

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at  
Chairperson

9:00 a.m. ~~p.m.~~ on March 25, 1985 in room 529-S of the Capitol.

All members were present except:

Senators Harder and Burke - Excused

Committee staff present:

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

Conferees appearing before the committee:

Ron Todd, Kansas Insurance Department

The minutes of March 22 were approved.

The hearing began on HB 2166 dealing with unearned premiums and reserves of certain insurance policies. Ron Todd of the Kansas Insurance Department testified in support of the bill. Mr. Todd said that the problem of insurance companies not having sufficient reserves to be admitted to do business in Kansas has occurred only a few times. He continued that the Rule of 78s produces a little less reserve than the pro rata method. Most states allow the use of either method and when some companies are applying for admission to Kansas, the difference is too much sometimes, making doing business in Kansas prohibitive to these companies. This has not been a problem of any magnitude in Kansas, but it would not harm the public to allow companies to use either method.

Mr. Todd agreed with the chairman's statement that this would not affect individual refund computations. He also clarified a question by the chairman regarding the percentage that must go in reserve for losses by explaining that the bill does not concern total loss reserves but is dealing with the reserve for unearned premiums.

Sen. Karr expressed his concern in relaxing the Rule of 78s to a limited extent. The chairman said that this would need to be addressed in the UCCC and that there would be a possibility of conforming this bill with the UCCC. Mr. Todd noted that he could not see enough difference between the Rule of 78s and pro rata to affect public policy. Other states are doing it, and it is not bad for the public. It merely removes artificial barriers for companies being admitted in Kansas to do business. There have been approximately six applications in Kansas during the last few years affected by this barrier. This concluded the hearing on HB 2166.

The hearing began on HB 2168 dealing with fraudulent insurance acts which had been requested by the Insurance Department. (See Attachment I.) Ron Todd testified in support of the bill. Mr. Todd said that in his opinion the bill is noncontroversial and follows the idea of the statute passed several years ago giving immunity in reporting suspected arson.

The chairman asked if the employees of the Insurance Department were covered under the general governmental immunity act at present, and Mr. Todd said that this is the case, under the Tort Claims Act. In response to the chairman's questions as to the reports made by the Department, Mr. Todd explained that a specific individual or a company name could be named in the compiled report which would not be made on an annual basis.

In regard to lines 58 and 59 of the bill, Sen. Werts confirmed that a confidential report would make the person immune, but if the information is spread over town and was incorrect, that person could be sued under tort action for slander.

In a discussion began by Sen. Karr regarding the extent of immunity, staff explained in reference to Section I of the bill that it would seem that fraud is fraud no matter where it is defined, and creating a statute for insurance fraud would not change it from the criminal codes. As far as Section II, the only new people given immunity are the company or their employees reporting the fraud to the Insurance

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 25, 1985

Commissioner because the Insurance Department employees are already given immunity under the Tort Claims Act.

The chairman asked what would happen if the information reported was incorrect. Staff said that in this case, the person would still be immune unless it was done with the intent to damage the person or company reported.

Sen. Karr asked if the reason for the bill is for procedure, and Mr. Todd said it is and that it was intended mainly to encourage people to report suspected fraud. The chairman noted that most of the bill is covered by other statutes. Staff added that it does not amend the Tort Claims Act but affects it indirectly by saying these additional employees are immune.

Staff observed that there is some confusion in Section 2, subsections 1, 2, and 3, with regard to the application of the phrase "without malice". Mr. Todd said that the bill was drawn as a model for other states and that he would have no objections to any changes necessary for clarification.

Sen. Reilly made a motion to conceptually amend HB 2168 to make certain that all provisions include that the reports were reported without malice. Sen. Karr seconded, and the motion carried.

Sen. Reilly made a motion to recommend HB 2168 favorably as amended. Sen. Gordon seconded, and the motion carried.

Sen. Gordon made a motion to report HB 2166 favorable for passage. Sen. Werts seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE                      NAME                      ADDRESS                      REPRESENTING

|      |                    |        |                        |
|------|--------------------|--------|------------------------|
| 3-25 | LM CORUIST         | Tepeda | 16 Senate Ave. des Cas |
|      | Mary Ann Bunnigara |        | Gen. Bunker-union      |
|      | DENNIS DEHN        | "      | SEN WERTS' INTERN      |
|      | Ren Todd           | "      | Gen. Dept              |

EXPLANATORY MEMORANDUM FOR  
LEGISLATIVE PROPOSAL NO. 2

2168

This proposal is the National Association of Insurance Commissioners' Model Immunity Act. As the title implies, the purpose of this act is to remove inhibitions persons might have to report possible instances of insurance fraud because of a fear of civil liability. In addition, the proposal extends immunity to the Commissioner and Insurance Department employees with respect to the publication of reports and/or bulletins regarding activities of the Insurance Department.

In administering the Workers' Compensation Fund Law and enforcing the statutes concerning disciplinary actions against insurance companies and agents, occasions arise where an element of fraud seems to be quite probable. In such instances, the Department completes its administrative actions and then turns the file over to the appropriate authority for any further action such authority deems appropriate. Also, the Department's administrative actions are disseminated to other states through the National Association of Insurance Commissioners and are published in the Department's quarterly bulletin. Finally, the Department receives and compiles a significant amount of sensitive financial information regarding individual insurance entities during the course of our normal activities. Much of this information is available to the public pursuant to the Open Records Act and some of it becomes public during the natural course of business.

In all of the situations described above, there is an exposure to possible civil liability which should not exist unless malice or bad faith is involved.

The House Insurance Committee will be requested to introduce this proposal.

3/25/85

Attachment I