

TO: Members of the Senate Committee on Judiciary

FROM: Steven C. Lee, President
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DATE: January 20, 2015

RE: Opposition to S.B. 16

My name is Steven C. Lee. I live in Valley Center, Kansas. Please consider this my testimony in opposition to S.B. 16. Last year, I gave this testimony in opposition to an identical bill, H.B. 2678, which was tabled by unanimous vote of the House Insurance Committee. In 2007, I testified in person before the House Committee on Judiciary in opposition to H.B. 2189, a substantially similar bill. In November of 2005, I testified in person before this Committee in opposition to a proposal to limit the scope of K.S.A. § 40-908.

I respectfully request that the Committee make no changes to limit the scope of K.S.A. 40-908.

For more than 30 years, I have owned and operated a small construction company called Lee Builders, Inc., in Wichita, Kansas. We build approximately 10-12 single-family homes each year. We have always used what we consider to be quality materials as well as quality subcontractors. Many of our subcontractors have been with us more than 20 years.

I have purchased the "recommended" insurance policy for protection against the unforeseen perils of the homebuilding business each year. In recent years, homebuilders have been plagued with damage claims related to moisture accumulating in exterior wall cavities caused by problems with manufactured windows over which the contractor has no control, and in homes with synthetic stucco finishes such as EFIS and DRIVIT.

Since 2001, on three separate occasions, I have received claims for damage caused by moisture accumulating in the exterior wall cavities of our customer's home. On each occasion, when I turned the claim in to my insurance company, the insurance company denied that its policy provided coverage for the claim.

The first time it happened, I accepted the insurer's explanation of why I had no coverage. I recognized I was ethically obligated to fix the problem and I knew my company would probably be sued if I did not accept that responsibility. With help from my suppliers, I proceeded to repair the damage at my expense.

On another occasion, I was actually sued by a homeowner contending that in addition to property damage, the homeowner and the homeowner's family had become ill as a result of mold that had grown, undetected, in the exterior wall cavities of the house. The insurance company acknowledged I had coverage for the bodily injury claims, but advised me I had no coverage for the property damage component of the claim.

On a third occasion, our homeowner contended that moisture had accumulated in the exterior wall cavity of the house, causing property damage and that undetected mold had caused the family to become ill. The insurance company, for reasons I do not understand, denied that I had coverage for the bodily injury component of the claim, and denied all other coverage, but agreed to defend me under a reservation of rights.

I was told by a fellow builder in Wichita that I needed to talk to Terry Moore and Jake Graybill, attorneys in the Wichita area. I called them. They assured me I had purchased insurance for completed operations risks that obligated the insurance company to cover the claims. They also explained there was a statute, which I have now learned is K.S.A. 40-908, which provided for reimbursement of my legal expenses if I successfully prosecuted a lawsuit against the insurance company.

In order for me to receive the benefit of the insurance I bought, it was necessary for me to file three separate lawsuits against the same insurance company. Those lawsuits stretched over a period of more than four years. All three of them have been resolved in my favor. If K.S.A. 40-908 had not been in place, I would have been required to pay in excess of \$200,000 in legal expenses. Had that been the case, as a practical matter, I would have been forced to abandon my claims for insurance coverage. Because K.S.A. 40-908 is on the books, I was able to obtain the insurance coverage I paid for. Had K.S.A. 40-908 been limited as is proposed by S.B. 16, it would have been of no help to me.

I urge the Committee to make no changes that would limit K.S.A. 40-908. If anything, the scope of protection for insurance consumers like my company should be expanded.

Respectfully submitted,

Steven C. Lee, President
LEE BUILDERS, INC.