

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 26, 2005 in Room 313-S of the Capitol.

All members were present except:  
Michael Peterson- excused

Committee staff present:  
Jerry Ann Donaldson, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:  
Representative Eric Carter  
Jerry Slaughter, Kansas Medical Society  
Kevin Fowler, Kansas Health Care Association  
Will Larson, General Counsel for Kansas Association of Insurance Agents  
Marlee Carpenter, Kansas Chamber of Commerce & Industry  
Jim Clark, Kansas Bar Association  
LJ Leatherman, Kansas Trial Lawyers Association  
Wil Leiker, AFL- CIO

The hearing on **HB 2016 - arbitrations; validity of agreement; can apply to employer employee contracts and tort claims**, was opened.

Representative Eric Carter, explained that **HB 2016** addresses the issue of arbitration agreements. When Kansas adopted the Uniform Arbitration Act they departed from the Act by adding three prohibitions on the use of arbitration agreements, tort claims, insurance and employment agreements. Since that time the Legislature has clarified that arbitration is permitted for existing tort claims and to allow arbitration agreements between insurance companies are permissible. (Attachment 1)

The Federal Arbitration Act has been held to preempt state statutes that are inconsistent with the purpose of the Federal Act. Representative Carter cited the following U.S. Supreme Court cases:

*Southland Corp. v. Keating*  
*Allied-Bruce Terminix Cos v. Dobson*

The Kansas appellate courts have followed the U.S. Supreme Court lead by holding that the Federal Arbitration Act preempts Kansas statutes prohibiting arbitration of certain claims. The following cases were cited:

*Circuit City Stores, Inc. v. Adam*  
*Biomat, Inc. v. Sampson*  
*Durkin v. Cigna Property & Casualty Corp.*

Jerry Slaughter, Kansas Medical Society, appeared as a proponent of the proposed bill because it would be an alternative that could be more efficient and less costly than using the current court system. (Attachment 2)

Kevin Fowler, Kansas Health Care Association, appeared in support of the proposed bill for practical reasons stating that nursing companies in Kansas that are involved interstate commerce can lawfully enter into written agreements that require arbitration while intrastate companies are not allowed to do so. The proposed bill would level the playing field for businesses operating in Kansas. He informed the committee that Oklahoma, Colorado and Missouri all have arbitration statutes which exempt tort claims. (Attachment 3)

Will Larson, General Counsel for Kansas Association of Insurance Agents, commented that the Insurance Agents in general support eliminating the exclusion of arbitration in tort actions. He believes that the majority of cases would not be affected by the change because there is not a contractual relationship. If the bill was passed into law he believes that insurance companies would be more willing to write nursing home liability. (Attachment 4)

## CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 26, 2005 in Room 313-S of the Capitol.

Marlee Carpenter, Kansas Chamber of Commerce & Industry, stated that 60% of their respondents stated that the current lawsuit system is a deterrent to business growth and 83% stated that frivolous lawsuits increase the cost of doing business in the state. (Attachment 5)

The following conferees did not appear before the committee but requested that their written testimony in support of the bill be distributed and placed in the committee minutes:

Kansas Grain & Feed/Kansas Agribusiness Retailers (Attachment 6)

Kansas Cooperative Council (Attachment 7)

Kansas Association of Homes & Services for the Aging (Attachment 8)

Jim Clark, Kansas Bar Association, appeared as an opponent of the proposed bill because it curtails access to the court system and mandates arbitration. With the passage of the bill it would cause the playing fields to not be level. (Attachment 9)

LJ Leatherman, Kansas Trial Lawyers Association, agreed that arbitration is an area of law that the Federal Government has spoken in favor of it. If states try to regulate arbitration through statute, they get in trouble. An easier way to deal with the issue is by public policy, by taking it outside of arbitration, so no one can waive a constitutional right in a contract. This would take the State outside the preemption. (Attachment 10) There is a big push to cut back on jury trials because of the expense. However, we continue to use jury trials because every citizen deserves the right to have a jury trial and use the court system.

Mr. Leatherman commented that the current cap system states that any action brought, then it gives a statutory site to a reference of negligence. He questioned that if these are subject to arbitration then does the cap go away, because cases that are not tied to negligence are not limited under the cap.

Wil Leiker, AFL- CIO, appeared as an opponent of the bill. He agreed with the concept of arbitration, but believes that the bill would be unfair to the average individual and supported the adoption of the Kansas Trial Lawyers Amendment. (Attachment 11)

Committee discussion followed. Representative Carter once again reiterated that the arbitration language was clean up language and that Federal Law preempts states. While Mr. Fowler believed the bill to be addressing public policy.

Chairman O'Neal believed that arbitration would be mandated because if one wants to be admitted to a specific facility they would have to sign the arbitration papers, otherwise they would not be admitted. Mr. Fowler responded that he didn't believe that it would be mandatory but only a option.

The Chairman left the hearing on **HB 2016** opened.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for Monday, January 31, 2005 at 3:30 p.m. in room 313-S.