

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 8, 2005 in Room 313-S of the Capitol.

All members were present except:
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Lew Ebert, The Kansas Chamber
Anne Kindling, Kansas Association of Defense Counsel
Jerry Slaughter, Kansas Medical Society
Kirk Scott, Kansas Medicial Mutual Insurance Company
Chip Wheelen, Kansas Association of Osteopathic Medicine
Bryan Smith, Kansas Trial Lawyers Association
Jim Clark, Kansas Bar Association
Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence
Representative Todd Novascone
Ron Hein, Kansas Restaurant & Hospitality Association & Kansas Beverage Association
Brent Haden, Kansas Livestock Association
Terry Holdren, Kansas Farm Bureau

The hearing on **HB 2150 - evidence of collateral source benefits allowed in any personal injury case where damages are requested**, was opened.

Lew Ebert, The Kansas Chamber, appeared before the committee as the sponsor of the bill. He informed the committee that 23 states allow collateral source to be admitted in jury trials. Collateral source benefits include insurance policies, gratuitous receipts of benefits such as wages or medical services and government benefits, such as workers' compensation and social security. The Chamber conducted a Business Owner's Poll in 2004 with 300 respondents, 60% of those believe that our current litigation system is a deterrent to business growth, while 83% believe that frivolous lawsuits increase the cost of doing business in the state. They also did a poll of 400 Registered Voters and found that they had the same belief, 65% believed that our current legal system should be reformed and 61% believed that lawsuit reform would contribute to economic growth. (Attachment 1)

Anne Kindling, Kansas Association of Defense Counsel, explained that current law does not allow juries to know about payments or benefits paid to or for the plaintiffs by healthcare providers or other sources. The bill would allow juries to hear the actual damages for which the plaintiff was and is responsible for. The proposed bill relates only to personal injury cases. (Attachment 2)

Representative Loyd questioned if there was some potential for inequity when the tort feisor actually did something wrong. Ms. Kindling responded that the greater inequity is when the plaintiff recovers cost, plus what the insurance companies have paid and end up with a windfall.

Representative Crow suggested that if juries are told about collateral source then they should also be told how much liability coverage doctors have. Ms. Kindling stated that the tort feisor doesn't argue he doesn't have any coverage so it shouldn't be allowed.

Representative Kinzer commented that the real purpose of the proposed bill is to reduce the number of cases where the tort feisor will have to pay large amounts. Ultimately the result is a reduction in the amount the defendant would have to pay. Ms. Kindling commented that the goal is to compensate the plaintiff for the actual cost that the plaintiff has and will have to pay. The legislation will still allow plaintiffs to recover, just not the costs that were already paid by someone else.

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Ms. Kindling explained that the jury would determine who is at fault, the percentage of fault, the total costs and the net value of the case. Plaintiffs attorneys are suggesting to juries that the medical bills are X amount and that the plaintiff should be reimbursed for X amount and then they do not go on and inform juries that a percentage of X amount was paid for or written off by another source.

Representative Pauls was concerned that most individuals pay for all or at least part of their insurance and that they could possibly max out their lifetime allowance and then were would the plaintiff be financially.

Jerry Slaughter, Kansas Medical Society, appeared as a proponent of the bill. He stated that a collateral source bill was introduced and passed in 1988 but that the Kansas Supreme Court struck it down due to the threshold amount. It was passed to help with the rising cost of malpractice insurance rates. (Attachment 3) He explained that the proposed bill would not include services or benefits for which a valid lien or subrogation interest exists.

Representative Loyd asked in the states which have collateral source what has been the effect on health insurance premiums and how have the jury verdicts changed.

Kirk Scott, Kansas Medicial Mutual Insurance Company, responded that savings on insurance premiums range from 4% to 11% and there has been some increase in jury verdicts. (Attachment 4)

Representative Loyd wanted to what a health care provider would have to pay to provided malpractice insurance. Mr. Scott responded that an OBGYN would pay \$53,000 per year. \$200,000 coverage would come from KaMMCO and \$800,000 coverage would come from the Healthcare Stabilization Fund.

Chip Wheelen, Kansas Association of Osteopathic Medicine, appeared in support of the bill. He reminded the committee to study all sections of law dealing with collateral source before making a decision. (Attachment 5)

Bryan Smith, Kansas Trial Lawyers Association, appeared before the committee in opposition to the bill because it's not a good bill for victims and would increase the costs of litigation. He was counsel for the plaintiff in *Thompson v. KFB Insurance Company* which is the case the Kansas Supreme Court took up and struck down the collateral source rule. He urged the committee to keep in mind that plaintiffs pay insurance premiums, co-pays, and deductibles and are entitled to care through their contractual and financial relationship with the insurance provider. They need to be compensated for all expenses in case they max out their lifetime benefits. (Attachment 6)

Representative Loyd pondered the issue that wouldn't good public policy be that if the plaintiff receives an award he then in turn pays the insurance company back for the expenses which they incurred. Mr. Smith commented that this would be placing the victim in a spot where they don't really receive any damages.

Chairman O'Neal stated that if juries are given the option to disregard the collateral source or look at payments and then decide how much the plaintiff would receive they would do it carefully. Juries continually ask in most trials "how much of the medical bills have been paid by insurance or written off?"

Jim Clark, Kansas Bar Association, provided the committee with an article from the Kansas Bar Journal in 1989 entitled Implementing the Kansas Collateral Source Rule. He stated that he could find only three cases last year where punitive damages were awarded. (Attachment 7)

Sandy Barnett, Kansas Coalition Against Sexual & Domestic Violence, appeared in opposition of the bill because it does not hold people accountable for their actions. (Attachment 8)

Written testimony in opposition to the bill was provided by:

David Moss (Attachment 9)

AFL-CIO (Attachment 10)

MADD (Attachment 11)

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The hearing on **HB 2150** was closed.

The hearing on **HB 2233 - creating an immunity from liability for claims relating to obesity or weight gain**, was opened.

Representative Todd Novascone appeared as the sponsor of the proposed bill which was requested on behalf of a constituent who owns a restaurant in Wichita who was concerned with the possible costs of court battles for people not taking responsibility for their own actions. The Senate introduced and had hearings on **SB 75** which deals with the same issue and it was suggested that the senate bill was drafted better and he would prefer that the committee consider it. (Attachment 12)

Ron Hein, Kansas Restaurant & Hospitality Association & Kansas Beverage Association, appeared in support of the proposed bill. His organizations prefer **SB 75** because it is more narrowly drafted than the house bill. Fourteen states have passed similar legislation most are called the "commonsense consumption act". The legislation proposed today is similar to the National Restaurant Association model act which is stronger than both **HB 2233 & SB 75**. The reason for the bill is to stop frivolous claims. (Attachments 13 & 14)

Representative Jack was concerned with the "catch all" provision in **SB 75**. Mr. Hein said that it probably wasn't drafted correctly and they prefer lines 42 & 43 in **HB 2233**. Representative Jack also wanted to know what the "catch all" would "catch". Mr. Hein responded that he wasn't sure and would check the model act and get back to him.

Lew Ebert, The Kansas Chamber, conducted a Business Owner's Poll in 2004 with 300 respondents, 60% of those believe that our current litigation system is a deterrent to business growth, while 83% believe that frivolous lawsuits increase the cost of doing business in the state. They also did a poll of 400 Registered Voters and found that they had the same belief, 65% believed that our current legal system should be reformed and 61% believed that lawsuit reform would contribute to economic growth. (Attachment 15)

Brent Haden, Kansas Livestock Association, emphasized support for the legislation as well. These types of suits are not moving forward now but will be and will probably be very broad. (Attachment 16)

Terry Holdren, Kansas Farm Bureau, commented that a recent U.S. Surgeon General report sited that 61% of Americans are either overweight or obese. In recent years tort cases have begun to arise linking weight gain to food providers. A 2003 Gallup poll found that nine out of ten Americans believe that it is wrong to hold producers and providers liable for obesity related health problems. They prefer **SB 75** because it includes producers in the list of those provided protection. (Attachment 17)

Written testimony in support of the bill was provided by:

National Federation of Independent Business (Attachment 18)

Kansas Grain & Feed Association (Attachment 19)

Kansas Cooperative Council (Attachment 20)

Bryan Smith, Kansas Trial Lawyers Association, opposed both **HB 2233 & SB 75** because the immunity they offer would encompass more than just the amount of food one eats. When creating immunity all bills need to be narrowly defined. He was also opposed to making the bill apply to all cases that are pending. (Attachment 21)

The hearing on **HB 2233** was closed.

The committee meeting was adjourned at 5:45 p.m. The next meeting was scheduled for February 9, 2005 at 3:30 p.m. in room 313-S.