

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:36 A.M. on March 9, 2005 in Room 123-S of the Capitol.

All members were present except:

Susan Wagle- excused

Committee staff present:

Susan Kannarr, Kansas Legislative Research Department

Kathie Sparks, Kansas Legislative Research Department

Helen Pedigo, Revisor of Statutes

Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Representative Jeff Jack

Douglas Hobbs, Kansas Self-Insured Association

Tom Whitaker, Kansas Motor Carriers Association

Pat Shelley, President, Teague Electric Construction

Duane Simpson, Kansas Grain & Feed Association

John Ostrowski, Kansas AFL-CIO

Greg Wright, Kansas Trial Lawyers Association

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by calling on Kathie Sparks, Legislative Research, to explain **HB 2141**. She stated **HB 2141** amends the Workers Compensation Act by establishing guidelines for the determination of whether the burden of proof needed to show that the employee used, had possession of, or was impaired by alcohol or drugs while working is met. The burden of proof for denial of benefits will be met by establishing any of the following; The employer required drug testing and the policy was set in writing before the accident; the drug testing was in the normal course of medical treatment; the injured worker had given written consent for a drug or alcohol test prior to the accident requiring medical treatment but then refused testing after such accident; The testing was done as a result of federal or state law or a federal or state regulation that requires post accident testing.

Chairperson Brownlee introduced Representative Jeff Jack to give his testimony. Representative Jack offered written testimony with his amendment attached. (Attachment 1) He stated he was an attorney and practiced for ten years representing the insurance companies in Workers Compensation cases. He supports **HB 2141**. Under the current system it is difficult to get drug and alcohol testing into evidence. **HB 2141** is an attempt to address that and carry out the legislation's intent. Representative Jack presented an amendment he felt would alleviate the holes he feels the bill leaves. He explained his amendment does away with the "probable cause" requirement altogether. Any contemporaneous post-accident blood or alcohol test is admissible; if it is positive, there is a presumption that the employee was impaired, but he can present evidence, if he has any, that the test was done in error or he wasn't impaired. Representative Jack presented written testimony which included his amendment to **HB 2141**.

A discussion occurred upon the conclusion of Representative Jack's testimony with the Committee regarding "probable cause". Then the discussion moved to the removal of the word "conclusively" on line 12 on page 2, which was removed in the Jack amendment. Representative Jack stated because they are allowing all the tests in there is always a possibility of a false positive. If you say it in conclusively presumed, you have taken away any argument you could make that there was a false positive test. Representative Jack stated that this bill with his amendment makes it easier than current law to present evidence before the ALJ. There was some discussion on things which cause false positives.

Chairperson Brownlee introduced Douglas Hobbs, Kansas Self-Insured Association, to testify as a proponent for **HB 2141**. Mr. Hobbs offered written testimony (Attachment 2) Mr. Hobbs stated he was an attorney who defends workers compensation cases. Mr. Hobbs stated amendments to the Workers' Compensation Act involve balancing the interests between various groups. HB 2141 balances the interests of employers and their law abiding employees on one hand and intoxicated workers who cause their own injuries on the other. Passage of **HB 2141** would allow employers to provide a safe working environment for their law abiding

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employees while preventing intoxicated workers from profiting from their own injuries without infringing on the civil rights of an employee. In closing Mr. Hobbs urged the Committee to support **HB 2141**. Mr. Hobbs offered written testimony. ([Attachment 2](#))

Chairperson Brownlee introduced Tom Whitaker, Kansas Motor Carriers Association, to give his testimony as a proponent on **HB 2141**. Mr. Whitaker offered written testimony ([Attachment 3](#)) He stated FMCSA requires motor carriers to implement drug and alcohol testing programs for all drivers of commercial vehicles. Motor carriers must perform pre-employment, random and post-accident drug tests. **HB 2141** clarifies that a positive post-accident drug test performed in accordance with federal and state laws would be conclusive evidence of impairment. In addition, the bill eliminates proving there was "probable cause" to test the individual. Proving the motor carrier had probable cause to test a driver following an accident is very difficult for their industry due to the fact that the driver is most often on the road and a supervisor does not have the opportunity to observe the drivers's actions. In closing Mr. Whitaker urged the Committee to support **HB 2141**.

Chairperson Brownlee introduced Pat Shelley, President of Teague Electric Constriction in Lenexa to give his testimony as a proponent on **HB 2144**. Mr. Shelley offered written testimony. ([Attachment 4](#)) Mr. Shelley stated that drugs and alcohol abuse in the work place can have devastating effects. I think it is important that our laws reflect that we have no tolerance for such abuse. He stated he had personal experience in this field. When there are areas that are unclear and are subject to dispute, claims can drag on for years. When that happens, you can have a situation where employees that truly deserve benefits can't get them for a long time or you can get a situation where the employer is penalized. He stated when a work comp insurance carrier has an open claim for a long period of time it causes the premiums to increase be increased

Chairperson Brownlee introduced Duane Simpson, Kansas Grain & Feed Association to give his testimony as a proponent on **HB 2144**. Mr. Simpson offered written testimony. ([Attachment 5](#)) Mr. Simpson stated the Kansas Grain & Feed Association supports **HB 2144** without the Jack Amendment. In closing Mr. Simpson stated that making this change in the Workers Compensation program will not have a dramatic impact on the costs of workers compensation insurance. It will, however, restore an employer's right to not have to pay compensation when they are not responsible for an injury, and it will reduce the cost of litigating whether or not a chemical test should be admitted. In closing Mr. Simpson urged the Committee to support **HB 2144** without the Jack Amendment.

Chairperson Brownlee called the Committee's attention to the written testimony of Leslie Kaufman, Government Relations, Kansas Cooperative Council, a proponent on **HB 2144**. ([Attachment 6](#))

Chairperson Brownlee introduced John Ostrowski, Kansas AFL-CIO to give his testimony as an opponent of **HB 2144**. Mr. Ostrowski offered written testimony. ([Attachment 7](#)) Mr. Ostrowski stated the AFL-CIO supports the amendment proposed by Representative Jack. They believe the Jack amendment is a fairer and more balanced approach to the perceived problem. In closing Mr. Ostrowski urged the Committee to accept the Jack amendment on HB 2144.

Chairperson Brownlee introduced Greg Wright , Kansas Trial Lawyers, to give his testimony as a opponent on **HB 2144**. Mr. Wright offered written testimony. ([Attachment 8](#)) Mr. Wright stated the Kansas Trial Lawyers have a problem with the language. He stated the Senate has the opportunity to fix HB 2141 with amendments that protect the worker but support a drug-free workplace. The Kansas Trial Lawyers request the Committee's support of the Jack amendment creating a rebuttal presumption of impairment and giving the worker the opportunity to show that he was not impaired, or that his injury was not the result of impairment.

Chairperson Brownlee stated she would keep the hearing open and would continue on Friday, March 11, 2005.

The meeting was adjourned with the next meeting scheduled for tomorrow, Thursday, March 10, 2005 at 8:00 a.m. in room 123S.