

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 20, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee: Jamie McDonald, private citizen
Jeff Cooper, Kansas Trial Lawyers Association

Others attending:

See Attached List.

The Chairman opened the hearing on **HB 2809 - Workers compensation liability for death or injury resulting from drugs or alcohol.**

Staff gave a briefing on **HB 2809** stating there was new language starting on line 31 and ending on line 39, "except that an employer shall be liable where the injury, disability or death was contributed to by the employer's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances including but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens subject to the same standards, conditions and limitations which are applicable to employees under subsection (d) (2).

Representative Ruff asked if any other states had this law?

Staff said they would check on that.

Jamie McDonald and Darla Gore, sisters, testified as proponents to **HB 2809**, stating their mother was killed in a fatal accident that occurred on April 21, 2003 in Marion, Kansas. A company pickup operated by the plant manager struck the scale house in which their mother, Georgie Vogel, was working. The plant manager had suffered a seizure at the time of the accident and failed to control the truck he was operating. Since 1995 the plant manager had been under a doctor's care regarding prescribed medications for seizures. During the 5-month span prior to this accident the plant manager had been involved in two motor vehicle incidents while taking this medication and experiencing seizures. The employer had knowledge of these prior incidents and continued to permit the plant manager to drive this vehicle, endangering himself and others. These are direct quotes from the MSHA investigation conducted after their mother was run over while sitting at her desk working. MSHA has deemed this to be of high negligence and has issued a Class D1 citation to the employer. A "D1" citation is an "unwarrantable failure that could significantly and substantially contribute to a health or safety hazard." The Marion County Police Department has turned this case over to the Attorney General for consideration of criminal charges against the employee and the employer.

An employer should be held accountable for the safety of their employees while they are at work and it is believed that most Kansan's trust that an employer is taking measures to keep them safe. Very few workers are aware of the "Exclusive Remedy" clause under Kansas workers compensation (Attachment 1).

Jeff K. Cooper, Kansas Trial Lawyers Association, testified as a proponent to **HB 2809**, stating that it would change the current Exclusive Remedy Rule in Kansas. **HB 2809** holds an employer to the same standards as the employee on use of drugs or alcohol which contribute to an injury. This bill does not address all the issues on the Exclusive Remedy debate. It does, however, hold the employer to at least the same standards as the employee is required to comply with on the use of drugs, use of alcohol, or any

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drugs where those alcohol or drugs contribute to an injury. Under **HB 2809**, employers would not be shielded by the Exclusive Remedy Rule where the injury, disability, or death is contributed to by the employers' use or consumption of alcohol, drugs, chemicals, or other compounds or substances, the same as an employee cannot collect for workers compensation benefits if such alcohol or drug use contributes to the employee's injury. Under **HB 2809**, Georgie Vogel's employer would not be able to avoid responsibility for their actions as the Exclusive Remedy would not apply to shield them for liability (Attachment 2).

The Chairman closed the hearing on **HB 2809**.

The Chairman opened the hearing on **HB 2719 - Establishing manufactured home installation licenses and apprentice installation licenses and standards for the installation and siting of manufactured homes**.

An amendment from Martha Neu Smith, Kansas Manufactured Housing Association, brought forth an amendment that would make the effective date January 1, 2006, instead of January 1, 2005.

It was asked how many individuals were licensed?

Ms. Smith responded, between 50 and 70.

Representative Ruff said this subject matter would be good for an interim study.

Ms. Smith said the Board wants to move forward to show that the state has made progress regarding the Manufactured Housing Improvement Act.

The Chairman said the deadline for moving out House Bills is February 24 or the bills will die.

Representative Swenson moved and Representative Burgess seconded to adopt the amendment to change the date. The motion carried.

Representative Swenson moved and Representative Burgess seconded to move **HB 2719** out favorably as amended. The motion carried.

Representative Pauls said there was a technical amendment to page 3, line 34 to close with a second parenthesis. Representative Swenson and Representative Burgess stated they wanted this included in their motion on **HB 2719**.

The meeting adjourned at 10:50 a.m. The next meeting will be February 23, 2004.