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Dear Members of the Senate Judiciary Committee:

As partners at Slape & Howard, with collective decades of experience representing injured workers and navigating the Kansas workers compensation system, we write in strong opposition to SB 463. This bill would fundamentally destabilize workers compensation in Kansas by eliminating third-party recovery and subrogation rights based on an unconscionably broad definition of "wrongful conduct." The consequences for injured workers, employers, and the solvency of the system itself would be severe and immediate.

The Bill Abandons Causation

Section 1(a) bars negligence actions if the plaintiff engaged in any "wrongful conduct"—defined as any violation that "constitutes a crime," regardless of whether it resulted in arrest, citation, indictment, or conviction. Critically, the bill requires no causal connection between the wrongful conduct and the injury.

The practical impact is staggering. In our practice, we routinely handle cases where workers are injured by third-party negligence: delivery drivers struck by distracted motorists, construction workers hit by negligent equipment operators, warehouse employees injured by careless truckers. Under SB 463, a construction worker injured by a negligent driver who runs a red light could be denied all recovery if he was speeding—even if his speed didn't contribute to the collision in any way. A worker struck by a drunk driver could lose everything if he was driving with an expired registration or failed to signal a lane change miles before the collision. The bill invites protracted litigation over plaintiffs' unrelated conduct rather than focusing on defendants' actual negligence that caused the harm.

The Bill Destroys Workers Compensation Subrogation and Shifts Massive Costs to Kansas Employers

When an accident occurs, workers compensation is the primary insurance covering expenses and lost wage indemnity payments to the injured worker. As part of the bargain of workers compensation claims, employers and their carriers are entitled to subrogation against a negligent third party. Third-party recovery serves two critical functions in the Kansas workers compensation system: it allows injured workers to recover full damages beyond statutory limits, and through subrogation, it allows carriers or self-insured employers to recover their costs from the claim. This protects the solvency of the workers compensation system by ensuring costs are ultimately borne by those responsible, rather than falling entirely on Kansas employers and their insurers.

SB 463 eliminates both functions, and the financial consequences for Kansas's workers compensation system will be catastrophic. Consider this scenario we see regularly: An employee is catastrophically injured when a negligent driver runs a red light and strikes his work vehicle. The workers compensation carrier pays hundreds of thousands in medical benefits, ongoing treatment costs, and permanent disability benefits. Under current law, the carrier pursues subrogation against the negligent driver and his insurer, recovering those costs. Under SB 463, if the employee was exceeding the speed limit by 1 mph—a violation that had nothing to do with the collision—both the employee's claim and the employer/insurer's subrogation rights are extinguished entirely.

The System-Wide Impact on Kansas

We have observed firsthand how third-party subrogation keeps workers compensation system balanced and affordable. When a carrier can pursue subrogation against a negligent third party, those recoveries offset claim costs, stabilize reserves, and moderate premium increases for employers. SB 463 severs this critical pressure valve.

This is not theoretical. In our practice, subrogation recoveries routinely reach six and seven figures in cases involving serious third-party negligence. SB 463 would eliminate those recoveries and force Kansas employers and their insurers to absorb those costs instead.

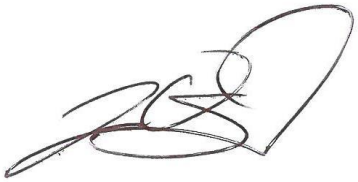
Recommendation

We respectfully urge the Committee to reject SB 463. The bill denies justice to injured workers based and eliminates critical subrogation rights that protect Kansas employers and the workers compensation system, and shields tortfeasors from liability for injuries they actually caused. This is not tort reform—it is a fundamental rejection of the principle that tortfeasors should bear responsibility for harm they cause, replaced with a system that punishes injured workers and forces Kansas employers to subsidize negligent third parties.

Thank you for your consideration. We are available to discuss these concerns or provide testimony at the Committee's convenience.

Sincerely,

Phillip B. Slape
Slape & Howard, Chtd.



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