Approved March 25, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.~~m. on March 24, 1988 in room 529-S of the Capitol.

All members were present except:

Sen. Gordon - Excused

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Ed Hund, Kansas Trial Lawyers Association
Lori Callahan, American Insurance Association
Mike Martin, American Insurance Association
Fred Bosse, USF & G
Kim Yelkin, St. Paul Companies
Larry Magill, Independent Insurance Agents of Kansas
L. M. Cornish, Kansas Assn. of Property and Casualty Companies
Glen Cogswell, Alliance of American Insurers
Ron Todd, Kansas Insurance Department

The minutes of March 23 were approved.

The hearing began in HB 2971 dealing with rate making for fire and casualty insurers. Ed Hund of Wichita and a member of the Kansas Trial Lawyers Association testified in support of the bill. He said he had been involved in the drafting of the bill along with the Kansas Insurance Department. This is a consumer bill designed to help resolve the availability and affordability problem. The bill expands what is excessive or unfairly discriminatory in the rate structure. The intent is to help stabilize prices and to prevent wild swings in charges. The second part of the bill relates to investment income. Mr. Hund continued that there is a disparity between the Insurance Commissioner and the companies that make rate application changes. The Insurance Department must hire actuaries when rate applications are made, but the insurance companies have them on their staffs. The bill provides that if the Department needs an actuary, it will be at the expense of the rate applicant. Also, the bill includes language saying that the burden of proof to show that rates are not excessive, inadequate, or unfairly discriminatory is on the companies.

Mr. Hund suggested a change in the bill on page 6, line 206, by reinserting "by a preponderance of the evidence", which has been removed, because this is the civil test of the proof of evidence, and without this language an interpretation would have to be made. He referred to a list of the six components of the bill which had been mailed to the committee. (See Attachment I). He concluded that this bill is not a panacea but is aimed to help the serious problem of affordability and, most importantly, stability.

Lori Callahan, American Insurance Association, testified in opposition to HB 2971. She said she is representing over 187 property and casualty companies in the United States, and they have a problem with the bill in that they do not feel it will help the availabilty and affordability problem.

Mike Martin, American Insurance Associaton of Houston, gave further testimony in opposition to the bill. He feels the bill is unworkable. Section 6 is an unreasonable restriction. "Orderly withdrawal" is unnecessary and ambiguous. This type of regulation is restrictive to availability, particularly on a class level. Also, he feels rating loss should be unified. Futhermore, he said that the use of "inadequate and excessive" is unnecessary because it is redundant. His next point was that he feels the burden of proof sections are totally unnecessary. His final objection was to the term "rate change" which he feels

is troublesome because the meaning is not clear in the context of the language therefore creating an ambiguity which was not there before.

Next to testify in opposition was Fred Bosse, USF & G, from Maryland. His organization has two branch offices in Kansas and employs 320 Kansans, and in 1986 they were the leading writer of property and casualty insurance in Kansas. He explained that the problem with this bill is similar to what happened with this legislation in Florida where he was personally involved in 1986. Since this was enacted in Florida, his company has found it a much less attractive place to do business. He told the committee that "unfairly discriminatory" was taken from the 1986 Florida act, but the language from the NAIC model bill would be better. He also objects to the sections dealing with prospective premium adjustments because they would incur an amazing adminstrative burden and cost for companies. If the bill is passed, it would be better to give the Insurance Commissioner the authority to order a company to make another rate filing.*

Kim Yelkin, St. Paul Companies, testified further in opposition to the bill. She said St. Paul is stockholder owned and the largest national provider of medical malpractice insurance. It is the major insurer in the Kansas market. She said that currently the Insurance Commissioner does have regulatory power to regulate rates in the Kansas market. The bill does nothing to impact the consumer favorably. As to wide price changes, the bill will not affect rates at all. With regard to Section 5, subsection d, regarding actuarial review, Ms. Yelkin said that it has been her company's experience in Kansas that this causes delay and great expense in the rate filing process. This provision exists in two other states, and it has not helped regulators there. As to new Section 6, she feels it implies some kind of approval from the regulator and also it is troublesome that no provision is included addressing a time period which potentially could lock in an insurer. She added that Kansas is one of the most difficult states to write insurance because the regulatory climate makes it more difficult to obtain rate approval, and this bill adds to this.**

Larry Magill, Independent Insurance Agents of Kansas, followed with testimony in opposition. (See Attachment II.)

L. M. Cornish, Kansas Association of Property and Casualty Companies, testified further in opposition to the bill. (See Attachment III).

Final testimony in opposition was given by Glen Cogswell, Alliance of American Insurers. In general, he opposes it because he considers it as unnecessary and undesireable. He stated that he accepts previous testimony in opposition.

Ron Todd, Kansas Insurance Department, gave testimony in support of the bill. (See Attachment IV.)

The Chairman informed the committee that he had received letters supporting HB 2971 from the Children's Coalition and the AARP. Also, he has letters of opposition from Farm Bureau, Farmers Insurance Company, and Alliance Insurance Companies.

The Chairman said the bill will be discussed at a meeting next week.

The meeting was adjourned.

*Written testimony of Fred Bosse submitted 3/31/88 -- See Attachment V.
**Written testimony of Kimberly Yelkin submitted 3/31/88 -- See Attachment VI.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
	Michael J Martin	3200 Southwest Freeway Suite 3100 Houston, Texas 77027	AIA
	Lori Callahan	Topeka	AIA
	Fred C. Boyce	100 Light St. Baltimore 21202	USF&G
	Kenneth A. Uelkin	St Paul Companies 385 Washington St Paul MN	
	Richard F. Wilborn	Alliance Ins Co's	McPherson KS
	Lee WRIGHT	Overland Park	Farmers Ins. Group
	William L. Mitchell	Hutchinson	Allstate Ins.
	Tom Bell	Topeka	KHA
	Pam Scott	Topeka	Insurance Dept
	Ed Hayes	Wichita	Members KTHA
	Richard A Weston	Topeka	"
	Michael Wolf	"	"
	Gary Gibson	Topeka	ARP Legislative Comm.
	LARRY MAGILL	"	I.I.A.K.
	Glenn Cogswell	Topeka	Alliance & Am. Insurers
	Bud Grant	Topeka	KTLA
	J M Cornish	"	Kansas Restaurant & Hospitality Assoc

KANSAS TRIAL LAWYERS ASSOCIATION

112 West Sixth, Suite 311, Topeka, Kansas 66603, (913) 232-7756

HB 2971 - INSURANCE REFORM ACT OF 1988

HB 2971 is a product of a series of interim meetings between the Kansas Trial Lawyers Association and the Department of Insurance. Both KTLA and the Commissioner's office support HB 2971 as introduced.

HB 2971 has six major components:

1. Provides specific criteria for the Commissioner to follow in determining whether rates are excessive, inadequate or unfairly discriminatory.

2. Requires investment income to be considered in reviewing rate applications.

3. Allows the Commissioner to require information, at the insurer's expense, to evaluate the reasonableness of the rate filing.

4. Places the burden of proof on the insurer to show that rates are reasonable.

5. Gives the Commissioner greater authority to require rates to be adjusted if they do not meet statutory guidelines.

6. Provides a procedure for orderly withdrawal from a market to minimize the impact upon those insured.

Attachment I

Testimony on HB 2971
Before the Senate Financial Institutions & Insurance Committee
March 24, 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 in opposition to HB 2971. Although the House Insurance Committee made a number of very positive amendments to the measure, we continue to oppose it as unnecessary, possibly punitive and definitely counterproductive.

Our concern and only reason for appearing is the possible negative impact on consumers. As an association, we want available and affordable coverage for our clients. Without it, we have literally nothing to sell.

We feel that clearly the result of this legislation will be almost unbearable pressure on the Commissioner to artificially hold down insurance rates. To the extent that happens, we can see much more severe availabililty problems, particularly in the next "hard" market cycle.

Insurance is not a utility granted a franchise with no competitors and a guaranteed return on net worth. It operates in a free (except for regulation), competitive marketplace. If companies cannot charge what they feel they need for a given risk in Kansas, they will simply go elsewhere. Then the legislature will be swamped with requests for assigned risk plans and the problems will compound for the remaining insurers and consumers in Kansas.

The road to a state becoming an undesirable insurance market with almost insurmountable problems isn't traveled in one step. New Jersey has 50% of its drivers in the state auto assigned risk plan. Once a state reaches a situation where a free insurance market no longer functions, it is an extremely difficult political and practical problem

Attachment II

to reverse it.

I should tell you 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 probl lines - long tail liab ty 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.

We would like to make a few comments on specific provisions of the bill:

1) Current law provides that rates shall be neither inadequate, excessive nor unfairly discriminatory.

We do not know of a recent case where the Department has found a rate inadequate. The nature of the process is to allow rates to go down. No one wants to subject themselves to public criticism for

denying consumers a low rate.

The Department has the tools now to find rates excessive and frequently does. There are substantial negotiations that go on on many rate filings before a final increase is agreed to.

The legislature passed a law last year which gives the Department ample authority to control individual risk credits and debits, which makes the provisions in (D) and (E) redundant in our opinion.

Finally, the five additional rate criteria do not track with the NAIC's own model legislation defining inadequate, excessive and unfairly discriminatory. They are taken from the Florida law, which was a very negative law in total and caused significant problems in that state.

2) The Department should not have the authority to use an independent actuary whenever they choose. This could dry up markets where the carrier on a small premium volume line refuses to pay for the evaluation.

If the Department needs actuaries, we suggest that they either fund permanent actuary positions within the Department or fund the use of outside consultants through their budget.

3) Shifting the burden of proof to the insurer filing a rate is unreasonable. It is analogous to being guilty until proven innocent.

4) Although the provisions of the withdrawal plan requirement in new Section 6 have been substantially improved, we still wonder what would be defined as an "orderly withdrawal" and how the company can "minimize the impact" of withdrawing from a line of coverage. They either write the coverage or they don't. The legislature has already passed in 1986, SB 512 limiting companies' rights to mid-term cancel

commercial insurance a[illegible] requiring 60 days notic[illegible]f nonrenewal. We feel this has adequately addressed the problem.

5) Investment income is already implicitly recognized by the industry. Companies will tolerate higher loss ratios on long tail liability lines because of the investment earnings on reserves. One of the forces that drives the cycle is investment income, but we are not sure how easily companies will be able to break it down by line and by classification. There are literally thousands of classifications for general liability coverage alone.

You will probably hear about the lawsuit filed by eight state's attorney generals who coincidentally oppose tort reform. This is an extension of NICO's (the National Insurance Consumers Organization headed by Bob Hunter) charge at the beginning of 1985 of a "conspiracy" to raise rates. They would have you believe 3,500 insurance companies got together in a smoke-filled stadium and all agreed to raise rates. Thirty-five hundred companies couldn't agree that the sun rises in the east.

The industry is powerless to stop the self-destructive nature of pricing because, with the exception of State Farm and personal auto, there are no price leaders. The Aetna tried in about 1983 to say that it was not going to compete on price because it saw where the industry was headed. As a result, the Aetna lost a substantial portion of their volume and backed off of their position.

The federal government investigated NICO's charges of conspiracy and found no proof.

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 sympt[illegible]s 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. Thank you for the opportunity to provide our views.

Re: HB 2971

Testimony of
L.M. CORNISH
Kansas Association of Property & Casualty Ins. Companies
before the
Senate Financial Institutions and Insurance Committee
March 24, 1988

Thank you for the opportunity to testify in opposition to HB 2971.

This bill adds little to current laws on rate making procedure. It is vague and ambiguous and will attract controversy and probable litigation. Today, Kansas auto rates are 39th in the country with only 11 states having rates less than Kansas.

The Kansas rate making process is working well and this bill will have little effect on the availability or affordability of insurance.

The law in this state currently provides that "Rates shall not be excessive, inadequate or unfairly discriminatory." (0060-0061). The insurance companies file their rates with the Department and support these filings with the necessary supporting documentation to show the rates are not excessive, inadequate or unfairly descriminatory. I am advised that there have been only four contested rate hearings during the past 35 years.

Attachment III

The definitions of "excessive, inadequate or unfairly discriminatory" has been understood for years by regulator and industry alike.

Definitions such as:

"Rates shall be deemed excessive if they are likely to produce a profit that is unreasonably high..." (lines 0065-0066)

or

"Rates shall be deemed inadequate if they are clearly insufficient..." (lines 0094-0095)

or

"A rate shall be deemed unfairly discriminatory... if the application of premium discounts or credits... does not bear a reasonable relationship to the effected loss and expense..."

These are clearly the law today and all parties recognize this.

Use of investment income has always been an ingredient of rate making, although not required by statute. Witness the problems of a few years ago when companies lowered rates to a point where underwriting income was insufficient to meet expense. Companies relied upon the then high investment income to meet expenses. Companies have been required to do this in the past, and will probably be required to do so in the future.

Traditionally, investment income is intended to increase policy holders surplus which in turn controls the amount of insurance which a company may write. This is extremely important to the small Kansas companies. The rule of thumb is 3 to 1, i.e., don't write more premium than 3 times surplus or you may be inviting solvency problems. In times of heavy demand, our domestic companies are called upon to write additional premium. During the past several years, some of our companies have been required to cease writing before year's end in order not to violate this 3-1 premium to surplus rule. Many of these mutual companies are 100 years old. They were small when organized and continue to be small. They simply do not make large profits.

This bill makes changes in a system that works. We suggest the legislature study this matter carefully.

REMARKS BY

RON TODD, ASSISTANT COMMISSIONER

KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

REGARDING HOUSE BILL NO. 2971

MARCH 24, 1988

Attachment IV

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. It

would, however, facilitate effective administration of the rate regulation statutes. 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 impact on insurers.

First, by defining the current standards of "excessive," "inadequate" and "unfairly discriminatory" the bill will have no practical effect since such definitions simply codify the current manner in which these standards are viewed in analyzing the statutory propriety of rate filings. There are no definitions at all now -- even insurers don't know how these standards are defined in the mind's eye of the rate analyst. House committee amendments should make this point even less objectionable.

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 as a means of formalizing and stabilizing the consideration given to investment results. 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 but does make it clear that justifying and supporting rate filings is a responsibility of insurers clear through the process. 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. The House Committee amendment to this section should make the section less objectionable to the insurance companies.

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. The amendments to this section should be less objectionable and make the section more workable.

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. The House amendments to this section appear workable and less objectionable to insurers.

STATEMENT BY

FRED C. BOSSE

ON BEHALF OF

UNITED STATES FIDELITY & GUARANTY CO.

REGARDING KANSAS HOUSE BILL NO. 2971

BEFORE THE SENATE INSURANCE COMMITTEE

March 24, 1988

TOPEKA, KANSAS

Attachment IV

My name is Fred C. Bosse. I am an Assistant Vice President for USF&G in the Government and Industry Affairs Department in Baltimore, Maryland.

Before getting into my remarks about our specific objections to House Bill 2971, I would like to take one minute of my allotted time to let you know that USF&G has two branch offices that service our policyholders in Kansas. Our Kansas City Office is responsible for the eastern third of the state and our Wichita Branch covers the remainder. We employ approximately 320 Kansans in both branches.

In 1986, USF&G was AIA's leading writer of property/casualty business in Kansas and the fourth largest writer among all property/casualty companies in Kansas.

In the spring of 1986, I spent the better part of two months in Tallahassee engaged in the so called "insurance reform" battle going on at that time. And I believe that experience directly relates to why I find myself in Topeka at this time. I shall address myself today to two areas of H.B. 2971 that parallel the unfortunate results that came out of Florida in 1986, and to urge this committee not to take the same path that Florida chose in 1986.

Sections 1 and 3 as written are intended to provide definitions for the terms "excessive" "inadequate" and "unfairly discriminatory". The definitions proposed in H.B. 2971 are lifted almost verbatim from Florida's Tort and Insurance Reform Act of 1986 and I have attached to my statement the two pages from the Florida bill that demonstrate this point.

Florida's definitions are overly broad, vague and essentially vest the Department of Insurance with the authority to say that these terms mean whatever it says they mean. For example, what is a profit that is "unreasonably high" in relation to the risk involved?

There are far better alternatives for such definitions and the opponents of this bill have already suggested the NAIC model language as a good starting place for the terms "excessive" "inadequate" and "unfairly discriminatory".

Secondly, in sections 3(e) and 5(h), we have what is in USF&G's estimation the most objectionable language of the entire proposal.

In essence, these sections really do away with what are referred to as "finally approved rates". Even if the insurer has successfully met its burdens and received approval of rates from the Department, these sections say that the Commissioner can at any time take a second look and not only order that a new filing is required, but also order that premiums be adjusted prospectively. That is, we assume, the return to policyholders of already paid premium--premium that was charged pursuant to rates that had previously received the approval of the Department.

Under this proposal, the insurer is never safe from the prospect of making premium refunds to policyholders. As we learned in Florida, premium refunds are an expensive proposition and an administrative nightmare for insurers. And because Kansas is a strict prior approval state for all lines, this part of the proposal goes beyond even where Florida has gone.

We respectfully urge the committee not to follow the lead of the Florida legislature in the area of insurance rate regulation.

I hope that my presence here today to provide seven minutes of testimony amply demonstrates USF&G's serious concerns with House Bill 2971. Thank you for your attention.

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

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

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

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

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 class of business to which they apply.

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

5. 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.

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

(f) In reviewing a rate filing, the department 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.

(g) The department may at any time review a rate, rating schedule, rating manual, or rate change, the pertinent records of the insurer, and market conditions. If the department finds on a preliminary basis that a rate may be excessive, inadequate, or unfairly discriminatory, the department shall initiate proceedings to disapprove the rate and shall so notify the insurer. However, the department may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for a period of 1 year after the effective date of the filing unless the department finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being so notified, the insurer or rating organization shall, within 60 days, file with the department all information which, in the belief of the insurer or organization, proves the reasonableness, adequacy, and fairness of the rate or rate change. In such instances and in any administrative proceeding relating to the legality of the rate, 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

CODING: Words stricken are deletions; words underlined are additions.

TESTIMONY ON HOUSE BILL 2971

BEFORE THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

March 24, 1988

Kimberly A. Yelkin
Senior Government Affairs Manager
St. Paul Fire and Marine Insurance Company

Attachment VI

Good Morning. My name is Kim Yelkin. I am Senior Government Affairs Manager at The St. Paul Fire and Marine Insurance Company.

I would like to thank you for the opportunity to appear before you today to testify in opposition to House Bill 2971. As most of you know, The St. Paul is a stockholder owned, multi-line company. We have been writing medical malpractice insurance for over 50 years and have been in the insurance business since 1853. The St. Paul is the largest national provider of medical malpractice insurance with approximately 18% of the market. Since we are a major player in the Kansas medical malpractice market, we felt it was important to be here today to offer our perspective to the members of the Kansas legislature on House Bill 2971.

In our opinion, the Kansas Insurance Commissioner currently has adequate powers to regulate insurers' rates. In fact, Kansas is one of the strictest regulatory environments in which we operate. There are a number of problems with it as currently drafted although the House Insurance Committee has amended the bill. Given the time restrictions, I will limit my comments to Sections 5 and Sections 6. I concur with the statements made by the other opponents of the bill on the remaining sections.

Section 5; Subsection (d) provides that the Commissioner may require the insurer to provide at the insurers' expense, an

independent actuarial evaluation of the rate filing. Our concern is that this provision will only add considerable expense and delay in insurance operations in the state of Kansas. Our experience has reflected such expense and delay. For example, The St. Paul paid a total of $13,000 for the independent actuarial review of three medical liability filings. Due to the delay caused by the independent actuarial review, it prevented us from implementing the rate change required. Essential to our continued operation in any state is the ability to respond quickly to the need for a rate change.

Additionally, we object to the regulator having the sole discretion to choose, without consultation with the insurer, the actuary who would review the filing. It is essential, for some lines of business, to obtain an actuarial consultant who is familiar with the rate-making methodology utilized in that particular line of insurance.

While I am sensitive to the lack of staff available to the Department, the Commissioner already has adequate powers to work with insurers to obtain outside actuarial review of filings. In fact, insurers committed to obtaining an adequate rate and confidant of their rate filing, will volunteer to seek independent review of filings. This type of provision exists in only two states that I am aware of -- our experience has been that it has not helped but only hindered the regulators ability to achieve a meeting of minds with a company on a request for a rate change.

We are also very troubled by Section 6 which is an entirely new section in the current rating law. Section 6 requires an insurer to submit a withdrawal plan when discontinuing to write a class or line of business. In its original form it granted the Commissioner the authority to approve or disapprove the withdrawal plan. While the language has been amended, in our opinion, it implies approval by the Commission.

Our fear is that this new provision grants broad and arbitrary power to the regulator; there are no standards set forth for non-compliance with the plan; and there are no provisions addressing the time period. Let me assure you that withdrawal from a line or class of business is a serious decision which is evaluated at the highest levels of The St. Paul. We would work cooperatively with the regulator and our customers before taking such action in order to minimize the impact upon the marketplace.

As a side note, let me report to you on the most recent activity in our medical liability business nationwide. We have lifted the moratorium in several states on a limited basis for all lines of medical liability business. To illustrate, all new business will be written on a deductible basis for groups of four or more practitioners. The factors which we considered for re-opening in a given jurisdiction were as follows: adequate rates, favorable regulatory and legislative climate, favorable historical experience, our internal ability to service business and approval of our voluntary deductible program. While

we have a strong commitment to the state, Kansas fails to meet some of those criteria.

In conclusion, we urge you to oppose House Bill 2971. As I said in my introduction, Kansas is currently one of the strictest regulatory environments in which we operate. The enactment of House Bill 2971 will not address any market availability or affordability problems in Kansas. In fact, it will further hinder the ability of insurers to operate in a competitive environment responding promptly to changing market conditions. No change in the rating law can alter the basic economic facts -- loss costs drive the price of insurance. House Bill 2971 has been characterized by the Kansas Trial Lawyers as a consumers' bill. In our opinion, the enactment of House Bill 2971 could potentially have a negative impact on both insurers and the insurance-buying public because it would impose further artificial restraint on rates and rate levels which could inevitably result in more restrictive underwriting practices and tight insurance markets.

Thank you. I would be happy to answer any questions.