

Approved: January 26, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:10 a.m. on January 20, 1993 in Room 529-S of the Capitol.

All members were present.

Committee staff present: William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Richard Brock, Office of the Insurance Commissioner

Others attending: See attached list

Minutes of the meetings of January 13 and 14, 1993 were submitted for approval. Senator Steffes made a motion to approve the minutes. Senator Moran seconded the motion. The motion carried.

Chairman Bond opened the hearing on SB 25. Dick Brock of the Insurance Department appeared before the committee to testify in favor of this bill. (Attachment #1.) The bill amends the penalty provision of the Unfair Trade Practices Act to include interest and/or costs incurred by the consumer that would not have been necessary if the claim or grievance had been properly addressed initially. In response to Senator Bond's question, Mr. Brock advised the committee that "reasonable costs" would include attorney fees, appraiser fees, etc. Senator Lee asked who would make the decision regarding reasonable cost and Mr. Brock advised that the decision would be made by the Commissioner of Insurance and provided an example of when this measure might be necessary. In reply to Senator Petty, Mr. Brock advised that hearings would be conducted under the Administrative Procedures Act--the Commissioner makes the decision and signs the order. There being no further questions and no other conferees, the hearing was closed. Senator Praeger made a motion, seconded by Senator Petty, to move the bill favorably. The motion carried.

The Chairman opened the hearing on SB 26. Mr. Brock appeared for the State Insurance Commissioner to explain that this is a housekeeping amendment required as part of the accreditation process regarding filing of annual financial statements. (Attachment #2.) After brief discussion, a motion was made by Senator Moran to pass SB 26 favorably and to place it on the Consent Calendar. The motion was seconded by Senator Steffes. The motion carried.

Hearings were held on SB 23 on Wednesday, January 19, 1993. This bill provides for continuity of coverage when carriers change while the insured is hospitalized or under treatment. There were no questions and no amendments. Senator Petty made a motion, seconded by Senator Lawrence, to move the bill favorably. The motion carried.

SB 24 was also heard on Wednesday, January 19, 1993. This bill will reduce from five (5) to three (3) the number of employees required for group eligibility. Senator Praeger made a motion, seconded by Senator Corbin, to move SB 24 favorably. The motion carried.

Chairman Bond informed the committee that four Governor's appointees have been referred to this committee for confirmation. Therefore, Financial Institutions and Insurance Committee will meet on Friday, January 22, at 9:00 a.m. for the purpose of beginning the confirmation hearings.

The committee adjourned at 9:43 a.m.

Testimony on
Legislative Proposal No. 11
(Senate Bill No. 25)

by

Dick Brock

Kansas Insurance Department

Legislative Proposal No. 11 amends the penalty provisions of the body of law commonly referred to as the Unfair Trade Practices Act. Generally speaking, these statutes define acts which constitute unacceptable behavior by insurance companies, agents and other persons involved in insurance transactions. Misrepresentation, false advertising, unfair claim settlement practices and other actions detrimental to the insuring public are prohibited by these statutes. Because of the significance of these statutes in the regulation of market conduct, there are several different types of penalties the Commissioner may impose ranging from a simple cease and desist order to license revocation. Included in these penalty options is a provision which permits the Commissioner to order redress of the injury and this is the provision affected by Legislative Proposal No. 11. Redress of the injury may, of course, take different forms. For example, in cases of false advertising, it is not unusual for an insurer or agent to be ordered to direct a letter to all persons purchasing the advertised product offering an unconditional refund of all premium paid. The Department contacts a random sample of the people who were supposed to receive the letter to see if, in fact, compliance with this part of the order was achieved.

Redress of the injury may also occur in claim situations. Because the Insurance Department has a very active and aggressive Consumer Assistance Division, the vast majority of disputed claims involve differences of opinion as to value, extent of insured damage and other common disagreements. Therefore, they are handled informally and do not fall within the parameters of the unfair claim settlement provisions of the Unfair Trade Practices Act. In addition, until an amendment was enacted last session, a violation of the unfair claims settlement provisions did

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Attachment #1

not exist unless the forbidden act was committed with such frequency as to constitute a general business practice. With the 1992 amendment, a single act may now be a violation if it is flagrant or in conscious disregard of the unfair claim settlement practices described in the statute.

I present this background because there is often a misperception that every insurance claim in which the Department becomes involved is or should be the subject of a formal proceeding under the unfair claims settlement provisions of the Unfair Trade Practices Act. This is not the case.

On the other hand, it is reasonable to assume that the existence of these statutory provisions and the related penalty options encourages insurance company cooperation in many claim situations addressed by our consumer assistance representatives. As a result, without incurring the expense or delay formal proceedings would require, the Department is able to resolve disputed claims situations and, in effect, redress the injury whether or not an unfair claim settlement practice has been committed. One area that has been the subject of some dispute both informally and otherwise is whether "... redress of the injury by requiring the refund of any premiums paid by, the payment of any moneys withheld from, any consumer ..." is intended to include interest and/or costs incurred by the consumer that would not have been necessary if the claim or other grievance had been properly addressed in the first place.

Legislative Proposal No. 11 will clarify this issue by adding the new sentence to subparagraph (3) subsection (a) of 40-2407.

Testimony on
Legislative Proposal No. 13
(Senate Bill No. 26)

by
Dick Brock
Kansas Insurance Department

Legislative Proposal No. 13 amends the statute which requires the filing of an annual financial statement by insurers. This statute, K.S.A. 1991 Supp. 40-225, also requires the form of such statement to be that adopted by the National Association of Insurance Commissioners (NAIC). Presumably requiring the statement to conform to the NAIC "blank" contemplates that it will be prepared in accordance with the instructions and accounting procedures and practices that are also prescribed by that organization. This proposal would simply include such requirement in the statute.

K.S.A. 40-225 includes latitude which permits the Commissioner to require such additions or amendments as the Commissioner deems necessary to elicit from insurers a true exhibit of their financial condition. Therefore, even with the required NAIC form, instructions, practices and procedures, the Commissioner can accommodate unusual or unique situations. However, the statutory requirement better assures that any non-conformity will be initiated by the Commissioner as opposed to insurers.

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Attachment #2