Approved: February 18, 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 February 17, 1993 in Room 529-S of the Capitol.

Members present: Senators Corbin, Lawrence, Lee, Petty, Praeger, and Steffes.

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

Conferees appearing before the committee: Senator William Brady
Richard Brock, Insurance Department
Chip Wheelen, Kansas Medical Society

Others attending: See attached list

Senator Lawrence made a motion, seconded by Senator Praeger, to approve the minutes of the meeting of February 16, 1993 as submitted. The motion carried.

The hearing on **SB 188**--Requiring all self-insurers to register with the State Insurance Department--was opened. Senator Bill Brady, sponsor of the legislation, appeared before the committee to explain the intent of the bill and the circumstances which prompted introduction of the bill. (Attachment #1.)

Dick Brock, Insurance Department, appeared before the committee to outline the difficulties the Insurance Department foresees with the enactment of this legislation (Attachment #2.)

Chip Wheelen, Kansas Medical Society, informed the committee that the problem can be described as a lack of responsibility on the part of those persons who conduct utilization review of health care services and **SCR 1605**, which will be heard in this committee at a future date, attempts to address the same problem.

There being no other conferees, the hearing on **SB 188** was closed.

The hearing on **HB 2078** --Liquidation of insurance company,dissolution or sale--was opened. Dick Brock, Insurance Department, appeared as a proponent of this bill which would make it permissive instead of mandatory for courts to order dissolution of insolvent insurance companies. (Attachment #3.) In response to Senator Steffes' question, Mr. Brock advised that although experience with this problem has been limited, the question has arisen and should be addressed. There being no further questions and no other conferees, the hearing was closed. Senator Lawrence made a motion, seconded by Senator Praeger, to move this bill favorably and to place it on the Consent Calendar. The motion carried.

The hearing was opened on **HB 2079**--Mutual companies, merger or consolidation. Dick Brock, Insurance Department, also appeared as a proponent of this legislation. (Attachment #4.) Senator Bond inquired whether there was a need to include the requirement for a finding by the Insurance Commissioner that a merger/consolidation was appropriate in order to avoid the provision of policy holder approval. Mr. Brock stated that this was covered under statute 40-2222B. There were no questions and no other conferees; the hearing was closed. Senator Corbin made a motion to move **HB 2079** favorably. The motion was seconded by Senator Lawrence. The motion carried.

The committee adjourned at 9:42 a.m.

The next meeting is scheduled for Thursday, February 18, 1993.

# GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 2/17/93

| NAME | ADDRESS | ORGANIZATION |
|---|---|---|
| Dick Brock | Topeka | Ins Dept |
| L.M (Bud) Cornish | " | KS P/C Assn |
| Jim Oliver | " | Observer |
| Bill Sneed | Topeka | KIAA |
| Steve Walje | Lawrence | KS Gov. Consulting |
| Chip Wheelen | Topeka | KS Medical Soc. |
| Chuck Stones | " | KS Bankers Assn |
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State of Kansas
Senate Chamber

BILL BRADY
SENATOR, FOURTEENTH DISTRICT
LABETTE & NEOSHO COUNTIES AND
PARTS OF CHEROKEE AND MONTGOMERY COUNTIES
319 CRESTVIEW
PARSONS, KANSAS 67357
(316) 421-6281

COMMITTEES:
ELECTIONS
CONGRESSIONAL & LEGISLATIVE APPORTIONMENT & GOVERNMENTAL STANDARDS
JOINT COMMITTEE ON COMPUTERS & TELECOMMUNICATIONS
JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE
JUDICIARY
TRANSPORTATION & UTILITIES
WAYS AND MEANS
KPERS COMMISSION

STATE CAPITOL
TOPEKA, KANSAS 66612-1504
913-296-7389

FEBRUARY 17, 1993

TESTIMONY IN SUPPORT OF SB188

THANK YOU, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR THE OPPORTUNITY TO MAKE A FEW COMMENTS ON SB188. MY INTEREST WITH SB188 IS TO ASSIST CONSUMERS WHEN QUESTIONS ARISE REGARDING POLICY INTERPRETATIONS FOR SELF-INSURED PLANS. THE KANSAS INSURANCE DEPARTMENT ESTIMATES THAT SIXTY PERCENT OF THE GROUP HEALTH INSURANCE BUSINESS IS IN SELF-INSURANCE POOLS. THE STATE OF KANSAS NEEDS TO KNOW WHO THE ADMINISTRATORS OF THESE POOLS ARE SO WHEN PROBLEMS ARISE WE CAN BETTER COMMUNICATE ON BEHALF OF OUR CONSTITUENTS.

I REALIZE, AS WRITTEN, THIS BILL IS MUCH BROADER THAN MY INTENT. I HAVE SPOKE WITH THE INSURANCE DEPARTMENT REGARDING POSSIBLE AMENDMENTS TO TIE THE LANGUAGE DOWN. MAKING THE BILL APPLICABLE ONLY TO LIFE AND HEALTH INSURANCE AND LIMITING IT TO POOLING

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Attachment #1

INVOLVING OVER 50 POLICYHOLDERS WOULD BE TWO SPECIFIC WAYS TO REDIRECT ITS INTENT.

I DO BELIEVE THE PROBLEM IS A REAL ONE. IF YOU HAVE NOT HAD THE EXPERIENCE OF TRYING TO TRACK DOWN AN OUT-OF-STATE, THIRD-PARTY ADMINISTRATOR, YOUR LEGISLATIVE CAREER IS NOT COMPLETE.

THANK YOU FOR THE TIME YOU SPEND ON THIS PROBLEM.

BILL BRADY

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Testimony on
Senate Bill No. 188
by
Dick Brock
Kansas Insurance Department

Subsection (a) of Senate Bill No. 188 would require all self-insurers to register annually with the Commissioner of Insurance. The commissioner, in turn, would be required by the bill to develop and maintain a list of all self-insurers including the address of their home office and their principal place of business in Kansas.

Subsection (b) is the enforcement mechanism in that it provides that any violation of Subsection (a) would be a Class C misdemeanor. Presumably, this potential penalty would apply not only to the entities required to register and disclose the required information but also to the Commissioner of Insurance if he or she fails to maintain the required list and information.

Although Senate Bill No. 188 is a simple bill with a fairly obvious initial objective, it poses a number of administrative questions and concerns. We have discussed these with Senator Brady and I want to raise the same issues with the committee because in its current form, I'm not at all confident we could implement and administer its provisions in a way that would accomplish its goal.

First the bill limits the registration requirement to those entities identified that are "...doing business in this state...". However, the bill really isn't clear as to what constitutes "doing business". Therefore, non-profit organizations and governmental entities come to mind as entities which may or may not be "doing business" as contemplated by the legislation. In administering the bill, the Department could, of course, make a judgement and impose the requirement but in the absence of

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Attachment #2

a clearer expression of intent, we could encounter rather strong opposition with respect to compliance.

Second, even if we knew for certain who the bill applies to, we don't know what a "self-insurer" is. Even entities who claim to be self-insurers are required to register but it is not at all uncommon for a person, firm or organization to describe themselves as being self-insured when, in fact, they are uninsured. We also have situations where a business will have a large deductible and/or coinsurance obligation or directly self-fund some portion of their risk and purchase some kind of insurance plan for large or numerous claims. Consequently, they are partially self-insured but also partially insured. Without some kind of definition, we don't know how we could properly distinguish between an ininsured, underinsured, commercially insured and self-insured plan given all the variations those terms can involve.

Third, Senate Bill No. 188 obviously applies to all kinds of insurance. We understand Senator Brady is primarily interested in accident and sickness insurance but understands the bill has a broader application. This not only complicates the ability to define a "self-insurer" but, for example, would require workers' compensation self-insurers to register twice - once with the Director of Workers' Compensation and once with the Commissioner.

The one problem we did not discuss with Senator Brady because we didn't know it was a problem at the time we visited is the question of the preemption from state law that is included in the Federal Employee Retirement Income and Security Act (ERISA). This preemption is extremely broad and reads as follows: "The provisions of this subchapter and subchapter 111 of this chapter shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit

plans...". As most of you know, the so-called ERISA preemption has caused all sorts of problems for insurance consumers, insurance regulators and legislators over the almost 20 years it has been in existence. Senate Bill No. 188 adds to this list according to the Legal Division of the Insurance Department because I am informed that since its requirements relate to employee benefit plans such requirements would be preempted by this federal law. There are, of course, many self-funded or self-insured health plans that are not employee benefit plans under ERISA and these are unaffected by the preemption. However, all of the more prominent self-insured plans I am aware of are employee benefit plans and would not have to comply with the registration requirements. Consequently, many of the self-insured plans of the most interest to the bill's sponsor would still avoid registration.

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Testimony on

House Bill No. 2078

by

Dick Brock

Kansas Insurance Department

House Bill No. 2978 amends the statutes which contain the procedures to be followed with respect to impaired or insolvent Kansas domiciled insurance companies.

Currently, as the language in subsection (a), section 1 of House Bill No. 2078 reveals, the dissolution of the insolvent corporation is required either by order of the court or by operation of law depending on the circumstances of the particular liquidation. This requirement fails to recognize that the corporate shell of an insurance company may itself have value and this value increases depending upon the number of states in which the company is licensed. As a result, the requirement to dissolve the corporation is sometimes counterproductive in terms of maximizing the value of an insolvent insurance company's estate.

House Bill No. 2078 would rectify this statutory shortcoming by making it permissive for the court to order dissolution of the corporation and inserting specific language permitting the insurance commissioner to request and the court to permit the sale of the corporate shell of a domestic insurer including any of its licenses to do business. The proceeds from any such sale would, of course, be added to other assets of the estate.

Since such corporation would continue to exist if this option was exercised, it is also necessary to immunize it from claims of creditors and others which arose when the corporation was the insurance company placed in liquidation. Language to this effect is contained in lines 31 through 33 of the bill.

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Attachment #3

Testimony on
House Bill No. 2079
by
Dick Brock
Kansas Insurance Department

House Bill No. 2079 applies to the merger and consolidation of mutual property and casualty insurance companies and would eliminate a requirement for a policyholder vote under certain circumstances.

While none of us like to think about it and even though Kansas has been fortunate having experienced the situation with respect to a domestic insurer only twice in my 33 years of regulation and I'm aware of none before that, the fact remains that domestic insurance companies can become financially hazardous or actually be financially impaired to the extent that their surplus falls below the statutory minimum surplus required or worse. When this happens, the policyholders of the financially distressed company are best served if the Commissioner has ready access to every available means of protecting their interests. Kansas, like most states, has a safety net for insolvencies in the form of a guaranty association. However, reliance on this vehicle is not be the best, easiest or quickest way to address the situation in some instances. One of those instances would be where the financially distressed insurer is relatively small, operates only in Kansas or a very limited number of states, is not involved in the sale of any exotic or unusual insurance products but, for whatever reason, finds itself -- or more likely the Commissioner finds it to be -- in financial difficulty.

Unlike House Bill No. 2076 discussed last week by this committee, we are now talking about an insurance company that is already in financial difficulty. Therefore, there is even less reason for a financially sound company to be interested in a merger or consolidation except to accommodate policyholder interests because the distressed company's agency force, book of business or some other attribute is usually of little value to other insurers. As a result, a healthy insurance company

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would have no incentive to expend the funds necessary to acquire policyholder approval. House Bill No. 2079 would remove the need for such approval in this instance and it would do so for both companies. In this case, the nonsurviving company is in a hazardous financial condition or financially impaired so its inconceivable that its policyholders would disapprove the opportunity to move their policy to a company that is financially sound. Therefore, approval by the policyholders of the impaired company would seem to be totally unnecessary and unproductive. Absorption of the company and its business would have little impact on the surviving company so its policyholders would have little interest in voting. Equally important, the need for such approval delays the process and the Commissioner and the companies involved really must make decisions of this sort rather quickly.

Consequently, complete elimination of the policyholder voting requirements as proposed by House Bill No. 2079 would not only remove one deterrent to the possible attraction of an insurance company that is willing to assume the business of a financially distressed insurer but it would also permit the Commissioner to consider this option at any time because he or she would not have to await a policyholder vote that would almost certainly be a foregone conclusion prior to moving decisively toward the objective of a merger or consolidation.

Again, the agreement would have to be reached by the management and boards of directors of the companies involved and the Commissioner's approval would be required the same as any other merger or consolidation so adequate oversight would continue to exist.

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