

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 7, 2005 in Room 241-N of the Capitol.

All members were present except:

Broderick Henderson- excused  
Patricia Kilpatrick- excused

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:

The Honorable Bruce E. Moore, Administrative Law Judge  
Wil Leiker, Kansas AFL/CIO  
Toni Wellshear, AARP  
Jerry Wisdom, private citizen  
Mark Desetti, Kansas National Education Association (KNEA), Kansas Coalition for Workplace Safety  
Johnnie Rodriguez, private citizen  
Jeff Cooper, Kansas Trial Lawyers Association  
Jack Cook, private citizen  
Mary Clark, private citizen  
Patricia Griffith, private citizen  
Ed Redmon, firefighter

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2142 - Workers compensation; date of accident, employer's maximum liability for disability compensation, attorney fees.**

The Honorable Bruce E. Moore, Administrative Law Judge, neutral to the bill addressed the committee regarding establishing the date of accident on contemplated workers compensation legislation.

**HB 2142** would make the following changes as to the date of accident in a repetitive trauma claim:

- 1) **K.S.A. 44-508(d)**, defining "accident," is amended to change date of accident for a repetitive use injury to the earliest of:
  - a. The date the employee gives written notice of the injury to his employer.
  - b. The date the condition is diagnosed as work-related, providing such notice is communicated to the worker in writing.
  - c. The first day the worker is taken off work, or is restricted from the work activities that caused the injury.

Judge Moore stated the language needed to be more definitive to establish date of accident. A doctor rarely gives a patient a statement in writing. There is not a problem with c. above.

The determination of an appropriate date of accident in a repetitive mini-trauma claim is crucial to computation of benefits to which the employee may be entitled. From the perspective of the courts, no one approach is "better" than the others. The law is applied and the courts don't offer judgements on what the law ought to be. Any approach would be somewhat arbitrary where the precise date of injury is unknown. However, the date of accident is not something that should be susceptible to manipulation by either party,

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 7, 2005 in Room 241-N of the Capitol.

either to increase or decrease the benefits due, or to shift liability between carriers (Attachment 1).

Wil Leiker, Executive Vice President, Kansas AFL-CIO testified as an opponent to **HB 2142**, stating there were three sections to the bill. The \$50,000 cap was removed. This cap was never needed. Mr. Leiker stated the date of accident provision was a complex issue and the intent was to prevent those workers with admitted on-the-job injuries from falling between the cracks. The section dealing with attorney fees is clear that the intent is to remove attorneys from the system, thus leaving the injured worker to fend for themselves. Attorneys can not afford to take these jobs.

A subcommittee of the Advisory Council, consisting of 60% of the membership, worked out an agreement regarding date of accident which accomplished a solution to the problem. (Attachment 2).

The Chairman requested a copy of the Advisory Council agreement and Mr. Leiker said he would get it for the committee.

Toni Wellshear, member of the AARP Kansas Topeka Advocacy Team, testified as an opponent to **HB 2142**. AARP believes that all workers who suffer an occupational injury or illness should be eligible for unreduced workers compensation regardless of age. All workers deserve to be protected from arbitrary discrimination in hiring terminations, compensation and access to training, promotion opportunities and inclusion in mass layoffs and downsizing. AARP opposes reforms that would restrict access to the courts for all legitimate claims. AARP opposes any action that would impair the right of any worker to full and just compensation for injuries resulting from on the job injuries (Attachment 3).

Jerry Wisdom, private citizen, was unable to be here due to his work schedule. Terry Humphrey read his testimony opposing **HB 2142**, stating the attorney fee provisions in **HB 2142** was the law in Kansas from 1994 to 1997, and because of that, he almost did not receive the workers compensation benefits that he was entitled to. Mr. Wisdom stated in his written testimony that he did not feel this issue should be considered again (Attachment 4).

Mark Desetti, Director of Governmental Relations, Kansas National Education Association, Kansas Coalition for Workplace Safety, testified as an opponent to **HB 2142**. Last year Judge Bruce Moore stated in his testimony “from the very beginning, there has been the attempt to *balance* a worker’s right to some measure of compensation with a limitation on the employer’s liability.”

How to best achieve balance between the needs of employees injured on the job and employers who are liable for their injuries is what is needed. This is a difficult and complex balancing act affected by factors *outside* the workplace such as the hard insurance market and skyrocketing medical costs and factors *inside* the workplace such as lax safety standards. Unfortunately, those intent on changing the workers compensation system do not address any of these complex issues. Instead, they propose to “recoup” their costs by cutting benefits to their injured workers. Two areas addressed in **HB 2142** that unfairly tip the scales in favor of employers and insurance companies are limits on attorney’s fees and date of accident. Kansas workers are among the most vital assets to the state’s economy. For the health of the economy and the health of the workers who keep it going, it is urged all Kansas businesses to keep their workplace safe. Preventing workplace injuries, not punishing injured workers, is the best solution (Attachment 5).

Johnnie Neal Rodriquez, private citizen, testified in opposition to **HB 2142**, stating that she had problems with both hands and shoulders. She turned this complaint into her employer and eventually was treated for her hand problem but has not received treatment for her shoulders. The insurance company offered her a settlement, but she didn’t want money, she wanted her shoulders treated. She had no choice but to hire an attorney. The Judge ordered the insurance company to pay for medical treatment on her shoulders. Without an attorney she felt she would never have received the medical care she needed (Attachment 6).

Jeff Cooper, Attorney at Law, appeared as an opponent to **HB 2142** on behalf of the Kansas Trial Lawyers Association. In Kansas workers compensation, as in all other states, a “series of events, repetitive use, cumulative traumas, or micro traumas” which culminates in disability impairment is compensable. A legitimate issue is where to fix the date of accident. There are three separate time limits relative to any given

## CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 7, 2005 in Room 241-N of the Capitol.

workers compensation claim, i.e., 10 day oral notice, 200 days written claim and usually 2 years for Application for Hearing. No other state has three statutes of limitation for workers compensation. If the injured worker stumbles on any one of the three, the claim is totally denied. Primarily, the 200 day written claim statute of limitation creates the problem when coupled with the proposed change to date of accident contained in **HB 2142**.

In conclusion, **HB 2142** sets the date of injury which would harm injured workers and families by setting a "time limit trap" which would exclude otherwise valid claims. The proposed changes in attorney fees would limit workers' access to representation. Injured workers and their families would be disadvantaged because they would not be able to enforce their rights to future medical treatment and review and modification. The bill in its present form is unfair to injured workers and their families. Kansas workers need to be treated with the respect they deserve (Attachment 7).

Mary Counts Clark, private citizen, testified as an opponent to **HB 2142**, because it appears to be an attempt to stop injured workers from obtaining legal representation. Ms. Clark stated she had to hire an attorney to receive future medical (Attachment 8).

Patricia Griffith, private citizen, an opponent to **HB 2142**, stated she had been an employee of Wolf Creek Nuclear Operation Corporation when she began experiencing problems with her wrists. Wolf Creek did not give her any written information about filing a workers compensation claim. Ms. Griffith did have surgery on her wrists but was told it was not work related and to submit her bills to Blue Cross-Blue Shield. Her personal physician wrote a letter to Wolf Creek telling them that her wrist condition was being aggravated by her work. Wolf Creek never reported her condition as an accident to the Division of Workers Compensation. She then went to an attorney and he filed a claim for workers compensation. If **HB 2142** had been the law it would have been too late for her to file a claim for workers compensation benefits (Attachment 9).

Ed Redman gave testimony for Dennis J. Phillips, Lobbyist, Kansas State Council of Fire Fighters, opposing **HB 2142**. Under this bill, firefighters in the state of Kansas stand to lose many of the protections they currently have under existing workmen's compensation laws. Injuries sustained while battling a blazing fire or rescuing someone can go unnoticed and not present themselves till a later date which could be out of the limitations (Attachment 10).

The following written testimony was distributed opposing **HB 2142** Terri Roberts, J.D., R.N. Executive Director, Kansas State Nurses Association (Attachment 11) and James Clark, Kansas Bar Association (Attachment 12).

The meeting adjourned at 10:45. The next meeting will be February 8, 2005.