

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:37 A.M. on January 25, 2006, in Room 123-S of the Capitol.

All members were present,

Les Donovan arrived 9:42 a.m.
Phil Journey arrived 9:43 a.m.
Dwayne Umbarger arrived 9:43 a.m.
Kay O'Connor arrived, 9:43 a.m.
Derek Schmidt arrived 10:04 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Tris Felix, Kansas Independent Oil & Gas Association
Stan Jackson, Kansas Independent Oil & Gas Association
Tom Whitaker, Executive Director, Kansas Motor Carriers Association
William Miller, American Sub-contractors Association
Ken Keller, Controller, Western Extralite Company
Bob Totten, Public Affairs Director, Kansas Contractors Association
Dan Haake, President, Haake Foundations
Doug Smith, Southwest Kansas Royalty Owners Association
Ron Heim, Occidental Oil & Gas
Cory Peterson, Executive Vice President, Associated General Contractors of Kansas
Larry Magill, Kansas Association of Insurance Agents

Others attending:

See attached list.

Introduction of Bills

Senator Nick Jordan introduced a bill concerning civil procedure relating to attorney fees. Senator Betts moved, Senator Goodwin seconded, to introduce the bill. Motion carried.

Dan Hermes, Kansas Coordinators of Alcohol Safety Action Projects, requested the introduction of a bill concerning purchase or consumption of alcoholic beverage by a minor and associated penalties. Senator Betts moved, Senator Goodwin seconded, to introduce the bill. Motion carried.

The hearing on **SB 339--Joint committee on corrections and juvenile justice oversight; repealing the sunset of December 31, 2005** was opened. Senator Vratil gave a brief overview of the bill. There were no conferees present.

Senator Haley moved, Senator Bruce seconded, to recommend SB 339 favorably for passage and place it on the consent calendar. Motion carries.

The Chairman opened the hearing on **SB 338--Contracts; indemnification clauses and additional insured requirements in certain contracts void.**

Senator Vratil provided background on the bill and the issues concerning additional insured requirements.

Tris Felix spoke as a proponent (Attachment 1). He indicated that it is very difficult to apply all of the provisions of **SB 338** to both construction and the oil and gas industries. Therefore, he requested several amendments to meet the needs of the oil and gas industry. They include:

- exclusion of joint operating agreements
- addition of an indemnification provision
- additional insured provisions to exclude construction and preservation of the right of an Operator to obtain liability coverage

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Stan Jackson spoke in support of the bill (Attachment 2). His concern is that when an oil company has put in place an indemnity agreement with the service contractor, the responsibility for negligence is shifted from the oil company to a service contractor and the oil company has no incentive to provide a safe work place. While use of the additional insured endorsement is needed in construction contracts, it is not in the best interest of the oil and gas industry. He suggested that the best solution would be to separate the definition of "construction contracts" and the definition of the oil and gas industry.

Tom Whitaker appeared in support of the bill (Attachment 3). The purpose of **SB 338** is to promote safety in the carriage of goods by motor carriers by eliminating clauses that shield shippers and others who perform their obligation negligently or wrongful. The bill does not shield a motor carrier from their own liability or negligence. The effect of indemnification clauses eliminates the incentive for the shipper to meet their responsibilities in a prudent or reasonable manner. The motor carriers in essence becomes an insurer for the shipper. This legislation will assist small carrier companies who are generally forced to sign such agreements in order to get and keep contracts.

Bill Miller spoke as a proponent stating that **SB 338** will plug a loophole in the anti-indemnity bill passed in 2004 (Attachment 4). Failure to close this loophole removes the intended effect of the statute to prevent risk transfers. This bill will not delete or reduce coverage provided in contractors', subcontractors' or suppliers' general liability policies.

Ken Keller testified as a supporter of **SB 338** (Attachment 5). The current practice of requiring the sub-contractor to name the owner, general contractor, etc. as additional insured on their insurance policies effectively transfers the risk to the sub-contractor and his insurance company. They are made responsible for problems out of their control. This is unfair and needs to be eliminated just as hold harmless and indemnification was two years ago.

Bob Toten, a proponent, raised concern about language regarding confusion with Section 1, lines 20 and 22 (Attachment 6). Another concern is with page 1, lines 26 and 27 regarding right of entry provision. He indicated that highway construction contractors fear that this may require them to provide entry to anyone desiring access to a construction project. When questioned by the Chairman, Mr. Toten stated that he did not feel the additional insured provision necessary at this point in time.

Dan Haake spoke as a proponent by sharing his experience involving a fatality accident (Attachment 7). He felt the general contractor was able to shift the risk and responsibility to others and eliminates the incentive to provide a safe work environment.

Doug Smith spoke as a neutral party seeking clarification to language regarding right of entry provisions (Attachment 8).

Ron Heim appeared as an opponent stating several reasons as they pertained to the oil and gas industry (Attachment 9). **SB 338** will have unintended consequences with respect to many of the contracts that are unique and standard to the industry today. Mr. Heim proposed several amendments to address these issues.

Cory Peterson spoke as an opponent raising concerns that the language could create serious gaps in insurance coverage for general contractors (Attachment 10). He stated that this was not necessarily a construction issue, but an insurance issue and requested amending the bill so that page 2, line 11, reads "(c) A provision in a contract, except construction contracts".

Larry Magill testified as an opponent stating that while it is good public policy to require each party be responsible for their own negligence it is good policy to support the continued use of reciprocal indemnification clauses, where each party protects the other from the results of their own negligence (Attachment 11). He proposed an amendment to except construction contracts from the additional insured prohibition in **SB 338** because general contractors are experiencing problems finding completed operations coverage.

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Written testimony in support of the bill was submitted by:

Keith Oliver, President, Oliver Insurance Agency (Attachment 12)

Chris Wilson, Executive Director, Kansas Building Association (Attachment 13)

Janet Stubbs, Administrator, Kansas Building Industry Workers Compensation Fund (Attachment 14)

Written testimony in opposition of the bill was submitted by:

Will Larson, General Council, Associated General Contractors of Kansas (Attachment 15)

Following questions by the Committee, the Chairman indicated his concern that despite ample notice of this issue for twelve months, parties requesting amendments to the bill at the last minute was not a good way to craft legislation. He had hoped to address the interests of the transportation and the oil & gas industries in the bill but now feels that it is inappropriate to do so. **SB 338** should be broken into three bills, one for construction, one for transportation and one for the oil & gas industries and he will consult with the Revisor.

There being no further conferees the Chairman closed the public hearing on **SB 338**.

The meeting adjourned at 10:32 a.m. The next scheduled meeting is January 26, 2006.