

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Sean Tarwater, Chairman
Members of the House Commerce, Labor & Economic Development Committee

From: Callie Jill Denton, Executive Director

Date: January 30, 2020

Re: HB 2507 An Act concerning high school work-based learning programs; liability for students and businesses - OPPOSE

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in opposition to HB 2507.

HB 2507 continues the conversation begun in 2019 with Sub for HB 2354. It addresses insurance coverage for high school students participating in apprenticeships and on-the-job training programs. KTLA's understanding is that the original intent of the bill is to clarify the responsibilities of businesses, districts, and student participants so that insurance coverage is available in the event of injury, death, or property damage.

HB 2507 does not clarify insurance coverage responsibilities. HB 2507 does not require any businesses or districts participating in work-based learning programs to carry insurance coverage for students at all. In addition, HB 2507 contains sweeping immunity and shifts accountability and "sole responsibility" for students' injuries to school districts—in other words, to taxpayers. HB 2507 is a one-sided bill with no assurances for high-school student apprentices and their families.

KTLA interprets HB 2507 as affecting tort claims. We do not interpret the bill as making students "employees" of businesses or schools for purposes of workers compensation coverage.

HB 2507 makes school districts "solely responsible" for any loss to a student resulting from bodily injury, sickness or death arising from any negligent act of the student or the business during the work-based learning program, (b).

Making districts "solely responsible" for any loss to students during a work-based learning program is not only unfair, it doesn't make practical sense. Districts should have some ability to minimize the chance of injury and loss if they are to bear responsibility. When a student is in a school building or on school property the district can act to make the facility safe for students through policy and hiring decisions, maintenance of equipment, etc. Districts don't have control

over the facility, employees, or customers at a business. They can do very little to limit dangerous conditions that could cause injury, sickness and death to a student, especially on a day-to-day basis.

Districts are permitted to purchase additional insurance coverage for accepting a significant amount of liability for conditions that are not within the districts' control. Sec. 2 and Sec. 3. However, policymakers should not be reassured; purchase of insurance is permissive, not mandatory, which leaves both districts and students at financial risk.

Another question relates to the Kansas Tort Claims Act. The KTCA caps *both* economic and noneconomic loss at \$500,000, total. Would making school districts "solely responsible" for losses to students trigger the KTCA and limit an injured student's claims as provided in the Act?

Because districts are "solely responsible" for the injury or death of students, are students and their families barred from suing other negligent parties, such as an employee or customer of the business? The bill includes substantial immunity for the negligent acts or omissions of businesses (discussed further below). Why would the Legislature want to limit a student's economic damages to \$500,000 total, *and* exclude claims that might be available against other negligent parties?

HB 2507 provides civil immunity from claims arising from participation in the work-based program at the business or worksite as follows:

- to business, for any claim arising from a student's negligent act or omission;
- to business, from any claim from a student for the student's injury caused by the business' negligent act or omission;
- to students, for any claim arising from the student's negligent act or omission occurring within the scope of the work-based learning program.

As discussed, a district would have "sole responsibility" for a student's claim of injury or death. However, claims of injury or death from the business' employees, customers, or other third parties against either the student or the business for either of their negligent acts or omissions occurring within the work-based program appear to be nearly without remedy.

In (c) HB 2507 provides that there is no immunity for the student or business for liability arising from gross negligence or willful misconduct. The inclusion of this provision does not offer reassurance of accountability.

HB 2507 expressly provides immunity for negligent acts or omissions which means that if an ordinary, reasonable person would have exercised due care, and a student or business fails to do so, and injuries or death results, the business or student is immune from civil liability and accountability. In other words, HB 2507 doesn't require basic, ordinary, reasonable carefulness.

Instead, to be held accountable under HB 2507, businesses or students' actions must rise to a standard of "gross negligence or willful misconduct." In Kansas, its an extraordinary standard for an injured party to prove. Gross negligence is extreme. It is reckless, wanton, and shows a

complete lack of concern and indifference for the safety of others. Gross negligence is so extreme it may be the basis of punitive damages which are claimed only in the most serious cases.

HB 2507 appears to be a sweeping shift of liability for a student's injury or death to school districts, and ultimately taxpayers. If remedies are limited to the school district and capped at \$500K, then costs are shifted to the injured student. Other claims against a business or student may be almost completely immunized due to the gross negligence or willful misconduct standard.

Placements in work-based learning programs are a win-win. Schools benefit from the training experience they can offer. Students get practical training for educational credit. Businesses get free labor and potentially trained employees after graduation. It seems like there should be at least a shared solution for the responsibility of the program. The negligence of any participant should not receive legal protection from the Legislature.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the committee oppose HB 2507.