Approved: January 25, 1994

Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:08 a.m. on January 20, 1994 in Room 529-S of the Capitol.

Members present: Senators Corbin, Lawrence, Lee, Moran, 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: Brad Smoot, Hartford Steam Boiler Inspection & Insurance Co.
Bud Grant, KCCI
Richard Brock, Insurance Department
William Sneed, Amvestors Financial Corporation
Paul Garvin, Insurance Department

Others attending: See attached list

Senator Steffes made a motion, seconded by Senator Corbin, to approve the minutes of the meeting of January 19, 1994 as submitted. The motion carried.

Brad Smoot, Hartford Steam Boiler Inspection & Insurance Company, appeared before the committee to request introduction of legislation to repeal KSA 40-209a, which is a 1931 act requiring foreign stock insurance companies to maintain a minimum par value of $1 per share. (Attachment #1.) Senator Praeger moved to introduce the legislation. Senator Steffes seconded the motion. The motion carried.

Bud Grant, KCCI, appeared before the committee to request introduction of legislation dealing with delinquency charges on precomputed loans upon default. (Attachment #2.) Senator Praeger made a motion to introduce the legislation. Senator Moran seconded the motion. The motion carried.

The chairman opened the hearing on **SB 522**--disclosure requirements relating to acquisition and disposition of assets and termination or revision of reinsurance contracts by insurance companies. Richard Brock, State Insurance Department, appeared before the committee to explain that, while this legislation is needed to maintain accreditation in the National Association of Insurance Commissioners, it will also provide regulators early information regarding transactions that could have a significant impact on an insurer's solvency. (Attachment #3.) The bill would also make these reports confidential. Senator Steffes questioned whether the bill was an attempt to protect companies in serious financial difficulty. Mr. Brock explained that it would not prevent insurance companies from moving assets around but it would require reporting such activities to the Insurance Commissioner on a more timely basis--currently the knowledge would not be available to the Insurance Commissioner until the annual report was received. Mr. Brock also explained why it is felt necessary to preserve the confidentiality of these reports since a competitor could use the information against the reporting company. Senator Steffes inquired whether any other industries are exempt from the open records act and Mr. Carman advised that there are currently 38 exceptions to the act.

Bill Sneed, Amvestors Financial Corporation, advised the committee that the reports will be confidential, but the Insurance Commissioner has the authority to investigate any companies reporting these transactions and also elaborated on how disclosure could harm companies making these transactions.

There being no further questions and no further conferees, the hearing on **SB 522** was closed. Senator Steffes made a motion to move **SB 522** favorably. Senator Praeger seconded the motion. The motion carried. Senator Steffes will carry this bill.

The hearing was opened on **SB 490**. Mr. Brock of the Insurance Department also appeared as a proponent of this legislation concerning minimum surplus and deposit requirements for mutual insurance companies other than life. (Attachment #4.) Mr. Brock explained that when a mutual fire and tornado insurer's surplus falls below the amount necessary to qualify as a "general" property and casualty company, the company may continue to write insurance, although not as much until their capital is rebuilt.

There being no further conferees, the hearing on **SB 490** was closed. Senator Steffes made a motion, seconded by Senator Moran, to move the bill favorably. The motion carried. Senator Steffes will carry **SB 490**.

The chairman opened the hearing on **SB 507**--relating to health care provider insurance and attorney's fees. Paul Garvin, State Insurance Department, appeared before the committee to explain that this legislation would accomplish three things: set out the function of a tender of primary insurance coverage limits to the Health Care Stabilization Fund, confirm that the Insurance Commissioner may set an hourly rate to be paid to defense counsel defending health care providers after a tender to the HCSF, and clarify the Commissioner's authority to retain or appoint defense counsel after such a tender. (Attachment #5.) At Senator Bond's request, Mr. Garvin explain the term "tender" to the committee. (Physicians are required to have $200,000 in malpractice insurance. When liability promises to exceed that amount, the litigation may be "tendered" to the Health Care Stabilization Fund, which is administered by the Insurance Commissioner for the purpose of proceeding with the defense of the claim.) Mr. Garvin explained that it is necessary for the Insurance Commissioner to be able to control attorneys' fees to control expenses. Senator Moran questioned why the Insurance Commissioner could not hire or fire attorneys as necessary and Mr. Garvin explained that the issue has been raised in Federal Court in Sedgwick County, questioning the Insurance Commissioner's authority to set attorney fees. This bill would remove any question of the Commissioner's authority to do so.

There being no further conferees, the hearing on **SB 507** was closed. Since the committee will be hearing another bill, **SB 474**, which amends the same statute and these two bills may be combined, no action will be taken on **SB 507** at this time.

The committee adjourned at 9:57 a.m.

The next meeting is scheduled for Tuesday, January 25, 1994.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 1-20-94

NAME	ADDRESS	ORGANIZATION
Dan Grant	Topeka	KCCI
Jerry Slaughter	Topeka	ICMS
Jim Potter	Topeka	SRS
Roen Hilton	Topeka	Ins. Dept.
Rich Guthrie	KC	Health Midwest
Dick Brock	Topeka	Ins Dept
Bill Cornish	"	KS PIC Assn KS Life Assn
Paul McGarvin	Topeka	KS Ins Dept
Rita Noll	"	" " "
Doug Taylor	Topeka	KAIA
Bill Speed	Topeka	State Farm
Brad Smoot	"	HSB

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January 20, 1994

The Honorable Richard Bond
Chairman
Senate Financial Institutions & Insurance Committee
Capitol
Topeka, Kansas 66612

Re: Request for bill introduction

Dear Chairman Bond:

On behalf of the Hartford Steam Boiler Inspection and Insurance Company of Connecticut, a property and casualty carrier licensed to do business in Kansas, I respectfully request the Senate Financial Institutions & Insurance Committee introduce the attached legislation repealing K.S.A. 40-209a. Said statute is a 1931 act requiring foreign stock insurance companies to maintain a minimum par value of $1 per share. This statute is unique among the several states and for reasons to be more fully discussed at a subsequent hearing, is no longer necessary.

Thank you for your consideration of this request.

Sincerely,

Brad Smoot

Brad Smoot
Kansas Legislative Counsel
The Hartford Steam Boiler
Inspection & Insurance
Company of Connecticut

Attachment

Senate FI&I 1/20/94
Attachment #1

SENATE BILL No. _____

By Committee on Financial Institutions and Insurance

1-20

AN ACT relating to insurance; foreign stock companies; requiring par value stock and repealing K.S.A. 40-209a.

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

Section 1. K.S.A. 40-209a is hereby repealed.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

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1-2

16a-2-502. (UCCC) Delinquency charges; conversion of precumputed loan upon default, when; rebate. (1) The parties to a consumer credit transaction may contract for a delinquency charge on any installment not paid in full within 10 days after its scheduled or deferred due date *either* in an amount not exceeding 5% of the unpaid amount of the installment or $25, whichever is less, *or in an amount not exceeding $10.*

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the timie is accures or at any time thereafter.

(3) No deliquency charge may be collected on an installment which is paid within 10 days after its scheduled or deferrred installment due date even though an earlier maturing installment or a deliquency charge on an earlier installment may not have been paid in full.
within 10 days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full.

Senate 7/91
1-20-94
Attachment #2

Testimony on

Senate Bill No. 522

by

Dick Brock

Kansas Insurance Department

Senate Bill No. 522 requires every domestic insurance company to report to the Commissioner all transactions involving more than 5% of an insurer's total admitted assets and all nonrenewals, cancellations or revisions of reinsurance contracts affecting more than 50% of the written premium for property and casualty insurance that has been ceded (transferred) to another carrier or more than 50% of the reserve credit taken with respect to life and accident and sickness insurance.

This is another bill required by the National Association of Insurance Commissioners to maintain accreditation but, more important, it will provide regulators early information regarding transactions that can have a significant impact on an insurer's solvency.

Reports on these transactions are to be made within 15 days after the end of the calendar month in which the reportable transactions occur. A copy of the report is also to be provided the NAIC so that it will be accessible by insurance departments of other states in which the insurer does business. Because this is a model law and is included in the financial regulatory standards applicable to NAIC accreditation, this legislation will be enacted in most states which means Kansas will also benefit from having access to the reports of insurance companies not domiciled in Kansas but which hold a Kansas certificate of authority.

Needless to say, this is sensitive information which could adversely affect an insurance company's operations and ultimately perhaps even its solvency if such information was accessible to its competitors. Furthermore, the information contained on such reports in and of itself would not be useful in any attempt to gauge a particular insurer's financial strength. Yet such information could be misused to produce erroneous impressions to the

Senate 7141 1/20/94
Attachment # 3

detriment of not only the insurer involved but its policyholders. Therefore, this proposal also contains an amendment to the Kansas Open Records Act which would have the effect of making these reports confidential.

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Attachment 3-2

Testimony on

Senate Bill No. 490

by

Dick Brock

Kansas Insurance Department

Under Kansas law insurers writing both property and casualty insurance e.g. fire and general liability are generally required to meet the minimum financial requirements applicable to what are known as "multiple line companies". As of May 1 this year, this requirement will be at least $900,000 of paid-up capital stock and $600,000 surplus or, if a mutual company, $1,500,000 surplus. When possessed of this amount of capital and/or surplus and when authorized to do so by their charter and certificate of authority, insurers may transact any kind of fire and casualty insurance recognized by Kansas statutes including multiple peril policies like Homeowners and Farmowners. Insurers may also be authorized to write only property insurance or only casualty insurance in which case the minimum financial requirement is one-half that of a multiple line company.

Also provided for under Kansas law are what are called mutual fire and tornado companies. These are small mutual insurance companies whose authority is basically confined to fire, extended coverage, vandalism and malicious mischief and some theft and glass breakage. These were the small county mutuals where neighbors literally insured each other. With the advent of homeowners and farmwowners multiple line package policies in the late 1950s, these companies were placed at a disadvantage because of their limited authority. As a result, the 1961 legislature amended the statutes governing mutual fire and tornado insurers to permit them to issue contracts of insurance which include legal liability coverage under certain conditions. One of these conditions was that such contracts could be issued only on residential policies and property reasonably incidental to such residence. Another condition was that the legal liability portion had to be totally reinsured unless the company had a surplus of at least $250,000 in which case it could retain the liability risk up to an amount equal to 3% of its surplus. In other words, the legislature allowed such insurers to write

Senate 7191
1-20-94
Attachment #4

multiple line coverage but only if they reinsured all or most of the legal liability exposure. The minimum surplus requirements applicable to this authority have been adjusted during the intervening years and the industry's standard definition of residential property has moved from 1 and 2 family dwellings to 1-4 family but the basic concept has not changed and has worked well. In fact, Kansas domestic insurers write most of the farm property insurance in Kansas and it's very doubtful they could do so if they were unable to issue multiple line (Farmowners) policies.

However, this special authority currently applies only to mutual fire and tornado insurers organized and operating under Chapter 40, Article 10 of Kansas statutes. When insurers can qualify, it is generally advantageous for them to amend their charter or do whatever they have to do to come under the provisions of Kansas law that apply to mutual property and casualty insurance companies that may be authorized to transact all types of property and casualty insurance. Therefore, when the surplus of a mutual fire and tornado insurer is adequate they generally make this change. By doing so they can issue policies to a greater variety of risks, retain a greater portion of the exposure and otherwise simply have more operational flexibility.

Unfortunately, as the storm patterns over the past several years demonstrate, the surplus of insurers does not always grow. It frequently shrinks. And when it shrinks to the point that the insurer can no longer qualify as a "general" property and casualty insurance company, one of their alternatives is to move back to organization under Article 10. Two domestic insurers just completed this transition late last year. As of May 1, 1994, another factor will enter the equation in that the final phase of legislation enacted in 1984 increasing the minimum financial requirements become effective. Therefore, on that date insurers will be required to possess $1.5 million in surplus to transact multiple line business. As of today the requirement is $1 million so there may be other insurers that will find it necessary to revert to a mutual fire and tornado company status.

Senate Bill No. 490 would simplify this process by adding essentially the same restricted authority to the statutes governing mutual property and

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casualty insurers generally. Section 2 of the proposal would add the same provisions to the statutes governing capital stock property and casualty insurers. The only substantive change between these provisions and those now applicable to mutual fire and tornado insurers is to revise the financial requirements to be consistent with those that will apply as of May 1.

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4-3

Testimony on

Senate Bill No. 507

by

Paul M. Garvin and Rita Noll

Kansas Insurance Department

Senate Bill No. 507, which was requested by the Kansas Insurance Department, primarily represents an amendment to the Health Care Provider Insurance Availability Act, K.S.A. 40-3401 et seq. This bill's various provisions basically 1) set out the function of a tender of primary insurance coverage limits to the Health Care Stabilization Fund, 2) confirm that the Commissioner of Insurance, as administrator of the Health Care Stabilization Fund, may set the hourly rate to be paid to defense counsel defending health care providers after a tender to the Fund, and 3) clarify the Commissioner's authority to retain or appoint defense counsel after such a tender.

The thrust of this bill is in Section 3, which amends K.S.A. 40-3411(b). In recent years, some confusion has arisen regarding the attorney's fee which the Health Care Stabilization Fund would pay after a medical malpractice insurer tenders its policy limits to the Fund. The Commissioner frequently reviews the fee schedule to ensure that the attorney's fees paid by the Fund are competitive with those paid by private insurers. As it currently reads, however, K.S.A. 7-121b purports to put the defense attorney's fee at the discretion of the trial judge after consideration of the

eight factors set out in that statute. On at least one occasion, this has resulted in the Fund being ordered by the court to pay attorney's fees that were considerably higher than the customary rate approved by the Commissioner of Insurance.

When a primary insurer commits its policy limits to the settlement of the case and tenders to the excess carrier, e.g., the Fund, the excess carrier becomes responsible for the conduct of the defense at that point and assumes the costs of defense. Senate Bill No. 507 further enhances K.S.A. 40-3411(b) by outlining the function and mechanics of a tender to the Fund. Also, K.S.A. 40-3411(b) currently authorizes the Commissioner of Insurance to employ "independent counsel" in actions involving exposure of the Fund's coverage for an insured, but offers no guidance as to the duties and limitations of such counsel. This bill alleviates uncertainty as to the responsibilities of counsel employed by the Commissioner.

Sections 1 and 2 of the bill serve to clean up some related statutes to make them consistent with K.S.A. 40-3411, as amended. Most notably, Section 1 amends K.S.A. 7-121b to ensure that a defense counsel's fee after a tender to the Fund in a medical negligence case is in line with the provisions and intent of K.S.A. 40-3411(b).

Therefore, the passage of Senate Bill No. 507 will prevent misunderstandings as to the nature and function of a tender by a

primary insurer to the Health Care Stabilization Fund, the attorney's fee to be paid after such a tender, and the right of the Commissioner of Insurance to employ defense counsel originally retained by the primary insurer, or replace such counsel when it serves the common interests of the defendant health care provider and the Fund.

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