

Approved February 23, 1983
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~pm~~ on February 22, 1983 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor's Office

Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department
Gary McCallister, Kansas Trial Lawyers Association
L. M. Cornish, Kansas Association of Property & Casualty Insurance Companies
Homer Cowen, The Western Insurance Companies

The minutes of February 21 were approved.

The hearing began on SB 145 which was introduced at the request of the Insurance Commissioner's Office. Ron Todd, Kansas Insurance Department, began his testimony in support of the bill. Mr. Todd said that this amends the Insurance Holding Company Act and provides that anyone who tries to acquire more than 10% of control over a domestic insurance company would have to go through specific procedures and meet with the insurance commissioner's approval. He said that lines 180-182 change the reason for which the commissioner could disapprove a transaction. Also, he said that on line 177 all after "policyholders" should be deleted. He also explained two minor changes in amendments located on line 28, to put "and" back in because the meaning is changed without it; and on line 245, to change "each person" to read "each such person" so there will be no question as to if it refers back to the first "person" mentioned in that section of the bill.

Sen. Pomeroy referred to Mr. Todd's statement earlier that a question was raised by the U. S. Supreme Court as to the constitutionality of protecting security holders who are being deleted in the bill and asked what the decision was. Mr. Todd did not know the specifics of the decision but agreed to furnish Sen. Pomeroy with this information. The hearing on SB 145 was concluded.

The hearing began on SB 291 which was referred by the Judiciary Committee and had been requested to be introduced by the Kansas Trial Lawyers Association. Kathleen Sebelius, Kansas Trial Lawyers Association, introduced Gary McCallister, a Topeka trial lawyer, and said he would be giving testimony in support of the bill. Mr. McCallister explained that the first five pages of the bill are existing laws in the insurance code and include unfair claim settlement practices in paragraph 9. He said that the amendment is located in paragraph 13 (b) which gives the commissioner the authority to hear unfair practice claims brought by an individual against an insurance carrier. After the commissioner hears the complaint, he can decide if it falls in the 14 categories listed in paragraph 9. If the complaint is in one of these categories, the commissioner must determine if the practice is occurring with such frequency as to be a business practice. This amendment is not intended to usurp the authority of the commissioner but would act as a private enforcement vehicle which should be of some assistance to the commissioner. Mr. McCallister said that the reason he has come with the bill is that the Supreme Court says there is no such cause of action in the State of Kansas so the request for a legislative form to accomplish this is needed. He explained that this action has been taken in California. He gave the committee an example of a case of false representation by an insurance carrier which acted in bad faith. In this case, the policyholder had no recourse in the State of Kansas because he was unable to prove that the action was a general business practice. This bill would not place the burden of proof on the individual as it is now. This bill would allow for the value of the claim and the attorney's fee for bringing action for the recovery of the damage.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,

room 529-S, Statehouse, at 9:00 a.m. ~~xxxx~~ on February 22, 1983.

The chairman asked why an individual could not bring suit now. Mr. McCallister said that he could but that the possibility of being successful is low because the individual would not be able to furnish enough examples of unfair practice as would be required as proof of unfair practice. The chairman said that he knows that on line 221 "committed or performed" are intended to be tied together but that it is possible that it could be read to mean "was committed". Mr. McCallister explained that the term comes from the current statute in line 141 of the bill.

Mr. McCallister explained further the example of the case of an insurance carrier denying coverage and acting in bad faith to Sen. Karr. Sen. Feleciano asked what the role of the insurance commissioner is pertaining to lines 220 and 221. Mr. McCallister answered that the commissioner would have to prove that the unfair practice was a general policy of the company and not the individual. Sen. Werts asked if the defendant prevails, would the attorney be paid the fees. Mr. McCallister answered that it would be subject to the discretion of the court.

L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies, appeared in opposition to SB 291. He said that the 14 causes of action are in very general language and that he questions if they should be allowed to be a cause of action against a company. He said that policyholders and insurers will have differences of opinions and controversy, but he feels that there are sufficient statutes to cover suits which may occur. These statutes also include damages and attorney fees. He feels that there is no need to adopt the California law.

Sen. Karr asked how long the California law has been in effect. Mr. Cornish answered that it has been about four or five years. He said that it has opened a new field of law. This is not a very good situation since it causes more litigations and costs which would affect premiums.

Homer Cowen, The Western Insurance Companies, appeared in opposition to SB 291. He said that he feels that it is a bad bill because it is a "double bite" bill. He feels that the language is too general. He said that claim handling is a matter of judgment and that there can be a difference of opinion as to what is reasonable. He feels the bill puts a penalty on inadvertent human error. He added that there is a possibility that companies would close their claim offices if the bill is put into effect. He concluded by saying that the available laws now are sufficient.

Sen. Feleciano asked Ron Todd of the Kansas Insurance Department if there is sufficient evidence that there is a need for lines 220 and 221. Mr. Todd said that the department does not take a position on this but that in his opinion, the Unfair Trade Practices Act was sufficient when it was adopted in 1972. Sen. Feleciano began to pursue the subject further.

There being no further time, the meeting was adjourned.

The next meeting will be held on February 23.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/22	Homer Cowan	Ft Scott	The Western Ins-Co's
	MARVIN UMHOLEZ	TOPEKA	KCMC
	LARRY MAGILL	"	I. I. A. K.
	LARRY SMITH	FT. SCOTT	THE WESTERN Cos
	MARK HEITZ	TOPEKA	SBL
	L. M. CORNUS #	"	K's Office of P & L Co's
	GARY D. McALLISTER	Topeka	ATTY. KTLA
	Valter Sebeus	"	KTLA
	Ron Todd	"	Ins Dept
	Dick Brock	"	" "