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To: Senator Tim Owens, Chairman
Members of the Senate Judiciary Committee

From: Rex Sharp, Gunderson Sharp & Walke, LLP, Prairie Village
On Behalf of the Kansas Association for Justice

Date: February 8, 2012

RE: SB 359 Interest on judgments in civil actions (OPPOSED)

The Kansas Association for Justice (KSAJ) is a professional association of attorneys. KSAJ opposes SB 359 because the current law regarding judgment interest works well. SB 359 will not expedite litigation and benefits the party who faces judgment, instead of protecting the party who awaits justice.

K.S.A. 16-201, the current judgment interest statute, was last amended in 1980. Prior to that, it was not amended since its enactment in 1889. It has stood the test of time and has served litigants and the courts well.

Under the current law, parties can negotiate an interest rate. However, when there is no agreement between the parties (in other words *involuntary creditors*) the interest rate is ten percent (10%) per annum, calculated as simple interest.

SB 359 implements a floating interest rate scheme that requires greater governmental administration and intrusion. Instead of a fixed, predictable rate, SB 359 requires the secretary of state to recalculate and publish a fluctuating interest rate every year.

SB 359 punishes a victorious plaintiff. Lowering the interest rate to 4% above the discount rate would allow the judgment debtor (defendant) to effectively borrow money from the judgment creditor (plaintiff) at a rate lower than the judgment debtor could reasonably expect to obtain from a lending institution. It is unlikely any judgment creditor would give his capital away, especially if he has endured significant cost and years of litigation to resolve a dispute.

A fixed 10 percent interest rate is reasonable and encourages settlement. Plaintiffs are unlikely to continue to incur litigation costs and delay settlement in order to obtain greater judgment

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interest. However, reducing judgment interest costs may be a factor in bringing reluctant defendants to the bargaining table.

New section (b) is unnecessary because it addresses situations that are already addressed elsewhere in the law. Kansas law is clear that prejudgment interest does not apply to unliquidated damages.

SB 359 does not encourage the resolution of cases, it simply complicates them.

For all of these reasons, the Kansas Association for Justice respectfully requests that the committee take no further action on SB 359.