

## Written Testimony

Senate Commerce Committee

RE: Senate Bill 167 - Support  
February 18, 2015  
Jeff Cooper, Esq.

Thank you, Madame Chairman, Members of the Committee. My name is Jeff Cooper and I am an attorney in private practice representing injured workers in the State of Kansas. I have also taught workers compensation law at Washburn University School of Law for 25 years as an adjunct professor.

I was also one of the members of a group of individuals who negotiated the agreed changes to the workers compensation law in 2011. Those changes were the result of negotiations between the parties as a result of a compromise on many issues. One of the very first items negotiated was whether the Kansas Workers Compensation Act would utilize the 4<sup>th</sup> Edition of the AMA Guides. Everyone present at the meeting agreed that the 4<sup>th</sup> Edition worked well and that there was no need to change to any other edition, specifically, the 6<sup>th</sup> Edition. The express intent of the compromise was that all changes made in 2011 would be based on the continued use of the 4<sup>th</sup> Edition of the AMA Guides. Fred Greenbaum, one of the major authors of the changes was there and agreed to continued use of the 4<sup>th</sup> Edition. Larry Karns, then a respondent's attorney, now Director of Workers Compensation was there and agreed to stay with the 4<sup>th</sup> Edition as well.

Less than a month ago, I was present at a meeting with a lot of the same folks here today, representing all sides of the issue. It was my understanding at that meeting that the Department of Labor was in favor of going back to the 4<sup>th</sup> Edition.

I agree with Secretary of State Kobach and Constitutional Law Professor Bill Rich and others who believe the Kansas Workers Compensation Act will be found unconstitutional as providing no quid pro quo or not an adequate substitute for workers in Kansas for their traditional right of recourse as required by the Kansas Constitution. However, between January 1, 2015 and the time the Supreme Court finds the Kansas Workers Compensation Act unconstitutional, a lot of injured Kansas workers will suffer disastrous consequences. During that same time frame, Kansas employers will be subject to multi-million dollar lawsuits and huge defense costs in attorney fees defending civil actions for employer and co-employer fault.

Civil actions and the costs associated will have disastrous consequences on the Kansas business climate. Businesses will leave the state and certainly will refuse to do business in the state and the risks associated will deter new businesses from opening shop in Kansas.

Senate Bill 167 corrects the problem inadvertently caused by authorizing use of the 6<sup>th</sup> Edition of the AMA Guides. Senate Bill 167 will allow Kansas employers and employees to continue under the agreed changes made in 2011. As pointed out previously, the changes in 2011 have resulted in \$50 million dollars in savings to the Kansas workers compensation system including Kansas employers.

I support passage of Senate Bill 167.