

Approved: Jan. 31, 1994
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 25, 1994 in Room 527-S of the Capitol.

All members were present except: Representative Kathleen Sebelius, Excused

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

Conferees appearing before the committee: Jim Parrish, Securities Commissioner
Dick Brock, Insurance Department
Mike Taylor, NCCI
Brad Smoot, AIA

Others attending: See attached list

Hearing on HB 2658: Securities, exempt securities and transactions

Jim Parrish of the Securities Commission testified before the Committee in support of this bill which would authorize the agency's participation in a centralized securities registration depository (SRD) (Attachment 1). This should result in improved regulatory efficiency. Section 2 would extend exemptions to securities of any foreign government with which the United States maintains diplomatic relations. Section 3 amends a transactional exemption to cover offers during the waiting period for certain registrations if offered through registered broker-dealers. This will enable more uniform and equitable treatment of smaller offerings, but will not reduce the regulatory protection of Kansas investors (no sales can occur until offerings are reviewed and made effective by order).

Hearing on HB 2636: Workers Compensation, appointment or assignment of risk

Dick Brock, Insurance Department, stated the bill is intended to improve the servicing of workers compensation insurance and/or employer's liability insurance policies issued through a plan that equitably distributes applicants for workers compensation insurance who are unable to purchase it in the voluntary market among insurers authorized to transact such business in Kansas (Attachment 2). By incorporating various performance standards and time requirements in the statute, servicing carriers would be required to meet them unless there is a good and valid reason for not doing so in a particular case. The performance standards would have greater credibility from the perspective of servicing carriers and they would, therefore, be more attentive to their provisions. The bill would also provide the Insurance Department with greater enforcement authority for the protection and benefit of policyholders in the event servicing carriers do not comply with the required standards. When there is a disagreement as to what a particular standard requires, there would be an opportunity to adopt an administrative regulation or amend the statute to resolve the issue.

Larry Magill, KAIA, stated that one drawback to the Commissioner's approach is that once placed in the statutes, the performance standards would be very difficult and cumbersome to change (Attachment 3). Their suggestion is to allow agents to choose their servicing carrier based on their performance. They also recommend "broad from other states" which would provide coverage where employees are traveling through other states or where contractors have work in other states as long as they use Kansas employees. Their Kansas workers compensation policy would protect them and pay the other states higher benefits if they are higher and if the injured employee elects them.

Mike Taylor, National Council on Compensation Insurance, stated their opposition to this bill is that it would place standards into law (Attachment 4). Currently establishing and implementing standards for performance of servicing carriers is done through a triple check process of research, review and approval. Carrier

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527-S Statehouse, at 3:30 p.m. on January 25, 1994.

performance in total claims cost is also measured and either rewarded or penalized. This is a direct reflection on the carrier's ability to control costs in the residual market.

Brad Smoot, American Insurance Association, said his members provide more than 50% of workers compensation insurance relied upon by Kansas employees. They are in opposition to any proposal which would abolish the current random assignment method of selecting servicing carriers. The current system gives the Commissioner authority to enforce existing statutes or promulgate new ones to guarantee satisfactory service by the participating carriers. (Attachment #5)

The meeting adjourned at 4:50 p.m. The next meeting is scheduled for January 26, 1994.

GUEST LIST

COMMITTEE: House F & I

DATE: 1-25-94

[illegible]

STATE OF KANSAS



OFFICE OF THE SECURITIES COMMISSIONER

Second Floor

618 South Kansas Avenue
Topeka, Kansas 66603-3804
(913) 296-3307

Joan Finney
Governor

James W. Parrish
Securities Commissioner

BEFORE THE HOUSE COMMITTEE ON
FINANCIAL INSTITUTIONS AND INSURANCE

TESTIMONY IN SUPPORT OF HB 2658

by JAMES W. PARRISH
KANSAS SECURITIES COMMISSIONER

House Bill No. 2658 enacts one new section of the Kansas Securities Act (Act), and amends two sections.

New Section 1.

The first section of HB 2658 proposes to authorize agency participation in a centralized securities registration depository (SRD). The SRD is a computerized system being implemented by the North American Securities Administrators Association (NASAA) to enable simultaneous electronic filings on a nation-wide basis among the state and federal securities agencies. The SRD is intended to facilitate uniformity and efficiency of securities registrations. Other subsections are necessary for coordination of other activities through NASAA and other agencies. This cooperation will enhance the ability of our agency to protect investors.

The new section is adopted from Sec. 420 of the Uniform Securities Act (1956), as amended. While we believe it will result in improved

James W. Parrish
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regulatory efficiency, it is not possible to estimate the savings this will bring.

Section 2.

Next, the bill amends K.S.A. 17-1261(b), which currently exempts securities issued or guaranteed by the Canadian government, and its political subdivisions. The amendment would extend comparable status to securities of any foreign government with which the United States maintains diplomatic relations.

Increasing globalization of securities markets have made debt and other securities offerings of foreign governmental issuers such as Euro bonds, an increasingly attractive investment option. These investments are as creditworthy as Canadian securities, and there is no longer any valid rationale for limiting the exemption to Canadian government securities. All except for five or six other states have adopted a similar amendment. The text is taken from the 1985 Uniform Securities Act as approved by the National Conference of Commissioners on Uniform State Laws.

Section 3.

Section 3 amends a transactional exemption found in K.S.A. 17-1262(i). The law currently exempts offers (but not sales) of securities for which a registration statement has been filed under both the Kansas Act and the Federal Securities Act of 1933. This is called registration by coordination and is provided for by K.S.A. 17-1257. This is commonly called the "red herring" exemption. It allows registered broker-dealers to solicit offers to buy securities from customers during a waiting period after a registration statement

is filed, but before it is ordered effective. The exemption is not currently available when a registration is filed only under the Kansas Act and not the federal act (registration by qualification or notification, K.S.A. 17-1256 and 17-1257). The amendment would extend the exemption to cover offers during the waiting period for the latter registrations if offered through registered broker-dealers.

This proposed change in Kansas law was prompted by recent federal amendments which expand the use of exemptions available under Regulation A and Regulation D, Rule 504, of the 1933 securities act. The proposed state amendment will allow the "red herring" exemption to be used in Kansas for these federally exempt offerings during the waiting period. This will enable more uniform and equitable treatment of smaller offerings, but will not reduce the regulatory protection of Kansas investors (no sales can occur until offerings are reviewed and made effective by order).

The two proposed amendments to existing exemptions will have no discernible fiscal impact either on this agency, other governmental agencies or the general public. Nothing in HB 2658 will impact other state agencies.

Testimony on
House Bill No. 2636

by

Dick Brock

Kansas Insurance Department

K.S.A. 40-2109 requires every insurance company writing workers compensation insurance and/or employer's liability insurance in the state to cooperate in the preparation and submission of a plan that will equitably distribute applicants for workers compensation insurance who are unable to purchase it in the voluntary market among insurers authorized to transact workers compensation business in Kansas. At the present time, there are 23 insurance carriers that service approximately 16,000 insurance policies issued through the Kansas Workers Compensation Insurance Plan (plan). Thirteen of these are what are called servicing carriers. These carriers issue the policies, collect the premium, process the claims and so forth for a fee established by the Governing Board of the Plan that is appointed by the Commissioner as provided in the statute. The risk assumed by these servicing carriers is assumed by a national reinsurance pool. There are ten other insurers that are called direct placement carriers. These insurers do not participate in the national pool and simply write the business assigned to them by the administrator of the plan.

Currently, any rules or performance standards for servicing policies issued through the plan are those the plan has theoretically elected to impose on itself by filing them with the Insurance Department at the direction of the Governing Board of the Plan by the National Council on Compensation Insurance. However, based on past experience as well as problems reported by insurance agents and employers to the Insurance Department in recent years, it is clear that some of the servicing carriers are not adhering to the standards established by the plan. A few of the more frequent problems that are voiced include new and renewal policies not being issued within acceptable time frames, premium refunds not being remitted to employers on time, the lack of adequate loss control services being provided and probably most frustrating, instances where a servicing carrier will simply place a

House FDs D
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different interpretation on a standard than what we believe was intended and thereby adversely affect the interests of the insured. For example, on page 1, line 34 of the bill, the filed standards include a provision directing servicing carriers to consider the effects of inflation and employment level changes in developing the deposit premium. Some carriers use this provision to arbitrarily increase an employer's payroll and/or number of employees to produce a higher deposit premium without even looking at whether the employer's payroll or number of employees has in fact increased -- it may have even decreased.

House Bill No. 2636 is intended to improve the servicing of policies issued through the plan by incorporating various performance standards and time requirements in the statute that servicing carriers would be required to meet unless there is a good and valid reason for not doing so in a particular case. By putting them in the statute, we believe the performance standards would have greater credibility from the perspective of servicing carriers and they would, therefore, be more attentive to their provisions. The bill would also provide the Insurance Department with greater enforcement authority for the protection and benefit of policyholders in the event servicing carriers do not comply with the required standards. Finally, when there is a disagreement as to what a particular standard requires, there would be an opportunity to adopt an administrative regulation or amend the statute to resolve the issue.

As the members of the committee will recall, the workers compensation reforms enacted last session have resulted in many employers being subjected to a premium surcharge if they obtain their workers compensation coverage from the plan. Since they are paying a surcharge for their coverage, they certainly don't deserve a further penalty of poor service.

Testimony on HB 2636
Before the House Financial Institutions and Insurance Committee
By: Larry W. Magill, Jr., Executive Vice President
Kansas Association of Insurance Agents
January 25, 1994

Thank you, Mr. Chairman, and members of the committee for the opportunity to appear today in support of HB 2636 with some major amendments. Our association appreciates the insurance commissioner's effort to improve service by placing the performance standards for the servicing carriers of the Kansas Workers Compensation Insurance Plan in the statutes. One drawback to the Commissioner's approach is that once placed in the statutes, the performance standards would be very difficult and cumbersome to change. We would like to suggest an alternative that would be less cumbersome and more "market driven." We propose that you allow agents to choose their servicing carrier based on their performance.

Background

Currently the Kansas Workers Compensation Insurance Plan has thirteen servicing carriers. Beginning a number of years ago, most servicing carriers have centralized their service for the entire country in one location for supposed economies and to squeeze the maximum profit out of being a servicing carrier. Since these service centers have to deal with a large number of different states with different laws, their attitude often seems to be that they could care less about the nuances of Kansas laws and regulations affecting our workers compensation plan.

The plan has grown tremendously over recent years to 35% of the total market as of December 31, 1992, compounding our service problems.

Harry F. D. D.

Attachment 3

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The companies were not prepared for the tremendous growth in the last seven to eight years. For many agents, the Kansas Workers Compensation Insurance Plan is their biggest "company."

It used to be that there was no premium differential between the plan and the voluntary market for workers compensation. After passage of the workers compensation reform act last session, there is now a merit rating plan for small risks, a 12 1/2% surcharge and up to a 37% ARAP debit for experience rated risks plus a non-stock discount for insureds paying over \$5,000 in annual premium. These factors mean that businesses in the assigned risk plan can be paying anywhere from 20% to over 50% more than they would in the voluntary market.

The Department has historically opposed the idea of selecting the servicing carrier because it was too easy for servicing companies to write all the insurance for a business but their workers compensation and have the workers compensation assigned back to them under the plan when there was no rate differential. Now, because of competitive pressures due to the substantial rate differential, it is unlikely to happen except on very small, non merit rated businesses.

Agent compensation is the same regardless of the servicing carrier chosen. But commission levels are extremely low for the amount of time required to service accounts in the plan. These service problems take time and cost the agent money. If the agent can direct business to carriers with good service, the agent will spend far less time servicing the business in the plan and might actually break even on handling the account. Plus, the insured receives far better service.

Let the Market Decide

The market clout this would wield against servicing carriers providing poor service would be tremendous. Since very few servicing carriers today - maybe one or two - are generally viewed as doing a good job, it may mean almost all business would be directed to them.

But we feel servicing carriers want the business enough to compete for it. We are confident the other servicing carriers will respond with Kansas service offices and improved service. Keep in mind that the servicing carrier standards are currently filed and approved by the Insurance Department. This means the Department could currently fine them for failure to meet the standards. The Department feels that having them in statute would give them added enforcement clout. That is probably true but that clout would pale in comparison to a market driven system.

There is a down side. It could drive other servicing carriers out of the market. It could cause good servicing carriers' performance to suffer if they are unprepared for a substantial increase in volume. But we think ultimately it will force all of them to improve service even more dramatically than the department's proposed standards call for.

Other States Amendment

★ We would also suggest another issue be considered and that is "broad form other states" coverage. Basically this extends coverage to businesses in the plan to all states but the six monopolistic state fund states for temporary and incidental exposures. It would provide coverage where employees are traveling through other states or where contractors have work in other states as long as they use Kansas employees. Their Kansas workers compensation policy would protect them

and pay the other states higher benefits if they are higher and if the injured employee elects them. Right now some servicing carriers will provide broad form other states coverage while others will exclude states where workers compensation is a particular problem. Some servicing carriers will list a state one year for other states coverage but refuse the next because they allege it is no longer "temporary." Attached is a copy of the declarations page showing the other states coverage under item 3c along with a copy of the policy provision for other states coverage.

We feel workers compensation should be like auto insurance. It should follow the employees wherever they travel. If you purchase an auto insurance policy from the Kansas Auto Insurance Plan, your coverage does not stop when you cross the Kansas border. If an employer has a permanent location or hires employees in another state, they clearly need to purchase a policy for that state.

We are suggesting that providing broad form other states coverage should be a criteria for being a servicing carrier in Kansas. We cannot force them to provide "other states" coverage in another state. They may not even be licensed and they claim that is necessary. But we think most of Kansas' servicing carriers could, if it were a requirement, provide the "broad form other states" coverage.

We recognize that we are suggesting two very significant changes in the way the Kansas Workers Compensation Insurance Plan is administered. We would be happy to work with representatives of the Kansas Insurance Department and other interested parties to develop our proposed amendments. Perhaps the chairman would want to assign this to

a subcommittee for further study. In any event, we urge the committee to take action to improve the service for businesses that remain in the Kansas Workers Compensation Insurance Plan.

Thank you for the opportunity to appear today in support of HB 2636. We would be happy to respond to questions.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

THIS INFORMATION PAGE ALONG WITH THE 'POLICY
PROVISIONS' COMPLETES THE NUMBERED POLICY.

* POLICY NUMBER *
* 0 H 8 - 8 0 - 1 3 ---95 *

ITEM 1

N A M E D I N S U R E D :

R E P R E S E N T A T I V E :

ITEM 2 POLICY PERIOD: 12:01 A.M., STANDARD TIME AT THE INSURED'S MAILING ADDRESS
FROM: FEB/10/94 TO: FEB/10/95

ITEM 3

- A. WORKERS' COMPENSATION INSURANCE: PART ONE OF THE POLICY APPLIES TO THE
WORKERS' COMPENSATION LAW OF THE STATES LISTED HERE; KS
- B. EMPLOYERS' LIABILITY INS.: PART TWO OF THE POLICY APPLIES TO WORK IN EACH
STATE LISTED IN ITEM 3.A. THE LIMITS OF OUR LIABILITY UNDER PART TWO ARE
- | | | |
|----------------------------|------------|---------------|
| BODILY INJURY BY ACCIDENTS | \$ 100,000 | EACH ACCIDENT |
| BODILY INJURY BY DISEASE | \$ 100,000 | EACH EMPLOYEE |
| BODILY INJURY BY DISEASE | \$ 500,000 | POLICY LIMIT |
- C. OTHER STATES INS: PART THREE OF THE POLICY APPLIES TO ALL STATES EXCEPT
ME, NV, ND, OH, WA, WV, WY, AND STATES DESIGNATED IN ITEM 3.A SHOWN ABOVE.
- D. THIS POLICY INCLUDES THESE ENDORSEMENTS AND SCHEDULES:
- WC7005(4/92) WC7003(9/86) IL7004(4/91) WC150401(4/84)
WC150601A(7/86) IL7008(8/86) WC000414(7/90)

ITEM 4

THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUALS OF . ESTIMATED
RULES, CLASSIFICATIONS, RATES AND RATING PLANS. ALL INFORMATION. ANNUAL
REQUIRED BELOW IS SUBJECT TO VERIFICATION AND CHANGE BY AUDIT. . PREMIUM

SEE CLASSIFICATION OF OPERATIONS SCHEDULE ATTACHED

PREMIUM SUBTOTAL - SEE SCHEDULE ATTACHED	.\$	2,033.00
EXPENSE CONSTANT	.\$	140.00

MINIMUM PREMIUM \$ 311
KANSAS

ESTIMATED POLICY PREMIUM . \$ 2,173.00

DEPOSIT PREMIUM . \$ 2,173.00

TOTAL DEPOSIT PREMIUM . \$ 2,173.00

INTERIM ADJUSTMENTS WILL BE MADE: ANNUALLY

COPYRIGHT 1983 NATIONAL COUNCIL ON COMPENSATION INSURANCE
ISSUED FROM: WICHITA, KS

DATE OF ISSUE: 01/11/94 (BPP) COUNTERSIGNED BY:

DATE:

FORM WC7002 ED. 09/86 (BPP) ANN RATING DATE: 02/10/94 115 LR 0H88013 9501

3-6

(Ed. 4-92)

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

The carrier at its option may or may not furnish such insurance.

- (a) In the event the original carrier agrees to provide such insurance, all premiums shall be collected by such carrier. The effective date of such insurance in such additional states shall be the day after premium is collected or, in the event premium is on an "if any" basis, the day following receipt of an acceptable request for such insurance by the carrier. No carrier shall be permitted to date back the insurance afforded.

A copy of the policy declarations and all endorsements, properly stamped WCIP, shall be submitted to the State Administration Organization having jurisdiction in the state where the coverage is effected.

- (b) An assigned carrier unwilling or unable to provide insurance for a risk in additional states either on a direct basis or under the provisions of any National Council-operated Insurance Plan shall refer the request to the Kansas Service Office.

13. A serving carrier of the National Pool shall, upon request, extend coverage to any competitive fund state provided:

- (1) The original assignment was for a National Pool State.
(2) The coverage is for temporary and incidental operations defined as follows:

Temporary: The duration of operations will be less than twelve months.

Incidental: Payroll in the state fund jurisdiction is less than 25% of the total risk payroll and less than \$50,000.

- (3) Extension of statutory workers compensation in National Pool states to cover temporary and incidental operations in competitive state fund states in which no assigned risk programs are available is permitted. Premiums and losses for a state fund state are to be allocated to the state of original assignment.

In considering this extension, apply the definitions for temporary and incidental coverage as listed above.

There is no formal insurance plan in the state. The competitive fund states in which no formal insurance plans exist are:

California	New York
Colorado	Oklahoma
Idaho	Pennsylvania
Maryland	Utah
Montana	

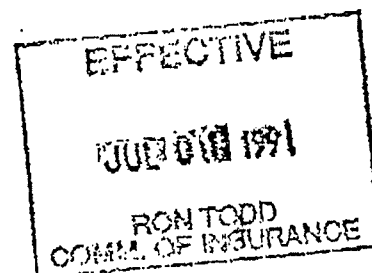
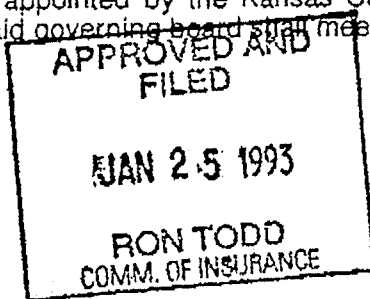
- (4) The carrier is licensed in that state.

However, the extension of coverage only applies to "temporary and incidental" and does not apply to permanent, known or anticipated operations in the competitive fund state. There currently exists a market for such risks in the competitive fund states.

14. The employer may designate a licensed producer and, with respect to any renewal of the assigned insurance, may change the designated producer by notice to the carrier prior to the date of such renewal or, with the consent of the carrier, at any other time. The carrier shall pay a fee to the producer designated by the employer on new and renewal policies effective (date) and thereafter upon payment of all premium due under the policy. The fee shall be based on the state standard premium and paid at the rate on file with the Kansas insurance regulatory authorities.

- ★ 15. All servicing carriers, and direct assignment carriers, upon request of the insured, must offer a benefit deductible program, subject to the provisions of the Kansas Deductible Insurance. Use or application of a deductible program is subject to the insured displaying adequate security which may be required by the insurer, and complying with the usual underwriting guidelines of the insurer.

16. A governing board shall be appointed by the Kansas Commissioner of Insurance pursuant to instructions contained in KSA 40-2109; said governing board shall meet at least annually to review and prescribe operating rules for this Plan.



TB00156



National
Council on
Compensation
Insurance

Government, Consumer and
Industry Affairs
Western Division

Mich. Taylor
Director

January 25, 1994

House Bill 2636

I am Michael Taylor, Director of Government Affairs for the National Council on Compensation Insurance. I am appearing here today on behalf of the NCCI in our role as Plan Administrator to offer testimony against this piece of proposed legislation.

The NCCI, along with providing a number of other functions related to the workers compensation industry, operates as the Plan Administrator for the Kansas Assigned Risk Plan. This includes local operations in our Topeka service office, as well as operations on a national level through the National Workers Compensation Reinsurance Pool, which the Kansas Assigned Risk Plan is part of. As Plan Administrator we are responsible for developing assigned risk rules, operations, procedures and standards for the residual market including performance of those carriers who are servicing assigned risk policyholders on behalf of the Kansas Insurance Department and all workers compensation carriers in the state of Kansas.

The NCCI does not oppose these standards and in many ways they mirror the standards currently in place. What we do oppose is placing the standards into law. Currently, establishing and implementing standards for performance of servicing carriers is done through a triple check process of research, review and approval.

First, the NCCI develops the standards after reviewing needs of the marketplace, current conditions, regulatory requirements, etc. This occurs on a regular basis, at least annually, and in some cases, semi annually. A review and revision of the standards often goes beyond those listed in the proposed regulations and covers such areas as commission payments, claims handling, adjudication, application processing etc. These standards are then presented to the Kansas Workers Compensation Insurance Plan Governing Board for review and approval. The Governing Board, authorized by Kansas Statute 40-2109 is made up of representatives of the general public, Kansas insurance agents and insurance carriers, both servicing carriers and voluntary market writers, all of which are appointed by the Commissioner. The Governing Board then considers these standards and either approves or make changes to them. Changes to the standards can come about any time, either in response to a proposal by the NCCI to the Governing Board, or as independent action by the Board itself. Once these standards have been reviewed and finalized, they are then submitted to the Kansas Insurance Department for review, amendment and approval. This three fold review provides for the greatest possible oversight of the standards and is the best manner to respond to the needs and particular conditions of the Kansas marketplace in a timely and efficient manner.

House FD & D

Attachment 4

Jan 25, 1994

If the standards are put into law, it will require either the Kansas Insurance Department, the Kansas Workers Compensation Insurance Plan Governing Board, or the National Council on Compensation Insurance to appear before the legislature annually to amend the standards as needed. We do not believe this would be in the best interests of Kansas policyholders.

One of the reasons behind this proposal was to gain greater adherence to the standards by the servicing carriers. Unfortunately, the population of the Kansas Assigned Risk Plan is over 14,500 policyholders, and while there have been complaints about service, the vast majority of claims, policies, audits, endorsements, etc, have been processed correctly and efficiently. The NCCI, as Plan administrator, does not accept deviation from standards and is constantly improving our monitoring and enforcement procedures. As an example, our audit staff, which conducts on site reviews of the servicing carriers, has been increased from 10 to 35 over the past three years. Additionally, incentive and disincentive programs that levy monetary penalties and suspend or reduce assignments for carriers who fail to meet standard are in place. Beyond that, the Governing Board and the Kansas Insurance Department have the ability to cease or suspend assignments to carriers who are not fulfilling their obligations. This has been done recently where a servicing carrier was suspended for over three years by the Governing Board and the Kansas Insurance Department. Finally, carrier performance in total claims cost is also measured and either rewarded or penalized. This is a direct reflection on the carriers ability to control costs in the residual market. All of these programs are separate and apart from any action the Kansas Insurance Department may take through market conduct examinations.

In summary, we believe, that despite the provision for extenuating circumstances, the ability to adjust and amend the standards are restricted, possibility to the detriment of Kansas policyholders if this bill is enacted. We believe the current system that allows for a three part review and approval process by both the Kansas Workers Compensation Insurance Plan Governing Board and the Kansas Insurance Department works best for all parties.

BRAD SMOOT

ATTORNEY AT LAW

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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 2636, JANUARY 25, 1994.

Mr. Chairman and Members of the Committee:

I am Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), a trade association representing more than 200 companies providing a variety of insurance products to Kansans and across the nation. AIA members provide more than 50% of workers compensation insurance relied upon by Kansas employers. As such they are required by K.S.A. 40-2108 et seq., to participate in the workers compensation assigned risk plan, a pool of insurance carriers who share the risk of loss for employers who cannot find insurance coverage in the open market. The "plan" or pool of insurance is governed by a statutorily-mandated governing board which is composed of insurers, agents and the general public. The terms of the plan must be approved by the Insurance Commissioner.

Under current rules of the plan, each new applicant for coverage is randomly assigned to a "servicing carrier" for the handling of their premiums, claims and other matters of administration. By statute (K.S.A. 40-2109), the plan must provide a procedure for applicants, insureds, insurers and agents to have their grievances heard and appealed to the Commissioner for resolution. In addition, the Commissioner has authority to adopt all necessary rules and regulations governing the performance of the servicing carriers. Indeed, the language of 1994 H2636 reflects several of the current performance standards.

Although I have not yet seen the exact language being suggested as an amendment to H2636, any proposal which would abolish the current random assignment method of selecting servicing carriers would be of considerable concern to AIA member companies.

House File D
Attachment 5
Jan 25, 1994

② To begin with, the Kansas Legislature just spent two years overhauling the Kansas Workers Compensation System. To the best of my knowledge, the amendment being offered today was not proposed in any formal way to the Legislature during that time. On the other hand, several provisions were enacted which are likely to dramatically impact the operation of the plan. In addition to the general reforms designed to reduce losses and premiums, the Insurance Department is given a specific directive to reduce the plan size and surcharges by 1997.

While no one would defend poor service or suggest that all servicing carriers are "created equal," many of the concerns expressed about service may be a result of an overburdened plan, with too many employers, too many losses and too much in surcharges. We believe many of these causes will be eliminated by the 1993 amendments and particular concerns can be resolved under the very broad powers of the Commissioner to handle grievances.

Random selection of servicing carriers is the only fair way to distribute servicing responsibilities associated with administration. A better approach has recently been initiated by NCCI through a performance incentive policy which credits servicing carriers with better than average performance and charges carriers with less than average performance. Again, this "carrot and stick" approach should be given a chance to work before we totally restructure the plan.

Finally, if there continue to be problems with the servicing carriers in the assigned risk plan after the 1993 changes take effect, I believe the Commissioner has adequate authority to enforce existing standards or promulgate new ones to guarantee satisfactory service by the participating carriers. If legislative action is required someday, the Committee may wish to take advantage of the Workers Compensation Advisory Council, a business and labor board established by the 1993 statutory reforms. The Council is specifically charged with the duty to study and comment on legislative proposals concerning workers compensation.

Thank you for this opportunity to comment on H2636 and the proposed amendment. I would request the opportunity to comment further in writing regarding the exact language of the amendment which has been proposed today and I would be pleased to respond to questions from the committee.