

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Dale Sprague at  
Vice-Chairperson

3:30 a.m./p.m. on Wednesday, March 6, 1985 in room 521-S of the Capitol.

All members were present except:

Reps. Hoy, Lowther - Excused

Committee staff present:

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

Conferees appearing before the committee:

Mr. Dick Scott - State Farm Insurance Company  
Mr. Homer Cowan - Western Companies  
Mr. Carl Schmitthenner, Jr. - Kansas Dental Assn.  
Mr. Wayne Morris - Security Benefit Group  
Ms. Jane Tedder - Security Benefit Group  
Mr. Bob Bernstein, Vice President, Security Benefit Group  
Mr. Dick Brock - Insurance Dept.  
Mr. L. M. Cornish - Domestic Property and Casualty and Life Companies

Vice-Chairman Sprague called the meeting to order and asked Dick Scott to explain HB 2490.

Mr. Scott said HB 2490 concerns a problem of diversion agreements made on DUI cases where insurance companies are unable to take action based on such agreement, as the records are confidential. Mr. Scott said a drunk driver, with enough money and a good attorney, can avoid conviction and the offense will not affect his insurance in any way. He further stated the diversion program is designed to give preferred treatment to people with money, and that a drunk driver is allowed to stay in the same pool as the good, average driver.

Mr. Homer Cowan spoke in support of HB 2490 and presented a Position Memo of the Western Companies. (Attachment I)

HB 2495- Mr. Carl Schmitthenner spoke in support of the bill saying the Kansas Dental Association is asking for legislation similar to the HMO law - if an employer offers a dental health program to employees, which restricts the employees from selecting the dentist of their choice, the employer must also offer an alternative program which does not restrict their choice. Testimony attached. (Attachment II)

HB 2465 - Wayne Morris explained HB 2465 saying it enacts two new sections (one for life insurance companies and one for all other insurance companies) which would allow companies to enter into financial futures contracts for hedging purposes. A copy of his testimony is attached. (Attachment III)

Jane Tedder further explained HB 2465. She presented a Memo outlining her discussion. She explained the purpose of hedging as reduction of risk fluctuations in interest rates. She defined futures contracts and hedging and explained the most common uses of hedging, as well as explaining the features of the bill. Memo attached. (Attachment IV)

Mr. Bob Bernstein, Vice-President of Security Benefit, answered questions from the Committee.

Mr. Brock said HB 2465 is based on the Illinois law. He said the real working parts are in the regulations and Illinois said they had had no problem with them. Mr. Brock also said all transactions are reviewable by the Insurance Department.

Mr. Cornish said his Domestic Property and Casualty Companies and Life Company support HB 2465.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,  
room 521-S, Statehouse, at 3:30 ~~xxx~~ p.m. on Wednesday, March 6, 1985.

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The Vice-Chairman announced there would be discussion and final action on the following four bills: HB 2251, 2464, 2465 and 2490.

HB 2251 - Regulation of continuing care agreements and the registration of providers of continuing care.

Rep. Cribbs made a motion, seconded by Rep. Weaver, that HB 2251 be reported favorably for passage. Motion carried.

HB 2464 - Investments of insurance companies, money market mutual funds.

Rep. Graeber made a motion, seconded by Rep. DeBaun, that HB 2464 be reported favorably for passage. Motion carried.

HB 2465 - Investment in financial futures contracts by insurance companies.

Rep. Graeber made a motion, seconded by Rep. Gjerstad, that HB 2465 be reported favorably for passage. Motion carried.

HB 2490 - Renewal and cancellation of insurance policies, diversion agreements.

Rep. Neufeld made a motion to amend HB 2490 in line 56, by striking "diversionary" and inserting "diversion". Rep. Turnquist seconded the motion and it carried.

Rep. Lowther made a substitute motion to further amend the bill on page 2, in line 51, preceding the comma, by inserting the following: "arising out of the operation of a motor vehicle".

Rep. Neufeld made a motion, seconded by Rep. Graeber, to pass out HB 2490, as amended, favorable for passage. Motion carried.

Rep. DeBaun made a motion, seconded by Rep. Cribbs, that the minutes of March 4 and 5 be approved. Motion carried.

Meeting adjourned at 5 PM.

*Rex B. Gray*





POSITION MEMORANDUM  
OF  
THE WESTERN CASUALTY AND SURETY COMPANY  
THE WESTERN FIRE INSURANCE COMPANY  
THE WESTERN INDEMNITY COMPANY, INC.  
ALL OF  
FORT SCOTT, KANSAS

SUBJECT: House Bill

When it comes to insurance, one of the most hated words is CANCELLATION!

A more hated word however, particularly in present day society is -- DRUNK DRIVER!

The two most important words or phrases to an insurance company, particularly today when so many companies are broke or going broke, is UNDERWRITING and RATE LEVEL!

RISK SELECTION: UNDERWRITING is the skill of risk selection -- To look at past statistics and predict who is most likely to sustain a loss. Anyone can have a loss, otherwise there is no need for insurance, but what group of people or things have less losses than other people or things.

One statistic we can rely upon is -- DUI's are traditionally REPEAT offenders. They will have more losses than others. They should pay a higher premium than those who don't drink, or those who don't drink and drive. Those who don't should have a lower rate.

*Attachment I*



## RESTRICTED

### UNDERWRITING:

Well meaning legislatures and insurance departments have greatly RESTRICTED the art or skill of underwriting. Kansas, for example, has a statute that prevents cancellation except for very definite reasons. A company must stay on a risk for five (5) years. There was a good reason for this five year non-can law when it was put on the books. It is debateable how much harm it does today. --- This is particularly true when you cannot change the rate level of a bad risk for five (5) years.

One of the reasons you can cancel within the five (5) years period is DUI -- EXCEPT, under our present law, diversion programs prevent the conviction!

Diversion Programs, administered correctly, are good incentive mechanisms. In some cases, it convinces the first-time offender who seldom drinks and drives -- not to do it again!

### DIVERSION PROGRAM OFFERS REWARD

#### FOR BEING DUI:

It does not however, prevent the person who drinks often from repeating the DUI! With Diversion "not counting for the record" -- those of you who do not drink and drive, help subsidize the premium of those who drink and drive and have more accidents than you do.

This amendment is meant to let the truth be considered in setting rates -- To make each of us pay the amount of premium we should.



**FACTS:**

A 1983 study by the National Transportation Safety Board states<sup>1</sup>:

Out of 56 alcohol related accidents:

1. Seventy-three (73) deaths
2. Out of 56 drivers, they have a combined record of 131 arrests, and 93 PRIOR convictions
3. Out of 56 drivers, 40 were REPEAT OFFENDERS.

Study shows that improper records (MVR's), restrictions on open records, and Diversion Programs are contributing factors to put drunk drivers - "on the road again!"

Interviews with these drivers revealed:

1. Diversion programs do not work except for the first offender who, by nature, seldom drinks; and the juvenile.
2. Even loss of drivers license does not deter the drinking driver.
3. Out of 773,000 drivers, 30% had been through a rehabilitation program of some kind.

The study goes on to recommend to the states -- DO NOT USE DIVERSIONARY PROGRAMS IN LIEU OF CONVICTION!

**REWARD -- NOT  
PENALTY --**

**FOR DUI's:**

Users of our Diversionary program actually benefit with lower insurance rates -- and you help pay for the subsidy!

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<sup>1</sup> National Transportation Safety Board - 1983 Study --- Attached



Let's take an example -- Assume a proper rate is \$200.00 per year for full coverage on a clean risk.

The DUI, who opted for the Diversion program, prevented the conviction of drunk driving. Therefore, his rate is also \$200.00. The insurance company cannot charge a point for Diversion.

Had the charge of DUI been allowed to show on the record, the insurance company would have charged three (3) points -- a 320% surcharge, or \$640.00. Thus, you subsidize the drunk driver rate.

Now, let's compound your subsidy by virtue of Kansas five (5) year non-cancellation law. -- Let's say we have had this risk for one year. The insured escapes the conviction by use of the Diversionary program. Therefore, we must stay on this risk four (4) more years! His premium should be, for these four years, \$2,760.00. Instead, he pays \$800.00. You subsidize the balance. Had there been a conviction, we could cancel, or place him in the proper rating program, thus keeping your rates lower.



**THE POSITION**

**OF THE WESTERN:**

When one is charged with DUI, testing programs verify alcohol content. The driver is legally drunk! There is nothing wrong with the Diversionary program, but it should not REWARD that driver. This amendment will correct that legal defect.

Respectfully submitted,

**THE WESTERN CASUALTY & SURETY COMPANY  
THE WESTERN FIRE INSURANCE COMPANY  
THE WESTERN INDEMNITY COMPANY, INC.**

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Homer H. Cowan, Jr.\*  
Vice President

\*Registered Lobbyist in the State  
of Kansas and the State of Missouri



### Correction

In the Oct. 13 issue of *Status Report*, a story on the increase in crashes at right-turn-on-red intersections erroneously stated "bicyclist crashes with cars rose a hundredfold." It should have said: Bicyclist crashes with cars rose by 100 percent.

## 'Down Payment' Made On DOT's Seat Belt Education Program

Congress has set aside \$10 million for the Department of Transportation's controversial seat belt education program as a down payment on the campaign's expected \$160 million outlay over four years.

Some \$2.5 million will be available immediately, with the remainder to be freed following review by the House and Senate appropriations committees. The money will be reallocated from existing DOT sources, with \$2.5 million to come from the National Highway Traffic Safety Administration's (NHTSA) operations and research budget and the remainder from the Federal Highway Administration and the Urban Mass Transportation Administration.

In a letter in the *Congressional Record*, Transportation Secretary Elizabeth Dole pledged to spend some of the funds on consumer education about air bags. (See *Status Report*, Vol. 19, No. 16, Oct. 13, 1984.)

The appropriation was introduced as part of an amendment to the continuing resolution appropriating funds for DOT in fiscal 1985, by Senators Jack Danforth, Missouri Republican, and Frank Lautenberg, New Jersey Democrat. The amendment also sets aside \$126.5 million for NHTSA's state and community highway safety programs, \$26.5 million more than had been sought. The additional funds will provide money for state incentive grants to be awarded for conversion to computerized traffic records, mandatory sentencing laws for convicted drunk drivers, and state child passenger safety programs.

Lautenberg and Danforth urged Dole to consider an accelerated demonstration program for an all-mechanical air bag design developed by the Breed Corp. Lautenberg said the system promises to lower the retail cost of air bags dramatically and suggested the demonstration "would provide a timely opportunity to allow this new technology to prove itself a viable alternative for consumers and automakers."

The continuing resolution also provided \$82.35 million for NHTSA's 1985 programs.

## Many Repeat Offenders Among Drunk Drivers Involved in Fatal Crashes

The alcoholic driver continues to be a particularly intractable problem despite heightened law enforcement efforts, the National Transportation Safety Board has reported.

In a year-long study of 51 crashes causing 73 fatalities, the safety board found the crashes involved 56 alcohol-impaired drivers whose prior records showed at least 131 arrests and 93 previous convictions for drunk driving.

The board also interviewed 40 convicted, repeat offenders as part of its assessment of the problem, reported Jim Burnett, chairman of the board. "Our study has shown there are gaps—perhaps chasms—in various state operations meant to deal with the problem of the drunk driver," he added. "Some of the reasons for the failures rest with law enforcement, others are traced to motor vehicle department or judicial record-keeping systems, or to the role that judges have played, and still others relate to the questionable effectiveness of treatment programs used in lieu of incarceration."

The study revealed that there continues to be a widespread belief among offenders that they are unlikely to be caught for driving while under the influence (DWI) of alcohol. Convicted drivers also said that alcohol treatment programs ordered in lieu of license revocation are an insufficient deterrent. But even when their licenses are suspended or revoked, many continue to drive, the board reported.

Although not a scientific sample, of the 51 cases studied by the board, one-third of the drivers were operating their vehicles while their licenses were under suspension. The board cited an unpublished 1983 study by the National Highway Traffic Safety Administration, "Rehabilitation/Treatment of DWI Offenders," which purportedly indicates that as many as 30 percent of the annual 773,000 drunk driving convictions each year involve repeat offenders.

Many of the board's findings and recommendations mirror those reported in other studies, including *Deter-*

### Moped Law

Effective January 1, in California, children under 15 and a half years will be required to wear safety helmets when riding as drivers or passengers on motorcycles or mopeds.

ring the Drinking Driver, by H. Laurence Ross, a book sponsored by the Insurance Institute for Highway Safety. (See *Status Report*, Vol. 17, No. 8, June 9, 1982.)

The board study did show that many juvenile offenders may be ill-served by gaps in the judicial system. Young drivers arrested for DWI were not often screened for signs of alcohol-related problems. The board recommended that law enforcement agencies routinely document in *any* arrest report whether the juvenile had been drinking.

In a series of recommendations issued to the states, the board suggested that:

- States not permit their alcohol treatment programs to be used in place of license revocation or suspension;
- Judges be provided special training on problems of drunk driving;
- The prior records of alcohol-related offenses be made available to judges prior to sentencing, and that juvenile records be carried into adulthood;

- Alcohol problem evaluations be performed for everyone arrested for drunk driving and that those evaluations be made available to the sentencing judge;

- States make available to juveniles special alcohol treatment programs geared to their needs;

- Governors propose legislation to facilitate collection of DWI evidence;

- Policies regarding holding of persons arrested for driving while intoxicated be reviewed to assure that people are not released before they are sober; and

- Efforts be made to lower the incidence of plea-bargaining and to require that every defendant's record reflect the original charge, despite the ultimate disposition of the case.

The board noted the emergence of new tools for law enforcement, including preliminary test devices that can show a driver's blood alcohol concentration level within 0.01 percent, and an eye test for quick determination of whether a driver is intoxicated.

March 6, 1985

TESTIMONY

by

Carl C. Schmitthenner, Jr.  
Executive Director  
Kansas Dental Association

INSURANCE COMMITTEE

Over the past few years we have seen the development of various "Alternative Health Care Systems." The idea behind the creation of these alternative systems is to increase competition in the delivery of health care services. In most cases these alternative systems enter into a contract with the health care professionals who agree to abide by certain provisions. Often times these alternative systems will contract with a limited number of health care professionals in a given area. In order to receive benefits the consumer would have to seek care from a contracting provider. Such an arrangement is called a "closed panel".

(When an employer offers a closed panel to his employees the employees must seek care from a health care professional who is participating in the closed panel.) The employee is not free to choose the health care professional of his choice. An example of a solution to this problem would be the new health plan for state employees. According to the state plan employees may choose to participate in the HMO, where they must choose a health care professional who is participating in the program, or they may choose the conventional health plan which places no restrictions on provider selection. The state employee has a dual choice. Consider what would happen if the state only offered the HMO. Many state employees would be financially forced to discontinue an already established relationship with their health care professional of long standing and select one of the participating providers selected by the entity offering the plan.

We at the Kansas Dental Association believe if an employer offers his/her employees a health care plan which restricts provider selection, he/she should also offer his/her employees an optional plan which does not restrict provider selection. The employer contribution can be the same for both plans. Under the terms of the HMO law, an employer in a group receiving medical care benefits must be offered the alternative of seeking treatment from an HMO, if one is available. This is the same principle that we are talking about only in reverse.

There is another aspect to consider. If employees/consumers are forced to receive care from a closed panel, no matter how low the fees are of the providers outside the closed panel (because the employees/consumers are restricted), there is no hope of gaining them as patients. Thus, any incentive to lower fees and compete is lost.

The Kansas Dental Association is asking for legislation similar to the HMO law - if an employer offers a dental health program to his/her employees which restricts (prohibits) the employees from selecting the dentist of their choice the employer must also offer an alternative program which does not restrict their choice. The Kansas Dental Association requests that House Bill 2495 be passed.

*Attachment II*



# Security Benefit Life Insurance Company

A Member of The Security Benefit Group of Companies

Date: March 5, 1985

To: The Honorable Rex Hoy, Chairman, and  
Honorable Members, House Committee on Insurance

From: Wayne Morris, Assistant Counsel

Re: H.B. 2465 -- Investments by Insurance Companies

H.B. 2465 is the second of two investment bills introduced by this Committee.

This bill would enact two new sections (one for life insurance companies and one for all other insurance companies) which would allow companies to enter into financial futures contracts for hedging purposes. The investment authority that would be granted by the bill is quite conservative and would allow companies to reduce the risk in their investment portfolios.

Protections offered by the bill include: 1) investment would be limited to "financial futures," rather than futures in commodities; 2) the contracts must be limited to "hedging," rather than speculative purposes; and 3) the investments may be made only in accordance with established procedures subject to review by the company's board of directors and the Insurance Department's examiners. Furthermore, these types of investments are allowed in a majority of other states. Financial futures contracts are also a common investment tool of other financial institutions such as banks and savings and loan associations.

Because many of these terms may be as new to you as they were to me, I have again asked Jane Tedder, Portfolio Manager, to explain the terms used in the bill and examples of such contracts.

Thank you for your consideration.

WM/chc

*Attachment III*

MEMO

Date: March 6, 1985

To: The Honorable Rex Hoy, Chairman, and Honorable Members,  
House Committee on Insurance

From: Jane Tedder, Portfolio Manager  
Security Benefit Group of Companies

Re: H.B. 2465 -- Use of Financial Futures Contracts for  
Hedging Purposes

- I. Purpose of Hedging: Reduction of risk created by fluctuations in interest rates.
- II. Definitions
  - A. Financial Futures Contracts: Agreements to buy or sell a financial instrument (i.e., Treasury Bills or Treasury Bonds) at a set time, at an agreed-upon price.
  - B. Hedging: The creation of a futures position that offsets risk exposure in the cash position.
- III. Most Common Hedging Uses
  - A. "Locking in" today's rates for anticipated investments
  - B. Protecting market value of investment portfolio
- IV. Features of Bill
  - A. Definitions of terms
  - B. Requirement of approval of Board of Directors
  - C. Limits on hedging activities
  - D. Accounting Procedures

NB/hjk

*Attachment IV*