

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Jeff King at 10:30am on Wednesday, January 21, 2015, 346-S of the Capitol.

All members were present

Committee staff present:

Lauren Douglass, Legislative Research Department
Robert Allison-Gallimore, Legislative Research Department
Natalie Nelson, Legislative Research Department
Suzanne Nelson, Kansas Legislative Committee Assistant
Katherine Goyette, Office of Revisor of Statutes
Jason Thompson, Office of Revisor of Statutes

Conferees appearing before the Committee:

Secretary Jim Clark, Dept. of Administration, Co-Chair Kansas Criminal Justice Information Systems (KCJIS);
Ed Klumpp, Associations for Chiefs of Police, Sheriffs and KS Peace Officers;
Leslie Moore, Information Service Division Director, KS Bureau of Investigation (KBI);
Bill Sneed, Legislative Counsel for State Farm Insurance;
William Larson, Kansas Association of Insurance Agents (KAIA);
Mike O'Neal, Kansas Chamber of Commerce;
Nathan Leadstrom, Kansas Association of Defense Counsel (KADC);
Pat Barnes, General Counsel for KS Automobile Dealers Association (KADA);
Russ Hazlewood, Graybill & Hazlewood, LLC;
Craig Harms, Small Business Owner, Wichita, KS;
Nancy Strouse, Executive Director, KS Judicial Council;
James Keller, Deputy General Counsel, KS Dept. of Revenue;

Others in attendance:

[See Attached List](#)

Bill introductions

The Chair called the meeting to order at 10:30 am and asked the committee and audience for bill introductions. Seeing none, he turned the Committee's attention to the first bill hearing.

Hearing on: SB14 — Relating to the criminal justice information system line fund.

The Chair opened the hearing on **SB14** and Jason Thompson presented an overview for the Committee.

Secretary Jim Clark presented testimony in support of **SB14** which addresses a funding shortfall for the data lines which KCJIS is required to supply to each county. The lines allow information sharing between agencies, supply data to the central repository, and permit law enforcement to query state and national databases for wanted persons, stolen goods and other critical information essential to public and officer safety. ([Attachment 1](#))

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There was discussion and Secretary Clark answered questions from the Committee regarding the speed of the lines being provided, what other counties are using the lines for, and what the plan is to address the shortfall in funding this year. Secretary Clark supported a suggestion that by making **SB14** effective upon publication in the Kansas Register, a significant savings would result in the amount of the shortfall in the interim.

Ed Klumpp spoke in support of favorable passage from the Committee. He related that the importance of these lines was recently demonstrated when the state internet systems were being updated and only those agencies that had KCJS direct lines had access to the criminal justice information systems. ([Attachment 2](#))

Leslie Moore urged for favorable passage stating that this bill will require the district courts to credit the KCJIS line fund 4.4% from fines generated from traffic cases, whereas it currently is credited only 2.91%. She related that **SB14** does not account for the shortfall in FY2015, however, it will fix the shortfall in future years. ([Attachment 3](#))

There being no opponent, neutral, or written only testimony, Chair King closed the hearing on **SB14**.

Hearing on: SB16 — Attorney fees in certain actions.

Chair King opened the hearing on **SB16** and called upon Jason Thompson for an overview.

Bill Sneed testified in support of **SB16**. Mr. Sneed related that State Farm Insurance Companies, the requester of this bill, believes that this legislative remedy will reflect the appropriate public policy considerations and the original intent of K.S.A. 40-908. ([Attachment 4](#))

William Larson urged favorable passage of the bill explaining to the Committee that K.S.A. 40-908 was enacted in 1927, at a time when insurance companies sold a specific line of separate products, such as fire insurance, hail insurance, and liability insurance. Then, in the 1950s and early 1960s, companies began selling bundled policies which included property damage coverage, liability coverage and many others all in one policy.

Because of the historical application of the statute until recently, the statute was generally only applied where the insured brought a claim against an insurance company for damage to a house or building and the contents of those structures. However, because of the *Lee Builders, Inc. v. Farm Bureau Mut. Ins. Co.* (2006), and the *Bussman v. Safeco* (2014), the Kansas Supreme Court began applying the statute in a very literal manner to any claim made against an insurance company under any policy that included coverage for damage caused by fire, tornado, lightening or hail regardless of the nature of the claim. In neither the *Lee Builders* nor the *Bussman* cases were there any claims against the insurance companies for property damage caused by fire, tornado, lightening, or hail. In both cases, the Supreme Court found the insureds were entitled to attorney's fees because of the literal language interpretation of the

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statute that seemed to apply to any claim brought under any policy that provided coverage for damage due to the four named perils. ([Attachment 5](#))

Mike O'Neal also urged support and favorable passage. He explained that **SB16** was introduced as the result and invitation of the Kansas Supreme Court. Because of the findings in the the *Lee Builders* and the *Safeco* appeals cases, the Kansas Supreme Court finally held that they must affirm the finding of the Court of Appeals, and were "leaving it to the legislature to modify the statute if it did not intend an illogical and unreasonable result." ([Attachment 6](#))

Nathan Leadstrom testified in support of **SB16**. He related that KADC wants to work for the administration of justice and its belief is that K.S.A. 40-908 in its current form does not work in favor or serve the ends of justice as originally intended. The statute was originally intended to put the insurer and insured on the same level so that they could talk reasonably and the insurer would make reasonable offers and the insureds would accept a reasonable offer and not file frivolous suits because they could recoup attorney's fees. The original intent of the statute was only to apply to property claims, not personal injury or third party liability claims. ([Attachment 7](#))

There was discussion. Questions from the Committee were addressed by the proponents who gave oral testimony. The Chair then asked for opponent testimony.

Pat Barnes testified opposing **SB16** citing that the existing law motivates insurers to pay damage claims promptly and fairly as required by their insurance contract. The net effect of the law at this point is if someone has covered calamities under this type of policy that are wrongfully denied, then the law that currently stands would allow the insured to collect those items and recover his/her costs for doing it. ([Attachment 8](#))

Russ Hazlewood offered testimony opposing **SB16**. He stated that last year, an identical bill, 2014 *HB2678*, was tabled by unanimous vote of the House Insurance Committee because they were concerned about the impact such a bill could have on the Kansas insurance market and they didn't feel comfortable voting on the bill without a firm understanding of the consequences of the statutory change being requested. ([Attachment 9](#))

Craig Harms opposed **SB16**, relating his concerns that changes to the statute would change or eliminate his current protection on coverages under his auto policy, property coverage, as well as his liability coverage on his business, and would provide a windfall to the insurance industry. ([Attachment 10](#))

There was discussion and questions from the Committee related to how certain kinds of claims and different terminology would be applied. These were addressed by the opponents. Seeing no further questions and no neutral testimony, Chair King called the Committee's attention to the proponent and opponent written only testimony submitted as follows:

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Proponent written only:

Lee Wright, Government Affairs Manager, Farmers Group, Inc. ([Attachment 11](#))
Brad Smoot, Legislative Counsel, American Insurance Association ([Attachment 12](#))
David Monaghan, Government Affairs Counsel, American Family Insurance ([Attachment 13](#))
Larrie Ann Brown, Legislative Counsel, Property Casualty Insurers Association of America (PCI) ([Attachment 14](#))
Marlee Carpenter, Kansas Association of Property and Casualty Insurance Companies (KAPCIC) ([Attachment 15](#))

Opponent written only:

Gay Muenchrath, Owner, G.M. Clothes Horse, Wichita, KS ([Attachment 16](#))
Delbert Taylor, V.P., Wray Roofing, Inc., North Newton, KS ([Attachment 17](#))
Douglas McComas, Manufacturing Engineer, Wichita, KS ([Attachment 18](#))
Janice Meliza, Accountant, Marion, KS ([Attachment 19](#))
Steven Lang, Owner/Operator Hardwood Millwork & Supply, Harvey County, KS ([Attachment 20](#))
Steven Lee, President, Lee Builders, Inc., Valley Center, KS ([Attachment 21](#))
Ted Timsah, Small business owner, Wichita, KS ([Attachment 22](#))

Since no neutral testimony was submitted, the Chair closed the hearing on **SB16**.

Hearing on: SB17 -- Judicial council membership.

The Chair opened the hearing on **SB17**.

Jason Thompson gave an overview of the bill, noting that the bill adds the Chairpersons of the Senate and House Corrections and Juvenile Justice Committees to the Judicial Council.

Nancy Strouse testified in support of the bill, relating that since both the House and Senate now have these corresponding committees, the Judicial Council thought it was appropriate to add both Chairs. With these additions, she said the council would be comprised of four legislators, four attorneys and four judges.

Ms. Strouse also proposed a small amendment in Section 3 to change the effective date to publication in the Kansas Register. She related that the council only meets twice a year in June and December. Changing the effective date would allow the two new members to attend both meetings this year. ([Attachment 23](#))

The Chair asked for discussion or questions. The issue was raised that the party affiliation on the Judicial Council was imbalanced and that adding these two Chairs would make it even more partisan.

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Ms. Strouse explained that the council is nonpartisan and membership is solely based upon position. However, nearly all the studies and work are completed by advisory committees. A lot of effort goes into making sure the advisory committees doing the studies and the bulk of the work are very well balanced in all senses by location, gender, what point of view they have on the issue, and others.

There being no opponent, neutral, or written only testimony, the Chair closed the hearing on **SB17**.

Hearing on: SB23 — Authorized restrictions of driving privileges; ignition interlock device.

The Chair opened the hearing on **SB23**.

Jason Thompson presented an overview of the bill.

James Keller offered testimony in favor of the bill, citing that the intention of the bill is to correct an oversight in Section 17 of *2012 SB60* relating to DUI interlock devices in vehicles and the restriction of driving privileges allowed in the statute. ([Attachment 24](#))

Mr. Keller addressed questions from the Committee relating to the kinds of problems or calls Mr. Keller has received from attorneys whose clients have been prohibited from driving to the interlock provider for maintenance-type work and have no one else to drive them there.

There being no further questions, and no opponent, neutral, or written only testimony, the Chair closed the hearing on **SB23**.

The meeting adjourned at 12:00 pm. The next meeting will be Thursday, January 22, 2015.