

TESTIMONY ON HOUSE BILL 2306

BY

WILLIAM A. LARSON

My name is Will Larson. I am a lawyer and the senior partner in the law firm of Gehrt and Roberts Chartered. I represent the Kansas Association of Insurance Agents, but more importantly for the purposes of testifying on this Bill, 90% of my practice and 99% of my law firms practice is what's called insurance defense work. In other words insurance companies hire us the defend people and companies that get sued.

Over the course of the years my law firm has defended numerous cases against nursing homes. I personally have handled several of these cases. Currently my firm is defending four nursing home cases. I can attest to the fact that most of the insurance companies we represent either have are in the process of pulling out of the nursing home market because of the pervasive litigation against nursing homes. It is becoming increasingly difficult to find insurance companies that are willing to write nursing homes.

One of the most difficult and costly matters that has arisen in every nursing home case I have defended is having to deal with the prior inspections or surveys of the nursing home. In every case I have defended there have been prior surveys that have noted some deficiencies. In none of the cases that I have defended have any of the deficiencies ever dealt directly with the resident who was bringing the suit or on whose behalf the suit was brought.

My impression is that typically the plaintiff's attorney's strategy in nursing home cases is to try and create the impression that nursing homes are simply out to make money at the expense of resident care. It has been my experience that, in fact, this is not the case but plaintiff's attorney's attempt to use the prior surveys to bolster this argument.

In all the cases I have defended I do not believe that there was virtually anything in the prior surveys that was truly relevant to the plaintiff's case. But even if I am successful in keeping the surveys from coming into evidence it is very expensive and time consuming. In the last few cases I have defended I have actually hired a consultant, in addition to expert witnesses, to do nothing but interpret the prior surveys and to advise us how best to deal with them.

House Bill 2306 would prohibit the use of prior surveys in the types of civil cases I defend. I think this would be of significant help in defending nursing homes. I urge the committee to recommend passage of the Bill.