

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at _____
Chairperson

1:00 ~~am~~/p.m. on April 20, 1983 in room 526-S of the Capitol.

All members were present except:

Representatives Justice, Erne, Peterson, and Whitaker.
Representatives Cloud and Duncan were excused.

Committee staff present:

Mark Burghart, Legislative Research Department
Nedra Spingler, Secretary

Conferees appearing before the committee:

Ron Todd, Assistant Commissioner of Insurance
Mark Bennett, American Insurance Association
Glenn Cogswell, Alliance of American Insurers

SB 426 - An act concerning product liability insurance.

A hearing was held on the bill. Staff reviewed the history of its introduction, noting it was the result of a Senate Judiciary Committee subcommittee's findings regarding concerns in obtaining Kansas statistics on product liability insurance.

Ron Todd, representing the Insurance Department, said he helped draft the bill and had met with the subcommittee. He said original Kansas legislation (Attachment No.1) was based on a model, nationwide law advocated by the Trial Lawyers Association. Present law does not result in adequate information. SB 426 was needed to provide premium and loss figures on a comparable basis. Attachment No.2 is a form to be filed by insurance companies doing business in Kansas which the Insurance Department believes will provide the desired information. Mr. Todd said his Department supports SB 426 as originally written and requested that Section 3, repealing present law, be reinserted. The Insurance Department has never needed the information resulting from present law, it requires additional work, and SB 426 would address legislative concerns. He noted the Kansas Trial Lawyers support retaining existing law because they believe some information required in it is needed.

Mark Bennett, representing the American Insurance Association, said this group and the group represented by Homer Cowan, Western Insurance Companies, worked with the Insurance Department and the subcommittee and support the bill. He supported reinsertion of Section 3 because 2 laws would be confusing and would destroy the intent of SB 426. He requested that the 60-day filing limit, on line 28, be lengthened to 120 days in order to give the industry sufficient time to file complicated reports. Mr. Bennett believed the Senate committee struck the repealer at the request of the KTLA on the basis that information gained from current law should not be lost until it was determined if SB 426 was adequate.

Glenn Cogswell, representing the Alliance of American Insurers, gave a statement (Attachment No.3) supporting SB 426 and the reinsertion of Section 3. He supported changing the 60-day filing limit to 120 days.

In order to followup with Senate action, the suggestion was made that current law be blended into SB 426. Mr. Todd said this had been considered previously by the Insurance Department and the industry who thought that two separate laws would cause less problems.

Representative Solbach moved to change, in line 28, 60 days to 120 days, seconded by Representative Miller. Motion carried. Representative Douville moved to reinsert Section 3, seconded by Representative Harper. Representative Miller made a substitute motion to recommend SB 426 favorably as amended, seconded by Representative Solbach. The question was raised if the Committee had the authority to act on this bill introduced by the Ways and Means Committee. The Chairman said the vote would be subject to a determination of the rule regarding committee action taken past the deadline. The vote on the substitute motion carried.

The meeting was adjourned at 2:00 p.m.

CASUALTY, SURETY AND FIDELITY COMPANIES

40-1130

port provided to certain agencies of the state. The reports required by clause (1) of subsection (a) of K.S.A. 40-1126 shall contain: (a) The name, address, and specialty coverage of the insured; (b) the insured's policy number; (c) date of occurrence which created the claim; (d) date of suit if filed; (e) date and amount of judgment or settlement, if any; and the parties involved in the distributions of such judgment or settlement and the amount received by any such party; (f) date and reason for final disposition if no judgment or settlement; (g) a summary of the occurrence which created the claim; and (h) such other information as the commissioner may require. The commissioner of insurance shall provide a copy of each such report relating to health care providers to the board which licenses or registers such health care provider or to the secretary of health and environment in the case of a licensed medical care facility.

History: L. 1975, ch. 241, § 2; L. 1976, ch. 216, § 2; L. 1977, ch. 160, § 2; L. 1978, ch. 178, § 2; July 1.

40-1128. Same; disclosure. The commissioner of insurance shall make such reports available to the public in a manner which will not reveal the names of any person or facility involved.

History: L. 1975, ch. 241, § 3; L. 1976, ch. 216, § 3; April 20.

40-1129. Same; no liability. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer reporting hereunder or its agents or employees, or the commissioner of insurance or the commissioner's employees, for any action taken by them pursuant to this act.

History: L. 1975, ch. 241, § 4; July 1.

40-1130. Annual reports to commissioner by product liability insurers; contents. Every insurer authorized to transact business in this state and providing product liability insurance shall on the first day of January of each year or within sixty (60) days thereafter file with the commissioner of insurance a report containing the information hereinafter specified. Such report shall be made upon forms provided by the commissioner of insurance and shall request the following information:

(a) The name of the insurance company.

(b) The name of all other companies associated with the company submitting the report, as either a holding company, parent, wholly owned subsidiary, division, or through interlocking directorates.

(c) The various lines of insurance a company offers.

(d) The states in which the company has been admitted for product liability insurance.

(e) The total premium dollar amount collected for all lines of insurance in Kansas and in all states in each of the six years next preceding the initial report or in the year next preceding the filing of each annual report thereafter.

(f) The dollar amount collected in product liability premiums in Kansas and in all states beginning with calendar year 1977.

(g) The amount in dollars of product liability premiums for primary coverage and for excess coverage in Kansas and in all states.

(h) The amounts shown in answer to subsection (f) which include premises and operations insurance or any other insurance delivered as part of a package which cannot be considered exclusively product liability insurance and the amounts which are not product liability insurance. Such amounts shall be listed separately for amounts relating to experience in all states and amounts relating to experience in Kansas only.

(i) Each company shall report to the commissioner of insurance for the period July 1, 1977, to December 31, 1977, at the time of filing its annual report for the year 1977 and for the year next preceding the filing of each annual report thereafter any claim or action for damages for personal injury, death or property damage claimed to have been by reason of a defect in such insured's product under a product liability policy, if the claim resulted in: (1) A final judgment in any amount; (2) a settlement in any amount; or (3) a final disposition not resulting in payment on behalf of the insured. Every insurer authorized to transact business in this state shall be subject to the provisions of this section in regard to claims adjudicated, settled or disposition made pursuant to the laws of this state.

(j) The reports required by subsection (i) shall contain: (1) The name and address of the insured or the insurer's claim number or file number; (2) type of product; (3) rating

classification code of products liability coverage; (4) the date of occurrence which created the claim, including the state or other jurisdiction under whose jurisdiction the claim was adjudicated, settled, or disposition made; (5) date of suit if filed; (6) date and amount of judgment or settlement, if any, and the number of parties involved in the distributions of such judgment or settlement and the amount received by each; (7) date and reason for final disposition if no judgment or settlement; (8) a summary of the occurrence which created the claim; (9) total number of claims; (10) total claims closed without payment; (11) total claims closed with payment; (12) total amount of payments; (13) total number of suits filed; (14) total number of verdicts or judgments for defendants; (15) total number of verdicts or judgments for plaintiffs; (16) total amounts for plaintiffs; and (17) such other information as the commissioner may require.

(k) The commissioner of insurance shall make reports required hereunder available to the public in a manner which will not reveal the names of any person, manufacturer or seller involved.

(l) There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer reporting hereunder or its agents or employees, or the commissioner of insurance or the commissioner's employees, for any action taken by them pursuant to this act.

(m) Whether or not the company sets reserves for product liability claims filed.

(n) Whether or not the company sets reserves for product liability claims for losses which have been incurred but not reported (IBNR).

(o) All reserves established in connection with the company's product liability line.

(p) How dollars reserved are treated in each of the categories listed in subsections (m), (n), and (o) for federal income tax purposes.

(q) With respect to amounts paid in claims for the year next preceding the filing of each annual report, each company shall provide the following information: (A) Total amounts reserved with respect to those claims; (B) the year in which the reserves were set; and (C) the amounts set in each year.

(r) The value of the securities held in your investment portfolio as of December 31 of

the year next preceding the filing of each annual report. Such information should be submitted in the same manner as provided by K.S.A. 40-225.

(s) Any published annual reports to shareholders or policyholders shall be submitted with the report.

History: L. 1977, ch. 156, § 1; L. 1978, ch. 179, § 1; March 1.

40-1131. Definitions. As used in K.S.A. 40-1130, "product liability insurance" or "product liability policy" means (1) any policy of insurance insuring only the insured's legal obligation arising from the product liability exposure of the insured; (2) any other policy of liability insurance in which the premium computation includes a specific premium charge for product liability exposures of the insured; and (3) any other insurance policy designated by the commissioner of insurance as providing product liability insurance.

History: L. 1978, ch. 179, § 2; March 1.

Article 12.—MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

40-1201. Authority for formation. Any number of persons, not less than twenty, a majority of whom shall be citizens of this state, by complying with the provisions of this code, may become a body corporate for the purpose of carrying on the business of mutual insurance as herein provided. Any such insurance company shall be governed by the provisions of section 40-502 as to the matters and purposes contained therein.

History: L. 1927, ch. 231, 40-1201; June 1.

Source or prior law:

L. 1921, ch. 202, § 1; R.S. 1923, 40-1001.

Research and Practice Aids:

Insurance—52.

Hatcher's Digest, Corporations § 21; Insurance §§ 15, 66, 67, 71.

C.J.S. Insurance § 104 et seq.

CASE ANNOTATIONS

1. History of article discussed in applying 40-1209. *Hosmer v. Mutual Reserve Ins. Co.*, 139 K. 472, 473, 32 P.2d 505.

2. Premium payments must be in cash and policies must so provide. *Fidelity Savings State Bank v. Grimes*, 156 K. 55, 56, 131 P.2d 894.

40-1202. Articles of incorporation; name. The persons proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

Product Liability Claim Data

KANSAS

YEAR 1977
(Ending 12-31)

Total Country-wide Product Liability Premium for the Policy Year 1977 \$ _____
 Total Kansas Product Liability Premium for the Policy Year 1977 \$ _____
 Does your company treat each accident as one claim? _____ or each injury? _____

POLICY YEAR 1977 Data Reported In for Year Below	KANSAS No. of Claims Opened With D/A in 1977 For Year Below	KANSAS Claim Payments On 1977 Claims Paid in Year Below	KANSAS Total Reserves Carried on 1977 Claims Outstanding For Year Below	KANSAS Total Allocated Expenses Incurred On 1977 Losses Paid in Year Below	KANSAS Total Unallocated Expenses Incurred On 1977 Losses Paid in Year Below	KANSAS No. of 1977 Claims Closed In Year Below	POLICY YEAR 1977 COUNTRYWIDE DATA	
							PAID LOSSES	RESERVED LOSSES
1977								
1978								
1979								
1980								
1981								
1982								
1983								
1984								
1985								
1986								
1987								
1988								
1989								
1990								
1991								
1992								

The Alliance of American Insurers is a national trade association of more than 160 property and casualty insurers. Many of our members write product liability insurance and their interest in improving the Kansas product liability insurance reporting law is substantial. The Alliance has been involved in the product liability reporting requirements in Kansas since the legislature first required reporting of statewide data.

Although the Alliance opposes the statutory institution of mandatory financial data and claims reporting requirements concerning product liability insurance, our members' great concern with the current reporting requirements has prompted our testimony at this hearing.

Senate Bill 426 as originally introduced would have replaced the current reporting requirement with new requirements which are intended to provide more meaningful information to the insurance department and ultimately to the legislature. The Alliance agrees the new format contained in Senate Bill 426 will give a better overall picture of product liability experience in Kansas. Unfortunately, the bill has been amended to delete the repeal of the current inadequate requirement, thus insurers must continue to comply with reporting requirements which force companies to manually review claim files and complete individual questionnaires for each product liability claim. We strongly support the reinstatement of the repeal provision into Senate Bill 426.

Retention of the current reporting requirement will only serve to confuse the issue of product liability insurance. We agree the current reporting statute does not fulfill its intended purpose of providing the legislature with valid information on which conclusions could be drawn regarding the appropriateness of product liability rates as well as a need for product tort reforms. The proposed reporting format in Senate Bill 426 will better serve these two purposes.

Retention of both reporting requirements will only create more work for insurers and for the insurance department. The industry, the department and the Senate Judiciary Committee all agree the new requirements are designed to be implemented in a more streamlined fashion, assuring more useful information compiled in a more efficient and meaningful manner. Retention of both reporting requirements will increase the burdens on the insurance department, requiring more staff time and diverting more resources of the department to compile information which users and recipients of the information say has been of little use anyway.

The Insurance Department spokesman said during the Senate Judiciary Committee hearing it was their opinion that both forms of reporting are not needed.

We strongly urge you to reinstate the language deleting the old product liability reporting requirements. (K.S.A. 40-1130 and 40-1131)

The extremely short deadline for reporting product liability information is of major concern to our members. Section 1 of Senate Bill 426 requires product liability insurance reports to be filed within sixty days of January 15th of each year. This deadline will be extremely difficult if not impossible for insurers to meet. During the first four months of the year, insurers must compile the information necessary to complete the annual statements for each state in which they do business. This is a time-consuming and complex process. The information required by Senate Bill 426 must be gathered separately from the annual statement data. The product liability data required by Senate Bill 426 is not readily available to insurers, and the new reports will take a great deal of time to prepare. Insurers would be able to submit this information within 120 days after January 15th of each year. Senate Bill 426 should be amended to reflect the reality of its requirements.

Also Senate Bill 426 requires that product liability policy year premium and loss experience be reported for the policy year 1977 and each policy year

thereafter. Problems will arise for the policy years 1977 and 1978 because prior to 1979, product liability premium information was not separated from general liability information. Any reports for 1977 and 1978 would therefore be estimates and it is unlikely this information would be useful to the insurance department and to the legislature. The bill should be amended to require reporting for the policy years 1979 and each year thereafter. Amendment of this provision would still provide the department with yearly information to obtain the goal of the statute.

We appreciate the opportunity to present our views on Senate Bill No. 426.