

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. ~~pm~~ on April 2, 1985 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:

Dick Scott, State Farm Insurance
Bud Cornish, Kansas Domestic Insurance Companies
Larry Magill, Independent Insurance Agents of Kansas
Dan Messelt, Independent Insurance Agents of Kansas
Jim Oliver, Professional Insurance Agents of Kansas

The minutes of April 1 were approved.

The hearing was begun on HB 2490 dealing with renewal and cancellation of insurance policies in connection with diversion agreements. The chairman called the committee's attention to written testimony previously submitted by Homer Cowan of the Western Insurance Companies who was not present. (See Attachment I.)

Dick Scott, State Farm Insurance, gave testimony in support of the bill.
(See Attachment II.)

Sen. Gannon said that he had the understanding that the diversion program was intended for first time offenders and asked Mr. Scott why these would be considered as a high risk category. Mr. Scott replied that this is the way it was intended to be used, but statistics indicate that these same drivers are high risks because they tend to repeat the offense. Also, there are cases where they get diversion after the first offense which is not the way it was intended to be used. The chairman asked for confirmation as to if the insurance companies had access to records of first time offenders, it would be handled the same as a conviction for DUI. Mr. Scott said, yes, it would be handled this way for insurance purposes.

In response to a question from Sen. Reilly as to what the policy would be in regard to first time offenders who seldom drink or are juveniles, Mr. Scott said his company would not automatically cancel a first time offender who otherwise had a good record. Also, he answered Sen. Reilly's inquiry as to the average impact first time offenses would have on insurance rates. The rate would probably be the same if the person stays with the same company, and this would be true also on renewals because his company sets up rates on the basis of losses, not violations.

Bud Cornish, Kansas Domestic Insurance Companies, testified in support of HB 2490. He said it is a fair way to allocate costs of insurance. Good drivers should not be paying for high risk drivers.

The chairman asked Ron Todd of the Kansas Insurance Department if they had a position on the bill. Mr. Todd said the Department has no position on the bill, but they have had complaints from insurance companies because they cannot cancel on diversions because diversions cannot be considered as convictions.

Sen. Reilly told the committee that he is on a conference committee at present that is debating on the definition problem involved here and that this could be related to this bill. Sen. Karr said that then perhaps the bill should be held until the conference committee's work is finished.

After a short discussion, the chairman called for action on HB 2490. Sen. Kerr made a motion to report HB 2490 favorable for passage, and Sen. Reilly seconded. Sen. Karr

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
 room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on April 2, 1985.

said he would hate to have the bill put on the calendar and killed, but if it is left in committee, legislators will have more time to become aware of it. He votes no on the motion. The chairman reminded the committee that if the bill is passed out, it is a policy decision. On a call for a vote on Sen. Kerr's motion, the motion failed on a tie vote.

The hearing was begun on HB 2421 dealing with notice requirements for cancellation of independent insurance agency contracts by insurance companies. The bill would increase the time from 120 days to 180 days. Larry Magill, Independent Insurance Agents of Kansas, introduced Dan Messelt of his organization to testify in support of HB 2421. (See Attachment III.)

The chairman asked Mr. Messelt if he has had problems with cancellation of agency agreements. Mr. Messelt said he had but, frankly, it was a mutual agreement. However, some of the smaller agencies in smaller communities have had problems, and there are many of these small agencies in Kansas.

Jim Oliver, Professional Insurance Agents of Kansas, testified in support of the bill as amended. He said insurance agencies are in a period of hard markets, and companies are cancelling agents. Many agents are given 180 days notice already, and he feels this is the proper amount of time.

Bud Cornish testified that those that he represents have a belief that contracts should be a meeting of minds between the two parties involved. He referred to lines 38-42 of the bill in noting that renewals of business is already in the statutes. This concluded the hearing on HB 2421.

After making a few points not made in testimony regarding cancellations by insurance companies, Sen. Reilly made a motion to report HB 2421 favorable for passage. Sen. Gannon seconded, and the motion carried.

The chairman asked for some direction from the committee as to how they would like to proceed on HB 2251 dealing with continuing care and HB 2137 dealing with interest rates which had not been heard due to lack of time. Stanley Lind has indicated that he would like the bill to be heard this session and since the committee is out of time, he has asked that it be referred to the Ways and Means Committee. The bill also could be held until next session. The bill as it was killed on the House floor, needs some study. It was the consensus of the committee that there is no certainty that Ways and Means will work the bill.

Sen. Burke asked Mr. Scott why he had stated in his testimony that his company does not like diversion programs. Mr. Scott said they do not like the way diversion programs are used; it depends on the influence of a defense attorney or on how much money is available. Sen. Burke replied that if there are no diversion programs, there is no way to get help for people so the whole program should not be condemned. Mr. Scott conceded that perhaps his statement was too broad, but his concern is with the affects it has on the insurance industry and the rates for offenders.

There being no further comments on HB 2251 and HB 2137, the chairman assumed that the committee's preference is to carry the bills over to next session. Sen. Gannon asked for a progress report from staff on HB 2251. Staff reported that the Attorney General referred them to the Securities Commissioner. The Securities Commissioner had said this was not a securities problem and should not be under the Consumer Protection Act. It appears that, by default, the Insurance Department is responsible for handling the bill, and this is where it has come from last year and this year. Mr. Yager who had testified on the bill had also been told by the Attorney General that the problem would not fall under the Consumer Protection Act. The chairman reported to the committee the bill has a \$88,000 fiscal note.

There being no further time, the meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
4-2	DENNIS DEHN	TOPEKA	SEN WERTS' INTER
	Rich Wilborn	McPherson	Alliance Ins. Co
	JIM OLIVER	TOPEKA	PIA of Ks
	Dick Scott	O.P.	State Farm Ins.
	John W. Smith	Topeka	Dept of Revenue
	Dan Messelt	Manhattan	IIAK
	LARRY MAGILL	TOPEKA	IIAK
	RON TODD	"	Ins. Dept
	Stan Lind	KCKs.	KAFC
	Cornix Stenlage	Topeka	KIHA



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 2490

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.



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 states⁰⁰:

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!

¹ 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.**

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.



State Farm Mutual Automobile Insurance Company

March 29, 1985

State Farm Insurance Claim Office
11661 College Boulevard
P.O. Box 26008
Shawnee Mission, Kansas 66225

Senate Committee on Financial
Institutions and Insurance
Chairman: Neil H. Arasmith
State Capitol Building
Topeka, Kansas

RE: House Bill 2490 - DWI Diversion Program

Mr. Chairman and Members of the Committee:

Public opinion today is very adverse to the Drunk Driver. This Legislature has, in the past few years, passed laws to stiffen the penalties and to treat this serious problem.

However, somehow we have on the statute books a program providing for a Diversion (a non-penalizing alternative to conviction).

By the Diversion Program a Drunk Driver with enough money and a good attorney, can avoid conviction. He/she can avoid many financial consequences of the crime, including any effect on the Drunk Driver's insurance.

The "drill" for Diversion is as follows:

1. The Drunk Driver's attorney makes a deal with the prosecuting attorney and the Judge to get the Drunk Driver on the Diversion Program in lieu of a conviction.
2. The Drunk Driver pays a healthy fine and a health attorney fee.
3. The Drunk Driver is placed on a kind of probation.
4. The Drunk Driver goes to some kind of schooling.
5. This whole arrangement is hushed up real tight. It is all very confidential and nobody is to know about it.

We do not like Diversion Programs. We believe it is designed to give preferred treatment to the person who can afford to arrange the program.

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Secondly, the program is grossly overused. John Smith of the Kansas Motor Vehicle Department testified before the Senate Judiciary Committee that there are 6,000 Diversions Programs set up each year.

Although we are adverse to Diversions, we are not here before this Committee to influence the criminal justice system of Kansas. We do not perceive that to be our place. We are asking this Committee to take action to correct the effect of Diversions Programs on automobile insurance.

The Diversions for the Drunk Driver is a confidential record. Even if the insurance carrier for the Drunk Driver learns of the DWI, no action can be taken to change the insurance program - no change in rate - no change in the Drunk Driver's insurance company (such as going to a high rate company or assigned risk).

House Bill 2490 is designed to correct this problem.

The Drunk Driver who is going to be allowed to continue to drive needs insurance. But, he/she should not be paying the same rate as the average good Kansas driver.

You may ask - Isn't it the purpose of insurance to pool risks? Yes, except that the pool of risks should be similar.

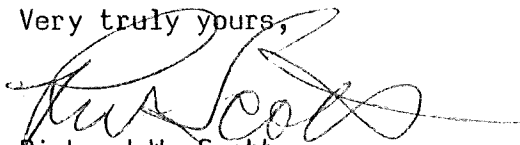
We submit that the Drunk Driver who is put back on the road, is not a similar risk to the average Kansas motorist.

If Drunk Drivers are allowed to stay in the "good driver" pool, the higher frequency of accidents resulting from that pool increases the premium for all of the good drivers. The good drivers are made to help pay for the losses of the Drunk Driver. This is not fair.

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House Bill 2490 simply provides the insurance carrier access to Drunk Driver Diversion Program information and allows the carrier to take appropriate action based on that information. The Drunk Driver will then be paying a premium appropriate to the higher risk and not be subsidized by the good, law abiding citizen motorist.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard W. Scott", written in black ink.

Richard W. Scott
DIVISIONAL CLAIM SUPERINTENDENT

RWS/mmd

Testimony on HB 2421

Before the Senate Financial Institutions & Insurance Committee
By: Daniel R. Messelt, CPCU, Governmental Affairs Committee Chairman
Independent Insurance Agents of Kansas

Mr. Chairman, members of the committee, thank you for this opportunity to appear today in support of HB 2421, a measure we requested that the House Insurance Committee introduce. We realize that time is growing short this session and that your committee has a heavy workload. Therefore, we will keep our oral remarks short and attached to this testimony is an outline of our position on the bill and reasons we urge you to pass it favorably.

For a variety of reasons, principally the current "hard" market, insurance company cancellation of agents' contracts is rising dramatically. Agents who have had contracts that have been in force for 50 years are being cancelled by their insurance companies.

As contrasted with the situation only a year or two ago when companies were mindlessly chasing premium dollars for cash flow and beating agents' doors down for contracts. Now that agents have invested time and trust in these same companies, they are terminating contracts placing hardships on many of the agent's clients/consumers.

Consumers face a number of potentially serious hardships as a result of these contract cancellations including the possible increase in premium that they would not experience otherwise due to, for example, advanced age or a slightly worse driving record. The consumer also loses a track record that may have been built up for years with that company where the consumer had no losses. A company that has had a policyholder for a number of years without losses is much more likely to stay on the risk even if their experience becomes adverse than a company that just wrote the policy. Finally, the consumer, at the very least, faces the inconvenience of having to reapply for a new insurance policy and be re-underwritten.

4/2/85
Attachment III

Companies may individually argue that their company allows one year after the contract cancellation notice period during which they will renew business. Unfortunately, that provision is not generally offered by the majority of companies in their agency contracts. Thus, after the expiration of the required notice period, all policies must be replaced with a new carrier at their next renewal after the notice period expires.

Subsection(b) of the present law does not alleviate these problems or require companies to continue renewing for one year after the notice period expires. All subsection(b) does, as far as we can determine, is prevent companies from wholesale cancellation of all policies for that agency - something the insurance department would frown on regardless of the statute.

Unless there is general movement among the insurance companies or among the various states towards one year notice of cancellation, we do not foresee this issue arising again.

Because of what is happening in the insurance marketplace today, there is urgency to this issue. Because of that urgency, we ask the committee to act favorably and pass the bill out this session. Thank you for your attention. We would be happy to answer any questions.

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 180 days 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.

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.