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STATEMENT OF BRAD SMOOT
COORDINATOR
KANSAS CIVIL LAW FORUM
SENATE JUDICIARY COMMITTEE
REGARDING SB 359
February 8, 2012

Mr. Chairman and Members:

On behalf of the Kansas Civil Law Forum, a loose affiliation of businesses, professional associations, insurers and lawyers, I am pleased to have an opportunity to address the Committee in support of SB 359.

Last year, this committee heard SB 105, which would have amended our current prejudgment interest law by tying the interest rate to the federal discount rate and codified the Kansas common law regarding the awarding of unliquidated damages in civil cases. While there were no opponents to SB 105, committee members expressed concern with the limited interest rate of 1% of the designated federal rate.

Members of the KCLF believe that the concepts of last year's bill are worth revisiting and requested SB 359 to accommodate the concerns of this Committee regarding the rate. As you know, K.S.A. 16-201 allows parties to contract for prejudgment interest by mutual agreement, however, if no rate is specified, current law sets the rate at a fixed 10% for both tort and contract cases. Post judgment interest, on the other hand is set at a "floating" rate of 4% above the federal discount rate. We see no reason why a similar automatically adjusted rate is not good policy for prejudgment interest as well. SB 359 mirrors the current post judgment rate of 4% above the designated federal rate.

With regard to the issue of liquidated damages, we offer the same language of last year's bill. This subsection would codify what we believe to be the common law of the state to make it perfectly clear that prejudgment interest cannot be awarded until the damages are established in amount and in time. There is at least one Kansas case suggesting that the district court has discretion to award "unliquidated" damages, which is clearly contrary to the general rule that interest is not to be awarded on punitive, exemplary, future or unliquidated damages.

With us today is Tom Theis of the Foulston Siefkin Firm, who litigates cases involving these issues. With the Chair's permission, we've asked him to address the Committee on behalf of the KCLF. Thank you for consideration of our views. We would be pleased to respond to any questions.