

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 6, 2007 in Room 313-S of the Capitol.

All members were present except:
Ben Hodge- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:
Representative Jason Watkins
Tom Whitaker, Kansas Motor Carriers Association
Dave Parker, Great West Casualty Company
Ken Keller, Western Extralite Company
Bill Miller, Building Erections Services
Dan Haake, Haake Foundations
Larry Magill, Kansas Association of Insurance Agents
Marvin Kleeb, Allied Staffing
Dan Murray, Midway Wholesale
Corey Peterson, Associated General Contractors of Kansas
Brent Moore, OXY Corporation
Keith Strama, Exxon Mobil
Steve Ware, Individual
Pat Barnes, Kansas Automobile Dealers Association
Ed Cross, KIOGA
David Dayvault, Abercrombie Energy
Jeff Kennedy, Martin & Pringle Attorney at Law
Wyatt Hoch, Coalition to Preserve Freedom to Contract
Callie Hartle, Kansas Trial Lawyers Association

The hearings on **HB 2007, 2228, & 2262 - indemnification clauses and additional insured requirements**, were opened.

Representative Jason Watkins spoke specifically in support of **HB 2007**. He explained that Kansas currently allows for one party to a contract to be indemnified by another party and be listed as an additional insured for their own acts of negligence. These types of indemnification clauses are increasing in popularity and have a devastating impact on small businesses. (Attachment 1)

Tom Whitaker, Kansas Motor Carriers Association, appeared in support of **HB 2262**. He stated that the proposed bill would prohibit indemnification clauses in motor carrier transportation contracts which require one party to indemnify and hold harmless a second party's negligence or wrongful acts. Indemnification clauses are most harmful to small carriers who want to deliver the freight, because they have to sign the contracts in order to take care and deliver the freight. The bill would not shield a motor carrier from their own liability or negligence. (Attachment 2)

Dave Parker, Great West Casualty Company, commented that the issue being discussed today is not unique to Kansas. It is impossible for insurance companies for motor carriers to underwrite and rate the risk of unknown shippers with unknown operations, unknown safety programs, unknown risks, and unknown employment procedure. (Attachment 3)

Ken Keller, Western Extralite Company, spoke in support of **HB 2228**. He commented that it effectively transfers risks to the sub-contractor and his insurance company making them responsible for claims for problems that were out of their control and for which they are not responsible for. (Attachment 4)

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Bill Miller, Building Erections Services, appeared in support of **HB 2228**. He stated that every person and company should be responsible for their own actions. He was concerned that there are cases where an unwitting subcontractor signs a contract agreeing to additional insure someone only to find out too late that his insurance company denies coverage required by the terms of the contract and that the subcontractor has self insured the loss. ([Attachment 5](#))

Dan Haake, Haake Foundations, is a small contractor who employs ten individuals. His company has been required by an insurance company to carry more insurance than what the company is worth. Reality is that he is insuring individuals for deeds not necessarily connected to the company and out of his control. ([Attachment 6](#))

Larry Magill, Kansas Association of Insurance Agents, appeared in support of all the bills up for hearing. The Association writes insurance for about 70% of all commercial insurance in Kansas. He believes that it would be good public policy to be negligent for only your actions; it encourages safety. ([Attachment 7](#))

Marvin Kleeb, Allied Staffing, appeared in support of **HB 2007** because the requirement to receive a job is to sign an indemnification clause. These types of clauses have grown greatly in the past few years. ([Attachment 8](#))

Dan Murray, Midway Wholesale, appeared in support of **HB 2007 & 2228**. He commented that the trend to require indemnification clauses in order to do business is very disturbing because it is placing liability onto those who actually can't afford to cover anyone involved in the project. ([Attachment 9](#))

Corey Peterson, Associated General Contractors of Kansas, appeared in support of **HB 2007** and in opposition of **HB 2228**. They oppose **HB 2228** because it would include contracts and not single out the construction industry. If it is fair for one industry, then it should be fair to all. ([Attachment 10](#))

Brent Moore, OXY Corporation, appeared as an opponent of the bill. He believed that it was too broadly drafted and applies to all contracts. He suggested that the committee look at Texas' anti-idemnity statute that they adopted which was directed towards the oil and gas industry. ([Attachment 11](#))

Keith Strama, Exxon Mobil, appeared in opposition to the bill. The purpose of these contracts is to eliminate costly future disagreements by allocating in advance the responsibility for certain actions which might arise. ([Attachment 12](#))

Steve Ware, Individual, teaches contract law at the University of Kansas and stated that indemnification provisions are simply ways to form legal binding contracts that allocate risk. Adoption of the proposed bill would cause prices of goods and services to rise because businesses will need to cover their increase in insurance costs. ([Attachment 13](#))

Pat Barnes, Kansas Automobile Dealers Association, appeared as an opponent of the bill. Reminded the committee that the Freedom of Contract has been the emphasis of common law for thousands of years and the proposed bill would be a stark departure from that norm. ([Attachment 14](#))

Ed Cross, KIOGA, commented that each party should be responsible for their own actions. His industry came up with a compromise and developed a model "Master Service Agreement" contract. ([Attachment 15](#)). Several other industries have requested a copy of the agreement and are in the process of making changes to apply to their specific needs.

David Dayvault, Abercrombie Energy, sees indemnification provisions as being a good way to establish responsibility by contract rather than through litigation. ([Attachment 16](#))

Jeff Kennedy, Martin & Pringle Attorney at Law, commented that the Model Master Service Agreement is an effort to ensure that the indemnification provisions used by the oil & gas industry do not overreach and are fair to both parties signing the agreement. ([Attachment 17](#))

Wyatt Hoch, Coalition to Preserve Freedom to Contract, suggested that the legislature should not take sides

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in a non-consumer business transaction. The allocation of risk in a business transaction is not a fairness issue, but a commercial issue. (Attachment 18)

Callie Hartle, Kansas Trial Lawyers Association, suggested an amendment to delete word “indemnitee” because the definition used is superfluous and could lead to confusion. (Attachment 19)

The committee meeting adjourned at 5:45 p.m. The next meeting was scheduled for February 7, 2007.