

MINUTES OF THE House COMMITTEE ON Insurance

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

3:30 ~~am~~/p.m. on March 5, 1986 in room 521-S of the Capitol.

All members were present except:

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. Dick Brock, Kansas Insurance Department

The meeting was called to order by the Chairman.

Final action on : HB 3088 - relating to life and health insurance guaranty association act

Mr. Gordon Self reiterated the clean-ups on this bill. (Attachment 1.) He stated that the provisions of subsection (o) shall not apply to annuity contracts procured pursuant to a settlement agreement in a medical malpractice liability action because they are covered by provisions under HB 2661.

Rep. Littlejohn moved that the amendments be approved; Rep. Cribbs seconded the motion. The motion carried.

Rep. Cribbs moved that the bill be reported favorably as amended; Rep. Sprague seconded the motion. The motion carried.

Hearing and final action on: HB 3049 - licensing of agents; waiver of exam

Mr. Dick Brock, Kansas Insurance Department, said that the bill deals with the examination of agents for a license to write crop hail insurance. It was initiated upon request of a major group of crop hail insurers. The bill will require that agents who seek a crop hail license after April 30, 1986, must take an examination. Those currently so licensed will not lose their licenses. The effective date of the bill will occur before the publication in the statute book to prevent a run on agents applying for a license. One factor that has made this bill seem advisable is that the federal crop hail program is multi-peril and quite complex.

There was concern that the current language of the bill would not necessarily allow testing for multi-peril and that the word "hail" should be stricken from Line 0050 to facilitate such testing.

Rep. Turnquist made a motion to strike the word "hail" from Line 0050; Rep. Neufeld seconded the motion. The motion carried.

Rep. King moved that the bill be reported favorably as amended; Rep. Neufeld seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 521-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 5, 1986

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Final action on: HB 3007 - relating to deposit of securities by life insurance companies.

Ms. Melinda Hanson explained that this bill would allow Kansas life insurance companies to get a credit for investment income due and accrued on investments which are on deposit when calculating the deposit requirement. The interest would accrue to that credit even though it would still be in the possession of the life insurance company. It also relates to appraisal of real estate; the bill would allow that the real estate be appraised by one appraiser approved by the Commissioner.

Rep. DeBaun moved that the bill be reported favorably; Rep. Cribbs seconded the motion. The motion carried.

There was discussion on HB 2495. The Chairman expressed his concern that it would take away an advantage of the HMO which has allowed it to be competitive with other medical providers, which is beginning to bring prices down.

Rep. Littlejohn made a motion that HB 2496 be passed favorably; Rep. Bryant seconded the motion. There were a number of questions raised on the bill, including whether it relates only to third-party payers, whether a dentist would then have the right to "write off" amounts due by persons on limited incomes, and whether the title of the act is accurate or whether it is an amendment to the Kansas Dental Act. The motion was withdrawn; action will be taken on the bill at the next meeting.

The minutes of the previous meeting were approved.

The meeting was adjourned at 4:20 p.m. by the Chairman.

HOUSE BILL No. 3088

By Committee on Insurance

(By request)

2-26

0017 AN ACT concerning insurance; relating to the Kansas life and
0018 health insurance guaranty association act; membership,
0019 duties, functions and procedures of the association; conditions
0020 and procedures for assessments against certain insurance
0021 companies by the association; certain functions, duties, au-
0022 thority and responsibility of the commissioner; responsibili-
0023 ties and duties of insurance companies; amending K.S.A.
0024 40-3005, 40-3006, 40-3007, 40-3008, 40-3009, 40-3010, 40-
0025 3011, 40-3012, 40-3013, 40-3014, 40-3017 and 40-3018 and
0026 K.S.A. 1985 Supp. 40-3002 and 40-3003 and repealing the
0027 existing sections.

0028 *Be it enacted by the Legislature of the State of Kansas:*

0029 Section 1. K.S.A. 1985 Supp. 40-3002 is hereby amended to
0030 read as follows: 40-3002. The purpose of this act is to protect
0031 policyowners, insureds, beneficiaries, payees, and assignees of
0032 life insurance policies, health insurance policies, and supple-
0033 mental contracts, subject to certain limitations, against failure in
0034 the performance of contractual obligations due to the impairment
0035 of the insurer issuing such policies or contracts. To provide this
0036 protection: (1) An association of insurers is created to enable the
0037 guaranty of payment of benefits and of continuation of coverages;
0038 (2) members of the association are subject to assessment to
0039 provide funds to carry out the purpose of this act; and (3) the
0040 association is authorized to assist the commissioner, in the pre-
0041 scribed manner, in the detection and prevention of insurer
0042 impairments: (a) The purpose of this act is to protect, subject to
0043 certain limitations, the persons specified in subsection (a) of
0044 K.S.A. 40-3003 and amendments thereto against failure in the
0045 performance of contractual obligations, under life and health

Proposed Amendments to House Bill No. 3088

Attachment 1
House Insurance
3-5-86

0046 insurance policies and annuity contracts specified in subsection
0047 (b) of K.S.A. 40-3003 and amendments thereto, because of the
0048 impairment or insolvency of the member insurer that issued the
0049 policies or contracts.

0050 (b) To provide this protection, an association of insurers is
0051 created to pay benefits and to continue coverages as limited
0052 herein, and members of the association are subject to assess-
0053 ment to provide funds to carry out the purpose of this act.

0054 Sec. 2. K.S.A. 1985 Supp. 40-3003 is hereby amended to read
0055 as follows: 40-3003. (a) This act shall apply to direct life insur-
0056 ance policies, health insurance policies, and contracts supple-
0057 mental to life and health insurance policies issued by persons
0058 authorized to transact insurance in this state at any time.

0059 (b) This act shall not apply to:

0060 (1) Any such policies or contracts, or any part of such policies
0061 or contracts, under which the risk is borne by the policyholder;

0062 (2) any such policy or contract or part thereof assumed by the
0063 impaired insurer under a contract of reinsurance, other than
0064 reinsurance for which assumption certificates have been issued;

0065 (3) any such policy or contract issued by persons transacting
0066 business pursuant to the provisions of K.S.A. 40-202 and amend-
0067 ments thereto; and

0068 (4) any annuity contracts except with respect to contractual
0069 obligations of impaired insurers for which the association has
0070 become liable prior to July 1, 1985. (a) This act shall provide
0071 coverage, for the policies and contracts specified in subsection
0072 (b), for: (1) Persons who, regardless of where they reside, except
0073 for nonresident certificate holders under group policies or con-
0074 tracts, are the beneficiaries, assignees or payees of the persons
0075 covered under paragraph (2); and

0076 (2) persons who are owners of or certificate holders under
0077 such policies or contracts, ~~or, in the case of unallocated annuity~~
0078 ~~contracts, persons who are the contract holders,] and who: (A)~~
0079 Are residents; or

0080 (B) are not residents, but only under all of the following
0081 conditions: (i) The insurers which issued such policies or con-
0082 tracts are domiciled in this state;



0157 contracts for which coverage is not provided under subsection
 0158 (b) of K.S.A. 40-3003 and amendments thereto, except that
 0159 assessible premiums shall not be reduced on accounts for sub-
 0160 section (n)(3) of K.S.A. 40-3008 and amendments thereto relating
 0161 to interest limitations and subsection (o)(2) of K.S.A. 40-3008
 0162 and amendments thereto relating to limitations with respect to
 0163 any one life and any one contract holder. Premiums shall not
 0164 include any premiums ~~in excess of \$5,000,000~~ on any unallo-
 0165 cated annuity contract;

0166 (i) (k) "person" means any individual, corporation, partner-
 0167 ship, association or voluntary organization;

0168 (j) (l) "resident" means any person who resides in this state at
 0169 the time the impairment is determined and to whom contractual
 0170 obligations are owed. A member insurer is determined to be an
 0171 impaired or insolvent insurer and to whom a contractual obli-
 0172 gation is owed. A person may be a resident of only one state
 0173 which, in the case of a person other than a natural person, shall
 0174 be its principal place of business;

0175 (m) "unallocated annuity contract" means any annuity con-
 0176 tract or group annuity certificate which is not issued to and
 0177 owned by an individual, except to the extent of any annuity
 0178 benefits guaranteed to an individual by an insurer under such
 0179 contract or certificate; and

0180 (n) "supplemental contract" means any agreement entered
 0181 into for the distribution of policy or contract proceeds.

0182 Sec. 4. K.S.A. 40-3006 is hereby amended to read as follows:
 0183 40-3006. (a) There is hereby created a nonprofit legal entity to be
 0184 known as the Kansas life and health insurance guaranty associa-
 0185 tion. All member insurers shall be and remain members of the
 0186 association as a condition of their authority to transact insurance
 0187 in this state. The association shall perform its functions under the
 0188 plan of operation established and approved under K.S.A. 40-3010
 0189 and amendments thereto and shall exercise its powers through a
 0190 board of directors established under K.S.A. 40-3007 and amend-
 0191 ments thereto. For purposes of administration and assessment,
 0192 the association shall maintain three (3) ~~four~~ accounts: (1) The
 0193 health insurance account;



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3 ce,

three

0490 any court in this state with jurisdiction over an impaired or
 0491 *insolvent* insurer concerning which the association is or may
 0492 become obligated under this act. Such standing shall extend to
 0493 all matters germane to the powers and duties of the association,
 0494 including, but not limited to, proposals for reinsuring or guaran-
 0495 teeing the covered policies of the impaired insurer and the
 0496 determination of the covered policies or *contracts* and contrac-
 0497 tual obligations. *The association shall also have the right to*
 0498 *appear or intervene before a court in another state with juris-*
 0499 *isdiction over an impaired or insolvent insurer for which the*
 0500 *association is or may become obligated or with jurisdiction over*
 0501 *a third party against whom the association may have rights*
 0502 *through subrogation of the insurer's policyholders.*

0503 (i) (1) Any person receiving benefits under this act
 0504 shall be deemed to have assigned ~~his~~ *the* rights under ~~any~~ *any* cause
 0505 of action relating to ~~the~~ *the* covered policy or contract to the
 0506 association to the extent of the benefits received because of this
 0507 act, whether the benefits are payments of or on account of
 0508 contractual obligations ~~or~~, continuation of coverage or provision
 0509 of substitute or alternative coverages. The association may re-
 0510 quire an assignment to it of such rights *and cause of action* by
 0511 any payee, policy or contract owner, beneficiary, insured or
 0512 annuitant as a condition precedent to the receipt of any ~~rights~~
 0513 *right* or benefits conferred by this act upon such person. ~~The~~
 0514 ~~association shall be subrogated to these rights against the assets~~
 0515 ~~of any impaired insurer.~~

0516 (2) The subrogation rights of the association under this sub-
 0517 section shall have the same priority against the assets of the
 0518 impaired or *insolvent* insurer as that possessed by the person
 0519 entitled to receive benefits under this act.

0520 (3) *In addition to paragraphs (1) and (2), the association*
 0521 *shall have all common-law rights of subrogation and any other*
 0522 *equitable or legal remedy which would have been available to*
 0523 *the impaired or insolvent insurer or holder of a policy or*
 0524 *contract with respect to such policy or contracts.*

0525 (j) (n) The contractual obligations of the impaired insurer for
 0526 which the association becomes, or may become, liable shall be as

0564 (5) any portion of a policy or contract to the extent that it
 0565 provides dividends or experience rating credits, or provides that
 0566 any fees or allowances be paid to any person, including the
 0567 policy or contract holder, in connection with the service to or
 0568 administration of such policy or contract;

0569 (6) any policy or contract issued in this state by a member
 0570 insurer at a time when it was not licensed or did not have a
 0571 certificate of authority to issue such policy or contract in this
 0572 state; and

0573 (7) any unallocated annuity contract.

0574 (o) The benefits for which the association may become liable
 0575 shall in no event exceed the lesser of: (1) The contractual
 0576 obligations for which the insurer is liable or would have been
 0577 liable if it were not an impaired or insolvent insurer; or

0578 (2) with respect to any one life, regardless of the number of
 0579 policies or contracts: (A) Three hundred thousand dollars in life
 0580 insurance death benefits, but not more than \$100,000 in net cash
 0581 surrender and net cash withdrawal values for life insurance;

0582 (B) one hundred thousand dollars in health insurance ben-
 0583 efits, including any net cash surrender and net cash withdrawal
 0584 values; or

0585 (C) one hundred thousand dollars in the present value of
 0586 annuity benefits, including net cash surrender and net cash
 0587 withdrawal values;

0588 (D) In no event shall the association be liable to expend
 0589 more than \$300,000 in the aggregate with respect to any one life

0590 as provided in paragraph (A), (B) or (C) of this subsection.

0591 ~~(k)~~ (p) The association may: (1) Enter into such contracts as
 0592 are necessary or proper to carry out the provisions and purposes
 0593 of this act;

0594 (2) sue or be sued, including taking any legal actions neces-
 0595 sary or proper for recovery of to recover any unpaid assessments
 0596 under K.S.A. 40-3009- and amendments thereto, and to settle
 0597 claims or potential claims against it;

0598 (3) borrow money to effect the purposes of this act. Any notes
 0599 or other evidence of indebtedness of the association not in
 0600 default shall be legal investments for domestic insurers and may

The provisions of subsection (o) shall not apply to annuity contracts for future economic loss procured pursuant to a settlement agreement in a medical malpractice liability action.

1008 (5) If any person liable under subsection (3) is insolvent, all
 1009 its affiliates that controlled it at the time the ~~dividend distribu-~~
 1010 *tion* was paid, shall be jointly and severally liable for any
 1011 resulting deficiency in the amount recovered from the insolvent
 1012 affiliate.

1013 Sec. 12. K.S.A. 40-3014 is hereby amended to read as fol-
 1014 lows: 40-3014. The association shall be subject to examination
 1015 and regulation by the commissioner. The board of directors shall
 1016 submit to the commissioner, not later than ~~May 1 of each~~ *120*
 1017 *days after the association's fiscal year ends*, a financial report ~~for~~
 1018 ~~the preceding calendar year~~ in a form approved by the commis-
 1019 sioner and a report of its activities during the preceding ~~calendar~~
 1020 *fiscal year*.

1021 Sec. 13. K.S.A. 40-3017 is hereby amended to read as fol-
 1022 lows: 40-3017. There shall be no liability on the part of and no
 1023 cause of action of any nature shall arise against any member
 1024 insurer or its agents or employees, the association or its agents or
 1025 employees, members of the board of directors, or the commis-
 1026 sioner or ~~his~~ *the commissioner's* representatives, for any action
 1027 ~~taken or omission~~ by them in the performance of their powers
 1028 and duties under this act. *Such immunity shall extend to the*
 1029 *participation in any organization of one or more other state*
 1030 *associations of similar purposes and to any such organization*
 1031 *and its agents or employees.*

1032 Sec. 14. K.S.A. 40-3018 is hereby amended to read as fol-
 1033 lows: 40-3018. All proceedings in which the ~~impaired insolvent~~
 1034 insurer is a party in any court in this state shall be stayed ~~sixty~~
 1035 ~~(60)~~ *60* days from the date an order of liquidation, rehabilitation,
 1036 or conservation is final to permit proper legal action by the
 1037 association on any matters germane to its powers or duties. As to
 1038 a judgment under any decision, order, verdict, or finding based
 1039 on default the association may apply to have such judgment set
 1040 aside by the same court that made such judgment and shall be
 1041 permitted to defend against such suit on the merits.

1042 New Sec. 15. (a) No person, including an insurer, agent or
 1043 affiliate of an insurer shall make, publish, disseminate, circulate
 1044 or place before the public, or cause directly or indirectly, to be

impaired or