

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 3:30 p.m. on March 23, 2004, in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Legislative Research Department
Susan Kannarr, Legislative Research Department
Renae Jefferies, Office of Revisor of Statutes
Helen Pedigo, Office of Revisor of Statutes
Fulva Seufert, Secretary

Conferees appearing before the committee:

Terry Leatherman, Vice President of Public Affairs, Kansas Chamber of Commerce & Industry
Jeff K. Cooper, Kansas Trial Lawyers Association
Terri Roberts J.D., R.N., Kansas Coalition for Workplace Safety
Bart Thomas, President and CEO, Thomas Outdoor Advertising Company, Manhattan, KS
David Wilson, AARP Kansas Executive Council, Kansas Coalition for Workplace Safety
John M. Ostrowski, Attorney, Kansas AFL-CIO
Roy T. Artman, General Legal Counsel, Kansas Building Industry Workers Compensation Fund

Others attending:

See Attached List

Chairman Wilk asked Ms. Kathie Sparks, Legislative Research, to brief the committee on the following:

SB 441 - Workers compensation; defining date of accident.

Ms. Sparks said **SB 441** would amend the Workers Compensation Act by changing the definition of "accident." The bill would add three dates to be considered as the date of the accident. The earliest of the three dates would be considered the date of the accident. The three dates include:

- The earliest date upon which an employee gives written notice to the employer of the injury;
- The date the condition is diagnosed as work-related, providing such fact is communicated in writing to the injured worker; or
- The first day the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition.

The Senate Committee amended the bill by adding that written notice must be given to the employer or the injured worker. The original bill required only notice. (Attachment 1)

Chairman Wilk thanked Ms. Sparks and opened the Public Hearing on **SB 441** by asking the conferees to please keep remarks focused on the bill. He first called on Mr. Roy T. Artman, Kansas Building Industry Workers Compensation Fund, who had not yet arrived at the meeting. Ms. Janet Stubbs said he was in another meeting and would be late and would testify later. The Chairman next welcomed Mr. Terry Leatherman, Vice President of Public Affairs, Kansas Chamber of Commerce and Industry, who spoke as a proponent of **SB 441**.

Mr. Leatherman said that **SB 441** proposes a clarifying change which the Kansas Chamber has advocated for many years by establishing a date of accident in workers compensation cases where an injury develops over time, rather than in a sudden accident. (Attachment 2)

Chairman Wilk thanked Mr. Leatherman and welcomed Mr. Jeff K. Cooper, Kansas Trial Lawyers Association, who testified in opposition to **SB 441**. Mr. Cooper said that workers compensation claims have three statutes of limitation, all of which begin to run or begin with the date of accident.

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1. Notice of an accident must be given to the employer within 20 days of the date of the accident.
2. No proceeding for workers compensation shall be maintainable under the Workers Compensation Act unless written claim for compensation is served on the employer within 200 days after the date of accident. (K.S.A. 44-520a.)
3. No proceeding for compensation shall be maintained under the Workers Compensation Act unless an Application for Hearing is on file with the Office of the Director within three years of the date of accident, or two years from the date of last payment of compensation, whichever is later. (K.S.A. 44-534) ([Attachment 3](#))

Testimony presented earlier to the House Commerce and Labor Committee by the Honorable Bruce E. Moore, Administrative Law Judge, was distributed to members. ([Attachment 4](#))

Chairman Wilk thanked Mr. Leatherman and welcomed Ms. Terri Roberts J.D., R.N., Executive Director of the Kansas State Nurses Association and Chair of the Kansas Coalition for Workplace Safety, who also spoke as an opponent of **SB 441**. Ms. Roberts' testimony said they want to see a balance between the needs of employees injured on the job and employers who are liable for their injuries. She said it is a difficult and complex balancing act affected by factors outside the workplace. The insurance market and skyrocketing medical costs are these factors along with lax safety standards inside the workplace. She said only 1 percent of those polled by the KCCI mentioned the need to change the work comp system as a way to improve business conditions. The U.S. Chamber of Commerce ranks Kansas in the top 10 states in the nation for creating a fair and reasonable legal environment for business. ([Attachment 5](#))

Chairman Wilk thanked Ms. Roberts and welcomed Mr. Bart Thomas, President and CEO, Thomas Outdoor Advertising Company, Manhattan, Kansas, who spoke as an opponent to **SB 441**. Mr. Thomas said that **SB 441** sets a trap for workers who sustain an injury from jobs requiring repetitive motions. He disputed the KCCI claim that this legislation is needed to reduce the cost of workers compensation insurance. He stated that Kansas workers' compensation premiums are among the lowest in the U.S. and that Kansas is one of the most profitable environments for workers' compensation insurance carriers. He said that the KCCI does not speak for small and medium-sized businesses like the Thomas Sign Company. ([Attachment 6](#))

The Chair thanked Mr. Thomas and welcomed Mr. David Wilson, member of the AARP Kansas Executive Council and Representative of the Kansas Coalition for Workplace Safety, who spoke in strong opposition to **SB 441**. Mr. Wilson said the AARP is committed to improving employment opportunities and removing barriers to equal employment opportunity. The AARP strives to promote job security for workers of all ages. He said the AARP believes that the proposed changes in **SB 441** would create potential traps and would have a harmful impact on workers of all ages who suffer an injury whose onset is gradual and cumulative. ([Attachment 7](#))

Chairman Wilk thanked Mr. Wilson and welcomed Mr. John M. Ostrowski, Kansas AFL-CIO. who spoke in opposition to **SB 441**. Mr. Ostrowski asked the committee to proceed with caution on this complex issue. He said there was no reason to rush into passage of bad laws, to increase litigation, and even to complicate the problems that currently exist. Mr. Ostrowski said that this legislation does not address the real cost-drivers in Kansas workers compensation. He, too, mentioned spiraling medical costs, lack of safety, and above normal insurance company profits. He said the Kansas AFL-CIO will urge the newly reformulated Advisory Council to produce comprehensive legislation detailing the multiple issues. ([Attachment 8](#))

Chairman Wilk thanked Mr. Ostrowski, and since there were no other opponents, he then welcomed Mr. Roy T. Artman, Kansas Building Industry Workers Compensation Fund, who testified as a proponent of **SB 441**. His testimony included information stating that the date of the accident is a big deal because it directly impacts the award for the claimant and determines the level of benefits they will receive for their injuries. He said this is important especially in repetitive and micro trauma cases. His testimony included examples of several court cases handled by the appellate courts. ([Attachment 9](#))

Chairman Wilk asked if any members had questions of the conferees. A question was asked concerning the process of litigation at a preliminary hearing level and the reply was that under current law is not a date of injury issue. Only an issue in cases where there is a problem in which an employee just keeps working regardless of the injury. Mr. Cooper said the real cost is in the insurance premiums, and the biggest problem

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are in situations where there is a change in insurance companies.

Representative Burroughs asked Mr. Ostrowski if it was safe to say that the advisory council moves very slowly and was told "yes."

Representative Burroughs made a motion that **SB 441** be tabled, and Chairman Wilk said the motion was out of order at this point because the Public Hearing was still open.

Representative Brunk asked about what is wrong with written notice and how it is a trap. He was told that there are three statutes of limitations in workman's comp.

Chairman Wilk announced that since there were no additional questions, the Public Hearing for **SB 441** was closed.

The Chair asked the committee members to direct their attention to **SB 441**.

Representative Burroughs made a motion to table **SB 441** until a recommendation comes back from the newly appointed advisory committee. Representative Kuether seconded. A division was called. The motion failed 6 to 8.

Representative Gordon made a motion to pass **SB 441** out marked favorable for passage. Representative Huntington seconded.

Representative Kuether made a substitute motion to amend **SB 441** to remove the language that requires written notice. Representative Loganbill seconded.

With the consent of Representative Loganbill, Representative Kuether withdrew her motion.

Representative Kuether made a substitute motion to repeal K.S.A. 44-520a in **SB 441**. Representative Loganbill seconded. Discussion followed. This would take out the trap of the 200 days and the injured will have two time requirements instead of three. Representative Boyer said that he was opposed to Kuether's amendment because it made a significant change to workman's comp. Representative Carlin supports the amendment. Representative Hill supports Rep. Kuether's amendment while looking forward to more good work from the House. A division was called and the motion failed 7 to 7. (Attachment 10)

Chairman Wilk announced that the committee was back on **SB 441**.

Representative Boyer made a substitute motion to amend on page 3, line 24 by deleting the word "written" and on line 26 the words "in writing," and to pass **SB 411** marked favorable for passage as amended. Representative Krehbiel seconded. Discussion followed. Some thought it streamlined the bill and made it better. Representative Burroughs said that he opposed and Representative Krehbiel said he supports the striking of the 3 words that the senate inserted. The vote was taken, a division was called, and the motion passed 8 to 6.

Representative Hill made a motion to approve the minutes of the March 18, 2004, meeting, and Representative Boyer seconded. Motion passed.

Chairman Wilk directed the committee's attention to **HB 2934 - Tax increment financing; river walk canal facility**.

Representative Brunk made a motion to add the words, "water walk facility" and on page 5, line 14 after the word "area" insert "within a city in Sedgwick County that has a population of not less than 300,000. Representative Novascone seconded. (Attachment 11) During discussion Representative Burroughs said that he opposed the amendment. Representative Brunk said that the original STAR Bond language was amended to allow for constructing buildings with STAR Bond money, and he wanted to go back to the original language so Wichita could do what Cabelas did in Wyandotte County. He said this was a complex situation and that Lt. Gov. Moore called and asked us what we thought the intent of STAR Bonds was. Initially it was thought that STAR Bond money was not to be used for vertical construction. The language in the law today is ambiguous and needs to be further studied. He said the second amendment limits it even more with the

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25% limitation. Representative Kuether said that she opposed the amendment because two wrongs do not make a right. The vote was taken and division was called. Motion passed 8 to 5. (Attachment 12)

Representative Brunk made a motion to pass HB 2934 marked favorable for passage as amended. Representative Novascone seconded. During discussion Representative Loganbill said she firmly opposed and Representative Burroughs said he also opposed. The Revisor asked for a small technical change to move line 11, "river walk canal facility" to line 12 after the word "including." The vote was taken and a division called. Motion failed 6 to 7. Representative Novascone asked to recorded as voting "yes."

Chairman Wilk asked Representative Gordon to present the subcommittee report from the Lights, Camera, Action (LCA) Subcommittee. Representative Gordon thanked the staff and her subcommittee for all their help and support. She thanked Ms. Susan Kannarr, Legislative Research, for her great job in compiling all the excellent research. Rep. Gordon also thanked Kansas, Inc. for doing the quick feasibility study and offering suggestions on how to proceed. She commented on the committee's informative visit to QuVis which is a local high definition technology facility. The subcommittee recommended the creation of a task force to report to the Joint Committee on Economic Development during the upcoming interim. Rep. Gordon said the goal of this interim activity would be to craft a package of legislative initiatives for consideration by the 2005 Legislature. She reported that Kansas, Inc. has indicated its willingness to continue to provide planning, writing, and analysis services. (Attachment 13)

Chairman Wilk thanked Representative Gordon for the productive work of the subcommittee and said that a letter should be drafted to the LCC requesting the appointment of a committee and asking that the subject matter be assigned to the Joint Interim Economic Development Committee.

Representative Gordon made a motion to send a letter to the Legislative Coordinating Council requesting that a committee be appointed and that the subject matter be assigned to the Joint Interim Economic Development Committee. Representative Kuether seconded. Motion passed.

Chairman Wilk thanked all the members of the Committee for their hard work and cooperation in making the Economic Development Committee a productive and enjoyable committee. He also thanked the staff for all their diligence and hard work.

The meeting adjourned at 5:30 p.m.