

Approved: February 2, 1993
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson William Bryant at 3:30 p.m. on January 26, 1993 in Room 527-S of the Capitol.

All members were present except: Representative Standifer, Excused due to illness

Committee staff present: William Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee:

Dick Brock, Insurance Department
Richard Mason, Kansas Trial Lawyers Association
David Ross, Kansas Association of Life Underwriters
Jim Maag, Kansas Bankers Association

Others attending: See attached list

Hearing on HB 2075:

Dick Brock of the Insurance Department explained this bill which would increase the initial application fee for an insurance agent's license from \$20 to \$30. The additional monies will offset an increase in the charge the Kansas Bureau of Investigation makes for conducting a records check on an individual applicant's license request (Attachment 1). The fee was last increased in 1988.

Hearing on HB 2080:

Dick Brock appeared for the Insurance Department and explained the bill which would clarify the reasons an insurance agent may be penalized of have his or her license suspended or revoked. The reasons would be conviction of felony or fraud without the Department having to make judgments on the revocations or suspensions (Attachment 2).

Hearing on HB 2082:

Dick Brock, on behalf of the Insurance Department, explained that other than editorial changes the bill would raise the application and annual fee for registering an automobile club agent from \$2.00 to \$15.00. The fee for the 450-500 agents was set in 1967. The KBI now charges \$10.00 per applicant for performing records checks as required by law (Attachment 3).

Hearing on HB 2074:

In explaining the bill as proposed by the Insurance Department, Dick Brock, the effect of current legislation is that persons injured in a work-related automobile accident and have both workers' compensation and personal injury protection benefits applicable to their injuries would receive whatever personal injury protection benefits are available less any amounts payable under the workers' compensation law. The entire amount of PIP benefits as purchased by the injured party would not be received under these circumstances. (Attachment 4). Persons purchasing PIP benefits now only receive 85% of their monthly wage. The bill is intended to change the law so a person in this situation would receive their actual wage loss or the total available from both workers' compensation and personal injury protection benefits, whichever is less. The bill would change the application of this provision of the no-fault law to offset the workers' compensation benefit against the actual losses of the injured party rather than apply the offset to the limit of the PIP. There will be an impact on automobile insurance rates.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 26, 1993.

Richard Mason, Kansas Trial Lawyers Association, presented written testimony to the Committee in support of the bill (Attachment 5). Their position is that when policyholders buy PIP insurance they assumed they would receive full compensation for losses suffered and that is what they are entitled to no matter what other compensation they receive. Coordination of workers compensation and PIP benefits should be accomplished by reducing PIP benefits by workers compensation benefits only to the extent necessary to prevent the worker's total benefits from exceeding his or her total lost wages.

David Ross, Kansas Association of Life Underwriters, asked for the introduction of legislation which would allow state employees to purchase whole life insurance through a payroll deduction plan (Attachment 6). The benefit of this plan would be that the insurance could be offered for a lower premium than through the private sector. No state employee survey has been made to determine if this is desired by employees and the plan would be optional but not offered as a cafeteria plan. A voluntary Advisory Council would be established to help set up the plan. Employees would not be contacted individually but enrollers would be available at certain times of the year.

Representative Kline moved for the introduction of this proposed bill into legislation. Representative Helgeson seconded the motion. Motion carried.

Jim Maag, Kansas Bankers Association, requested that a 65 year old law forbidding the use of compensation such as workers' compensation from being assigned or awarded, be amended to allow workers' compensation to be used as collateral for a loan (Attachment 7). Representative King moved that the bill request be introduced into legislation. Representative Neufeld seconded the motion. Motion carried.

The meeting was adjourned by the Chair at 4:30 p.m. The next meeting is scheduled for January 27, 1993.

GUEST LIST

COMMITTEE: Insurance - Banking

DATE: 1-26

[illegible]

Testimony on
House Bill No. 2075
by
Dick Brock
Kansas Insurance Department

House Bill No. 2075 proposes a \$10 increase in the initial application fee for an insurance agent's license. This would bring such fee to a total of \$30 which is a one time fee for agents and agencies.

The proposed increase will offset an increase in the charge the Kansas Bureau of Investigation makes for conducting a records check on individual applicants for an agent's license. This fee is now \$10 per applicant.

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& Insurance*

1-26-93

Attachment 1

Testimony on
House Bill No. 2080
by
Dick Brock
Kansas Insurance Department

House Bill No. 2080 restructures the statute which prescribes the reasons an insurance agent may be penalized or have his or her license suspended or revoked. Such restructuring is intended to clarify the statute by itemizing the reasons such action may be taken.

In addition to this editorial change, the more substantive amendment is the addition of a conviction for certain misdemeanors or felonies as a specific reason an agent's license may be suspended or revoked or some other allowable penalty assessed. Historically, the Department has had to determine that such convictions either adversely affected the agent's good business reputation so the person was no longer qualified to hold a license; or, determine that such conviction would result in the interests of the insurer or the insurable interests of the public not being properly served under such license. Rather than being required to approach suspension or revocation so indirectly because of a conviction relevant to the activities of an insurance agent, the statute and process would be much more straightforward if troublesome convictions could be directly addressed.

House Bill No. 2080 would make this change.

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Attachment 2
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Testimony on
House Bill No. 2082
by
Dick Brock
Kansas Insurance Department

Although House Bill No. 2082 contains some editorial revisions to K.S.A. 40-2508 to correct the format and make its provisions gender neutral, the only substantive change appears in new subsection (c) of the bill where the fee for registering an automobile club agent is increased from \$2 to \$15.

Automobile club agents are persons who solicit and sell memberships in auto clubs. Consequently, they are in constant contact with the public, making representations about the auto club services offered by their company, in some cases handling money and so forth. In addition, the statute requires the Commissioner to ascertain that the applicant is of good reputation before registering the person as an automobile club agent.

For these reasons, applicants for such registration are subjected to a records check by the Kansas Bureau of Investigation (KBI). The KBI now charges \$10 per applicant for performing this service. In addition, the current \$2 fee for registration has remained the same since the requirement was first enacted in 1967.

Since functions such as this should be somewhat close to being economically self-sustaining, we believe the increase is reasonable and the resulting charge is still quite modest.

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Attachment 3
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Testimony on
House Bill No. 2074

by

Dick Brock

Kansas Insurance Department

House Bill No. 2074 amends the Kansas Automobile Injury Reparations Act (No-Fault Law) to address a 1992 Kansas Supreme Court decision we believe is unnecessarily adverse to consumer interests.

When the no-fault law was drafted and enacted there was general agreement that the first party benefits -- Personal Injury Protection Benefits (PIP) -- required under the no-fault law should not duplicate benefits payable under workers' compensation. Furthermore, it was agreed that workers' compensation should continue to be the first source of compensation for a work-related injury. As a result, the law provided the offset appearing in section 2 of House Bill No. 2074 which says that benefits payable under any workers' compensation law will be credited against any personal injury protection benefits. However, what this language does is apply the workers' compensation benefit offset against the total amount of personal injury protection benefits payable instead of the actual loss sustained. Consequently, persons injured in a work-related automobile accident and have both workers' compensation and personal injury protection benefits applicable to their injuries would receive whatever personal injury protection benefits are available less any amounts payable under the workers' compensation law. For example, and these are just numbers I pulled out of the air for purposes of illustration, if at the time of the accident a person was receiving \$1,200 per month in salary -- entitled to \$900 per month in personal injury protection benefits and \$500 per month under workers' compensation, the person would receive the \$500 workers' compensation benefits plus \$400 under personal injury protection (i.e. \$900 PIP minus \$500 workers' compensation) or a total of \$900. In the example, this is \$300 less than the actual wages and \$400 of the total personal injury protection benefit is unused. Nevertheless, under the current statutory

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language and the Supreme Court decision, the injured party is not entitled to any of the unused personal injury protection benefit. Therefore, under the current law, the injured party would simply lose \$300 per month as a result of the injury even though he or she purchased sufficient PIP benefits to cover the entire difference.

House Bill No. 2074 is intended to change the law so a person in this situation would receive their actual wage loss or the total available from both workers' compensation and personal injury protection benefits whichever is less. Actually, we have tried to be certain of accomplishing this purpose by inserting the word "duplicative" in line 6/7 on page 2. By so doing, we believe the language then limits the workers' compensation offset to those payments that would otherwise produce a double recovery. Then, in an effort to be even more clear and more specific, we have added the sentence which appears on lines 13 through 18 of page 2 which is intended to relate the workers' compensation offset to actual losses for the specified benefits namely disability, rehabilitation or funeral benefits.

In the syllabus of the Supreme Court decision we referenced in drafting House Bill No. 2074 the court said, "... If the intent of the Kansas Legislature was to make workers compensation benefits primary, but to require the payment of any remaining uncompensated losses by auto insurers as excess coverage, that intent would be apparent somewhere in the language of the pertinent statutes. We find no suggestion that any such result is expected or intended."

We believe House Bill No. 2074 would clearly change the application of this provision of the no-fault law to offset the workers' compensation benefit against the actual losses of the injured party rather than apply the offset to the limit of the personal injury protection benefits. But, at the very least, it certainly should incorporate the suggestion of this intent which the court has said is now absent.

Finally, in making this proposal, we understand it will have a cost impact on automobile insurance premiums. We don't know how much impact

but anytime conditions or statutes change which result in claims being paid that were previously excluded, those additional costs will ultimately be reflected in premiums. However, sometimes we have to decide whether we want a lower priced product that leaves gaps in coverage or pay a little more and avoid such gaps. House Bill 2074 requires that kind of decision.



KANSAS TRIAL LAWYERS ASSOCIATION

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January 26, 1993

TO: House Financial Institutions and Insurance Committee
FROM: Richard Mason, Executive Director
SUBJECT: HB 2074 - PIP Benefits/Workers Compensation Offset

The Kansas Trial Lawyers Association supports the provisions of HB 2074 and respectfully encourages you to recommend it favorable for passage.

The need for HB 2074 arose with a decision by the Kansas Supreme Court in the 1992 case of House v. American Family Mutual Insurance Co. We believe the Court incorrectly ruled on the intent of the legislature when it created personal injury protection (PIP) benefits.

The issue is whether PIP benefits may be denied simply because the injury victim was partially compensated by workers compensation. We suggest the legislature intended full, not partial, compensation for losses suffered. Certainly this is the reason policyholders buy PIP insurance in the first place and we would hope this is the reason insurance companies collect a premium for this coverage.

The law regarding PIP benefit coverage as interpreted in this Court decision treats policyholders differently depending on their level of income. The more an individual makes, the more they receive under workers compensation and the less they would receive from PIP. We believe this is inconsistent and unfair.

Coordination of workers compensation and PIP benefits should be accomplished by reducing PIP benefits by workers compensation benefits only to the extent necessary to prevent the worker's total benefits from exceeding his or her total lost wages. Where the wage loss resulting from a vehicle accident in the course of employment is partially paid by workers compensation, that portion remaining unpaid is a loss which PIP benefits were intended to compensate. The insurer is required to pay the balance up to the maximum amount recoverable under the PIP coverage.

HB 2074 clearly states the public policy we believe was intended when no-fault auto insurance was enacted.

*Attachment 5
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Insurance
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AN ACT concerning establishment of the Kansas public employees whole life plan; relating to provisions thereof; prescribing powers, duties and functions for the secretary of administration.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Employee" means any person who is an elected or appointed officer or any employee of the state in the classified service or unclassified service under the Kansas civil service act, other than persons who are employed on a seasonal or temporary basis.

(b) "Employee whole life plan" means a plan developed and approved as provided in this act and under which an employee authorizes a payroll deduction of a specified amount for the purchase of permanent whole life insurance.

(c) "Participant" means an eligible employee who has entered into an agreement with the secretary as provided in section 4, authorizing a payroll deduction under the Kansas public employees whole life plan.

(d) "Secretary" means the secretary of administration.

(e) "State" means the state of Kansas and any state agency as defined in K.S.A. 75-3701 and amendments thereto.

Sec. 2. There is hereby established an advisory committee on employee whole life plans which shall be composed of the secretary, the director of the budget, the state commissioner of insurance and two employees appointed by the governor. The secretary shall be chairperson of the advisory committee and the advisory committee shall meet on call of the chairperson. The members of the advisory committee on employee whole life plans shall receive no compensation or expenses for service on the advisory committee. The advisory committee shall:

(a) Advise and consult with the secretary in the implementation and administration of this act;

(b) advise and approve of an employee whole life plan for employees;

(c) review and analyze the operation of the act and make recommendations to the secretary and the legislature for improvements therein;

(d) assist in the preparation of rules and regulations for the implementation and administration of this act;

(e) make recommendations as to when amounts of salary and compensation may be deducted under this act;

(f) approve or disapprove insurers or other contractors for participation in the Kansas public employees whole life plan; and

(g) recommend consultants to assist the secretary in the administration of the Kansas public employees whole life plan.

Sec. 3. (a) The secretary is authorized to establish an employee whole life plan in accordance with this act, subject to the approval of the advisory committee on employee whole life plans. The plan established by the secretary shall be known as the Kansas public employees whole life plan.

(b) The secretary may enter into an agreement with an approved insurer or other contracting party whereby benefits under

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Attachment 6*

the Kansas public employees whole life plan would be made available to participants who contract with the secretary for an employee whole life plan under section 4. In addition, the secretary may enter into an agreement with one qualified private firm for consolidated billing services, participant enrollment services, participant accounts and other services related to the administration of the Kansas public employees whole life plan.

(c) No significant costs shall be incurred by the state as a result of the administration of this act unless such costs are recovered by charging and collecting a service charge from all participants and in addition thereto or in lieu thereof, where the secretary has entered into an agreement with a qualified private firm under subsection (b), costs are recovered from such firm. The amount of any such significant costs incurred and to be recovered by the state shall be determined by the secretary.

(d) Subject to the approval of the advisory committee on employee whole life plans, the secretary is authorized to negotiate and enter into contracts with qualified insurers and other contracting parties for the purposes of establishing an employee whole life plan, including acquisition of actuarial and other services necessary therefor. The secretary shall advertise for employee whole life plan proposals, shall negotiate with firms or other contracting parties submitting such proposals and shall select from among those submitting such proposals the firm or other contracting party to contract with for purposes of establishing an employee whole life plan. Contracts entered into under this act shall not be subject to K.S.A. 75-3739 and amendments thereto.

(e) Implementation of the Kansas public employees whole life plan and any additions or deletions thereto shall be subject to approval of the secretary of administration to assure adequate data processing and accounting resources therefor.

Sec. 4. (a) The secretary is authorized to enter into a voluntary agreement with any employee whereby the secretary agrees to deduct each payroll period a portion of the employee's salary or compensation from the state in accordance with the Kansas public employees whole life plan. The agreement may require each participant to pay a service charge to defray all or part of any significant costs incurred and to be recovered by the state pursuant to subsection (c) of section 3, as a result of the administration of this act. Pursuant to this act and such agreements the secretary is authorized to deduct amounts authorized in such agreements from the salary or compensation of such employee each payroll period, as part of the system of regular payroll deduction.

(b) The Kansas public employees whole life plan shall exist and be in addition to, and shall not be a part of any retirement or pension system for employees. The state shall not be responsible for any loss incurred by an employee under the Kansas public employees whole life plan established and approved pursuant to this act.

(c) Any amount of the employee's salary or compensation that is deducted under such authorized agreement shall continue to be included as regular compensation for all purposes of computing retirement and pension benefits earned by any such employee.

(d) The secretary is hereby authorized to establish an employee whole life clearing fund in the state treasury in which shall be placed temporarily all compensation deducted in accordance with this act, as provided for in any agreement between an employee and the secretary.

Sec. 5. The secretary may adopt rules and regulations, in the manner provided in K.S.A. 75-3706 and amendments thereto for the implementation and administration of this act. The secretary shall maintain such accounts and records as are necessary and appropriate to the efficient operation of this act.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

WORKMEN'S COMPENSATION

44-514. Payments not assignable. No claim for compensation, or compensation agreed upon, awarded, adjudged, or paid, shall be assignable or subject to levy, execution, attachment, garnishment, or any other remedy or procedure for the recovery or collection of a debt, ~~and this exemption cannot be waived.~~

History: L. 1927, ch. 232, § 14; June 30.

This provision shall not apply to any process of law obtained by virtue of a lien given by the consent of a recipient of compensation.

Attachment 7

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