

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 11, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Representative Candy Ruff
Jeff Cooper, Kansas Trial Lawyers Association
Terry Leatherman, Kansas Chamber of Commerce
Hal Hudson, National Federation of Independent Businesses

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2316 - Workers compensation liability of employer involving drug and alcohol use.**

Representative Candy Ruff, a proponent for **HB 2316**, testified in favor of the bill. A signal was sent to employees that those who abuse drugs and alcohol would be further punished by losing their right to probable cause. In a system termed no fault, injured workers alone bear the consequences of their actions when an injury that occurs at work is the result of their impairment. They lose their ability to access the benefits of workers compensation (Attachment 1).

Jeff K. Cooper appeared as a proponent to **HB 2316** on behalf of the Kansas Trial Lawyers Association. Employers are not required to provide workers compensation benefits when the workers' use of drugs or alcohol contributed to the workers injuries, disability or death. There are no provisions in the Kansas Workers Compensation Act that articulate the employer's liability if an employee is injured on the job as a result of the employer's use of drugs or alcohol. **HB 2316** would create an exception to the exclusive remedy provision in the Workers Compensation Act where the employer uses or consumes alcohol or drugs, and as a result of an employer's use of alcohol or drugs an employee is injured or killed and such injury, disability or death was contributed to be the employer's use or consumption of alcohol or drugs.

Employers would be held to the same standard for their use of drugs or alcohol as are injured workers under the current provisions of the Workers Compensation Act as dealing with drug and alcohol use by the employee (Attachment 2).

Terry Leatherman, Vice President–Public Affairs, Kansas Chamber of Commerce, testified as an opponent to **HB 2316**. At its core, workers compensation is a tradeoff. The worker receives first dollar medical care, compensation dollars for the lasting affects of a work-related injury, and an administrative process designed to deliver prompt and fair justice to a claim. For an employer, workers compensation provides a shield against protracted legal action that could cripple a business. There are certainly examples where the workers compensation shield is used by employers to protect them from their indefensible actions. However, that is a tradeoff. **HB 2316** rips into the exclusive remedy principle of the workers compensation law. This would increase workers compensation insurance costs. Workers compensation is no shield from criminal wrongdoing. **HB 2316** is a radical departure from efforts to promote employer/employee cooperation and return to work. Instead, it promotes open combat through litigation between boss and worker (Attachment 3).

Hal Hudson, State Director, National Federation of Independent Business, testified as an opponent to **HB 2316**. Enactment of the bill would undermine the basic concept of workers compensation. 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

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of wages lost as a result of job-related injuries. By providing workers compensation insurance, the employer and the insurance company already accept liability for accidents that might injure an employee on the job, whether or not any action of the employer led to the injury. Our greatest concern is for the “exclusive remedy” provision of the Act to remain intact. Without this protection, employers have little justification for buying the insurance (Attachment 4).

The Chairman closed the hearing on **HB 2316**.

The Chairman asked what the committee’s pleasure was on working **HB 2141**.

Representative Jack moved and Representative Ruff seconded to amend **HB 2141** by inserting “materially” between “was” and “contributed” on line 43, page 1. On page 2 strike “conclusively” in line 12, strike “(A)” and re-letter and make “B” “A” and capital “T” on line 41 and strike “establishing probable cause” on line 42 and add “causing the injury”. Strike all of (3) on page 3.

Representative Novascone moved and Representative Sharp seconded a Substitute Motion to move **HB 2141** out favorable. The motion carried.

A Division was called: 10 Yeas - 9 Nays.

The following people requested being recorded as voting NO: Representatives Pauls, Garcia, Swenson, Ruff, Grant, Henderson, Burgess, Ruiz.

The meeting adjourned at 10:50 a.m. The next meeting will be February 14, 2005.