

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 27, 1993 in Room 527-S of the Capitol.

All members were present except:

Representative Carol Dawson, Excused
Representative Vernon Correll, Excused

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

Conferees appearing before the committee:

Joe Furjanic, Kansas Chiropractors Association
Bill Sneed, American Investors Life Investment Company

Others attending: See attached list

Discussion and final action on HB 2078:

This bill would allow for the Insurance Commissioner to petition the court for the right to sell the corporate shell of an insolvent insurance company. The assets would be added to the estate of the company. Representative King moved for the bill to be reported favorably. The motion was seconded by Representative Cornfield. Motion carried.

Discussion and final action on HB 2076:

This bill would allow a smaller company to merge with a larger company without the necessity of policyholders of the smaller company voting for the merger. The larger company must have capital in excess of 25 times greater than the smaller company. Representative Crabb moved that the bill be reported favorably. The motion was seconded by Representative Cornfield. Motion carried.

Discussion and final action on HB 2079:

This bill would allow an impaired company to be merged with a larger financially sound company without the policyholders of the larger company being required to vote for the merger. This merger would require the approval of the Insurance Commissioner. Representative King moved that the bill be reported favorably. Representative Cox seconded the motion. Motion carried.

Discussion and final action on HB 2080:

This bill would authorize the Insurance Commissioner to suspend or revoke the license of an insurance agent found guilty of felony or fraud. Representative Cornfield moved that the bill be passed favorably to the Consent Calendar. The motion was seconded by Representative Gilbert. Motion carried.

Discussion and final action on HB 2075:

This bill would increase the application fee for an insurance agent from \$20 to \$30 due to the increase in the cost of the KBI records check. Representative Cox moved that the bill be passed favorably. Representative Crabb seconded the motion. Motion carried.

Discussion and final action on HB 2082:

This bill would raise the annual fee from \$2 which was established in 1967 to \$15 for automobile clubs. The

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 27, 1993.

fee increase is due to the increase in the cost of KBI record checks which are required by law. Representative King moved to amend the bill to make the initial application fee \$15 and the fee be increased to \$15 every two years. Representative Neufeld seconded the motion. Motion carried. Representative Watson moved that the bill be reported favorably as amended. Representative Weiland seconded the motion. Motion carried.

Discussion and action on HB 2074:

This bill would assure that an out-of-state pedestrian who is struck by an automobile would receive PIP benefits for losses actively sustained. It would also assure that PIP benefits would be paid to a worker injured who is eligible for workers' compensation payments. Dick Brock was asked to develop a fiscal note on the proposed bill as auto premiums would be increased in order to offer this benefit. State Farm is the largest provider of such insurance in the state with Farm Bureau being the seconded largest. Due to the lack of fiscal information available at this time, Representative Cornfield moved that the bill be tabled. Representative Kline seconded the motion. Motion carried.

Joe Furjanic, representing the Kansas Chiropractor's Association, requested the Committee to introduce into legislation the former HB 2499 which later become HB 2590 in the 91-92 session. This bill would create an enforcement mechanism for second pay providers thus prohibiting discriminatory provisions in health and accident policies between certain providers of health care (Attachment 1).

Representative Helgerson moved that the proposed bill be introduced into legislation. The motion was seconded by Representative Gilbert. Motion carried.

Bill Sneed, representing American Investors Life Insurance Company, requested additional technical changes in a bill which is scheduled to go into effect on July 1, 1993 (Attachment 2). He agreed to work with the staff in the wording of these minor additions. Representative Helgerson moved that the bill be introduced into legislation. Representative Neufeld seconded the motion. Motion carried.

Chairman Bryant adjourned the meeting at 4:20 p.m. The next meeting is scheduled for February 2, 1993.

GUEST LIST

COMMITTEE: Financial Institutions + Insurance

DATE: Jan. 27, 1993

[illegible]

HOUSE BILL No. 2499

By Committee on Insurance

2-26

8 AN ACT relating to insurance; prohibiting discriminatory provisions
9 in health and accident policies between certain providers of health
10 care and providing penalties for violations; amending K.S.A. 40-
11 19a10 and 40-19b10 and K.S.A. 1990 Supp. 40-19c09 and 40-
12 19d10 and repealing the existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. This act shall apply to all insurance companies,
16 health maintenance organizations, nonprofit medical and hospital
17 service corporations, nonprofit dental service corporations, nonprofit
18 optometric service corporations, and nonprofit pharmacy corporations
19 issuing, delivering or renewing insurance policies, subscriber con-
20 tracts or certificates of insurance within or outside this state or used
21 within this state by or for an individual who resides or is employed
22 in this state.

23 New Sec. 2. No entity to which this act applies shall avoid,
24 evade, circumvent or otherwise attempt to elude compliance with
25 the provisions of K.S.A. 40-2,100, 40-2,101 and 40-2,104 and K.S.A.
26 1990 Supp. 40-2,114 and 40-2250, and amendments thereto, by im-
27 posing conditions or using contractual provisions to exclude, describe
28 or arrange for treatment of a covered condition or delivery of a
29 covered service the effect of which is to deny payment or benefits
30 for covered services lawfully performed within the scope of any
31 license, registration or certificate of the health care personnel iden-
32 tified in the statutory provisions referenced in this section.

33 New Sec. 3. Nothing in this act shall be construed to prohibit
34 the application of deductibles, coinsurance, cost containment or qual-
35 ity assurance measures, or contractual arrangements the purpose of
36 which is to promote or require a more efficient use of health care
37 services if such provisions and arrangements are equally applied to
38 all types of health care personnel referred to in the statutory pro-
39 visions cited in section 2 without discrimination to the usual, cus-
40 tomary and lawful procedures of any type of medical care provider.

41 New Sec. 4. Violations of this act shall be treated as violations
42 of the unfair trade practices act and subject to the penalties pre-
43 scribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

House
Financial Institutions &
Insurance

Attachment 1

January 27, 1993

1 New Sec. 5. The commissioner of insurance may promulgate
2 such rules and regulations as are necessary to carry out the provisions
3 of this act.

4 Sec. 6. K.S.A. 40-19a10 is hereby amended to read as follows:
5 40-19a10. Such corporations shall be subject to the provisions of
6 *sections 1 to 5, inclusive, of this act and to the provisions of* K.S.A.
7 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-
8 225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247,
9 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 to
10 40-2a19, inclusive, 40-2216 to 40-2220, inclusive, 40-2401 to 40-2421,
11 inclusive, 40-3301 to 40-3313, inclusive, and amendments thereto,
12 except as the context otherwise requires, and shall not be subject
13 to any other provisions of the insurance code except as expressly
14 provided in this act.

15 Sec. 7. K.S.A. 40-19b10 is hereby amended to read as follows:
16 40-19b10. Such corporations shall be subject to *sections 1 to 5,*
17 *inclusive, of this act and to the provisions of* K.S.A. 40-214, 40-215,
18 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-
19 229, 40-230, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249,
20 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 to 40-2a19, inclu-
21 sive, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3312, inclusive,
22 and amendments thereto, except as the context otherwise requires,
23 and shall not be subject to any other provisions of the insurance
24 code except as expressly provided in this act.

25 Sec. 8. K.S.A. 1990 Supp. 40-19c09 is hereby amended to read
26 as follows: 40-19c09. Corporations organized under the nonprofit
27 medical and hospital service corporation act shall be subject to the
28 provisions of the Kansas general corporation code, articles 60 to 74,
29 inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable
30 to nonprofit corporations, to the provisions of ~~K.S.A. 1990 Supp.~~
31 ~~40-2250 and 40-2251~~ *sections 1 to 5, inclusive, of this act* and to
32 the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-
33 222, 40-223, 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235,
34 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-
35 254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-
36 2,116, 40-2,117, 40-2a01 *et seq.*, 40-2111 to 40-2116, inclusive, 40-
37 2216 to 40-2220, inclusive, 40-2401 to 40-2421, inclusive, and 40-
38 3301 to 40-3313, inclusive, and amendments thereto, and to the
39 provisions of K.S.A. ~~1989~~ 1990 Supp. 40-2221a, 40-2221b, 40-2229
40 ~~and~~, 40-2230, ~~40-2250 and 40-2251~~, and amendments thereto, except
41 as the context otherwise requires, and shall not be subject to any
42 other provisions of the insurance code except as expressly provided
43 his act.

1 Sec. 9. K.S.A. 1990 Supp. 40-19d10 is hereby amended to read
2 as follows: 40-19d10. Such corporations shall be subject to the pro-
3 visions of *sections 1 to 5, inclusive, of this act and to the provisions*
4 *of* K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223,
5 40-224, 40-225, 40-226, 40-229, 40-230, 40-231, 40-235, 40-236, 40-
6 237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-
7 2,102, 40-2a01 to 40-2a19, inclusive, 40-2216 to 40-2220, inclusive,
8 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, and
9 amendments thereto, except as the context otherwise requires, and
10 shall not be subject to any other provisions of the insurance code
11 except as expressly provided in this act.

12 Sec. 10. K.S.A. 40-19a10 and 40-19b10 and K.S.A. 1990 Supp.
13 40-19c09 and 40-19d10 are hereby repealed.

14 Sec. 11. This act shall take effect and be in force from and after
15 its publication in the statute book.

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

Sec. 1. K.S.A. 1991 Supp. 40-3305 is hereby amended to read as follows:

40-3305. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner of insurance, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1 of each year unless the commissioner of insurance for good cause shown extends the time for registration, and then within such extended time. The commissioner of insurance may require any authorized insurer which is a member of a holding company system and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (c) or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner of insurance, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identify and relationship of every member of the insurance holding company system;

*Financial Institutions
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January 27, 1993
Attachment 2*

(3) the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(A) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management agreements and service contracts and all cost sharing arrangements;

(F) reinsurance agreements;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements.

(4) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner of insurance;

(5) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purpose of this section. Unless the commissioner of insurance by rules and regulations or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees, involving .5% or less of an insurer's admitted assets as of the December 31 next preceding shall not be deemed material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in such insurer's registration statement by reporting all material changes or additions on amendment forms provided by the commissioner of insurance within 15 days after the end of the month in which it learns of each such change or addition, except that subject to subsection (c) of K.S.A. 40-3306 and amendments thereto, each registered insurer shall report all dividends and other distributions to shareholders within ~~15~~ 5 business days following the declaration *and no less than 10 business days prior to payment* thereof.

(f) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, where such information is reasonably necessary to enable the insurer to comply with the provisions of this act.

(g) The commissioner of insurance shall terminate the registration of any insurer which demonstrates that such insurer no longer is a member of an insurance holding company system.

(h) The commissioner of insurance may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement.

(i) The commissioner of insurance may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any information or transaction if and to the extent the commissioner of insurance by order shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner of insurance a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner of insurance disallows such a disclaimer. The commissioner of insurance

shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard in accordance with the provisions of the Kansas administrative procedure act.

Sec. 2. K.S.A. 1991 Supp. 40-3306 is hereby amended to read as follows:
40-3306. (a) Material transactions by registered insurers with their affiliates shall be subject to the following standards:

- (1) The terms shall be fair and reasonable;
- (2) the charges or fees for services performed shall be reasonable;
- (3) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (4) the books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and
- (5) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in such insurer's holding company system may not be entered into unless the insurer has notified the commissioner in writing of such insurer's intention to enter into such transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved such transaction within such period.

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed:

(A) with respect to nonlife insurers, the lesser 3% of the insurer's admitted assets or 25% of surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31 next preceding.

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets, each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and

nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) all management agreements, service contracts and all cost-sharing arrangements; and

(5) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any 12 month period for such purpose, the commissioner may exercise authority under K.S.A. 40-3311 and amendments thereto.

(d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a), and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds 10% of such corporation's voting securities.

(f) (1) No insurer subject to registration under K.S.A. 40-3305, and amendments thereto, shall pay any extraordinary dividend or make any other extraordinary distribution to such insurer's shareholders until: (A) Thirty days after the commissioner of insurance has received notice of the declaration thereof and has not within such period disapproved such payment; or (B) the commissioner of insurance shall have approved such payment within such 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the ~~lesser~~ *greater* of: (A) Ten percent of such insurer's surplus as regards policyholders as of December 31 next preceding; or (B) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains for the 12-month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. An extraordinary dividend or distribution shall also include any dividend or distribution made or paid out of any funds other than surplus profits arising from the insurer's business, as defined in K.S.A. 40-233, and amendments thereto. The provisions of K.S.A. 40-233, and amendments thereto, shall not be construed so as to prohibit an insurer, subject to registration under K.S.A. 40-3305, and amendments thereto, from making or paying an extraordinary dividend or distribution in accordance with this section.

In determining whether a dividend is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has

not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until: (A) The commissioner of insurance has approved the payment of such dividend or distribution; or (B) the commissioner of insurance has not disapproved such payment within the 30-day period referred to above.

(g)(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this act.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of K.S.A. 40-3306 and amendments thereto.

(h) For purposes of this act, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to such insurer's financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by such insurer's assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; ~~and~~

(10) the quality and liquidity of investments in affiliates. The commissioner of insurance may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment such investment so warrants; *and*

(11) *the quality of the insurer's earnings and the extent to which the reported earnings indicate the extraordinary items.*