

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 8, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Ron Hein, Kansas Restaurant & Hospitality Association  
Marlee Carpenter, The Kansas Chamber  
Thomas Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas  
Terry Holdren, Kansas Farm Bureau  
Brent Haden, Kansas Livestock Association  
David Curotto, Kansas Trial Lawyers

Others attending:

See attached list.

Chairman Vratil called the meeting to order and asked if there were any bill introductions.

Senator Barnett introduced a bill relating to domestic battery, amending K.S.A. 2004 Supp. 21-3412a. Senator Allen moved, Senator Journey seconded, and the motion carried. (Attachment 1)

Chairman Vratil opened the hearing on **SB 75**.

**SB 75 Creating an immunity from liability for claims relating to obesity or weight gain**

Proponents:

Ron Hein, testifying on behalf of the Kansas Restaurant and Hospitality Association, stated that the Association originally requested introduction of the bill to stop frivolous claims of weight gain due to long-term consumption of food. Mr. Hein stated that there are 13 additional organizations listed in his written testimony that support the bill in Kansas. Additionally, 14 states have already passed this bill. (Attachment 2) Mr. Hein also provided written testimony on behalf of the Kansas Beverage Association. (Attachment 3)

Marlee Carpenter, testifying on behalf of the Kansas Chamber, stated the Chamber and its more than 10,000 members support passage of the bill. Ms. Carpenter shared recent poll results which support the legislation. (Attachment 4)

Tom Palace, testifying on behalf of the Petroleum Marketers and Convenience Store Association of Kansas, stated the more than 300 members support the bill and believe that current labeling and nutritional content information guarantee that when a person chooses to buy a consumable product, that he or she is aware as to the calorie and nutritional value, and people have to take responsibility for their choices. (Attachment 5)

Chairman Vratil asked if Mr. Palace and Mr. Hein if they had any problem with section (g) that states, "the provisions of this section shall apply to all covered claims pending as of July 1, 2005, and all claims filed thereafter". The concern is the effective retroactive application and the fact that the existence of a claim is a property right and this would be taking a claim without due process. Mr. Hein offered to check with the Board of the National Restaurant Association and see how it has been resolved in other states.

Terry Holdren, testifying on behalf of the Kansas Farm Bureau, stated the Bureau has 40,000 members across Kansas. The members have adopted a policy to support tort reform measures, including prohibiting claims based on weight gain, obesity, or related conditions caused by consumption of food. (Attachment 6)

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 8, 2005, in Room 123-S of the Capitol.

Chairman Vratil brought up a question about whether food is defined clearly in the bill. Mr. Hein stated that lines 17-18 of the bill use the federal definition of food, including alcoholic beverages. Chairman Vratil questioned whether definitions should be considered to define a manufacturer, producer, distributor, packer, carrier, etc. Mr. Hein stated in the national model act, those terms are not defined. The revisors will check the federal statutes to determine whether definitions currently exist. Senator Schmidt stated that, from discussing **SB 296** last year, some of the terms are defined in other places of Kansas law, and the revisors might want to look there.

Senator Bruce questioned what scenario would be applicable to lines 32-35 of the bill, with the standard of culpability raised to “knowingly and willingly” causing the injury, as opposed to simple negligence. Mr. Hein stated the intent is to address any misrepresentation of the labeling or manufacturing standard of safety.

Mr. Brent Hayden, assistant Counsel for the Kansas Livestock Association, testified that the Association was joining with the other producers and sellers to ask for help to prevent frivolous obesity lawsuits. Mr. Hayden stated it was the belief of the members that the burden of costs and consequences of obesity should be the responsibility of the individual. He stated one could see a trend had occurred in other areas of product liability, such as with cigarettes, firearms, pharmaceuticals, and now food. (Attachment 7)

Three testimonies were supplied in writing: Leslie Kaufman, Kansas Cooperative Council; Mr. Hal Hudson, National Federation of Independent Business; Duane Simpson, Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association. (Attachments 8-10)

### Opponent:

David Curotto testified on behalf of the Kansas Trial Lawyers Association(KTLA) in opposition to the bill and stated that, although the KTLA is against all frivolous lawsuits, the bill is over broad and has far reaching potential for barring consumers from redress for negligence caused in the manufacturing, distribution, or sale of products to the retailers. (Attachment 11)

Chairman Vratil closed the hearing on **SB 75**.

Chairman Vratil distributed to the Committee a letter from the Kansas Supreme Court Chief Justice, Kay McFarland, on a topic that was the subject of legislation last year. The Court, through their rulemaking process, has clarified some details regarding judicial administrators. (Attachment 12)

Chairman Vratil opened the hearing on **SB 96**.

### **SB 96 Punitive damage awards; splitting awards**

### Proponent:

One written testimony was provided in support of the bill from Marlee Carpenter, The Kansas Chamber. (Attachment 13)

### Opponent:

David Curotto, Kansas Trial Lawyers Association, testified that punitive damages are a supplemental award to an injured person for the purpose of forcing the wrongdoer to take responsibility for his or her conduct. An attorney’s ethical duty is to represent a client and seek financial awards for all the damages the client is entitled to, and it would be improper to fund litigation against a party if the client was not going to benefit from the claim. Mr. Curotto stated that attachments provided with his written testimony summarize the punitive damages awarded in Kansas during 2000-2003, averaging \$4,500, and, on a pie-chart, show that the total tort cases involving punitive damages in Kansas in 2003 were less than 6 percent. (Attachment 14)

Three testimonies were submitted in writing: Mr. David Moss; Jim Clark, Kansas Bar Association; Sandy Barnett, Kansas Coalition against Sexual and Domestic Violence. (Attachments 15-17) Chairman Vratil closed the hearing on **SB 96**.

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 9, 2005.

Please continue to circulate!

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/8/05

NAME	REPRESENTING
Leberca Bailey	KMS
Traci Doering	KAMMCO
Suzannah Meyer	KANSASW Intern
David Curotta	KTLA
P BIGGS	KSC
J BUTLER	KSC
Alvin Lampe	Sen. D Schmidt Intern
Paul O'Neil	Sen. Bruce Intern
Brent Haden	KS Livestock Assoc.
BRAD HARRELSON	KFB
TERRY HADREN	KFB
MIKEY SIMONDI	PMCA
TOM PALACE	PMCA OF KANSAS
Julie Hein	KRHA
Xon Hein	KRHA
Dennis Carpenter	KRHA

COP

By Senator Barnett

AN ACT concerning the criminal code; relating to domestic battery; amending K.S.A. 2004 Supp. 21-3412a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2004 Supp. 21-3412a is hereby amended to read as follows: 21-3412a. (a) Domestic battery is:

(1) intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or

(2) intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) (1) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.

(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a class A person misdemeanor and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the

person shall be required to enter into and complete a treatment program for domestic violence prevention.

(3) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a third or subsequent time, such person shall be guilty of a person felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The court may also require as a condition of parole that such person enter into and complete a treatment program for domestic violence. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) Family or household member means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint

alleging a violation of this section;

(B) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, or an ordinance which prohibits the acts of this section, and amendments thereto, or a resolution which prohibits the acts of this section, and amendments thereto, only once during the person's lifetime.

Sec. 2. K.S.A. 2004 Supp. 21-3412a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

# HEIN LAW FIRM, CHARTERED

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*Ronald R. Hein*

*Attorney-at-Law*

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**Testimony Re: SB 75**  
**Senate Judiciary Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**Kansas Restaurant and Hospitality Association**  
**February 8, 2005**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas professional association for restaurant, hotel, lodging and hospitality businesses in Kansas.

The KRHA requested the introduction of SB 75, and strongly supports the passage of this legislation. This bill provides in section 1(b) that there shall be no civil liability by any grower, producer, retailer, or other person identified in the bill for a “claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food.” This bill might very well have been called the “Personal Responsibility Act”. In fact, at the national level, the U.S. House of Representatives last year passed a similar bill called the “Personal Responsibility in Food Consumption Act.” It was passed with overwhelming bi-partisan support, 276 to 139. Similar legislation, titled the “Commonsense Consumption Act,” was introduced in the U.S. Senate.

SB 75 is very narrowly written to block particular types of frivolous litigation. It applies only to claims of weight gain, obesity, or other conditions associated with the long-term consumption of food. It specifically does not apply to civil liability for what might be known colloquially as “food poisoning” type activities.

The bill also includes good faith exemptions, so that bad actors are still liable for their bad acts. For example, section 1(c) provides that the bill will NOT prohibit actions where there has been a “material violation of an adulteration or misbranding requirement” of state or federal law. The bill also allows civil liability under the provisions of section 1(c)(2), where the claim is based on “any other material violation of federal or state law applicable to” the activities set out therein, including manufacturing and marketing. So, if a company misbrands a product, sells adulterated food or intentionally misrepresents a product, the company can still be liable.

The point of this bill is to stop frivolous claims. For example, where an individual makes his own choice of where to eat and how much to eat, as well as a slew of other lifestyle choices – such as exercise – and then files suit for gaining weight or developing a

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condition from overeating. This bill will provide sufficient protection for Kansas agricultural producers, Kansas restaurants, food dealers, and others in the food production chain who might be a victim of such a suit.

These types of lawsuits have been filed in other states, though I am not aware of any suits specifically filed in Kansas at this point. Thus far, judges have not been receptive to these suits. The KRHA believes we should not wait until litigation is filed in this state.

Section 1(f) provides for a stay of discovery during the time the motion to dismiss is being decided, unless the judge orders otherwise pursuant to that section. In this way, the costs of discovery will be avoided while the judge rules on the motion to dismiss. In this way, defendants will be forced to expend substantial funds to retain counsel and to fight these lawsuits in court.

This legislation is modeled after the National Restaurant Association model act. As of January 2005, 14 states have enacted this or similar legislation, and numerous others have introduced them for consideration this year. We believe that this legislation is the most appropriate of the various versions that have been offered or enacted, and sets the most sound policy for handling cases of this nature.

A number of associations in Kansas support this legislation. Please see the attached list for those who have asked to be listed. Some or all of them may testify as well.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



Kansas Beverage Association

Kansas AgriBusiness Retailers Association

Kansas Farm Bureau

The Kansas Chamber

Kansas Cooperative Council

Kansas Food Dealers Association

Kansas Grain and Feed Association

Kansas Livestock Association

Kansas Pork Association

Kansas Restaurant and Hospitality Association

Kraft Foods North America, Inc.

National Federation of Independent Business

Petroleum Marketers and Convenience Store Association of Kansas

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*Ronald R. Hein*

*Attorney-at-Law*

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**Testimony Re: SB 75  
Senate Judiciary Committee  
Presented by Ronald R. Hein  
on behalf of  
Kansas Beverage Association  
February 8, 2005**

Mister Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Beverage Association (KBA), which is the state trade association for beverage bottling companies operating in Kansas. Prior to last November, we were named the Kansas Soft Drink Association, but after several generations, we have changed our name to more truly reflect our members and the products we make, which include carbonated diet and regular soft drinks, bottled waters, isotonic drinks, juice, juice drinks, sports drinks, dairy-based beverages, teas, and other beverages.

The KBA strongly supports the passage of this legislation. Fourteen states have passed this legislation, which we believe will help insure that Kansas does not have the types of lawsuits relating to obesity that have occurred in other states. In addition, the U.S. House of Representatives passed legislation along these lines last year and called it the "commonsense consumption act". It is possible that Congress will enact such legislation this year with regards to actions in federal court.

This bill provides for no civil liability for obesity claims arising from long term consumption of food. It provides exemptions to this general prohibition of liability if food producers, such as the bottlers who are members of the KBA, act in violation of state or federal law.

This legislation is basically the National Restaurant Association model act. The American Beverage Association also has a model act which is arguably stronger than this act, but the KBA understands that the Kansas Restaurant and Hospitality Association requested this bill, and supports this legislation even though there may be other options available.

Thank you very much for permitting me to submit this written testimony, and I will be happy to yield to questions.

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Attachment 3

# Legislative Testimony

SB 75

Submitted by  
MARLEE CARPENTER

Tuesday, February 8, 2005

Testimony before the Kansas Senate Judiciary Committee  
By Marlee Carpenter, Vice President of Government Affairs

Chairman Vratil and members of the Committee;

The Kansas Chamber and its over 10,000 members support passage of SB 75. Passage of this measure will help curb frivolous lawsuits against food manufacturers and producers. This is a solid first step in ensuring that class actions lawsuits are not filed against the food industry and consumers take personal responsibility for the decisions that they make.

In our December 2004 CEO and Business Owner's Poll, 60% of the 300 respondents believe that our current litigation system is a deterrent to business growth and 83% believe that frivolous lawsuits increase the cost of doing business in the state. Our November 2004 poll of Registered Voters found the same firmly held belief. Nearly 65% of those participating believe that our current legal system should be reformed and 61% believe that lawsuit reform will contribute to economic growth.

Passage of SB 75 would help protect many Kansas businesses and industries from frivolous lawsuits that are a reality in today's society. More than 10 state's have passed this type of legislation that safeguards companies against attorney's who see the food industry as their next cash cow.

We urge this committee to recommend favorably SB 75. Thank you for your time and I will be happy to answer any questions.



**THE KANSAS  
CHAMBER**

The Force for Business

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*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, the Chamber Federation, have more than 10,000 member businesses, including local and regional chambers and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*

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Attachment 4



Submitted by  
Tom Palace

MEMO TO: Senate Judiciary Committee  
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and  
Convenience Store Association of Kansas  
DATE: February 8, 2005  
RE: Comments on SB 75

Mr. Chairman and members of the Senate Judiciary Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 300 independent petroleum marketers, gasoline retailers and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today as a proponent of SB 75.

Convenience stores throughout Kansas have the potential of being named in a lawsuits blaming us that we were/are the cause of obesity. In this litigious society, people jump at the opportunity to sue for any reason. People have many choices when they enter a store to purchase food. Convenience stores should not be held liable for a person's weight gain if that person decides to purchase a Snickers bar as opposed to a granola bar. Most, if not all products sold, in a convenience store have consumer protection notices on the wrappers for people to be advised as to what they are eating. Current labeling (nutritional content) laws guarantee that when a person chooses to buy a consumable product that he or she is well aware as to what the calorie content or nutritional value is, the manufacturing segment has done its duty. It is wrong to attribute a person's weight and health problems to the consumption of specific foods. Legislation like SB 75 should bar claims arising out of obesity or weight gain, regardless of the legal theory that a customer gained weight or has become obese because a fad-laden product was available to him or her. Consumption of the product is his or her personal decision, not the business practices of a specific retailer.

Society is always looking for a convenient scapegoat. People have to take responsibility for their own volition, their own choices or actions. If we want to get to the heart of the issue, we need to go to the source (manufacturer) to stop making products that make people obese.

Mr. Chairman and committee members, I urge your support of SB 75.

Petroleum Marketers and Convenience Store Association of Kansas  
201 NW Highway 24 • Suite 320 • PO Box 8479  
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785-233-9655 Fax: 785-354-4374

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Attachment 5



*PUBLIC POLICY STATEMENT*

**SENATE COMMITTEE ON JUDICIARY**

Re: SB 75—Prohibiting claims based on weight gain or obesity.

**February 8, 2005**  
**Topeka, Kansas**

**Testimony by:**  
**Terry D. Holdren**  
**Local Policy Director—KFB Governmental Relations**

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Chairman Vratil, Vice-Chairman Bruce, and members of the Senate Judiciary Committee, thank you for the opportunity to appear before you today. I am Terry Holdren and I serve as the Local Policy Director—Governmental Relations for Kansas Farm Bureau. As you know, KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

As recently as 2002, our members, in conjunction with other farmers and ranchers across the state produced over 2 million bushels of grain and nearly 8 million head of cattle and hogs, adding nearly \$9 billion to the economy of the state of Kansas. Those products—considered the safest and most affordable supply of food in the world—have increasingly become a target as more and more Americans eat too much without a proper perspective regarding nutrition and exercise.

The US Surgeon General reported recently that 61% of Americans are either overweight or obese. Those individuals are at risk to develop diabetes, heart disease and/or cancer among several other potentially negative health consequences caused by being overweight. Likewise, in recent years novel theories have begun to emerge that

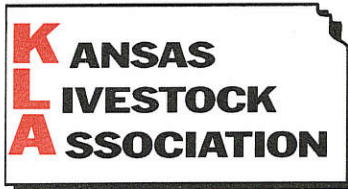
seek to expand tort liability to include those health conditions related to weight gain or obesity. Specifically, the suits have alleged that providers of food have misled the public by promoting the idea that their products have greater nutritional value than they actually do, thereby encouraging patrons to overindulge. Secondly, they claim that providers should be held liable for offering "super-sized" meals that cause innocent customers to be duped into consuming more than nutritionally required.

A 2003 Gallup poll found that nine of ten Americans believe it is wrong to hold producers and providers of safe and properly prepared food liable for obesity related health problems. The members of Kansas Farm Bureau agree and have adopted policy supporting tort reform measures including prohibiting claims based on weight gain, obesity, or related conditions caused by consumption of food.

Eating habits, good and bad, are a matter of personal choice and responsibility. It is not the place of law to protect us from our own excesses. KFB asks that you carefully consider SB 75 and act favorably on this important protection for producers and providers of food.

Thank you.

*Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.*



*Since 1894*

TESTIMONY

To: Senate Judiciary Committee  
Senator John Vratil, Chairman

From: Brent Haden, Assistant Counsel  
Kansas Livestock Association

Date: February 8, 2005

Re: SB 75, Obesity Lawsuit Immunity

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.*

Good Morning. My name is Brent Haden, and I serve as Assistant Counsel for the Kansas Livestock Association. I am here today representing KLA and asking for your support and passage of SB 75.

KLA is joining with the other food producers and sellers here today to ask this body to help prevent frivolous obesity lawsuits in Kansas. We believe it is important that the state of Kansas, as a net food exporter and America's bread basket, take affirmative steps now to shield its food producers, processors and sellers from economically destructive lawsuits in which plaintiffs will seek to shift the consequences of their own actions onto the backs of Kansas ranchers, workers and businesses.

The fundamental question addressed by this bill is one of personal responsibility, and of who should bear the burden for actions that cause obesity and the health problems that go with it. It is the belief of our members, and indeed the belief of 85% of Americans, that the burden of the costs and consequences of obesity should be borne by each individual, as each individual has the most control over whether they are obese or not. Every individual may choose to eat or not eat, to exercise or not exercise. No one is forced to do either, or to refrain from either, and therefore the responsibility for these choices should lie with the individual.

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Conversely, to allow obese individuals to sue farmers, ranchers, wholesalers or retailers for the costs associated with their own obesity unfairly places the burden of an individual's behavior upon people who have no control over whether an individual is overweight or not. Ranchers, farmers and the rest of the food production and preparation chain cannot police the consumption habits of individuals, even if they were inclined to. As such, the food producers and sellers of this state should not be forced to bear the responsibility for costs and consequences associated with these choices.

Of course, to most the above statement is mere common sense. In fact, some would say that the proposition that individuals, and not food producers and sellers, should be responsible for their own weight is so self-evident that SB 75 is an unnecessary piece of legislation. However, we believe that in light of recent developments this legislation is warranted to protect the whole chain of food production and preparation from economically devastating lawsuits.

While to date no obesity suit has been successfully litigated, the last three years have seen a concerted national effort by trial lawyers and self-anointed food police groups to undermine consumer confidence in the safety practices and ethics of food producers and sellers. This is troubling because the current campaign against food producers and sellers parallels past campaigns waged against other types of products. In several of those campaigns, plaintiffs were able to win large verdicts after several years of defeat, during which they continued to lay the groundwork for victory by attacking the ethics of the industries in question and using mass media to create pockets of willing juries throughout the country.

If obesity suits were ever successful, Kansas, as a net food exporter, would disproportionately feel the effects because so much of Kansas' economy is tied to food production and preparation. Furthermore, Kansas food producers and sellers would be damaged economically if courts in Kansas would even entertain an *unsuccessful* lawsuit because the food producer or seller would be forced to hire attorneys to defend itself in court. Similarly, if obesity lawsuits were allowed to proceed in Kansas there is a possibility that food producers and sellers would settle these cases, regardless of their merit, to avoid the litigation costs involved in a successful defense. Such a development would prove a further drag on the state's economic health.

For the above reasons, our members believe that passage of SB 75 is imperative for the protection of Kansas' economy. If obesity suits are allowed to go forward, successfully or unsuccessfully, the farmers, ranchers and food-service entities so crucial to Kansas' economic health would suffer. However, this body has before it an opportunity to protect the ranchers, farmers and food-service businesses of Kansas by nipping frivolous obesity lawsuits in the bud. SB 75 would protect Kansas' critical food production and preparation businesses by preventing individuals from saddling food producers and sellers with the costs of their own actions, and would in turn protect Kansas' economy. We urge you to vote for this bill, and look forward to working with you. Thank you.





816 SW Tyler St. Ste. 300  
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[www.kansasco-op.coop](http://www.kansasco-op.coop)

## Senate Judiciary Committee

February 8, 2005  
Topeka, Kansas

### **SB 75 – immunity from liability claims for weight gain.**

Chairman Vratil and members of the Committee, thank you for the opportunity to share comments on behalf of the Kansas Cooperative Council in support of SB 75. I am Leslie Kaufman and I serve the Kansas Cooperative Council as Governmental Relations Director. The Council includes more than 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans.

Our members are concerned with the overall business climate in Kansas and the increased costs of doing business. The KCC has adopted policy language supporting changes in the regulatory systems and in our judicial system that eliminate unnecessary regulation, encourage business development and promote growth in the Kansas economy. Helping ensure food producers and processors are protected from frivolous lawsuits is another way the state can assist the state's food production sector.

Several members of our association can benefit from the protection proposed in SB 75. Cooperative businesses and their owner-members are involved in food production at every point from the farm to the dinner table. Our grain handling and farm supply cooperatives are owned by the farmers and ranchers that grow our basic

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commodities. They provide seed and inputs at the start of the process and storage and marketing once the crop is harvested. Cooperative members are also involved in processing, distribution and retail sales.

Food safety is an important component in cooperative food handling enterprises. Various types of protections and state and federal oversight are intermingled in the processes. Food products, their ingredients, or their processors that meet current health and safety standards should not be held liable for an individuals over-indulgence.

It is simply not reasonable to hold a food producer/processor responsible for an individual's lack of moderation. Even nature's most basic life sustaining fluid, water, is dangerous in excessive quantities. This truth was reemphasized recently by the tragic death of a young fraternity pledge that, as part of a hazing ritual, was forced to drink too much water in too short of a time period.

Too often, it seems human nature to overlook personal short-comings and try and shift blame where it really does not belong. This bill can help protect the food industry from becoming an unfair scapegoat for an individual's, or society's, weight problem.

As such, we respectfully encourage this committee to act favorably on SB 75. Should you have any questions or comments regarding our position or this statement, please feel free to contact me. Thank you for your consideration.

Leslie Kaufman  
Government Relations Director  
Kansas Cooperative Council  
816 SW Tyler St., Ste. 300  
Topeka, Kansas 66612  
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KANSAS

**Statement by  
Hal Hudson, State Director  
National Federation of Independent Business  
On Senate Bill 75  
Before the Senate Judiciary Committee  
February 8, 2005**

Mr. Chairman and Members of the Committee:

My name is Hal Hudson, and I am representing the nearly 6,000 small business owners who are members of NFIB, in support of SB 75.

Fear of expensive or crushing lawsuits is a major concern for small business owners. In a survey of small business owners conducted by the NFIB Research Foundation the liability exposure to frivolous lawsuits and lawsuits for which they had no responsibility ranked high on the list of problems.

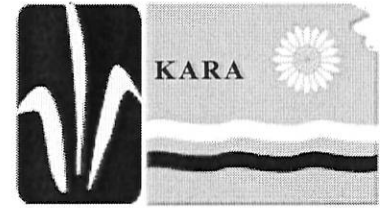
Recent lawsuits against food manufacturers have caused great concern for small-business owners who already pay a high price under our nation's troubled legal system. Trial lawyers have turned their sights on the food industry and have filed lawsuits blaming cookies and fast food for plaintiffs' weight and health problems.

Many of these lawsuits have been thrown out of court, but more are expected, and small-business owners are concerned that some of these suits will ultimately be successful. Trial lawyers, using the same tactics they used in asbestos and tobacco lawsuits, are charging that fast-food restaurants have acted negligently or deceptively in selling products high in cholesterol, fat, salt and sugar.

While small business owners ultimately may prevail in such frivolous lawsuits, they still may face expensive charges from lawyers to defend them.

We urge you to report SB 75 favorably.

*The NFIB Research Foundation conducts some of the most comprehensive research of small-business issues in the nation. The National Federation of Independent Business (NFIB) is the nation's largest small-business advocacy group. A nonprofit, nonpartisan organization founded in 1943, NFIB represents the consensus views of its 600,000 members in Washington and all 50 state capitals.*



Submitted by  
Dwayne Simpson

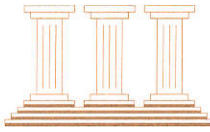
STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION  
AND THE  
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION  
SUBMITTED TO THE  
SENATE JUDICIARY COMMITTEE  
IN SUPPORT OF SENATE BILL 75  
SEN. JOHN VRATIL, CHAIRMAN  
FEBRUARY 8, 2005

KGFA & KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FC

Chairman Vratil and members of the Senate Judiciary Committee, I am Duane Simpson testifying on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. On behalf of these organizations, I am testifying in support of Senate Bill 75.

SB 75 is a common sense piece of legislation that prevents trial attorneys from filing frivolous lawsuits against our industry for damages due to obesity related health issues. It seems ridiculous that someone could regularly eat Big Macs, become obese and then file a lawsuit against McDonald's for damages. Unfortunately, those lawsuits have already been filed in other states. In addition, they could file a lawsuit against the livestock producers, the farmer who grew the corn fed to the cattle, and maybe even the agribusiness who sold fertilizer to that farmer. Grain elevators that buy and sell wheat in Kansas could face claims due to the high-carb content of bread.

Unfortunately, the threat for these lawsuits is all too real. Everyone involved in food production, from the farm to the fork, should be protected from these frivolous lawsuits. Individuals are responsible for what they eat. If they are incapable of self-control, they have no one but themselves to blame. We urge the members of the committee to support SB 75. Thank you for your consideration.



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

To: Chairman Vratil and Members of the Senate Committee on Judiciary  
From: David Curotto on behalf of the Kansas Trial Lawyers Association  
Date: February 8, 2005  
Re: SB 75

Chairman Vratil and members of the committee, I appear before you today on behalf of the Kansas Trial Lawyers Association. I am a Kansas attorney and member of KTLA. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to present written and oral testimony on SB 75.

KTLA opposes all frivolous lawsuits. They are a poor use of the courts, waste citizens' time, and do not reflect well on our profession. We agree that "McLawsuits" based solely on the principal that someone who has overeaten and subsequently gained weight because of a personal choice should not have the right to waste the time of our courts here in Kansas.

Nevertheless, KTLA opposes SB 75. Our concerns with SB 75 are as follows:

1. It is overbroad and has far reaching potential for barring consumers from redress for negligence caused in the manufacturing, distribution, or sale of products to the retailer;
2. It does not address defective, mishandled, and dangerous products; and
3. It does not consider what might happen to consumers who ingest food products containing chemicals and additives, with unknown side effects, over time.

As written, SB 75 attempts to limit the liability of a very broad number of services provided by the food industry without protection except in the most deceptive or malicious circumstances. Limitations without protecting a citizen's right to access the courts for redress under negligent circumstances not related to personal choices goes against the very nature of our constitutional right to use the courts under legitimate circumstances. Additionally, limitations to liability of any future negligent party should be taken with the greatest restraint. It is impossible to foresee long term consequences of many of the items we ingest; consequences that at times are because of another party's negligence, not our personal choice.

I respectfully urge your opposition to SB 75.

*Terry Humphrey, Executive Director*



# Supreme Court of Kansas

KAY MCFARLAND  
Chief Justice

Kansas Judicial Center  
Topeka, Kansas 66612-1507

(785) 296-5322

February 4, 2005

Senator John Vratil  
Chair, Senate Judicial Committee  
Room 522-S, Statehouse  
Topeka, KS 66612

Re: Judicial Administrator

Dear Senator Vratil:

The Supreme Court has recently amended its internal operating rules to provide:

A judicial administrator shall be appointed by the Supreme Court to serve at the will of the Supreme Court. The judicial administrator shall be responsible to the Supreme Court, shall implement the policies of the court under the supervision of the Chief Justice and shall perform such other duties as are provided by law or by the Supreme Court or the Chief Justice.

I want to let you know of the change the Court has unanimously adopted, which should satisfy any concerns on this matter.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Kay McFarland".

Kay McFarland  
Chief Justice

KMcF:mr

Senate Judiciary

2-8-05

Attachment 12

# Legislative Testimony

SB 96

February 8, 2005

Testimony before the Kansas Senate Judiciary Committee  
By Marlee Carpenter, Vice President of Government Affairs

Senator Vratil and members of the Committee;

The Kansas Chamber supports SB 96, having punitive damages go to the state. In addition to our support, we would like to make several recommendations to SB 96. First, we would encourage an amendment that would not allow any of the money coming into the state from punitive damage awards to go to the courts. Allowing this money to flow to the courts would encourage judges to award additional or excessive punitive damages. Second, would encourage an amendment that would not allow punitive damages to be awarded in the same type of action to the state. In mass tort cases such as tobacco or asbestos, those industries could be looked at as "cash cows" and a way to balance the state general fund. We would encourage a limitation on this practice.

The Kansas Chamber encourages and supports tort reform in Kansas. In our December 2004 CEO and Business Owner's Poll, 60% of the 300 respondents believe that our current litigation system is a deterrent to business growth and 83% believe that frivolous lawsuits increase the cost of doing business in the state. Our November 2004 poll of Registered Voters found the same firmly held belief. Nearly 65% of those participating believe that our current legal system should be reformed and 61% believe that lawsuit reform will contribute to economic growth.

Thank you for your time and I will be happy to answer any questions.



**THE KANSAS  
CHAMBER**

The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: [info@kansaschamber.org](mailto:info@kansaschamber.org)

[www.kansaschamber.org](http://www.kansaschamber.org)

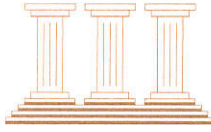
*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*

Senate Judiciary

2-8-05

Attachment 13





KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

To: Chairman Vratil and the Senate Committee on Judiciary  
From: David Curotto on behalf of the Kansas Trial Lawyers Association  
Date: February 8, 2005  
Re: **SB 96**

Chairman Vratil and Members of the Senate Committee on Judiciary, I appear before you today on behalf of the Kansas Trial Lawyers Association. I am a Kansas attorney and member of KTLA. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to present written and oral testimony on SB 96.

Punitive damages are defined as compensation in excess of actual damages; a form of punishment to the wrongdoer. In other words, punitive damages are a supplemental award to the injured person for the purpose of forcing the wrongdoer to take responsibility for his conduct. SB 96 as written would change one of the purposes of awarding punitive damages from compensating the person injured for the egregious acts of a wrongdoer to compensating the State for the egregious acts of the wrongdoer committed, not against the State, but against the injured person.

Punitive damages are very rarely awarded in Kansas for several reasons. First, under the current K.S.A. 60-3703, the procedural hurdles a person must overcome to make a punitive claim already have the effect of only permitting those most egregiously injured to successfully hold a wrongdoer accountable. Indeed, a person must first request a court allow an amendment to his petition to add a claim for punitive damages. Second, to succeed in making a punitive claim, an injured person must prove to a judge that there is a probability the injured person will prevail on the punitive damage claim. Third, assuming this can be done, the standard of proof that must be met to prevail on a claim for punitive damages is much higher. A punitive claim must be proven by clear and convincing evidence to a judge, not a jury.

The reality is that under the current statute only their most egregious acts of wrongdoers can be punished by punitive damage awards. SB 96 as written would have the effect of even fewer, if any, wrongdoers, contemplated under K.S.A. 60-3702, being held accountable.

The most recent information obtained by the KTLA shows that as of 2003, 43 other states

*Terry Humphrey, Executive Director*

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E-Mail: [trially@ink.org](mailto:trially@ink.org)

Senate Judiciary

2-8-05

Attachment 14

in the Union have no statute requiring an apportionment of punitive damages. In five states with apportionment laws, the law was either declared unconstitutional or repealed. SB 96, as written, is not only a bill to apportion punitive damages, but also a bill ostensibly designed to confer upon the state a benefit derived from the tragedy of another. But even more troublesome, SB 96 would effectively end punitive damage claims all together. Indeed, what incentive exists for a widow or widower, grieving over the loss of his/her spouse killed by a drunk driver, to pursue punitive damages when the end result would be nothing gained for the injured person but only for the state? Faced with this situation, most people would decline to bring punitive claims. The end result of SB 96 would be to grant wrongdoers statutory protection from punitive damages by removing any incentive on the part of individuals hurt by these wrongdoers to hold them accountable.

I respectfully urge you to oppose SB 96.

## Punitive Damage Awards in Kansas Tort Cases 2000-2003<sup>1</sup>

<b>2000</b>		
<b>County</b>	<b>Nature of Case</b>	<b>Amount (\$)</b>
Sedgwick	Other Tort	40,000
Sedgwick	Motor Vehicle Accident	20,000
Reno	Motor Vehicle Accident	15,0000
Jackson	Motor Vehicle Accident	1.00

<b>2001</b>		
<b>County</b>	<b>Nature of Case</b>	<b>Amount (\$)</b>
Crawford	Motor Vehicle Accident	30,000
Shawnee	Other Personal Injury	250

<b>2002</b>		
<b>County</b>	<b>Nature of Case</b>	<b>Amount (\$)</b>
Reno	Motor Vehicle Accident	126,000
Reno	Motor Vehicle Accident	19,580
Leavenworth	Motor Vehicle Accident	11,000
Crawford	Motor Vehicle Accident	5,000
Leavenworth	Motor Vehicle Accident	5,000
Leavenworth	Motor Vehicle Accident	1,000

<b>2003</b>		
<b>County</b>	<b>Nature of Case</b>	<b>Amount (\$)</b>
Leavenworth	Motor Vehicle Accident	10,000
Wyandotte	Motor Vehicle Accident	2,500
Finney	Motor Vehicle Accident	1,000

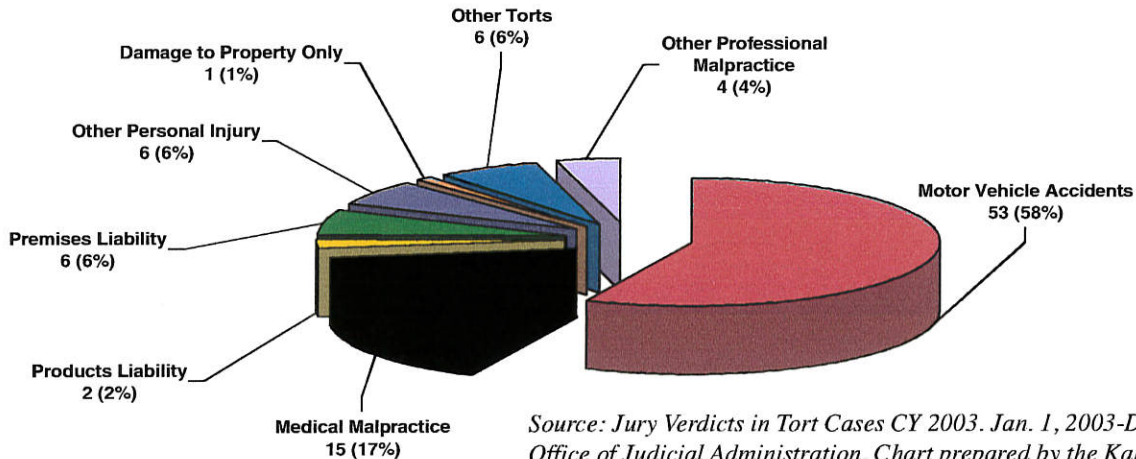
A plaintiff's recovery of the award above may have been reduced by the defendant's financial capacity to pay.

<sup>1</sup> Office of Judicial Administration, District Courts of the State of Kansas, Calendar Years 2000, 2001, 2002, and 2003.

# There is no “litigation crisis” in Kansas

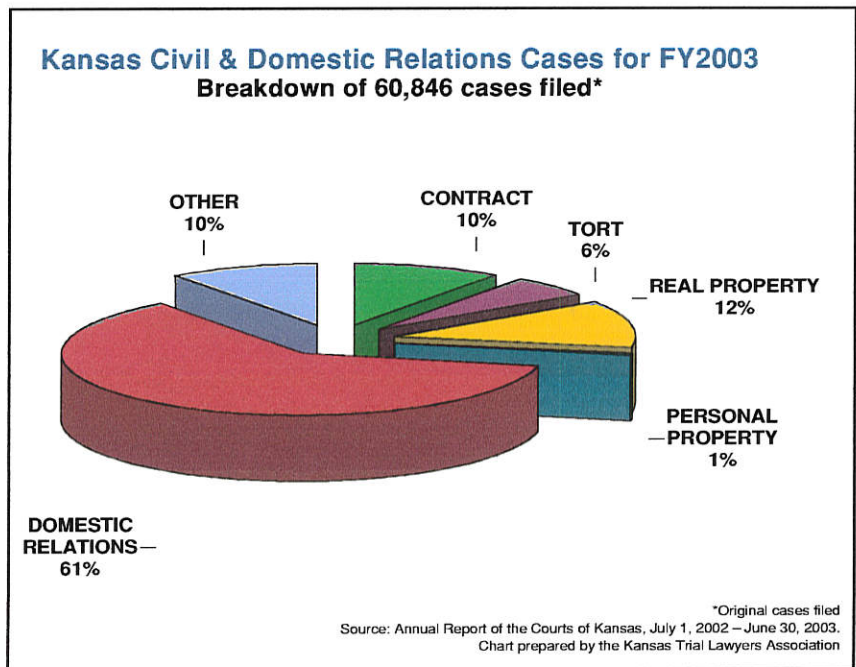
## KANSAS TORT CASES 2003

Breakdown of 93 tort cases that resulted in a jury trial



Source: *Jury Verdicts in Tort Cases CY 2003. Jan. 1, 2003-Dec. 31, 2003.* Office of Judicial Administration. Chart prepared by the Kansas Trial Lawyers Association.

- ✓ Only 6% of cases filed in Kansas are torts, or personal injury cases.
- ✓ 93 tort cases were decided by juries in 2003, down from 112 cases in 2002 and 135 cases in 2003.
- ✓ More than half of all tort cases involve auto accidents.
- ✓ The median award in 2003 was \$23,416.
- ✓ Punitive damages were awarded in only 3 cases in 2003. All 3 cases involved auto accidents.



*Check Your Facts Before You Change the Law*

Testimony of David Moss

Senate Committee on Judiciary  
Hearing on SB 96  
February 8, 2005

Mr. Chairman and members of the Committee, thank you for the opportunity to speak to you today on SB 96 relating to punitive damages. I'm here today to tell you why this issue is important to me and to ask you to oppose SB 96.

On November 25, 2004 my car was pulled over on the side of the road in Wichita and I was getting ready to have it towed. I was standing by my vehicle when a car hit me. The driver then hit my car and the tow truck driver. I was seriously injured with a left fractured ankle, damage to my left arm, and other physical injuries. The tow truck driver later died. I witnessed his injuries.

My case is still pending, but the police report indicates that the accident was caused by the driver driving under the influence (DUI) as well as inattentive driving.

If you pass HB 96 it will have serious implications for Kansans like me. If punitive damages are awarded, they should go to the person who suffered the effects of the injury. If it is determined that punitive damages are appropriate, I don't understand why the state should get them since the state hasn't suffered any injury. I also don't think it is fair that the jury will not know the truth about my award.

I also believe that the driver in my case will benefit if this bill is passed. What is the point of requesting punitive damages if they will go to the state? If HB 96 passes, people that seriously, intentionally hurt Kansans will not be punished for their acts.

I respectfully ask you to oppose SB 96.

Senate Judiciary

2-8-05

Attachment 15



KANSAS BAR  
ASSOCIATION

Testimony in Opposition to

**Senate Bill No. 96**

Presented to the Senate Judiciary Committee  
February 8, 2005

The Kansas Bar Association opposes **SB 96**, which would divert exemplary or punitive damage awarded to the plaintiff to the state general fund.

While one of the purposes of punitive damages would still be served, the defendant would bear the financial burden of such damages, other effects of such damages appear problematical. For instance:

1. Does the state automatically obtain standing when exemplary or punitive damages are alleged?
2. What entity would monitor the progress of such lawsuits to ensure that settlement agreements would include such damages?
3. After the plaintiff went through all the time, effort and expense, not to mention the mental anguish of a trial, would the exemplary or punitive damage award be taxed to the plaintiff, similar to attorney percentages are in current law?

For these questions, and other uncertainties involving the award of punitive or exemplary damages, the Kansas Bar Association opposes **SB 96**.

Thank you.

James W. Clark  
KBA Legislative Counsel  
1200 S.W. Harrison  
Topeka, Ks 66612  
785-234-5696

Senate Judiciary

2-8-05

Attachment 16



UNITED AGAINST VIOLENCE

**KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE**

220 SW 33rd Street, Suite 100 Topeka, Kansas 66611  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org

TO: Senate Judiciary Committee  
RE: SB96  
Oppose  
DATE: February 8, 2005

Dear Chairman Vratil and Members of the Senate Judiciary Committee:

The Kansas Coalition Against Sexual and Domestic Violence (KCSVD) is a non-profit organization whose members are the programs serving victims of sexual and domestic violence across the state.

It is our understanding that SB96 will require that any punitive damages awarded in personal injury actions go automatically into the state general fund instead of to the plaintiff.

In working with victims of sexual and domestic violence, advocates often focus on the issues of safety for the victim and accountability of the perpetrator. Whether the violence is sexual or domestic in nature, in order to feel whole again, it is important that the victim feel there is full accountability for the violence. Full accountability includes holding the perpetrator responsible for the violence, whether the damages are emotional or financial in nature, whether the damages are actual damages or whether they are imposed to punish the wrongdoer, as is the case with punitive awards.

In bringing a civil action, victims of sexual and domestic violence not only seek to obtain redress for the violence inflicted upon them by the wrongdoer, but they often seek to keep these same actions by the wrongdoer from harming others. They bring these actions not just for themselves, but also for the public good. In doing so, victims of sexual and domestic violence put their own reputations and personal lives in the full view of the court and the public. They do this at great personal risk.

Punitive damages are about punishing the wrongdoer. When a victim of sexual or domestic violence risks public exposure and ridicule by bringing a personal injury action these punitive damages should go to her. This is good public policy. Public policy in Kansas has always been to support the victim of sexual and domestic violence both criminally and civilly. Please continue to support the victims of sexual and domestic violence who are strong enough to bring these actions and seek punitive damages.

For these reasons, we oppose SB96.