

## MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 15, 2005 in Room 234-N of the Capitol.

All members were present.

## Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Ken Wilke, Office of Revisor of Statutes  
Sandy Yingling, Committee Secretary

## Conferees appearing before the committee:

Chad Austin, Senior Director of Health Policy & Data  
Senator Ruth Teichman  
Senator David Wysong  
Rep. Eric Carter  
Paul Odle, Commissioner Olathe Youth Baseball, Inc.  
Mick Murphy, General Manager Olathe Youth Baseball, Inc.  
Eric Blasdel, General Manager Westurban Baseball  
Jeff Chalk, Executive Director the 3&2 Baseball Club of Johnson County  
F. Russell Peterson, Kansas Trial Lawyers Association  
Bob Tomlinson, Assistant Commissioner of Insurance  
William Sneed, State Farm Insurance Co., Inc.  
Larry McGill  
Kathy Olsen, KBA  
Bill Henry, Kansas Credit Union Association

## Others attending:

See attached list.

Madam Chair opened the hearing on **SB 152**.

**SB 152 - District hospitals; procedure for disposal of property.**

Chair Teichman testified in favor of **SB 152** by offering the situation that arose in Stafford that prompted this bill to be written. (Attachment 1)

Chad Austin, Senior Director of Health Policy and Data, testified in favor on SB 152. (Attachment 2). Mr. Austin stated that **SB 152** amends K.S.A. 80-250 and would allow district hospitals to choose an alternative process for the disposal of property. Senator Steineger asked what was going on in Stafford that the hospital and school were sold? Chair Teichman answered, anyone the Senator would like to send out in her economically deprived area would be a blessing.

Senator Barnett asked Ken Wilke if there were any other definitions of "hospital" that would be of concern in this particular instance? Mr. Wilke answered **SB 152** was designed to deal with hospitals districts which have taxing powers to support the hospitals and was not designed to extend to other hospitals outside of that hospital district. Senator Barnett asked Mr. Wilke if he agreed with the language as written and Mr. Wilke stated he did. Madam Chair pointed out that Mr. Wilke wrote the language.

Madam Chair asked for other questions. There were none.

Madam Chair closed the hearing on **SB 152**.

Madam Chair opened the hearing on **SB 177**.

**SB 177 - Workers compensation; exemption for certain sports working for nonprofit organizations.**

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 15, 2005 in Room 234-N of the Capitol.

Senator Wysong offered an overview of the bill. Senator Wysong played baseball in Johnson County as a youth 46 years ago and feels very strongly in favor of **SB 177**. He stated that for the first time in 50 years of operation, the baseball club is being forced, by its insurance carrier, to take premiums on umpires for its workers compensation insurance. Senator Wysong stated the bill amends K.S.A. 44-505 to provide services performed by an individual as a sports official for a private, nonprofit organization, which sponsors amateur sports events. This employment is not subject to the Workman's Compensation Act.

Madam Chair stated that the Committee would hear all the proponents on **SB 177** before questions and that this bill is double introduced in House and the Senate. The House hearing would be this afternoon.

Paul Odle, Commissioner of Olathe Youth Baseball, Inc., testified in favor of **SB 177** stating they were a nonprofit organization with two thousand, six hundred ball players in their league aging from six to 18. (Attachment 3) Mr. Odle stated that approximately 60% to 70% of their umpires range from ages 13 through 18 and the balance would be 18 through 55. Given the number of umpires and the games to be played, it is estimated that should **SB 177** not be passed, it would be adding around \$18,00 for the worker's compensation costs.

Rep. Eric Carter, Kansas State Representative, testified in favor of **SB 177**. (Attachment 4) Rep. Carter pointed out that these are risks in the workers' compensation bases that are being priced at much higher costs than the likelihood of any instance of loss. Johnson County's 3&2 Baseball League is looking at a \$70,000 bill that is pending, plus another \$70,000 for each on-going year including this year. Other leagues across the state are facing a similar proposition.

Mick Murphy, General Manager of Olathe Youth Baseball, Inc., added his comments to Paul Odle's in favor of **SB 177**.

Eric Blasdel, General Manager of Westurban Baseball, testified in favor of **SB 177**. (Attachment 5)

Jeff Chalk, Executive Director of The 3 & 2 Baseball Club of Johnson County, testified in favor of **SB 177**. (Attachment 6)

Madam Chair opened **SB 177** for questions.

Senator Brownlee asked, who is writing the pay check for the officials? Mr. Chalk answered, in the case of 3 & 2 Baseball, the organization writes the pay check and there are no withholdings taken out. Although, the officials are issued 1099's. Senator Brownlee, asked if that was also the case with the other organizations? Mr. Murphy answered yes, that would be the same with Olathe. Senator Brownlee asked, if the kids had entered into a contract, were they not more of an employee than an independent contractor? Rep. Carter answered, they go by what the determination of the IRS is. Senator Brownlee stated that it would be her understanding that the officials are technically employed by the leagues. Mr. Blasdel added that earlier this year he made a call to the Kansas Department of Labor and asked them a similar question and was transferred to the Worker's Compensation Bureau and he talked to two individuals there, Carol Case and Nick Compus. Both Ms. Case and Mr. Compus stated to Mr. Blasdel they would be considered independent contractors.

Senator Brownlee wondered if one step to be taken, would be to change or review the rating from "professional athlete" through the Department of Labor or the Insurance Office. Mr. Tomlinson, Kansas Insurance Department, explained that his office does not do those ratings. The KID has had complaints in regard to the ratings. They are looking into those ratings for definitions frequently used in cases like these that have nothing to do with sports. The KID can make an adjustment and are currently in the process of doing so, not that this has specific relevance to this case. The KID cannot make any guarantees, but they are certainly trying to help.

Madam Chair announced the Committee, they would now hear from the opponents to **SB 177**.

Russell Peterson, for the Kansas Trial Lawyers Association, testified in opposition of **SB 177**. (Attachment 7) Mr. Russell stated he is currently a practicing attorney, a sports official, a 3 & 2 umpire and a 3 & 2 coach.

## CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 15, 2005 in Room 234-N of the Capitol.

He stated he has had experience in the Blue Valley system as well as Olathe. Mr. Peterson stated that there is an assumption being made. The proposed exclusion may violate the equal protection clause since it applies only to sports officials working for private, nonprofit organizations, and would bar compensation to sports officials doing exactly the same work for a public entity. Also, sports officials who are hired as independent contractors rather than employees, are already excluded from the Workers Compensation Act. Mr. Peterson believes work needs to be done with the Insurance Department to address the ratings issue. Mr. Peterson stated the problem lies with mis-classification.

Madam Chair asked if there were questions of Mr. Peterson. Senator Barone asked, if the \$70,000 covered everybody or is each group paid \$70,000? Mr. Chalk stated that the \$70,000 were the 3 & 2's premiums for the year 2003. Senator Barone asked about Wichita's? Mr. Blasdel stated that in Wichita, they are paying just less than \$11,000. Senator Barone asked what is the difference between private nonprofit organization and public nonprofit organization? Why is "private" in there? Rep. Carter suggested that would be a question for advisor, Ken Wilke. Mr. Wilke stated, private not-for-profits would be things like Optimist and 3 & 2; public-not-for profit would be the schools and similar things. Senator Barone asked if the leagues sponsored by the City would be included in this bill? Mr. Wilke stated the city leagues would not be included in the bill as it is written. Senator Barone asked if the leagues were paying workers' compensation now with accelerated premiums or are they not paying workers' compensation at all? Mr. Chalk answered that 3 & 2 baseball is not currently paying workers' compensation. Mr. Odle stated youth baseball has not been paying. Mr. Blasdel stated that Westurban Baseball has been paying workers' compensation. Bill Curtis, KASB, stated that when public schools have officials at high school football games, the official have some written contract that clarify his or her status and thus are not compensated under the school district's worker's compensation policy. Rep. Carter pointed out that Mr. Peterson's testimony probably defines this problem correctly. In this case these organizations have long viewed and treated their umpires as independent contractors. That is how the IRS has treated them, and that is how the State of Kansas has viewed them. Mr. Blasdel added his similar comments.

Madam Chair thanked all the conferees then closed the hearing on **SB 177**.

Madam Chair opened the hearing on **SB 207**.

### **SB 207 - Insurance department; fraud prevention program.**

Bob Tomlinson, Assistant Commissioner of Kansas Insurance Department, testified in favor of **SB 207**. (Attachment 8) Mr. Tomlinson stated **SB 207** is an anti-fraud bill the Department has sponsored. Further, fraudulent insurance plans are becoming more prevalent in every line of insurance, and cost consumers billions in unpaid claims.

Madam Chair asked for questions. Senator Barone asked if this mandates fraud? Mr. Tomlinson answered yes. Senator Barone asked, as a private citizen, if he were aware of a fraudulent claim, would he be caught in the web of this bill? Mr. Tomlinson stated no, it references insurance companies.

Bill Sneed, Legislative Counsel to State Farm Insurance Co. Inc., testified in support of **SB 207**. (Attachment 9) Mr. Sneed put on record that State Farm Insurance Co. Inc., is in support of a bill of the Insurance Department. Madam Chair asked for questions. There were none.

Written testimony from Howard Goldblatt, Coalition Against Insurance Fraud, in support of **SB 207** was offered to the Committee. (Attachment 10)

Madam Chair closed the hearing on **SB 207**.

Madam Chair handed out a schedule of the bills currently in the committee. (Attachment 11)

Madam Chair requested more time for **SB 103** since an agreement is about to be reached. The request was granted.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 15, 2005 in Room 234-N of the Capitol.

Madam Chair announced final action on **SB 103** and **SB 140** would be February 22.

Madam Chair reopened the hearing on **SB 140**.

**SB 140 - Limitation on insurance value on improvements on real property.**

Larry McGill, Kansas Association of Insurance Agents, passed out a bill draft with an amendment. (Attachment 12) Mr. McGill stated they were adding a sentence at the end which says “that nothing in this section will be deemed to create a private cause of action by the insured against the lien holder or mortgagee.” This amendment is an attempt on KAIA’s part to address some of the opponent’s concerns that might shift some liability to the lien holder. Mr. McGill stated that he does not believe that is the case because the liability they are concerned with is potential liability for establishing replacement costs on the home. Mr. McGill stated that is a function of the insurance policy. Also, in the first sentence of the amendment, Mr. McGill stated it should say “no lien holder or mortgage may require . . .” replacing may with “shall.” Madam Chair asked for questions. There were none.

Madam Chair asked Ken Wilke if he had the style changes. Mr. Wilke stated that what he would do, is where we have it provided, he would put a period after improvements and just say “nothing contained herein will prohibit an inflation guard provision.” It would just be a matter of starting a new sentence and would not change the intent. Madam Chair asked Mr. Wilke if the amendment would read “no lien holder or mortgage shall require insurance on improvements to real property for more than the reasonably estimated replacement cost of such improvements. Nothing herein (or nothing contained herein) . . .”

Kathy Olsen, Kansas Banker’s Association, continued to express concern about the proposed amendment on **SB 140** (Attachment 13) One reason being “replacement cost” is a value that is between the insurance company and the insured. Often the lender does not know the value because it is not on the insurance policy. Secondly, KBA does think there is liability placed on the lien holder or mortgagee with this new language. Ms. Olsen stated that the KBA is not opposed to the idea that replacement costs should be the value, but again they are opposed to making the lien holder or mortgagee monitor this value that KBA does not have access to or cannot determine. Senator Brungardt stated that it looks like there is a difference of opinion in market value and replacement value.

Bill Henry, Director of Governmental Affairs for the Kansas Credit Union Association, in opposition of **SB 140** stated this issue was visited by F I & I Committee last year. In the financial institutions when a mortgage is issued, it is keyed into the appraised value. In the insurance industry, on the other hand, the issue is replacement value. Mr. Henry stated, trying to meld these two together to govern what should be the right level of coverage is a vexing issue. Mr. Henry requested, they take more time in deciding this new language. KCA likes the original language better. There were no other questions.

Madam Chair closed the hearing on both **SB 103** and **SB 140** until February 22. Any questions could be taken up with the conferees. If an agreement still has not been reached at that time, Madam Chair may look at the possibility of these two bills being an interim study.

Meeting adjourned 10:30 a.m.