

MINUTES OF THE House COMMITTEE ON InsuranceThe meeting was called to order by Rep. Rex B. Hoy at  
Chairperson3:30 ~~am~~/p.m. on Thursday, February 28, 1985 in room 521S of the Capitol.

All members were present except:

## Committee staff present:

Gordon Self - Revisor's Office  
Melinda Hanson - Legislative Research  
Emalene Correll - Legislative Research  
Helen Carlson - Secretary

## Conferees appearing before the committee:

Rep. Baker  
Kathy Sebelius - Kansas Trial Lawyers  
Ron Smith - Legislative Counsel for Kansas Bar Assn.  
Mark Bennett - American Investors Assn.,  
Homer Cowan - Western Insurance Companies  
David Hansen - Kansas Assn. of Property and Casualty Companies  
Dan Scott - Kansas Mutual Insurance Co., Topeka  
Mr. Bob Williams - Kansas Dental Assn.  
Mr. Robert West - Electrical Contractors Assn.  
Mr. Larry Magill - Kansas Independent Insurance Agents  
Mr. Ed. Roling - Delta Dental Clinic, Wichita, Ks.

HB 2399 - Rep. Baker presented written testimony in support of HB 2399 saying it requires all attorneys engaged in private practice of law in Kansas to purchase professional liability insurance. (Attachment I).

Kathy Sebelius spoke in support of HB 2399 saying she felt it should be mandatory that lawyers carry liability insurance to protect their clients.

Ron Smith, Legislative Counsel for the Kansas Bar Assn., presented testimony on HB 2399 saying other states have adopted such mandatory insurance requirements, but he wonders if such action is currently prudent. He said their concern is that they haven't enough statistics to advise the legislature on the feasibility of this bill. (Attachment II).

Mr. Mark Bennett, representing the American Investors Assn., spoke in opposition to HB 2399 saying he has been on the disciplinary board for misconduct for lawyers for 20 years, and he has not encountered one lawyer who could not pay off any debts owed. He further stated he could not see any reason for this bill and that any mandatory provision is almost impossible to enforce.

HB 2421 - Melinda Hanson said the new law applies to certain contracts between insurance companies and independent insurance agents that have been in effect for more than a year. Under the bill, these contracts could not be terminated or amended by the company except by mutual agreement or one year's prior notice. Current law provides 120 days' notice.

Larry Magill presented testimony in support of HB 2421 saying cancellation creates hardships for the consumer and they need a year's prior notice by the company instead of the present 120 days. (Attachment III).

Mr. Homer Cowan spoke in opposition to HB 2421 saying he feels the 120 days gives sufficient notice to an agency if change has to be made. He further stated most other states do not have a one year guarantee.

Dan Scott, Kansas Mutual Insurance Co., spoke in opposition to the bill.

David Hansen, Ks. Assn. of Property & Casualty Cos., spoke in opposition to HB 2421.

CONTINUATION SHEET

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Staff explained HB 2496, saying that the bill would define certain practices to be misrepresentation or fraud within the context of licensure and disciplinary procedures for dentists.

Mr. Williams, Kansas Dental Assn., spoke in support of HB 2496, saying they feel the submitting of misleading or untrue statements or charging a patient with dental insurance a fee greater than usual, is fraudulent misrepresentation. (Attachment IV).

Mr. Ed Roling, Delta Dental Clinic, spoke in support of HB 2496, saying the bill would make forgiveness of co-payment illegal and feels this bill is necessary to regulate this situation.

Mr. Robert West of the Electrical Contractors Assn. said he has serious concerns about HB 2496, mainly Section 3. He said they would like to present written information from their Insurance Administrator regarding this bill.

Meeting adjourned at 5 PM.

Rex B Hy



ELIZABETH BAKER  
REPRESENTATIVE, EIGHTY-SECOND DISTRICT  
SEDGWICK COUNTY  
1025 REDWOOD RD.  
DERBY, KANSAS 67037



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: ELECTIONS  
EDUCATION  
LOCAL GOVERNMENT

TO: House Committee on Insurance

FROM: Representative Elizabeth Baker

RE: House Bill 2399

OBJECTIVE: To prevail upon the committee to review favorably HB 2399 in recognition of the need for legislation which protects consumers of legal services.

House Bill 2399 requires all attorneys engaged in the private practice of law in Kansas to purchase a policy of professional liability insurance, insuring themselves and protecting their clients from the risk of legal malpractice.

The bill fixes the minimum limits of coverage at \$100,000 per claim and \$300,000 for the annual aggregate of all claims made during the policy period. Attorneys employed by the federal, state, and local government are exempt from the provisions of this bill.

We live in an increasing litigious society. The conduct of professionals, once practically immune from liability, is now commonly subjected to judicial scrutiny. Consumers of legal services have a right to insist that their rights be recognized and protected. When legal services depart from the appropriate standard of care to the damage of the client, recompense should be assured.

To the extent that data is available in Kansas concerning legal malpractice claims, it shows an average of one claim for every 37 lawyers. During the first 6 months of 1984 for example, there were 60 claims filed against insured attorneys. It is estimated that approximately 300 out of 6000 attorneys licensed to practice law in Kansas are uninsured.

Consumers of legal services are entitled to protection from losses caused by, or arising as a result of, incompetent legal services. This bill raises for further study the issue of providing some reasonable assurance of compensation to those who are damaged as a result of these incompetent legal services.

EB/bs

*(Attachment I)*

RON SMITH  
Legislative Counsel



KANSAS BAR  
ASSOCIATION

HB 2399  
House Insurance Committee  
February 28, 1985

Mr. Chairman. Members of the committee. My name is Ron Smith. I am Legislative Counsel for the Kansas Bar Association.

The Kansas Bar Association represents 4,200 of the state's 5,800 attorneys. Our attorney-members are in every county, practice all types of law, represent both plaintiffs and defendants. Their common bond is they want a good legal system within which they can help Kansas citizens with their problems.

Our legislative policies are considered by the Legislative Committee of the KBA, which makes recommendations to the Executive Council. The Council consists of 21 lawyers from across the state. Ten members are elected by geographic districts. Our Executive Council includes members of the Judiciary.

We believe our Legislative Positions constitute a considered and rational approach to the important issues facing the Kansas Legislature.

Other states have adopted such mandatory insurance requirements. The legislature certainly has this power. The question is whether such action is currently prudent. Last summer, St. Paul Insurance was granted a 75% increase in their basic premium. In January, 1985, they filed for a 195% increase. There appears to be no reason why that rate increase won't be granted. I think it fair to state had they not gotten their increase, they would no longer write such insurance in Kansas.

National Union Insurance and St. Paul are the two largest writers of malpractice insurance for lawyers in Kansas.

KBA has a Mandatory Malpractice Insurance Sub-committee chaired by Rod Busey, from Wichita.

The following information is pertinent to this discussion of HB 2399:

1. St. Paul Insurance estimates there about about 300 of the nearly 6,000 attorneys in Kansas who are not insured. Not all of them seek malpractice insurance. Some of them cannot qualify for any commercial malpractice insurance.

2. The cost of a \$100,000/\$300,000 premium, without the requirement of insurance companies to cover everyone, is around \$1,500 per year.

3. The average claim is \$20,000. The frequency is that one claim is filed per year for every 37 attorneys. Insurers call this a severity problem, rather than a frequency problem.

4. If your firm does title, abstracts, or patent work, the \$1,500 is increased. If the firm does Securities & Exchange commission work, helping corporations go public, and 10% of their billable time is in this work, the premium is about 30% higher than the \$1,500.

5. If a firm does more than 20% of their billable work in SEC work, they can't even get a commercial domestic malpractice insurance policy. Lloyd's of London insures, but the premium is very high, and Lloyds is very particular.

6. Subsection (c) beginning at line 80 requires that "every insurer providing professional liability insurance" for attorneys in Kansas become part of an assigned risk pool. This means a sort of "surcharge" must be charged, which will increase the \$1,500 basic premium substantially. St. Paul estimates 10 to 20%.

The concept of mandatory insurance is good. However, just as with the medical malpractice crisis in the mid-1970s, if you mandate coverage and force insurers to cover everyone, not only will premiums go up, but some insurers may decide to get out of this line of insurance completely. We possibly could have an "availability" crisis of our own.

KBA has an ongoing Insurance committee that is constantly looking at the types and availability of insurance plans available to KBA members. This committee studies and makes recommendations on insurance systems, including professional liability insurance.

Kansas has lately become a state with higher-than-average legal malpractice claims. Insurers, generally, are reluctant to take on too many new programs or too much coverage in higher-than-average claim states.

KBA is looking at self-funded malpractice insurance, although it would require a captive company with at least \$3 million in the bank to do it right. Other smaller states with similar claims experience are looking to perhaps pool their resources into a single captive company, but until our claims experience comes down, Kansas is not a real attractive partner for this type of operation.

In Kansas, St. Paul reports that there is one claim for every 37 lawyers each year, so the problem is not one of frequency, but rather severity. The largest claim currently in the mill is a \$500,000 claim for a lawyer who allegedly did not draft an oil and gas lease properly. Interestingly, it is not a case of repeat malpractice, or malpractice by

young attorneys. The average claim is against a practitioner who has been practicing law 7 years.

One other thing that we don't do currently that insurers are looking at is the concept of premium surcharges by speciality. The specialities of real estate, personal injury-plaintiff, bankruptcy and collections are designated as more hazardous areas, with 60% of the claims coming in these areas. If we have speciality premiums, it will be similar to what physicians have--OB-GYNs pay more than general practitioners because of potential liability. Personal injury lawyers would pay more for insurance than divorce attorneys. But, the cost of missing a statute of limitations deadline in a large personal injury case is greater than negligently drafting filing a property settlement agreement.

Our major concern is that we haven't got enough statistics to advise the legislature on the feasibility of this bill. The public has a right to be protected, and as such this bill is attractive. But the assigned risk provision may scare some of the insurance companies out of this state and if we do that, it will require a massive solution be considered that goes far beyond the scope of HB 2399.

Therefore, KBA doesn't oppose HB 2399. We just recommend further study. To that end, we'll help provide statistics in any manner we can.

NOTICE OF AGENT'S CONTRACT CANCELLATION  
HB 2421

ISSUE

HB 2421, proposed by IIAK, would amend our cancellation statute first passed in 1977 to provide one year's notice of cancellation or amendment.

BACKGROUND

1. Agents have witnessed an increasing trend over the years of companies towards consolidation of their agency force in only the biggest and most profitable agencies (the 80-20 rule).
2. Our present hard market, through no fault of the agent but driven by market forces, has forced prices down to the point where companies are seeking emergency capacity relief and would-be expense savings. One of the first casualties of these actions will be their small agents.

ARGUMENTS IN FAVOR

1. At least 14 states including Kansas have notice of cancellation statutes on the books. Three of these provide for 180 days; Massachusetts, Texas and Illinois.
2. Many companies today voluntarily offer their agents 180 days or more. Those companies offering 180 days are: Commercial Union's personal lines, Fireman's Fund, Great American, Kemper and Travelers. Commercial Union commercial lines and Kansas Fire & Casualty both offer one year's notice of cancellation.
3. Cancellation creates hardships for the consumer, who through no fault of their own, face:
  1. Possible increase in premium either because of losses subsequent to when they were initially placed with their carrier, developments which make them no longer eligible under present underwriting standards.
  2. The loss of their track record with their present carrier where previous good experience might offset claims.
  3. Inconvenience.
4. Cancellation creates hardship on agents because:
  1. The added expense of replacing an entire book of business, particularly in a hard cycle when underwriting is much stricter and new markets may be unavailable.

*(Attachment III)*



2. The possible loss of accounts because the agent cannot find an acceptable replacement carrier.
  3. Disruption of the agent's planning and budgeting process which may severely impact their bottom line.
5. Cancellation is often beyond the agent's control because:
1. The companies put volume requirements on small town agents which are completely out of the realm of reason and may then place a moratorium or severe restrictions on new business written, making it doubly difficult to meet volume requirements. We know of one situation where a small town agent had a \$250,000 volume requirement placed on him at the same time the company had a moratorium on all new business.
  2. The companies have been underwriting to a negative loss ratio of 119 or more but they may apply an unrealistic loss ratio criteria to their agents. The agent may actually be running an average loss ratio below the company or the company may not eliminate shock losses in computing an agent's loss ratio.
  3. Mix of business requirements between personal lines and commercial lines may be placed on an agent without sufficient time to adjust to the new requirements.
6. Agents are simply not in an equitable position to negotiate with their companies - the companies are huge in relation to their agents and the actions of one agent have no effect on the companies. A cancellation could have the effect of putting an agent out of business if they have no place to go with existing insureds or new accounts.

February 27, 1985

TESTIMONY

by

Robert R. Williams  
Assistant Executive Director  
Kansas Dental Association

INSURANCE COMMITTEE

Mr. Chairman and Members of the Committee:

Subsections (a) (1) and (a) (2) of House Bill 2496 deems the submitting of misleading or untrue statements and charging a patient with dental insurance a fee greater than the dentists usual, customary and reasonable fee as fraudulent misrepresentation. Subsection (a) (3) would also deem the forgiveness of a co-payment provision of a contract as fraudulent misrepresentation. In addition House Bill 2496 allows for the Kansas Dental Board to take disciplinary action when such violations are reported or identified.

Although the American Dental Association and the Kansas Dental Association view these practices as deceptive, we feel House Bill 2496 is necessary in order for these activities to be properly regulated. The Kansas Dental Association requests that House Bill 2496 be passed.

*(Attachment IV)*