

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on March 21, 2006 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Bev Beam, Committee Secretary

Conferees appearing before the committee:

Shannon Ratliff, Kansas Chamber of Commerce
Lew Ebert, Kansas Chamber (written only)
John Klamann, Klamann & Hubbard

Others attending:

See attached list.

The Chair called the meeting to order and opened the hearing on **(SB 592) - An act enacting the asbestos compensation fairness act; concerning asbestos claims.** She asked Melissa Calderwood for an overview.

Ms. Calderwood said **(SB 592)** has similarities to **(SB 512)** but instead of silicosis, the subject matter is asbestos. The bill has many of the same requirements in terms of claims being made based on physical impairment due to asbestosis and how those determinations would be made. There are some differences. Competent medical authority were the words used in **(SB 512)** and in **(SB 592)** a qualified physician is used. Some of the other standards that are different include exposure years.

The Chair called Shannon Ratliff, on behalf of the Kansas Chamber of Commerce. Mr. Ratliff said the primary purpose of this bill is to provide a fair method of adjudication while precluding the necessity for claimants to file prematurely when they cannot establish that they are, in fact, physically impaired or cannot establish that they have been diagnosed with either cancer related to asbestos or some other condition. Mr. Ratliff said this bill would establish an equitable system that is fair to both claimants and to companies who are named as defendants in cases by asbestos claimants. It does that by providing clear standards for establishing a prima facie case in cases involving claimants seeking compensation for non-malignant conditions claimed to be caused by exposure to asbestos. Mr. Ratliff said persons suffering from cancer associated with asbestos exposure are only minimally impacted by the provisions of this bill. He said persons seeking compensation for non-malignant conditions are required to meet certain minimal criteria in order for their case to proceed. Mr. Ratliff said this procedure is adopted to clear the dockets of trial courts and allow the truly sick to have their day in court and seek compensation. It also adopts an approach which does not penalize those who do not presently meet the criteria established. Instead of having to file to prevent the running of the statute of limitations upon the first indication of some possible condition, it allows those claimants to wait until they meet the criteria in the bill before limitations begins to run. He said only then must they bring suit and because they meet the criteria, their case will be processed unimpeded by thousands of cases where the claimants have no symptoms of asbestosis or any other asbestos related disease.

Mr. Ratliff said the features of the bill are: The claimant must establish a Prima Facie case; discovery is not allowed to proceed until the court has determined that the plaintiff has presented a prima facie case; joinder of claims is limited; cases are limited to those with substantial Kansas connections and punitive damages are prohibited. Mr. Ratliff said what this Bill intends to do is take those who are truly impaired and have been diagnosed as such and move them to the front of the line in terms of courthouse so that they may prosecute their case unencumbered by the claimants who have yet to suffer any impairment, loss of income or loss of any ability to function daily. Mr. Ratliff said he thinks this bill strikes a very fair balance between protecting businesses from what can be crushing contingent liabilities from claimants who felt compelled to file to protect their rights. (Attachment 1)

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Written testimony of Lew Ebert, President and CEO of the Kansas Chamber, was also presented.
(Attachment 2)

The Chair called John Klamann, Klamann & Hubbard, who testified as an opponent to (**SB 592**). Mr. Klamann said there is no asbestos litigation crisis in Kansas, nor has there ever been one nor will there ever be one. Mr. Klamann said this Bill is unnecessary and patently unfair to victims. He said it is unscientific and legislates a bias in favor of asbestos defendants and their insurers. It makes it unduly difficult for victims to make their claims in civil cases and it imposes unconstitutional barriers to the exercise of victims' due process rights. Mr. Klamann said for these reasons, the Bill should be rejected. (Attachment 3)

Senator Brownlee asked Mr. Klamann if someone should be able to bring suit on behalf of someone even though they have no medical evidence of any of these illnesses?

Mr. Klamann said the courthouse doors are open to everyone, Senator. They are open to people who didn't have car wrecks who claim they have car wrecks; they are open to people that claim they slipped and fell and didn't slip and fall; they are open to people who claim they hurt their back and didn't hurt their back so the courthouse doors should be open but, once we are in the courthouse, the judges are very careful and the standards are very strict about our ability to make our proof and there is a provision in rules of procedure for summary judgment but once we get into the courthouse these very skilled lawyers who are expert at these cases just like I am do file cases for summary judgment if those cases are not appropriate to file. That's the first thing they go after is authorization from the plaintiff to see all of the medical records and authorization from the plaintiff to see all of the employment records and they go out and get all that and have the capability of getting the case dismissed on a summary judgment motion. But at least then we are not barring people from the courthouse.

Senator Brownlee said, but when you're talking about significant money damages to the defendant and even to the point that you bankrupt companies, darned tootin' they better have medical evidence and what has been going on around the country -- the damages that are perpetrated against companies that don't even have anything to do with it -- is ridiculous.

Mr. Klamann asked, "Senator, are you aware of a single case in Kansas where that has occurred?"

Senator Brownlee said, "Sir, we are not going to let it happen."

Senator Barnett asked who can present evidence in court? Does it have to be the treating physician or qualifying? I want to make sure I understand those differences.

Mr. Klamann said by definition, a qualified physician, for the requirements of this statute, is the treating physician.

The qualifying physician has to make the diagnosis of asbestosis. By definition, qualifying physician has to be a treating physician.

The Chair closed the hearing on (**SB 592**).

The Chair opened the hearing on (**HB 2553**) - **An act pertaining to the Kansas Department of Revenue; concerning the division of vehicles; prohibiting certain contracts relating to drivers' license renewal.** Senator Wyszog asked, specifically from the insurance side, why do they have such a problem with this bill?

Larry Magill said, it is because it sets a precedent. It's basically prospecting.

The Chair said it is her understanding that this is a test case for the rest of the United States. AAA has put a lot of money into making sure this doesn't get passed in the state of Kansas because they want to continue the practice in the rest of the United States. If they want to continue this practice in the rest of the United States, there has to be some cause as to why this has been set up as a test case.

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Senator Barnett moved to pass the bill out favorably. Senator Brownlee seconded. Motion passed.

The meeting adjourned at 10:30 a.m. The next meeting of this Committee is scheduled for March 22, 2006.