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WRITTEN ONLY

STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL, THE AMERICAN INSURANCE ASSOCIATION
SENATE JUDICIARY COMMITTEE
REGARDING 2015 SENATE BILL 16
JANUARY 21, 2015

Mr Chairman and Members:

Thank you for this opportunity to comment on SB 16 on behalf of the American Insurance Association. AIA is a trade group of more than 300 member insurance companies who write commercial general liability, auto, home, life and workers compensation insurance in all 50 states. Our members include companies that are household names, employ thousands of Kansans and may even insure your family or business.

AIA is pleased to express support of SB 16, which would amend a unique and limited statutory grant of attorneys fees in property damage cases involving insurance coverage. For nearly 60 years, K.S.A. 40-908 was used and interpreted as it no doubt had been intended -- a way for insureds to recover attorneys fees against their own carriers for property damage caused by fire, tornado, lightning or hail. In the 2014 case of *Bussman v. Safeco*, the Kansas Supreme Court broadened the scope of this statute to include third party claims for personal injury damages. With this interpretation, the court created a situation where Kansas plaintiffs can recover against an insurer under two different attorneys fee statutes with differing standards. See K.S.A. 40-256, the general rule allowing for attorneys fees to be awarded where the insurer has refused to pay a claim "without just cause or excuse."

We are aware that some believe the Legislature should just repeal K.S.A. 40-908 as an antiquated and now complicating provision in civil litigation. And while we could support such a position, we endorse the terms of SB 16 and consider it a reasonable and much needed compromise that returns the law of attorneys fees to its proper balance and restores the rights of plaintiffs and insurers.

SB 16 would return K.S.A. 40-908 to the meaning and application as well as to the original intention of the Kansas Legislature, something the Supreme Court virtually invited the Legislature to do. We urge this Committee to consider the excellent comments of Will Larson, on behalf of the Kansas Association of Independent Agents and Mike O'Neal, presenting on behalf of The Kansas Chamber. Both gentlemen have considerable experience and expertise in the application of these provisions so integral to the civil litigation process. Both urge the adoption of SB 16, to which we also lend our support.

Thank you for consideration of our views and please do not hesitate to contact me if you have questions or concerns.