

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on April 2, 2003 in Room 243-N of the Capitol.

All members were present:

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department
Renae Jefferies, Revisor of Statutes
Mitchell Rice, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Representative Rob Boyer
Hal Hudson, National Federation of Independent Business
Terry Leatherman, Kansas Chamber of Commerce
Amy Garcia, R.N., Wichita
John Ostrowski, Attorney, AFL/CIO
Jeff Cooper, Kansas Trial Lawyers Association
Representative Doug Patterson
Curt Wright, Taylor Oil, Inc.
Bob Alderson, Casey's General Store
Roger B. Haack, President & CEO, DataTeam Systems, Inc.
Larry Patrick, Central Region Director for Smoky Hill
Education Service Center

Others attending: See attached sheet

The Chairman called the meeting to order and announced that minutes of March 11, 12 and 18 had been distributed. If there are any corrections or additions, contact the secretary to change. If there is no response before the end of the week, the minutes will stand as presented.

The Chairman opened the hearing on **SUB SB 181 - Workers compensation, pre-existing condition.**

Staff gave a briefing on **SUB SB 181**. A prior impairment rating or permanent restrictions are not necessary to prove preexisting (symptomatic) functional impairment or disability. The trier of fact shall consider all medical testimony on the issue of preexisting impairment or disability. Any award of compensation shall be determined by showing, through medical evidence, the amount of functional impairment or disability caused by work activity for the employer from whom the employee is seeking compensation.

Representative Rob Boyer, a proponent to **SUB SB 181** testified this is an important change to our state's workers compensation law. The application of the law has become unfavorable to the business community and is resulting in double digit-increases in workers compensation premiums (Attachment 1).

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Hal Hudson, State Director, National Federation of Independent Business, a proponent to **SUB SB 181** testified the Workers Compensation Act has been in effect for many decades. Kansas employers have accepted the responsibility for paying millions of dollars a year in premiums to purchase Workers Compensation Insurance for one basic reason.

The Workers Compensation Act sets up “NO-FAULT” exclusive remedy for dealing with problems related to on-the-job injuries of workers. The Act provides that employers’ insurance will pay for medical expenses and a portion of wages lost as a result of job-related injuries (Attachment 2)

Terry Leatherman, Vice President - Legislative Affairs, Kansas Chamber of Commerce, testified as a proponent to **SUB SB 181**. Kansas employers are clearly facing significantly higher workers compensation insurance costs. However, **SUB SB 181** does not propose to attempt to reduce those costs by slashing benefits paid to injured workers. Instead, the legislation attempts to address two areas of workers compensation which are costly and outside the scope of what employers should be responsible for compensating.

Reducing workers compensation awards where a pre-existing condition contributes to the worker’s injury is already law in Kansas. Pre-existing condition language was one of the major reforms of the Act by the Kansas Legislature in 1993.

Today’s problem, from an employer’s perspective, is that a pre-existing condition determination is extremely difficult to obtain. **SUB SB 181** requires medical evidence to be used to determine how much an injury was caused by work. **SUB SB 181** makes the 1993 reform applicable today. The Kansas Chamber respectfully requests **SUB** for **SB 181** be amended to return it to the Legislature’s original intention (Attachment 3).

Amy Garcia, R.N., Wichita Independent Business Association, testified as a proponent to **SUB SB 181**. Workers compensation premiums and costs associated with lost time are a major, bottom line expense for small businesses. For many businesses, workers compensation is the second most expensive benefit behind salaries and it is extremely difficult to replace the lost work. Employers have been frustrated by paying for pre-existing conditions through workers compensation instead of health insurance. **SUB SB 181** does not reduce benefits. Employers are still responsible for injuries caused by work. This bill clarifies situations related to economic layoffs (Attachment 4).

Terri Roberts, Kansas Coalition for Workplace Safety and the Kansas State Nurses Association, testified in opposition to **SUB SB 181**. Nothing in **SUB SB 181** addresses the need for improved workplace safety. Nothing is mandated that insurance companies pass along their profits to Kansas employers in the form of lower insurance premiums. The bill further devalues the Kansas worker, further enriches Kansas workers compensation insurance carriers, and further undermines the promise employers made to Kansas workers in 1911 (Attachment 5).

John M. Ostrowski, Attorney, Kansas AFL-CIO, testified in opposition to **SUB SB 181**. The Kansas AFL-CIO has numerous reasons for opposing the bill, but today, seeks to emphasize the fact that this is “a solution in search of a problem.” **SUB SB 181** is nothing more than an effort to further reduce benefits to injured workers. Proponents have indicated in prior testimony that the bill seeks to “end abuses in the system,” and “enforce the intent of the 1993 amendments,” and “control liberal judges,” etc. Be assured that this bill has

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nothing to do with any matter other than a reduction in benefits to injured workers. This is a benefit reduction bill. Premiums in Kansas are low and stable. Increases in premiums are not due to increased payouts, but rather loss cost multipliers. This is nothing more than an unregulated protection of insurance company profits. Medical costs are driving payouts and this bill does not address medical costs. Proponents of the bill do not even indicate that premiums will fall or stabilize with passage of this bill (Attachment 6). (NOTE: Yellow book "*And now you'll learn the rest of the story*" is filed in the Chairman's office)

Jeff K. Cooper, Kansas Trial Lawyers Association, testified as an opponent to **SUB SB 181**. Most Kansas employees are covered by the Workers Compensation system. The current system offers minimal protection to Kansans who are injured on the job. This bill not only slashes workers compensation benefits to workers – benefits that are already among the lowest in the nation – but does nothing to improve work place safety.

This legislation would erode the rights of Kansans with disabilities from on-the-job injuries. **SUB SB 181** creates a double-standard that favors insurance companies at the expense of injured workers. The proponents of the bill are attempting to circumvent the current statutory procedure by introducing legislation that has not been reviewed and studied by the Workers Compensation Advisory Council (Attachment 7).

The Chairman closed the hearing on **SUB SB 181** and stated this was something to think about over the summer. There is no time left this session to work the bill, but it will be at the top of the priority list next session.

The Chairman opened the hearing on **HB 2330 - Prohibited acts and remedies for certain acts involving sale of motor fuel below cost.**

Staff gave a briefing on **HB 2330** concerning the sale of motor fuel. No marketer or retailer of motor fuel shall sell or offer for sale, by posted price or indicating meter, motor fuel at a price below cost. Cost means product cost and actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law. If such costs are unavailable, then cost means the invoice price or the lowest terminal price on the day at the terminal from which the most recent supply of motor fuel delivered to the retail location was acquired, as published by a nationally recognized petroleum price reporting service, plus actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law.

Representative Doug Patterson, a proponent to **HB 2330**, testified that there was a growth of large high volume retail stores, many from an Arkansas chain, along highways, that place gasoline pumps in the parking lot and sell gasoline at a loss to bring customers into the store. Retailers sell at retail and give coupons for the customer to redeem inside the store. Gas stations operate on a very small margin and the development of convenience stores selling gasoline are causing unfair sales. The federal law says it is illegal to sell below cost. This needs to be dealt with next year. My proponent for the bill was unable to be here today and give testimony.

Curt Wright, Taylor Oil, Inc., testified in support of **HB 2330**. Taylor Oil is a family owned petroleum marketer in Wellsville, Kansas and employs more than 70 people. Mirastar, a competitor, routinely sells gasoline below what Taylor Oil can buy gas for from BP Amoco. Large companies continue to dominate today's marketplace. Many of these companies are located outside the state of Kansas and they take their

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profits outside the boundaries of this state to benefit people from other states. A large part of preserving competition is to preserve choice. It is not good public policy to allow some company to take a precious natural resource and use it as a loss leader to drive their business (Attachment 8).

Bob Alderson, Casey's General Stores, Inc., testified in opposition to **HB 2330**. Casey's has more than 100 convenience stores located in Kansas, and these stores employ in excess of 800 people with an annual payroll of more than \$8 million. In 2001, those stores paid Kansas property taxes of more than \$615,000 and they remitted sales taxes in excess of \$2.8 million.

As a general principle, Casey's believes that free market competition should establish motor fuel prices without government interference. Retailers and consumer demands should establish the price for products and not the government. Our economic system works so well because competition in the market place establishes prices for products based on supply and demand.

During this time of the state's well-publicized budget crunch, this bill would appear to add a lot of responsibilities to the Department of Agriculture and the Attorney General's office. There is no funding mechanism in the bill, so these agencies would be expected to absorb the additional duties imposed by the bill without any additional financial resources (Attachment 9).

The Chairman closed the hearing on **HB 2330** and stated the bill would be held over until next year.

The Chairman opened the hearing on **HB 2385 - Interlocal agreements, prohibits government competition against private business.**

Staff gave a briefing on **HB 2385**.

Roger Haack, President and CEO, Data Team Systems, Inc., Lawrence, testified as a proponent with an amendment to **HB 2385**. DataTeam provides specialized fund accounting, human resources, fixed assets and other business office solutions to school districts in Kansas and other states. We believe strongly in our education system and in the appropriate activities of education service centers. We also believe strongly in fair competition.

HB 2385 is a strong step in the right direction to limit unfair government competition and to promote a level playing field and thus a healthy economy in Kansas. The bill, as currently stated, has too many loopholes, but with some changes to the language, it can be a strong and effective instrument. The concept of not allowing a governmental agency to convert a for-profit-tax-paying entity into a not-for-profit enterprise constitutes sound economic policy.

The exception that allows a government agency to compete if they can do it at a lower cost also has significant problems. The bill must specify that the costs used in the cost comparison are to be those available to private enterprise. Private small business provides 75% of the new jobs in Kansas. Private business can provide a growing economy and generate additional tax revenues and is the best approach to balancing the budget. The expanded tax revenues allow the state to fulfill its public education and other obligations to the people of Kansas. This goal is best met when government does not compete against private business and competition

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is on a level playing field (Attachment 10).

Larry Patrick, Central Region Director for Smoky Hill Education Center, testified in opposition of **HB 2385**. **HB 2385** promotes small business organizations and education service centers understand the complexity of running a small business. Since we have no taxing authority, we are much like a small business in that we exist through fees for services. We are different in that our only customers are school organizations and it is our mission to save them money while earning enough to keep our doors open. This is sometimes difficult because, while we are no taxing authority, we are required by law to operate and follow personnel and all regulations mandated for school districts. Lynn Myers, Insurance Director, South West Plains Regional Service Center, was in the audience and shared this testimony (Attachment 11).

The Chairman closed the hearing and stated due to time constraints **HB 2385** would be held over until next year.

The following written testimony was received: **SB 181** - Jim Keating, Kansas Fire Service Alliance (Attachment 12), Ernest Kutzley (Attachment 13), Joseph Ledbetter (Attachment 14), **HB 2330** - Terry Leatherman, Vice President of Legislative Affairs, KCCI (Attachment 15), Petroleum Marketers and Convenience Store Association of Kansas (Attachment 16), **HB 2385** - Terry Leatherman, Vice President of Legislative Affairs, KCCI (Attachment 17), Mike Taylor, Government Relations Director, City of Wichita (Attachment 18), Roger Werholtz, Secretary of Corrections (Attachment 19), Mark Tallman, Assistant Executive Director/Advocacy (Attachment 20), Dr. Kent Hurn, Assistant Lobbyist, United School Administrators of Kansas (Attachment 21), Hal Hudson, State Director, National Federation of Independent Business (Attachment 22) Don Moler, Executive Director, League of Kansas Municipalities (Attachment 23), David DeMoss, Executive Director, Southeast Kansas Education Service Center (Attachment 24), Judy A. Moler, General Counsel/Legislative Services Director (Attachment 25), Denise L. Everhart, Commissioner, Juvenile Justice Authority (Attachment 26).

The meeting adjourned at 9:55 a.m. and no further meetings are expected this session.