

Approved: _____

Date

Jan. 24, 1994

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 20, 1994 in Room 527-S of the Capitol.

All members were present except: Representative Ruby Gilbert, Excused

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

Conferees appearing before the committee: James Maag, KBA
John Peterson, Kansas Professional Psychologists
Ron Nitcher, Insurance Department
William Sneed, State Farm
Brad Smoot, AIA
David Hanson, NAIH

Others attending: See attached list

James Maag, representing KBA, appeared before the Committee to request the introduction of legislation relating to how long banks can hold repossessed real estate (Attachment 1). The banking commissioner would be allowed to grant extensions of time for real estate or agricultural land to be carried as a book asset of the bank or trust company for longer than ten years with a review every five years. The bank would be allowed to operate agricultural land. Mr. Magg also requested that if this change is approved that it be placed in the Kansas register rather than in the statute book.

Representative Allen moved to introduce the bill into legislation. Representative Weiland seconded the motion. Motion carried.

John Peterson, Kansas Association of Professional Psychologists, asked the Committee to introduce legislation which would include psychologists under the medical benefits section of K.S.A. 40-3102 Kansas Automobile Injury Reparations Act (Attachment 2). Psychologists are not licensed under the board of healing arts.

Representative Allen moved to introduce the bill into legislation. Representative Correll seconded the motion. The motion carried.

Hearing on HB 2631: Property Insurance, inspection of property

Ron Nitcher, Insurance Department, stated that this bill addresses a problem of determining which insurance company is liable for covered damages to real property when there has been a change in insurance carriers (Attachment 3). This bill would require insurance companies to inspect real property prior to issuance of the policy to determine not only the existence and location of the property but also its condition. If inspection did not occur, the insurer could not deny the payment of the claim on the basis that the damage occurred when a previous policy with a different insurer was in effect. No cost study has been done on what effect this amendment would have on insurance agencies.

Bill Sneed, State Farm, related the history of the original statute, K.S.A. 40-906 which was enacted in 1927 (Attachment 4). This proposal changes the contract (fire insurance contract) by requiring insurers to provide coverage on a claims-made basis rather than on the occurrence basis if exterior damage, construction defects or ordinary wear and tear is omitted from the policy. This is a substantial expansion in coverage and presents a potential for large additional expenses for property claims. Such change will increase the claims expense and result in higher property insurance premiums. This bill is also a disincentive to cover any type of property except for new construction by reputable builders in Kansas. Agents are not qualified to provide the types of building inspections required under the legal duty established by this bill so trained inspectors would have to be hired thus adding to the cost of premiums. Companies may be forced to no longer bind coverage until

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 20, 1994.

inspection is made. No other states have any type of similar law. Problems associated with the passage of this bill would be:

1. What type of process would the insurance company go through as it attempts to comply with this provision with its current book of business?
2. What effect would a failure on behalf of an agent to secure this information have on the agent's potential errors and omission liability?
3. If this bill encompasses exterior conditions, how are such potential losses limited by construction defects?

Brad Smoot, American Insurance Association, stated their greatest concern was the potential cost to consumers due to the necessity of hiring experts to do the inspecting of real property (Attachment 5).

Larry Magill, KAIA, presented written testimony only (Attachment 6).

David Hanson, National Association of Independent Insurers, stated that direct writers of insurance companies such as UIAA and GEICO are currently able to do selective marketing and underwriting by obtaining sufficient information to describe the property and premises without having to hire an inspector to examine each piece of property (Attachment 6A). The proposed amendments would add risks and potential exposure of a statutory mandate that says if the insurer does not find and specifically describe some problem or defect in the physical condition of the premises, then the problem or defect is covered in the event of any subsequent claim.

Hearing on HB 2635: Life Insurance conversion privileges

Ron Nitcher, Insurance Department, stated that this bill would correct an inconsistency in the current statutes that related to the conversion of group life insurance to individual coverage (Attachment 7). The clarification would be to the benefit of Kansas insurance consumers by requiring the life insurance benefit to be paid during the entire time period which the insured has to apply for conversion coverage. Insurers can avoid the payment of such claims by simply providing the notice K.S.A. 40-435 requires.

ACTION ON BILLS PREVIOUSLY HEARD

HB 2632: Accident and sickness insurance, application to medicaid eligibility and coverage

This bill would bring Kansas into compliance with the OBRA 1993 by making medicaid the payer of last resort.

Representative King moved to pass the bill out favorably. Representative Cornfield seconded the motion. The motion carried.

HB 2619: Health and accident insurance; "usual, reasonable and customary charges"

Representative Cox moved to accept the balloon amendment as presented by the Insurance Department. Motion was seconded by Representative Dawson. Motion carried.

Representative Cox moved to pass the bill out favorably as amended. Representative Dawson seconded the motion. The motion carried.

HB 2618: Accident and health insurance; "usual, reasonable and customary charges"

Representative Sebelius moved to accept the amendment as presented by the Insurance Department which would clarify the intent of the bill with regard to production time (6 months) of statistically valid sample. Included in the motion was the request to move the bill out of Committee favorably as amended. The motion was seconded by Representative Allen. Motion carried.

HB 2617: Discontinuance of accident and sickness insurance contracts

Representative King moved to accept the balloon amendment as presented by the Insurance Department. The motion was seconded by Representative Wagle. Motion carried.

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MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 20, 1994.

Representative Wagle moved to report the bill as amended favorably. The motion was seconded by Representative Correll. Motion carried.

The meeting was adjourned at 4:40 p.m. The next meeting is scheduled for January 24, 1994.

House F.D.D

DATE: 1-20-94

[illegible]

HOUSE BILL NO. _____

AN ACT concerning banks and trust companies; relating to the holding of real estate and personal property; amending K.S.A. 9-1102 and repealing the existing section.

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

Section 1. K.S.A. 9-1102 is hereby amended to read as follows: 9-1102. (a) Any bank or trust company may own, purchase, lease, hold, encumber or convey real property and certain personal property subject to the following:

(1) Own suitable building, furniture and fixtures, stock in a single trust company organized under the laws of the state of Kansas, and stock in a safe deposit company organized under the laws of the state of Kansas, and stock in a corporation organized under the laws of this state owning real estate all or a part of which is occupied or to be occupied by the bank or trust company;

(2) purchase, hold, encumber and convey real estate or lease, as lessor or lessee, any building or buildings. Any real estate not necessary for the bank's or trust company's accommodation in the transaction of its business shall be disposed of or charged off its books by the bank or trust company not later than seven years after its acquisition unless the state bank commissioner authorizes the bank or trust company to retain such real estate on its books for a period not to exceed an additional two years;

(3) a bank's or trust company's total investment or ownership at all times in any one or more of the following shall not exceed 1/2 of its unimpaired capital stock, surplus, undivided profits and capital notes and debentures, and any such excess shall be removed from the bank's or trust company's books unless approval is granted by the state bank commissioner:

(A) The book value of real estate plus all encumbrances

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thereon;

(B) the book value of furniture and fixtures;

(C) the book value of stock in a safe deposit company;

(D) the book value of stock in a trust company; or

(E) the book value of stock in a corporation organized under the laws of this state owning real estate occupied by the bank or trust company and advances to such corporation acquired or made after July 1, 1973. Except that any real estate not necessary for the accommodation of the bank's or trust company's business shall be disposed of or charged off its books according to paragraph (2).

(b) Any bank or trust company may acquire real estate in satisfaction of any debts due it and may purchase real estate in satisfaction of any debts due it, and may purchase real estate at judicial sales, but no bank or trust company shall bid at any judicial sale a larger amount than is necessary to protect its debts and costs. No real estate, except for agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, acquired in the satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than five years. At the termination of the five years such real estate shall be charged off. No agricultural land, as defined in K.S.A. 17-5903, and amendments thereto, acquired in satisfaction of debts or upon judicial sales shall be carried as a book asset of the bank or trust company for more than 10 years. At the termination of the 10 years such agricultural land shall be charged off. The commissioner may grant ~~an extension for an additional four years, or any portion thereof~~ extensions of time for real estate or agricultural land to be carried as a book asset of the bank or trust company, if in the commissioner's judgment it will be to the advantage of the bank or trust company to carry the real estate or agricultural land as an asset for such extended period. Any such extensions issued shall be reviewed by the commissioner on an annual basis.

Sec. 2. K.S.A. 9-1102 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the ~~statute book~~. *Kansas Register*

pealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error shall be returned to the member insurer.

(d) The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this act.
History: L. 1972, ch. 190, § 11; L. 1986, ch. 180, § 9; L. 1986, ch. 318, § 42; L. 1988, ch. 356, § 115; July 1, 1989.

40-3017.

CASE ANNOTATIONS

1. Prevailing party cannot show prejudice in court's refusal to give requested instruction regarding phrase "appropriate reference." *Snodgrass v. State Farm Mut. Auto. Ins. Co.*, 15 K.A.2d 153, 172, 804 P.2d 1012 (1991).

Article 31.—KANSAS AUTOMOBILE INJURY REPARATIONS ACT

Law Review and Bar Journal References:

"Caps, 'Crisis,' and Constitutionality Evaluating the 1986 Kansas Medical Malpractice Legislation," *Elizabeth Schartz*, 35 K.L.R. 763, 808 (1987).

"Kansas Automobile Insurance: Current Issues and Problems," *John J. Knoll*, 29 W.L.J. 600, 604 (1990).

"Pitfalls on the Road to Salvation: The Kansas Saving Statute," *Steven C. Day*, 59 J.K.B.A. No. 8, 19, 22 (1990).

CASE ANNOTATIONS

4. Equitable contribution independent of subrogation principles; statutorily prohibited exclusion void only to extent of minimum coverage required by law. *Great West Cas. Co. v. Canal Ins. Co.*, 901 F.2d 1525 (1990).

40-3101.

Law Review and Bar Journal References:

"The End of Interspousal Tort Immunity in Kansas and Potential Conflicts of Interest for Plaintiffs Attorneys," *Timothy A. Short*, Vol. X, No. 5, J.K.T.L.A. 9 (1987).

"Perspectives on Personal Injury Law," *Willard H. Pedrick*, 26 W.L.J. 399, 410, 420 (1987).

Attorney General's Opinions:

Joint water district; city of Lansing and Delaware township; nature of the joint board. 86-103.

CASE ANNOTATIONS

29. Cited in holding uninsured motorist provision establishing priority of payment without restrictions on mandated coverage permissible. *Farmers Ins. Co. v. Prudential Property & Cas. Ins. Co.*, 10 K.A.2d 93, 97, 692 P.2d 393 (1984).

30. Cited; automobile as used in 40-284 held to include motorcycles. *Klamm v. Carter*, 11 K.A.2d 574, 578, 580, 730 P.2d 1099 (1986).

31. Waiver of affirmative defense that act required coverage for permissive users despite policy exclusion examined. *Canal Insurance Co. v. Earnshaw*, 629 F.Supp. 114, 115 (1985).

32. "Employee" exclusions provisions invalid in Kansas, held void only as to minimum coverage required by statute. *Canal Ins. Co. v. Merritt*, 683 F.Supp. 1296 (W.D. Mo. 1988).

33. Unenforceability of occupant hazard exclusion in trucking company's liability policy, equitable contribution between insurers examined. *Great West Cas. Co. v. Canal Ins. Co.*, 706 F.Supp. 761, 762 (D. Kan. 1989); affirmed in part and remanded in part, 901 F.2d 1525 (1990).

34. Cited; statutes (60-3407, 60-3409, 60-3411) limiting recovery in medical malpractice actions as unconstitutional examined. *Kansas Malpractice Victims Coalition v. Bell*, 243 K. 333, 344, 757 P.2d 251 (1988).

35. Absence of distinction between phrases "accidental means" and "accidental results" determined. *Whitaker v. State Farm Mut. Auto Mins. Co.*, 13 K.A.2d 279, 281, 284, 768 P.2d 320 (1989).

36. Authority of department of revenue to delete suspension order under 40-3104 examined. *State v. Damman*, 244 K. 487, 489, 769 P.2d 662 (1989).

37. Devices (dune buggy) for off-road use, while used as such, not motor vehicle under automobile insurance policy. *Shumaker v. Farm Bureau Mut. Ins. Co.*, 14 K.A.2d 155, 156, 785 P.2d 180 (1990).

38. Choice of law principles regarding medical payments examined where Missouri owner of motor vehicle had accident in Kansas. *State Farm Mut. Auto Ins. Co. v. Baker*, 14 K.A.2d 641, 797 P.2d 168 (1990).

39. Authority of regulation to prohibit subrogation of medical benefits coverage other than PIP (40-3113a) examined. *Durrett v. Bryan*, 14 K.A.2d 723, 726, 799 P.2d 110 (1990).

40-3102.

CASE ANNOTATIONS

12. Public policy of act does not cover bailee or collision damages to automobile dealer's vehicle through bailee's negligence. *Western Motor Co. v. Koehn*, 12 K.A.2d 215, 221, 738 P.2d 466 (1987).

13. Absence of distinction between phrases "accidental means" and "accidental results" determined. *Whitaker v. State Farm Mut. Auto Ins. Co.*, 13 K.A.2d 279, 281, 284, 768 P.2d 320 (1989).

14. Authority of department of revenue to delete suspension order under 40-3104 examined. *State v. Damman*, 244 K. 487, 489, 769 P.2d 662 (1989).

40-3103. Definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Commissioner" means the state commissioner of insurance.

(b) "Disability benefits" means allowances for loss of monthly earnings due to an injured person's inability to engage in available and appropriate gainful activity, subject to the following conditions and limitations: (1) The injury sustained is the proximate cause of the injured person's inability to engage in available and appropriate gainful activity; (2) subject to the maximum benefits stated herein, allowances shall equal 100% of any such loss per individual, unless such allowances are deemed not includable in gross income for federal income tax purposes, in which event such allowances shall be limited to 85%; and (3) allowances shall be made up to a maximum of not less than \$900 per month for not to exceed

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one year after the date the injured person becomes unable to engage in available and appropriate gainful activity.

(c) "Director" means the director of vehicles.

(d) "Funeral benefits" means allowances for funeral, burial or cremation expenses in an amount not to exceed \$2,000 per individual.

(e) "Highway" means the entire width between the boundary lines of every way publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.

(f) "Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or moved upon the highways.

(g) "Insurer" means any insurance company, as defined by K.S.A. 40-201, and amendments thereto, authorized to transact business in this state, which issues policies of motor vehicle liability insurance covering liability arising out of the ownership, operation, maintenance or use of a motor vehicle.

(h) "Injured person" means any person suffering injury.

(i) "Injury" means bodily harm, sickness, disease or death resulting from an accident arising out of the ownership, maintenance or use of a motor vehicle.

(j) "Lienholder" means a person holding a security interest in a vehicle.

(k) "Medical benefits" means and includes allowances for all reasonable expenses, up to a limit of not less than \$4,500, for necessary health care rendered by practitioners licensed by the board of healing arts, surgical, x-ray and dental services, including prosthetic devices and necessary ambulance, hospital and nursing services; and such term also includes allowances for services recognized and permitted under the laws of this state for an injured person who relies upon spiritual means through prayer alone for healing in accordance with such person's religious beliefs.

(l) "Monthly earnings" means: (1) In the case of a regularly employed person or a person regularly self-employed, $\frac{1}{12}$ of the annual earnings at the time of injury; or (2) in the case of a person not regularly employed or self-employed, or of an unemployed person, $\frac{1}{12}$ of the anticipated annual earnings from the time such person would reasonably have been expected to be regularly employed. In calculating the anticipated annual earnings of an unem-

or licensed psychologists

employed person who has previously been employed, the insurer shall average the annual compensation of such person for not to exceed five years preceding the year of injury or death, during which such person was employed.

(m) "Motor vehicle" means every self-propelled vehicle of a kind required to be registered in this state, including any trailer, semitrailer or pole trailer designed for use with such vehicle, but such term does not include a motorized bicycle.

(n) "Operator" means any person who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(o) "Owner" means a person, other than a lienholder, having property in or title to a motor vehicle, including a person who is entitled to the use and possession of a motor vehicle subject to a security interest held by another person, but such term does not include a lessee under a lease not intended as security.

(p) "Person" means an individual, partnership, corporation or other association of persons.

(q) "Personal injury protection benefits" means the disability benefits, funeral benefits, medical benefits, rehabilitation benefits, substitution benefits and survivors' benefits required to be provided in motor vehicle liability insurance policies pursuant to this act.

(r) "Rehabilitation benefits" means allowances for all reasonable expenses, up to a limit of not less than \$4,500, for necessary psychiatric services, occupational therapy and such occupational training and retraining as may be reasonably necessary to enable the injured person to obtain suitable employment.

(s) "Relative residing in the same household" means a relative of any degree by blood, marriage or adoption, who usually makes such person's home in the same family unit, whether or not temporarily living elsewhere.

(t) "Security interest" means an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security.

(u) "Self-insurer" means any person effecting self-insurance pursuant to subsection (f) of K.S.A. 40-3104, and amendments thereto, or any nonresident self-insurer that has filed the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto.

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(v) "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch-digging apparatus, well-boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, levelling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carryalls and scrapers, power shovels and drag lines and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(w) "Substitution benefits" means allowances for appropriate and reasonable expenses incurred in obtaining other ordinary and necessary services in lieu of those that, but for the injury, the injured person would have performed for the benefit of such person or such person's family, subject to a maximum of \$25 per day for not longer than 365 days after the date such expenses are incurred.

(x) "Survivor" means a decedent's spouse, or child under the age of 18 years, where death of the decedent resulted from an injury.

(y) "Survivors' benefits" means total allowances to all survivors for: (1) Loss of an injured person's monthly earnings after such person's death, up to a maximum of not less than \$900 per month; and (2) substitution benefits following the injured person's death. Expenses of the survivors which have been avoided by reason of the injured person's death shall be subtracted from the allowances to which survivors would otherwise be entitled, and survivors' benefits shall not be paid for more than one year after the injured person's death, less the number of months the injured person received disability benefits prior to such person's death. For purposes of this subsection, monthly earnings shall include, in the case of a person who was a social security recipient or a retirement or pension benefit recipient, or both, at the time of such injured person's death, $\frac{1}{12}$ of the annual amount of the difference between the annual amount of the social security benefits or the retirement benefits, or both, that such injured person was receiving at the time of such injured person's death and the annual amount of the social security benefits or the

retirement benefits, or both, that the survivor is receiving after the time of such injured person's death.

(z) "Uninsured motor vehicle" means any motor vehicle which is not included under an approved self-insurance plan of a self-insurer or for which there is not in effect a motor vehicle liability insurance policy meeting the requirements of this act.

(aa) "Any workmen's compensation law" means the workmen's compensation act of Kansas, the United States longshoremen's and harbor workers' compensation act, the federal employer liability acts, and any similar state or federal law.

History: L. 1974, ch. 193, § 3; L. 1977, ch. 28, § 5; L. 1987, ch. 173, § 1; Jan. 1, 1988.

Law Review and Bar Journal References:

"Evidenciary and Procedural Considerations in Meeting the Automobile No-fault Threshold," Timothy Alvarez, 12 J.K.T.L.A. No. 4, p. 17 (1989).

"Should You Take A Chiropractor To Court?", Steven M. Dickson, J.K.T.L.A., Vol. XIII, No. 3, pp. 19-20 (1990).

Attorney General's Opinions:

Motor vehicle liability insurance; application to non-resident motorists. 84-113.

Diversion; factors to be considered. 85-163.

Doctors of chiropractic cannot use the term "chiropractic physician." 87-42.

CASE ANNOTATIONS

20. Award of maximum disability benefits proper where partial disability shown because value of lost services still exceeded award. *Dewey v. Allstate Ins. Co.*, 739 F.2d 1494, 1496 (1984).

21. Absence of distinction between phrases "accidental means" and "accidental results" determined. *Whitaker v. State Farm Mut. Auto Ins. Co.*, 13 K.A.2d 279, 281, 284, 768 P.2d 320 (1989).

22. Authority of department of revenue to delete suspension order under 40-3104 examined. *State v. Damman*, 244 K. 487, 489, 769 P.2d 662 (1989).

23. Choice of law principles regarding medical payments examined where Missouri owner of motor vehicle had accident in Kansas. *State Farm Mut. Auto Ins. Co. v. Baker*, 14 K.A.2d 641, 642, 797 P.2d 168 (1990).

40-3104. Motor vehicle liability insurance coverage required; prohibited vehicle operation; verification; self-insurance; display of proof of financial security; penalties for failure to maintain financial security; reinstatement fees. (a) Every owner shall provide motor vehicle liability insurance coverage in accordance with the provisions of this act for every motor vehicle owned by such person, unless such motor vehicle: (1) Is included under an approved self-insurance plan as provided in subsection (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver

Testimony on
House Bill No. 2631

by

Ron Nitcher

Kansas Insurance Department

House Bill No. 2631 addresses a problem of determining which insurance company is liable for covered damages to real property when there has been a change in insurance carriers.

The Insurance Department has been receiving an increasing number of complaints from consumers whose claims for property damage are being denied by their present insurance company that asserts such damage occurred and existed prior to the time it began providing coverage. The company's basis for denial stems from a Kansas Court of Appeals case, Salt City Business College, Inc. vs. Ohio Casualty Insurance Company, 4 Kan. App. 2d 77, 602 P.2d 953 (1980), in which the court held that K.S.A. 40-906 requires an insurer when issuing a policy covering real property to properly and fully describe the property being insured but does not require the insurer to check the property for damage.

House Bill No. 2631 would amend K.S.A. 40-906 by requiring insurance companies to inspect real property prior to issuance of the policy to determine not only the existence and location of the property but also its condition. As a result, insurers would have an opportunity to detect damage existing at the time coverage becomes effective and the insured would have an opportunity to submit a claim to his or her previous insurer. Conversely, if an insurer fails to perform the inspection or identify existing damage, the insurer could not deny the payment of the claim on the basis that the damage occurred when a previous policy with a different insurer was in effect.

Harold F. D. D.
Attachment 3
January 20, 1994

HOUSE BILL No. 2631

By Committee on Financial Institutions and Insurance

1-14

8 AN ACT relating to property insurance; requiring inspection of prop-
9 erty; amending K.S.A. 40-906 and repealing the existing section.

10

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

12 Section 1. K.S.A. 40-906 is hereby amended to read as follows:

13 40-906. It shall be the duty of every person, corporation, association,
14 partnership, company or individual issuing any policy insuring real
15 property of any description against loss by fire or any of the risks
16 usually insured against in their insurance policies, by itself or its

17 agents, to make careful examination of the physical condition and exterior

18 location of the premises insured, and to place in such policy a full,

19 complete and correct description of the property or premises insured

20 ~~thereby; and no. Notwithstanding any provisions contained in a~~
21 ~~policy, failure to properly and fully describe such property or prem-~~

22 ~~ises and the condition of such property or premises, nor or any~~ exterior

23 erroneous statement in the description of such property or premises, an otherwise covered

24 shall be a defense in any action to collect for loss thereon or there- not

25 ~~under~~ when such description shall be sufficient to enable a person

26 of ordinary intelligence to find and fully identify the property or

27 premises upon which said ~~such~~ insurance was written and upon

28 which premiums have been paid; and this notwithstanding any

29 ~~provisions contained in the policy.~~

30 Sec. 2. K.S.A. 40-906 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after
32 its publication in the statute book.

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MEMORANDUM

TO: The Honorable William M. Bryant, Chairman
House Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

DATE: January 20, 1994

RE: H.B. 2631

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am legislative counsel for the State Farm Insurance Companies. Please accept this memorandum as our testimony in opposition to H.B. 2631. Before I comment on the specifics of our opposition, please accept the following preliminary comments.

First, K.S.A. 40-906, which H.B. 2631 attempts to amend, was prescribed into law in 1927 in order to eliminate insurance companies from denying claims based solely upon the use of an improper address. If the description was sufficient to enable a person of ordinary intelligence to locate and fully identify the property, then claims on said property could not be denied based solely on an error of address. As you will see later, the proposed amendments to K.S.A. 40-906 greatly expand the requirements of this statute.

Next, it is our understanding that the Department will be proposing to insert the word "exterior" on line 17 and line 22. Although such a change may make the bill slightly more tolerable, for reasons listed below, we still oppose the proposal, and as such believe that this Committee should act unfavorably on H.B. 2631.

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As stated earlier, this proposal attempts to require insurers to pay 100% of the damages when a claim is made on property which involves in a loss that occurred before the policy was taken out with the insurance company if the insurer did not find or the insured did not disclose the earlier damage before insuring the property. The fire insurance contract used across the country is an agreement between the insurer and policyholder to restore the property to the condition it was in prior to the loss. Claims for damages are adjusted to take into account the condition of the property prior to the loss. While it is well intentioned, this bill changes the contract by requiring insurers to provide coverage on a claims-made basis rather than on the occurrence basis if exterior damage, construction defects or ordinary wear and tear is omitted from the policy. This is a substantial expansion in coverage and presents a potential for large additional expenses for property claims. We anticipate such change will increase the claims expense and result in higher property insurance premiums in Kansas.

Next, this bill could act as a disincentive to cover any type of property except for new construction in Kansas. Companies may be concerned that it would be too easy to miss wear-and-tear types of damages. Thus, many companies may decide the most effective way to deal with this type of legislation would be to cover only new construction, and then only construction effected by reputable builders. In an era of concern over availability of this type of market, we believe such a proposal could act as a disincentive to expanding the current insurance companies within this marketplace.

Next, our agents are not qualified to provide the types of building inspections required under the legal duty established by this bill. Thus, it is most likely that insurers would need to hire or retain qualified building inspectors to identify defects prior to insuring the home. This is further compounded by the fact that insurance companies would have to immediately move forward to ascertain any type of damages on current policyholders before this bill goes into effect. For example, my client currently insures 261,207 properties in the state of Kansas. There is no way that my client could conduct inspections on its current policyholders prior to the effective date of the law. It is our estimate that my client would need a minimum of three years to perform the inspections necessary for all the buildings that we currently insure, if we can find enough qualified building inspectors in Kansas. This would be compounded by the fact that during this same time frame we might be writing new business on new properties, thus adding to the work load of the inspectors. Finally, the cost of procuring these inspections would ultimately be included in the rate base, and as such, this requirement would increase the insurance premiums currently paid by property owners in the state of Kansas.

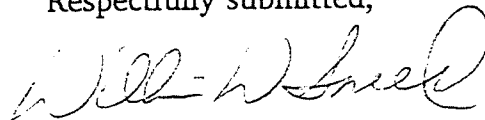
Next, such a proposal may create the practical problem of forcing companies to no longer bind coverage until such an inspection is made. We believe this could potentially cause a great inconvenience to the Kansas public.

The time needed to comply with proposal would also be subject to a pyramid effect in that policies during the same time frame would be renewed and would simply add to the burden and cost that would have to be incorporated in complying with this proposal.

We are unaware of any other state that has any type of law similar to this proposal. Although we acknowledge that simply because no one else has done it in and of itself is not a substantial reason to not implement a program, we do believe it demonstrates that a proposal like this needs to put into effect with careful consideration of its potential and far-reaching effects. Two other practical problems that are not identified in this bill but should be reviewed are (1) what type of process would the insurance company go through as it attempts to comply with this provision with its current book of business; (2) what effect would a failure on behalf of an agent to secure this information have on the agent's potential ^{errors + omissions} E & O liability; and (3) notwithstanding the fact that this bill may encompass exterior conditions, how are such potential losses limited by construction defects?

As stated before, we believe the proposal is well intended and we understand the concerns that have been voiced by the Insurance Department. However, insureds cannot be totally absolved from responsibility for reporting damage when it occurs or from properly maintaining their property. By shifting this requirement to the insurance company, you may well "cure" a problem a small segment of the insuring public, but we believe you will be creating a larger, much more costly, problem for the vast majority of the public. Thus, we respectfully request your unfavorable consideration of H.B. 2631.

Respectfully submitted,



William W. Sneed

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**STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL
FOR THE AMERICAN INSURANCE ASSOCIATION,**

**PRESENTED TO THE KANSAS HOUSE
FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
REGARDING 1994 HOUSE BILL 2631, JANUARY 20, 1994.**

Mr. Chairman and members of the committee, I am Brad Smoot representing the American Insurance Association, a trade association of more than 200 insurance companies providing various lines of insurance to Kansans and others across the country.

AIA appears today as an opponent of H 2631, which would add a new standard for inspection of property to be insured. While I am certain that it is the intent of the Kansas Insurance Department to provide some protections to some insureds, the effect of expanding the inspection requirements of Kansas' rather unique law may be just the opposite. In addition to placing new obligations on the independent agents on whom we rely for the sale of our policies, the expanded duty to inspect the "condition" of the premises may require the hiring of experts who will need to report on the condition frequently (at issuance or renewal) and whose services will add costs ultimately shared by the consumer.

The need to perform a detailed inspection prior to issuance may also impair the ability of an agent to quickly bind a carrier on a policy and thus inconvenience property owners seeking coverage on short notice.

Added burdens on insurance carriers and agents; costs and delays for consumers are not likely to increase the access of Kansans to the property insurance coverage they desire.

For these reasons, AIA companies urge the Committee to give consideration to the impact of this new requirement on insurance consumers and look for alternative solutions to the problems sought to be remedied by H 2631.

Thank you for allowing AIA to comment on this proposed legislation. I would be happy to respond to questions.

Steve F. D.

Attachment 5

January 20, 1994

Testimony Before the House Financial Institutions
and Insurance Committee
on HB 2631

By: Larry W. Magill, Jr., Executive Vice President
Kansas Association of Insurance Agents
January 20, 1994

Thank you, Mr. Chairman, and members of the committee, for the opportunity to appear today in opposition to HB 2631. Our members feel the present system is working reasonably well. Often, if the insurance company cannot clearly show a claim is for previous damage, then they will pay it under the current policy. In other instances where a claim was made previously for some damage from a storm, for example, extensive damage discovered later can be recovered from the insurer which wrote the coverage at the time of the loss. In our members' experience, these situations have been worked out reasonably well over the years. Of course, we always have the Insurance Department to mediate any disputes.

If an inspection is made that shows old water damage, for example, in a home, a subsequent new loss to the same area of the house could be denied on the basis it was old. The insurer could allege it was a slow, gradual leak rather than a sudden and accidental loss, thus denying the new damage and the old.

Agents are going to be burdened with making these inspections and consequently held liable by the insurer if even the slightest previous damage is not found. Agents are not trained to adequately inspect roofs for old damages. Often it is virtually impossible to detect previous hail damage, yet a contractor or adjuster may allege the damage is old after a loss. The company will then come back against the agent for reimbursement for the loss, since under the provisions of this bill they will be forced to pay it.

What if an agent inspects a car and finds a handful of minor previous hail dents. The insurer is probably going to refuse to provide

*House F&I
Attachment 6
Jan 20, 1994*

physical damage coverage. The insured will have to keep looking until they find an insurer who does not inspect or who does not detect the old damage. If you do not look at just the right angle in just the right light, a different inspector may not see the damage. In most instances these types of damage will present no problem, if the car is later in a second hailstorm and further damaged. You have to do the same type of repairs at the same cost whether the body sustained one dent or hundreds.

The proposed legislation is difficult to understand. What does "condition" encompass? Will agents be required to pass judgement on the condition of wiring, plumbing, heating, air conditioning, hot water heaters, appliances, floors, ceilings, walls and foundations? You can imagine how ridiculous the insurance company inspection requirements could become.

Today's personal lines insurance market is highly restricted due to the last four years of record wind and hail losses. We fear this measure will only further restrict the options available to consumers. Companies through the Equifax CLUE system have the ability to research previous claims on roofs and autos. If an insured is indeed trying to claim the same damage twice, that should be relatively easy to detect. If the size of the loss is sufficient, the company may challenge it and ultimately the courts could decide. This would be rare in our view.

But if you pass this legislation, you will virtually require companies and agents to inspect all property and autos, greatly inconvenience consumers and add substantial time and expense to agents and possibly only succeed in denying coverage to a lot of consumers. Regardless of the recent Supreme Court case, the present system has worked well for years. We urge you not to act favorably on this legislation.

January 21, 1994

House Committee on Financial
Institutions and Insurance
State Capitol Building
Topeka, Kansas

Re: House Bill 2631

Dear Mr. Chairman and Members of the Committee:

I am David Hanson and appear on behalf of the National Association of Independent Insurers to express several concerns about House Bill 2631. Currently, K.S.A. 40-906 requires an insurance company or its agents to carefully examine the insured premises and to include in the insurance policy a full, complete and correct description of the property or premises insured. Failure to fully and properly describe the property or premises cannot be used as a defense or otherwise prevent payment of a covered loss. These current provisions are broad enough to allow some flexibility in the insurance market. Companies, agents and policy holders can work together to supply the information needed to examine and describe the insured property without the unnecessary delay and expense of trying to examine and fully describe in detail the physical condition of every piece of property or premises insured.

The current law is broad enough to allow some insurance companies to operate as direct writers, such as USAA and GEICO, without requiring local agents. Through very selective marketing and underwriting, direct writers are able to obtain sufficient information to describe the property and premises without having to hire an inspector to go out and examine each piece of property. Obviously, the proposed amendments would result in added expense to those companies and their insureds.

We are also concerned that the proposed amendments will cause added expense and delay to companies and their policy holders generally by requiring careful examination and full descriptions of physical conditions without designating the nature of the physical condition. In other words, we are very concerned about the added risks and potential exposures of a statutory mandate that says if the insurer does not find and specifically describe some problem or defect in the physical condition of the premises, then the problem or defect is covered in the event of any subsequent claim. Limiting the

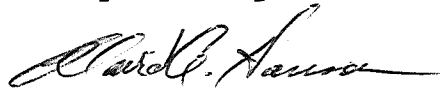
House File
Attachment 6A
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examination and description to exterior physical condition does not solve this problem. Under the current law, a company may exclude or limit its liability for certain physical conditions, such as structural deficiencies. A roof that leaks because of improper pitch or defects in materials or workmanship may not be covered. Likewise, an old roof that starts to leak because of its age and normal deterioration may not be a covered loss. However, the proposed amendments do not preserve those exclusions and limitations. Since any such defenses would be lost under the proposed amendments, insurance companies and their agents would be forced to delay issuance of any policy until the roof was thoroughly examined, inspected and tested, if necessary, and then all preexisting deficiencies, including structural defects, fully and completely described.

We understand that problems with recent wind and hail losses may have prompted the proposed amendments due to disputes as to preexisting wind and hail damage. However, the proposed amendments are not limited to those areas and in effect will create more problems. Naturally, insurance companies do not want to pay for storm losses occurred before the policy was written or other preexisting damages or structural deficiencies that would not otherwise be insured. To avoid such increased coverage and exposure, companies would be required to incur increased expenses for detailed examinations and reports as to the physical condition of each building to be insured. We do not believe this added expense and delay to be in the best interests of the insuring public and would therefore oppose the proposed amendments in House Bill 2631.

Thank you for your consideration.

Respectfully,

A handwritten signature in dark ink, appearing to read "David A. Hanson", written in a cursive style.

DAVID A. HANSON

DAH:kls/7847K

6A-2

Testimony on
House Bill No. 2635
by
Ron Nitcher
Kansas Insurance Department

House Bill No. 2635 would correct an inconsistency in the current statutes that relate to the conversion of group life insurance to individual coverage. Specifically, K.S.A. 40-435 requires insurance companies to provide notification to eligible individuals of their right to convert from group life to individual coverage. If written notification is not provided at least 15 days prior to the expiration date of the time period the group policy allows the insured to apply for a conversion policy, the statute requires the company to provide the insured with additional time to exercise such right. That additional time may not extend more than 60 days beyond the time period stated in the policy during which the insured may apply for individual coverage. K.S.A. 40-435, however, also explicitly states that it is not to be construed to extend coverage beyond the time period stated in the group policy.

K.S.A. 40-434(10), on the other hand, provides that if the insured dies within the period allowed to apply for a conversion policy, the amount of life insurance which such insured would have been entitled to apply for under the individual policy is payable under the group policy. This may be at a later time than the expiration date of the time period stated in the group policy which raises the question as to which statutory provision applies.

In the past, some insurance companies have argued that K.S.A. 40-435 extends only the time to apply for conversion and not coverage. Consequently, those companies attempt to deny the payment of any life insurance benefit when an insured dies after the time period stated in the contract and before the end of the additional 60 days notification period. House Bill No. 2635 will clarify the inconsistent provisions of the two statutes to the benefit of Kansas insurance consumers by requiring the life insurance benefit to be paid during the entire time period which the insured has to apply for conversion coverage. Insurers can, of course, avoid the payment of such claims by simply providing the notice K.S.A. 40-435 requires.

Harold F. D. L.
Attachment 7
Jan 20, 1994

HOUSE BILL No. 2635

By Committee on Financial Institutions and Insurance

I-14

8 AN ACT relating to life insurance; concerning conversion privileges;
9 amending K.S.A. 40-435 and repealing the existing section.

10

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

12 Section 1. K.S.A. 40-435 is hereby amended to read as follows:

13 40-435. If any individual insured under a group life insurance policy
14 hereafter delivered in this state becomes entitled under the terms
15 of such policy to have an individual policy of life insurance issued
16 to him such insured without evidence of insurability, subject to
17 making of application and payment of the first premium within the
18 period specified in such policy, and if such individual is not given
19 notice of the existence of such right at least fifteen (15) 15 days
20 prior to the expiration date of such period, then, in such event the
21 individual shall have an additional period within which to exercise
22 such right, ~~except as provided in subsection (10) of K.S.A. 40-434,~~
23 ~~and amendments thereto,~~ but nothing herein contained in this sec-
24 tion shall be construed to continue any insurance beyond the period
25 provided in such policy. The additional period shall expire fifteen
26 (15) 15 days next after the individual is given such notice but in no
27 event shall such additional period extend beyond sixty (60) 60 days
28 next after the expiration date of the period provided in such policy.
29 Written notice presented to the individual or mailed by the poli-
30 cyholder to the last known address of the individual or mailed by
31 the insurer to the last known address of the individual as furnished
32 by the policyholder shall constitute notice for the purpose of this
33 paragraph section.

34 Sec. 2. K.S.A. 40-435 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after
36 its publication in the Kansas register.

Delete

, except as provided in subsection (10) of K.S.A.
40-434, and amendments thereto,