

Approved March 15, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE

The meeting was called to order by REPRESENTATIVE DALE SPRAGUE at
Chairperson

3:30 XX.m./p.m. on MARCH 1, 1988 in room 531-N of the Capitol.

All members were present except: Representative Brady, excused

Committee staff present: Emaline Correll, Research Department
Bill Edds, Revisor of Statutes Office
Nancy Wolff, Secretary

Conferees appearing before the committee:

Richard Brock, Insurance Department
Ed Hund, Kansas Trial Lawyers Assn.
Gary Pauley, State Farm Insurance
Lori Callahan, American Insurance Association
Fred Bosse, U.S. F. & G.
Kim Yelkin, St. Paul Insurance

The meeting was called to order by the Chairman.

The minutes of February 23, 1988, February 24, 1988, and February 29, 1988, were distributed for the members review. Representative Cribbs made a motion that the minutes be approved and Representative Gross seconded the motion. The motion carried.

Hearings were scheduled on House Bill 2971, the Insurance Reform Act of 1988.

Dick Brock, Kansas Insurance Department, testified as a proponent of the bill. He stated that the legislation was a compromise between the Kansas Trial Lawyers Association and the Insurance Department. In his written testimony, he outlined the six primary areas covered by the legislation. (Exhibit I)

Ed Hund, Kansas Trial Lawyers Assn., appeared to testify in favor of House Bill 2971. He also outlined the five new standards established by the insurance commissioner to judge whether a rate set by a fire, property and casualty company is excessive, inadequate, or unfairly discriminatory. (Exhibit II)

At this point, the chairman requested that the out-of-town opponents to the bill testify on House Bill 2971 and the local opponents hold their testimony until Wednesday.

The first conferee to testify in opposition to House Bill 2971 was Gary Pauley, State Farm Insurance, Bloomington, Illinois. He presented the attached balloon (Exhibit III) of House Bill 2971 and reviewed the changes he would propose in the legislation to make it more workable.

Lori Callahan, American Insurance Association, presented her testimony to the committee. (Exhibit IV) She then introduced Fred Bosse, U.S.F. & G. Mr. Bosse who testified in opposition to the bill. He compared the proposed Kansas legislation with the Florida law which was previously enacted. He urged the committee to not make the same bad decisions. (Exhibit V)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE,
room 531-N, Statehouse, at 3:30 ~~a.m.~~^{XX}/p.m. on MARCH 1, 1988

Lori Callahan then introduced Kim Yelkin representing the St. Paul Insurance Company who also appeared in opposition to House Bill 2971. She stated that she concurred with the comments made by Mr. Bosse and stated that St. Paul is concerned about this sort of bill being enacted.

The meeting was adjourned at 5:45 p.m.

VISITORS TO HOUSE INSURANCE COMMITTEE

DATE: 3-01-88

NAME

REPRESENTING

NAME	REPRESENTING
Bob Arbutnot	KTLA
S. STREEF	AP
Sara Sanders	KTLA
Thom	✓
Michael Wolf	
Ed Hunch	KTLA
Kimberly A. Yelkin	St Paul COMPANIES
Lori Callahan	Am. Ins. Assn.
Brad C. Jones	USF&G
Gary Panley	State Farm Ins. Co.
Dick Scott	State Farm
Bob Corkins	Kans. Hospital Assn.
Steve Ortmeyer	State Farm
Mike Bassett	STATE FARM INS.
Pam Scott	Kansas Insurance Dept
Lee WRIGHT	FARMERS INS. GROUP
Dick Brock	Kansas Ins Dept
Rich Wilhoon	Alliance Ins Co's
Wm Nuttall	Alliance Ins -
Glenn Cogswell	Alliance of Am. Insurers
LM CORNISH	Kansas P/C Ins Co's.

REMARKS BY

DICK BROCK, ADMINISTRATIVE ASSISTANT
KANSAS INSURANCE DEPARTMENT

BEFORE THE

HOUSE INSURANCE COMMITTEE
REGARDING HOUSE BILL NO. 2971

MARCH 1, 1988

EXHIBIT I

It is no secret that House Bill No. 2971 is a compromise between the Kansas Insurance Department and the Kansas Trial Lawyers Association (KTLA). This fact alone has raised some eyebrows but, unfortunately, it has also led to a negative reaction on the part of some members of the insurance industry which is unwarranted by the provisions of the bill and the effect its enactment will have. As just a bit of background, House Bill No. 2971 evolved from House Bill No. 2502 which was introduced at the request of the KTLA last session. While there were some parts of that bill the Insurance Department could not accept, we made no secret of the fact that other parts of House Bill No. 2502 were appropriate regulatory tools. Consequently, the fact that many components of House Bill No. 2502 were reasonable and desirable led to an agreement to sit down with representatives of the KTLA and attempt to compromise our differences on changes in the rate regulation laws. House Bill No. 2971 is the result and even though, as I've indicated and as you know, some industry folks won't agree I am convinced that when viewed objectively as one component of the whole tort reform/liability insurance debate, the bill is in the overall best interests of the insurance industry as well as insurance consumers.

I'm not going to tell you House Bill No. 2971 doesn't do anything because it does. And I'm not going to tell you that House Bill No. 2971 does not strengthen the Insurance Commissioner's ability to regulate fire and casualty insurance rates by granting him or her additional statutory authority because it does, but I am going to tell you that what it does should not be harmful to insurance companies or insurance markets. If

insurance markets are adversely affected by this passage of this bill, it will only be because an insurer or insurers want to use the bill and its proponents as scapegoats. The bill contains six basic ingredients and I will very, very briefly summarize what these ingredients are and what they will do in terms of their economic impact on insurers.

First, by defining the current standards of "excessive," "inadequate" and "unfairly discriminatory" the bill will have no effect since such definitions simply codify the current manner in which these standards are viewed in analyzing the statutory propriety of rate filings.

Second, requiring consideration to be given to investment income or losses on unearned premium and loss reserves may have a long term impact on the insurance industry since it should result in more consistent treatment of investment results. However, the short term impact will be minimal because on at least major premium volume lines insurers have traditionally requested a more modest rate adjustment than their underwriting results would justify. The difference has to be attributed to investment results despite the lack of a statutory requirement that such revenues or losses be considered in the ratemaking process. In addition, we all remember what insurance prices did when the prime interest rate rose to 20% or above and we all painfully recall what happened when interest rates fell from these unprecedented heights. So no one should have any reason to doubt that investment results have impacted insurance rates quite significantly without statutory recognition. Consequently, investment results are already being given

consideration in many situations which, in turn, materially reduces the impact that will be realized from this change in the rating laws. Nevertheless, inclusion of investment income or loss in the ratemaking process is an ingredient the Insurance Department has long supported and advocated. After an exhaustive study of the issue, the National Association of Insurance Commissioners also adopted this position in 1984.

Third, while the proposal specifically requires the company to provide all information necessary to evaluate a rate filing, current law has the same effect. This does not include the new authority contained in the proposal which would permit the commissioner to have a filing subjected to an independent evaluation (presumably analysis by an independent actuary) at the company's expense. This authority will be useful and is a meritorious addition from a regulatory perspective; however, because of the experience and expertise of the current insurance department staff, it is not anticipated that such authority will be frequently utilized. Consequently, expenses incurred by the insurance industry to fund the independent evaluations will be quite small in relation to the premium volume involved. At the same time, however, it should be recognized that the insurers and rating organizations making the filing routinely utilize actuarial services and expertise. The Insurance Department has no actuaries on its staff because we have found that being able to retain an independent actuary who specializes in the line of insurance or ratemaking principles involved on a given subject is a more effective and efficient use of resources. Thus, all this provision does is permit the Commissioner to get a second opinion on a rate filing at the expense of

the company or organization that is going to benefit if the rate request is approved.

Fourth, requiring insurers and rating organizations to specifically assume the burden of proof to show that rates meet the statutory standards will have very little, if any, impact. The vast majority of rate disapprovals are not contested by the organization making the filing and in those rare instances where a formal administrative hearing is requested, granted and held, the expenses attributable to this statutory change would not be of sufficient magnitude to measure.

Fifth, the ability of the Commissioner to impose a retroactive adjustment of rates could, of course, have a significant fiscal impact if it occurred. However, this provision would only be operative with respect to rates that are disapproved after they have been in effect.

Furthermore, since the rates would have had to be initially approved, such disapproved rates would have to be in effect for an extended period for the retroactive application of a reduction or increase to have influence. As a result, even though the provision is meritorious and in the public interest, it is not going to need to be applied with sufficient frequency to have a quantifiable impact on the insurance industry. However, it seems to us that if the rates used by an insurer are statutorily required to meet certain standards such as "not excessive," "inadequate" or "unfairly discriminatory" they should be in compliance at all times. Under current law and without the change proposed in lines 267-270 and 432-434, insurers are permitted to charge

an excessive, inadequate or unfairly discriminatory rate until they get caught and even then can't be required to right the wrongs they have already committed.

Finally, the new section in the bill requiring insurers to submit a plan for an orderly withdrawal if they decide to quit writing a line of insurance or particular class of risks does nothing more than that. It does not in any way prevent or prohibit such withdrawals. It simply attempts and intends to require insurers who exercise this business judgment to do so in an orderly manner and in a way that minimizes the impact on the public. We believe this is a perfectly proper and appropriate provision which would benefit the insuring public without harming in any way the interests of insurers who believe in treating policyholders fairly and with respect.

HOUSE BILL NO. 2971

Explanatory Memorandum

This bill increases the authority of the insurance commissioner to regulate the fire, property and casualty insurance industry. It further sets more specific rate standards which are designed to promote some stability in the cost of insurance. There is a requirement that investment income be considered as part of any rate change. New Section 6 is designed to discourage boycotting. This bill amends K.S.A. 40-927, 40-928, 40-929, 40-1112 and 40-1113. The significant changes are summarized as follows:

1. Five new standards are established by which the insurance commissioner shall judge whether a rate set by a fire, property and casualty company is excessive, inadequate, or unfairly discriminatory. These standards though not exclusive would apply in any proceeding or review in which the insurance commissioner questions the rate or rate change. These standards are summarized as follows:

- A. A rate is excessive if
 - profits are unreasonable in relation to the risk
 - premium income replenishes loss due to investment losses.
- B. A rate is inadequate if
 - the rate together with investment income will not sustain the projected losses
 - discounts and credits exceed a reasonable reflection of expense savings to a risk or group.
- C. A rate is unfairly discriminatory if
 - discounts or credits among various risks do not bare a reasonable relationship to expected loss or experience between risks.

2. Investment income and losses for the first time are required to be part of any premium rate base.

3. The insurance commissioner may require an independent audit of a rate filing at the applicants expense. This provision is completely discretionary with the commissioner but attempts to equalize the disparity in resources and personnel between the commissioners office and the larger carriers in the rate hearing process.

4. Under present law, the insurance commissioner must act upon a rate application by notifying the applicant in writing or a new rate will go into effect upon the expiration of 30 days. The law provides that the new rate will be deemed approved unless the insurance commissioner takes action. To avoid the implication that the insurance commissioner has the burden in any administrative proceeding following disapproval of a rate application, new language affirmatively states that the applicant insurance company has the burden of proof by preponderance of the evidence to show that a question rate is not excessive, inadequate, or unfairly discriminatory.

5. The commissioner is given the authority to adjust premiums to reflect his findings when a rate or rate change is disapproved by the commissioner. This provision is discretionary but it is an additional tool the commissioner can use to make his rulings effective when rates are inappropriate.

6. Essentially all of the above changes are repeated in subsequent sections so that they apply to property and casualty companies as well as fire and marine companies. This repetitiveness is necessary because the appropriate statutes treat each separately.

7. New Section 6: This provision seeks to discourage boycotting requiring any company that decides to stop selling particular types of insurance to submit a plan to the commissioner. The plan should provide for orderly withdrawal so as to minimize the impact of discontinued insurance coverages on affected consumers. It would also give the commissioner assistance in finding alternate coverage for consumers whose insurance has been discontinued.

HOUSE BILL No. 2971

By Committee on Insurance

2-16

0017 AN ACT relating to insurance; concerning rate making with
0018 respect to certain insurers; providing requirements for certain
0019 insurers upon cessation of business in the state; amending
0020 K.S.A. 40-928, 49-929 and 40-1113 and K.S.A. 1987 Supp.
0021 40-927 and 40-1112 and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1987 Supp. 40-927 is hereby amended to
0024 read as follows: 40-927. (a) Rates shall be made in accordance
0025 with the following provisions:

0026 (1) Manual, minimum, class rates or rating schedules, shall
0027 be made and adopted, except in the case of specific inland
0028 marine rates on risks specially rated. Such rates for personal lines
0029 of property insurance may be modified to produce rates for
0030 individual risks in accordance with rating plans which establish
0031 standards for measuring variations in hazards or expense provi-
0032 sions, or both. Rates for commercial lines of property insurance
0033 may be modified to produce rates for individual risks in accord-
0034 ance with rules and regulations promulgated by the commis-
0035 sioner establishing reasonable standards for rating plans, in-
0036 cluding experience rating plans, schedule rating plans,
0037 individual risk premium modification plans and expense reduc-
0038 tion plans, designed to modify rates in the development of
0039 premiums for individual risks insured in a property market. Such
0040 standards shall permit recognition of expected differences in loss
0041 or expense characteristics, and shall be designed so that such
0042 plans are reasonable and equitable in their application, and are
0043 not unfairly discriminatory, violative of public policy or other-
0044 wise contrary to the best interests of the people of this state. Such
0045 standards shall not prevent the development of new or innova-

0046 tive rating methods which otherwise comply with this act. Such
 0047 rating plans shall be filed or refiled by insurers in compliance
 0048 with the rules and regulations. The commissioner shall review
 0049 such plans and shall disapprove a plan that does not comply with
 0050 the rules and regulations. The rules and regulations shall es-
 0051 tablish maximum debits and credits that may result from the
 0052 application of a rating plan, encourage loss control, safety pro-
 0053 grams, and other methods of risk management and require in-
 0054 surers to maintain documentation of the basis of the debits and
 0055 credits applied under any plan. Once it has been filed and
 0056 approved, use of the rating plan shall become mandatory and
 0057 such plan shall be applied uniformly for eligible risks in a
 0058 manner that is not unfairly discriminatory.

0059 (2) Rates shall not be excessive, inadequate or unfairly dis-
 0060 criminatory. *In applying the rate standards provided in this*
 0061 *subsection, a rate may be found by the commissioner to be*
 0062 *excessive, inadequate or unfairly discriminatory based upon but*
 0063 *not limited to the following standards:*

0064 (A) Rates shall be deemed excessive if they are likely to
 0065 produce a profit that is unreasonably high in relation to the risk
 0066 involved in the class of business or are based on expenses that line or
 0067 are unreasonably high in relation to services rendered.

0068 (B) Rates shall be deemed excessive if the rate structure
 0069 established by a stock insurance company provides for any
 0070 replenishment of surpluses from premiums when the need for
 0071 replenishment is attributable to investment losses, other than unrealized
 0072 ~~investment losses otherwise considered in the rates.~~

0073 (C) Rates shall be deemed inadequate if they are clearly
 0074 insufficient, together with the investment income attributable
 0075 to them, to sustain projected losses and expenses in the class of line or
 0076 business to which they apply.

0077 (D) A rate shall be deemed inadequate as to the premium
 0078 charged to a risk or group of risks if discounts or credits are
 0079 allowed which exceed a reasonable reflection of expense savings
 0080 and reasonably expected loss experience from the risk or group
 0081 of risks.

0082 (E) A rate shall be deemed unfairly discriminatory as to a

0083 risk or group of risks if the application of premium discounts or
0084 credits among such risks does not bear a reasonable relationship
0085 to the expected loss and expense experience among the various
0086 risks.

0087 (3) Due consideration shall be given to past and prospective
0088 loss experience within and outside this state, to the conflagration
0089 and catastrophe hazards, to a reasonable margin for underwriting
0090 profit and contingencies, to dividends, savings or unabsorbed
0091 premium deposits allowed or returned by insurers to their poli-
0092 cyholders, members or subscribers, to past and prospective ex-
0093 penses both countrywide and those specially applicable to this
0094 state, to earnings or losses resulting from the investment of
0095 unearned premiums and loss reserves and to all other relevant
0096 factors within and outside this state; and in the case of fire
0097 insurance rates consideration shall be given to the experience of
0098 the fire insurance business during a period of not less than the
0099 most recent five-year period for which such experience is avail-
0100 able.

0101 (4) The systems of expense provision included in the rates for
0102 use by any insurer or group of insurers may differ from those of
0103 other insurers or groups of insurers to reflect the requirements of
0104 the operating methods of any such insurer or group with respect
0105 to any kind of insurance, or with respect to any subdivision or
0106 combination thereof for which subdivision or combination the
0107 commissioner of insurance, hereinafter referred to as commis-
0108 sioner, approves the application for separate expense provisions.

0109 (b) Except to the extent necessary to meet the provisions of
0110 subdivision (2) of subsection (a) of this section, uniformity among
0111 insurers in any matters within the scope of this section is neither
0112 required nor prohibited.

0113 (c) Rates made in accordance with this section shall be used
0114 subject to the provisions of this act.

0115 Sec. 2. K.S.A. 40-928 is hereby amended to read as follows:
0116 40-928. (a) Every insurer shall file with the commissioner, except
0117 as to those inland marine risks which by general custom of the
0118 business are not written according to manual rates or rating
0119 plans, every manual, minimum, class rate, rating schedule or

0120 rating plan and every other rating rule and every modification of
0121 any of the foregoing which it proposes to use. Every such filing
0122 shall state the proposed effective date thereof and shall indicate
0123 the character and extent of the coverage contemplated. When a
0124 filing is not accompanied by the information upon which the
0125 insurer supports such filing, and the commissioner does not have
0126 sufficient information to determine whether such filing meets
0127 the requirements of the act, the commissioner shall require such
0128 insurer to furnish the information upon which it supports such
0129 filing, and in such event the waiting period shall commence as of
0130 the date such information is furnished. The information fur-
0131 nished in support of a filing may include (1) the experience or
0132 judgment of the insurer or rating organization making the filing;
0133 (2) its interpretation of any statistical data it relies upon; (3) the
0134 experience of other insurers or rating organizations; or (4) any
0135 other relevant factors. A filing and any supporting information
0136 shall be open to public inspection after it is filed with the
0137 commissioner. Specific inland marine rates on risks specially
0138 rated, made by a rating organization, shall be filed with the
0139 commissioner.

0140 (b) An insurer may satisfy its obligation to make such filings
0141 either individually or by authorizing the commissioner to accept
0142 on its behalf the filings made by a licensed rating organization or
0143 another insurer. Nothing contained in this act shall be construed
0144 as requiring any insurer to become a member of or a subscriber
0145 to any rating organization.

0146 (c) The commissioner shall review filings as soon as reason-
0147 ably possible after they have been made in order to determine
0148 whether they meet the requirements of this act. *In reviewing a*
0149 *rate filing the commissioner may require the insurer to provide,*
0150 *at the insurer's expense, all information necessary to evaluate*
0151 ~~*the condition of the company and the reasonableness of the*~~
0152 ~~*filing according to the criteria enumerated in this section, in-*~~
0153 ~~*cluding an independent evaluation of the filing.*~~

0154 (d) Subject to the exception specified in subsection (e) of this
0155 section, each filing shall be on file for a waiting period of fifteen
0156 ~~(15)~~ 15 days before it becomes effective, which period may be

0157 extended by the commissioner for an additional period not to
0158 exceed fifteen (15) 15 days if the commissioner gives written
0159 notice within such waiting period to the insurer or rating orga-
0160 nization which made the filing that such additional time is
0161 needed for the consideration of such filing. Upon written appli-
0162 cation by such insurer or rating organization, the commissioner
0163 may authorize a filing which he or she *the commissioner* has
0164 reviewed to become effective before the expiration of the wait-
0165 ing period or any extension thereof. A filing shall be deemed to
0166 meet the requirements of this act unless disapproved by the
0167 commissioner within the waiting period or any extension
0168 thereof.

0169 (e) Specific inland marine rates on risks specially rated by a
0170 rating organization shall become effective when filed and shall
0171 be deemed to meet the requirements of this act until such time as
0172 the commissioner reviews the filing and so long thereafter as the
0173 filing remains in effect.

0174 (f) Under such rules and regulations adopted by the com-
0175 missioner, the commissioner may, by written order, suspend or
0176 modify the requirement of filing as to any kind of insurance,
0177 subdivision or combination thereof, or as to classes of risks, the
0178 rates for which cannot practicably be filed before they are used.
0179 Such orders, *and* rules and regulations shall be made known to
0180 insurers and rating organizations affected thereby. The commis-
0181 sioner may make such examination as deemed advisable to
0182 ascertain whether any rates affected by such order meet the
0183 standards set forth in subdivision 2 of subsection (a) of K.S.A.
0184 40-927, *and amendments thereto*.

0185 (g) Upon the written application of the insured, stating the
0186 reasons therefor, filed with and approved by the commissioner, a
0187 rate in excess of that provided by a filing otherwise applicable
0188 may be used on any specific risk.

0189 (h) No insurer shall make or issue a contract or policy except
0190 in accordance with the filings which are in effect for said insurer
0191 as provided in this act or in accordance with subsections (f) or (g)
0192 of this section. This subsection shall not apply to contracts or
0193 policies for inland marine risks as to which filings are not

0194 required.

0195 Sec. 3. K.S.A. 40-929 is hereby amended to read as follows:

0196 40-929. (a) If within the waiting period or any extension thereof
0197 as provided in subsection (d) of K.S.A. 40-928, *and amendments*
0198 *thereto*, the commissioner finds that a filing does not meet the
0199 requirements of this act, ~~he~~ *the commissioner* shall send to the
0200 insurer or rating organization which made such filing, written
0201 notice of disapproval of such filing specifying therein in what
0202 respects ~~he finds~~ such filing fails to meet the requirements of this
0203 act and stating that such filing shall not become effective. *In any*
0204 *administrative proceeding under this act, the insurer or rating*
0205 *organization shall carry the burden of proof by a preponderance*
0206 *of the evidence to show that the rate is not excessive, inadequate*
0207 *or unfairly discriminatory.*

0208 (b) If within ~~thirty (30)~~ 30 days after a specific inland marine
0209 rate on a risk specially rated by a rating organization, subject to
0210 subsection (e) of K.S.A. 40-928, *and amendments thereto*, has
0211 become effective, the commissioner finds that such filing does
0212 not meet the requirements of this act, ~~he~~ *the commissioner* shall
0213 send to the rating organization which made such filing written
0214 notice of disapproval of such filing specifying therein in what
0215 respects ~~he finds~~ that such filing fails to meet the requirements
0216 of this act and stating when, within a reasonable period thereaf-
0217 ter, such filing shall be deemed no longer effective. ~~Said disap-~~
0218 ~~proval shall not affect any contract made, issued and effective~~
0219 ~~prior to the expiration of the period set forth in said notice.~~

0220 (c) If at any time subsequent to the applicable review period
0221 provided for in subsection (a) or (b) of this section, the commis-
0222 sioner finds that a filing does not meet the requirements of this
0223 act, ~~he~~ *the commissioner* shall, after a hearing held upon not less
0224 than ~~ten (10)~~ 10 days' written notice, specifying the matters to be
0225 considered at such hearing to every insurer and rating organiza-
0226 tion which made such filing, issue an order specifying in what
0227 respects ~~he finds that~~ such filing fails to meet the requirements
0228 of this act, and stating when, within a reasonable period thereaf-
0229 ter, such filing shall be deemed no longer effective. Copies of
0230 ~~said such~~ order shall be sent to every such insurer and rating

Said disapproval shall not affect any contract made, issued and effective prior to the expiration of the period set forth in said notice.

0231 organization. Said order shall not affect any contract or policy
 0232 made, issued and effective prior to the expiration of the period
 0233 set forth in said order.

0234 (d) Any person or organization aggrieved with respect to any
 0235 filing which is in effect may make written application to the
 0236 commissioner for a hearing thereon: *Provided, however, That,*
 0237 *except that* the insurer that made the filing shall not be autho-
 0238 rized to proceed under this subsection. Such application shall
 0239 specify the grounds to be relied upon by the applicant and such
 0240 application ~~must shall~~ show that the person or organization
 0241 making such application has a specific economic interest af-
 0242 fected by the filing. If the commissioner shall find that the
 0243 application is made in good faith, that the applicant has a specific
 0244 economic interest, that the applicant would be so aggrieved if ~~his~~
 0245 *such applicant's* grounds are established, and that such grounds
 0246 otherwise justify holding such a hearing, ~~he the commissioner~~
 0247 shall, within ~~thirty (30)~~ 30 days after receipt of such application,
 0248 hold a hearing upon not less than ten ~~(10)~~ 10 days' written notice
 0249 to the applicant and to every insurer and rating organization
 0250 which made such filing. No rating or advisory organization shall
 0251 have any status under this act to make application for a hearing
 0252 on any filing made by an insurer with the commissioner.

0253 If, after such hearing, the commissioner finds that the filing
 0254 does not meet the requirements of this act, ~~he the commissioner~~
 0255 shall issue an order specifying in what respects he finds that such
 0256 filing fails to meet the requirements of this act, and stating when,
 0257 within a reasonable period thereafter, such filing shall be
 0258 deemed no longer effective. Copies of said order shall be sent to
 0259 the applicant and to every such insurer and rating organization.
 0260 ~~Said order shall not affect any contract or policy made or issued~~
 0261 ~~prior to the expiration of the period set forth in said order.~~

0262 ~~(e) In the event the commissioner finds that a rate or rate~~
 0263 ~~change is excessive, inadequate or unfairly discriminatory after~~
 0264 ~~hearing, the commissioner shall issue an order disapproving~~
 0265 ~~such rate or rate change and specifying that a new rate or rate~~
 0266 ~~schedule be filed by the insurer which responds to the findings~~
 0267 ~~of the commissioner within 30 days. The commissioner may~~

Said order shall not affect any contract or
 policy made, issued and effective prior to the
 expiration of the period set forth in said order.

Said order shall not affect any contract or policy
 made or issued prior to the expiration of the period
 set forth in said order.

(e) If after hearing, the commissioner
 finds that a rate or rate change is excessive,
 inadequate or unfairly discriminatory, the
 commissioner shall issue an order disapproving
 such rate or rate change and shall further order
 that premiums be adjusted prospectively to
 reflect the findings of the commissioner
 regarding the rate or rate change.

0268 ~~further order that premiums be adjusted retroactively to the~~
0269 ~~effective date of the rate or rate change to reflect the findings of~~
0270 ~~the commissioner regarding the rate or rate change.~~

0271 (e) (f) No manual, minimum, or class rate, rating schedule,
0272 rating plan, rating rule or any modification of any of the foregoing
0273 which has been filed pursuant to the requirements of K.S.A.
0274 40-928, and amendments thereto, shall be disapproved if the
0275 rates thereby produced meet the requirements of this act.

0276 Sec. 4. K.S.A. 1987 Supp. 40-1112 is hereby amended to read
0277 as follows: 40-1112. All rates shall be made in accordance with
0278 the following provisions:

0279 (a) Due consideration may shall be given: (1) To past and
0280 prospective loss experience within and outside the state;

0281 (2) to catastrophe hazards, if any;

0282 (3) to a reasonable margin for profit and contingencies;

0283 (4) to dividends, savings or unabsorbed premium deposits
0284 allowed or returned by insurers to their policyholders, members
0285 or subscribers;

0286 (5) to policyholders' dividends in the case of participating
0287 insurers; and

0288 (6) to earnings or losses resulting from investment of un-
0289 earned premiums and loss reserves; and

0290 ~~(6)~~ (7) to all other relevant factors within and outside the
0291 state.

0292 (b) The systems of expense provisions included in the rates
0293 for use by any insurer or group of insurers may differ from those
0294 of other insurers or groups of insurers to reflect the requirements
0295 of the operating methods of any such insurer or group with
0296 respect to any kind of insurance, or with respect to any subdivi-
0297 sion or combination thereof for which subdivision or combina-
0298 tion the commissioner of insurance approves the application of
0299 separate expense provisions. This paragraph shall not be con-
0300 strued to require uniformity among all insurers with respect to
0301 the application of other paragraphs of this section.

0302 (c) Risks may be grouped by classifications for the establish-
0303 ment of rates and minimum premiums. Classification rates for
0304 personal lines of casualty insurance may be modified to produce

0305 rates for individual risks in accordance with rating plans which
0306 establish standards for measuring variations in hazards or ex-
0307 pense provisions, or both. Classification rates for commercial
0308 lines of casualty insurance may be modified to produce rates for
0309 individual risks in accordance with rules and regulations
0310 promulgated by the commissioner establishing reasonable stan-
0311 dards for rating plans, including experience rating plans, sched-
0312 ule rating plans, individual risk premium modification plans and
0313 expense reduction plans, designed to modify rates in the devel-
0314 opment of premiums for individual risks insured in a casualty
0315 market. Such standards shall permit recognition of expected
0316 differences in loss or expense characteristics, and shall be de-
0317 signed so that such plans are reasonable and equitable in their
0318 application, and are not unfairly discriminatory, violative of
0319 public policy or otherwise contrary to the best interests of the
0320 people of this state. Such standards shall not prevent the devel-
0321 opment of new or innovative rating methods which otherwise
0322 comply with this act. Such rating plans shall be filed or refiled by
0323 insurers in compliance with the rules and regulations. The
0324 commissioner shall review such plans and shall disapprove a
0325 plan that does not comply with the rules and regulations. The
0326 rules and regulations shall establish maximum debits and credits
0327 that may result from the application of a rating plan, encourage
0328 loss control, safety programs, and other methods of risk manage-
0329 ment and require insurers to maintain documentation of the
0330 basis of the debits and credits applied under any plan. Once it
0331 has been filed and approved, use of the rating plan shall become
0332 mandatory and such plan shall be applied uniformly for eligible
0333 risks in a manner that is not unfairly discriminatory.

0334 (d) Rates shall be reasonable, adequate and not unfairly dis-
0335 criminatory. *In applying the rate standards provided in this*
0336 *subsection, a rate may be found by the commissioner to be*
0337 *excessive, inadequate or unfairly discriminatory based upon but*
0338 *not limited to the following standards:*

0339 (1) Rates shall be deemed excessive if they are likely to
0340 produce a profit that is unreasonably high in relation to the risk
0341 involved in the class of business or are based on expenses that

line or

0342 are unreasonably high in relation to services rendered.

0343 (2) Rates may be deemed excessive if the rate structure
0344 established by a stock insurance company provides for any
0345 replenishment of surpluses from premiums when the need for _____ unrealized
0346 replenishment is attributable to investment losses, other than
0347 ~~investment income or loss otherwise considered in the rates.~~

0348 (3) Rates shall be deemed inadequate if they are clearly
0349 insufficient, together with the investment income attributable _____ line or
0350 to them, to sustain projected losses and expenses in the class of
0351 business to which they apply.

0352 (4) A rate shall be deemed inadequate as to the premium
0353 charged to a risk or group of risks if discounts or credits are
0354 allowed which exceed a reasonable reflection of expense savings
0355 and reasonably expected loss experience from the risk or group
0356 of risks.

0357 (5) A rate shall be deemed unfairly discriminatory as to a
0358 risk or group of risks if the application of premium discounts or
0359 credits among such risks does not bear a reasonable relationship
0360 to the expected loss and expense experience among the various
0361 risks.

0362 Sec. 5. K.S.A. 40-1113 is hereby amended to read as follows:
0363 40-1113.(a) Every insurer shall file with the commissioner every
0364 manual of classifications, rules and rates, every rating plan and
0365 every modification of any of the foregoing which it proposes to
0366 use. Every such filing shall indicate the character and extent of
0367 the coverage contemplated and shall be accompanied by the
0368 information upon which the insurer supports the filing. A filing
0369 and any supporting information shall be open to public inspec-
0370 tion after it is filed with the commissioner.

0371 (b) An insurer may satisfy its obligation to make such filings
0372 by authorizing the commissioner to accept on its behalf the
0373 filings made by a licensed rating organization or another insurer.
0374 Nothing contained in this act shall be construed as requiring any
0375 insurer to become a member of or a subscriber to any rating
0376 organization.

0377 (c) Any filing made pursuant to this section shall be approved
0378 by the commissioner unless the commissioner finds that such

0379 filing does not meet the requirements of this act or establishes an
0380 unreasonable or excessive rate. As soon as reasonably possible
0381 after the filing has been made, the commissioner shall in writing
0382 approve or disapprove the same, except that any filing shall be
0383 deemed approved unless disapproved within ~~thirty (30)~~ 30 days.

0384 (d) *In reviewing a rate filing the commissioner may require*
0385 *the insurer to provide, at the insurer's expense, all information*
0386 *necessary to evaluate ~~the condition of the company and the~~*
0387 *reasonableness of the filing according to the criteria enumer-*
0388 *ated in this section, ~~including an independent evaluation of the~~*
0389 *filing.*

0390 ~~(d)~~ (e) Any such filing with respect to a fidelity, surety or
0391 guaranty bond shall be deemed approved from the date of filing
0392 to the date of such formal approval or disapproval.

0393 (e) (f) In the event that the commissioner disapproves a
0394 filing, the commissioner shall specify in what respect he or she
0395 finds that such filing does not meet the requirements of this act.
0396 *In any administrative proceeding under this act, the insurer or*
0397 *rating organization shall carry the burden of proof by a pre-*
0398 *ponderance of the evidence to show that the rate is not exces-*
0399 *sive, inadequate or unfairly discriminatory.*

0400 (f) (g) If at any time the commissioner finds that a filing so
0401 approved no longer meets the requirements of this act, the
0402 commissioner may, after a hearing held on not less than ~~twenty~~
0403 ~~(20)~~ 20 days' written notice, specifying the matters to be consid-
0404 ered at such hearing, to every insurer and rating organization
0405 which made such filing, issue an order withdrawing his or her
0406 approval thereof. ~~Said~~ *Such* order shall specify in what respects
0407 the commissioner finds that such filing no longer meets the
0408 requirements of this act and shall be effective not less than ~~thirty~~
0409 ~~(30)~~ 30 days after its issuance. Copies of such order shall be sent
0410 to every such insurer and rating organization.

0411 (g) (h) Any person or organization aggrieved by the action of
0412 the commissioner with respect to any filing may, within ~~thirty~~
0413 ~~(30)~~ 30 days after such action, make written request to the
0414 commissioner for a hearing thereon. This section shall not apply
0415 to any insurer or rating organization with respect to a withdrawal

0416 of a filing made by it. The commissioner shall hear such ag-
 0417 grievd party within ~~thirty (30)~~ 30 days after receipt of such
 0418 request and shall give not less than ~~ten (10)~~ 10 days' written
 0419 notice of the time and place of the hearing to the insurer or rating
 0420 organization which made the filing and to any other aggrieved
 0421 party. Within ~~thirty (30)~~ 30 days after such hearing the commis-
 0422 sioner shall affirm, reverse or modify his or her such commis-
 0423 sioner's previous action specifying the reasons therefor. Pending
 0424 such hearing and decision thereon the commissioner may sus-
 0425 pend or postpone the effective date of his or her such previous

0426 action. ~~[In the event the commissioner finds that a rate or rate
 0427 change is excessive, inadequate or unfairly discriminatory after
 0428 hearing, the commissioner shall issue an order disapproving
 0429 such rate or rate change and specifying that a new rate or rate
 0430 schedule be filed by the insurer which responds to the findings
 0431 of the commissioner within 30 days. The commissioner may
 0432 further order that premiums be adjusted retroactively to the
 0433 effective date of the rate or rate change to reflect the findings of
 0434 the commissioner regarding the rate or rate change.]~~

0435 (h) (i) No insurer shall make or issue a contract or policy
 0436 except in accordance with filings which have been approved for
 0437 said insurer as provided in this act.

0438 New Sec. 6. An insurer may cease to transact insurance in
 0439 this state, or discontinue the writing or renewal of one or more
 0440 kinds of property or casualty insurance specified in K.S.A. 40-901
 0441 and 40-1102, and amendments thereto, or classes of property or
 0442 casualty insurance risks, ~~only~~ after the submission of a plan
 0443 which provides for an orderly withdrawal from the market and a
 0444 minimization of the impact of the surrender or discontinuance on
 0445 the public generally and on the insurer's policyholders. ~~The plan
 0446 shall be approved by the commissioner, and the insurer shall
 0447 comply with the plan's provisions before the withdrawal or
 0448 discontinuance takes effect. Enforcement of the provisions of
 0449 this section shall be in accordance with article 24 of chapter 40 of
 0450 the Kansas Statutes Annotated, and acts amendatory thereof and
 0451 supplemental thereto.]~~

0452 Sec. 7. K.S.A. 40-928, 40-929 and 40-1113 and K.S.A. 1987

(e) If after hearing, the commissioner finds that a rate or rate change is excessive, inadequate or unfairly discriminatory, the commissioner shall issue an order disapproving such rate or rate change and shall further order that premiums be adjusted prospectively to reflect that findings of the commissioner regarding the rate or rate change.

(1) or, (2) upon loss of adequate reinsurance, or (3) when deemed to be in hazardous financial condition, or (4) when deemed to be insolvent or potentially insolvent.

Nothing contained in this section shall be deemed to authorize the commission to order an insurer to write a kind of property or casualty insurance or a class of property or casualty insurance risks that the insurer does not write in its normal course of business.

0453 Supp. 40-927 and 40-1112 are hereby repealed.

0454 Sec. 8. This act shall take effect and be in force from and
0455 after its publication in the statute book.

TESTIMONY OF LORI M. CALLAHAN
KANSAS LEGISLATIVE COUNCIL
AMERICAN INSURANCE ASSOCIATION
BEFORE THE
HOUSE INSURANCE COMMITTEE
MARCH 1, 1988
H.B. 2971

I would like to thank you for the opportunity to testify at this hearing on H.B. 2971, on behalf of AIA and its member companies. AIA is a national trade association representing more than 187 companies that write property and casualty insurance.

AIA opposes H.B. 2971. This bill defines the terms "excessive", "inadequate" or "unfairly discriminatory." These are terms which have been utilized universally in the field of insurance regulation, and have a long history concerning their definition in Kansas. The bill does not utilize the model language of the National Association of Insurance Commissioners, and appears to be unique from all other state's except Florida, which have attempted to define these terms. The bill would shift the burden of proof in rate filings from the Insurance Department to the insurers, thereby allowing the Insurance Commissioner to disapprove a rate unreasonably, while requiring the insurer to prove this unreasonableness, rather than the Commissioner being required to justify his actions. In administrative and regulatory law, the regulatory body traditionally has the burden of proving the validity of its actions. The bill further would pro-

vide that valid contracts of insurance which were carefully negotiated between insurers and sophisticated insurance purchasers could be voided by the Commissioner at some later date to the detriment of both the insurer and the insurance purchaser at some later date.

The bill would allow the Commissioner of Insurance to disapprove rates by setting a new rate, thereby making insurance rates state-made rather than company-made. This again is a unique provision within the states. The bill would further provide that if a rate was later found inadequate, insurance companies would be required to demand a higher premium from their customers for insurance which has already been provided. Further, if a rate was found excessive, companies would be required to refund premiums previously paid to the company.

Finally, new Section 6 of H.B. 2971 undoes many years of cooperation between insurers and the Kansas Department of Insurance, resulting from the Department's extremely successful Market Availability Program (MAP). New Section 6 would make companies virtual hostages of the Insurance Commissioner requiring fulfillment of a plan, which the bill does not define, and which might be impossible to fulfill, all the while allowing the Insurance Commissioner to take as much time as the Commissioner chooses since new Section 6 has no time limitations.

The American Insurance Association is comprised of companies

writing in some of the most volatile lines of insurance in Kansas. Each company has its own unique perspective on the problems which H.B. 2971 would create for their book of business in Kansas. St. Paul Fire & Marine, writing medical malpractice insurance has a perspective on the bill unique from U.S.F. & G. and from Hartford writing in commercial lines of business. Thus, after careful consideration and discussion of possible amendments to this bill, the AIA companies have been unable to reach a consensus. Three companies will present their perspective today. I will present amendments for Henry Katz of the Hartford, who could not be with us today. Kimberly Yelkin, Senior Government Affairs Manager for St. Paul Insurance Company, will discuss St. Paul's perspective; and Fred Bosse, Assistant Vice President of Government Affairs for U.S.F. & G. will present the perspective of his company.

Hartford Amendments. Attached hereto you will find a balloon of amendments proposed by the Hartford Insurance Company. On lines 68-72 of the bill, the Hartford proposes deleting that section since it appears to be discriminatory towards stock insurance companies. At line 82, the word "rate" should be deleted and the word "rating plan" should be utilized to more clearly reflect where premium discounts and credits are utilized. At line 151, the words "the condition of the company and" are eliminated to address the problems many states have faced when

they have established rating plans wherein the company must prove it will be virtually insolvent without the rate change prior to approval of its rates. As you can imagine, a company such as Hartford would withdraw from a state if it was required to prove that it would be insolvent without a rate change.

At line 152-153, the term "including an evaluation of the filing" is deleted since this would require an additional cost on the insurance company when in fact the Insurance Commissioner should have staff which can provide an evaluation of the filing.

At lines 203-207, deletion prevents the shifting of the burden of proof from the Insurance Commissioner to the insurer, thereby avoiding a unique and unjustified statute with regard to regulatory hearings.

Lines 217-219, 231-233, and 259-261, are deleted so that valid insurance contracts which have been negotiated and agreed to by both parties could not at some date in the future be voided by actions of the Insurance Commissioner, thereby protecting both the insured and the insurer.

Language changes in 262-270 would disallow the Commissioner from setting rates for companies. This provision, if passed, would be extremely unique and would set an onerous burden on the Insurance Commissioner to set rates for all insurance companies doing business in Kansas. Further, it addresses the possibility that a rate found to be inadequate could result in the Commission

mandating that additional premium be obtained from insured; as well as preventing the Insurance Commissioner from ordering rate roll backs after a rate has been previously approved.

Additional amendments on pages 8-12 are the same amendments previously discussed but cover casualty insurance.

With regard to new Section 6, the Hartford would propose that this Section be eliminated. There has not been demonstrated need for such a proposal. Quite to the contrary, the MAP program of the Insurance Commissioner has helped address availability problems in a manner which has elicited cooperation from insurance companies. Further, it is questionable that such a requirement would be constitutional since it could result in the Insurance Commissioner mandating that a company write a form or type of insurance. Finally, if the problem which new Section 6 hopes to address is to alert the Insurance Department as to companies which may be departing from a line of business, a more constitutional, and probably more helpful solution would be to require companies to provide written notice to the Department as to its intention to stop writing a kind or class of insurance, without any mandatory withdrawal provisions.

CONCLUSION

In this time of availability and affordability with property and casualty insurance, this bill which supposedly addresses these problems, merely causes further availability and affor-

dability problems. Availability will be hindered by putting onerous requirements on companies currently writing in volatile lines in the state of Kansas. Further, the ability of the state of Kansas to attract new companies to these volatile lines will be sharply hindered to the extent that new companies will see that they must deal with provisions which are undefined, untested, and virtually without limit.

With regard to affordability, requiring independent evaluations of filings, establishing new definitions and new regulations unique from other states, shifting the burden of proof, allowing for rate roll backs, at tremendous expense to the most volatile and unavailable of lines in the state of Kansas, virtually eliminating any incentive that these companies currently have in these unprofitable areas to continue to do business in Kansas. The proponents of this bill have not identified an availability and affordability problem with property and casualty insurance that this bill would eliminate. The bill would merely cause tremendously greater affordability and availability problems at a time when every indication is that we should be preventing any further tightening in these areas.

If you have any questions in deliberating on these matters, please do not hesitate to contact us. We too are interested in seeking viable solutions to the availability and affordability of property and casualty insurance in the state of Kansas, however, H.B. 2971 is not a viable solution.

HOUSE BILL No. 2971

By Committee on Insurance

2-16

0017 AN ACT relating to insurance; concerning rate making with
0018 respect to certain insurers; providing requirements for certain
0019 insurers upon cessation of business in the state; amending
0020 K.S.A. 40-928, 49-929 and 40-1113 and K.S.A. 1987 Supp.
0021 40-927 and 40-1112 and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1987 Supp. 40-927 is hereby amended to
0024 read as follows: 40-927. (a) Rates shall be made in accordance
0025 with the following provisions:

0026 (1) Manual, minimum, class rates or rating schedules, shall
0027 be made and adopted, except in the case of specific inland
0028 marine rates on risks specially rated. Such rates for personal lines
0029 of property insurance may be modified to produce rates for
0030 individual risks in accordance with rating plans which establish
0031 standards for measuring variations in hazards or expense provi-
0032 sions, or both. Rates for commercial lines of property insurance
0033 may be modified to produce rates for individual risks in accord-
0034 ance with rules and regulations promulgated by the commis-
0035 sioner establishing reasonable standards for rating plans, in-
0036 cluding experience rating plans, schedule rating plans,
0037 individual risk premium modification plans and expense reduc-
0038 tion plans, designed to modify rates in the development of
0039 premiums for individual risks insured in a property market. Such
0040 standards shall permit recognition of expected differences in loss
0041 or expense characteristics, and shall be designed so that such
0042 plans are reasonable and equitable in their application, and are
0043 not unfairly discriminatory, violative of public policy or other-
0044 wise contrary to the best interests of the people of this state. Such
0045 standards shall not prevent the development of new or innova-

0046 tive rating methods which otherwise comply with this act. Such
 0047 rating plans shall be filed or refiled by insurers in compliance
 0048 with the rules and regulations. The commissioner shall review
 0049 such plans and shall disapprove a plan that does not comply with
 0050 the rules and regulations. The rules and regulations shall es-
 0051 tablish maximum debits and credits that may result from the
 0052 application of a rating plan, encourage loss control, safety pro-
 0053 grams, and other methods of risk management and require in-
 0054 surers to maintain documentation of the basis of the debits and
 0055 credits applied under any plan. Once it has been filed and
 0056 approved, use of the rating plan shall become mandatory and
 0057 such plan shall be applied uniformly for eligible risks in a
 0058 manner that is not unfairly discriminatory.

0059 (2) Rates shall not be excessive, inadequate or unfairly dis-
 0060 criminatory. *In applying the rate standards provided in this*
 0061 *subsection, a rate may be found by the commissioner to be*
 0062 *excessive, inadequate or unfairly discriminatory based upon but*
 0063 *not limited to the following standards:*

0064 (A) Rates shall be deemed excessive if they are likely to
 0065 produce a profit that is unreasonably high in relation to the risk
 0066 involved in the class of business or are based on expenses that
 0067 are unreasonably high in relation to services rendered.

0068 (B) ~~Rates shall be deemed excessive if the rate structure~~
 0069 ~~established by a stock insurance company provides for any~~
 0070 ~~replenishment of surpluses from premiums when the need for~~
 0071 ~~replenishment is attributable to investment losses other than~~
 0072 ~~investment losses otherwise considered in the rates.~~

0073 (C) Rates shall be deemed inadequate if they are clearly
 0074 insufficient, together with the investment income attributable
 0075 to them, to sustain projected losses and expenses in the class of
 0076 business to which they apply.

0077 (D) A rate shall be deemed inadequate as to the premium
 0078 charged to a risk or group of risks if discounts or credits are
 0079 allowed which exceed a reasonable reflection of expense savings
 0080 and reasonably expected loss experience from the risk or group
 0081 of risks.

0082 (E) ~~A rate shall be deemed unfairly discriminatory as to a~~

Rating plan

0083 *risk or group of risks if the application of premium discounts or*
0084 *credits among such risks does not bear a reasonable relationship*
0085 *to the expected loss and expense experience among the various*
0086 *risks.*

0087 (3) Due consideration shall be given to past and prospective
0088 loss experience within and outside this state, to the conflagration
0089 and catastrophe hazards, to a reasonable margin for underwriting
0090 profit and contingencies, to dividends, savings or unabsorbed
0091 premium deposits allowed or returned by insurers to their poli-
0092 cyholders, members or subscribers, to past and prospective ex-
0093 penses both countrywide and those specially applicable to this
0094 state, *to earnings or losses resulting from the investment of*
0095 *unearned premiums and loss reserves* and to all other relevant
0096 factors within and outside this state; and in the case of fire
0097 insurance rates consideration shall be given to the experience of
0098 the fire insurance business during a period of not less than the
0099 most recent five-year period for which such experience is avail-
0100 able.

0101 (4) The systems of expense provision included in the rates for
0102 use by any insurer or group of insurers may differ from those of
0103 other insurers or groups of insurers to reflect the requirements of
0104 the operating methods of any such insurer or group with respect
0105 to any kind of insurance, or with respect to any subdivision or
0106 combination thereof for which subdivision or combination the
0107 commissioner of insurance, hereinafter referred to as commis-
0108 sioner, approves the application for separate expense provisions.

0109 (b) Except to the extent necessary to meet the provisions of
0110 subdivision (2) of subsection (a) of this section, uniformity among
0111 insurers in any matters within the scope of this section is neither
0112 required nor prohibited.

0113 (c) Rates made in accordance with this section shall be used
0114 subject to the provisions of this act.

0115 Sec. 2. K.S.A. 40-928 is hereby amended to read as follows:
0116 40-928. (a) Every insurer shall file with the commissioner, except
0117 as to those inland marine risks which by general custom of the
0118 business are not written according to manual rates or rating
0119 plans, every manual, minimum, class rate, rating schedule or

0120 rating plan and every other rating rule and every modification of
0121 any of the foregoing which it proposes to use. Every such filing
0122 shall state the proposed effective date thereof and shall indicate
0123 the character and extent of the coverage contemplated. When a
0124 filing is not accompanied by the information upon which the
0125 insurer supports such filing, and the commissioner does not have
0126 sufficient information to determine whether such filing meets
0127 the requirements of the act, the commissioner shall require such
0128 insurer to furnish the information upon which it supports such
0129 filing, and in such event the waiting period shall commence as of
0130 the date such information is furnished. The information fur-
0131 nished in support of a filing may include (1) the experience or
0132 judgment of the insurer or rating organization making the filing;
0133 (2) its interpretation of any statistical data it relies upon; (3) the
0134 experience of other insurers or rating organizations; or (4) any
0135 other relevant factors. A filing and any supporting information
0136 shall be open to public inspection after it is filed with the
0137 commissioner. Specific inland marine rates on risks specially
0138 rated, made by a rating organization, shall be filed with the
0139 commissioner.

0140 (b) An insurer may satisfy its obligation to make such filings
0141 either individually or by authorizing the commissioner to accept
0142 on its behalf the filings made by a licensed rating organization or
0143 another insurer. Nothing contained in this act shall be construed
0144 as requiring any insurer to become a member of or a subscriber
0145 to any rating organization.

0146 (c) The commissioner shall review filings as soon as reason-
0147 ably possible after they have been made in order to determine
0148 whether they meet the requirements of this act. *In reviewing a*
0149 *rate filing the commissioner may require the insurer to provide,*
0150 *at the insurer's expense, all information necessary to evaluate*
0151 ~~the condition of the company and the reasonableness of the~~
0152 ~~filing according to the criteria enumerated in this section, in-~~
0153 ~~cluding an independent evaluation of the filing.~~

0154 (d) Subject to the exception specified in subsection (e) of this
0155 section, each filing shall be on file for a waiting period of fifteen
0156 (15) 15 days before it becomes effective, which period may be

0157 extended by the commissioner for an additional period not to
0158 exceed ~~fifteen (15)~~ 15 days if the commissioner gives written
0159 notice within such waiting period to the insurer or rating orga-
0160 nization which made the filing that such additional time is
0161 needed for the consideration of such filing. Upon written appli-
0162 cation by such insurer or rating organization, the commissioner
0163 may authorize a filing which ~~he or she~~ *the commissioner* has
0164 reviewed to become effective before the expiration of the wait-
0165 ing period or any extension thereof. A filing shall be deemed to
0166 meet the requirements of this act unless disapproved by the
0167 commissioner within the waiting period or any extension
0168 thereof.

0169 (e) Specific inland marine rates on risks specially rated by a
0170 rating organization shall become effective when filed and shall
0171 be deemed to meet the requirements of this act until such time as
0172 the commissioner reviews the filing and so long thereafter as the
0173 filing remains in effect.

0174 (f) Under such rules and regulations adopted by the com-
0175 missioner, the commissioner may, by written order, suspend or
0176 modify the requirement of filing as to any kind of insurance,
0177 subdivision or combination thereof, or as to classes of risks, the
0178 rates for which cannot practicably be filed before they are used.
0179 Such orders, *and* rules and regulations shall be made known to
0180 insurers and rating organizations affected thereby. The commis-
0181 sioner may make such examination as deemed advisable to
0182 ascertain whether any rates affected by such order meet the
0183 standards set forth in subdivision 2 of subsection (a) of K.S.A.
0184 40-927, *and amendments thereto*.

0185 (g) Upon the written application of the insured, stating the
0186 reasons therefor, filed with and approved by the commissioner, a
0187 rate in excess of that provided by a filing otherwise applicable
0188 may be used on any specific risk.

0189 (h) No insurer shall make or issue a contract or policy except
0190 in accordance with the filings which are in effect for said insurer
0191 as provided in this act or in accordance with subsections (f) or (g)
0192 of this section. This subsection shall not apply to contracts or
0193 policies for inland marine risks as to which filings are not

0194 required.

0195 Sec. 3. K.S.A. 40-929 is hereby amended to read as follows:
 0196 40-929. (a) If within the waiting period or any extension thereof
 0197 as provided in subsection (d) of K.S.A. 40-928, *and amendments*
 0198 *thereto*, the commissioner finds that a filing does not meet the
 0199 requirements of this act, ~~he~~ *the commissioner* shall send to the
 0200 insurer or rating organization which made such filing, written
 0201 notice of disapproval of such filing specifying therein in what
 0202 respects ~~he finds~~ such filing fails to meet the requirements of this
 0203 act and stating that such filing shall not become effective. ~~In any~~
 0204 ~~administrative proceeding under this act, the insurer or rating~~ X
 0205 ~~organization shall carry the burden of proof by a preponderance~~
 0206 ~~of the evidence to show that the rate is not excessive, inadequate~~
 0207 ~~or unfairly discriminatory.~~

0208 (b) If within ~~thirty (30)~~ 30 days after a specific inland marine
 0209 rate on a risk specially rated by a rating organization, subject to
 0210 subsection (e) of K.S.A. 40-928, *and amendments thereto*, has
 0211 become effective, the commissioner finds that such filing does
 0212 not meet the requirements of this act, ~~he~~ *the commissioner* shall
 0213 send to the rating organization which made such filing written
 0214 notice of disapproval of such filing specifying therein in what
 0215 respects ~~he finds~~ that such filing fails to meet the requirements
 0216 of this act and stating when, within a reasonable period thereof,
 0217 such filing shall be deemed no longer effective. ~~Said disap-~~
 0218 ~~proval shall not affect any contract made, issued and effective~~
 0219 ~~prior to the expiration of the period set forth in said notice.~~

0220 (c) If at any time subsequent to the applicable review period
 0221 provided for in subsection (a) or (b) of this section, the commis-
 0222 sioner finds that a filing does not meet the requirements of this
 0223 act, ~~he~~ *the commissioner* shall, after a hearing held upon not less
 0224 than ~~ten (10)~~ 10 days' written notice, specifying the matters to be
 0225 considered at such hearing to every insurer and rating organiza-
 0226 tion which made such filing, issue an order specifying in what
 0227 respects ~~he finds~~ that such filing fails to meet the requirements
 0228 of this act, and stating when, within a reasonable period thereof,
 0229 such filing shall be deemed no longer effective. Copies of
 0230 ~~said~~ *such* order shall be sent to every such insurer and rating

said disapproval shall not affect any contract made, issued and effective prior to the expiration of the period set forth in said notice.

0231 organization. Said order shall not affect any contract or policy
0232 made, issued and effective prior to the expiration of the period
0233 set forth in said order.

0234 (d) Any person or organization aggrieved with respect to any
0235 filing which is in effect may make written application to the
0236 commissioner for a hearing thereon: *Provided, however, That,*
0237 *except that* the insurer that made the filing shall not be autho-
0238 rized to proceed under this subsection. Such application shall
0239 specify the grounds to be relied upon by the applicant and such
0240 application ~~must~~ shall show that the person or organization
0241 making such application has a specific economic interest af-
0242 fected by the filing. If the commissioner shall find that the
0243 application is made in good faith, that the applicant has a specific
0244 economic interest, that the applicant would be so aggrieved if his
0245 *such applicant's* grounds are established, and that such grounds
0246 otherwise justify holding such a hearing, ~~he~~ *the commissioner*
0247 shall, within ~~thirty (30)~~ 30 days after receipt of such application,
0248 hold a hearing upon not less than ~~ten (10)~~ 10 days' written notice
0249 to the applicant and to every insurer and rating organization
0250 which made such filing. No rating or advisory organization shall
0251 have any status under this act to make application for a hearing
0252 on any filing made by an insurer with the commissioner.

0253 If, after such hearing, the commissioner finds that the filing
0254 does not meet the requirements of this act, ~~he~~ *the commissioner*
0255 shall issue an order specifying in what respects ~~he finds that~~ such
0256 filing fails to meet the requirements of this act, and stating when,
0257 within a reasonable period thereafter, such filing shall be
0258 deemed no longer effective. Copies of said order shall be sent to
0259 the applicant and to every such insurer and rating organization.

0260 Said order shall not affect any contract or policy made or issued
0261 prior to the expiration of the period set forth in said order.

0262 (e) ~~In the event the commissioner finds that a rate or rate~~
0263 ~~change is excessive, inadequate or unfairly discriminatory after~~
0264 ~~hearing, the commissioner shall issue an order disapproving~~
0265 ~~such rate or rate change and specifying that a new rate or rate~~
0266 ~~schedule be filed by the insurer which responds to the findings~~
0267 ~~of the commissioner within 30 days. The commissioner may~~

Said order shall not affect any contract or policy made,
issued and effective prior to the expiration of the
period set forth in said order.

Said order shall not affect any contract or policy made
or issued prior to the expiration of the period
set forth in said order.

If after hearing,
(shall

0268 further order that ~~premiums be adjusted retroactively to the~~
0269 ~~effective date of the rate or rate change to reflect the findings of~~
0270 ~~the commissioner regarding the rate or rate change.~~

(rates
on or after the date of the order.

0271 (e) (f) No manual, minimum, or class rate, rating schedule,
0272 rating plan, rating rule or any modification of any of the foregoing
0273 which has been filed pursuant to the requirements of K.S.A.
0274 40-928, and amendments thereto, shall be disapproved if the
0275 rates thereby produced meet the requirements of this act.

0276 Sec. 4. K.S.A. 1987 Supp. 40-1112 is hereby amended to read
0277 as follows: 40-1112. All rates shall be made in accordance with
0278 the following provisions:

0279 (a) Due consideration ~~may shall~~ be given: (1) To past and
0280 prospective loss experience within and outside the state;

0281 (2) to catastrophe hazards, if any;

0282 (3) to a reasonable margin for profit and contingencies;

0283 (4) to dividends, savings or unabsorbed premium deposits
0284 allowed or returned by insurers to their policyholders, members
0285 or subscribers;

0286 (5) to policyholders' dividends in the case of participating
0287 insurers; and

0288 (6) to earnings or losses resulting from investment of un-
0289 earned premiums and loss reserves; and

0290 ~~(6)~~ (7) to all other relevant factors within and outside the
0291 state.

0292 (b) The systems of expense provisions included in the rates
0293 for use by any insurer or group of insurers may differ from those
0294 of other insurers or groups of insurers to reflect the requirements
0295 of the operating methods of any such insurer or group with
0296 respect to any kind of insurance, or with respect to any subdivi-
0297 sion or combination thereof for which subdivision or combina-
0298 tion the commissioner of insurance approves the application of
0299 separate expense provisions. This paragraph shall not be con-
0300 strued to require uniformity among all insurers with respect to
0301 the application of other paragraphs of this section.

0302 (c) Risks may be grouped by classifications for the establish-
0303 ment of rates and minimum premiums. Classification rates for
0304 personal lines of casualty insurance may be modified to produce

0305 rates for individual risks in accordance with rating plans which
0306 establish standards for measuring variations in hazards or ex-
0307 pense provisions, or both. Classification rates for commercial
0308 lines of casualty insurance may be modified to produce rates for
0309 individual risks in accordance with rules and regulations
0310 promulgated by the commissioner establishing reasonable stan-
0311 dards for rating plans, including experience rating plans, sched-
0312 ule rating plans, individual risk premium modification plans and
0313 expense reduction plans, designed to modify rates in the devel-
0314 opment of premiums for individual risks insured in a casualty
0315 market. Such standards shall permit recognition of expected
0316 differences in loss or expense characteristics, and shall be de-
0317 signed so that such plans are reasonable and equitable in their
0318 application, and are not unfairly discriminatory, violative of
0319 public policy or otherwise contrary to the best interests of the
0320 people of this state. Such standards shall not prevent the devel-
0321 opment of new or innovative rating methods which otherwise
0322 comply with this act. Such rating plans shall be filed or refiled by
0323 insurers in compliance with the rules and regulations. The
0324 commissioner shall review such plans and shall disapprove a
0325 plan that does not comply with the rules and regulations. The
0326 rules and regulations shall establish maximum debits and credits
0327 that may result from the application of a rating plan, encourage
0328 loss control, safety programs, and other methods of risk manage-
0329 ment and require insurers to maintain documentation of the
0330 basis of the debits and credits applied under any plan. Once it
0331 has been filed and approved, use of the rating plan shall become
0332 mandatory and such plan shall be applied uniformly for eligible
0333 risks in a manner that is not unfairly discriminatory.

0334 (d) Rates shall be reasonable, adequate and not unfairly dis-
0335 criminatory. *In applying the rate standards provided in this*
0336 *subsection, a rate may be found by the commissioner to be*
0337 *excessive, inadequate or unfairly discriminatory based upon but*
0338 *not limited to the following standards:*

0339 (1) *Rates shall be deemed excessive if they are likely to*
0340 *produce a profit that is unreasonably high in relation to the risk*
0341 *involved in the class of business or are based on expenses that*

0342 are unreasonably high in relation to services rendered.

0343 ~~(2) Rates may be deemed excessive if the rate structure~~
0344 ~~established by a stock insurance company provides for any~~
0345 ~~replenishment of surpluses from premiums when the need for~~
0346 ~~replenishment is attributable to investment losses other than~~
0347 ~~investment income or loss otherwise considered in the rates.~~

0348 (3) Rates shall be deemed inadequate if they are clearly
0349 insufficient, together with the investment income attributable
0350 to them, to sustain projected losses and expenses in the class of
0351 business to which they apply.

0352 (4) A rate shall be deemed inadequate as to the premium
0353 charged to a risk or group of risks if discounts or credits are
0354 allowed which exceed a reasonable reflection of expense savings
0355 and reasonably expected loss experience from the risk or group
0356 of risks.

0357 (5) ~~A rate~~ shall be deemed unfairly discriminatory as to a
0358 risk or group of risks if the application of premium discounts or
0359 credits among such risks does not bear a reasonable relationship
0360 to the expected loss and expense experience among the various
0361 risks.

0362 Sec. 5. K.S.A. 40-1113 is hereby amended to read as follows:
0363 40-1113. (a) Every insurer shall file with the commissioner every
0364 manual of classifications, rules and rates, every rating plan and
0365 every modification of any of the foregoing which it proposes to
0366 use. Every such filing shall indicate the character and extent of
0367 the coverage contemplated and shall be accompanied by the
0368 information upon which the insurer supports the filing. A filing
0369 and any supporting information shall be open to public inspec-
0370 tion after it is filed with the commissioner.

0371 (b) An insurer may satisfy its obligation to make such filings
0372 by authorizing the commissioner to accept on its behalf the
0373 filings made by a licensed rating organization or another insurer.
0374 Nothing contained in this act shall be construed as requiring any
0375 insurer to become a member of or a subscriber to any rating
0376 organization.

0377 (c) Any filing made pursuant to this section shall be approved
0378 by the commissioner unless the commissioner finds that such

Rating plan

0379 filing does not meet the requirements of this act or establishes an
0380 unreasonable or excessive rate. As soon as reasonably possible
0381 after the filing has been made, the commissioner shall in writing
0382 approve or disapprove the same, except that any filing shall be
0383 deemed approved unless disapproved within ~~thirty (30)~~ 30 days.

0384 (d) *In reviewing a rate filing the commissioner may require*
0385 *the insurer to provide, at the insurer's expense, all information*
0386 *necessary to evaluate ~~the condition of the company and the~~*
0387 *reasonableness of the filing according to the criteria enumer-*
0388 *ated in this section, ~~including an independent evaluation of the~~*
0389 *filing.*

0390 (d) (e) Any such filing with respect to a fidelity, surety or
0391 guaranty bond shall be deemed approved from the date of filing
0392 to the date of such formal approval or disapproval.

0393 (e) (f) In the event that the commissioner disapproves a
0394 filing, the commissioner shall specify in what respect he or she
0395 finds that such filing does not meet the requirements of this act.
0396 ~~In any administrative proceeding under this act, the insurer or~~
0397 ~~rating organization shall carry the burden of proof by a pro-~~
0398 ~~ponderance of the evidence to show that the rate is not exces-~~
0399 ~~sive, inadequate or unfairly discriminatory.~~

0400 (f) (g) If at any time the commissioner finds that a filing so
0401 approved no longer meets the requirements of this act, the
0402 commissioner may, after a hearing held on not less than ~~twenty~~
0403 ~~(20)~~ 20 days' written notice, specifying the matters to be consid-
0404 ered at such hearing, to every insurer and rating organization
0405 which made such filing, issue an order withdrawing his or her
0406 approval thereof. ~~Said~~ Such order shall specify in what respects
0407 the commissioner finds that such filing no longer meets the
0408 requirements of this act and shall be effective not less than ~~thirty~~
0409 ~~(30)~~ 30 days after its issuance. Copies of such order shall be sent
0410 to every such insurer and rating organization.

0411 (g) (h) Any person or organization aggrieved by the action of
0412 the commissioner with respect to any filing may, within ~~thirty~~
0413 ~~(30)~~ 30 days after such action, make written request to the
0414 commissioner for a hearing thereon. This section shall not apply
0415 to any insurer or rating organization with respect to a withdrawal

0416 of a filing made by it. The commissioner shall hear such ag-
 0417 grieved party within ~~thirty (30)~~ 30 days after receipt of such
 0418 request and shall give not less than ~~ten (10)~~ 10 days' written
 0419 notice of the time and place of the hearing to the insurer or rating
 0420 organization which made the filing and to any other aggrieved
 0421 party. Within ~~thirty (30)~~ 30 days after such hearing the commis-
 0422 sioner shall affirm, reverse or modify ~~his or her~~ such commis-
 0423 sioner's previous action specifying the reasons therefor. Pending
 0424 such hearing and decision thereon the commissioner may sus-
 0425 pend or postpone the effective date of ~~his or her~~ such previous
 0426 action. ~~In the event the commissioner finds that a rate or rate~~
 0427 ~~change is excessive, inadequate or unfairly discriminatory after~~
 0428 ~~hearing, the commissioner shall issue an order disapproving~~
 0429 ~~such rate or rate change and specifying that a new rate or rate~~
 0430 ~~schedule be filed by the insurer which responds to the findings~~
 0431 ~~of the commissioner within 30 days. The commissioner may~~
 0432 ~~further order that premiums be adjusted retroactively to the~~
 0433 ~~effective date of the rate or rate change to reflect the findings of~~
 0434 ~~the commissioner regarding the rate or rate change.~~

0435 (h) (i) No insurer shall make or issue a contract or policy
 0436 except in accordance with filings which have been approved for
 0437 said insurer as provided in this act.

0438 New Sec. 6. ~~An insurer may cease to transact insurance in~~
 0439 ~~this state, or discontinue the writing or renewal of one or more~~
 0440 ~~kinds of property or casualty insurance specified in K.S.A. 40-901~~
 0441 ~~and 40-1102, and amendments thereto, or classes of property or~~
 0442 ~~casualty insurance risks, only after the submission of a plan~~
 0443 ~~which provides for an orderly withdrawal from the market and a~~
 0444 ~~minimization of the impact of the surrender or discontinuance on~~
 0445 ~~the public generally and on the insurer's policyholders. The plan~~
 0446 ~~shall be approved by the commissioner, and the insurer shall~~
 0447 ~~comply with the plan's provisions before the withdrawal or~~
 0448 ~~discontinuance takes effect. Enforcement of the provisions of~~
 0449 ~~this section shall be in accordance with article 24 of chapter 40 of~~
 0450 ~~the Kansas Statutes Annotated, and acts amendatory thereof and~~
 0451 ~~supplemental thereto.~~

0452 Sec. 7. ~~K.S.A. 40-928, 40-929 and 40-1113 and K.S.A. 1987~~

If after hearing,

(shall

rates

on or after the date of the order.

0453 Supp. 40-927 and 40-1112 are hereby repealed.

0454 Sec. ~~5~~. This act shall take effect and be in force from and
0455 after its publication in the statute book.

7

SENATE AMENDMENT
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1 be subject to approval of the department. Any ceding
2 commission received by an insurer purchasing reinsurance for
3 catastrophes shall be placed in the catastrophe reserve.

4 (e) After consideration of the rate factors provided
5 in paragraphs (b), (c), and (d), a rate may be found by the
6 department to be excessive, inadequate, or unfairly
7 discriminatory based upon the following standards:

8 1. Rates shall be deemed excessive if they are likely
9 to produce a profit from Florida business that is unreasonably
10 high in relation to the risk involved in the class of business
11 or if expenses are unreasonably high in relation to services
12 rendered.

13 2. Rates shall be deemed excessive if, among other
14 things, the rate structure established by a stock insurance
15 company provides for replenishment of surpluses from premiums,
16 when the replenishment is attributable to investment losses.

17 3. Rates shall be deemed inadequate if they are
18 clearly insufficient, together with the investment income
19 attributable to them, to sustain projected losses and expenses
20 in the class of business to which they apply.

21 4. A rating plan, including discounts, credits, or
22 surcharges, shall be deemed unfairly discriminatory if it
23 fails to clearly and equitably reflect consideration of the
24 policyholder's participation in a risk management program
25 adopted pursuant to s. 627.0625.

26 5. A rate shall be deemed inadequate as to the premium
27 charged to a risk or group of risks if discounts or credits
28 are allowed which exceed a reasonable reflection of expense
29 savings and reasonably expected loss experience from the risk
30 or group of risks.

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1 6. A rate shall be deemed unfairly discriminatory as
2 to a risk or group of risks if the application of premium
3 discounts, credits or surcharges among such risks does not
4 bear a reasonable relationship to the expected loss and
5 expense experience among the various risks.

6 (f) In reviewing a rate filing, the department may
7 require the insurer to provide at the insurer's expense all
8 information necessary to evaluate the condition of the company
9 and the reasonableness of the filing according to the criteria
10 enumerated in this section.

11 (g) The department may at any time review a rate,
12 rating schedule, rating manual, or rate change, the pertinent
13 records of the insurer, and market conditions. If the
14 department finds on a preliminary basis that a rate may be
15 excessive, inadequate, or unfairly discriminatory, the
16 department shall initiate proceedings to disapprove the rate
17 and shall so notify the insurer. However, the department may
18 not disapprove as excessive any rate for which it has given
19 final approval or which has been deemed approved for a period
20 of 1 year after the effective date of the filing unless the
21 department finds that a material misrepresentation or material
22 error was made by the insurer or was contained in the filing.
23 Upon being so notified, the insurer or rating organization
24 shall, within 60 days, file with the department all
25 information which, in the belief of the insurer or
26 organization, proves the reasonableness, adequacy, and
27 fairness of the rate or rate change. In such instances and in
28 any administrative proceeding relating to the legality of the
29 rate, the insurer or rating organization shall carry the
30 burden of proof by a preponderance of the evidence to show
31 that the rate is not excessive, inadequate, or unfairly