

Approved: April 7, 1995  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Michael R. O'Neal at 3:30 p.m. on February 20, 1995 in Room 313-S-of the Capitol.

All members were present.

Committee staff present: Jerry Donaldson, Legislative Research Department  
Jill Wolters, Revisor of Statutes  
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Representative Vince Snowbarger  
Bill Sneed, Gehrt & Roberts, Chartered  
Bill Henry, Kansas Association Defense Council  
Kevin Davis, American Family Insurance Group  
Mark Works, Kansas Trial Lawyers Association  
Representative Joel Rutledge  
Scott Teeselink, Kansas Bureau of Investigation

Others attending: See attached list

Hearings on **HB 2318** - Durable power of attorney may include power to convey homestead rights, were opened.

Representative Snowbarger appeared before the committee as the sponsor of the proposed bill. He told the committee that the new Kansas Title Standards does not allow the homestead to be conveyed by a power of attorney. (Attachment 1)

Hearings on **HB 2318** were closed.

Hearings on **HB 2448** - In property damage cases in auto accidents, attorney fees recovered only if previous demand for payment has been made, were opened.

Bill Sneed, Gehrt & Roberts, Chartered, appeared before the committee as a proponent of the bill. He commented that this bill would allow the court to provide the ability to tax attorney's fees as a cost in certain actions involving motor vehicle accidents. There must be three requirements met in order for the recovery of attorney's fees; damages must be less than the threshold; party claiming attorney's fees must prevail; and the adverse party did not make a tender of damages before the commencement of the action in an amount equal to or greater than the amount recovered. (Attachment 2)

Bill Henry, Kansas Association Defense Council, appeared before the committee in support of the proposed bill. (Attachment 3)

Kevin Davis, American Family Insurance Group, appeared before the committee as a proponent of the bill. He told the committee that this bill addresses two issues; it corrects the long standing misinterpretation of the existing statute and adds a notice and submission/demand requirement as a prerequisite to the award of attorney fees. (Attachment 4)

Mark Works, Kansas Trial Lawyers Association, appeared before the committee in opposition of the bill because section (b) is not defined and specific.

Hearings on **HB 2448** were closed.

Hearings on **HB 2299** - Giving worthless checks and causing an unlawful prosecution for worthless checks, were opened.

Representative Rutledge appeared before the committee as the sponsor of the proposed bill. He explained that this bill would solve the problem that one can not prosecute for a worthless check if the check was post-dated.

Kansas Chamber of Commerce and Industry did not appear before the committee but requested that their testimony be included in the minutes. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY, Room 313-S-Statehouse, at 3:30 p.m. on February 20, 1995.

Hearings on HB 2299 were closed.

Hearings on HB 2084 - Creating the Kansas Crime Tip Hotline, were opened.

Scott Teeselink, Kansas Bureau of Investigation, appeared before the committee in support of the proposed bill. He told the committee that the KBI already has a toll free hotline and that this bill would add the ability to pay rewards which would help solve more crimes. (Attachment 6)

Hearings on HB 2084 were closed.

HB 2223 - Criminal deprivation of property

Representative Ott made a motion to report HB 2233 favorably for passage with an amendment that would change the severity level, in line 23, to a 9. Representative Graeber seconded the motion.

Representative Garner made a substitute motion to amended in the provisions of HB 2315 and strike the language in HB 2223 line 24 "In any prosecution under this subsection.....without such owner's consent". Representative Goodwin seconded the motion. The motion carried.

Representative Pugh made a motion to strike the language in line 28 "and have such person's driving privileges suspended for 30 days". Representative Edmonds seconded the motion. The motion carried.

Representative Pauls made a motion to change the severity level, in line 23, to a 9 and amend line 33 to read "upon a 1st conviction the time served cannot be less than 30 days nor more than one year to be served in a county jail and fined no less than \$100. Upon a second or subsequent conviction the time served cannot be less that 60 days for more than one year in a county jail and fined not less than \$200." Representative Haley seconded the motion.

Representative Graeber made a substitute motion to table HB 2223. Representative Adkins seconded the motion. The motion carried.

HB 2448 - In property damage cases in auto accidents, attorney fees recovered only when previous demand for payment has been made

Representative Heinemann made a motion to report HB 2448 favorably for passage. Representative Adkins seconded the motion.

Representative Heinemann made a substitute motion to amend lines 14 & 24 to make it clear that the bill is talking about property damages only. Representative Adkins seconded the motion. The motion carried.

Representative Nichols made a motion to strike in line 22 "prevailing party" and insert "plaintiff". Representative Howell seconded the motion. The motion carried.

Representative Heinemann made a motion to add, in line 23, "a" written demand. Representative Graeber seconded the motion. The motion carried.

Representative Pauls made a motion to table the HB 2448. Representative Spangler seconded the motion. The motion failed.

Representative Heinemann made a motion to report HB 2448 favorably for passage as amended. Representative Adkins seconded the motion. The motion carried.

HB 2084 - Creating the Kansas crime tip hotline; creating the crime tip hotline fund.

The Chairman asked if there was any interest of the committee in working the bill. No interest was shown at this time.

The next meeting is scheduled for February 21, 1995.

# HOUSE JUDICIARY COMMITTEE GUEST LIST

DATE: February 20, 1995

NAME	REPRESENTING
Don Smith	Ks Bar Assoc
Jim Cole	KC DAA
Scott Toase	RBI
Paul Shelby	OJA
Edw. M. Neave	QC
Kenn Dinn	Am. Family Bus Group
Sinda DeCoux	KI Insurance Dept.
John W. Smith	KDOR DMV
Rick Scheibe	KDOR
Jenifer Brandberry	KTLA
Tommy Hunsberger	KTLA
Mark Worke	KTLA
Patricia O'Grady	Ks Bankers
Tracie Lee	KCUA
Roll Sneed	Ks Civil Law Form
Bill Henry	Ks Assn. of Defense Counsel

**WATSON &  
MARSHALL** LC  
ATTORNEYS AT LAW

Founded 1887  
By I.N. Watson

**TO:** Vince Snowbarger  
**FROM:** Jim Hubbard and Frank Taylor  
**DATE:** February 20, 1995  
**RE:** TESTIMONY IN SUPPORT OF HOUSE BILL 2318

130 N. Cherry  
P.O. Box 550  
Olathe, Kansas 66051  
913-782-2350

Facsimile  
913-782-2012

House Bill 2318 would clarify legislation governing durable powers of attorney to permit the conveyance of a homestead under the authority of a durable power of attorney. The primary use of durable powers of attorney pursuant to K.S.A. 58-610, *et seq.* is to serve as a substitute for a court supervised conservatorship or other property management technique when that is appropriate. One of the things that most Kansans contemplate when they execute a durable power of attorney is that they are facilitating the ability to sell a personal residence if that becomes necessary.

The most recent revision of the Kansas Title Standards added Title Standard 6.12 which suggests that a power of attorney does not grant the authority to convey a homestead. The Title Standards Committee relies on Article 15, Section 9 of the Kansas Constitution and two Kansas Supreme Court cases, the most recent of which was decided in 1920. It is curious that this Title Standard did not exist during the decade of the 1980's when the Uniform Durable Power of Attorney Act was in effect in Kansas.

Article 15, Section 9 of the Kansas Constitution provides that a homestead "shall not be alienated without the joint consent of husband and wife, when that relationship exists." The conveyance of a homestead pursuant to a durable power of attorney does, in fact, involve the joint consent of both spouses because one spouse signs the document of conveyance and the other spouse, through the instrument of the power of attorney, authorizes the execution of the document of conveyance. That is, the consent of both spouses is simultaneous; the deed is executed on behalf of each contemporaneously although the *mode of execution* is previously authorized pursuant to the durable power of attorney.

It is incorrect to conclude that a durable power of attorney cannot be used as authority to execute all conveyances of property that it specifically authorizes and this conclusion is inconsistent with the intention of persons who execute durable powers of attorney. The litigation that is relied upon as prohibiting the conveyance of a homestead does not involve the use of durable powers of attorney which are consensual in nature and simply authorize an alternative mechanism for conduct that will occur after their execution.

A durable power of attorney that specifically authorizes the conveyance of a homestead should be given that effect by statute. Prior to the implementation of Title Standard 6.12, durable powers of attorney were generally given this effect.

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## MEMORANDUM

TO: The Honorable Mike O'Neal  
Chairman, House Judiciary Committee

FROM: William W. Sneed  
Gehrt & Roberts, Chartered

DATE: February 20, 1995

RE: H.B. 2448

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Mr. Chairman, Members of the Committee: My name is Bill Sneed and my law firm is a member of the Kansas Civil Law Forum. I have been requested to provide testimony on H.B. 2448.

H.B. 2448 is an amendment to K.S.A. 60-2006. K.S.A. 60-2006 is a statute that was first enacted in 1969. This statute provides the ability to tax attorney's fees as costs in certain actions involving motor vehicle accidents. The purpose of this statute has been cited by several Kansas Supreme Court cases to be "the promotion of prompt payment of small but well-founded claims and the discouragement of unnecessary litigation of certain automobile negligence cases." *Arnold v. Hershberger*, 4 Kan.App.2d 24, 602 P.2d 120. The statute originally provided that attorney's fees could be taxed as costs if damages were less than \$300.00. Since that time, the amount creating the threshold has been amended four additional times to its current level of \$7,500.00.

The courts have stated that there are three requirements for the recovery of attorney's fees. They are: (1) damages must be less than the threshold; (2) the party claiming attorney's fees must prevail; and (3) the adverse party did not make a tender of damages before the commencement of the action in an amount equal to or greater than the amount recovered.

Kansas case law has also stated that it is not a requirement that a demand for damages be a prerequisite for recovering attorney's fees under the statute. The courts have stated that since there is no specific prerequisite to that effect, they will not read something into the statute which is not there. In most of the cases cited regarding this statute on the issue that is the subject of the amendment found in H.B. 2448, the amount of damages under the claim were generally under \$750.00. As noted earlier, that amount has increased over time, and as such, making a determination as to the validity of the claim has become more complex. Further, members of our coalition have seen an increase in cases filed shortly after the accident date notwithstanding the fact that much of the information needed in order to determine the appropriate amount of payment has yet to be provided to the appropriate party, usually the insurance carrier.

We believe that the statute as written, coupled with the amount of damages available under this statute, has given rise to the exact opposite of the original intent. It is our contention that it has in essence encouraged lawsuits to be filed in an effort to force the payment of attorney's fees or to be used as a negotiating tool when attempting to settle claims, notwithstanding the fact that the individuals reviewing the claim have never had a good faith opportunity to settle the claim. To that end, we have requested two amendments.

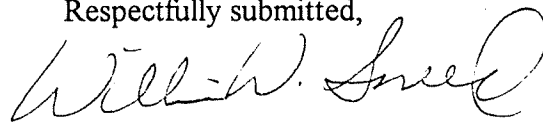
The first amendment is found on line 14 by insertion of the word "property." This would eliminate those cases in which bodily injury claims are also involved with a property claim. In lieu of reducing the amount of damages sustained in the claim, it is our contention that by the elimination of bodily injury claims from the formula, the claim can be more quickly analyzed, thus reverting back to the original intent of the statute, i.e., prompt payment of small but well-founded claims.

The second amendment is new language found on lines 22-26. This new section would require the prevailing party, prior to being awarded attorney's fees, to provide written demand for the settlement of such claims containing all of the elements necessary for the opposing party to evaluate and quickly determine the validity of the claim. The amendment further requires that such material must be provided to the adverse party not less than thirty days before the commencement of the action.

We believe this section provides good public policy. Certainly there is a great desire to reduce the caseload in our court system. Further, it is important public policy that claims should be handled quickly and effectively. However, in order to meet this criteria the entity reviewing the claim should be provided the opportunity to receive all of the pertinent information on the claim so as to evaluate the propriety of the claim submitted. This will not eliminate the current safeguard in that after the proper submission and a tender offer made by the opposing party, if the prevailing party receives in excess of the tender offer, attorney's fees still are available for recovery by the prevailing party. Thus, the true intent of the statute is still retained and will halt what we believe to be the increasing race to the courthouse in an attempt to come under this statute.

Thus, on behalf of the Kansas Civil Law Forum, I respectfully request your favorable passage of H.B. 2448.

Respectfully submitted,



William W. Sneed



**TESTIMONY**  
**HOUSE JUDICIARY COMMITTEE**  
February 20, 1995

Mr. Chairman, members of the Judiciary Committee, I am Bill Henry, Executive Secretary of the Kansas Association of Defense Counsel and I appear before you today in support of HB 2448.

Members of the Kansas Association of Defense Counsel include more than 300 attorneys across the state of Kansas who do defense work in civil litigation. One of the key provisions in our code of civil procedure is a principle that all claims should be brought to the attention of the defending party so that the defendants may evaluate the claim in a prompt manner.

New subsection (b) in K.S.A. 60-206 would carry out this intent by requiring a written demand for the settlement of the claim involved as well as the total monetary amount sought. This written demand would have to be brought at least 30 days before the plaintiff could commence the action.

Respectfully Submitted,

A handwritten signature in black ink, which appears to read 'William M. Henry', is written over the typed name below.

William M. Henry, Executive Secretary  
Kansas Association of Defense Counsel



Kevin R. Davis  
Government Affairs Representative

February 20, 1995

TO: House Judiciary Committee

FROM: Kevin R. Davis  
American Family Insurance Group

Re: House Bill No. 2448

It is our understanding that this bill is designed to address two issues. One to correct a long standing misinterpretation of the existing statute and two, to add a notice and submission/demand requirement as a prerequisite to the award of attorney fees.

In regard to the first issue, the word "property" has been added to modify damages and thereby eliminate other types of claims, such as personal injury, from applying to this statute. It is our understanding and belief that the statute was initially designed and passed to expedite property damage only claims of a relatively small amount (\$7,500.00). I believe the statute was intended to facilitate the payment of property damage claims. However, we have found that creative plaintiff's attorneys are using the statute to also make personal injury and other claims which we believe was not the original intent of the statute. This bill would correct that problem.

The second issue addresses a notice requirement and submission of damages which must be met before attorney fees could be recovered. This would help facilitate settlement, discourage unnecessary litigation, and allow for a reasonable time period in order to investigate a claim and respond to a demand.

For example, under the current statute a lawsuit can be filed immediately after a cause of action has occurred without notice, and if there is liability and damage, attorney fees would be taxed as a part of the action. In an automobile accident an insurance carrier is required to indemnify their insured for the insured's legal liability as a result of an automobile accident. The insurance company is responsible to investigate these accidents and evaluate liability and damages. Obviously, before they can do that they must have notice of the claim, and some reasonable time to investigate the accident including the liability and damages aspects of a claim. This also involves contact with the

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parties and at least some minimal cooperation in order to evaluate liability and damages.

The investigation of a claim begins with personal contact of the parties to obtain statements and learn about the nature of the accident, damages and witnesses. It also involves acquiring an accident report, estimate of damages, and many times various additional documentation, such as verification of vehicle ownership and liens. Without this investigation the insurance company can only guess as to whether their insured has liability, what the damages may be, and who to pay.

In order to provide for some reasonable requirement before awarding attorney fees we suggest that this bill is consistent with the requirements of the Kansas Insurance Department in Administrative Regulation 40-1-34, establishing the requirement for Unfair Claims Settlement Practices as promulgated by the National Association of Insurance Commissioners. This is a regulation which governs the manner in which insurance companies are required to handle claims. The following provisions are found in the Unfair Claims Practices Act.

1. Section 6(a). "Every insurer, upon receiving notification of a claim shall, within 10 working days, acknowledge the receipt of such notice unless payment is made within such period of time."

2. Section 7. "Every insurer shall complete investigation of a claim within 30 days after notification of claim, unless such investigation cannot reasonable be completed within such time."  
(emphasis added)

3. Section 8(e). "Insurers shall not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants 30 days and to third party claimants 60 days before the date on which such time limit may expire."

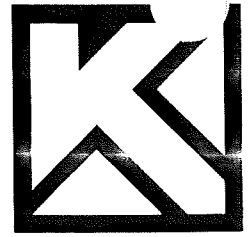
As you can see, in regard to claims being made which involve insurance coverage, the Kansas Insurance Department has appropriate rules and regulations governing the processing of such claims. The National Association of Insurance Commissioners recognize that it does take some time to process and investigate a claim, once notice is given. They established a 30 day investigation period after notification, unless such investigation cannot reasonably be completed within such time. Obviously they are providing for the circumstance when the liability and/or damage investigation cannot be concluded within the 30 day time period. This bill would provide for that minimum time which we believe is reasonable. I would state that there are certainly times when we cannot complete this investigation within the 30 days and we will still be at jeopardy for attorney fees in such circumstances.

In conclusion, we believe that this bill is appropriate in limiting the claims to "property damages" only and allowing attorney fees only when written demand is made containing all of the elements of damage and the total monetary amount demanded on the adverse party not less than 30 days before the commencement of action. This appears to be totally consistent with the Kansas Insurance Department and the National Association of Insurance Commissioners in regard to claims handling and processing. I would note that section 8(e) of the Unfair Claims Practices Act demands that insurers notify third party claimants 60 days before the date on which any statute of limitations may run. We believe that 60 days is more than appropriate quid pro quo and justification for the notice and time requirements in this bill.

Kevin R. Davis

KRD/psc

# LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

HB 2299

February 20, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
House Judiciary Committee

by  
Bob Corkins  
Director of Taxation

Honorable Chairman and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to express our members support for HB 2299 and its attempt to rectify the unfairness of Kansas law which condones the practice of postdating checks. I also speak today on behalf of the Kansas Retail Council to convey their interest in correcting a persistent source of difficulty.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Most people are familiar with the tactic of "kiting" checks. It is when a person writes a draft with the knowledge his account is insufficient, yet he knows that by the time the payee and the payee's financial institution has fully processed the check he will have deposited the proper amount in his

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account to cover it. Postdating a check is frequently an extension of that strategy. By postdating a check, one can create a guaranteed safe harbor kiting period. We have no problem with this practice if the payee is made aware of the objective, but often the recipient of the draft is not.

The inequity of current law lies with its failure to recognize the illicit purposes for which many checks are postdated. Moreover, the law now provides an *affirmative defense* to makers of postdated checks who may have done so with deceptive intent. The extra administrative and legal costs which retailers are saddled with in these circumstances are burdensome and unjustifiable.

We believe that HB 2299 is a reasonable and overdue solution to a problem which advocates and policy makers failed to identify when the relevant statutes were enacted. The language of this bill acknowledges and allows for the postdating of checks when both parties are aware of that fact. Because those utilizing the practice legitimately will continue to receive protection under the terms of this bill, we see no drawbacks to this proposal and strongly encourage you to recommend it favorably for passage.

On behalf of KCCI and the Kansas Retail Council, I thank you for your time and consideration of this issue.



LARRY WELCH  
DIRECTOR

KANSAS BUREAU OF INVESTIGATION  
DIVISION OF THE OFFICE OF ATTORNEY GENERAL  
STATE OF KANSAS



CARLA J. STOVALL  
ATTORNEY GENERAL

TESTIMONY  
SCOTT TEESELINK, SPECIAL AGENT  
KANSAS BUREAU OF INVESTIGATION  
BEFORE THE HOUSE JUDICIARY COMMITTEE  
IN SUPPORT OF HOUSE BILL 2084  
FEBRUARY 20, 1995

Mr. Chairman and Members of the Committee:

I am Scott Teeselink, a Special Agent with the Kansas Bureau of Investigation Crime Prevention Unit, and appear today on behalf of Director Larry Welch and the KBI in support of HB 2084. We believe this legislation will assist in involving the most important of anti-crime efforts, public participation.

HB 2084 provides that the KBI shall establish a toll free number to receive telephone calls concerning criminal activity. As hopefully all of you are aware, the KBI has the 1-800-KSCRIME telephone already in place and it has been operating for several years with a great deal of success. What HB 2084 does is for the first time authorizes the KBI to offer rewards for such information. While a great number of citizens do call our 1-800-KSCRIME number out of a sense of civic duty and the security of being able to make an anonymous tip, there is little doubt that more crimes will be solved and more criminals apprehended if there is the additional inducement of a financial reward.

Crime Stoppers organizations have demonstrated what an incredibly effective method of fighting crime a combination of rewards and anonymity can be. This brings up two points.

First, the thrust of such a crime tip hotline would be to supplement the existing 36 Crime Stoppers Chapters across the state, not to replace them. The KBI has worked very

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closely with state and local Crime Stoppers chapters throughout Kansas, and where those calls and crimes are from locations with an active Crime Stoppers chapter we will continue to coordinate amounts and payments of rewards. However, that still leaves two-thirds of the state that is not being served by this type of crime fighting activity. We believe HB 2084 would be a boon in reaching potential witnesses and informants in many of these primarily rural areas.

Second, as currently written, the bill does not specifically create any anonymity or confidentiality for citizens calling in on this number. This is not currently a problem as the individuals are not seeking later contact to collect a reward. However, we think that the success of this legislation will depend on our ability to offer and fulfill on a guarantee of anonymity.

While the KBI may not be able to provide the degree that anonymity that a private Crime Stoppers chapter may (since we are subject to rules of discovery and private corporations are not), we think it important that the bill be amended to first specifically reference that information provided and information that may lead to disclosure of the payee be covered by the informant privilege statute, K.S.A. 60-423, and not subject to open records.

In sub-paragraph c, all expenditures from the tip hotline would appear to be required to be made with state vouchers. Having an informant's name printed on a state voucher, and thus available to all individuals in the Department of Administration, proposes a substantial breach of anonymity as well. We would suggest that the KBI be authorized to request a voucher for a particular informant, that the money be paid into our buy fund and then handled with the controlling paperwork and supervision within the Bureau as are payments to other informants.

While there is no funding provided for rewards or publicity, section 2 of the bill requires that all state documents receiving statewide distribution be printed with a reference to the toll-

free number which will guarantee statewide distribution and exposure.

Thank you for your consideration. I will be happy to stand for questions.

HB2084