

Senate considers bill limiting Kansans' access to the courts

A Senate bill to make the loser of a lawsuit liable for both parties' attorneys' fees could keep poor and middle-income Kansans, small businesses and nonprofit organizations from pursuing meritorious court cases.

That information came from the Kansas Trial Lawyers Association late last week.

The "Loser Pays" provision in Senate Bill 420 would require the person bringing the suit to pay attorney fees for both sides in addition to court costs after a settlement offer, if the verdict is more favorable to the defendant than the offer rejected by the plaintiff, said Matthew Bretz, Hutchinson and vice-president of the association.

The bill was passed by the Senate Judiciary Committee on Thurs-

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Matthew Bretz, Association vice-president

day and now will head to the full Senate for consideration.

"No proponents spoke in favor of the bill when the committee heard testimony Feb. 10, he said, but the association opposed the proposal.

In the association's opinion, Bretz said, the bill abandons the long-standing Kansas and American traditions of having each party of a lawsuit responsible for his or

her own legal fees.

Instead, the bill would institute "the English Rule," often called "Loser Pays," which requires the losing party to pay both sides' legal costs in some cases.

Bretz said such a practice deters anyone who is unable to risk financial ruin from accessing the courts, regardless of the merits of their claims.

"This effectively limits access to the judicial system to those who have the financial fortitude or insurance to allow them to take the risk of an unfavorable outcome," he said.

"Those who need access to the judicial system the most – the poor, disabled or injured – would lose access to the judicial system for resolution of disputes."

The bill would affect such cases as divorce, child custody, protection from abuse, civil rights claims, wrongful death, fraud, professional negligence, eminent domain, employment disputes, real estate disputes, foreclosures, business contracts, liens and others.

Among the civil and domestic relations cases filed in Kansas during fiscal year 2003, 61 percent of

them involved domestic relations, according to the Annual Report of the Courts of Kansas.

"Kansans should be concerned that their elected officials would even consider legislation that jeopardizes their fundamental right to trial by jury," said Terry Humphrey, the association's executive director.

"The right to a jury trial is the basis of our freedom and democracy. We encourage Kansans to contact their senator and urge them to protect their judicial rights by opposing SB 420."

The Florida Legislature repealed "loser pays" legislation for medical malpractice actions in 1985, five years after enacting it.

"The middle-income individual with assets may be deterred from

filing a malpractice suit, regardless of the merit of his claim, because of the possibility of losing the suit and becoming liable for the substantial legal fees of the prevailing party," a Florida Senate Commerce Committee staff analysis noted.

More information about SB 420 and other legislation affecting the civil justice system can be found on the the Kansas Trial Lawyers Association Legislative Action Center at www.ktla.org.

The association is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system.

For other questions, call the association at (785) 232-7756 or fax information to (785) 232-7730.

One senator takes issue with tardy colleagues

By **BILL DRAPER**

Associated Press Writer
TOPEKA (AP) — Senators agree that sometimes they can't make it to meetings on time. They even have a phrase — "on Senate time" — to describe any meeting that starts late.

But the chairman of the Senate Judiciary Committee says showing up late shouldn't be an everyday occurrence for members of that panel.

Sen. John Vratil, R-Leawood, says perpetual tardiness shows a lack of etiquette and detracts from the work that needs to be done. Vratil was so frustrated recently that he took an unusual — and perhaps unprecedented — step. After five members of the panel were at least 10 minutes late for a meeting, Vratil ordered the committee's secretary to start recording latecomers' arrival times. Those times are now part of the panel's official record.

Among those who sauntered in late the day Vratil declared the policy was the normally prompt Sen. Kay O'Connor, who arrived for the 9:30 a.m. meeting at 9:53 a.m.

O'Connor, R-Olathe, apologized and explained she was delayed by a phone call from a constituent.

"I understand people on committees have other commitments," Vratil said later in an interview.

"I try to be understanding because it happens to me, too."

"My concern is when people are 15 and 20 minutes late every day," he added. "You don't have unexpected occurrences every day."

But Sen. David Haley, D-Kansas City, doesn't see being late as such a big deal. He admits that he's probably the most consistently tardy legislator in Statehouse, but that doesn't mean he's not getting things done.

"I've never been procedurally correct," Haley said in an interview. "Mine is a lifestyle of procrastination. But it's also a lifestyle of productivity."

Besides, said Senate Minority Leader Anthony Hensley, D-Topeka, there are a lot of demands on the time of the 10 Democrats in the 40-member Senate.

There must be at least one Democrat on each of the chamber's 15 standing committees, so that the members of the minority party are sometimes late because they have heavy committee schedules. Haley is often the last Judiciary Committee member to arrive. On the day O'Connor was late, Haley walked in at 9:57 a.m. but was unapologetic.

"Being productive while you are here is more important than being there on time," Haley said later. "I believe the reason I was elected and how I keep getting re-elected is that, unlike people who attend meetings beginning to end and have nothing to say, I am probably one of the more active legislators here."

Attorney general looks at foster care deaths

TOPEKA (AP) — Kansas Attorney General Phill Kline is proposing measures that would scrutinize the deaths of children in the foster care system who die from abuse or neglect.

Under his proposal, the state would hire an independent investigator to review the deaths of chil-

dren who are in state custody or who had been in foster care or the juvenile-justice system within six months of their deaths.

Kline said the investigator would determine whether the actions of state child-welfare officials contributed to harming the children. Those findings would be reported

to a legislative oversight committee.

"This is a significant step in the right direction," he said.

"I believe our government needs to be as accountable and as transparent as possible."

The proposal comes on the heels of the December 2002 murder of

Brian Edgar, a 9-year-old former foster child whose adoptive parents bound him with duct tape and left him to suffocate.

The adoptive parents and baby sitter were convicted of murder and sentenced to life in prison.

Many child-welfare advocates have lobbied for greater public disclosure, saying openness would improve social services systems designed to protect children.

Raytheon opposes Sedgwick landfill plan

WICHITA (AP) — Raytheon Aircraft said it opposes a proposed plan by Sedgwick County to build a landfill near Furley because it would threaten the safety and future of the company.

Trash from a landfill north of Raytheon's runway would attract birds that could wreck planes, said Wayne Wallace, a company vice president.

"We are going to proceed with whatever actions are necessary in order to keep a landfill out of Furley," he said. "The safety issue posed by this landfill would affect what aircraft we manufacture here."

Raytheon, which employs 6,200 workers, is the county's third-largest employer.

County commissioners last week directed County Manager Bill Buchanan to make a bid to develop a landfill on land the city owns near Furley.

Commissioner Dave Unruh said the county needs to be sensitive to Raytheon's worries.

"Frankly, they are a big partner in the county economy and it's important that when they're concerned, we need to be concerned," he said.

Other commissioners, however, said they needed more information.

A majority of the proposed landfill area is within five miles of

Raytheon's airport, and the Federal Aviation Administration would have to review the plan because of bird hazards.

Raytheon says hitting a bird could cause millions of dollars in damage to a plane and delay production of new jets.

Raytheon sees more than 21,000 departures and arrivals a year, Wallace said.

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