



KANSAS SELF-INSURERS ASSOCIATION
SERVING THE WORKERS' COMPENSATION NEEDS OF KANSAS EMPLOYERS SINCE 1994

TO: House Federal & State Affairs Committee

FROM: Tony Andersen, KSIA Board Member

RE: KSIA Comments on HB 2184

DATE: February 25, 2021

Dear Chairman Barker:

On behalf of the members of the Kansas Self Insured Association (KSIA), thank you for the opportunity to submit written testimony on HB 2184.

Established in 1994, KSIA represents the interests of employers and self-insurance pools across the state. KSIA's members include large private employers, state and local governmental entities, as well as business associations organized to advance common interests in the great State of Kansas.

KSIA is neutral on HB 2184 but has some significant concerns. Of primary concern is the proposal's diminishment of employers to create and maintain safe workplaces. Three examples are set forth below.

First, HB 2184 includes no carveout allowing employers to exclude marijuana-impaired workers from factories, warehouses, kitchens, schools, hospitals or any other Kansas workplace. Many employers have adopted policies establishing a drug-free workplace knowing that a company's success is dependent on alert, attentive and focused employees.

Eliminating drugs in the workplace reduces the chance of impaired workers creating hazardous working conditions.

Employer's must have statutory rights to root out dangerous working conditions. This means if a worker is impaired on the job, employers must be allowed to take disciplinary action. Without explicit language allowing the establishment of a drug-free workplace, there will undoubtedly be an increase in dangerous working conditions, work injuries and employment litigation.



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Second, K.S.A. 2020 Supp. 44-501 currently discourages drug usage in the workplace by disallowing workers compensation benefits if an impaired employee is injured on the job. In court, workers know if they are high, their claim won't get by. But HB 2184 eliminates this safety-essential prohibition.

As proposed, Section 62 amends K.S.A. 2020 Supp 44-501 to require workers compensation benefits be paid to any marijuana-impaired employee who is injured on the job as long as:

1. The employee is registered as a patient under Medical Marijuana Act;
2. The cannabis/cannabis derivative is used in accordance with the Act; and
3. There is no history in the last 24 months that the employee was impaired on the job as a result of the use of cannabis or its derivatives.

There are no exceptions. Tree trimmers, construction laborers, first responders and factory workers all would be paid workers compensation benefits even if they were marijuana-impaired at the time of their work accident. All they have to have is a marijuana "get out of jail free" card. This is clearly contrary to the social goal of encouraging safe jobsites. If HB 2184 becomes law as written, why would Kansas allow workers impaired by marijuana to collect workers compensation benefits when an alcohol-impaired worker's claim would be denied? Both drugs lead to an increase in accidents and injuries. Yet if the drug is marijuana, the employee is rewarded for his/her impairment but if the drug is alcohol, all benefits are denied. This is a strange outcome since both substances could be legally consumed with the passage of HB 2184.

KSIA recommends Section 62 be excised from HB 2184. The Legislature made clear in the workers compensation laws that impairment on the job combined with a work accident should result in a denial of workers compensation benefits. KSIA believes a similar standard should be imposed if medical marijuana is legalized i.e. if the worker is impaired by marijuana and has an accident contributed to by the marijuana use, his/her claim for benefits should be denied, no matter if he/she has a marijuana prescription or not.



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Third, HB 2184 does not address whether medical marijuana shall be paid for by employers and carriers in workers compensation matters. Marijuana is still illegal under federal law so without some language in HB 2184 exempting employers from covering medical marijuana in workers compensation cases, employers and carriers will be put in the conflicting position of having to provide medical marijuana under state law at the same time violating federal law. HB 2184 should be amended to eliminate medical marijuana as a treatment paid for under workers compensation. Finally, HB 2184 redefines "misconduct" as applied to the Kansas unemployment laws. If an employer terminates an employee for violating the employer's drug policy, current law will bar the employee from unemployment benefits for this misconduct. HB 2184 reverses this policy. "Misconduct" will no longer mean a violation of a duty, obligation or company rule If the employee is:

1. A registered patient and the person carries a marijuana prescription; or
2. In possession or uses medical marijuana.

By this language, an employee cannot be denied unemployment benefits even if the employee violated a drug-free workplace policy. If the employee shows up on the jobsite with marijuana in his possession or uses it at work, the employer cannot claim misconduct to resist unemployment benefits. Most employers don't allow alcohol to be brought to or consumed at work, so why should marijuana of any type be allowed?

Whether allowing medical marijuana is a good social policy for Kansas is not a subject KSIA wishes to address. However, if medical marijuana is permitted, KSIA wants to ensure its membership will continue to be able to provide safe work environments for all Kansas employees. Policies allowing the establishment of a drug-free workplace, prohibiting workers compensation benefits to impaired employees injured on the job, and denying unemployment benefits for employees that violate a company's drug-free workplace rules should continue to be the law in Kansas.

Modifying HB 2184 to reflect those policies must be the goal of the Kansas legislature.