



KANSAS BAR
ASSOCIATION

TO: The Honorable Susan Humphries
And Members of the House Judiciary Committee

FROM: Joseph Molina
On Behalf of the Kansas Bar Association

RE: HB 2593 - Amending the uniform arbitration act of 2000 to make certain agreements to arbitrate in contracts of insurance invalid and creating exceptions therefor.

DATE: February 12, 2024

Madam Chair and Members of the House Judiciary Committee:

The KBA appreciates the opportunity to appear today in **SUPPORT** to **HB 2593** - Amending the uniform arbitration act of 2000 to make certain agreements to arbitrate in contracts of insurance invalid and creating exceptions therefor.

As way of background, in 2018 the Kansas Bar Association proposed HB 2186 – Revised Uniform Arbitration Act of 2000. That bill provided provisional remedies, consolidation of proceedings, disclosure of arbiter, immunity of arbitrator and ability to award punitive damages by an arbiter. However, HB 2186 had an unintended consequence of striking a provision that prohibited the use of binding arbitration in certain insurance contracts. This was not the goal of HB 2186. The bill passed both chambers and was signed into law.

In 2019 the KBA attempted to correct the unintended consequence by introducing HB 2072. That bill is identical, sans dates, to the bill before us today. HB 2072 was given a hearing and recommended favorably by this committee. It was then stricken from the calendar by Rule 1507.

To reinstate the prohibition against binding arbitration in certain insurance contracts the KBA proposed and supports HB 2593.

Besides being an unintended consequence, the prohibition against binding arbitration in insurance contracts was supported by case law. The Kansas Supreme Court in the case of *Tommie L. Friday v. Trinity Universal of Kansas* (262 Kan. 347 (1997)) upheld the validity of the prohibition in K.S.A. 5-401, ruling that a binding appraisal provision in a contract of

insurance looked exactly like an arbitration provision and therefore was invalid under K.S.A. 5-401. The court also found that the arbitration provision was not preempted by the *Federal Arbitration Act* (9 U.S.C.A section 1) because the *McCarran-Ferguson Act* (15 U.S.C Section 1011 et seq.) permitted the states the exclusive right to regulate the business of insurance. McCarran-Ferguson is often referred to as a reverse preemption law, allowing states to regulate the business of insurance, rather than federal law.

Missouri retained its prohibition against arbitration clauses in insurance contracts (R.S.Mo 435.350), which reads “A written agreement to submit any existing controversy to arbitration or a provision in a written contract, **except contracts of insurance and contracts of adhesion**, to submit to arbitration any controversy... between the parties is valid, enforceable, and irrevocable...”. This law in Missouri has been in effect since 1996.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 5,500 members include lawyers, judges, law students, paralegal students and paralegals. www.ksbar.org