

## 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 February 13, 2006 in Room 234-N of the Capitol.

All members were present except:

James Barnett- excused  
Jim Barone - excused  
Dennis Wilson - excused  
Pete Brungardt - excused

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:

Woody Moses, KAPA  
Mark Wilkerson, IMA  
Ramon Gonzales, N. R. Hamm Quarries  
Warren Harshman, Harshman Construction  
Lew Ebert, Kansas Chamber  
Larry Magill, KAIA  
Debs McIlhenny, Kansas Trial Lawyers Assn.

Others attending:

See attached list.

The Chair welcomed everyone to the meeting and thanked those in attendance for meeting on Monday.

Hearing on:

**SB 512** - An act enacting the silicosis claims act

The Chair asked Melissa Calderwood for an overview of (**SB 512**). Ms. Calderwood said the first section of the bill is the definition section and those definitions of most interest are found on page 4 that define what a silicosis claim is. A "Silicosis claim" means any claim for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to inhalation of, exposure to, or contact with silica. Silicosis claim also includes a claim made by or on behalf of any person who has been exposed to silica, or any representative, spouse, parent, child or other relative of that person for injury, including mental or emotional injury, death or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to silica. Silicosis, she said, means an interstitial lung disease caused by the pulmonary response to inhaled silica.

The Chair asked Woody Moses for his testimony. Mr. Moses said Silicosis is a disease of the lung which is caused when small particles of silica usually contained in sand become imbedded in the lungs. It is important to note, he said, that silicosis is not related to asbestos, a similar lung disease. Crystalline silica, despite many years of study, has never been found to be carcinogenic. In Kansas, our rock, sand and gravel actually contain very low amounts of silica. So low, that in some cases they are not measurable, he said.

Mr. Moses said there has been an explosion of silica cases occurring primarily in the eastern half of the United States. This has led insurance carriers providing liability coverage to exclude silicosis coverage regardless of where a particular producer may reside and operate, despite the fact that the overall national mortality rate as a result of silicosis has been dropping steadily for the last 40 years. This is a particular problem in Kansas because the Kansas aggregate industry is comprised of a high percentage of relatively small members who, due to their size, do not have a net worth to withstand a silicosis claim. Without available insurance coverage, it is impossible to withstand such an action without facing bankruptcy, he said. (Attachment 1)

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 13, 2006 in Room 234-N of the Capitol.

The Chair called for testimony of Mark Wilkerson, IMA.

Mr. Wilkerson said while **(SB 512)** is an important issue for the insurance industry, he wanted to make clear that it does not affect Workers Compensation Insurance nor the coverage of Kansas workers. It is a bill that is related to the commercial general liability insurance policy, he said.

He added as a result of numerous lawsuits over the past several years and many of these being filed without merit, the insurance industry has spent a considerable amount of time and money defending their insured's interests in cases where no evidence of bodily injury has occurred. Plaintiffs have even alleged that possible exposure to silica or mixed dust might create future medical conditions or ailments and are seeking judgments where no injury has occurred. The defense of these unsubstantiated claims has caused the insurer's to look for ways to mitigate their defense expenses, Mr. Wilkerson said.

He said insurance carriers, both large and small, apply exclusion for silica and mixed dust to the Commercial General liability policies of many construction firms, quarry operations, manufacturing, glass plants, and tool makers. The exclusion is also being applied to Environmental Pollution policies as well. He said this exclusion releases the carrier from being obligated to respond to claims and be responsible for defense costs, judgments, or settlements related to silica or mixed dust related claims.

If the Kansas Legislature passes this proposed legislation, it will limit litigation to only silica and mixed dust claims meeting the established medical criteria and will eliminate the potential for unfounded claims tying up our courts. It will also ensure that those who have valid claims are provided an opportunity to seek medical care and any damages related to their condition from the responsible party, he said. (Attachment 2)

The Chair called on Ramon Gonzalez for his testimony. Mr. Gonzalez said Hamm Quarries has seen the number of insurance companies willing to write coverage for their company shrink in the last five years. This is mainly because of a shift in insurance companies' willingness to underwrite exposures in either heavy highway companies, paving contractors, quarry operations or companies with large auto fleets, Mr. Gonzalez said. He added, one or more of these exposures usually makes the majority of insurance companies decline even a quotation, regardless of a very good loss record.

Mr. Gonzalez said his company believes **(SB 512)** will reduce the apprehension to the insurance companies declining to quote insurance to Kansas employers solely based on silica exposure. We also believe the state of Kansas, business and industry benefit from the elimination of the possibility of frivolous class action claims from silica. (Attachment 3)

The Chair called on Warren Harshman, Harshman Construction for his testimony. Mr. Harshman said, in Kansas, unlike the eastern United States, the actual silica content of our rock is very low and in some cases not even measurable. Yet the liability is great, as many claims can be generated by a perceived exposure as compared to an actual exposure. Mr. Harshman said he wishes to stress that his company is not seeking to avoid a legitimate claim for which they may or may not be liable. He said **(SB 512)** would simply require a bona fide medical diagnosis of silicosis to exist prior to filing a claim. Mr. Harshman said **(SB 512)** is very important and without its passage, the basic sustainability of his business will be threatened because he simply has no coverage for this liability. (Attachment 4)

The Chair called on Lew Ebert, President and CEO of The Kansas Chamber. Mr. Ebert said the Kansas Chamber and it's more than 10,000 members support **(SB 512)**. He added that because silica claims and diagnosis have mirrored asbestos litigation, Kansas, like other states, is seeing an insurance market place that is excluding companies with silica exposure. He said these concerns need to be addressed so companies can continue to compete in Kansas and employ Kansas workers. (Attachment 5)

Larry Magill, Executive Director, Kansas Association of Insurance Agents, brought written testimony. (Attachment 6)

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 13, 2006 in Room 234-N of the Capitol.

Charles L. Chip Wheelen testified on behalf of Kansas Association of Osteopathic Medicine. Mr. Wheelen said requested amendments by the Kansas Association of Osteopathic Medicine would simply acknowledge that there are two parallel systems whereby a physician may become board certified in a particular field of medical expertise. (Attachment 7)

The Chair called on Debs McIlhenny, Kansas Trial Lawyers Association, who testified as an opponent of the bill.

Due to time constraints, the chair asked Ms. McIlhenny if she would discontinue her testimony and return on Wednesday, February 15, to continue her testimony. She agreed.

The meeting adjourned at 10:30 a.m.