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~~ a.m./p.m. on MARCH 2, 19 88 in room 531-N of the Capitol.

All members were present except:

Representative Harper, excused

Committee staff present:

Chris Courtwright, Research Department
Bill Edds, Revisor of Statutes Office
Nancy Wolff, Secretary

Conferees appearing before the committee:

L. M. Cornish, Kansas Assn. of Property & Casualty Insurers
Larry Magill, Independent Insurance Agents of Ks.
Lori Callahan, American Insurance Association
Glen Cogswell, Kansas Counsel for the Alliance of American Insurers
Dick Brock, Kansas Insurance Department
Bill Mitchell, Kansas Land Title Association
Jim Oliver, Professional Insurance Agents of Ks.
Don Graves, Professional Insurance Agents of Ks.

The meeting was called to order by the Chairman.

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

L. M. (Bud) Cornish, representing the Kansas Association of Property and Casualty Insurers testified in opposition to House Bill 2971. He reviewed the balloon draft of House Bill 2971 which was presented to the committee on March 1 by Mr. Pauley of State Farm Insurance. (Exhibit I)

Larry Magill, Independent Insurance Agents of Kansas, also testified in opposition to House Bill 2971. (Exhibit II)

Lori Callahan, American Insurance Association, appeared briefly to make a correction to her testimony of March 1, 1988. She did not wish her testimony to be subject to interpretation that Hartford Insurance would withdraw from Kansas should HB 2971 become law.

Glen Cogswell, Kansas Counsel for Alliance of American Insurers, stated that historically his association has asked him to appear for the record to state that the Alliance stands squarely with Mr. Pauley of State Farm Insurance. The Alliance opposes the bill, but if it is passed, they support the amendments proposed by State Farm. There being no other conferees on House Bill 2971, the hearings were closed.

The Chairman then called for testimony on House Bill 3055. Chris Courtwright, Research Department, reviewed the bill for the committee. The primary focus of the bill is on licensing of agencies, as well as insurance agents in the State of Kansas and would also require a continuing education requirement for all insurance agents.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE,

room 531N, Statehouse, at 3:30 ~~XX~~ a.m./p.m. on MARCH 2, 1988

Dick Brock, Kansas Insurance Department, testified as a proponent of House Bill 3055. (Exhibit III)

Larry Magill, Independent Insurance Agents of Kansas testified as a proponent of House Bill 3055. (Exhibit IV)

Jim Oliver, representing the Professional Insurance Agents of Kansas, introduced Don Graves who testified in support of House Bill 3055. (Exhibit V)

Bill Mitchell, Kansas Land Title Association, presented the committee with a proposed amendment (Exhibit VI) which would reduce education requirements for title insurance licensees to 4 hours rather than 8 hours.

There being no other conferees, the hearings were closed.

The committee then took up House Bill 2955 which would make all charges made in connection with the issuance, sale and servicing of title insurance policies subject to the same rate regulation as casualty insurance.

Representative Hoy presented a balloon of House Bill 2955 and then made a mation to amend the bill by the balloon. The motion was seconded by Representative Shauf. The motion carried.

Representative Hoy then made a motion that House Bill 2955 be passed as amended and Representative Littlejohn seconded the motion. The motion carried.

The meeting was adjourned at 5:25 p.m.

VISITORS TO HOUSE INSURANCE COMMITTEE

DATE: 3-2-88

NAME	REPRESENTING
Ron Smith	Vanna White
Bob Corkins	KTLA
Peg Scott	Insurance Dept
Ed Mailen	Insurance Dept
Don Graves	PIAK
Jim Oliver	PIA of Ks
Don Molden	Ks Life Underwriters Assn
Michael Woods	KTLA
Marge Braden	
Jim Snyder	Ks Funeral Dir Assn
Larry Magill	IIAK
Lori Callahan	AIA
	Kansas Fraternal Congress
	KRA
Lee Wright	FARMERS GROUP
Dick Brack	Ins Dept
	Alliance US Companies
Glenn Cogswell	Alliance of Am Insurers
L M Cornish	Ks Assoc of Prop & Casualty Cos
	Alliance & KLTA
Dick Scott	State Farm

TESTIMONY ON HB 2971
before House Insurance Committee
by
L. M. CORNISH
Kansas Association of Property & Casualty Ins. Cos., Inc.
March 2, 1988

Our Association opposes the enactment of HB 2971 in its entirety. We do not believe there is a real need for this legislation. The Insurance Department representative stated yesterday that this bill provides "nothing new", and we suggest there is no need to add additional laws to the statute books. The current rate making climate in Kansas is strict but fair.

The Association consists of 17 Kansas domestic insurers, most quite small. All but one does business only in Kansas. These companies write only personal lines: Home Owners, Farm Owners, Fire, extended coverage and a very small amount of liability insurance. They principally write in the rural areas.

We have had little complaint about rates - our problem is that big company competition is fierce. We have used the same rate making methods for years.

The current laws have worked well.

The current laws have adequate guidelines. We invite your attention to lines 0028 thru 0046. Standards for rate making are clear and have worked satisfactorily.

Note lines 0046 - 0048 which currently provide that rating plans should be filed in accordance with rules and regulations. This statute recognizes that standards should be developed by rule and regulation.

Insurance companies are not public utilities. The rates for public utilities are filed and set by an extensive hearing process by the Kansas Corporation Commission. Utilities are allotted exclusive territories on the basis of public need. Insurance companies operate in a competitive environment statewide. There are over 500 property and casualty insurance companies authorized to do business in this state.

EXHIBIT I

Currently, rates are filed and unless found by the Department to be excessive, inadequate or unfairly discriminatory, are approved and used. The competitive nature of this business keeps the rate making in line. Competition is strong, even ferocious at times. Like Macy's - if it prices shoes at $100.00, and competitors price the same shoes at $50.00, Macy's loses market share.

HB 2971 makes certain changes in the rate making procedures for fire and allied lines (KSA 40-927) and casualty lines (40-1112 etc.).

The respective definition sections contain language that actually does not add anything significant to current law.

The provisions at lines 152-153 greatly concern the small domestic companies as this requires these companies to furnish an additional actuarial evaluation. These small companies do not have salaried actuaries and the cost could be significant.

The provision at lines 0204-0207 reverses the burden of proof. Currently, the burden of proof is upon the Commissioner to show the rate filing to be excessive, inadequate or unfairly discriminatory. Under HB 2971, the company is required to prove that the rate <u>is not</u> excessive, inadequate or unfairly discriminatory. <u>This is a major change in concept</u>.

We believe the "retroactive" language contained in HB 2971 at line 0262 is unfair as it will cause companies great expense after rate approved and further hearing. Any premium adjustment should be "<u>prospective</u>".

Finally, we believe New Section 6, lines 0438-0451, should be stricken. If, however, the committee believes the concept of the bill should be passed, the bill should be amended to provide additional reasons to cease transacting business or discontinuing lines. We also believe that this section should be clarified so as to clearly provide that companies cannot be required to write lines which are not a part of their normal course of business.

Session of 1988

HOUSE BILL No. 2971

By Committee on Insurance

2-16

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

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

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

(1) Manual, minimum, class rates or rating schedules, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated. Such rates for personal lines of property insurance may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Rates for commercial lines of property insurance may be modified to produce rates for individual risks in accordance with rules and regulations promulgated by the commissioner establishing reasonable standards for rating plans, including experience rating plans, schedule rating plans, individual risk premium modification plans and expense reduction plans, designed to modify rates in the development of premiums for individual risks insured in a property market. Such standards shall permit recognition of expected differences in loss or expense characteristics, and shall be designed so that such plans are reasonable and equitable in their application, and are not unfairly discriminatory, violative of public policy or otherwise contrary to the best interests of the people of this state. Such standards shall not prevent the development of new or innova-

tive rating methods which otherwise comply with this act. Such rating plans shall be filed or refiled by insurers in compliance with the rules and regulations. The commissioner shall review such plans and shall disapprove a plan that does not comply with the rules and regulations. The rules and regulations shall establish maximum debits and credits that may result from the application of a rating plan, encourage loss control, safety programs, and other methods of risk management and require insurers to maintain documentation of the basis of the debits and credits applied under any plan. Once it has been filed and approved, use of the rating plan shall become mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.

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

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

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

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

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

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

line or

unrealized

line or

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

(3) Due consideration shall be given to past and prospective loss experience within and outside this state, to the conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, *to earnings or losses resulting from the investment of unearned premiums and loss reserves* and to all other relevant factors within and outside this state; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

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

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

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

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

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

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

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

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

extended by the commissioner for an additional period not to exceed ~~fifteen (15)~~ *15* days if the commissioner gives written notice within such waiting period to the insurer or rating organization which made the filing that such additional time is needed for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which ~~he or she~~ *the commissioner* has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this act unless disapproved by the commissioner within the waiting period or any extension thereof.

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

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

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

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

required.

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

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

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

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

organization. ~~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.~~

(d) Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon: ~~*Provided, however, That,*~~ *except that* the insurer that made the filing shall not be authorized to proceed under this subsection. Such application shall specify the grounds to be relied upon by the applicant and such application ~~must~~ *shall*, show that the person or organization making such application has a specific economic interest affected by the filing. If the commissioner shall find that the application is made in good faith, that the applicant has a specific economic interest, that the applicant would be so aggrieved if ~~his~~ *such applicant's* grounds are established, and that such grounds otherwise justify holding such a hearing, ~~he~~ *the commissioner* shall, within ~~thirty~~ ~~(30)~~ *30* days after receipt of such application, hold a hearing upon not less than ten ~~(10)~~ *10* days' written notice to the applicant and to every insurer and rating organization which made such filing. No rating or advisory organization shall have any status under this act to make application for a hearing on any filing made by an insurer with the commissioner.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this act, ~~he~~ *the commissioner* shall issue an order specifying in what respects ~~he finds that~~ such filing fails to meet the requirements of this act, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of said order shall be sent to the applicant and to every such insurer and rating organization. ~~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) In the event the commissioner finds that a rate or rate change is excessive, inadequate or unfairly discriminatory after hearing, the commissioner shall issue an order disapproving such rate or rate change and specifying that a new rate or rate schedule be filed by the insurer which responds to the findings 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.

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

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

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

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

(2) to catastrophe hazards, if any;

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

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

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

(6) to earnings or losses resulting from investment of unearned premiums and loss reserves; and

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

(b) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination the commissioner of insurance approves the application of separate expense provisions. This paragraph shall not be construed to require uniformity among all insurers with respect to the application of other paragraphs of this section.

(c) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates for personal lines of casualty insurance may be modified to produce

rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Classification rates for commercial lines of casualty insurance may be modified to produce rates for individual risks in accordance with rules and regulations promulgated by the commissioner establishing reasonable standards for rating plans, including experience rating plans, schedule rating plans, individual risk premium modification plans and expense reduction plans, designed to modify rates in the development of premiums for individual risks insured in a casualty market. Such standards shall permit recognition of expected differences in loss or expense characteristics, and shall be designed so that such plans are reasonable and equitable in their application, and are not unfairly discriminatory, violative of public policy or otherwise contrary to the best interests of the people of this state. Such standards shall not prevent the development of new or innovative rating methods which otherwise comply with this act. Such rating plans shall be filed or refiled by insurers in compliance with the rules and regulations. The commissioner shall review such plans and shall disapprove a plan that does not comply with the rules and regulations. The rules and regulations shall establish maximum debits and credits that may result from the application of a rating plan, encourage loss control, safety programs, and other methods of risk management and require insurers to maintain documentation of the basis of the debits and credits applied under any plan. Once it has been filed and approved, use of the rating plan shall become mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.

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

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

are unreasonably high in relation to services rendered.

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

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

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

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

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

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

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

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

(d) In reviewing a rate filing the commissioner may require the insurer to provide, at the insurer's expense, all information necessary to evaluate ~~the condition of the company~~ and the reasonableness of the filing according to the criteria enumerated in this section ~~including an independent evaluation of the filing~~.

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

~~(e)~~ *(f)* In the event that the commissioner disapproves a filing, the commissioner shall specify in what respect ~~he or she finds that~~ such filing does not meet the requirements of this act. *In any administrative proceeding under this act, the insurer or rating organization shall carry the burden of proof ~~by a preponderance of the evidence~~ to show that the rate is not excessive, inadequate or unfairly discriminatory.*

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

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

of a filing made by it. The commissioner shall hear such aggrieved party within ~~thirty~~ ~~(30)~~ *30* days after receipt of such request and shall give not less than ~~ten~~ ~~(10)~~ *10* days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within ~~thirty~~ ~~(30)~~ *30* days after such hearing the commissioner shall affirm, reverse or modify ~~his or her~~ *such commissioner's* previous action specifying the reasons therefor. Pending such hearing and decision thereon the commissioner may suspend or postpone the effective date of ~~his or her~~ *such* previous action. ~~*In the event the commissioner finds that a rate or rate change is excessive, inadequate or unfairly discriminatory after hearing, the commissioner shall issue an order disapproving such rate or rate change and specifying that a new rate or rate schedule be filed by the insurer which responds to the findings of the commissioner within 30 days. The commissioner may further order that premiums be adjusted retroactively to the effective date of the rate or rate change to reflect the findings of the commissioner regarding the rate or rate change.*~~

(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.

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

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

(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.

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

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

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

stimony on HB 2971
Before the House Insurance Committee
March 1, 1988
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you, Mr. Chairman, and members of the committee for the opportunity to appear on HB 2971 amending Kansas' rating laws. We are opposed to the bill without substantial amendments. Attached to my testimony is a copy of the "issue paper" from our Day at the Capitol activities which outlines the major provisions of the bill on page 1, gives our perspective under the heading of "Background" on page 2 and our recommended amendments on page 2. Since all of our amendments involve simply deleting what we consider to be the most onerous provisions of the legislation, we have not provided you with a balloon draft of those changes.

I should tell you at the outset that we subscribe to the "deranged commissioner" theory. Although the name of the theory is obviously tongue in cheek, the concern is real. We have a great deal of faith in Commissioner Bell and his staff to fairly administer any rating law. We do not and cannot have that same faith that Commissioner Bell's successor will be as professional and even-handed in his or her approach.

Kansas now has one of the most restrictive rating laws in the country - a perspective we hope you will keep when looking at the proposed changes contained in HB 2971. Many other state have what are known as "open competition" rating laws that either call for companies to file and then use rates or use and then file rates without the formal approval of the Commissioner. In those states, the Commissioner can call a hearing after new rates have already gone into force to

question those rates. In California, the insurance companies don't even have to file the rates and in Illinois there is no rating law whatsoever. Kansas, by contrast, requires that the Commissioner grant approval prior to a company ever using a rate in this state. The combination of our rating law and a professional and very meticulous insurance department means that Kansas consumers are already very adequately protected. In fact, the next step would have to be some form of administered pricing by the Insurance Department, an idea that would eliminate competition and that we suspect no one in this room would support.

We are concerned that further politicizing the rate making process in Kansas could substantially worsen the next "hard market" cycle. By that we mean that to the extent pressure can be brought to bear on the Insurance Department to artificially hold down rates, carriers could be driven from the problem lines - long tail liability coverages like products liability, professional liability, directors and officers liability, etc. - creating a serious availability problem for the buyers of those coverages.

Secondly, we as an association are concerned that Kansas not create an image as an undesirable state to do business in. To the extent that we do, we run the risk of driving capacity to other states with larger premium volumes to offer and less restrictive insurance laws and regulations. Capacity, i.e., policyholder surplus, is the fuel that drives the insurance industry. When premiums outstrip the growth in an insurance company's net worth or policyholder surplus, the companies have to cut back on the insurance written or face losing their favorable Best's rating, coming under increased scrutiny by the

National Association of Insurance Commissioners and various insurance departments and being subject to the "rumor mill." These are all very serious problems for an insurance company that management cannot ignore.

For these reasons, we as an association have historically opposed any legislation which we feel is punitive enough to create an image problem for Kansas nationwide, driving capacity from the state.

On page 2 of the attached issue paper, we have outlined those provisions in the bill that we feel could potentially worsen the situation for insurance buyers the next time we hit another "hard" market cycle. Those four points outline our four major concerns and the proposed amendments to eliminate them. They also give a brief summary of why we feel they will have a significant detrimental impact on Kansas.

There is no "quid pro quo" between insurance reform and tort reform. Increasing insurance premiums and a lack of companies willing to write the "long tail" liability lines are symptoms of the underlying problems. Any attempt to hold down rate increases to lessen the political pressure for tort reform will only make the situation worse.

In the long term, the only proposed help is to reduce the transaction costs of our liability system, reduce payouts and increase the predictability of our civil justice system.

Rates are driven by claims experience. Claims experience is driven by the frequency (number of claims) and severity (size of award) of losses. If the legislature can address frequency and severity, claims costs will come down. If the system becomes more efficient, claims costs will come down. If the system becomes more

predictable, more carriers will be willing to write the long tail liability lines and competition will increase. All of these will ultimately reduce rates - something we want as much as anyone.

But HB 2971 will not reduce rates and it will not increase the number of companies willing to write the difficult liability lines. In fact, quite the reverse could be true. For these reasons, we oppose HB 2971 without substantial amendments. Thank you for the opportunity to provide our views.

ISSUE PAPER
INSURANCE "REFORMS"

3/1/88

ISSUE:

HB 2971 - Amends our rating law by:

1. Adding five new criteria for determining if rates are neither "excessive, inadequate or unfairly discriminatory":

   a) Deemed excessive if likely to produce unreasonably high profits in relation to risk or based on unreasonably high expenses in relation to services rendered.

   b) Deemed excessive if intended to replace lost surplus from investments other than investments included in rate making process.

   c) Deemed inadequate if clearly insufficient including investment income to sustain projected losses and expenses for the class.

   c) Deemed inadequate for a risk or group of risks if the credits exceed a reasonable expectation of expense savings or loss experience of the risk or group.

   e) Deemed unfairly discriminatory for a risk or group of risks if like credits are not applied to all like risks.

2. Rate filings must include earnings or losses from investment on unearned premiums and loss reserves.

3. The Commissioner may require that a company pay for an independent actuarial review of the filing and require "all information necessary to evaluate the condition of the company" (Oklahoma insolvency test?!).

4. Shifts the burden of proof to the company to show by a preponderence of the evidence that a rate should be approved.

5. If, after an administrative hearing, the Commissioner finds that a rate is excessive, inadequate or unfairly discriminatory, the Commissioner can disapprove the rate and force the company to file new rates within 30 days. The Commissioner may also order that premiums be adjusted retroactively.

6. Before a company can withdraw from the state, or discontinue writing one or more kinds of insurance, the company must file and obtain approval for orderly withdrawal and minimization of the impact on the public and policyholders.

BACKGROUND:

HB 2971 is a comprehensive and complex proposal which seems to further politicize the rate approval process.

The opponents of tort reform have long argued that the liability insurance affordability and availability problems were brought on by excessive insurance rates and not the civil justice system.

While insurance cycles have played a part, proponents of tort reform have argued that addressing rates only addresses the symptoms and is not a cure.

The cycles are caused by company competition yet no one is proposing we go to "cartel pricing" and eliminate the benefits of competition for the consumer. Plus on the difficult professional liability, products, E&O and similar long tail liability lines, there are not a lot of companies willing to write the coverages. Artificially holding down rates in very volatile, high risk lines of insurance will insure that there will be even fewer insurance companies willing to provide coverage at any price in the future.

When companies are forced to withdraw from markets because they cannot obtain adequate rates, the legislature turns to state run insurance companies like the Health Care Stabilization Fund. Once formed, the voluntary market disppears and it becomes extremely difficult to eliminate the state insurance company.

For these reasons and more specific problems, IIAK has opposed legislation which would have the effect of making Kansas an undesirable state to do business in. With only approximately 1% of the nation's property/liability premiums, we cannot afford to pass punitive legislation which could cause companies to allocate insurance capacity to states where they stand a better chance of making a profit. In the longrun, Kansas consumers are far better off with companies wanting to grow in Kansas and competing for their business.

IIAK POSITION:

HB 2971 - We oppose this measure without the following amendments:

1. Eliminate the reference to information necessary to evaluate the financial condition of a company, lines 150-151. Though not intended by the Insurance Department, this phrase could be interpreted by the courts as requiring a company to be on the verge of insolvency before they would be granted a rate increase on any line of insurance.

2. Eliminate the provision giving the Commissioner the power to use outside actuaries and charge the cost to the insurance company on any rate filing, lines 148-153. This could stop a company from filing rates in marginally profitable lines, low volume lines or for coverages where a good statistical data base is not available. Let the legislature either fund

an actuary position) for the Department or g_ e them discretionary funds to retain outside actuaries from the 40 plus million in premium taxes the state collects.

3. Eliminate the retroactive rate disapproval authority and the requirement after an administrative hearing that new rates must be filed within 30 days, lines 265-270. Retroactive rate changes are implicitly unfair, costly to the companies to handle, and would create permanent uncertainty among companies of whether a rate would be challenged or not.

   Clearly the Commissioner should have authority to call an administrative hearing but should not have the authority to require that new rates be filed. The company has the option of either filing acceptable rates or not writing the coverage.

4. Eliminate the requirement that a withdrawal plan must be filed and approved, lines 438-451 (all of Sec. 6). What if the Commissioner refuses to approve a withdrawal plan? Should companies be forced to stay on lines where they are potentially "losing their shirts?" What kind of plan would minimize the impact on the public or policy-holders? Kansas already has a mid-term cancellation and nonrenewal law. Companies cannot be forced to stay on disastrous lines of coverage, yet this provision could conceivably be used to attempt that.

REMARKS BY

DICK BROCK, ADMINISTRATIVE ASSISTANT

KANSAS INSURANCE DEPARTMENT

BEFORE THE

HOUSE INSURANCE COMMITTEE

REGARDING HOUSE BILL NO. 3055

MARCH 2, 1988

EXHIBIT III

House Bill No. 3055 - the Insurance Department's Legislative Proposal No. 2 -- is the result of a comprehensive study of the laws relating to the licensing and qualifications of Kansas insurance agents which began last spring and concluded in November, 1987. It seems that almost every year there is some statutory or regulatory change which addresses a particular aspect of agents licensing but as far as I know this was the first time an in-depth, all-encompassing study of every requirement, procedure and concern about agents licensing has been undertaken.

The 16 member study group which included representation from the Kansas Association of Life Underwriters, Independent Insurance Agents of Kansas, Professional Insurance Agents, General Agents and Managers Association, Kansas Society of Insurance Women, National Association of Insurance Women, Kansas insurance companies and other interested parties who were willing to devote time and resources to the project are in agreement with the bill. Because the bill is quite far-reaching, I cannot tell you it will be or is completely void of opposition and I know of at least one amendment in addition to some I will offer momentarily that will be offered. However, in view of the wide range of interests represented on the study group and interested or involved with the licensing qualifications of insurance agents, the degree of acceptance, agreement and support for the work product represented by House Bill No. 3055 is remarkable. Of more importance, both the study group and the Insurance Department are convinced that enactment of House Bill No. 3055 will not only modernize Kansas statutes and procedures relating to insurance agents but will in fact, result in the public being served by more

competent, better qualified, professional insurance agents as a whole than is currently the case.

Be that as it may, I want to just briefly run through the major components of House Bill No. 3055. First, it provides for a single agent's license in Kansas as opposed to a separate license for brokers and another license for agents with the present qualification requirements -- that is 18 years old, a high school diploma, passing an examination, good business reputation, and so forth. In so doing, the bill does remove the current provisions requiring brokers to have and maintain an errors and omissions policy in effect but this is such a basic economic necessity that in our judgement the absence of a compulsory requirement will not materially, if at all, reduce the existence of this coverage.

Second, as I indicated, the single license concept results in a repeal of the present brokers law and grants the two authorities in it to all agents. Specifically, the right to charge fees where there is a signed contract with the insured and the right to place business direct with a non-contracted company normally associated with a brokers license would be permissible under an agents license. In other words, all resident and non-resident agents would have the same authority a person holding both a brokers and agents license now has.

Third, it would make no change in the current law which specifies who must be licensed. This, of course, means the current law requiring all

persons doing any act toward the transaction of insurance will continue to need a license. In addition, while it does not require a change in this statute, the bill will require agencies to be licensed. This is a new idea for Kansas, however, when consideration is given to the fact that obtaining a license for an agency will not be difficult or entail a large additional expense yet will permit insurers to certify an agency and thereby automatically include certification of every agent in the agency, the advantages become evident.

Fourth, -- and this is a big step -- the bill provides for statutorily prescribed continuing education requirements for all agents. Currently, Kansas law imposes a one-time minimum education requirement on life and accident and sickness agents but this is, of course, quite different from a continuing education program and there is no requirement on fire and casualty agents although voluntary education programs are and have been a significant part of the services offered by various associations for a long period of time. The continuing education program established by House Bill No. 3055 is a lengthy and detailed component but its essential elements can be described fairly quickly. The basic recommendation is that each licensee would be required to obtain a minimum of 8 hours of approved continuing education credits each year with the first report of compliance due on or before March 31, 1989. New agents would have the remainder of the year in which they are licensed plus 12 months to complete their first continuing education requirement after which the annual completion requirement would apply. This requirement would apply separately for property and casualty and life, accident and health and

variable contracts. Thus, an agent licensed for both classes -- property and casualty plus life and health, would be subject to a 16 hour requirement. It should be noted, however, that because of the specialized nature of the product, crop hail insurance agents are subject to a one hour annual continuing education requirement.

Fifth, the provisions relating to examinations will permit this portion of the agents licensing activity to be equally progressive. The primary change is the incorporation of sufficient statutory latitude that a computer generated examination system provided by a third party, independent, testing vendor could eventually replace the current paper test. This is really accomplished in line 107 which permits the Commissioner to designate someone else to administer examinations; in lines 114 and 115 which eliminates the statutorily inscribed limit on examination fees and permits them to be established by regulation; and, in lines 143 and 144 which would permit examinations to be developed and conducted by outside interests on the same basis as study manuals are currently prepared and distributed. Moving to this type of system has necessitated some other adjustments such as giving the property and casualty examination with the same frequency as the life and health examination.

However, in addition to these kinds of changes it is also contemplated that (for computer generated tests) applicants will be allowed to make application for testing to the test vendor, simultaneous with their application for license to the Insurance Department -- that a composite

score of 70% as opposed to a 70% score for each part of each class of examination be used as the passing score for all examinations -- that applicants who fail an examination be required, on re-examinations, to take the complete examination -- that applicants who fail the first examination be required to wait 7 days before being allowed to take the examination a second time, another 7 days before a third attempt, and wait 6 months before being allowed to take the examination a fourth and subsequent times -- and that examination fees be forfeited by applicants who fail to appear for an examination, or fail to cancel their examination schedule at least 3 working days prior to the scheduled testing date.

Sixth, and finally, provisions are included in the legislative proposal which will permit newly licensed agents or existing agents who are appointed to represent a different company to solicit business or otherwise represent such company as soon as they qualify for a license or, if already licensed, as soon as they are appointed by the company. The company would then have 15 days to notify the Department of the appointment.

That is I believe a complete summary of the significant changes embodied in House Bill No. 3055. We, of course, believe it is worthy of your favorable consideration and hope you agree.

ISSUE PAPER
AGENTS LICENSING CHANGES AND
MANDATORY CONTINUING EDUCATION

2/25/88

ISSUE:

HB ---- - Agents Licensing Changes and Mandatory Continuing Education.

1. Establishes an agency license requiring the reporting of all licensed personnel to the Insurance Department. Additional people must be reported within 15 days and people who leave an agency must be reported within 30 days. The agency must also designate a person responsible in that agency for licensing.

2. Certification of an agency by an insurance company automatically includes all licensed insurance agents legally associated with the agency. (This will virtually eliminate individual agent certifications and should eliminate the processing of hundreds or even thousands of pieces of paper in an average agency.)

3. Will eliminate the present $25 maximum fee that can be charged for the agents' examination. (This paves the way for the Insurance Department to use a computerized testing service which could run anywhere from $40-60 per class.)

4. Change the present three classes of license to five classes of license by adding health and variable contracts as separate classes of licenses. The five classes would be life, health, casualty, property and variable. The Department is still free under the law to establish whatever sub classes within each of these five classes they choose for exam and licensing purposes.

5. Change the frequency of the property and casualty examination to allow daily testing, to allow retakes within 7 days of failing to pass and to limit a person to two retakes and then they must wait six months to take the exam again. (IIAK has historically opposed daily property and casualty exams as watering down the effectiveness of the examination, but with this stringent retake provision we will not oppose the change.)

6. No-shows will forfeit their examination fee.

7. Company appointments can be effective immediately with notice to the Department within 15 days of an appointment and a penalty for failure to notify the Department.

8. Eliminate the broker's license and give the present powers of a broker's license to all agents. Those powers are the ability to represent a company without a contract and the ability to

charge fees at any time with a written contract with the insured.

9. A mandatory continuing education requirement as follows:

   a) Eight continuing education credits (50-60 minutes) for all property and casualty licenses and eight CEC's for all life, accident/health or variable annuity licenses each calendar year.

   b) One CEC for crop only agents per calendar year.

   c) Carry forward of up to eight hours credit each year from professional designation courses only.

BACKGROUND:

Partially as a result of a recommendation from IIAK, Commissioner Bell appointed an agents licensing task force during the 1987 session to review all our licensing laws except excess lines. The task force met every month from May to November to produce a compromise bill.

IIAK surveyed our membership in January, 1988, offering four options on mandatory continuing education. Seventy-eight percent (78%) of the respondents out of 119 chose one of the three mandatory continuing education options over no change.

Among the three continuing education options, the task force proposal of eight hours each for P/C and Life/Health came out slightly ahead. Total first and second place votes were 61 for the Task Force report, 55 for a two-tier system and 44 for an eight hour requirement but with a change in who must be licensed.

IIAK supports mandatory continuing education for basically three reasons:

1. Increased professionalism of insurance agents.

2. Enhanced image of our profession with the public.

3. Ease of compliance for our members with other state's continuing education laws where they are on a reciprocal basis.

IIAK suggested the inclusion in the Task Force report of the NAIC's Model Single License Procedure Act. Advantages we see are:

1. Substantial reduction of paperwork for agents, companies and the Department by eliminating agent certifications in favor of agency certifications. Thus all licensed personnel reported by an agency would be automatically certified for each company that agency has under contract.

2. Eliminating the brokers license and giving those powers to all agents. Very few agents were applying for a brokers license because of the additional paperwork and expense for questionable benefit. Giving the authority to charge fees and broker business to all agents makes sense. Under Kansas' "mini brokers law" one licensed agent can broker through another licensed agent now. Companies refuse to do true brokerage business where they are dealing with a non-contracted agent direct.

3. An agency license will allow the Department to quickly identify and economically notify agents of a particular company.

IIAK remains concerned about the cost of a computer test for agents license exams and the number and location of exam sites, particularly in western Kansas. If these concerns are addressed by any proposed testing service then we can see positive benefits in a "feedback proof" test and instant results for the person taking the test.

The tests are "feedback proof" in that the computer can generate unique exams from a large bank of questions for each person taking the test. This should help insure that people studying for the exam learn the basic principles of insurance and not study simply questions and answers.

IIAK POSITION: Support.

STATUS:

House Insurance Committee is awaiting a printed bill. Hearings should be held the week of February 29th.

KANSAS

PROFESSIONAL INSURANCE AGENTS

DOROTHY M. TAYLOR
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Testimony before the House Insurance Committee on HB3055, March 2, 1988.

Mr. Chairman, members of the committee, my name is Don Graves. I am a director of the Professional Insurance Agents of Kansas, and represented that association on the Agents Licensing Task Force appointed by Commissioner Bell.

As chairman of the sub-committee on education of that task force, I pursued the wishes of my association in proposing mandatory countinuing education for life, health, property and casualty agents. Those proposals are reflected in the requirements of HB3055. Many other professions have turned to continuing education as a means of maintaining the highest possible service to the insuring public. The Professional Insurance Agents of Kansas feel that the complexities of insurance demands a high level of professionalism and that this bill will futher that professional level.

The whole task force considered other elements of this bill including a single agents license, including the present powers of a broker; a new agency license; a simplified certification process; and changes to the agents examination process.

Our Legislative Committee and Board of Directors have reviewed this bill and support it.

Don Graves, CIC
Hutchinson, Kansas

EXHIBIT V

Kansas Land Title Association proposes to the Committee on Insurance that House Bill 3055 be amended on Page 7 at Line 260 by adding to Section 6 the following

"(b)(4)

Every licensed agent who is an individual and holds a Title Insurance License only or its equivalent shall annually obtain a minimum of four (4) C.E.C. in courses certified by the Board of Abstract Examiners as title under the property and casualty category.

EXHIBIT VI