OLD TOWN | 218 NORTH MOSLEY | WICHITA KANSAS 67202 | TEL 316.266.4058 | FAX 316.462.5566

GRAYBILL & HAZLEWOOD L.L.C.
LAWYERS

N. Russell Hazlewood
russ@graybillhazlewood.com

January 27, 2026

To the House Judiciary Committee
Rep. Susan Humphries, Chair

Re: HB 2351 (Proponent)

Dear Chair Humphries and Committee Members,

I am here to testify in support of HB 2351.

I am a lawyer with the firm of Graybill & Hazlewood, L.L.C., in Wichita. For twenty-eight years, I have represented Kansas property owners in disputes with insurance companies. My clients own hundreds of insured homes, farms, and commercial buildings across this state. They range from families of modest means to farmers, small business owners, real estate investors, and major commercial enterprises. What unites them is their reliance on insurance as a safety net against unexpected losses, and their frustration when insurers fail to honor their obligations.

HB 2351 restores a protection that Kansas property owners had for over 45 years before it was accidentally removed in 2018. The bill is simple: it says that insurance companies cannot force policyholders into mandatory arbitration or appraisal as the only way to resolve a claim dispute. Policyholders would retain their right to go to court. Importantly, the bill does *not* prohibit arbitration. It simply requires that both parties agree to it voluntarily when a dispute arises, rather than allowing insurers to impose it through take-it-or-leave-it policy language.

Let me briefly explain what "appraisal" means in this context, since it differs from a home appraisal. When a property owner and an insurance company disagree about the value of a covered loss, many insurance policies contain an "appraisal clause" that requires each side to hire an appraiser. If the two appraisers cannot agree, they select an "umpire" to break the tie. The decision agreed by any two on the amount of the loss is supposed to be binding. Kansas courts have long held that this process is a form of arbitration. The problem is that the property owner must pay for their own appraiser and half the umpire's fee, often thousands of dollars, with no guarantee of a fair outcome and no ability to recover those costs even if they win.

`

For as long as I had practiced prior to 2018, Kansas law prohibited insurance companies from requiring policyholders to submit to mandatory appraisal or arbitration. Appraisal was available only if both sides agreed to use it after a dispute arose. This made sense: arbitration works best when both parties have equal bargaining power and voluntarily choose that path. But insurance policies are not negotiated contracts. They are drafted entirely by the insurance company. The policyholder either accepts the terms or goes without coverage. Most policyholders have never read their policies, and even with the assistance of a lawyer, obtaining a complete copy of a policy from an agent can be an ordeal. Allowing insurers to bury mandatory arbitration clauses in these one-sided contracts strips property owners of their right to seek justice in court, a right they never knowingly gave up.

You may wonder why Kansas can regulate this at all, given that federal law generally favors arbitration. The answer is the McCarran-Ferguson Act, a 1945 federal law that reserves the regulation of insurance to the states. Because of this law, Kansas has the authority to decide whether mandatory arbitration clauses belong in insurance contracts sold to Kansans. For decades, Kansas decided they did not. That changed by accident in 2018.

In 2018, the Kansas Bar Association requested legislation to update the state's Uniform Arbitration Act. The new version was a lengthy, technical update, fourteen pages of statutory language. In the process, a single paragraph exempting insurance contracts was inadvertently left out. There was no testimony about removing the exemption. There was no policy debate. The change happened through a conference committee with no hearing in the Senate. The KBA itself did not realize the omission until a month after the new law took effect, and has sought to correct its error ever since.

This committee wisely referred the issue to the Kansas Judicial Council for study. The Council's Civil Code Advisory Committee, which includes district court judges, attorneys from across the state, and law school faculty, conducted a thorough review. They heard from proponents and opponents, examined the law in other states, and reviewed the legislative history. **On December 6, 2024, the Judicial Council approved the Committee's report, which recommended by a 9-2 vote that the insurance exception be restored.** The Committee found no evidence that the legislature ever intended to change this longstanding policy. It concluded that restoring the exception "promotes the evenhanded, predictable, and consistent development of legal principles." HB 2351 reflects the Committee's recommended language.

Why does this matter to Kansas families, and businesses? Because mandatory appraisal does not work the way insurers claim. Let me give you two real examples from my practice.

Tamera Anwar, who is testifying as a proponent, owns a farmhouse in Pottawatomie County. In December 2021, her home was damaged by a severe storm while she was inside caring for her wheelchair-bound mother. Her insurer paid $7,081 on the claim. Through the appraisal process, the loss was later valued at $182,060. To participate in appraisal, Mrs. Anwar paid approximately $6,000 for her appraiser and her share of the umpire's fee. Those costs were not recoverable. Despite the appraisal result, the insurer declined to pay the award. Mrs. Anwar was required to retain counsel and pursue litigation to obtain payment. Nearly three years passed from the date of loss before she ultimately received the proceeds owed under her policy.

Joyce Hirt of Johnson County is submitting written testimony in support of this bill. Her home sustained storm damage in March 2023. Her insurer paid $755 on the claim. Mrs. Hirt proceeded to appraisal, incurring $1,500 in appraiser fees. In December 2023, the appraisers agreed the amount of loss was $22,500. This was not the result of an umpire decision; the insurer's appraiser agreed to the valuation. The insurer acknowledged the appraisal award and indicated payment would be made, but payment was not issued. Litigation was filed in August 2024. After approximately fifteen months of litigation, Mrs. Hirt received payment—more than two and a half years after the loss and nearly two years after the appraisal determination. The appraisal costs she incurred were not recovered.

These are not isolated cases. Since my testimony in 2024, I have continued to hear from Kansas property owners who won in appraisal and still needed to hire lawyers and sue to collect. The appraisal process, which insurers describe as faster and cheaper than litigation, becomes just another obstacle, an expensive one, before property owners can access the courts they should have been able to use from the start.

The fundamental unfairness is this: from the insurer's perspective, mandatory appraisal is "heads I win, tails you lose." If the insurer wins, the policyholder is bound by the result. But if the policyholder wins, the insurer can simply refuse to pay and force more litigation. The policyholder bears the cost of the appraisal process, often as much as $5,000 to $10,000 or more, and cannot recover those costs even with a favorable outcome. Meanwhile, the property sits unrepaired, sometimes for years.

Kansas would not be an outlier in restoring this protection. **Our neighbors in Missouri, Nebraska, and Oklahoma all prohibit mandatory arbitration in insurance contracts**, and **roughly half the states have similar laws.** These states use various approaches: some place the restriction in their arbitration statutes, others in their insurance codes, and still others through administrative regulations. But the policy goal is the same: ensuring that policyholders are not forced out of court by provisions they had no power to negotiate. The protection existed in Kansas for 45 years and was part of our common law before that. We are simply asking to restore what Kansans had before the 2018 accident.

I want to be clear about what this bill does *not* do. It does not prevent insurance companies and policyholders from agreeing to arbitrate a dispute after it arises. Voluntary arbitration remains fully available. It does not affect contracts between insurance companies, including reinsurance. It does not create any new cause of action or expand liability. And because it applies only to contracts entered into or renewed after July 1, 2025, it does not disturb any existing policies. It simply ensures that Kansas property owners retain the choice of whether to go to court or to arbitrate, a choice that should belong to both parties, not just the insurance company.

The Judicial Council has studied this issue thoroughly and recommends restoration of the exception. I respectfully request that the committee pass HB 2351 and restore the rights that Kansas property owners had for nearly half a century.

Thank you for the opportunity to appear and present my testimony. I will be glad to address any questions or concerns.

Very truly yours,

GRAYBILL & HAZLEWOOD L.L.C.

N. Russell Hazlewood

NRH