

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on February 10, 2003 in Room 313-S of the Capitol.

All members were present except:

Representative Ward Loyd - Excused
Representative Dan Williams - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

Bob Totten, Kansas Contractors Association
John Sherwood, Attorney for Sherwood Construction of Wichita
Will Larson, Attorney for Kansas Contractors Association and Associated General Contractors
Larry Magill, Kansas Association of Insurance Agents
Sue Ann Schultz, General Counsel, IMA Financial Group
Corey Peterson, Associated General Contractors of Kansas
George Barbee, Kansas Consulting Engineers
Trudy Aron, American Institute of Architects
John Cassidy, Attorney for Office of Chief Counsel, Kansas Department of Transportation
David Burr, Assistant V.P. Risk Management, Burlington-Northern-Santa Fe Railway Company

Hearings on **HB 2154 - Construction contracts; indemnification agreements**, were opened.

Bob Totten, Kansas Contractors Association, explained that some companies include in their contracts language that assigns risk of anything that happens on their property to the contractor. The proposed bill would make each party responsible for their own act of negligence and not allow the shift of liability. ([Attachment 1](#))

John Sherwood, Attorney for Sherwood Construction of Wichita, relayed a case where they were taken to court, as a third party, it put Sherwood Construction in the position of paying worker's compensation and then having to defend a civil suit. He believes that the proposed bill is fair and would have parties take responsibility for their own negligent acts. ([Attachment 2](#))

Will Larson, Attorney for Kansas Contractors Association and Associated General Contractors, appeared in support of the proposed bill because it affects situations where one doesn't want to pay for their own negligence. ([Attachment 3](#))

Larry Magill, Kansas Association of Insurance Agents, introduced Sue Ann Schultz, General Counsel, IMA Financial Group, who stated that 42 other states have enacted similar legislation that restricts the use of indemnification provisions in construction contracts. Many insurance carriers exclude coverage for liability assumed under a contract and therefore, those who sign contracts with indemnification provisions are

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mistaken that if a claim is brought against them they will be covered by their liability insurance. (Attachment 4)

Corey Peterson, Associated General Contractors of Kansas, commented that contractors are having a difficult time finding insurance companies that will provide coverage on contracts that have indemnification agreements. (Attachment 5)

George Barbee, Kansas Consulting Engineers, informed the committee that many small companies cannot afford to hire an attorney to direct them when signing a contract. (Attachment 6)

Trudy Aron, American Institute of Architects, believes that the proposed bill is good public policy, since our society is litigious and everyone wants someone else to bear the blame for their own wrongdoing. (Attachment 7)

John Cassidy, Attorney for Office of Chief Counsel, Kansas Department of Transportation, explained that the proposed bill does not prohibit all indemnification provisions, just those relating to contractors. (Attachment 8)

David Burr, Assistant V.P. Risk Management, Burlington-Northern-Santa Fe Railway Company, appeared as an opponent of the bill because it would limit their contracts with third parties regarding the allocation of risk relating to construction projects that occur on their property. He commented that in many situations they give access to their property for the purpose of utility construction projects. They are not compensated for the use of land or the disruption it may cause to the railroads. They agree to these types of arrangements because they are able to shift the risk of any liability that occurs to the contractor in charge of the construction sight. (Attachment 9)

Boeing did not appear before the committee but requested their written testimony in opposition to the bill be included in the committee minutes. (Attachment 10)

Hearing on **HB 2154** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for February 11, 2003 at 3:30 p.m. in room 313-S.