

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 p.m. on February 7, 2011, in Room 152-S of the Capitol.

All members were present except:

Representative Hermanson - Excused

Committee staff present:

David Wiese, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Melissa Calderwood, Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Sue Fowler, Committee Assistant

Conferees appearing before the Committee:

Kevin Davis, Kansas Insurance Department
Bill Sneed, State Farm Insurance
Brad Smoot, American Insurance Association and National Council on Compensation Insurance
R. J. Wilson, Kansas Trial Lawyers Association
Representative Dillmore, District 92

Others attending:

See attached list.

Introduction of Bills:

Bill Sneed, State Farm Insurance, (Attachment 1), proposed a bill dealing with problem areas in the roofing industry. Representative Fawcett moved for introduction. Seconded by Representative Grant. Motion passed.

R. J. Wilson, Kansas Trial Lawyers Association, requested a motion to introduce a bill that would clarify statutory language regarding uninsured and underinsured vehicles. Representative Grant moved for introduction. Seconded by Representative Montgomery. Motion passed.

Representative Dillmore requested a bill that would amend existing law regarding rate review for individual health insurance policies. Representative Grant moved introduction as a committee bill. Seconded by Representative Montgomery. Motion passed.

Hearing on:

HB 2074 **Rate filings; disclosure fo trade secrets or copyrighted material**

Ken Wilke, Kansas Office of Revisor of Statutes, gave a brief overview on **HB 2074**.

Representative Shultz, opened the hearing on **HB 2074**.

Proponents:

Kevin Davis, Kansas Insurance Department, (Attachment 2), gave testimony before the committee in support of **HB 2074**.

Bill Sneed, State Farm Insurance, (Attachment 3), appeared before the committee in support of **HB 2074**.

Brad Smoot, American Insurance Association, (Attachment 4) and National Council on Compensation Insurance, (Attachment 5), gave testimony before the committee in support of **HB 2074**.

Mark Johnston, National Association of Mutual Insurance Companies, (Attachment 6), presented written testimony in support of **HB 2074**.

Representative Grant closed the hearing on **HB 2074**.

CONTINUATION SHEET

Minutes of the House Insurance Committee at 3:30 p.m. on February 7, 2011, in Room 152-S of the Capitol.

Representative Grant moved without objection to pass the January 31, 2011 committee minutes as written.

Next meeting is scheduled for Wednesday, February 9, 2011, 3:30 P.M. in Room 152-S in Capitol.

Meeting adjourned at 4:35 p.m.

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Representing

KATA

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State Farm

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AIA / NCET
KID

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TO: The Honorable Clark Shultz, Chairman
House Insurance Committee

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

SUBJECT: Bill Introduction Request

DATE: February 3, 2011

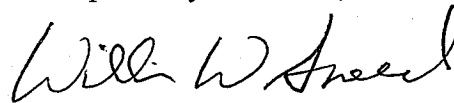
Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for The State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in the United States and in Kansas. State Farm insures one out of every five cars and one out of every four homes in the United States.

Attached to this testimony is a proposed bill we would like introduced dealing with problem areas in the roofing industry. As we will explain in further hearings, this is an attempt to go after the "fly-by-night" individuals who come into an area after a catastrophic loss.

We would appreciate this bill being introduced as a Committee bill, and we look forward to discussing it with you further.

I would be happy to answer any questions at your convenience.

Respectfully submitted,



William W. Sneed

WWS:kjb

555 South Kansas Avenue, Suite 101
Topeka, KS 66603
Telephone: (785) 233-1446
Fax: (785) 233-1939

_____ **BILL No.** _____

By _____

AN ACT concerning the Kansas consumer protection act; relating to residential roofing; certain restrictions, enforcement and penalties..

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

New Section 1. Sections 1 through 8, and amendments thereto, shall be known as the Kansas Residential Roofing Act. Sections 1 through 8, and amendments thereto, shall be part of and supplemental to the Kansas Consumer Protection Act.

New Section 2. The following words and phrases when used in the Kansas Residential Roofing Act, shall have the meanings given to them in this section unless the context directly indicates otherwise: (a) "Residential roofing contractor," a person or other entity in the business of contracting, or offering to contract with an owner to repair or replace roof systems on residential real estate, including roof coverings, roof sheathing, roof weatherproofing, and insulation; (b) "residential real estate," a new or existing building constructed for habitation by one to four families, including detached garages.

New Section 3. A residential roofing contractor providing roofing goods and services to be paid by an insured from the proceeds of a property or casualty insurance policy shall not advertise or promise to pay or rebate all or any part of an applicable insurance deductible. For the purposes of this Section, rebating the insurance deductible includes granting any allowance against the fees to be charged or paying to the insured any form of compensation, for any reason, including, but not limited to, permitting the residential roofing contractor to display a sign or any other type of advertisement at the insured's premises, or paying an insured for providing a letter of referral or recommendation. If a residential contractor violates this subsection, (1) the insurer to whom the insured tendered the claim shall not be obligated to consider the estimate prepared by the residential contractor; and (2) the insured or the applicable insurer may bring an action against the residential roofing contractor in a court of competent jurisdiction for damages sustained by the insured or insurer as a consequence of the residential contractor's violation.

New Section 4. A person who has entered into a written contract with a residential roofing contractor to provide roofing goods and services to be paid by the insured from the proceeds of a property or casualty insurance policy has the right to cancel the contract within 72 hours after the insured has been notified by the insurer that all or any part of the claim has been denied. Cancellation is evidenced by the insured giving written notice of cancellation to the contractor at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit into the United States mail, postage prepaid and properly addressed to the

contractor. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

New Section 5. Before entering a contract referred to in Subsection 3, the contractor must: (1) furnish the insured a statement in boldface type of a minimum size of ten points, in substantially the following form: "You may cancel this contract at any time within 72 hours after you have been notified that your insurer has denied your claim to pay for the goods and services to be provided under this contract. See attached notice of cancellation form for an explanation of this right."

(2) Furnish each insured a fully completed form in duplicate, captioned, "NOTICE OF CANCELLATION,;" which shall be attached to the contract but easily detachable, and which shall contain in boldface type of a minimum size of ten points the following statement:

"NOTICE OF CANCELLATION.

If your insurer denies all or any part of your claim to pay for goods and services to be provided under this contract, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time within 72 hours after you have been notified that your claim has been denied. If you cancel, any payments made by you under the contract will be returned within ten business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

(date)

(Insured's signature)"

New Section 6. Within ten days after a contract referred to in Subsection 3 has been canceled, the contractor must tender to the insured any payments made by the insured and any note or other evidence of indebtedness. If, however, the contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the contractor is entitled to the reasonable value of such services.

New Section 7. (a) Whenever the attorney general or a county or district attorney has reason to believe that any person is in violation of this act, and amendments thereto, and the proceedings would be in the public's best interest, the attorney general or county or district attorney may bring an action against the person to restrain, by temporary or permanent injunction, that practice. (b) Whenever any court issues a permanent injunction to restrain and prevent violation of the Kansas Residential Roofing Act, the court may direct that the defendant restore to any person and interest any monies or property, real or personal, which may have been acquired by means of violation of the Kansas Residential Roofing Act, under terms and

conditions to be established by the court. (c) Any person who violates the Kansas Residential Roofing Act shall be liable for a civil penalty as provided in subsection (a) of K.S.A. 50-636, and amendments thereto, which civil penalty shall be in addition to any other relief which may be granted.

New Section. 8. This act shall take effect and be in force from and after its publication in the statute book.



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON HB 2074

HOUSE COMMITTEE ON INSURANCE February 7, 2011

Mr. Chairman and Members of the Committee:

I am Kevin Davis with the Kansas Insurance Department and with me today is Jim Newins of our Property and Casualty Division.

Thank you for the opportunity to testify in support of HB 2074. This bill would amend K.S.A. 40-955 to provide that certain documents filed with the Kansas Insurance Department which are considered trade secrets or are copyrighted material shall not be required to be disclosed by the Department. This amendment is the result of Attorney General Opinion Number 2010-17 issued last year which stated that absent any other authority this material is subject to disclosure by the Department.

The documents in question are part of the material required to be filed with the Department by insurers when they seek to modify their property and casualty forms and rates. This includes the forms and rates as well as any necessary supporting information required to support the filing. For example this may include such material as bureau manuals, underwriting models, data developed specifically by zip code or territory, and other insurer developed proprietary data.

A trade secret is defined in KSA 60-3320 as:

- (4) "Trade Secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
 - (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - (ii) Is the subject of efforts that are reasonably under the circumstances to maintain its secrecy.

The Kansas Insurance Department believes that there is certain information included in some filings which meets the definition of trade secret and it is reasonable to protect from disclosure. In addition, copyrighted material which is properly identified under the provisions of federal copyright law is appropriate for protection as per copyright laws. This amendment will give the Department the ability to not disclose such qualifying material.

Thank you for the opportunity to appear in support of this bill. I would be happy to stand for questions at the appropriate time.

House Insurance
Date: 2-7-11
Attachment # 2

TO: The Honorable Clark Shultz, Chairman
House Insurance Committee

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

SUBJECT: H.B. 2074

DATE: February 3, 2011

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. Please accept this memorandum as our support for H.B. 2074.

As I am sure the Committee has been briefed, this bill is to clarify Kansas law as it relates to property and casualty insurers filing material deemed to be a trade secret or copyrighted that is included with filings made with the Insurance Department. Because of the confusion, industry has met with the Insurance Department in an attempt to present this bill so that the information the Insurance Department needs in its rate filings can be provided by the insurance companies, and at the same time, the insurance companies would be afforded disclosure protection as enumerated under current Kansas law.

In many instances, the Insurance Department will request information during its evaluation of a rate filing. Although it does not happen often, there are instances when the material that is being requested is by federal and state law deemed a trade secret. Under current law, there is a dispute as to whether a document legally determined to be a trade secret is in fact unavailable for protection under the Kansas Open Records Act if that designation is not specifically listed in the statute at hand.

Because of this confusion, we are simply attempting to codify what has been a long-standing practice to allow these records to retain their status as a trade secret or copyrighted material.

Again, this information is provided to the Insurance Department, and under the appropriate circumstances, could be subject to disclosure under the direction of the courts; but under that scenario the insurance companies are provided the protection of the courts so that the material is not disseminated until a court of competent jurisdiction has made a final decision.

Thus, based upon the foregoing, we respectfully request that the House Insurance Committee look favorably on H.B. 2074 and pass it out to the full House.

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Telephone: (785) 233-1446
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House Insurance
Date: 2-7-11
Attachment # 3

The Honorable Clark Shultz, Chairman
House Insurance Committee
February 3, 2011
Page 2

I am available for questions at your convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will W. Sneed", with a stylized flourish at the end.

William W. Sneed

WWS:kjb

BRAD SMOOT
ATTORNEY AT LAW

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STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
AMERICAN INSURANCE ASSOCIATION
HOUSE INSURANCE COMMITTEE
Regarding 2011 HOUSE BILL 2074
February 7, 2011

Dear Mr. Chairman and Members:

On behalf of the American Insurance Association, a nationwide trade association whose 300 member companies write all lines of property and casualty insurance, including general liability, business, workers compensation, medical malpractice, homeowners and auto, I am pleased to appear today in support of House Bill 2074.

Kansas insurance laws require insurers to file policy forms and rates with the Kansas Insurance Department for review and approval. When so doing, the Department needs and requests, supporting documents that justify the filings submitted. Without this background information, the Department would be unable to confidently approve the filings. Often, however, the submissions include documents that contain company trade secrets or copyrighted materials, not intended for public access or copying. For decades, this background information has been kept confidential for use only by the Insurance Department, when marked "trade secret" or "copyrighted." Frankly, it has never been the business of the state of Kansas to violate the trade secret and copyright protections otherwise authorized by state and federal laws.

Unlike other lines of insurance, however, property and casualty insurers have a unique statute that requires filings to be open to the public. K.S.A. 2010 Supp. 40-955 requires all filings and "supporting information" to be open for public inspection. Prior to July 1, 2010, the Department concluded that trade secret and copyright laws preempted disclosure of any materials that qualified as such. But on July 1, of last year, then Attorney General Steve Six issued Kan Atty Gen Op No 2010-17 reversing that longstanding policy and legal interpretation. On July 9, 2010, the Commissioner was forced to issue Bulletin 2010-1, notifying carriers of the consequences of the AG's Opinion. Carriers were allowed to withdraw filings that had not yet been approved and they would be notified by the Department of any proposed release of such filings 10 days prior to the release so that the insurer might take any necessary legal action to prevent release of confidential information.

Now that the Insurance Department could no longer protect confidential or copyrighted materials, it was placed in the untenable position of (a) not getting information it needs to approve or disapprove a given filing or (b) being sued by an insurer wishing to protect material it was forced to submit to the Department in order to defend its legitimate business interests.

House Insurance
Date: 2-7-11
Attachment # 4

Finally, we would note that other lines of insurance do not require disclosure of trade secrets or copyrighted material as those filing statutes do not have the specific wording contained in K.S.A. 2010 Supp. 40-955. Such filings are governed by the ordinary rules of the Kansas Open Records Act, K.S.A. 45-215 et seq., where trade secret and copyright materials would be handled in accordance with K.S.A. 45-222i (1) and (2). It is interesting to note that "trade secrets" would not be disclosed in a civil court action or a proceeding under the Kansas Administrative Procedures Act. See K.S.A. 60-432 and K.S.A. 60-3320 et seq. Nor would such trade secrets be required to be disclosed during a meeting under the Kansas Open Meetings Act. See K.S.A. 75-4317 et seq., specifically K.S.A. 75-4319(a)(4) where protection of confidential trade secrets is enumerated.

Kansas law (K.S.A. 2010 Supp 40-955), as now interpreted, makes it more difficult for the Kansas Insurance Department to do its regulatory job; encourages lawsuits against the state of Kansas and fails to protect the legal trade secret and copyright privileges otherwise recognized in state and federal law. While many of us may disagree with the Attorney General's Opinion and its reversal of the longstanding departmental practice, a legislative clarification is the most effective and efficient means to rectify the situation. We urge your support for House Bill 2074. Thank you.

BRAD SMOOT

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STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
NATIONAL COUNCIL ON COMPENSATION INSURANCE
HOUSE INSURANCE COMMITTEE
Regarding 2011 House Bill 2074
February 7, 2011

Mr. Chairman and Members:

On behalf of the NCCI, the National Council on Compensation Insurance, I am pleased have the opportunity to offer support for 2011 HB 2074, introduced at the request of the Kansas Insurance Department. NCCI manages the nation's largest database of workers compensation insurance information. NCCI analyzes industry trends, prepares workers compensation insurance rate recommendations, determines the cost of proposed legislation and provides a variety of services, tools and publications to maintain a healthy workers compensation insurance system.

In Kansas, NCCI files modifications to loss cost levels for the voluntary and assigned risk workers compensation system. Kansas' laws and regulations require the Insurance Commissioner to approve an annual loss cost level from which individual companies can establish their competitive multipliers. NCCI also provides cost analysis of various legislative and regulatory proposals so that policy makers in Kansas will have a reliable estimate of the potential financial impact of the changes being considered for the workers compensation system. NCCI collects and maintains its massive database and performs these public services free of charge to the state. The cost of these and other services performed by NCCI is born by affiliate dues and the sale of publications in this specialized insurance market. Consequently, many of the tools and publications of NCCI have financial value and are copyrighted in accordance with federal law.

In the past, we have provided the Kansas Insurance Department with copies of copyrighted manuals for their review in connection with the annual workers compensation filings and other matters. With the new Attorney General's Opinion 2010 - 17 and the advent of mandatory electronic filings, it has become nearly impossible for the Insurance Department to respect the copyrights of NCCI or other rating bureaus or filers. It should not be the business or practice of any state agency to violate federal copyright laws and the rights of companies that must do business with those agencies. Under the current interpretation of K.S.A. 2010 Supp. 40-955, the Department is virtually powerless to protect against illegal copying of copyrighted materials in its possession whether housed in files or computers. HB 2074 will take us back to the rule of law we had before the AG's Opinion and properly guard the copyrights guaranteed by federal law. Thank you.

House Insurance
Date: 2-7-11
Attachment # 5

February 7, 2011

The Honorable Clark Shultz
Chairman
House Insurance Committee
Room 166-W
State Capitol Building
10th and Jackson
Topeka, Kansas 66612

Re: Letter in Support of House Bill 2074 – February 7, 2011 Hearing

Dear Chairman Shultz:

Founded in 1895, the National Association of Mutual Insurance Companies (NAMIC) is a full service national trade association with more than 1,400 member companies that underwrite over 40% of the property/casualty insurance premium in the United States. In Kansas, we have 135 member companies, including 14 domiciled companies, which underwrite 44% of the state's property and casualty insurance business.

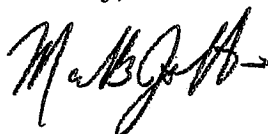
NAMIC offers this letter as testimony in support of HB 2074.

Simply put, HB 2074 clarifies the statutory language found in K.S.A. 2010 Supp. 40-955 so that it is aligned in accordance with the way policymakers, regulatory and insurance stakeholders had interpreted the requirements of that section over the years. It is in keeping with modern practices that facilitate the sharing of important data with regulators while sustaining a competitive marketplace.

NAMIC urges the members of the committee to support HB 2074 when it comes up for a vote.

If there is anything NAMIC or our members can do to assist you, or if you have any questions or comments, please do not hesitate to contact me. In the meantime, I remain,

Sincerely,



Mark Johnston
State Affairs Manager - Midwest