

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 8, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Norm Furse, Office of Revisor of Statutes  
Renaë Jefferies, Office of Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee:

Lew Ebert, President and CEO, Kansas Chamber of Commerce  
Duane Simpson, Kansas Grain & Feed Association (KGFA) and Kansas Agribusiness Retailers Association (KARA)

Others attending:

See attached list.

The Chairman opened the meeting and asked staff to give a briefing on **HB 2142 - Workers compensation, date of accident, employer's maximum liability for disability compensation, attorney fees.**

Staff briefed the committee on **HB 2142** stating there were three components to the bill: date of accident, employer's maximum liability for disability compensation, and attorney fees. There is new language on page 3, lines 21 thru 29. One key word on line 27 is "or". There would be no maximum award on permanent partial disability. The percentage paid to attorneys was changed from 50% to 25% of that portion of the amount of compensation recovered and paid. There is a repealer that would take effect and be in force from and after its publication in the statute book.

Lew Ebert, President and CEO, Kansas Chamber of Commerce, testified as a proponent to **HB 2142**. The Kansas Chamber does not want to cut benefits to injured workers, but has requested this measure because if **HB 2142** passes, more money would end up in the hands of Kansas' injured workers.

It is believed there needs to be some guidelines setting a date of accident in non-traumatic injury cases, not to trap the injured worker, but to help move the rehabilitation and compensation process along. The Chamber would be happy to work with Judge Moore on establishing some types of guidelines and remedies to cases such as *Kimbro*.

Last week NCCI showed that the frequency of claims in Kansas continues to decline as well as the incidence rates among all major industries in Kansas. This means there are less workers being injured on the job and it seems like Kansas workplaces are becoming safer. In addition, NCCI stated there was higher attorney involvement than in other states in which they collect data.

The Kansas Chamber polled 500 registered voters in Kansas in November 2004. Sixty-eight percent of the respondents believe that the workers' compensation system is plagued by the over involvement of lawyers and that this keeps legitimately injured workers' from receiving their fair share. Additionally, 57% of Kansans believe that the abundance of lawyers in the workers' compensation system keeps businesses from expanding in Kansas. Given this sentiment, it is not surprising that Kansans are very united in their desire to cap attorney fees at 20% (85% favor vs. 8% oppose). Sixty-seven percent of Kansas voters, cutting across all income, age and geographic groupings, strongly favor capping attorney fees.

Currently, an attorney can recover 50% above the settlement offer but **HB 2142** caps the attorney fee at 25%.

The third part of the bill would remove the \$50,000 cap on functional impairments. This is something that labor has been requesting for many years and is something the business community believes would help the injured workers (Attachment 1).

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 8, 2005 in Room 241-N of the Capitol.

Duane Simpson, on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA), testified as a proponent to **HB 2142**. Between 2001 and 2004, agribusiness has seen workers compensation increase between 17% to 105%. Workers have been laid off so businesses could stay open.

**HB 2142** addresses some of the issues that have been driving up the cost of workers compensation. The three major components of the bill would help the cost of litigation which is one of the major cost drivers within the current system. The first one is the removal of the \$50,000 cap on functional impairment. A small technical amendment needs to be made in the bill. On page 5, line 43: (3) strike “subject to the provisions of subsection (a) (4)”. This proposal strikes all of subsection (a) (4) so it is unnecessary to make that exception to the \$100,000 permanent or temporary partial disability cap.

**HB 2142** sets the date of accident as the earliest of three dates. Opponents were concerned that this definition might somehow prevent an injured worker from receiving benefits they deserve due to deadlines associated with the date of injury. However, their concern is misplaced. Clearly, a worker who has met any of the three criteria has already progressed through enough of the process to satisfy the relevant deadlines.

The final provision of the bill is the most controversial. This provision reduces the attorney fees to 25%. Since the cap was removed, the gap between Kansas and the national average has grown wider. The question is whether or not attorneys would pass on cases where the settlement offer is fair (Attachment 2).

The meeting adjourned at 10:10 a.m. The next meeting will be February 9, 2005.