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February 9, 2024

To the House Judiciary Committee
Rep. Susan Humphries, Chair

Re: HB 2593 (Proponent)

Dear Chair Humphries and Committee Members,

I am here to testify in support of HB 2593.

I am a lawyer with the firm of Graybill & Hazlewood, L.L.C., in Wichita. For twenty-six years, I have had the privilege of representing the interests of Kansas policyholders in disputes with insurance companies. My current and former clients own hundreds of, or perhaps more than a thousand, insured homes, farms, and commercial buildings in this state. This diverse group ranges from individuals of limited means to major real estate firms, investors, and developers, retailers, manufacturing companies, and warehouse owners, all united as insurance consumers and by a common reliance on their insurance policies as a safety net against unexpected losses. Unfortunately, this protective net is often undermined by insurers' practices of denial, delay, and underpayment of claims. Until recently, the ability to seek remedies in our courts has been a pillar of justice for Kansas policyholders, reinforced by a state law that barred mandatory arbitration clauses (including mandatory appraisal clauses) in insurance agreements. Recently, this vital safeguard was inadvertently repealed, and I strongly advocate for the passage of HB 2593 in order to restore it.

For as long as I have practiced, Kansas law has prohibited mandatory appraisal clauses in insurance contracts, recognizing that losses should be submitted to appraisal only upon mutual agreement of the insurer and the policyholder. (That public policy decision was reserved by the McCarran–Ferguson Act, 15 U.S.C. §§ 1011-1015, a federal law that exempts the business of insurance from most federal regulation). The ban on mandatory arbitration clauses went beyond a simple regulatory measure; it acted as a crucial defense for policyholders in an environment where insurance companies hold a disproportionate amount of power.

The accidental repeal of the prohibition in 2018 represents a significant setback in our state's commitment to fairness and protection of Kansas insurance consumers. It opened the door for insurance companies to compel policyholders into a process that is biased, financially burdensome, and devoid of the procedural safeguards afforded by our court system.

The recent case involving our client, Tamara Anwar, highlights the pitfalls of the mandatory appraisal process now permitted because of the accidental repeal of the prior law. Despite obtaining a supposedly binding award in her favor, Mrs. Anwar was forced into further litigation, incurring thousands of dollars in additional costs and more than two years of delay. She first was compelled to file a lawsuit to have a judge appoint the umpire. Then, even after she obtained a favorable appraisal award, she was compelled to go back to court because the insurer refused to pay. Only through the court system could she recover what she was owed (although she could not recover the thousands of dollars and years wasted on the appraisal process). Her case is a stark illustration of how insurers can exploit the appraisal process to the detriment of policyholders, undermining the very principle of insurance as protection.

Appraisal of an insurance dispute might seem like a straightforward way to resolve disagreements over property damage valuations, but it comes with significant drawbacks that can disadvantage the policyholder:

First, the financial burden placed on the property owner is considerable. Appraisal requires the policyholder to hire their own appraiser and share the cost of an umpire if there's a disagreement. This upfront investment, which can run into thousands of dollars*, is not recoverable*, even if the appraisal outcome is favorable to the policyholder. What that means is the policyholder could end up paying out more for the appraisal process than they gain from any adjustment in the damage valuation. For example, if you have a $10,000 roof claim, and you have to pay $6,000 for the appraiser and umpire, it doesn't make financial sense to pursue the claim, even though you are entitled to coverage under the policy. Some policyholders may not even have the option, if they lack the financial resources to pay for the appraisal.

Second, the appraisal process lacks a defined timeline, and it can potentially drag on for months or even years. During this time, the policyholder must cope with the unresolved damage, further compounding their stress and financial strain. The indefinite timeline can lead to significant delays in repairing the property, as well as additional damage resulting from that delay, leaving the owner in a prolonged state of uncertainty and inconvenience.

Third, appraisal lacks due process. The only rule is that there are no rules. Three people do whatever they do, without a formal hearing or filtering of evidence, and they pick a number.

Fourth, the policyholder has limited control over the final decision in the appraisal process. The choice of umpire, who has the final say, can often favor the insurance company due to their experience and established relationships within the industry. This inherent bias can skew the appraisal outcome in favor of the insurer, leaving the policyholder with a resolution that may not fully reflect the true extent of their losses.

Finally, from the insurer's perspective, the appraisal process is "**heads I win, tails you lose.**" If the insurer wins, the policyholder is stuck with the outcome. However, if, as in Mrs. Anwar's case, the policyholder gets a favorable award, the insurer may still reject the award and assert policy defenses – including denial of the claim altogether! Thus, the policyholder is back to where they started, in need of a lawyer who understands the process.

Insurance contracts are drafted by insurers to favor insurers. They offer policyholders little to no negotiation leverage, emphasizing the need for statutory safeguards against mandatory appraisal. The accidental repeal of Kansas' statute necessitates urgent legislative action. I respectfully request the committee to pass HB 2593, which will restore the prohibition against mandatory arbitration clauses in insurance contracts, and reestablish insurance as a genuine safety net for all Kansans.

Thank you for the opportunity to appear and present my testimony today.

Very truly yours,

GRAYBILL & HAZLEWOOD L.L.C.

N. Russell Hazlewood

NRH