

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 March 21, 1984 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research  
Myrta Anderson, Legislative Research  
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Representative David Miller  
John Yager, Clear View City, Kansas  
Noel Hord, Clear View City, Kansas  
Stu Entz, Kansas Association of Homes for the Aging  
Sylvia Hoagland, Kansas Department of Aging  
Sgt. Bill Jacobs, Kansas Highway Patrol  
John Smith, Department of Revenue  
Jack Quinlan, Kansas Motor Car Dealers Association  
Lee Wright, Farmers Insurance Group

The minutes of March 20 were approved.

The hearing began on HB 2251 dealing with regulations for providers of continuing care agreements. Rep. Miller, one of the sponsors of the bill, said that his interest in the bill arises from an unfortunate situation which developed in Clear View City. The residents there had believed that they were dealing with an organization, but upon the unexpected death of the owner, it was discovered that Clear View City was part of that man's estate. Therefore, it was possible that residents could lose their investment in the settlement of the owner's estate. The purpose of the bill is to provide for some financial assurance for continuing care for the life of the individual. The bill as amended is simply a disclosure requirement. Rep. Miller explained that it is similar to an annuity in the insurance business where the insurance companies are highly regulated. The bill puts minimal requirements for continuing care providers to disclose to potential purchasers and includes some penalties for the unscrupulous provider.

Sen. Pomeroy had a question regarding the five year statute of limitations on line 586 of the bill as to why it is two and one half times longer than for other crimes such as theft or rape. Rep. Miller replied that it was recommended by the House committee which was advised by an attorney to do so. He said that a longer time period is needed because the effect of these fraudulent activities may not come to light for some time, adding that some of the residents of Clear View City were defrauded and were not aware of it.

Sen. Hess said that he felt that the Kansas Consumer Protection Act would cover most of the provisions of the bill in regard to fraud and misrepresentation. Rep. Miller responded that he would have no objections to change the bill by making statutory references applicable to this situation.

The chairman called on John Yager of Clear View City for testimony in support of the bill. In answer to Sen. Pomeroy's inquiry about persons being aware if they were defrauded, Mr. Yager said that this deals with older people, and their comprehension of what is happening is slow. They are also more trusting and, thus, prone to being defrauded, and this is the reason for the five year statute of limitations which would allow time to discover cases of fraud. In regard to Sen. Hess' reference to the Kansas Consumer Protection Act, Mr. Yager said that he would question the effect of it. He briefly cited examples where residents of Clear View City were defrauded but had not been able to recover their losses. He said that no one has been able to discover anything about the finances of Clear View City even though there have been numerous attempts. He feels that HB 2251 will prevent the situation in Clear View City from occurring again by its requirement for disclosure of exact terms.

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Noel Hord of Clear View City followed with his testimony in support of HB 2251. He informed the committee that he was one of a group that brought a class action suit against Clear View City. The manager put so much pressure on the others filing with him that they withdrew. He and his lawyer have continued their action, and pressure has been put on him. Mr. Hord related to the committee some instances of fraud that he knows of in Clear View City. He also referred to an article in a magazine about Clear View City where it is stated that four million dollars is involved there, but the management says that they have no money. He said that other residents had avoided him for fear of pressure being put on them but that since the filing of this bill, he has been receiving encouragement from the residents. He feels that there is something not being disclosed at Clear View City, and the bill will prevent this situation from occurring again.

Stu Entz of the Kansas Association of Homes for the Aging appeared in opposition to HB 2251. He handed out copies of a comparison of the bill in its original form with the House committee amended form. (See Attachment I.) He began by saying that he had been under the impression that refunds were made in the case of Clear View City. He is concerned that this bill will not help Clear View City residents because it is after-the-fact action. He feels that there is no need for this legislation now. He stated that he has no objections to the original bill which dealt with disclosure, but he has serious objections to the change in the bill creating a new crime for the alleged omission of a material fact. He feels that this is a complete over-reaction. In his opinion, there was not really a need for the original bill, and the bill as amended is definitely not needed. He feels it is unnecessary and unwarranted to subject the people in continuing care centers to this new law.

Sylvia Hoagland, Kansas Department of Aging, appeared in support of the disclosure aspect of the bill. She said that there will be a growth in the number of retirement homes as the number of aging people increases. The bill would not apply to nursing homes. The sponsors of the bill intended to define what a continuing care center is, to require full disclosure before a person invests any money in it, require that the Insurance Commissioner review the center, require an annual disclosure after the investment, and to allow a seven day "cooling off" period during which a purchaser may rescind a contract without penalty. She said that she would be willing to compromise on the five year statute of limitations issue. She added that most of these centers are church related at present and have not defrauded anyone, but the bill is for future homes which may not be church related and not have the same degree of honor and integrity. Her testimony concluded the hearing on HB 2251.

The hearing began on HB 2614 dealing with proof of motor vehicle liability insurance or financial security. Sgt. Bill Jacobs of the Kansas Highway Patrol appeared in support of the bill. (See Attachment II.) He said John Smith of the Department of Revenue had come with him to help answer questions from the committee.

Jack Quinlan of the Kansas Motor Car Dealers Association appeared to request that automobile and truck dealers be exempted from the bill. (See Attachment III.) He suggested that the bill be amended on line 24 to write automobile dealers out of the bill by adding "K.S.A. 8-2401".

Sen. Reilly inquired as to what the procedure would be in a case where a ticket is issued to a person who is driving a new car on which he has not yet had time to obtain proof of insurance. Sgt. Jacobs responded that the Department of Revenue has a form which can be easily completed by the operator which is sent to the insurance company for verification. The insurance company would have thirty days to respond to the inquiry. The ticket will be dismissed upon receipt of the response from the insurance company that the operator is insured. He added that a ticket would not be issued in this case, however, because the patrolman would understand the situation.

The chairman asked how the bill would apply to out-of-state drivers, and Sgt. Jacobs answered that it would not apply to out-of-state drivers.

Sen. Karr inquired about the number of uninsured drivers in Kansas. John Smith said that he is aware that there has been a disagreement over the statistics concerning uninsured drivers, but the statistics of the Department of Revenue show that over the last four or five year period, the uninsured rate has held at five percent which is about as low as one can expect. He said that this bill is designed

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to eliminate the inconvenience to law abiding people and to concentrate on the bad drivers who are usually the ones without insurance. It will help law enforcement because the burden of proof has been on the state, and the bill will change that.

Sen. Harder asked if it will be necessary to carry more papers than the cards which are issued at present. Sgt. Jacobs said the information on the card would be sufficient to be put on the form from the Department of Revenue to be checked with the insurance company which will have thirty days to confirm if the operator is covered or not. In response to a question regarding on whom the responsibility for proof of financial security rests, he said that the owner is responsible for the insurance, not the operator.

Lee Wright of the Farmers Insurance Group gave the final testimony on HB 2614. He requested that the bill be amended on lines 68, 80, 129, and 141 to add language which would allow his group to provide certificates of insurance or the ID card used by many insurance companies. He stated that this would not change the intent of the bill but would provide another way in which to furnish evidence of financial security for his group. The hearing on HB 2614 was concluded.

There being no further time, the meeting was adjourned.

SENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
	Mark Pennell	Topeka	a J a
	Richard E Jones	Clearview City	
	James M. Whitsett	Clearview City Ks	
	Merle Alexander	Clearview City Ks	
	Ed Mullins	Topeka	Budget
	John Yager	clearview city Ks	self
	Wesley Ford		
	Lynna M. Ford	KDDA	
	Steve Entz		
	Lee Wright	Lenexa	FIG
	Dick Hummel	Ks HENRY LANE ASSN	Topeka
	JIM SOWDS	Ks. MOTOR CAR DEALERS ASSN.	TOPEKA
	Jack A. Quinlan	TOPEKA	KMCD A
	PAT BARNES	TOPEKA	KMCD A
	John W Smith	Topeka	Dept of Revenue
	Sgt Bill Jacobs	TOPEKA	KANSAS HIGHWAY PATROL
	Ron Todd	"	INS. Dept.
	M. Hawver	"	Capital Journal
	Rep D. Miller		

# HB 2251 / Continuing Care Contracts

Original Bill Form

House Comm. Amend.

I.	<u>Definitions</u> Section 1.	Added New Section 2 unlawful acts (lines 74-85)
II.	<u>Registration Protection</u> Section 2	New Section 3
III.	<u>Disclosure Protection</u> Section 3 - Initial Discl. Section 4 - Annual Discl.	New Section 4 New Section 5
		Added New Section 6, unlawful Filings (lines 374-378)
IV.	<u>Rescission Protection</u> Section 5	New Section 7
V.	<u>Escrow Protection</u> Section 6 - Initial Fees Section 7 - One Yr. Debt Service	Deleted (lines 389-444) Deleted (lines 445-460)

VI.

Remedies

Section 8 - Revocation of  
Registration.

Section 9 - Refund Money

Section 10 - Enforcement  
Powers

Section 11 - Cease and  
Desist

Added mandamus,  
equitable relief,  
receivership (lines 574-6)

VII.

Administration of Act

Section 12 - Rules and  
Regulations.

Added New Section 13  
creating criminal  
liability (lines 580-611)

Section 13 - Fees

Section 14 - Effective  
Date

New Section 14

New Section 15



SUMMARY OF TESTIMONY  
BEFORE THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

HOUSE BILL 2614

Presented by the Kansas Highway Patrol  
(Sergeant William A. Jacobs)

March 21, 1984

APPEARED IN SUPPORT

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

Present law renders it virtually impossible for an officer on a routine traffic stop or at an accident scene to determine if a vehicle is properly insured. Although required by law to meet certain insurance requirements, vehicle operators have no obligation to furnish proof of the same. Even when registering a vehicle it is simply a form entry and proof is not required.

The Patrol and the Department of Revenue worked very closely with the summer Interim Special Committee on Commercial and Financial Institutions and the House Committee on Insurance. We feel that the present bill will suffice the needs and not create any undue hardships on concerned agencies or individuals.

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 required.

As in the instance of a driver's license, persons would only be required to do nothing more than furnish proof of something that is already required by law.

We respectfully solicit your favorable consideration of House Bill 2614 in its present form.

Attachment II

STATEMENT

to the

SENATE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

Regarding HB 2614

Wednesday, March 21, 1984

Mr. Chairman and Members of the Committee. I am Jack Quinlan, Legislative and Legal Counsel for the 400 member Kansas Motor Car Dealers Association. While we support House Bill 2614 as far as intent is concerned, there are some serious concerns with the Bill as it presently is drafted.

Automobile and truck 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 vehicle 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 not 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 the 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.

Attachment III



Additionally, as required in the Dealer-Manufacturer Licensing Law, K.S.A. 8-2405, applicants for dealer's license must have on file with the division of vehicles a liability insurance policy with limits corresponding with the amount required by Kansas law. Cancellation of this policy voids the dealer's license.

Dealers carry an "umbrella" type insurance and do not have each and every vehicle individually insured. You can understand this of course because in a large dealership 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 before 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 the 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 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 a traffic violation 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 of the problems which might arise and which need to be considered. We would simply ask that the Committee grant an exemption from the requirements of HB 2614 to vehicles owned by dealers.

Thank you, and I would be happy to answer any questions of the Committee.