

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Chairman Rex Hoy at
Chairperson

3:30 ~~xxx~~ p.m. on March 3, 1983 in room 521 S of the Capitol.

All members were present except:
No exceptions.

Committee staff present:
Wayne Morris, Legislative Research
Gordon Self, Revisor's Office
Mary Sorensen, Committee Secretary

Conferees appearing before the committee:
None

Others present:
See List (Attachment 1) Pages 1 and 2

The following committee action was taken:

HB 2485, concerning extension of credit to policyholders by agent.
Chairman Hoy explained the bill, and the suggested amendment (Attachment 2). Rep. Littlejohn moved adoption of the amendments. Rep. Cribbs seconded. The motion carried. Rep. Cribbs moved HB 2485 be passed out favorably, as amended. Rep. Long seconded. Motion carried.

HB 2189, by Rep. Moore and Rep. David Webb, requiring certain information to be specified in title insurance policies.
Rep. Webb briefly explained the bill and the suggested amendments (Attachment 3). Rep. Webb moved adoption of the amendments. Rep. Blumenthal seconded. Motion carried. Rep. Webb moved that HB 2189 be passed out favorably as amended. Rep. Spaniol seconded. Motion carried.

HB 2437, concerning automobile liability insurance coverage.
Chairman Hoy explained the suggested amendments shown on Attachment 4 and Attachment 5. Rep. Spaniol moved to insert "and" on line 71 and restore language on line 70 and the first part of line 71. Rep. Cribbs seconded. The motion carried. Rep. Spaniol moved to add Sections 9, 10, 11, 12 and 13, with Section 9 amended to clarify the meaning. Rep. Cribbs seconded. The motion carried. Rep. Blumenthal moved to take out Section 4, re-number the following sections and eliminate the repealers. Rep. Turnquist seconded. The motion carried. Rep. Spaniol moved to report HB 2437, as amended, favorably for passage. Rep. Cribbs seconded. The motion carried.

HB 2246 relating to nonprofit medical and hospital service corporations; limiting payment to participating members.
Dick Brock of the insurance department briefly explained the bill, and there was committee discussion. Rep. Baker moved to pass out HB 2246 favorably. Rep. Mary Jane Johnson seconded. Rep. Littlejohn offered a substitute motion to table HB 2246 until next year. Rep. L. Johnson seconded. A vote was taken, and a division called for. Four voted in favor and six voted against, so the substitute motion to table failed. Rep. Littlejohn made a substitute motion to change the enactment date for this bill to January 1, 1985. Rep. L. Johnson seconded. The substitute motion failed. Rep. Blumenthal made a substitute motion to amend by changing from 104% to 100%, or to the CPI. Rep. Spaniol seconded. This substitute motion failed. Back on the original motion to pass out HB 2246 favorably a vote was taken. Ten voted in favor, four against, and the motion carried. Rep. Leary Johnson, Rep. Littlejohn, and Rep. Fuller all asked to be recorded as voting "no".

HB 2336, by Rep. Spaniol, concerning licensing of insurance adjusters; providing for suspension and revocation of licenses in certain cases; prohibiting certain acts and prescribing penalties for violations.
Rep. Spaniol briefly explained the bill and suggested amendments. Rep. Spaniol offered a conceptual motion to adopt the first suggested amendment. Rep. Sutter seconded. The motion carried. Rep. Spaniol moved to approve the balloon amendments on Attachment 6. Rep. Turnquist seconded, and the motion carried. Rep. Spaniol moved HB 2336 be reported favorably for passage, as amended. Rep. Baker seconded. The motion carried.

HB 2061, by Rep. Vancrum and others; concerning wrongful death actions.
Rep. Blumenthal moved to pass out HB 2061 favorably. Rep. Baker seconded. Rep. Spaniol made a conceptual substitute motion to take the cap off, and have no limit. Rep. Littlejohn seconded. There was discussion as to whether this amendment should be offered in committee

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CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 521 S., Statehouse, at 3:30 ~~xxx~~/p.m. on March 3, 1983
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or on the floor during discussion. A vote was taken, five voted in favor and nine voted against, so the substitute motion failed. Back on the original motion to pass HB 2061 out favorably, a vote was taken and the motion carried.

HB 2062, by Rep. Vancrum; concerning coverage of liability for punitive damages.

Wayne Morris, of Legislative Research, briefly explained the bill and the amendment suggested by Rep. Vancrum at the original hearing. Rep. Sutter moved adoption of the amendment. Rep. Long seconded. The motion carried. Rep. Sutter moved to pass HB 2062 favorably as amended. Rep. Spaniol seconded. The motion carried.

Chairman Hoy announced that Substitute HB 2111 would be carried over until next year, and the other bills on which no vote was taken, and that there would be further study on some of the bills during the interim.

The meeting adjourned at 5:05 PM.

HOUSE BILL No. 2485

By Committee on Insurance

(By Request)

2-22

0017 AN ACT relating to insurance; concerning extension of credit to
0018 policyholders by agent; amending K.S.A. 40-282 and repealing
0019 the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 40-282 is hereby amended to read as fol-
0022 lows: 40-282. (a) Any insurance agent, as defined in K.S.A. 40-239
0023 and amendments thereto, may extend credit to policyholders in
0024 connection with the issuance or servicing of policies procured or
0025 negotiated by such agent but any such credit so extended shall
0026 satisfy one of the following conditions, unless otherwise autho-
0027 rized by law:

0028 (a) (1) If credit is extended to policyholders for a period of
0029 not more than ~~thirty (30)~~ 30 days from the date the premium is
0030 due, and such credit is not evidenced by a written instrument,
0031 there shall be no interest charged for such credit; or

0032 (b) (2) if credit is extended to policyholders for a period of
0033 more than ~~thirty (30)~~ 30 days from the date the premium is due,
0034 and such credit is not evidenced by a written instrument, interest
0035 may be charged for credit extended after ~~thirty (30)~~ 30 days at a
0036 rate not exceeding ~~one and one-half percent (1 1/2%)~~ 1 1/2% per
0037 month on the unpaid balance; or

0038 (c) (3) if the extension of credit to a policyholder is evidenced
0039 by a written instrument setting forth the terms ~~thereof~~, and signed
0040 by the policyholder, any interest charged for such credit shall be
0041 clearly stated in the instrument but it shall not exceed the legal
0042 rate of interest authorized in K.S.A. 16-207 and amendments
0043 thereto.

0044 (b) Any insurance agent or broker extending credit to policy-

045 holders as provided in this section may cancel such insurance _____ subparagraphs (a)(1) or (2) of
0046 according to the terms of the policies ~~on a pro-rata basis for~~
0047 nonpayment of the policyholders' accounts, except as provided in
0048 K.S.A. 40-277 and amendments thereto.

0049 Such insurance agent ~~or broker~~ shall have a lien on any return
0050 premium for the policies to the extent of the amount owed by the _____
0051 policyholder.

Any such cancellation shall be construed as cancellation by the insurance company
such agent represents.

0052 Sec. 2. K.S.A. 40-282 is hereby repealed. _____ of the same policyholder

0053 Sec. 3. This act shall take effect and be in force from and after _____s
0054 its publication in the statute book.

AN ACT relating to title insurance companies; requiring certain information to be specified in title insurance policies.

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

Section 1. (a) Any title insurance company insuring titles to real estate located within Kansas shall specify in any policy issued when the governing body of the municipal or quasi-municipal corporation in which the property is located has filed with the register of deeds of the county or counties in which it is located, a certified copy of any ordinance or resolution creating or establishing any public improvement or special benefit district or any other district having the power to impose special assessments upon taxable tangible real property in the district as required by K.S.A. 12-153, and amendments thereto, provided the municipal or quasi-municipal corporation creating such public improvement or special benefit district has particularly described all platted areas, every lot, block or parcel in any addition, or subdivision and in all unplatted areas, every lot, tract or parcel defined by metes and bounds, which is or will be affected by such public improvement or special benefit district.

(b) No title insurance company shall exempt itself from the provisions of subsection (a) by means of a general exclusion in any policy of title insurance.

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

Session of 1983

HOUSE BILL No. 2437

By Committee on Insurance

(By Request)

2-10

0017 AN ACT relating to insurance; concerning automobile liability
0018 insurance coverage; amending K.S.A. 40-284, 40-3107, 40-3109
0019 and 40-3117 and repealing the existing sections; also repealing
0020 K.S.A. 40-3113a.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 40-284 is hereby amended to read as fol-
0023 lows: 40-284. (a) No automobile liability insurance policy cover-
0024 ing liability arising out of the ownership, maintenance, or use of
0025 any motor vehicle shall be delivered or issued for delivery in this
0026 state with respect to any motor vehicle registered or principally
0027 garaged in this state, unless the policy contains or has endorsed
0028 thereon, a provision with coverage limits equal to the limits of
0029 liability coverage for bodily injury or death in such automobile
0030 liability insurance policy sold to the named insured for payment
0031 of part or all sums which the insured or the insured's legal
0032 representative shall be legally entitled to recover as damages from
0033 the uninsured owner or operator of a motor vehicle because of
0034 bodily injury, sickness or disease, including death, resulting
0035 therefrom, sustained by the insured, caused by accident and
0036 arising out of ownership, maintenance or use of such motor
0037 vehicle, or providing for such payment irrespective of legal
0038 liability of the insured or any other person or organization.

(b) Any uninsured motorist coverage shall include an un-
derinsured motorist provision which enables the insured or the
0041 insured's legal representative to recover from the insurer the
0042 amount of damages for bodily injury or death to which the
0043 insured is legally entitled from the owner or operator of another

HOUSE BILL 2437 - Should Be Noncontroversial:

When the present no-fault law was passed in 1973/74 the old financial responsibility laws were repealed. The repealed sections contained permitted exclusions which were part of a standard automobile policy. This standard policy is used in all states. Further, in 1980 a case in the Kansas Supreme Court interpreted the repeal of these exclusions as being the "legislative intent". Thus, all exclusions in the Kansas automobile insurance policy were declared null and void.

Subsequently in 1980, a hurried attempt was made to restore these exclusions with SB 371. Many were. The restored exclusions were those applicable to personal auto policies. These relating to commercial auto policies were overlooked and were not included.

House Bill 2437 attempts to restore the commercial auto policy to its former provisions.

In addition, a number of changes are suggested which would broaden coverage. These changes are needed to clarify the law in certain areas or to improve the delivery of insurance benefits under the auto no-fault statute.

The changes recommended by HB 2437, simply places the Kansas Insurance policy on equal parity with all similar policies sold by the industry across the country. Without these changes, Kansas policyholders will be disadvantaged in respect to policyholders in all other states!

Atch. 4

0045 provided by such uninsured motorist coverage to the extent such
0046 coverage exceeds the limits of the bodily injury coverage carried
0047 by the owner or operator of the other motor vehicle.

0048 (c) The insured named in the policy shall have the right to
0049 reject, in writing, the uninsured motorists coverage required by
0050 subsection (a) which is in excess of the limits for bodily injury or
0051 death set forth in K.S.A. 40-3107 and amendments thereto. Unless
0052 the insured named in the policy requests such coverage in writ-
0053 ing, such coverage need not be provided in or supplemental to a
0054 renewal policy where the named insured had rejected the cover-
0055 age in connection with a policy previously issued to the insured
0056 by the same insurer.

0057 (d) Coverage under the policy shall be limited to the extent
0058 that the total limits available cannot exceed the highest limits of
0059 any single applicable policy, regardless of the number of policies
0060 involved, persons covered, claims made, vehicles or premiums
0061 shown on the policy or premiums paid or vehicles involved in an
0062 accident.

0063 (e) Any insurer may provide for the exclusion or limitation of
0064 coverage when:

0065 (1) When the insured is occupying or struck by an uninsured
0066 automobile or trailer owned or provided for the insured's regular
0067 use;

0068 (2) when the uninsured automobile is owned by a self-insurer
0069 or the federal government any governmental entity;

0070 (3) there is no evidence of physical contact with the unin-
0071 sured motor vehicle when there is no reliable competent evidence
0072 to prove the facts of the accident from a disinterested witness not
0073 making claim under the policy;

0074 (4) to the extent that workers' compensation benefits apply;
0075 and

0076 (5) when suit is filed against the uninsured motorist without
0077 notice to the insurance carrier; and

0078 (6) to the extent that personal injury protection benefits apply.

0079 Sec. 2. K.S.A. 40-3107 is hereby amended to read as follows:
0080 40-3107. Every policy of motor vehicle liability insurance issued
0081 by an insurer to an owner residing in this state shall:

(2) We are adding "struck by" and "or trailer" to make the exclusion consistent with the intent of the existing language. This is a "clean up" effort in that injuries caused by an owned but uninsured auto or trailer should not qualify for uninsured motorist coverage. As amended this language is consistent with the original intent and will help insure that uninsured motorist coverage premiums will stay as low as possible.

(3) "The federal government" was replaced by "any governmental entity". A self-insured government unit, whether federal, city, county or state, should not be considered uninsured. Otherwise, you are paying premiums for losses caused by a self-insured entity.

(4) This broadens coverage. The existing law requires physical contact between two autos before uninsured motorist coverage is applicable. This is the "phantom vehicle" situation where someone forces a vehicle off the roadway without colliding. We believe coverage should exist in these situations as long as there is evidence to support the claim.

0082 (a) Designate by explicit description or by appropriate refer-
0083 ence of all vehicles with respect to which coverage is ~~thereby~~ to
0084 be granted;

0085 (b) insure the person named ~~therein~~ and any other person, as
0086 insured, using any such vehicle with the expressed or implied
0087 consent of such named insured, against loss from the liability
0088 imposed by law for damages arising out of the ownership, main-
0089 tenance or use of any such vehicle within the United States of
0090 America or the Dominion of Canada, subject to the limits stated
0091 in such policy;

0092 (c) state the name and address of the named insured, the
0093 coverage afforded by the policy, the premium charged ~~therefor~~
0094 and the policy period;

0095 (d) contain an agreement or be endorsed that insurance is
0096 provided ~~thereunder~~ in accordance with the coverage required by
0097 this act;

0098 (e) contain stated limits of liability, exclusive of interest and
0099 costs, with respect to each vehicle for which coverage is ~~thereby~~
0100 granted, not less than \$25,000 because of bodily injury to, or
0101 death of, one person in any one accident and, subject to the limit
0102 for one person, to a limit of not less than \$50,000 because of
0103 bodily injury to, or death of, two or more persons in any one
0104 accident, and to a limit of not less than \$10,000 because of harm
0105 to or destruction of property of others in any one accident;

0106 (f) include personal injury protection benefits to the named
0107 insured, relatives residing in the same household, persons
0108 operating the insured motor vehicle, passengers in such motor
0109 vehicle and other persons struck by such motor vehicle and
0110 suffering bodily injury while not an occupant of a motor vehicle,
0111 not exceeding the limits prescribed for each of such benefits, for
0112 loss sustained by any such person as a result of injury. The owner
0113 of a motorcycle, as defined by K.S.A. 8-1438 *and amendments*
0114 *thereto* or motor-driven cycle, defined by K.S.A. ~~1080 Supp.~~
0115 8-1439 *and amendments thereto*, who is the named insured, shall
0116 have the right to reject in writing insurance coverage including
0117 such benefits for injury to a person which occurs while the named

0119 motor-driven cycle; and unless the named insured requests such
 0120 coverage in writing, such coverage need not be provided in or
 0121 supplemental to a renewal policy when the named insured has
 0122 rejected the coverage in connection with a policy previously
 0123 issued by the same insurer. The fact that the insured has rejected
 0124 such coverage shall not cause such motorcycle or motor-driven
 0125 cycle to be an uninsured motor vehicle;

0126 (g) notwithstanding any omitted or inconsistent language,
 0127 any contract of insurance which an insurer represents as or which
 0128 purports to be a motor vehicle liability insurance policy meeting
 0129 the requirements of this act shall be construed to obligate the
 0130 insurer to meet all the mandatory requirements and obligations of
 0131 this act;

0132 (h) notwithstanding any other provision contained in this
 0133 section, any insurer may exclude coverage required by subsec-
 0134 tions (a), (b), (c) and (d) of this section while any insured vehicles
 0135 are:

0136 (1) Rented to others or used to carry persons for a charge,
 0137 however, such exclusion shall not apply to the use of a private
 0138 passenger car on a share the expense basis;

0139 (2) being repaired, serviced or used by any person employed
 0140 or engaged in any way in the automobile business. This does not
 0141 apply to the named insured, spouse or relative residents; or the
 0142 agents, employers, *employees* or partners of the named insured,
 0143 spouse or resident relative; and

0144 (i) in addition to the provisions of subsection (h) and not-
 0145 withstanding any other provision contained in subsections (a),
 0146 (b), (c) and (d) of this section, any insurer may exclude coverage
 0147 for:

0148 (1) ~~For any bodily injury to any insured or any family member~~
 0149 ~~of an insured residing in the insured's household; person injured~~
 0150 ~~while operating the insured motor vehicle or for bodily injury to~~
 0151 ~~any person related to and residing in the same household with~~
 0152 ~~such operator;~~

0153 (2) for any damages for which the United States government
 0154 might be liable for the insured's use of the vehicle;

0155 (3) for any damages to property owned by, rented to, or in

- (5) The word "employees" was left out originally. This is a correction only.
- (6) The "household" exclusion is broadened by this amendment.
EXAMPLE: Father lets daughter have the family car for the evening. Daughter lets her boyfriend drive. While driving the boyfriend has an accident, seriously injuring the daughter. Under present law, daughter's injuries would not be covered. With this amendment, the daughter would be covered as she is not related to or residing with the operator of the auto.

0156 charge of or transported by an insured, however, this exclusion
0157 shall not apply to coverage for a rented residence or rented private
0158 garage;

0159 (4) for any obligation of an insured, or the insured's insurer
0160 under any type of workers' compensation or disability or similar
0161 law;

0162 (5) for liability assumed by an insured under any contract or
0163 agreement; and

0164 (6) if two or more vehicle liability policies apply to the same
0165 accident, the total limits of liability under all such policies shall
0166 not exceed that of the policy with the highest limit of liability;

0167 (7) for any damages arising from an intentional act; and

0168 (8) for any damages to any person who is insured under a
0169 nuclear energy liability policy.

0170 Sec. 3. K.S.A. 40-3109 is hereby amended to read as follows:

0171 40-3109. (a) A self-insurer or the insurer of the owner of a motor
0172 vehicle covered by a policy of motor vehicle liability insurance
0173 meeting the requirements of this act shall pay any personal injury
0174 protection benefits which are required to be provided by this act
0175 or in such owner's policy of motor vehicle liability insurance for
0176 any injury:

0177 (1) Sustained in this state by the owner while occupying a
0178 motor vehicle not excluded by subsection (a) of K.S.A. 40-3108; or
0179 while not an occupant of a motor vehicle if the injury is caused by
0180 physical contact with a motor vehicle;

0181 (2) sustained outside this state, but within the United States
0182 of America, its territories or possessions or Canada, by the owner
0183 while occupying the owner's motor vehicle; within the United
0184 States of America, its territories or possessions or Canada by the
0185 owner while:

0186 (A) Occupying a motor vehicle not excluded by subsection (a)
0187 of K.S.A. 40-3108 and amendments thereto; or

0188 (B) not an occupant of a motor vehicle if the injury is caused
0189 by physical contact with a motor vehicle;

0190 (3) (2) sustained by a relative of the owner residing in the
0191 same household, under the circumstances described in paragraph

0192 (1) or (2) of this subsection, if the relative at the time of the

(7) Permitted exclusion: Exclusion #7. This is the "intentional act" exclusion. Very simply, insurance should not pay the person who burns his car down or who intentionally causes an accident. If insurance paid these losses the honest person would surely pay higher premiums.

(8) For the most part the "nuclear exclusion" will not affect the average Kansas auto policyholder. The "nuclear exclusion" applies only to persons who deal in the transportation of nuclear substances. In those cases coverage is excluded in favor of a nuclear energy liability policy such as one written by the Nuclear Energy Liability Insurance Association or the Mutual Atomic Energy Liability Underwriters.

*** The amending language for paragraphs 9, 10, 11, 12 and 13 are shown on next page.

Strike this paragraph.

and adding the language below extends coverage to other states. This language broadens coverage.

The Exclusions ARE Underlined
Below the Amendatory Language
is a brief explanation —

(9) Any obligation of the insured to indemnify another for damages resulting from bodily injury to the insured's employee.

Exclusion #9: The "WC indemnification exclusion" is a companion to subsection (4). Both, operating together, make worker's compensation coverage the exclusive remedy for injured workers.

Explanation

EXAMPLE: "A" the employer and driver was taking "B" the employee to a worksite. "A" failed to yield at an intersection and was struck by "C" who was speeding in his car. "A" paid WC benefits to "B". "B" sued "C" and collects his medical expenses and loss of earnings based on "C's" negligence. "C" then sues "A". "A" has met his responsibility to "B". "C's" suit against "A" should be dropped. In the event the lawsuit against "A" is not dropped, it will be "A's" worker's compensation policy which will defend "A". Employer's Liability Coverage (Coverage B) of the WC policy is written for this purpose.

(10) Bodily injury to any fellow employee of the insured arising out of and in the course of his or her employment.

Explanation

Exclusion #10: The "fellow servant rule" hold that since the employer is required to provide worker's compensation coverage hi is not further liable to the injured employee. This is the law in the State of Kansas. This exclusion simply makes the Kansas auto policy conform with present law.

(11) Bodily injury or property damage resulting from the handling of property:

(a) Before it is moved from the place where it is accepted by the insured for movement into or onto the covered auto, or

(b) After it is moved from the covered auto to the place where it is finally delivered by the insured.

Explanation

Exclusion #11: This exclusion and #12 below are known as the "loading and unloading" exclusions. Their purpose is to coordinate coverage between a general liability policy and the automobile policy. One begins where the other ends to provide coverage as goods and materials go in and out of autos and trucks. These exclusions are used in all states. We attach a general liability endorsement to illustrate how these exclusions work together.

Without the "loading and unloading" exclusions in the policy, Kansas auto policyholders can be charged with general liability losses of Boeing or Safeway for example!

(12) Bodily injury or property damage resulting from the movement of property by a mechanical device (other than a hand truck) not attached to the covered auto.

Explanation

Exclusion #12: This is the "forklift" exclusion which should be considered in the discussion of the "loading and unloading" exclusion above.

(13) Bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental.

Explanation of Exclusion #13

Exclusion #13: This is the pollution exclusion. Here, as with exclusions above, there is a need to coordinate with the general liability policy:

EXAMPLE: Mr. Smith a farmer, is carrying a tank of liquid fertilizer. He loses control of his pickup, hits a bridge abutment and the tank goes into a stream, causing considerable pollution damage. This damage is covered. All sudden and accidental damage is covered. By contract, continuous pollution is not covered. It is not covered under a general liability policy and it should not be covered under an auto policy. Coverage is written by the Pollution Liability Insurance Association as well as several individual insurance companies, specifically for the pollution exposure. To load the Kansas auto policy with this additional risk is not right! And has premium impact. -

0193 accident is not himself the owner of a motor vehicle with respect
0194 to which a motor vehicle liability insurance policy is required by
0195 this act;

0196 (4) (3) sustained in this state by any other person while oc-
0197 cupying such motor vehicle or, if a resident of this state, while not
0198 an occupant of such motor vehicle, if the injury is caused by
0199 physical contact with such motor vehicle and the injured person
0200 is not himself the owner of a motor vehicle with respect to which
0201 a motor vehicle liability insurance policy is required under this
0202 act.

0203 (b) If two (2) or more insurers or self-insurers are liable to pay
0204 personal injury protection benefits for the same injury to any one
0205 (1) person, the maximum benefits payable from all applicable
0206 policies shall be the total of the various maximum benefits
0207 provided by this act, and any insurer or self-insurer paying the
0208 benefits shall be entitled to recover from each of the other
0209 insurers or self-insurers an equitable pro rata share of the benefits
0210 paid and expenses incurred in processing the claim: highest limit
0211 of any one policy providing such personal injury protection ben-
0212 efits. The primary personal injury protection coverage shall be
0213 provided by the policy covering:

0214 (1) The motor vehicle occupied by the injured person at the
0215 time of the accident; or

0216 (2) the motor vehicle causing such physical contact.

0217 Sec. 4. K.S.A. 40-3117 is hereby amended to read as follows:
0218 40-3117. (a) In any action for tort brought against the owner,
0219 operator or occupant of a motor vehicle or against any person
0220 legally responsible for the acts or omissions of such owner,
0221 operator or occupant, a plaintiff may recover damages in tort for
0222 pain, suffering, mental anguish, inconvenience and other nonpe-
0223 cuniary loss because of injury only in the event the injury re-
0224 quires medical treatment of a kind described in this act as
0225 medical benefits, having a reasonable value of five hundred
0226 dollars (\$500) \$500 or more, or the injury consists in whole or in
0227 part of permanent disfigurement, a fracture to a weightbearing
0228 bone, a compound, comminuted, displaced or compressed frac-
0229 ture, loss of a body member, permanent injury within reasonable

Strike this paragraph

And adding the new language simply cures an administrative headache. It takes nothing from the insured! It simply defines the insurance carrier who is to accept the responsibility for payment to the insured, instead, the insureds payments being delayed while two carriers argue who should step in and make the payments to the insured.

0230 medical probability, permanent loss of a bodily function or death.
 0231 Any person who is entitled to receive free medical and surgical
 0232 benefits shall be deemed in compliance with the requirements of
 0233 this section upon a showing that the medical treatment received
 0234 has an equivalent value of at least five hundred dollars (\$500)
 0235 \$500. Any person receiving ordinary and necessary services,
 0236 normally performed by a nurse, from a relative or a member of his
 0237 household shall be entitled to include the reasonable value of
 0238 such services in meeting the requirements of this section. For the
 0239 purpose of this section, the charges actually made for medical
 0240 treatment expenses shall not be conclusive as to their reasonable
 0241 value. Evidence that the reasonable value thereof was an amount
 0242 different than the amount actually charged shall be admissible in
 0243 all actions to which this subsection applies.

0244 ~~(b) In any such action in tort for pecuniary or nonpecuniary~~
 0245 ~~loss because of injury, the amount of any settlement or judgment~~
 0246 ~~shall be reduced by any personal injury protection benefits, in-~~
 0247 ~~cluding any excess benefits above the minimum limit required by~~
 0248 ~~this act, paid or payable to the injured person as specified in~~
 0249 ~~subsection (q) of K.S.A. 40-3103 and amendments thereto.~~

0250 Sec. 5. K.S.A. 40-284, 40-3107, 40-3109, 40-3113a and 40-
 0251 3117 are hereby repealed.

0252 Sec. 6. This act shall take effect and be in force from and after
 0253 its publication in the statute book.

Since this paragraph is controversial, we are deleting this language.

By striking the above paragraph, we need not repeal 40-3113a which is the present subrogation statute.

HOUSE BILL No. 2437

By Committee on Insurance

(By Request)

2-10

0017 AN ACT relating to insurance; concerning automobile liability
 0018 insurance coverage; amending K.S.A. 40-284, 40-3107, 40-3109
 0019 and 40-3117 and repealing the existing sections; also repealing
 0020 K.S.A. 40-3113a.

and

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 40-284 is hereby amended to read as fol-
 0023 lows: 40-284. (a) No automobile liability insurance policy cover-
 0024 ing liability arising out of the ownership, maintenance, or use of
 0025 any motor vehicle shall be delivered or issued for delivery in this
 0026 state with respect to any motor vehicle registered or principally
 0027 garaged in this state, unless the policy contains or has endorsed
 0028 thereon, a provision with coverage limits equal to the limits of
 0029 liability coverage for bodily injury or death in such automobile
 0030 liability insurance policy sold to the named insured for payment
 0031 of part or all sums which the insured or the insured's legal
 0032 representative shall be legally entitled to recover as damages from
 0033 the uninsured owner or operator of a motor vehicle because of
 0034 bodily injury, sickness or disease, including death, resulting
 0035 therefrom, sustained by the insured, caused by accident and
 0036 arising out of ownership, maintenance or use of such motor
 0037 vehicle, or providing for such payment irrespective of legal
 0038 liability of the insured or any other person or organization.

0039 (b) Any uninsured motorist coverage shall include an un-
 0040 derinsured motorist provision which enables the insured or the
 0041 insured's legal representative to recover from the insurer the
 0042 amount of damages for bodily injury or death to which the
 0043 insured is legally entitled from the owner or operator of another
 0044 motor vehicle with coverage limits equal to the limits of liability

0045 provided by such uninsured motorist coverage to the extent such
0046 coverage exceeds the limits of the bodily injury coverage carried
0047 by the owner or operator of the other motor vehicle.

0048 (c) The insured named in the policy shall have the right to
0049 reject, in writing, the uninsured motorists coverage required by
0050 subsection (a) which is in excess of the limits for bodily injury or
0051 death set forth in K.S.A. 40-3107 *and amendments thereto*. Unless
0052 the insured named in the policy requests such coverage in writ-
0053 ing, such coverage need not be provided in or supplemental to a
0054 renewal policy where the named insured had rejected the cover-
0055 age in connection with a policy previously issued to the insured
0056 by the same insurer.

0057 (d) Coverage under the policy shall be limited to the extent
0058 that the total limits available cannot exceed the highest limits of
0059 any single applicable policy, regardless of the number of policies
0060 involved, persons covered, claims made, vehicles or premiums
0061 shown on the policy or premiums paid or vehicles involved in an
0062 accident.

0063 (e) Any insurer may provide for the exclusion or limitation of
0064 coverage **when:**

0065 (1) *When* the insured is occupying *or struck by* an uninsured
0066 automobile *or trailer* owned or provided for the insured's regular
0067 use;

0068 (2) *when* the uninsured automobile is owned by a self-insurer
0069 or the federal government *any governmental entity*;

0070 (3) ~~there is no evidence of physical contact with the unin-~~
0071 ~~sured motor vehicle when there is no reliable competent evidence~~
0072 *to prove the facts of the accident from a disinterested witness not*
0073 *making claim under the policy*;

0074 (4) to the extent that workers' compensation benefits apply;
0075 **and**

0076 (5) *when* suit is filed against the uninsured motorist without
0077 notice to the insurance carrier; *and*

0078 (6) *to the extent that personal injury protection benefits apply.*

0079 Sec. 2. K.S.A. 40-3107 is hereby amended to read as follows:
0080 40-3107. Every policy of motor vehicle liability insurance issued
0081 by an insurer to an owner residing in this state shall:

0083 (a) Designate by explicit description or by appropriate refer-
0084 ence of all vehicles with respect to which coverage is ~~thereby~~ to
0085 be granted;

0086 (b) insure the person named ~~therein~~ and any other person, as
0087 insured, using any such vehicle with the expressed or implied
0088 consent of such named insured, against loss from the liability
0089 imposed by law for damages arising out of the ownership, main-
0090 tenance or use of any such vehicle within the United States of
0091 America or the Dominion of Canada, subject to the limits stated
0092 in such policy;

0093 (c) state the name and address of the named insured, the
0094 coverage afforded by the policy, the premium charged ~~therefor~~
0095 and the policy period;

0096 (d) contain an agreement or be endorsed that insurance is
0097 provided ~~thereunder~~ in accordance with the coverage required by
0098 this act;

0099 (e) contain stated limits of liability, exclusive of interest and
0100 costs, with respect to each vehicle for which coverage is ~~thereby~~
0101 granted, not less than \$25,000 because of bodily injury to, or
0102 death of, one person in any one accident and, subject to the limit
0103 for one person, to a limit of not less than \$50,000 because of
0104 bodily injury to, or death of, two or more persons in any one
0105 accident, and to a limit of not less than \$10,000 because of harm
0106 to or destruction of property of others in any one accident;

0107 (f) include personal injury protection benefits to the named
0108 insured, relatives residing in the same household, persons
0109 operating the insured motor vehicle, passengers in such motor
0110 vehicle and other persons struck by such motor vehicle and
0111 suffering bodily injury while not an occupant of a motor vehicle,
0112 not exceeding the limits prescribed for each of such benefits, for
0113 loss sustained by any such person as a result of injury. The owner
0114 of a motorcycle, as defined by K.S.A. 8-1438 *and amendments*
0115 *thereto* or motor-driven cycle, defined by K.S.A. ~~1980 Supp.~~
0116 8-1439 *and amendments thereto*, who is the named insured, shall
0117 have the right to reject in writing insurance coverage including
0118 such benefits for injury to a person which occurs while the named
insured is operating or is a passenger on such motorcycle or

9 motor-driven cycle; and unless the named insured requests such
0120 coverage in writing, such coverage need not be provided in or
0121 supplemental to a renewal policy when the named insured has
0122 rejected the coverage in connection with a policy previously
0123 issued by the same insurer. The fact that the insured has rejected
0124 such coverage shall not cause such motorcycle or motor-driven
0125 cycle to be an uninsured motor vehicle;

0126 (g) notwithstanding any omitted or inconsistent language,
0127 any contract of insurance which an insurer represents as or which
0128 purports to be a motor vehicle liability insurance policy meeting
0129 the requirements of this act shall be construed to obligate the
0130 insurer to meet all the mandatory requirements and obligations of
0131 this act;

0132 (h) notwithstanding any other provision contained in this
0133 section, any insurer may exclude coverage required by subsections
0134 (a), (b), (c) and (d) of this section while any insured vehicles
0135 are:

0136 (1) Rented to others or used to carry persons for a charge,
0137 however, such exclusion shall not apply to the use of a private
0138 passenger car on a share the expense basis;

0139 (2) being repaired, serviced or used by any person employed
0140 or engaged in any way in the automobile business. This does not
0141 apply to the named insured, spouse or relative residents; or the
0142 agents, employers, *employees* or partners of the named insured,
0143 spouse or resident relative; and

0144 (i) in addition to the provisions of subsection (h) and notwithstanding any other provision contained in subsections (a),
0145 (b), (c) and (d) of this section, any insurer may exclude coverage
0146 for:

0148 (1) *For any bodily injury to any insured or any family member
0149 of an insured residing in the insured's household; person injured
0150 while operating the insured motor vehicle or for bodily injury to
0151 any person related to and residing in the same household with
0152 such operator;*

0153 (2) for any damages for which the United States government
0154 might be liable for the insured's use of the vehicle;

0155 (3) for any damages to property owned by, rented to, or in

0156 charge of or transported by an insured, however, this exclusion
 0157 shall not apply to coverage for a rented residence or rented private
 0158 garage;

0159 (4) for any obligation of an insured, or the insured's insurer
 0160 under any type of workers' compensation or disability or similar
 0161 law;

0162 (5) for liability assumed by an insured under any contract or
 0163 agreement; and

0164 (6) if two or more vehicle liability policies apply to the same
 0165 accident, the total limits of liability under all such policies shall
 0166 not exceed that of the policy with the highest limit of liability;;

0167 (7) for any damages arising from an intentional act; and

0168 (8) for any damages to any person who is insured under a
 0169 nuclear energy liability policy.

0170 Sec. 3. K.S.A. 40-3109 is hereby amended to read as follows:
 0171 40-3109. (a) A self-insurer or the insurer of the owner of a motor
 0172 vehicle covered by a policy of motor vehicle liability insurance
 0173 meeting the requirements of this act shall pay any personal injury
 0174 protection benefits which are required to be provided by this act
 0175 or in such owner's policy of motor vehicle liability insurance for
 0176 any injury:

0177 (1) Sustained in this state by the owner while occupying a
 0178 motor vehicle not excluded by subsection (a) of K.S.A. 40-3108; or
 0179 while not an occupant of a motor vehicle if the injury is caused by
 0180 physical contact with a motor vehicle;

0181 (2) sustained outside this state, but within the United States
 0182 of America, its territories or possessions or Canada, by the owner
 0183 while occupying the owner's motor vehicle; within the United
 0184 States of America, its territories or possessions or Canada by the
 0185 owner while:

0186 (A) Occupying a motor vehicle not excluded by subsection (a)
 0187 of K.S.A. 40-3108 and amendments thereto; or

0188 (B) not an occupant of a motor vehicle if the injury is caused
 0189 by physical contact with a motor vehicle;

0190 (3) (2) sustained by a relative of the owner residing in the
 0191 same household, under the circumstances described in paragraph
 0192 (1) or (2) of this subsection, if the relative at the time of the

- (9) for any obligation of the insured to indemnify another
 for damages resulting from bodily injury to the
 insured's employee;
- (10) for bodily injury to any fellow employee of the insured
 arising out of and in the course of such employee's
 employment;
- (11) for bodily injury or property damage resulting from
 the handling of property:
- (A) Before it is moved from the place where it
 is accepted by the insured for movement
 into or onto the covered auto; or
- (B) after it is moved from the covered auto to
 the place where it is finally delivered by
 the insured;
- (12) for bodily injury or property damage resulting from
 the movement of property by a mechanical device,
 other than a hand truck, not attached to the covered
 auto; and
- (13) for bodily injury or property damage caused by the
 dumping, discharge or escape of irritants, pollutants
 or contaminants, however, this exclusion does not
 apply if the discharge is sudden and accidental.

accident is not himself the owner of a motor vehicle with respect to which a motor vehicle liability insurance policy is required by

0195 this act;

0196 (4) (3) sustained in this state by any other person while oc-
0197 cupying such motor vehicle or, if a resident of this state, while not
0198 an occupant of such motor vehicle, if the injury is caused by
0199 physical contact with such motor vehicle and the injured person
0200 is not himself the owner of a motor vehicle with respect to which
0201 a motor vehicle liability insurance policy is required under this
0202 act.

0203 (b) If two (2) or more insurers or self-insurers are liable to pay
0204 personal injury protection benefits for the same injury to any one
0205 (1) person, the maximum benefits payable *from all applicable*
0206 *policies* shall be the total of the various maximum benefits
0207 provided by this act, and any insurer or self-insurer paying the
0208 benefits shall be entitled to recover from each of the other
0209 insurers or self-insurers an equitable pro rata share of the benefits
0210 paid and expenses incurred in processing the claim: *highest limit*
0211 *of any one policy providing such personal injury protection ben-*
0212 *efits. The primary personal injury protection coverage shall be*
0213 *provided by the policy covering:*

0214 (1) *The motor vehicle occupied by the injured person at the*
0215 *time of the accident; or*

0216 (2) *the motor vehicle causing such physical contact.*

0217 Sec. 4. ~~K.S.A. 40-3117 is hereby amended to read as follows:~~
0218 40-3117. (a) In any action for tort brought against the owner,
0219 operator or occupant of a motor vehicle or against any person
0220 legally responsible for the acts or omissions of such owner,
0221 operator or occupant, a plaintiff may recover damages in tort for
0222 pain, suffering, mental anguish, inconvenience and other nonpe-
0223 cuniary loss because of injury only in the event the injury re-
0224 quires medical treatment of a kind described in this act as
0225 medical benefits, having a reasonable value of five hundred
0226 dollars ~~(\$500)~~ \$500 or more, or the injury consists in whole or in
0227 part of permanent disfigurement, a fracture to a weightbearing
8 bone, a compound, comminuted, displaced or compressed frac-
29 ture, loss of a body member, permanent injury within reasonable

medical probability, permanent loss of a bodily function or death.

Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this section upon a showing that the medical treatment received has an equivalent value of at least five hundred dollars (\$500) \$500. Any person receiving ordinary and necessary services, normally performed by a nurse, from a relative or a member of his household shall be entitled to include the reasonable value of such services in meeting the requirements of this section. For the purpose of this section, the charges actually made for medical treatment expenses shall not be conclusive as to their reasonable value. Evidence that the reasonable value thereof was an amount different than the amount actually charged shall be admissible in all actions to which this subsection applies.

(b) In any such action in tort for pecuniary or nonpecuniary loss because of injury, the amount of any settlement or judgment shall be reduced by any personal injury protection benefits, including any excess benefits above the minimum limit required by this act, paid or payable to the injured person as specified in subsection (a) of K.S.A. 40-3103 and amendments thereto.

Sec. 5. K.S.A. 40-284, 40-3107, 40-3109, 40-3113a and 40-3117 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

and

5

Attachment 6

HOUSE BILL No. 2336

By Representative Spaniol

2-9

0017 AN ACT relating to insurance; concerning the licensing of in-
0018 surance adjusters; providing for suspension and revocation of
0019 licenses in certain cases; prohibiting certain acts and prescrib-
0020 ing penalties for violations.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. As used in this act: (a) The term "commissioner"
0023 shall mean the commissioner of insurance of this state.

0024 (b) The term "insurance adjuster" or "adjuster" shall mean an
0025 individual who, for remuneration, investigates, ascertains or de-
0026 termines the amount of claim, loss or damage arising under any
0027 contract of insurance, as defined herein, written in this state by a
0028 fire or casualty insurance company under the authority granted
0029 the insurer, or undertakes to effect settlement of such claim, loss
0030 or damage on behalf of insurance companies authorized to do
0031 business in this state, but for the purposes of this act, no one shall
0032 be an adjuster:

0033 (1) Who is a licensed attorney in the state of Kansas and
0034 adjusts insurance losses and who does not advertise or represent
0035 that such attorney is an insurance adjuster;

0036 (2) who is a licensed insurance agent of a company authorized
0037 to write any contract of insurance, as defined in this act, and acts
0038 in settlement or negotiating claim settlements only for those
0039 insurers for which they are licensed as an agent;

0040 (3) the president, officers and directors of an insurer;

0041 (4) any employee of an insurer who performs the activities of
0042 an adjuster only in a clerical capacity; or

0043 (5) an individual employed or retained by, or on behalf of, an
0044 insurer or a licensed insurance adjuster to ascertain or determine
0045 the amount of claim, loss or damage arising under a contract of

Atch. 6

0046 insurance but who does not advertise or represent that such
 0047 individual is an insurance adjuster and who does not undertake to
 0048 effect settlement of a claim. Such individuals may include but not
 0049 be limited to accountants, licensed practitioners of the healing
 0050 arts, professional engineers and appraisers.

0051 (c) The term "contract of insurance" shall mean a written
 0052 agreement whereby one party, for a consideration, promises to
 0053 pay money or its equivalent or to perform some act valuable to the
 0054 insured upon the destruction, loss or injury of something in
 0055 which the other party has an interest. The term "contract of
 0056 insurance," as used herein shall not mean an accident and sick-
 0057 ness insurance policy or a life insurance policy.

0058 (d) When used in this act the term "person" shall mean and
 0059 include any individual, corporation, association, partnership, re-
 0060 ciprocal exchange, inter-insurer, mutual nonprofit hospital ser-
 0061 vice corporation, nonprofit medical service corporation, societies,
 0062 including fraternal benefit societies, receiver, trustee, fiduciary or
 0063 any other legal entity engaged in the business of insurance.

0064 Sec. 2. Before any individual shall engage in the insurance
 0065 business as an insurance adjuster, such individual shall make
 0066 written application to the commissioner of insurance, in the
 0067 manner and form prescribed by the commissioner, for an insur-
 0068 ance adjuster's license in any one or all of the specialized areas of
 0069 insurance adjusting as determined by the commissioner in sec-
 0070 tion 3, authorizing such person to engage in and transact such
 0071 business. At the time such application is filed with the commis-
 0072 sioner, the applicant shall pay an annual license fee fixed by the
 0073 commissioner in an amount sufficient to cover administrative
 0074 costs incurred by the commissioner and shall make sworn an-
 0075 swers to such interrogatories as the commissioner may require.
 0076 Such applicant shall: (1) Be at least 18 years of age; (2) be a citizen
 0077 of the United States; (3) be of good moral character; and (4) have
 0078 experience in the insurance business, unless such applicant has
 0079 received or will immediately receive a course of instruction in the
 0080 type of insurance, including the policies and policy forms, for
 0081 which such applicant seeks to be licensed as an adjuster.

0082 Sec. 3. (a) The commissioner shall identify specialized areas

, except that such individual, if new to the insurance business as an insurance adjuster and involved in a provisional insurance adjuster training program, shall not be required to make written application to the commissioner for an insurance adjuster's license until after 60 calendar days have passed from such individual's commencement of work in the insurance business as an insurance adjuster

type of

for which the applicant seeks to be licensed

0083 of insurance adjusting and each applicant for an insurance ad-
 0084 juster license, except as provided in section 4, shall be required,
 0085 as a condition of licensure in any such area or areas, to pass to the
 0086 satisfaction of the commissioner an examination in any one or all
 0087 of the specialized areas established by the commissioner. The
 0088 examination shall be administered by the commissioner or the
 0089 commissioner's appointees and shall test the applicant's qualifi-
 0090 cations and competency. An examination fee to be paid by the
 0091 applicant shall be required in an amount sufficient to cover
 0092 administrative costs incurred by the commissioner in processing
 0093 the examination, and such examination fee shall be in addition to
 0094 the license fee required under section 2.

Such
 not be refundable and shall

0095 (b) Each examination for a license in any one or all of the
 0096 specialized areas of insurance adjusting shall be prescribed by
 0097 the commissioner and shall be of sufficient scope to test the
 0098 applicant's knowledge of basic insurance theory, essential ele-
 0099 ments of contracts, problems peculiar to the specialized area or
 0100 areas of insurance adjusting for which the applicant is being
 0101 tested, claims ethics and the duties and responsibilities of ad-
 0102 justers under the laws of Kansas.

0103 (c) The commissioner shall, within a reasonable period of
 0104 time, not to exceed 30 days from the date of examination, transmit
 0105 the results of the examination after determining which special-
 0106 ized area or areas of insurance adjusting that the applicant has
 0107 successfully completed and the final action taken on the applica-
 0108 tion, to the applicant. If the applicant fails to satisfactorily com-
 0109 plete the examination in one or more of the specialized areas for
 0110 which the applicant has applied, the examination may be retaken
 0111 after a waiting period not to exceed 30 days from the date of last
 0112 attempt, and upon the payment of an additional examination fee.

for those areas not passed

another

0113 (d) The examination shall be given at such times and places
 0114 within this state as shall be provided by the commissioner.

0115 Sec. 4. The examination required under section 3 shall be
 0116 waived by the commissioner for:

0117 (a) Any applicant who applies for a license within 90 days of
 0118 the effective date of this act and who, for the two-year period
 0119 immediately prior to the effective date of this act has been

a six-month

0120 regularly engaged in the investigation, negotiation and settlement
0121 of losses occurring in this state and who is so engaged on the
0122 effective date of this act and who presents evidence satisfactory to
0123 the commissioner; or

0124 (b) any person who files a timely application for a renewal of
0125 a license; or

0126 (c) any applicant who is licensed as an insurance adjuster in
0127 another state with standards for licensure of adjusters which are
0128 substantially similar to the requirements of this act.

0129 Sec. 5. If the commissioner determines that the applicant
0130 meets the requirements of sections 2 and 3, the commissioner
0131 shall issue to the applicant a license to act as an insurance
0132 adjuster in this state in any one or all of the specialized area or
0133 areas of insurance adjusting for which the applicant has applied
0134 and successfully completed the examination. The commissioner
0135 shall keep a permanent record of all insurance adjusters' licenses
0136 so issued.

0137 Sec. 6. (a) In the event of a catastrophe or emergency situa-
0138 tion within the state, creating a need for additional insurance
0139 adjusters, the commissioner may issue a temporary permit, for the
0140 purposes and under the conditions which the commissioner shall
0141 fix, and for such period of time as the commissioner shall deter-
0142 mine, to any individual, as a catastrophe or emergency adjuster,
0143 who is not a licensed adjuster under this act, but who has been
0144 designated and certified by an authorized insurer or by an ad-
0145 juster licensed under this act as qualified to act as an adjuster in
0146 adjusting fire and casualty claims, losses or damages under con-
0147 tracts of insurance issued by the insurer. The fee for the permit
0148 shall be fixed by the commissioner in an amount sufficient to
0149 cover administrative costs incurred by the commissioner.

0150 (b) In the event that an investigation by the commissioner
0151 discloses that any person, who has been issued a temporary
0152 permit under subsection (a), has obtained a permit by fraud or
0153 misrepresentation, or that the interests of the insurer, or the
0154 insurable interests of the public, are not being properly served
0155 under the permit, the commissioner, without notice and hearing,
0156 is hereby authorized to issue an order revoking the permit granted

is an applicant for renewal of a license in Kansas where said license has been permitted to lapse for not more than 2 years prior to the date of the application, and where the commissioner is satisfied that the applicant complies with the other provisions of this act;

to the extent the

for a period of 10 years

the commissioner determines

exists

insurers

7 to such individual under this section, and it shall be unlawful for
0158 such person to serve in such capacity in this state.

0159 Sec. 7. The commissioner shall have the right to revoke or
0160 suspend the license in any one or all of the specialized areas for
0161 which the adjuster holds a license, when the commissioner has
0162 reason to believe: (a) That such license was obtained by fraud or
0163 misrepresentation; or (b) that the interests of the insurer, or the
0164 insurable interests of the public are not properly served under
0165 such license. [The commissioner shall, before revoking or sus- (c)
0166 pending any license, give the adjuster, and the company or
0167 companies represented by the adjuster, reasonable notice of a
0168 hearing to be held by the commissioner, at a time and place fixed
0169 in the notice, at which time the adjuster and the company or
0170 companies represented by the adjuster shall be given an oppor-
0171 tunity to present evidence relevant to the issue involved.

0172 Upon such hearing, the commissioner may administer oaths,
0173 examine and cross-examine witnesses, receive relevant oral and
0174 documentary evidence, and shall have the power to subpoena
0175 witnesses, compel their attendance and require the production of
0176 books, papers, records, correspondence or other documents rele-
0177 vant to the inquiry. Notice of the hearing, subpoenas and other
0178 processes shall be served by the commissioner or the commis-
0179 sioner's duly authorized agent in the manner provided by law. In
0180 case of a refusal by any person to comply with any subpoena
0181 issued, or to testify with respect to any matter concerning which
0182 such person may be lawfully interrogated, the district court of
0183 Shawnee county, or the county where such party resides, on the
0184 application of the commissioner, may issue an order requiring
0185 such person to comply. Failure to obey any such order of the
0186 court may be punished by the court as a contempt thereof.

0187 [The commissioner shall not be bound by the formal rules of (d)
0188 evidence or pleading at the hearing, but only relevant evidence of
0189 probative value shall be admitted.

0190 Sec. 8. Within 60 days after the revocation, suspension or
0191 refusal of a license, any person aggrieved by such action shall
0192 have the right to petition any court of record in this state to
0193 require the commissioner of insurance to show cause why the

(e) The lapse of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such licensee, to render a decision suspending or revoking such license, or to establish and make a record of the facts of any violation of law for any lawful purpose. No such disciplinary proceedings shall be instituted against any licensee after the expiration of two years from the termination of such license.

(f) In the event the commissioner of insurance suspends or revokes the license of any adjuster, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against the adjuster who is the subject of the hearing or the company or companies represented by such adjuster who is the party to the matter giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

0194 license should not be reinstated or issued.

0195 Sec. 9. (a) It shall be unlawful for any individual not ex-
0196 empted from licensing by subsection (b) of section 1, to inves-
0197 tigate, ascertain or determine the amount of claims, loss or dam-
0198 age arising under any contract of insurance, undertake to effect
0199 settlement of such claim, loss or damage on behalf of insurers
0200 authorized to do business in this state, or hold oneself out as an
0201 adjuster in any one or all of the specialized areas for which the
0202 individual does not hold a license, unless such individual in each
0203 instance shall have been duly authorized under the laws of this
0204 state to transact such business and shall have received proper
0205 written authority from the commissioner in accordance with the
0206 provisions of this act.

0207 (b) It shall be unlawful for any insurance company: (1) To
0208 investigate, ascertain or determine the amount of any claims, loss
0209 or damage arising under any contract of insurance; or (2) to
0210 undertake to effect settlement of such claims, loss or damage on
0211 their behalf, except through individuals who are permitted to
0212 perform such functions in accordance with the provisions of this
0213 act and those persons exempt under subsection (b) of section 1.

0214 Sec. 10. Any person violating the provisions of this act shall,
0215 upon conviction, be subject to the penalties prescribed in K.S.A.
0216 40-254 and amendments thereto for violations of the insurance
0217 code.

0218 ~~Sec. 11. - The powers vested in the commissioner by this act~~
0219 ~~and the other applicable provisions of chapter 40 of the Kansas~~
0220 ~~Statutes Annotated, and acts amendatory thereof or supplementat~~
0221 ~~thereto, shall replace and supersede any other provisions of~~
0222 ~~Kansas law with respect to the licensing and regulation of insur-~~
0223 ~~ance adjusters.~~

0224 Sec. 12. The commissioner is hereby authorized to promul- 11
0225 gate such rules and regulations as are necessary to carry out the
0226 provisions of this act and are not inconsistent therewith.

0227 Sec. 13. This act shall take effect and be in force from and 12
0228 after its publication in the statute book. January 1, 1984