

TO: Members of the Senate Committee on the Judiciary

FROM: Gay Muenchrath, G .M. Clothes Horse, Inc., Wichita, Kansas

DATE: January 19, 2015

RE: K.S.A. 40-908 and S.B. 16

Dear Senators:

My name is Gay Muenchrath. I live in Wichita, Kansas, where I own and operate G.M. Clothes Horse, Inc., an upscale women's clothing store located in the Waterfront. I have been in business for more than 29 years.

Please consider this my written testimony in opposition to S.B. 16.

In July of 2000, my company and I were sued in federal court by a local sheet metal supply company. The supply company sought to recover hundreds of thousands of dollars in damages from us, because its controller embezzled moneys from the supplier over a period of several years and used some of that money to purchase merchandise from my store. I had no knowledge of the source of my customer's money, and I certainly did not know she had embezzled it from her employer. It has never been my practice to demand to know the source of a customer's funds, and I don't think a retailer has the right to do that in any event. Nevertheless, I was accused of fraud and racketeering, as well as negligence.

I paid significant premiums to insure my business through a business insurance policy issued by State Farm Fire and Casualty Insurance Company ("State Farm"). I also paid for insurance under a personal liability umbrella insurance policy issued by State Farm. When I was sued, I notified State Farm and requested that it defend me and my company and pay any amounts for which we might be liable. In response, State Farm denied my claim and refused even to defend us in the lawsuit.

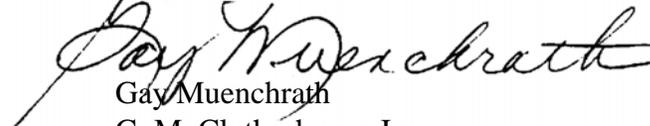
I hired a lawyer to defend me and my company, at my expense. He was able to obtain a dismissal of the federal RICO claims, and the federal court dismissed the remaining claims asserted against us for lack of jurisdiction. However, in January of 2003, the sheet metal supplier sued us again in state district court. Again, I turned to State Farm for coverage. Again, it denied the claim and refused to provide a defense. By that time, I had spent \$108,514.31 in attorneys fees and expenses to defend the claim. I was running out of funds, and the very existence of my business was in jeopardy. Around that time, I was introduced to an attorney named Jacob Graybill. He told me there was a statute, K.S.A. 40-908, that would allow me to recover my attorneys fees and expenses from State Farm if I prevailed in a coverage lawsuit against it. Consequently, he agreed to take my case on a contingent fee basis.

In 2006, after years of litigation, Mr. Graybill negotiated a settlement with State Farm, and all of the claims against me and my company were finally resolved. The settlement also addressed my attorney's fees, past and present.

K.S.A. 40-908 is a remedial statute that affords an attorneys fee to a policyholder who, like me, is forced to litigate against her insurance company on a policy that includes property coverage for the perils of fire, lightning, tornado, or hail, and she prevails. In other words, the insurance company bears the financial risk that its decision to deny coverage is wrong. I have been told that S.B. 16 would amend K.S.A. 40-908 such that it would only apply to certain property losses caused by fire, tornado, lightning or hail. Under the circumstances, that would have been a death sentence for my business.

Business owners, like me, recognize that there are a number perils that pose a risk of financial loss and threaten the viability of our businesses. In an attempt to manage that risk, we purchase insurance, which is an important component of our business. Each of the businesses pays significant premiums to cover a litany of risks, including, but not limited to, fire, tornado, lightning and hail. Examples that come to mind include theft, vandalism, automobile collision, and liability coverages. When we pay our premiums, we expect that the insurance company will honor its promises, without delay, and without making us go to the trouble and expense of prosecuting a lawsuit. Simply put, the statute saved my business. It seems to me that K.S.A. 40-908, if amended, should be expanded to encompass all insurance coverages.

Respectfully submitted,



Gay Muenchrath
G .M. Clotheshorse, Inc .