

SESSION OF 2004

**SUPPLEMENTAL NOTE ON SENATE
SUBSTITUTE FOR HOUSE BILL NO. 2267**

As Amended by Senate Committee on
Commerce

Brief*

Senate Sub. for HB 2267 would modify current workers compensation law. Specifically, the bill would address the treatment of preexisting conditions and change the definition of "accident".

Preexisting Conditions

Under current law, an employee is not entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. The bill would expand the exception to say that an employee is not entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased functional impairment or disability. The bill also would clarify that a prior impairment rating or permanent restrictions are not necessary to prove preexisting functional impairment or disability. Instead, under the bill the administrative law judge would be directed to consider all medical testimony on the issue of preexisting impairment or disability. The bill provides that any compensation would be determined by showing, through medical evidence, the amount of functional impairment or disability caused by the work activity at issue.

Definition of Accident

The bill would add three dates to be considered as the date of the accident. The earliest of the three dates would be considered the date of the accident. The three dates include:

- ! The earliest date upon which an employee gives written notice

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

to the employer of the injury;

- ! The date the condition is diagnosed as work-related, providing such fact is communicated in writing to the injured worker; or
- ! The first day 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.

Background

The Senate Committee amended the preexisting condition section of the bill from SB 181 and the change in definition of accident from SB 441.

The Senate Committee held hearings on SB 181 during the 2003 Session, at which time proponents of the bill included Representative Rob Boyer, and representatives of the Kansas Chamber of Commerce and Industry, the Wichita Area Employers Workers Compensation Task Force, the Kansas Association of School Boards, the Kansas Self-Insurers Association, the American Insurance Association, the Greater Kansas City Chamber of Commerce, and the Wichita Independent Business Association. Opponents of the bill included the Secretary of Human Resources, and representatives of the Kansas Trial Lawyers Association, the Kansas AFL-CIO, the United Steel Workers of America, the Kansas Fire Service Alliance, the National Action Network, and a number of injured workers and their representatives.

The Senate Committee assigned SB 181 to a subcommittee for further deliberation. The subcommittee met several times and developed a substitute bill. The original bill contained the following main issues: treatment of preexisting conditions, treatment of cumulative injuries, offset of retirement and certain other benefits, and separation from employment subsequent to work-related injury.

The substitute bill pared down the four main issues in the original bill. The two issues remaining in the substitute bill as recommended by the subcommittee addressed the treatment of preexisting conditions and separation from employment subsequent to work-related injury.

The Senate Committee amended only the preexisting condition section into Senate Substitute for HB 2267.

In addition, the Senate Commerce Committee amended SB 441 entirely into HB 2267.

The Division of the Budget reports that passage of SB 181 and SB 441, as introduced, would not incur a fiscal effect. Information regarding the fiscal impact of the substitute bill was not available upon publication of this supplemental note.