

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 14, 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  
Renaë Jefferies, Office of Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee:

John Ostrowski, Kansas AFL-CIO  
Gary Peterson, Former Chairman and Appeals Board Member for Division  
Terri Roberts, Kansas Coalition for Workplace Safety  
Terry Leatherman, Kansas Chamber of Commerce  
Beth Foerster, Adjunct Professor at Washburn University  
Dan Keener, private citizen  
Curt Richards, private citizen  
Calli Denton for Janelle Schuster, private citizen  
Mark Block, private citizen  
Wil Leiker, AFL-CIO

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2272 - Workers compensation maximum benefits and advisory council.**

Staff gave a briefing on **HB 2272** which strikes language on page 1 from lines 28 through 30. On page 3 there is a change that changes the advisory committee from four to three affirmative votes from the five voting members. There is a technical change on page 3, lines 32 through 35 that is outdated..

John Ostrowski, on behalf of the Kansas AFL-CIO, testified in support of **HB 2272**. The original intent of this bill was to prevent someone with a low disability from recovering a large amount of money. When the law was passed, a worker with a very high average weekly wage could have a very minor injury and receive a significant payout.

In reality, the law has done the exact opposite of what it was intended to do. Workers who have high medical disabilities are being punished by giving them low awards.

The law was written to cover “work disability cases”, but instead, it has affected scheduled injury cases as well. Virtually every scheduled injury is impacted by the \$50,000 cap when there is serious injury. The figures are worse now than they were in 2004 because the average weekly wage has gone up to \$440. Therefore, an amputated arm receives half of what the legislature intended.

The AFL-CIO supports the change in the voting requirements of the Advisory Council. In the past, virtually all of the compromises that failed received at least three votes from each side of the table. It is believed that the Advisory Council has a useful purpose to serve the legislature. Especially in the avoidance of new laws passed that create “unintended circumstances” (Attachment 1).

Gary Peterson, former Chairman and Workers Compensation Appeals Board Member for the Division, testified in support of **HB 2722**. The bill would allow the Advisory Council to approve legislative recommendations by a majority vote of three of five members. Currently four out of five members on each side is required before approving any proposed changes.

Workers compensation is a very complex area of the law. Under the present law it is difficult to reach

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agreement on issues due to the current voting requirements on the Advisory Council. For example, a compromise was worked out on date of injury language by a Subcommittee to the Advisory Council, but was not approved because two of the five members of the employers' side voted against the compromise language. A simple majority of members of each side of the table would facilitate compromise between the parties. The Advisory Council was established to assist the legislature in this complex area of the law. When one side perceives that it has all of the leverage, they are less likely to reach a compromise. **HB 2272** levels the playing field and there will be less need for hearings in the legislature (Attachment 2).

Terri Roberts, J.D., R.N., Chairperson, Kansas Coalition for Workplace Safety, testified in support of **HB 2722**, which would eliminate the \$50,000 limit on awards for permanent partial disability in cases where only functional impairment is present. The bill also reduces the super majority for purposes of adoption of recommendations by the Kansas Workers Compensation Advisory Committee (Attachment 3).

Terry Leatherman, Vice President of Public Affairs, Kansas Chamber of Commerce, testified as an opponent to **HB 2272**. In prior testimony on **HB 2142**, the Kansas Chamber found merit to lifting the current benefit cap to \$50,000. However, it is important to point out that legislation also contained reforms concerning the date of accident for non-traumatic injury and attorney fee limits that would encourage workers compensation claim settlements. As a result, the Chamber encourages the committee to advance the functional impairment benefit change by approving **HB 2142** rather than on **HB 2272**.

As an Advisory Council participant since its inception, the Kansas Chamber questions the effectiveness of changing the voting requirements (Attachment 4).

The Chairman closed the hearing on **HB 2272**.

The Chairman opened the hearing on **HB 2317 - Compensation of disabilities under workers compensation act**.

Beth Regier Foerster, Adjunct Professor, Washburn University Law School, testified in support of **HB 2317**. Ms. Foerster appeared one year ago and indicated the benefits paid to injured workers in Kansas was "woeful." There has been virtually no change in the condition of workers compensation since that time. The premiums remain stable, insurance company profits remain high and the significant cost driver in the system remains the ever escalating cost of medical care.

The first portion of the bill deals with an increase in temporary total weekly benefits. Temporary total benefits are those benefits paid to a worker when they are completely unable to work during the recovery period. The most typical example is an individual who undergoes surgery, and is therefore removed from the workplace. Again, in order to receive these benefits, the worker must be declared unable to be engaged in substantial and gainful employment.

It is believed there is a drafting error in the bill. The intent of the bill was to remove the 75% multiplier, and permit a worker to receive 66.67% of their average weekly wage up to a "cap" of 100% of the state's average weekly wage. Currently, the state's maximum is \$449. In other words, this weekly cap at today's rate would change to \$673. This would put Kansas approximately equal with Missouri and Colorado.

Temporary total is arguably the most important indemnity benefit for an injured worker. Working families plan their budgets around the income they earn. Even the most responsible workers have little discretionary income available to them should they become injured on the job.

**HB 2317** further seeks to increase permanent total disability to \$250,000. The amount that an injured worker receives for permanent total disability has not increased since July of 1987. Kansas is the lowest state in the nation in benefits for permanent total disability. Only four states cap permanent total disability.

Permanent total and permanent partial disability has now been "frozen" for almost two decades. Permanent partial disability needs to be dramatically increased to minimally conform with inflation and the increased cost of living (Attachment 5).

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Terrie Roberts, J. D., R. N., Chair, Kansas Coalition for Workplace Safety, testified as a proponent to **HB 2317**, stating the Coalition is very supportive of increasing the benefit package in Kansas for workers injured on the job. Kansas currently has the 7<sup>th</sup> lowest benefit package in the country (Attachment 6).

Dan Keener, private citizen, Rush Center, Kansas, testified in support of **HB 2317**. While doing work on a subcontract basis for insurance carriers, Mr. Keener slipped off a ladder and hurt his back. His experiences with workers compensation were not very good. Checks were constantly interrupted by the insurance carrier. The insurance carrier constantly and continuously ignored court orders. After hiring an attorney, Mr. Keener settled for much less than \$125,000, but wisely did not give up future medical as the insurance company repeatedly suggested (Attachment 7).

Curt Richards, private citizen, Russell, Kansas, testified as a proponent to **HB 2317**. Mr. Richards had been Director of Maintenance for Russell Regional Hospital for 15 years when he hurt his back moving 100 pound tubs of ice melt. Paychecks were less than half of his salary and the checks were always late. He did not want to settle his case, and against his attorney's advice, he settled for approximately the maximum allowed by the law as they were financially desperate and lost nearly everything. It is felt that workers compensation did not come close to doing what was intended (Attachment 8).

Calli Denton, Kansas Trial Lawyers Association, gave testimony for Janelle J. Schuster, private citizen in support of **HB 2317**. Ms. Schuster was earning \$700 to \$800 a week, depending on overtime. As a result of injury, she was taken off work by the authorized treating physicians, and was paid \$432 per week. The decrease in salary created substantial hardships. It is time for legislators to stand up for what is right and fair for employees (Attachment 9).

Mark Block, private citizen, a proponent of **HB 2317**, was injured in a motor vehicle accident in Marion County, Kansas, on May 16, 2001 and suffered burns to 55% of his body. Mr. Block is permanently and totally disabled and benefits are limited to \$125,000 which is supposed to cover permanent total disability the rest of his life. Kansas benefits for permanent total disability are the absolute lowest in the nation. This needs to be changed (Attachment 10).

Wil Leiker, Executive Vice President, AFL-CIO, testified in support of **HB 2317**. The intent is to move the weekly maximum up for temporary total disability from its present level. It is unfair to ask workers to live on 50% or less of their weekly earnings. This is unfair, since the intention of the workers compensation system is, in part, wage replacement. A serious injury should not force a worker into bankruptcy, or force them to sell assets to keep the family's welfare intact. Permanent total disability needs to be raised from \$125,000 to \$250,000 (Attachment 11).

Terry Leatherman, Kansas Chamber of Commerce, testified opposing **HB 2317** as it removes a financial incentive that exists in the law today to encourage return to work by injured employees. As a result, employer costs would not just be increased workers compensation premiums, but also higher expense to perform work not being done by employees off work on workers compensation. **HB 2317** would prompt a massive increase in the cost of workers compensation insurance, a cost paid exclusively by businesses (Attachment 12).

The Chairman closed the hearing on **HB 2317**.

The meeting adjourned at 10:45 a.m. The next meeting will be February 15, 2005.