

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:09 A.M. on March 17, 2005 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Marlee Carpenter, Kansas Chamber of Commerce & Industry (KCCI)
Terri Roberts, Kansas Coalition for Workplace Safety
Tuck Duncan, Kansas Occupational Therapy Association
Scott Heidner, Kansas Self Insurers Association (KSIA)
Paul Silovsky, Kansas Physical Therapy Association

Others attending:

See attached list.

Chairperson Brownlee opened the meeting by calling on Kathie Sparks, Legislative Research to explain **HB 2142**. Ms. Sparks stated that the Substitute for **HB 2142** would amend the Workers Compensation Act as it relates to the date of accident. The bill would provide that in cases where the accident occurs as a result of a series of events, repetitive use, cumulative traumas or micro traumas, the date of the accident shall be the date the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition. In the event the worker is not taken off work or restricted as above described, then the date of the injury be the earliest of the following: the date upon which the employee gives written notice to the employer of the injury or the date the condition is diagnosed as work related, provided such fact is communicated in writing to the injured worker.

In cases where none of the above criteria are met, then the date of accident shall be determined by the administrative law judge based on all evidence and circumstances; and in no event shall the date of accident be the date of, or the day before the regular hearing. These provisions would not preclude a worker's right to make a claim for aggravation of injuries under the Workers Compensation Act.

Chairperson Brownlee opened the hearing in **HB 2142** by introducing Marlee Carpenter, KCCI, to give her testimony as a proponent on **HB 2142**. Ms. Carpenter offered written testimony. (Attachment 1) Ms. Carpenter stated the language of **HB 2142** is agreed language between the Kansas Chamber and the Kansas Trial Lawyers Association and sets out a test for a date of accidental non-traumatic injury cases. Ms. Carpenter urged the Committee to support **HB 2142**.

Chairperson Brownlee introduced Terri Roberts, Kansas Coalition for Workplace Safety, to give her testimony as a proponent of **HB 2142**. Ms. Roberts offered written testimony (Attachment 2) and made a brief summary of her written testimony stating that they did not support this bill originally but through the work of the KCCI Chamber and the Kansas Trial Lawyers Association a fair compromise has been made. The Kansas Coalition for Workplace Safety can now support this bill.

Chairperson Brownlee called the Committee's attention to the written testimony of the Kansas Trial Lawyers Association. (Attachment 3)

Upon completion of the testimonies Chairperson Brownlee called for questions. Being none, Chairperson closed the hearing on **HB 2142**. Senator Barone moved to pass the bill out favorable. Senator Kelly seconded. Motion Carried.

Chairperson Brownlee opened the hearing on **HB 2299** by stating the bill was self explanatory and introducing Tuck Duncan, Kansas Occupational Therapy Association to give his testimony as a proponent of the bill. Mr. Duncan offered written testimony (Attachment 4) and gave a brief summary of his testimony. He urged the Committee to support **HB 2299**.

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Chairperson Brownlee introduced Scott Heidner, KSIA to give his testimony as a proponent to **HB 2299**. Mr. Heidner offered an amendment to the bill. (Attachment 5) He stated the amendment he offered would add two more members, one from labor and one from business to be appointed by the Secretary to keep a balance on the panel. Upon completion of Mr. Heidner's explanation on the amendment, a discussion of questions and answers occurred.

Senator Wysong asked the question on how many members were on the board now. Mr. Heidner stated that the board was made up of 7 members at the present time. **HB 2299** would add two more, one from physical therapy and one from occupational therapy and his amendment would add two more; one from business and one from labor. At the present time there is one from labor and one from business and his amendment would add in addition to what is on the panel. A discussion followed on the number of members and if any additional were actually needed. There was also a discussion on the responsibilities of the Work Comp Advisory Panel. Dick Thomas representing the Workers Compensation Division, was recognized and he entered the discussion. Mr. Thomas stated that the Panel suggests the medical fees for the work comp schedules. The discussion shifted to the fiscal note on this bill. Mr. Thomas stated the members could charge mileage up to \$100.00 per year but in the past years only \$100.00 had been paid out. Most members do not charge the mileage. Next the Committee discussed that how adding more groups would open the door for next year more groups to ask to be added to the Panel. The point was made by Senator Reitz that a panel could get too big to function properly. More people make the meeting much longer. Senator Reitz asked about the attendance to these meetings. Mr. Thomas stated the Committee did not meet very often and sometimes the meetings were done by conference calling. He also added the schedules were redone every other year. Senator Brownlee suggested combining the two groups to just add one person. That idea was discussed among the Committee.

Chairperson Brownlee does not think it will be very difficult to add the people to a panel already established. Senator Barone asked about the participation. Mr. Thomas stated again they don't meet very often but when they do the participation is very good. Senator Barone asked how the medical fee schedules measure up to others such as BCBS. Mr. Thomas stated he did not have information for local comparisons just comparisons with other states.

Chairperson Brownlee introduced Paul Silovsky, Kansas Physical Therapist Association, to testify as a proponent of **HB 2299**. Mr. Silovsky offered written testimony. (Attachment 6) Mr. Silovsky stated that having members of the KPTA and Kota added the advisory panel will provide more comprehensive and improved representation as the state continues in its efforts toward evaluating workers compensation cost containment and effective fee schedule utilization.

The discussion continued upon the conclusion of Mr. Silovsky's testimony regarding the proposed amendment by Mr. Heidner. Senator Kelly suggested one category for rehab and then only one person representing instead of two. Chairperson Brownlee recognized Bud Burke who stated the issue was trying to hold down the size. This panel is not a major panel of work comp, it is just for fee schedules. He stated the occupational therapist and physical therapist are not the same and could not be lumped together. This panel just makes recommendations for the fee schedules of work comp. Senator Wagle entered the discussion. She wanted to know why we need this bill. Mr. Duncan joined the discussion stating they were asking because in some states the therapists have been left out so they are trying to prevent that from happening in Kansas.

Upon completion of the discussion Senator Reitz moved to accept the amendment from Mr. Heidner. Senator Jordan seconded. Motion carried.

Chairperson Brownlee closed the hearing on **HB 2299**.

Chairperson Brownlee turned the Committee's attention to **HB 2141**. She stated there had been a lot of correspondence and dialog with the beer distributors regarding this bill. Chairperson Brownlee stated that the .04 blood level comes from the Federal Department of Transportation standard for a commercial drivers licenses. Chairperson Brownlee recognized Senator Schodorf. Senator Schodorf had questions on if an employee has permission to drink alcohol on the job such as a sales person entertaining a customer/client what would happen if they were in an accident. Senator Brownlee stated she emailed her beer distributor and told

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him his drivers would have to comply with the federal law. The discussion continued on some of the beer/liquor distributors' concerns regarding this bill. Senator Jordan joined the discussion stating he felt there was a lot of confusion with this bill. There are a lot of sales people that take clients/customers out to dinner and have a drink and they are on the job. The question is they are on the job and what is the liability under this bill with that kind of situation. The .04 has been on the books for quite a while and hasn't seemed to be a problem until this bill came up. Senator Jordan doesn't think it is a problem and would like to have discussion. Senator Brownlee stated the liquor lobby has distorted the intent of this bill. The purpose of this bill is to make sure that if someone was drinking on the job and that impaired their judgment and caused them to have an accident that evidence could be used in a work comp hearing. Senator Emler joined in the discussion stating there were some things about the amendment that bothered him and he was confused and had not decided which way to go yet. Senator Kelly entered into the discussion and stated she shared in Senator Emler's confusion and feels the Committee needs to think it through. Upon the conclusion of this discussion.

Senator Jordan moved this bill out favorably. Senator Wysong seconded. Motion carried with one no vote from Senator Reitz.

Meeting adjourned at 9:00 a.m. with the next meeting scheduled for tomorrow, March 18, 2005 at 8:30 a.m. in room 123S.