



**KANSAS TRIAL LAWYERS
ASSOCIATION**

To: Senator Renee Erickson, Chair
Members of the Senate Commerce Committee

From: Jeff K. Cooper, Cooper Law Office, Topeka
On Behalf of the Kansas Trial Lawyers Association

Date: March 8, 2022

Re: SB 361 Concerning an employer's liability for maximum liability for permanent total disability (Proponent)

Thank you for the opportunity to appear today to provide testimony on SB 361. I am testifying on behalf of the Kansas Trial Lawyers Association (KTLA) and workers across the state of Kansas in support of Senate Bill 361. My name is Jeff Cooper, I am a Topeka attorney who has practiced workers compensation law for the past 37 years and have taught workers compensation as an adjunct professor at Washburn Law School for the past 30 years. I am also the workers compensation section chair for KTLA.

Senate Bill 361 deals with benefits payable to the most severely injured workers in Kansas, those that are hurt so bad they can never return to any type of work. Those workers who can never do any type of work again because of their injury and are permanently and totally disabled. Senate Bill 361 would change current Kansas Workers Compensation Law. The current Kansas law provides the lowest benefits in the nation to those who can never work again. Right now, if a worker can never work again, the worker receives a total of \$155,000. For the rest of their lives, the total amount paid is \$155,000. It does not matter if they are 25 years old or 65 years old, the total paid is \$155,000.

The cap is in place for low wage earners and high wage earners. Kansas has a cap on weekly benefit rates, currently \$737 maximum per week. A worker eligible for the maximum weekly rate of \$737 would receive weekly benefits at that rate for 210 weeks. After 210 weeks, or slightly over 4 years, no further benefits are paid. Before the injury, to get \$737 a week, they were earning at least \$1,106. After the injury, they receive two

thirds, or .6667, of their wages for 4 years. Then after the \$155,000 cap - nothing. What does the worker do after the cap is paid out? They can't work. Current Kansas law is an insult to hard working Kansas employees. Kansas employees deserve better.

It should be noted that Senate Bill 361 would affect a very small portion of Kansas employees. According to the National Academy of Social Insurance (NASI), nationally permanent total disability and death claims are relatively rare and together amount to less than 1% of the claims involving cash benefits.

Most states pay either benefits for life or until full retirement age. Only 6 states have any sort of cap on permanent total disability and Kansas Workers Compensation law pays less for permanent total disability claims than any other state. Missouri, Nebraska, Iowa and Colorado, all neighboring states, all pay benefits for the duration of the disability. Oklahoma, another neighboring state, does have a cap on benefits, however, it pays for a minimum of 15 years of disability.

Senate Bill 361 simply puts Kansas workers who can never work again on the same footing as our neighboring states. Senate Bill 361 provides a bare minimum of benefits to severely injury and totally disabled employees.

Senate Bill 361 does not change current Kansas law but allows either party to review and modify any award of benefits. If a worker's condition improves and they can return to work, the award can be reviewed and changed.

Senate Bill 361 put Kansas workers on a level playing field with the rest of the nation. The Workers Compensation Act should provide a safety net for injured workers who can never work again. Current Kansas law does not. KTLA believes Kansas workers deserve the best - not the worst in the nation.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the Committee take action on SB 361, and that the Committee recommend it favorably for passage.