

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 12, 2008 in Room 313-S of the Capitol.

All members were present except:

Representative Dick Proehl - excused
Representative Joe Patton - excused
Representative Paul Davis - excused

Committee staff present:

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

Conferees appearing before the committee:

Tom Whitaker, Kansas Motor Carriers Association
Will Larson, Kansas Association of Insurance Agents, Kansas Contractors Association & Associated General Contractors of Kansas
Gus Meyer, Associated General Contractors of Kansas City
Dan Haake, Haake Foundations, Inc.
Bill Miller, American Subcontractors Association
Brent Moore, OXY USA & Kansas Petroleum Council
Pat Barns, General Counsel, Kansas Automobile Dealers Association
David Dayvault, Kansas Independent Oil & Gas Association

The hearing on **SB 379 - indemnification clauses**, was opened.

Tom Whitaker, Kansas Motor Carriers Association, spoke in support of **HB 2262**, with a suggested technical amendment. (Attachment #1) Currently, shippers are pressuring motor carriers to sign contracts which indemnify and hold harmless the shippers of any responsibility. The motor carriers have no choice than to sign the contracts if they want to provide service.

Will Larson, Kansas Association of Insurance Agents, Kansas Contractors Association & Associated General Contractors of Kansas, appeared before the committee as a proponent of **SB 379**. The bill simply requires that each company be responsible for their own negligence or fault. It's important to maintain the central concept of the subject, and that if a compromise is reached it must be consistent with the law in Kansas. (Attachment #2)

Gus Meyer, Associated General Contractors of Kansas City, expressed his concern with the unfair shift of liability that insurance companies exclude coverage for these clauses. Contractors are forced to put their companies on the line thus placing the employees and their families also at risk. (Attachment #3)

Dan Haake, Haake Foundations, appeared in support of any bill that would limit indemnification clauses. If these types of contracts continue, companies will have to start carrying additional insurance. He strongly endorsed all businesses be responsible for their own negligence and carry insurance for themselves. (Attachment #4)

Bill Miller, American Subcontractors Association, commented that bills, closely to **SB 379**, have passed in Oklahoma, Colorado, New Mexico and one legislative house in Missouri. (Attachment #5)

Written testimony in support of the bill was provided by Western Extralite Company (Attachment #6)

Brent Moore, OXY USA & Kansas Petroleum Council, appeared before the committee to oppose **SB 379**. There needs to be significant abuses brought to the committee before such legislation is adopted. The U.S. has adopted the "freedom of contracts" and if this bill is going to pass it should be narrowly drafted to apply only in limited circumstances.

CONTINUATION SHEET

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However, he did propose two amendments that they would support with regard to the definition of “construction contracts”. If either amendment was adopted, they would withdraw their opposition to the bill. (Attachment #7)

David Dayvault, Kansas Independent Oil & Gas Association, appeared before the committee in opposition of the bill. Indemnification clauses are used in just about every contract they sign. There are generally five types of agreements used in the oil & gas industry:

- Operating Agreement in which all parties share proportionately by the owners.
- Purchase Properties Agreement
- Servicing Contracts such as Master Service Agreement
- Payment of Interest Owners for Crude Oil Purchases Agreements
- Drilling Contract Agreements

They support using these types of agreements because of the risk involved in oil and gas operations. It reduces litigation and the associated costs with it. Both parties understand these types of agreements and are entering into it willingly. (Attachment #8)

Pat Barns, General Counsel, Kansas Automobile Dealers Association, appeared before the committee. They believe in the freedom of contract and how it applies to a large number of situations. In their industry they have owners who are selling out their ownership and wanting to retire. They do not want to be held responsible for negligence of the dealership after they have left. (Attachment #9)

Written testimony, in opposition to the bill, was provided by the Coalition to Preserve the Freedom of Contract and American Legislative Exchange Council. (Attachments #10 & 11)

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for March 13, 2008.