

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Rex B. Hoy at  
Chairperson

3:30 a.m./p.m. on March 4, 1986 in room 521-S of the Capitol.

All members were present except:

Rep. King, excused  
Rep. Lowther, excused

Committee staff present:

Ms. Melinda Hanson, Research Department  
Mr. Gordon Self, Revisor's Office  
Ms. Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Mr. Larry Magill, Independent Insurance Agents of Kansas  
Mr. Jim Oliver, Professional Insurance Agents of Kansas  
Mr. Jerry Slaughter, Kansas Medical Society

The meeting was called to order by the Chairman.

Hearing on: HB 3008 - relating to insurance agents and insolvent insurers

Mr. Larry Magill, Independent Insurance Agents of Kansas, appeared on behalf of this bill, which was introduced on his request. It is an effort to address problems brought to light by the insolvency of the Iowa National Mutual Insurance Company. It deals only with property and casualty companies and the manner in which company liquidations are generally handled. The liquidator's legal obligation is to collect all assets of a company and pay all claims according to priorities established by statute. He considers the full annual premium on all policies on an agent's account current as an asset, despite the fact that much of this premium will not be earned. This practice works a hardship on the agent if he has not collected the money and the insured who must pay both the agent and also purchase new coverage.

This bill would allow the agent to offset unearned premiums against earned premiums due the insolvent insurance company. The insureds would benefit by an immediate credit, agents would not have to advance funds due them by insureds, and the Guaranty Fund would not have to process claims for return premiums. Section 1(b) provides that an agent not bind an insolvent insurance company to a new or increased risk, but other provisions relating to open items between the agent and the insolvent insurer should continue to apply until all accounts are settled and all policies are terminated. (Attachment 1.)

Mr. Jim Oliver, Professional Insurance Agents of Kansas, stated that he heartily endorsed the bill and feels that it will solve many of the inequities caused by insolvencies.

Discussion on the bill clarified that it would apply only to Kansas insureds and agents but to any insurer who writes

CONTINUATION SHEET

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business here regardless of where it is domiciled.

Hearing on: SB 382 - providing for refund on unearned surcharge from health care stabilization fund

Ms. Melinda Hanson briefed the committee on this bill. She said it comes from the interim study on medical malpractice. It relates to financing of insurance premium surcharges. Currently the surcharge is 110% of a physician's liability premium, but since the health care stabilization fund has been unable to return unearned premiums, a premium finance company had no security to enable it to finance surcharges. The bill would allow a premium finance company to be refunded unearned premium in the event of cancellation for nonpay, death, moving out of state, and retirement.

Mr. Jerry Slaughter, Kansas Medical Society, spoke for this bill. He stated that the issue is that under current law, a physician may finance his basic insurance premium with a premium finance company but not the surcharge. The date at which the bill would go into effect is upon its publication in the Kansas register; he stated that the earlier it goes into effect, the more people who can be helped.

Mr. Larry Magill, Independent Insurance Agents of Kansas, endorsed the bill as an important method of providing financing for doctor's of their insurance premium surcharge.

Mr. Dick Brock, Kansas Insurance Department, said that the department has no problem with the bill. It details what the fund can pay out.

Rep. Littlejohn made a motion that the bill be reported favorably; Rep. Sprague seconded the motion. The motion carried.

Rep. Neufeld made a motion that HB 3008 be reported favorably; Rep. Blumenthal seconded the motion. The motion carried.

The Chairman informed the committee of the agenda for committee meetings on March 5 and 6. He also stated that he would buy a meal for everyone at a future date.

The meeting was adjourned at 4:15 p.m. by the Chairman.



Testimony on HB 3008  
Before the House Insurance Committee  
March 4, 1986

By: Larry W. Magill, Jr., Executive Vice President  
Independent Insurance Agents of Kansas

We appreciate the opportunity to appear today in support of HB 3008 introduced on our request by this committee. Our request was the culmination of a joint effort between our association and the Professional Insurance Agents of Kansas to address problems caused by the Iowa National Mutual Insurance Company's insolvency, October 10, 1985.

Although the Kansas Insurance Guaranty Association Act (property and casualty) was passed in 1970, the Iowa National Mutual Insurance Company insolvency represented the first time that a "standard" insurer with a large number of Kansas agents and policyholders has been declared insolvent. The Iowa National's insolvency brought to our association's attention the problem with how insurance company liquidations are generally handled.

Our guaranty fund law provides \$300,000 coverage per claim including claims for unearned premiums subject to a \$100 deductible per claim. The limitation does not apply to workers' compensation claims, which are covered in full. The act provides 30 days coverage for insureds after a court finding of insolvency unless the policy is replaced or expires by its terms sooner.

The liquidator's legal obligation is to collect all assets of a company and pay all claims against the insolvent company according to an order of priority established by

statute. The liquidator considers the full annual premium on all policies on agent's account current (monthly billings) as an asset of the company. Generally because of the time allowed for payment of an account current, this will involve three months' accounts. The accounts are generally due 45 days after the close of the month in which the policy was billed by the insurance company. In Iowa National's case, they were declared insolvent October 10, 1985, so the October account which was in payment of August, the November account paying September and the December account paying for policies not replaced by October 10th were all open at the time of the insolvency.

It makes absolutely no sense to either agents or insureds to pay the full annual premium shown on these account currents to an insolvent insurance company when the vast majority of that premium is not earned and will never be earned by the then insolvent company.

The agent may or may not have been paid by the insured for premiums that appear on the agent's account current. This depends largely on the agent's collection practices and the consumer's ability to pay. The liquidator, on the other hand, does not know and therefore assumes that an agent has been paid for all items that appear on an account current.

The insured needs to purchase new insurance elsewhere once a company has been declared insolvent and does not want to pay twice for the same coverage nor may they be able to afford it.

If the premiums have been paid to the agent, the agent wants to give the insured an immediate credit for the unearned premium including unearned commissions, either as a

refund or as a credit towards a new policy with a new carrier.

If the agent has not been paid, the agent does not want to advance money for the insured, possibly having to borrow those funds from a bank and then wait as much as six months or longer for a refund from the guaranty association. The first refund of unearned premium has yet to be issued by the Kansas Guaranty Association for Iowa National.

The following is a time table of the Iowa National insolvency, which is fairly typical:

September 19, 1985 - Iowa National placed in rehabilitation by the Iowa Insurance Department.

October 10, 1985 - Iowa National declared insolvent by an Iowa court.

November 9, 1985 - All coverage terminated if not sooner.

March 4, 1986 - Almost five months later and still no refunds of unearned premiums.

Our proposal, HB 3008, would allow the agent to offset unearned premiums for all their insureds against earned premiums due and outstanding to the insolvent insurance company.

This would provide the following benefits:

1. Insureds would benefit by an immediate credit instead of waiting perhaps six months or longer for a return premium.
2. Agents benefit by not having to advance funds for insureds and wait for checks from guaranty funds.

Where the client has paid, many agents, to retain the goodwill of their clients, have already allowed a credit to their customer's account and purchased new coverage using that credit.

3. The Guaranty Fund and the liquidator should save on processing of claims for return premiums.

This would result since individual refund checks would not have to be issued. The liquidator would reconcile with agents the credits they take on their account current and presumably offset these credits against what the liquidator would owe the Guaranty Fund.

Our research indicates that both the states of Illinois and Texas specifically recognize in statute the rights to certain set-offs in insurance company liquidation proceedings.

Section 1(b) of HB 3008 addresses the problem of a liquidator who ignores the terms and provisions of the agent's contract with the insolvent insurer. In the case of Iowa National, the contracts contained a typical provision allowing an agent to return an audit for additional premium if it was uncollectable and it was returned within 45 days. The liquidator has refused to accept the return of an audit for a Kansas agent, claiming that the contract no longer applied.

The liquidator's claim is based on a standard provision in agency agreements that provides that the contract is terminated on the insolvency of either party.

We do not believe that this provision should be allowed to be used by a liquidator to deny the protection of the contract to an agent on transactions which began prior to the liquidation. In other words, we believe this insolvency clause means that an agent cannot bind an insolvent insurance company to a new risk or to an increase in an existing risk or in any other way continue to represent an insolvent company. Nevertheless, other provisions of the contract relating to open items between the agent and the insolvent insurer should continue to apply until all accounts are

settled and all policies are terminated.

We are aware of one case in Missouri where an agency has an additional premium due on a commercial account's workers' compensation policy of \$1,468.00 and a return premium due on the same account's general liability of \$4,479.00. In this case, the liquidator is not allowing the agent to offset and is requiring the agent to pay the \$1,468.00 additional premium. The insured must then take a claim to the Missouri Guaranty Fund for the \$4,479.00 return premium on their general liability policy where the Missouri Guaranty Fund only covers a maximum of \$2,500 for return premium.

We believe the provisions of HB 3008 are much more realistic of the way business is conducted between agents, insureds and insurance companies today. It will provide immediate relief to agents and their clients and should not work an undue hardship on the Guaranty Fund or the liquidator. We urge the committee to recommend favorably for passage HB 3008.