

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 13, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research  
Athena Andaya, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Duston Slinkard, Office of Revisor of Statutes  
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Nancy Strouse, Kansas Judicial Council  
Anne Kindling, Kansas Association of Defense Counsel  
Bill McKean, Individual  
Bill Skepnek, Kansas Trial Lawyers Association  
William Larson, State Farm Insurance Company  
Tim Finnerty, Kansas Association of Defense Counsel  
Senator Phil Journey  
Jacob Graybill, Graybill & Hazlewood  
Janice Meliza, Citizen  
Jackson Hulsey, Citizen

The hearing on **HB 2363 - civil procedure; repealing statutes dealing with terms of court**, was opened.

Nancy Strouse, Kansas Judicial Council, explained that the proposed bill would delete references to "terms of the court" at the district level, because that term is no longer used and has been deleted from the Supreme Court Rules Relating to District Courts. The bill would also change the motion for summary judgement being served at least 10 days prior to a hearing to 21 days. (Attachment 1)

The hearing on **HB 2363** was closed.

The hearing on **HB 2188** - professional screening panels, was opened.

Chairman O'Neal provided the committee with a bill brief explaining each section of the proposed bill. (Attachment 2)

Anne Kindling, Kansas Association of Defense Counsel, appeared before the committee in support of the proposed bill. She commented that the changes proposed are consistent with the original intent of the process to provide an expedited and cost-effective opportunity to resolve professional and medical malpractice claims. The changes would also bring the operation of the screening panel process closer to how such cases actually progress. (Attachment 3)

Bill Skepnek, Kansas Trial Lawyers Association, agreed that there are problems with the screening panel process and that it needs to be fixed. (Attachment 4)

Bill McKean, Individual, provided an incident where a case took two years before it actually made it to the Board of Healing Arts because the screening panel took such a long time. He agreed that the process needs to be streamlined.

The hearing on **HB 2188** was closed.

The hearing on **HB 2189** - attorney fees; civil actions concerning loss by fire, tornado, lightning, or hail

William Larson, State Farm Insurance Company, explained to the committee that K.S.A. 40-908 provides for mandatory assessment of attorney fees when actions are brought on insurance policies where the actual

## CONTINUATION SHEET

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loss occurred by fire, tornado, lightning or hail. K.S.A. 40-256 allows for attorney fees to be awarded if the insurer acted improperly, i.e., if the company has refused without just cause or excuse to pay the full amount of the loss.

The proposed bill would clarify that the mandatory assessment of attorney fees would apply only to actions brought under insurance policies where there was an actual loss that occurred by fire, tornado, lightning or hail. Without clarification, the insurance industry could unfairly be placed into a “loser pays” attorney fees situation in contravention of the well-established rule that generally each litigant bears its own attorney fees. (Attachment 5)

Tim Finnerty, Kansas Association of Defense Counsel, provided a history of K.S.A. 40-908 & 40-256. (Attachment 6)

Written testimony in support of the bill was provided by American Insurance Association, American Family Insurance Group, and State Farm Insurance (Attachments 7-9)

Senator Phil Journey, appeared as an opponent of the bill and suggested that the committee consider adopting **SB 377** from the 2006 Legislative Session. **SB 377** would enhance consumer protection and the consumer’s position in dealing with insurance companies. (Attachment 10)

Jacob Graybill, Graybill & Hazlewood, commented that the reason he files insurance claim cases under 40-908 is because it’s hard to get the court to order attorney fees under 40-256. One has to prove that the insurance company, without just cause, failed to pay the costs. (Attachment 11)

Janice Meliza and Jackson Hulsey, Citizens, informed the committee of their cases where they could not afford to hire an attorney to take their cases. Each talked to Mr. Graybill and he filed suit under 40-908 because he could recoup attorney fees and then they would not have to pay him directly. (Attachments 12 & 13)

Written testimony, in opposition to the bill, was provided by Kansas Trial Lawyers Association. (Attachment 14)

The hearing on **HB 2189** was closed.

The committee meeting adjourned at 5:45 p.m. The next committee meeting is scheduled for February 13, 2007.

The committee minutes from January 23, 24, 29, 30, & 31 were distributed by e-mail on February 12, 2007 with the notice that the minutes will stand approved if no changes are requested by February 19, 2007.