

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 18, 1986 in room 521-S of the Capitol.

All members were present except:

Rep. Blumenthal, 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. Dick Brock, Kansas Insurance Department
Mr. T. C. Anderson, Ks. Society of CPA's
Mr. Bill Cheatham, Fidelity and Deposit Co. of Maryland
Mr. Dan Messelt, Independent Insurance Agents of Ks.
Mr. Rick Wilborn, Alliance Ins. Co.
Mr. Richard Harmon, Ks. Assoc. of Property/Casualty Co.
Mr. Tom Whitaker, Ks. Motor Carriers Assoc.
Mr. George Barbee, Ks. Consulting Engineers

The Chairman called the meeting to order.

Hearing on: HB 3103 - concerning tax on gross premiums

Mr. Dick Brock, Kansas Insurance Department, said this bill resulted from a suggestion made to the joint subcommittee studying the availability and affordability of insurance. It would reduce temporarily the tax that would be paid on surplus lines business written by "foreign" companies to 2% - the same as is paid by admitted companies. These companies traditionally must collect and submit a higher tax than admitted companies, as they are not subject to Kansas regulations. Due to the current availability situation, insureds often have no choice but a foreign company.

There was a suggestion that "except" in Line 0026 be changed to "until," to make it more clear. It was pointed out that some persons have already paid 4% this year; thus, an amendment providing that agents who have collected 4% make refunds might be needed.

Mr. T. C. Anderson, Kansas Society of CPA's, spoke in support of HB 3103. He presented a quotation letter from a non-admitted company to an accounting firm which illustrated the effect of the 4% tax on a premium. (Attachment 1.) He said that the bill would provide some relief.

Hearing on: SB 512 - concerning the cancellation or nonrenewal of property and casualty policies

Ms. Melinda Hanson, Research Department, briefed the committee on the bill. It has three provisions: 1) An insurance carrier could cancel a policy for only the four reasons listed; 2) A notice of nonrenewal must be given 60 days before the end of the policy period; and 3) A written explanation shall be given to any insured who is canceled or denied renewal and to any applicant who is denied coverage.

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Mr. Bill Cheatham, Fidelity and Deposit Company of Maryland, expressed concern over the impact of the bill on his company, specifically that new unfavorable underwriting factors could not be cause for cancellation. He stated that they have modified underwriting standards to write around 40% of all available risks of credit lending institutions. If they did not have the option of reevaluating these risks on a quarterly basis, they would possibly need to withdraw from about 50% of the risks. He also stated that a number of treaties (reinsurance) have been withdrawn in the last 14 to 18 months, which contributes to their need to maintain underwriting control.

Mr. Dan Messelt, Independent Insurance Agents of Kansas, expressed opposition to the bill unless it had amendments which he offered. (Attachment 2.) 1) Reinsert (d), adding "specific to the insured"; 2) Add (f) "a determination by the commissioner that the insurer no longer has adequate reinsurance to meet the insurer's needs"; and 3) Substitute a hold harmless clause for the provision that an applicant who is denied coverage receive a written explanation.

Mr. Rick Wilborn, Alliance Insurance Company, expressed support for Mr. Messelt's amendments. He would like to see Line 0047 amended to 30 days and for the explanation of canceled coverage to be given "upon the request of the insured" in Line 0053.

Mr. Dick Brock stated that the insurance department would oppose reducing the time for a person to search the market, a view also expressed by a committee member.

Mr. Richard Harmon, Kansas Association of Property/Casualty Companies, stated that his main objections were the deletion of Section 1, Subsection D, and the addition of Section 3. He urged consideration of Mr. Messelt's amendments and the suggestion by Mr. Wilborn for Line 0053.

Mr. Tom Whitaker, Kansas Motor Carriers Association, spoke about the federal and state levels of coverage they were required to maintain to operate. He said it often takes about six weeks to locate coverage, so the 60 days notice is necessary. A few types of insurance that are required are not available; as accessibility goes down, rates have gone up.

Mr. George Barbee, Kansas Consulting Engineers, said that it would be acceptable to reinsert Section 1 (d.) He felt that Section 3 was worthwhile; if someone is not renewed, he must furnish the reason when seeking new coverage, and it would be more expeditious if he were provided with it automatically.

Written testimony was distributed on behalf of Mr. Lee Wright, Farmers Insurance Group, urging that the stricken

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language on Lines 0038 and 0039 be reinserted. (Attachment 3.)

Rep. Turnquist moved that the first page of the balloon amendments be adopted; Rep. Gjerstad seconded the motion. The motion carried.

There was discussion on the current statute relating to adverse underwriting decisions. If a person suffers an adverse underwriting decision, he may be furnished the reason and, if not, he will receive it upon request. Mr. Dick Brock stated that if the insured is to know the actual reason for the underwriting decision, some protection will have to be provided for the agent and the company.

Rep. Gjerstad moved that the balloon on Section 3 be accepted and that SB 512 be reported favorably as amended; the motion was seconded by Rep. Littlejohn. The motion carried.

Hearing on: SB 531 - concerning minimum educational requirements for agents

Mr. Dick Brock stated that this bill was a housekeeping bill. There have been repeated requests that the commissioner should oversee the educational courses for agents. He informed the committee that the educational requirements would likely be less stringent than they are currently as the bill provides that the courses must simply be approved by the commissioner. He felt it didn't provide the authority to disapprove courses. It was felt that changing "approved by" on Line 0064 to "as designated by" would eliminate the problem.

Rep. Gjerstad made a motion to approve the wording change; Rep. Graeber seconded the motion. The motion carried.

Rep. Littlejohn moved that SB 531 be reported favorably as amended; Rep. Gjerstad seconded the motion. The motion carried.

The minutes of the previous meeting were approved.

The meeting was adjourned at 5:00 p.m. by the Chairman.

Rollins Burdick Hunter Co.
605 Third Avenue, New York, New York 10016 / Telephone 212 661-9000
March 6, 1986

ROLLINS BURDICK
HUNTER

ACCOUNTANTS PROFESSIONAL LIABILITY
INSURANCE PLAN
POLICY NO. AL 28018
EXPIRATION DATE: 1-1-86

Dear

Thank you for your application for the captioned type insurance.

Based on underwriting consideration, we are pleased to submit the following quotation within the International Surplus Lines Insurance Company.

<u>Limit of Liability</u>	<u>Deductible</u>	<u>Annual Premium</u>	<u>Tax</u>
\$1,000,000	\$20,000	\$25,463.00	++ \$1,018.52

Please read the attached Coverage description for comparison between the current (North River Insurance Company) policy and the quoted ISLIC policy.

To bind coverage, please forward a check for the annual premium plus tax payable to Rollins Burdick Hunter Co.

Thank you for your continued participation in the AICPA Accountants Professional Liability Insurance Plan.

Very truly yours,

Barbara Van Klein
Barbara Van Klein
Vice President

\$25,463.00
-19,775.00 pd
\$ 5,688.00 balance due plus tax

bv
Attachment

P.S. This quotation is available for 30 days.

Attachment 1
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cs

COMPARISON

NORTH RIVER INSURANCE COMPANY

AND

INTERNATIONAL SURPLUS LINES INSURANCE COMPANY

1. ISLIC contract does not contain a requirement that written consent of insured required to settle a claim. (See II (b) Insuring Agreement North River).
2. ISLIC does not contain a provision for extension of coverage in the event client cancels coverage. North River has a considerably restricted clause in this regard which is triggered only by retirement or cessation of Accounting practice.

North River allows an extension of one year if the insurance company cancels or two years if the insured retires or ceases the private practice of accounting. In both cases the extension premium would be 100% of the last year's premium.

3. Claims Expense is not separate from the Limit but is a part of the limit.
4. There is a 60 Day Notice of Cancellation for Underwriting with North River - 30 Days with ISLIC. Both are 10 Days for Non Payment of Premium.
5. There is a Service of Suit Clause on the ISLIC contract which naturally is not on North River contracts.

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Testimony on SB 512
Before the House Insurance Committee
March 18, 1986
By: Daniel R. Messelt, CPCU, Chairman
IIAK Governmental Affairs Committee

Thank you, Mr. Chairman, and members of the committee, for the opportunity to appear today on SB 512. My name is Dan Messelt. I am here representing the Independent Insurance Agents of Kansas as their Governmental Affairs Committee Chairman, Secretary of the Association and also an independent insurance agent from Manhattan, Kansas. We are opposed to SB 512 without amendments as shown in the balloon copy of the bill attached to my testimony.

Before explaining our amendments, I would like to give a few brief comments on our position on the bill as a whole from the beginning in the Senate. Normally we might stand back from an issue like the one addressed in SB 512 since it primarily affects insurance companies. Nobody likes mid-term cancellations and nonrenewals, especially insurance consumers and their agents. Agents and their insureds must scramble to find a new carrier when there is a cancellation or nonrenewal and particularly during a "hard market" when capacity to write new insurance is limited, this can be a difficult task. This is particularly true when many companies have absolute moratoriums on new business and underwriting has become much more restrictive.

Nevertheless, it would be irresponsible for we as an association to not be equally concerned with how Kansas is perceived as a market. To a significant degree, that will

determine which companies choose to do business here and how much capacity they allocate to the state when they were formulating their overall company marketing plans.

That's why in the Senate we suggested reducing the number of days notice of nonrenewal from 90 to 60. We felt 90 days would have been unrealistic, since companies would have had to begin the renewal process 120 to 150 days in advance. A risk can change, underwriting factors can change, company plans can change and company service is already a serious problem with personnel cutbacks by companies to improve their bottom line.

Secondly, the NAIC model nonrenewal and mid-term cancellation statute calls for between 30 and 60 days. We do not want Kansas to stick out like a sore thumb.

Finally, we felt that 60 days would normally be an adequate amount of time for the agent to remarket the account.

As stated earlier, we cannot support SB 512 without the amendments shown in the "balloon" attached to our testimony that would reverse the change made on the floor of the Senate deleting underwriting factors as a reason for mid-term cancellation, that would add an important reason for mid-term cancellation, the loss of reinsurance and that would provide a "clean-up" change to the written notice added on the floor of the Senate by granting immunity for giving the reasons for cancellation or nonrenewal.

We propose adding back underwriting factors as a valid reason for mid-term cancellation, but with the added wording of "unique to the risk."

The entire basis for the voluntary, free enterprise insurance market is the right of an insurance company to underwrite - i.e., select and price risks. Underwriting is the process of determining the exposures to loss that an insured has, both their severity and their nature, to determine the quality of the risk (e.g., above average, average, below average, etc.) and price it or reject it.

These factors can change during the policy period. An insured could decide to begin manufacturing fireworks or a contractor could decide to enter the asbestos removal field. These would be examples of a change in underwriting factors that we feel would justify mid-term cancellation.

By adding the wording, "unique to the risk", we hope to avoid the problem of cancellation, for example, of a Kansas day care center because of a general fear of child abuse or molestation problems. Yet discovery by an insurance company of a prior record of such activity by an operator would be grounds for an immediate mid-term cancellation.

Secondly, we propose adding the loss of reinsurance, subject to a review of the facts by the Commissioner of Insurance, as a valid reason for mid-term cancellation. If an insurance company's reinsurance treaty is renewed and they lose their reinsurance, for example, on public entities' liability, they should be able to cancel those risks mid-term. No insurance company, no matter how large, can offer today's high limits without the protection of reinsurance for losses over a predetermined retention level.

Finally, the requirement that companies give reasons in writing for mid-term cancellations and nonrenewals is reasonable, but the requirement in new Section 3, sub part

(b) is unreasonable that every time an account is submitted to an insurance company, they must provide detailed reasons why the account is turned down. An agent might approach ten different companies, four or five different excess and surplus brokers and possibly even some non-admitted companies over the telephone with a difficult to place commercial account. A requirement that each of these companies must provide the insured with specific, detailed reasons for a rejection is both an unreasonable burden on the insurance companies, an unrealistic requirement for the way the insurance market actually operated and probably unenforceable.

We propose that sub part (b) be deleted and that a new sub part be added giving the companies a hold harmless for providing the reasons in writing for a mid-term cancellation or nonrenewal. The proposed wording we have used was taken from K.S.A. 40-2,113, in the adverse underwriting law.

With these changes, you will have a responsible, reasonably balanced bill between the needs of insurance companies to be able to operate in a competitive, free market and insureds and their agents who need adequate warning of nonrenewals and who have a right to expect coverage to continue to expiration date unless there is a significant change in either party's circumstances. We urge the committee to favorably consider our proposed amendments.

[As Further Amended by Senate Committee of the Whole]

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1986

SENATE BILL No. 512

By Committee on Financial Institutions and Insurance

1-30

0024 AN ACT relating to insurance; concerning the cancellation or
0025 nonrenewal of property and casualty policies[; *providing for*
0026 *written explanation for cancellation, nonrenewal and denial*
0027 *of coverage*].

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

0029 Section 1. No policy of property or casualty insurance, other
0030 than accident and sickness, used primarily for business or pro-
0031 fessional needs that has been in effect for 90 days or more may be
0032 canceled except for one of the following reasons:

0033 (a) Nonpayment of premium;

0034 (b) the policy was issued because of a material misrepresen-
0035 tation;

0036 (c) any insured violated any of the material terms and condi-
0037 tions of the policy;

0038 ~~(d) unfavorable underwriting factors exist that were not~~
0039 ~~present at the inception of the policy; or~~

0040 ~~(e) [(d)] a determination by the commissioner that continua-~~
0041 ~~tion of coverage could place the insurer in a hazardous financial~~
0042 ~~condition or in violation of the laws of this state.~~

0043 ~~Sec. 2. Any insurance company that denies renewal or sub-~~
0044 ~~stitution of similar coverage for the same exposures under any~~
0045 ~~property or casualty insurance policy; other than a policy cover-~~
0046 ~~ing accident and sickness, which is used primarily for business~~
0047 ~~or professional needs shall give at least 60 days' written notice~~
0048 ~~to the named insured at such person's last known address of the~~
0049 ~~insurance company's intention not to renew such policy. The~~

(d) unfavorable underwriting factors, specific to the insured, exist that were not present at the inception of the policy; or

(e) a determination by the commissioner that continuation of coverage could place the insurer in a hazardous financial condition or in violation of the laws of this state; or

(f) a determination by the commissioner that the insurer no longer has adequate reinsurance to meet the insurer's needs.

0050 company may satisfy this obligation by causing such notice to be
0051 given by a licensed agent.

0052 *[Sec. 3. Any insurance company doing business in this state*
0053 *shall:*

0054 *[(a) Provide to an insured a written explanation specifically*
0055 *detailing the reasons why such company canceled or denied*
0056 *renewal of an existing policy of insurance; or*

0057 ~~*[(b) provide to any person applying for insurance coverage a*~~
0058 ~~*written explanation specifically detailing the reasons why such*~~
0059 ~~*company denied coverage to such person.]*~~

0060 Sec. 3 [4]. This act shall take effect and be in force from and
0061 after its publication in the statute book.

(b) There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for any adverse underwriting decision, for any statement made by any of them in any written notice of any adverse underwriting decision, for the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith, if such information was provided in good faith and without malice.

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TESTIMONY ON SB 512
HOUSE INSURANCE COMMITTEE

BY: Lee Wright

Legislative Representative for Farmers Insurance Group

Thank you Mr. Chairman and members of the committee. My name is Lee Wright and I represent Farmers Insurance Group. We appreciate this opportunity to address Senate Bill 512 as amended. We are particularly concerned with the language stricken on lines 38 and 39 which would no longer allow an insurer to cancel a commercial policy after 90 days for unfavorable underwriting factors which were not present at the time the policy was taken out.

Although the Senate may have considered this amendment as a way to help relieve the insurance availability and affordability problem, they may be doing more harm than good. We feel this particular underwriting restriction is both unnecessary and will prove costly to the insurance buyer.

As you know, we make profits by earning premiums, not by arbitrarily cancelling policies and refunding premiums. But, in those very small number of cases where type of exposure changes significantly after the business is written, we must maintain the option to cancel. If we are not allowed to take action to preserve a good loss ratio, the other policyholders will suffer in the end by having to pay increased premiums to support those few high risk policies.

Finally, if insurance companies can no longer cancel due to unfavorable underwriting factors, they may be forced to rethink their marketing strategy in Kansas and become even more selective in what types of business risks they will accept. This would only add to the availability problem.

Attachment 3
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We would urge the committee to amend SB 512 by simply reinserting the stricken language on lines 38 and 39.