

MINUTES OF THE House COMMITTEE ON InsuranceThe meeting was called to order by Rep. Rex Hoy at
Chairperson3:30 XX a.m./p.m. on Wednesday, January 25, 1984 in room 521 S of the Capitol.All members were present except:
Rep. Cribbs, who was excused.Committee staff present:
Wayne Morris, Legislative Services
Gordon Self, Revisor's Office
Mary Sorensen, Committee secretaryConferees appearing before the committee:
Mark Bennett, for American Insurance Association
Lynn Hultquist
Larry Magill, for Independent Insurance Agents of KansasOthers present:
See Attachment 1

Rep. Blumenthal spoke, with a request for introduction of a committee bill concerning insurance coverage for alcohol and drug abuse, and nervous or mental health conditions. Rep. Mary Jane Johnson moved to request that such a bill be drafted, introduced, and referred back to the committee for action. Rep. Peterson seconded. The motion carried.

The hearing continued on HB 2251. Mark Bennett, representing the American Insurance Association, testified on the bill. He said their organization does not oppose the bill, but feels that the bond provision in the bill is so mixed up that it would probably not be possible to obtain a bond. If that section is cleared up they would have no opposition to the bill. Mr. Bennett passed around a letter to the committee members and a copy of a letter from the attorney in their home office, setting out their position on the surety bond section (Attachment 2). This letter was given to the Interim Committee for its consideration last summer. Chairman Hoy said that a copy of the Interim Committee's report would be furnished to each committee member, and later someone from the Interim Committee would be asked to testify. Rep. Sprague requested that an amendment be drafted to include the term "continuing care contract" under the Kansas Security Law. The hearing on HB 2251 was concluded until further notice.

HB 2614 was next on the agenda. Chairman Hoy stated there had been a meeting that morning of some members of the committee and representatives from the various state agencies who had expressed some concerns with the bill as written. The balloon amendments in Attachment 3 are a result of that meeting and were provided to each committee member. Gordon Self of the Revisor's office explained each suggested amendment. There were questions from the committee about the proposed amendments, and discussion and explanation. Rep. Sprague offered a conceptual motion to amend the bill, making a person with three violations of driving without insurance in five years a habitual criminal through a civil action. Rep. Spaniol seconded. There was no vote.

Lynn Hultquist spoke in opposition to HB 2614. He said the reason he opposes it is because he feels it violates his constitutional rights by forcing him to pay money to a particular business, the insurance business, which he does not choose to do. Mr. Hultquist believes there are a lot of other people who do not want to buy insurance or cannot afford to; he feels he should be free to choose whether or not to buy insurance; and he knows that it is his responsibility to pay for any damage he might cause to someone. Chairman Hoy explained some of the reasons for requiring insurance.

Chairman Hoy asked if there were motions on the balloon amendments and on Rep. Sprague's suggested amendment. Rep. Sprague withdrew his motion.

CONTINUATION SHEET

Minutes of the House Insurance Committee on Wednesday, January 25, 1984

Rep. Spaniol withdrew his second, and made a motion that the balloon amendments be adopted. Rep. Sutter seconded. The motion carried. Rep. Sprague made a conceptual motion that an amendment be drafted providing that after a third offence in a five year period there be procedures such as "habitual violator" applied, but limited to one year. Rep. Peterson seconded. There was discussion and a vote taken. The Motion carried.

Chairman Hoy said that HB 2518 would not be discussed at this time, and there might be a bill later to replace it. HB 2519 had no conferees scheduled so it was passed over also.

Chairman Hoy said that HB 2754 was scheduled for hearing next Tuesday, and asked Larry Magill, of the Independent Insurance Agent of Kansas, to discuss the bill on countersigning requirements. Mr. Magill explained the reasons the bill was requested and the provisions of the bill. The bill will remain on the calendar and if anyone asks to testify on it arrangements will be made for such testimony.

Chairman Hoy announced there would be no meeting on Thursday, January 26th, and the meeting adjourned at 4:30 PM.

GUEST LIST

Attachment 1

COMMITTEE: House Insurance

DATE: Jan 25, 1984

NAME	ADDRESS	COMPANY/ORGANIZATION
SGT BILL JACOBS	TOPEKA	K. H. P.
Paul M. Klotz	TOPEKA	ASSOC. OF CMHCs of KS
LYNN HULTQUIST	TOPEKA	CITIZEN
Al [unclear]	" "	House Majority Leader office
Barb Reinert	" "	Ks. Women's Political Caucus
Darlene Stearns	Topeka	Council of Churches
JIM SULLINS	TOPEKA	Ks Motor Car Dealers Assoc
Mark [unclear]	Topeka	Our Insurance
Gary Blumenthal	—	Leg
TOM WHITAKER	TOPEKA	Ks Motor Carriers Assoc
Mary Humphrey	Topeka	Planned Parenthood
John W. Smith	"	Dept. of Revenue
Dick Brock	"	Ins Dept

Attachment 2

Law Offices

DAVIS & BENNETT
500 CAPITOL FEDERAL BUILDING
700 KANSAS AVENUE
TOPEKA, KANSAS 66603

CLAYTON M. DAVIS
MARK L. BENNETT
MARK L. BENNETT, JR.
MICHAEL E. FRANCIS

TELEPHONE 234-0417
AREA CODE 913

January 25, 1984

The Honorable Rex B. Hoy, Chairman
and
Members of the House Insurance Committee

Re: House Bill 2251 - License Bonds, Continuing Care Contracts

Gentlemen:

I represent the American Insurance Association which is a service organization for more than 100 companies writing fire and casualty insurance, many of which are admitted to do business in the State of Kansas.

When I learned early last summer that the Interim Committee on Judiciary intended to study and take evidence on HB 2251, I requested our attorneys at the home office of the American Insurance Association to give me a written memorandum on this bill. In pursuance of my request, I received an opinion letter from Robert C. Nolan, counsel, copy of which is attached.

This letter was presented to the Interim Committee and they had it for their information during the consideration on Proposal No. 30.

Although that letter discusses both HB 2355 in the 1981 session and HB 2251 now before this committee, the problems in regard to the bond provisions are the same. In considering the bill at this time I will appreciate your giving consideration to the problems more fully described in the attached letter from Robert C. Nolan.

Very truly yours,



Mark L. Bennett
American Insurance Association

MLB:eg
Enc.

Atch. 2



AMERICAN INSURANCE ASSOCIATION

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New York, N. Y. 10038
(212) 669-0400

July 15, 1983

Mark L. Bennett, Esq.
Davis and Bennett
500 Capitol Federal Bldg.
Topeka, KS 66603

RE: Kansas H.B. 2251 - License Bonds -
Continuing Care Contracts

Dear Mark:

I just reviewed H.B. 2355 (1981), H.B. 2251 (1983) and your comments to Holly Alt relative to Interim Study Proposal 30 dealing with continuing care contracts.

We at AIA can well understand the concern of the state in protecting the elderly from the loss of life savings invested in such contracts. However, we are somewhat mystified by the formulas proposed in H.B. 2251 and H.B. 2355 for determining the proper bond amount to be designated for a particular provider of continuing care. Relative to the 1981 proposal, Bob McCann correctly pointed out that the bond amount prescribed in the bill (equal to net worth) was so high that the market for such a bond would not exist. It must be kept in mind that the writing of a surety bond is an extension of credit which is issued on the strength of the applicant's ability to cover all losses. When the prescribed bond is for an amount equaling net worth (assets minus liabilities), the surety is being asked to guarantee performance up to an amount which theoretically is the maximum amount of loss which the bonded principal could sustain, and this assumes that: a) all of that net worth will remain unencumbered over the life of the guarantee; b) the principal is not incurring, has not incurred and will not incur other commitments of liability (i.e., loans, judgments, liens) which would be adjudged equal or superior to the priority of the surety's claim should a bankruptcy be declared; c) the net worth picture will not shrink over the term of the guarantee; and d) the unencumbered assets can be readily liquidated. Such assumptions cannot be made in considering the extension of credit.

H.B. 2251 contains a bonding provision which is not only confusing but which, relative to the prescribed size of the bond, is more outrageous than its predecessor. The confusion arises because the bond would be issued in

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lieu of the escrow provision (Section 6) which would mandate that the escrow account be maintained for only a limited period of time as is spelled out in Sections 6(a) and (b). Would the need for a bond terminate once the conditions spelled out in those provisions have transpired? If so, the residents are not protected very long against the loss of the funds they have invested in the facility. I thought the intention of the bill was otherwise. The size of the bond could be several times the net worth of the licensee since factors such as construction costs, purchasing expenditures and equipment and furnishing costs of the facility would be considered in the formula in addition to anticipated revenues. The cost of construction alone can dwarf the net worth of the owner. Could we assume that the typical Kansas homeowner (as an example) with a \$100,000 mortgage has a net worth of \$100,000 or even \$50,000? I doubt it, and I doubt if we could make a similar assumption about the providers of continuing care facilities.

I think that we must make the point that bonding is a viable idea only if the prescribed bond is reasonable as to condition and amount so that sureties would be willing to guarantee an entity's performance or compliance with the law. We would again suggest that the bond be in an amount equal to the moneys deposited by the residents.

As an additional point of opposition to H.B. 2251, we notice that the provision permitting bonding in lieu of an escrow account (Section 6(e)) also permits the posting of a letter of credit. We object to the posting of such an instrument in lieu of a bond and consider it inappropriate.

The essential element in any letter of credit is an identifiable obligee. In license bonds the licensee who is the "account party" does not know the identity of his customers and/or creditors when the letter of credit is issued. The letter of credit, as you know, works as a demand instrument. If the letter of credit is a documentary letter, the obligee merely presents the required documents and the bank pays over the amount demanded. If the letter of credit were drawn in such a fashion that any party filing an affidavit as an unpaid creditor were entitled to draw on the letter, the account party would effectively give a bank check to everybody in the world. Anyone willing to make a false oath could present an affidavit to the bank and draw to the full extent of the letter.


Under the regulations of the controller of the currency, letters of credit are charged against a customer's account in the same manner as a loan would be. The open letters of credit are charged against the total loan obligations of the bank. Thus, there is little benefit to either the

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banks or the contractors in providing this alternative device. The essence of the letter of credit is immediate, uncontested payment of the obligation. Unlike surety bonds where the surety has the right to every defense of its principal, the banker is required to pay on demand as soon as the obligee presents his draft. While the system is technically unworkable, the surety industry does not want the banking community dabbling in this area with an aim of substituting their judgment of a credit risk for that of a surety.

If you have any further questions on AIA position, please let me know.

Very truly yours,



Robert C. Nolan
Counsel

RCN:obc

cc: Holly Alt (AIA-TX)
James D. Dinwiddle (USF&G)