

MINUTES OF THE House COMMITTEE ON InsuranceThe meeting was called to order by Rep. Rex Hoy at
Chairperson3:30 ~~xxx~~/p.m. on Monday, January 23, 1984 in room 521 S of the Capitol.

All members were present except:

Rep. Peterson and Rep. Sutter, who were excused.

Committee staff present:

Wayne Morris, Legislative Services
Gordon Self, Revisor's office
Mary Sorensen, Committee secretary

Conferees appearing before the committee:

Rep. Edgar Moore
Sylvia Hougland, Secretary of Aging
Rep. David Miller
John Yager
Dr. J. R. Nicklin
Richard Brock, Insurance Department
Noel Hord
Richard Jones
Rep. Kenneth Francisco
Tom Hatten, Attorney, Dept. of Revenue
John Smith, Chief, Driver Control Unit, Dept. of Revenue

Others present:

See Attachment 1

HB 2251--providing for the regulation of continuing care agreements and the registration of providers of continuing care, by Reps. Moore, D. Miller and F. Weaver.

Wayne Morris gave a brief review of the bill. Rep. Moore then spoke to the bill, giving some of his reasons for introducing this bill. He said the main thrust of the bill was to protect the investment of the elderly that they put into a life care home, and he thought the disclosure requirements were necessary in order to do that. Sylvia Hougland, of the Department on Aging, then passed out written testimony (Attachment 2). She said the Department had testified last year on this bill before the insurance committee and before the Interim Committee, and they supported the bill but could accept some modifications. Rep. David Miller, also a sponsor of the bill, then spoke. He said he supported what had been said, and his principal reason for supporting this bill was to require disclosure. He asked that the committee give the bill favorable consideration.

John Yager, a resident of Clearview City in Johnson County, then spoke. He said this was one of the retirement homes being discussed here, and he told of his dissatisfaction with the administration of the project--primarily increases in monthly fees and lack of disclosure. Dr. J. R. Nicklin, also a resident of Clearview City, was next to testify. Dr. Nicklin said he thought the legislation is needed and he feels the residents there should have the right to disclosure and an explanation of why their fees are always rising. Noel Hord, of Clearview City, said he would like to put his OK on what Mr. Yager and Dr. Nicklin said about Clearview City. He said he was the one who brought the Class Action lawsuit against Clearview City and John Anderson, the attorney, handled the lawsuit. He said something should be done to help senior citizens in this area. Richard Jones, also of Clearview City, also gave his feelings on the situation and agreed with the prior testimony.

Richard Brock said the Insurance Department did not oppose the bill. Chairman Hoy announced that opponents would be heard at the next meeting.

HB 2614--concerning proof of motor vehicle liability insurance or financial security, replacing Sub. 2111 introduced in last session, by Special Committee on Commercial and Financial Institutions.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insuranceroom 521 S, Statehouse, at 3:30 a.m./p.m. on Monday, January 23, 1984

Rep. Francisco was first to speak on HB 2614. He stated that he served on the Interim Committee that worked on this bill, and he supported it. He thought the bill, as written, was good, but he thought the Department of Revenue should check insurance for all drivers involved in accidents, not just spot-check as they do now. He would like to have the committee add that to this bill if possible. He passed around Attachment 3, which is a memo from Wayne Morris, Principal Analyst for the Legislative Research Department, on this subject.

Tom Hatten, Attorney for the Motor Vehicle Division of the Department of Revenue, said the Department supports the need for liability insurance for Kansas drivers but feels that the bill, as written does not have the desired effect and might undermine the Division's established procedures. They feel that the language excuses the driver who obtains insurance and then cancels it. Chairman Hoy asked if a higher penalty would be a possible deterrent to falsely stating there was insurance or giving an incorrect policy number, and Mr. Hatten said he did not believe it would be. John Smith, Chief of the Driver Control Unit, answered questions as to why the Department's feelings on this bill had not been presented to the Interim Committee, and then stated that Rep. Francisco was correct about spot checking accidents. He said the Department usually checked those where some information was missing or appeared to be incorrect, and about 25 to 30% of the other drivers involved in an accident. He said the Department was not opposed to the bill but thought there were some questions that needed to be worked out.

Sgt. Jacobs of the Highway Patrol furnished written testimony which he would have given if there had been time (Attachment 4). This states that the Highway Patrol supports the bill with minor reservations. Jack Quinlan passed around Attachment 5. This is a statement from the Motor Car Dealers Association stating the Association supports HB 2614 in its intent, but has concern with some sections as it is now.

Chairman Hoy announced that he would try to schedule a meeting of representatives of interested agencies and some committee members on Wednesday morning to try to put some of the concerns voiced during this meeting into amendment form. These amendments could then be discussed in the committee meeting on Wednesday afternoon.

Rep. Cribbs moved that the minutes of January 17th and January 19th be approved as written. Rep. Spaniol seconded. The motion carried.

The meeting adjourned at 4:30 PM.

TESTIMONY ON HB-2251
TO HOUSE INSURANCE COMMITTEE
By Kansas Department on Aging
January 23, 1984

Bill Brief:

Provides for protection of citizens who enter into continuing care contracts.

Summary Provisions:

1. Defines continuing care agreements.
2. Requires registration and review by the Insurance Commission.
3. Provides full disclosure to the prospective buyer:
 - a. Financial condition
 - b. Fees to be charged
 - c. Affiliations
 - d. Management
 - e. Services to be provided
 - f. Transfer and termination provisions.
4. Requires an escrow fund to protect contractees' entrance fees during construction.
5. An escrow fund to 1 year's debt service to cushion against sudden change in case of bankruptcy or insolvency.
6. A grandfather clause for existing homes on escrow funds.
7. A 7 day cooling off period.

KDOA supports HB-2251. This bill is designed to provide consumer protection for senior citizens entering Life Care facilities and is developed after model legislation proposed by the American Association of Homes for the Aged. A continuing care home agrees to provide services for a specified period of time, often life, in exchange for a sum of dollars.

The purpose of the bill is to assure older people who enter into continuing care contracts that their investment is protected. The average enrollment fee is estimated by a KAHA representative to be about \$25,000.

Continuing care homes (which are sometimes called life care homes) differ as to the services they offer. When a person enters a continuing care facility, he or she signs a contract that spells out what shelter and services the home will provide for an established time period, usually for the rest of the resident's life. The contract also states the financial and other legal obligations the resident will have to the home for the length of time specified. Most homes offer arrangements whereby residents, upon entering the home, pay a one-time accommodation fee in addition to regular monthly charges.

Existing law provides no safeguards for this investment if the home becomes insolvent. Because the older person may be committing his or her entire assets to the continuing care agreement, safeguards are essential. HB-2251 provides those safeguards:

1. Full disclosure including affiliations, identity and solvency of owners, management, etc.
2. Registration and oversight by the insurance commissioner.
3. A construction escrow account to ensure that an older resident's fees are protected against insolvency during the construction.
4. A one year's debt services in escrow after construction.
5. A 7 day cooling off period allows the potential resident time to reconsider.

As you know the Interim Committee concluded that no legislation was needed for two reasons:

- No problems are occurring, and
- Escrow and bonding requirements might generate cash flow problems.

On the first point, KDOA thinks it is a clear legislative choice between taking a measure that could prevent a great deal of hardship on the part of some Older Kansans and waiting till the hardship occurs before taking the same action.

On the second point - the important part of this bill is public disclosure. Escrows would be nice to have, but we would still have a good law without them.

The retirement homes in Kansas that now offer continuing care contracts, all members of the Kansas Association of Homes for the Aged, will have their current continuing care agreements grandfathered in and be exempt from escrow account requirements.

This bill is adopted from model legislation from the American Association of Homes for the Aged, the national counterpart of KAHA.

KDOA endorses this bill to prevent the very real possibility of serious problems for older people in the future.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N - Statehouse

Phone 296-3181

Attachment 3

Date January 16, 1984

TO: REPRESENTATIVE KEN FRANCISCO Office No. 281-W

RE: VERIFICATION OF AUTOMOBILE INSURANCE CERTIFICATIONS

This memorandum is in response to your question as to whether the Division of Motor Vehicles verifies the insurance of all vehicles involved in accidents or whether only a random sample is of accident vehicles is checked.

The chief of the bureau administering the financial responsibility law told me that the Division checks the insurance certification on all vehicles where the insurance information on the accident reports is either incomplete or does not appear to be accurate, i.e., when the policy numbers do not match a company's usual sequence or pattern. With all other accident vehicles, however, the Division only checks the insurance certifications on a random basis.

I hope this will be helpful to you. Please call me if you have any other questions.

Wayne
Wayne D. Morris
Principal Analyst

WDM/sdp

Atch. 3

Attachment 4

SUMMARY OF TESTIMONY
BEFORE THE HOUSE COMMITTEE ON INSURANCE
1984 Legislative Session

House Bill 2614

Presented by the Kansas Highway Patrol
(Sergeant William Jacobs)

Appeared in Support of House Bill 2614

The Patrol supports this bill because it addresses an ongoing problem for law enforcement officers.

The Patrol has appeared before this committee in the 1983 legislative session and before the summer Interim Special Committee on Commercial and Financial Institutions to support legislation on this matter.

The Patrol realizes that the Department of Revenue has some reservations concerning House Bill 2614 and they will present them to the Committee.

We do, indeed, sympathize with the Department of Revenue, but we have not changed our stance in regard to this legislation.

The law now requires motorists to have continuous liability coverage but does not provide the means of enforcement. House Bill 2614 would provide law enforcement officers the means to enforce what is now required.

We would suggest that possibly one reservation in the bill could be alleviated by adding a severe penalty for displaying "fraudulent" proof of insurance.

Atch. 4

Before the House Committee on Insurance

Honorable Rex Hoy, Chairperson

Statement of Kansas Motor Car Dealers Association on House Bill No. 2614.

I am Jack Quinlan and I am legislative counsel and lobbyist to the Kansas Motor Car Dealers Association. While we support House Bill No. 2614 as far as intent is concerned, there is some very serious concerns with the Bill as it presently is drafted. Automobile Dealers, as you know, have many vehicles in inventory and on the road for demonstrations. It would be almost impossible to have some type of identification in every vehicle. The Bill provides that in lieu of carrying proof of insurance in every car there is a twenty (20) day period within which to provide proof thereof. This would be burdensome to the dealer or someone representing the dealer to have to go to the police station or court to prove financial security.

Dealers of course, have a very substantial financial interest in their business and cannot afford to have their vehicles insured. Many years ago the policy was made that insurance would follow the vehicle, therefore, if you or I were to test drive a vehicle at a place of business, it would be the dealer's insurance that would be actually required to cover any damage as a result of anything you or I may do driving that vehicle. Thus the dealer has substantial investment in the vehicle and also is subjected to the personal liability of the driver as far as his insurance is concerned. It is imperative that he carry insurance and does so.

Dealers carry an "umbrella type" insurance and do not have each and every vehicle insured. You can understand this of course because in large dealerships vehicles come and go almost every day and you would almost have to have an insurance agent on hand at the dealership to continue to underwrite the insurance on each and every vehicle after it is delivered and cancel the same after it is sold. We are also concerned and we ask the question of the committee, what would the dealer's liability be if a customer operating a dealer's vehicle was stopped and proof of insurance was demanded which the customer operating a dealer's vehicle could not provide and then the customer did not report the incident to the dealer. Would the dealer then be subject to penalty for not providing proof within twenty (20) days? or would the liability for providing the proof rest with the customer? Many customers may not want the dealer to know that they were stopped for traffic violations in a dealer's vehicle. These are some of the questions we have and, as I say, we are not diametrically opposed to the Bill, we just believe that this Bill does not address all the problems which might arise and which need to be considered.

Thank you.