

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Rex Hoy at
Chairperson

3:30 ~~xxx~~ p.m. on February 21, 1984 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:
Homer Cowan, Jr. Kathleen Sebelius
Jerry Davies Gary McCallister
John Brookens

Others present:
See List (Attachment 1)

There was discussion about two possible committee bills which had been requested by Rep. Peterson. Rep. Spaniol moved to introduce the bills as committee bills. Rep. Turnquist seconded. The motion carried.

HB 2861, by Rep. Turnquist and others--relating to required contents of motor vehicle liability insurance policies, was up for final action. Rep. Littlejohn moved to report HB 2861 adversely. Rep. DeBaun seconded. The motion failed. Rep. Turnquist moved to report HB 2861 favorably. Rep. Sutter seconded. Rep. DeBaun offered a substitution motion to amend HB 2861 by requiring the words used to be 50 or less, and excluding fleet policies covering 3 or more vehicles. Rep. Littlejohn seconded. A vote was taken and a division requested. 5 voted for, 6 against, and the substitute motion failed. Rep. Spaniol suggested that there be a statement included in the minutes directing the Insurance Department, in their preparation of the required contents, to limit the length of the proposed language to an 8½ x 11" page or less, and Mr. Brock of the Insurance Department indicated that would be no problem. A vote was taken on the motion to pass HB 2861 out favorably, and the motion carried. It was directed that the minutes should show that any language furnished by the Insurance Department to the companies for compliance with the requirements of this bill should be concise and to the point so as not to increase postage expense.

Rep. Sprague gave a brief report of subcommittee action on HB 2251, providing for the regulation of continuing care agreements and registration of providers. He asked that there be no action by the committee until balloon amendments could be furnished for discussion, and he hoped such amendments could be ready by next week.

HB 3008, concerning the Kansas automobile injury reparations act, relating to attorney fees, was next for discussion.

Homer Cowan, Jr., representing the Western Insurance Companies of Fort Scott, KS, spoke in support of HB 3008. He said this bill would let the companies retain an attorney if they wanted to, but he did not feel that they should have to pay attorney's fees if an attorney did not do anything to effect settlement of a claim. There were questions from the committee of Mr. Cowan.

Jerry Davies, of Farmers Alliance Mutual Insurance Company, spoke in support of HB 3008. He said their company agreed with the statements Mr. Cowan had just made. They feel they should be able to determine whether or not an attorney is needed in cases that could be settled by subrogation or arbitration. He passed out his written testimony (Attachment 2) and referred to it by his testimony.

John Brookens, representing the Kansas Bar Association, then spoke in opposition to HB 3008. He passed around a proposed amendment to the bill (Attachment 3), which their association would like to have considered by the committee.

Kathleen Sebelius, representing the Kansas Trail Lawyers Association, spoke briefly in opposition to HB 3008, then introduced Gary McCallister, a Topeka attorney, and member of their association, who spoke against the bill, and

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gave several examples of how passage of the bill would affect insurance settlements. He asked the committee to oppose HB 3008 and allow the language to stay as it is now. There were questions from the committee and discussion of the bill.

Rep. L. Johnson moved to approve the minutes of February 14, 15, and 16.
Rep. Cribbs seconded. The motion carried.

The meeting adjourned at 4:30 PM.

GUEST LIST

Attachment 1

COMMITTEE: House Insurance

DATE: Feb. 21, 1984

NAME	ADDRESS	COMPANY/ORGANIZATION
Alvin G. Gubins	Topoea	Kan Bar Assn
Stephen H. Hines	"	AIA
Wynne M. Hines	"	IAA
Frank Jensen	Topoea	Ks Assoc Prop Cas Insur
Jerry Davies	McPherson	Farmers Alliance Mut. Ins. Co.
Homer Cowan	Ft Scott Ks	The Western Ins Co
Lee WRIGHT	Lenexa KS.	FIG
Steve Williamson	Topoea	KTLA
William Siedlis	"	"
GARY McCallister	Topoea	KLA
Donald Knight	Lawrence	KSEFA
James A. Lidel	Wichita	KS77A
Jerry Marlatt	Emmett, Ka.	KSC77
Pick Brock	Topoea	Ins Dept
Larry Smith	Ft. Scott Ks	Western

Atch. 1



ALLIANCE INSURANCE COMPANIES

POST OFFICE BOX 1126

McPHERSON, KANSAS 67460

316 241-2200

MR. CHAIRMAN AND MEMBERS OF THE HOUSE INSURANCE COMMITTEE:

MY NAME IS JERRY DAVIES. I AM VICE PRESIDENT OF GOVERNMENT AFFAIRS WITH THE ALLIANCE INSURANCE COMPANIES IN MCPHERSON, KANSAS. I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND SPEAK IN SUPPORT OF HOUSE BILL 3008.

MY COMMENTS TODAY EXPRESS THE OPINION OF OUR CLAIMS DEPARTMENT MANAGEMENT AT THE ALLIANCE COMPANIES. IT IS THE CONCENSUS OF OUR CLAIMS MANAGEMENT THAT HOUSE BILL 3008 WOULD CORRECT SERIOUS INEQUITIES THAT EXIST IN THE PRESENT KANSAS AUTOMOBILE INSURANCE REPARATIONS ACT. THEY CONCERN THE SUBROGATION RIGHTS OF COMPANIES FOR PERSONAL INJURY BENEFITS PAID TO INSUREDS WHO ARE NOT AT FAULT IN ACCIDENTS.

BY LAW, TODAY, WE, AS INSURANCE COMPANIES, HAVE A RIGHT TO RECOVER PERSONAL INJURY BENEFIT DOLLARS WE PAY TO OUR INSUREDS WHO ARE NOT AT FAULT IN AN ACCIDENT. WE RECOVER THE DOLLARS FROM THE COMPANIES OF PERSONS WHO ARE CLEARLY AT FAULT IN AUTOMOBILE ACCIDENTS INVOLVING OUR INSUREDS. SINCE WE HAVE THE RIGHT TO SUBROGATE, WE THEREFORE FEEL THAT WE SHOULD BE ABLE TO DETERMINE WHETHER WE ALSO NEED AN ATTORNEY TO REPRESENT OUR INTERESTS IN CASES THAT CAN CLEARLY BE SETTLED BY SUBROGATION. BUT, IF OUR INSURED HAS ELECTED TO HIRE AN ATTORNEY TO REPRESENT HIM/HER AGAINST THE PARTY AT FAULT, WE THEN BECOME LIABLE TO PAY ATTORNEY FEES FROM THE DOLLARS WE WOULD RIGHTLY HAVE COLLECTED THROUGH SUBROGATION.

Attch. 2

AS AN EXAMPLE, WE RECENTLY CLOSED A CLAIMS FILE CONCERNING ONE OF OUR INSUREDS WHO, WHILE DRIVING, WAS STRUCK BY A DRIVER IN ANOTHER CAR WHO MADE AN ILLEGAL TURN. WE PAID MEDICAL BENEFITS TO OUR INSURED OF \$2000. OUR INSURED HIRED AN ATTORNEY TO SUE THE PARTY AT FAULT. WE, AS THE INSURANCE COMPANY REPRESENTATIVE OF OUR INSURED, NOTIFIED THE AT FAULT PARTY'S INSURANCE COMPANY THAT WE WOULD BE MAKING A SUBROGATION CLAIM FOR THE \$2000 WHICH WE HAD ALREADY PAID OUR INSURED. WHEN THE CASE WAS FINALLY SETTLED, WE COLLECTED OUR \$2000, TO WHICH WE WERE ENTITLED, LESS \$500 ATTORNEY'S FEES. WE DID NOT FEEL THAT THE FEE WAS APPROPRIATE BECAUSE THERE WAS NO WORK INVOLVED FOR THE ATTORNEY. THE INSURANCE COMPANY OF THE PARTY AT FAULT WOULD HAVE PAID THE \$2000 THROUGH SUBROGATION WITHOUT THE SUIT. BUT, BECAUSE THE ATTORNEY REPRESENTED OUR INSURED, UNDER THE PRESENT LAW, WE PAID THE FEE.

WHEN THERE IS A DISPUTE AS TO WHO IS AT FAULT IN AN ACCIDENT INVOLVING ONE OF OUR INSUREDS, THEN WE WOULD HIRE AN ATTORNEY. IF OUR INSURED HAS HIRED AN ATTORNEY ALREADY, THEN WE, OF COURSE, IN MOST CASES WOULD USE OUR INSURED'S ATTORNEY AND PAY THE EQUITABLE FEES TO THE ATTORNEY. BUT, IN THOSE CASES WHERE OUR INSURED IS CLEARLY NOT AT FAULT, WE CAN SETTLE THE CASE BETWEEN OUR COMPANY AND THE AT FAULT INSURED'S COMPANY WITHOUT HAVING TO INVOLVE AN ATTORNEY. UNDER H. B. 3008, WE WOULD HAVE A CHOICE AS TO THE NEED OF ATTORNEYS AND THIS, WE FEEL, WOULD KEEP MORE DOLLARS IN THE SYSTEM, HELP TO STABILIZE AUTO INSURANCE RATES AND, ABOVE ALL, PUT THE DOLLARS INTO BENEFITS FOR THOSE INJURED IN AUTOMOBILE ACCIDENTS, WITHOUT DELAYS.

I HAVE THREE ADDITIONAL EXAMPLES OF HOW THE PRESENT SYSTEM WORKS WHICH WILL DEMONSTRATE HOW PASSAGE OF HOUSE BILL 3008 WOULD CREATE A BETTER SYSTEM.

(more)

EXAMPLE ONE: OUR INSURED WAS STOPPED AT A LIGHT AND WAS REAR-ENDED BY A DRIVER IN CAR "B". WE HAVE PAID OUR INSURED \$2000 IN MEDICAL BENEFITS AND \$4,420 IN LOST WAGES TO DATE. WE ALSO NOTIFIED THE ADVERSE CARRIER OF THE DOLLARS WE ARE PAYING OUR INSURED TO KEEP THE ADVERSE CARRIER INFORMED FOR SUBROGATION PURPOSES. OUR INSURED HAS HIRED AN ATTORNEY. THE SETTLEMENT HAS NOT YET BEEN MADE BUT WE KNOW WE WILL HAVE TO PAY ATTORNEY'S FEES FOR THE AMOUNT PAID OUR INSURED UNDER FIRST PARTY BENEFITS AND WHICH WE WOULD HAVE COLLECTED UNDER SUBROGATION WITHOUT THE USE OF AN ATTORNEY.

EXAMPLE TWO: OUR INSURED WAS STRUCK BY A DRIVER IN CAR "B" WHO RAN A RED LIGHT. WE PAID \$1,036 IN MEDICAL BILLS TO OUR INSURED AND \$4,000 IN LOST WAGES. OUR INSURED HAS HIRED AN ATTORNEY AND OUR INSURED HAS ALSO SIGNED AN AGREEMENT FOR THE ATTORNEY TO RECEIVE ONE-THIRD OF ALL RECOVERED. IT IS A CLEAR CUT CASE OF WHO IS AT FAULT AND WE FEEL THAT IN THIS CASE WE WOULD NOT NEED THE SERVICES OF AN ATTORNEY TO REPRESENT US. THE BENEFITS WE HAVE PAID OUR INSURED COULD BE COLLECTED FROM THE ADVERSE CARRIER THROUGH SUBROGATION.

EXAMPLE THREE: OUR INSURED WAS HIT HEAD-ON BY A DRIVER IN ANOTHER CAR. THE DRIVER AT FAULT (NOT OUR INSURED) HAD BEEN DRINKING. WE HAVE PAID MEDICAL BENEFITS TO OUR INSURED OF \$10,000 (OUR INSURED HAS HIGHER LIMITS) AND \$1,473 IN LOST WAGES TO DATE. OUR INSURED HAS HIRED AN ATTORNEY AND EVEN IF WE PAY A MINIMUM OF 25 PERCENT TO THE ATTORNEY WE'LL PAY IN EXCESS OF \$2,500 IN ATTORNEY'S FEES. WE DO NOT NEED THE SERVICES OF THIS ATTORNEY UNDER OUR SUBROGATION RIGHTS.



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Attachment 3

February 21, 1984.

Kansas Bar Association suggests the following amendment to HB 3008.

On page 2, lines 0074 and 0075, be amended to read as follows:

"if such attorney fees are appropriate, they shall be paid proportionally by the insurer or self-insurer and the injured person, his or her dependents or personal representatives, and fixed by the court under equitable considerations."

Att. 3