represents the interests of employers and self-insured pools across the state. KSIA's members include large private employers, state and local governmental entities, as well as business associations organized to advance common interests in the great State of Kansas.

Kansas Self Insurers Association opposes SB 361. The proposed amendment to KSA 44-510f represents a fundamental change in the compensation scheme of the Kansas Workers Compensation Act. It will increase costs throughout the system which, in turn, affects every employer, municipality, school district, governmental entity, and taxpayer in this state. It will also set off an explosion of litigation in the workers compensation system.

SB 361 fundamentally changes how weekly benefits are paid. Currently, every workers compensation case in the state handles weekly benefits the same. The injured worker's compensation rate is 2/3rds of the worker's average weekly wage with those weekly benefits statutorily capped at 75% of the State's average weekly wage. For example, if an injured worker makes \$1,000 per week pre-accident, the benefit rate is \$666.70. If the injured worker's weekly wage is \$1,500 and state's average weekly wage is \$982.26, the injured worker's weekly benefits are capped at \$737 per week ( $\$982.26 \times 75\% = \$736.70$  rounded up to \$737.00)

The reason injured workers do not receive compensation benefits equal to 100% of their average weekly wage is three-fold. First, workers compensation disability benefits are not taxable and thus there is no reduction for FICA, Medicare, Federal and State Income taxes. Second, injured workers, if receiving off-work benefits, do not incur the attendant costs of going to and from work each day. Third, prior Legislatures were concerned that payment of 100% of a person's wages while off work may be a disincentive for some workers to not give their best effort to return to work after an accident.

SB 361 carves out an exception from this approach for permanent total disability cases. Under SB 361, benefits would be paid at 100% of the injured workers average weekly wage with no statutory cap.

Changing this disability benefit model, as SB 361 would do, is not good policy. If adopted, SB 361 would require payment to injured workers an amount greater than what they earned working. This then incentivizes injured workers to not return to work as they can make more from staying off work than they can working. If the purpose of the workers compensation act is to provide a system to treat work-related wounds and return the injured worker to a productive life in the Kansas workforce, SB 361 encourages the opposite.

Finally, SB 361 will explode workers compensation litigation. SB 361's passage means higher weekly benefits + no statutory caps = massive upsurge in litigation. Why? Because trial attorneys stand to receive 25% of anything recovered. Higher awards mean more litigation. More marginal cases will be advanced to argue an injured worker is eligible for permanent total disability benefits. One need only look at the experience of its eastern neighbor, Missouri, to know that permanent total disability litigation is the most common type of workers compensation litigation advanced in the Missouri Workers Compensation system and appellate courts.

Further, KSIA takes exception to the fiscal note submitted by the Division of Budget which downplays the effect SB 361 will have on the state and governmental entities. No empirical evidence is cited by the Division of budget to forecast the number of cases affecting the State itself will rise from 2 per year to 6 per year. Without obtaining an analysis from NCCI, the Division of Budget is just guessing.

Yet even if DOB's guess is accurate, it estimates a tripling of the number of permanent total disability cases in the system. Apply that across the workers compensation system and the cost increase will be massive. Those costs will be borne by every person in the State of Kansas through increased prices and taxes.

SB 361 upsets the delicate balance between the interests of injured workers and employers that prior legislatures have crafted over the past century when dealing with workers compensation issues. It will fundamentally change how benefits are paid, disincentivize injured workers from returning to work and incentivize trial attorneys to ramp up litigation, and will impact every taxpayer in this state. Without any study of its effects by NCCI or other statistical assessment, passage of SB 361 would be legislative malpractice.

For the above reasons, KSIA opposes SB 361.