

Approved February 14, 1989  
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Dale Sprague at  
Chairperson

3:30 a.m. on February 7, 1989 in room 531-n of the Capitol.

All members were present except:

Representative Bill Bryant, excused  
Representative Theo Cribbs, absent  
Representative Michael Sawyer, absent

Committee staff present: Chris Courtwright, Research Department  
Bill Edds, Revisor of Statutes  
Patti Kruggel, Committee Secretary

Conferees appearing before the committee:

Others present: see attached list.

The Chairman called the meeting to order at 3:30 p.m.

A motion was made by Rep. Gross to approve the minutes of January 31, and February's 1, 2, and 6. Rep. Lynch seconded. The motion carried.

The Committee opened hearings on HB 2044.

HB 2044 -- An Act concerning companies failing to make timely payments for losses; requiring interest to be paid on amounts owing; amending K.S.A. 40-219 and repealing the existing sections.

Chris Courtwright, Legislative Research Department gave a brief overview of the bill, explaining that by amending K.S.A. 40-219, any Insurance Company failing to make payments within 30 days after the date of settlement or final judgement, would be required to pay interest at a one percent per day rate on the amount owing, until the settlement is fully paid. Chris also informed the Committee SB 110, now in the Senate, represents another form of legislative interest similar to this proposal, and should be considered.

Representative Joan Wagnon introduced Bob Keeshan, and explained to the Committee that Mr. Keeshan is a constituent of hers and it was at his request that she propose this legislation. Rep. Wagnon provided copies of their correspondence requesting the bill. (Attachment 1)

Bob Keeshan, local attorney, testified in support of HB 2044 stating that he feels insurance companies should be required to pay judgements and settlements against them within 30 days or have a statutory penalty of one percent up to 100 percent until paid. (Attachment 2)

Richard Mason, Kansas Trial Lawyers, was not able to appear before the Committee but wishes to give his support for the concept of HB 2044.

There were no other conferees wishing to testify in support of the bill, and the Committee began hearing proponent testimony.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance

room 531-N Statehouse, at 3:30 ~~a~~xx/p.m. on \_\_\_\_\_, 19 89

Lori Callahan, American Insurance Association, testified that the Association has not taken a position on HB 2044, but question whether there is a need for this legislation in light of the Insurance Department's authority under the Unfair Claims Practices Act. (Attachment 3) Ms. Callahan asked the Committee to be deliberate in the consideration of the bill.

Next appearing testifying in opposition to HB 2044 was Jim Hall, Security Benefit Life (Attachment 4). Mr. Hall stated that the concerns that provided for this bill are, in their opinion, more adequately addressed in the proposal contained in SB 110.

David Hanson, Kansas Life Association and Kansas Association of Property Casualty, testified in opposition to HB 2044 stating that no substantial need has been shown to justify the harsh penalty proposed in the bill. (Attachment 5)

There were no other conferees wishing to testify on behalf of HB 2044 and the hearings were concluded.

The meeting was adjourned at 4:15 p.m.



# HAMILTON, PETERSON, TIPTON & KEESHAN

ATTORNEYS AT LAW

JAN HAMILTON  
JOHN C. PETERSON  
ALAN L. TIPTON  
ROBERT E. KEESHAN  
ANTHONY D. CLUM  
LEON B. GRAVES

1206 WEST TENTH  
TOPEKA, KANSAS 66604-1291  
PHONE (913) 233-1903

May 26, 1988

Representative Joan Wagnon  
c/o YWCA  
225 W. 12th  
Topeka, Kansas 66612

Re: Insurance Companies - Delayed Payments

Dear Representative Wagnon:

I write to you to relate you to a problem which appears to be occurring with greater and greater frequency which I face as a general practitioner attempting to get insurance company to pay settlements made by their counsel.

Most of the litigation which I file is ultimately settled. The insurance companies who are ultimately responsible for the settlements are, in my opinion, promptly notified by their local counsel as to the terms and conditions of settlement. Yet the insurance company seems to be taking longer and longer to make payments of agreed upon settlements.

Recently my experience included the following. In one case where we agreed upon a nominal settlement involving failure to timely pay a claim, the insurance company took 79 days to get a draft to me. In a second case involving an out-of-state insurance company, it took 41 days to get payment. In a medical malpractice case, as I dictate this letter, it has been 41 days since settlement was agreed upon and relayed by local counsel to the company and payment still is not forthcoming.

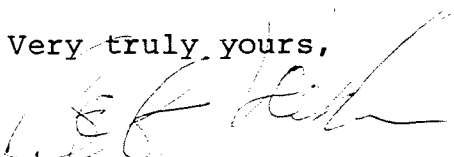
The Kansas Supreme Court has recognized what you, I and the citizens of the state already know, that is, that money has a value. The Kansas Supreme Court has repeatedly said that interest is a valid factor, yet the insurance companies are allowed to withhold what is undoubtedly vast sums of money without any action under the Kansas Administrative Law or statutes.

Suggested Solution: I would like to see the Kansas legislature enact a statute requiring insurance companies to pay judgments

and settlements against them within 30 days or have a statutory penalty of one percent (1%) a day up to 100% until paid. Similar provisions exist within the workers compensation act and for failure to timely pay employees wages.

The above suggestions should not be a burden on insurance companies as many fine companies routinely will have the settlement to you within a week. Under the status quo, insurance companies who delay profit by retaining the interest, yet insurance companies who promptly pay receive no benefit. The solution is simple, yet needed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. E. Keeshan", written in a cursive style.

Robert E. Keeshan

REK:dt



STATE OF KANSAS

JUN 09 1988

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
Topeka 66612-1678 913-296-3071

1-800-432-2484  
Consumer Assistance  
Division calls only

FLETCHER BELL  
Commissioner

June 8, 1988

Mr. Robert E. Keeshan  
Hamilton, Peterson, Tipton & Keeshan  
1206 West Tenth  
Topeka, Kansas 66604-1291

Re: Insurance Companies - Delayed Payments

Dear Mr. Keeshan:

Commissioner Bell has received your May 26, 1988 letter and asked that I respond.

In your letter you relate a problem you are experiencing with insurance companies' failure to promptly make payments once a settlement is reached. You suggest that the Kansas Insurance Department enact a regulation requiring insurance companies to pay judgments and settlements within thirty (30) days or be assessed a statutory penalty of one percent (1%) per day up to one hundred percent (100%) until paid.

It appears that the solution you offer would not be appropriate for an administrative regulation, but would require a legislative enactment. We will place your recommendation in the Commissioner's file of potential 1989 legislative proposals for his consideration when he develops his 1989 recommendations to the legislature.

There is a current statute, K.S.A. 40-219, which applies when a company neglects or refuses to pay a final judgment, for three months when there is no appeal pending or no supersedeas bond filed. The statute gives the Commissioner the authority to enjoin the company from doing business in the state until the judgment is fully paid.

Thank you for bringing this matter to our attention. Should you have any further questions or comments, please feel free to contact the undersigned.

Very truly yours,

Fletcher Bell  
Commissioner of Insurance

Pamela Scott  
Chief Attorney

PS:ks  
LE/4456

STATEMENT OF  
ROBERT E. KEESHAN  
In Support of H.B. 2044

I. Insurance Companies Should Promptly Pay Settlements  
or Judgments.

In our society today, money is a commodity with a legitimate price on the market and loss of its use, whether occasioned by the delay or default of an ordinary corporation, citizen, state or municipality should be compensable. (Shapiro v. Kansas Public Employee's Retirement System, 216 Kan. 353, 532 P.2d 1081.)

Insurance policy holders require protection because of their inequitable bargaining position with insurance companies. (Spencer v. Aetha Life & Casualty Ins. Co., 227 Kan. 914, 926, 911 P.2d 149.)

II. No Remedy Exist for Insurance Company's Delay  
in Payments.

A. K.S.A. 40-219 is inadequate - 3 months required.

B. K.S.A. 40-2404(9). The Unfair Claim Settlement Practice Act is inadequate. (Spencer v. Aetna Life & Casualty Ins. Co., 227 Kan. 914, 923, 925, 611 P.2d 149) [Requires committee or performing with the frequency as to indicate a general practice; no private cause of action.]

C. Judgement interest is inadequate. K.S.A. 16-204.

III. Penalties for Delay in Paying Agreed Settlements  
or Judgment After 30 days are Appropriate.

Similar penalties after eight days are applied to wages willfully withheld. (K.S.A. 44-315(b).)

KOK020790T1

(a) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. Any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice of any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed ad-

vertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, when liability has become reasonably clear, and one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) Failure to maintain complaint handling procedures. Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which has received since the date of its last examination under K.S.A. 40-222 and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. This record shall indicate total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance related to the acts and practices set out in this section.

(11) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the pur-



(b) If an employer knowingly fails to pay an employee wages as required under subsection (a) of this section, such employer shall be liable therefor and shall be additionally liable for damages in the fixed amount of one percent (1%) of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the eighth day after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller, except that such penalty shall apply only in the event of a willful violation. For the purpose of such additional damages, the failure to pay shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon such petition nor shall it be deemed to continue after an appeal is filed under K.S.A. 44-322a, until the decision on appeal becomes final.

History: L. 1973, ch. 204, § 3; L. 1977, ch. 173, § 1; July 1.

Source or prior law:  
44-307, 44-308.

LAW OFFICES

## BENNETT, DILLON &amp; CALLAHAN

1605 S.W. 37TH STREET  
TOPEKA, KANSAS 66611  
(913) 267-5063MARK L. BENNETT, JR.  
WILBURN DILLON, JR.  
LORI M. CALLAHAN

TESTIMONY OF LORI M. CALLAHAN

KANSAS LEGISLATIVE COUNSEL  
AMERICAN INSURANCE ASSOCIATION

BEFORE THE HOUSE INSURANCE COMMITTEE

February 7, 1989

H.B. 2044

I would like to thank you for the opportunity to testify at this hearing on H.B. 2044 on behalf of the American Insurance Association and its member companies. AIA is a national trade association representing more than 187 companies writing property and casualty insurance.

AIA to date has not taken a position with regard to H.B. 2044, therefore, the purpose of my testimony today is informative, rather than persuasive.

Attached to my testimony is a copy of S.B. 110, which is similar to H.B. 2044. S.B. 110 was proposed by the Kansas Insurance Department and hearings are scheduled on that bill for Thursday, February 9, 1989. I am unsure whether there is a problem which requires either of these bills in light of the Insurance Department's authority under the Unfair Claims Practices Act. Further an insurance company's failure to pay a judgment, will result in the automatic assessment of post judgment interest, as well as subjecting the insurance company to garnishment proceedings. The same would be true for a judicially approved settlement.

I would therefore ask that in considering H.B. 2044, that you also consider S.B. 110, as well as the need for this legislation in light of the current mechanisms available for both the Insurance Department and successful litigants to force collection of judgments and settlements.

If you have any questions while deliberating on this matter, please do not hesitate to contact me.

**SENATE BILL No. 110**

By Committee on Financial Institutions and Insurance

1-30

15 AN ACT relating to insurance; concerning the payment of claims or  
16 judgments; providing for accrual of interest on amounts owing  
17 under certain circumstances.

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

19 Section 1. Except as otherwise provided by K.S.A. 40-447 and  
20 40-3110, and amendments thereto, each insurance company, fraternal  
21 benefit society and any reciprocal or interinsurance exchange licensed  
22 to transact the business of insurance in this state which fails or refuses  
23 to pay any amount due under any contract of insurance within 15  
24 business days after final determination of the amount payable or  
25 which fails to pay any judgment against any entity to which this act  
26 applies within 45 days after final judgment and there being no appeal  
27 pending and no supersedeas bond filed shall pay interest at the rate  
28 of 18% per annum on the amount due.

29 Sec. 2. For purposes of this act, if a claimant agrees to accept  
30 other than a lump sum payment, the penalty provided by section  
31 1 shall apply separately to each payment.

32 Sec. 3. Nothing in this act shall be construed to allow any in-  
33 surance company, fraternal benefit society, reciprocal or interinsur-  
34 ance exchange to withhold payment of money for a period longer  
35 than reasonably necessary to transmit such payment.

36 Sec. 4. This act shall take effect and be in force from and after  
37 its publication in the statute book.

38

**Security Benefit Life Insurance Company**

A Member of The Security Benefit Group of Companies

Date: February 7, 1989

To: HOUSE COMMITTEE ON INSURANCE

Re: HOUSE BILL 2044 - Amendment of K.S.A. 40-219 adding additional penalties to existing law relating to penalties on insurance companies that fail to timely pay judgment for losses.

Statement by

Jim Hall  
Assistant Counsel

The Security Benefit Group of Companies

Members of the Committee, I would like to thank you for the opportunity to appear and testify on behalf of the Security Benefit Group of Companies regarding House Bill 2044.

We oppose House Bill 2044 in its present form. Our opposition is based on several problems with the language of the bill.

First, with regard to the proposed interest penalty, aside from the fact that the amount of interest proposed is far in excess of any other interest penalty in the insurance statutes, there is no provision made for how the interest is to be compounded. However, regardless of what method is chosen, the amount involved is still unreasonably high.

Second, in the proposed amendment, no provision is made for the interest to not accrue during any appeal process. You will note that in the existing first paragraph of the law, provision is made for the sanctions to not be imposed if an appeal is pending. Under the present proposed amendment a claimant who wins a case at trial, but for less than he wanted, would stand to gain by appealing and having the interest accrue during the appeal. Further, if the insurance company appealed, the interest would again be accruing even though the company was merely pursuing its right to an appeal. We submit that in order for the language of both penalty paragraphs to be consistent, provision must be made in the proposed amendment for the interest to be held in abeyance during any appeal by either party.

Third, no definition of "settlement" is provided thus leaving open a question of just when the time for payment occurs.

Finally, we feel the concerns which may have prompted this amendment are adequately addressed in the proposal by the Kansas Insurance Department contained in Senate Bill 110. Although Senate Bill 110 admittedly has not received the wholehearted endorsement of the insurance industry (indeed, few laws imposing additional penalties on an industry are welcomed with open arms by the industry involved) it is nevertheless a more reasonable approach to the perceived problem of delayed payment than House Bill 2044.

For these reasons we respectfully request that the Committee decline passage of House Bill 2044.

JDH/sl

LAW OFFICES  
GLENN, CORNISH, HANSON & KARNS  
CHARTERED  
900 MERCHANTS NATIONAL TOWER  
POST OFFICE BOX 1280  
TOPEKA, KANSAS 66601  
913-232-0545  
FACSIMILE NO: 913-232-0005

L. M. CORNISH  
DAVID A. HANSON  
LARRY G. KARNS  
K. KIRK NYSTROM  
TODD B. BUTLER  
RON D. MARTINEK

RALPH F. GLENN  
(1988)

SUITE NO. 1  
431 NORTH CASCADE  
COLORADO SPRINGS, CO 80903  
719 475-1204

February 7, 1989

House Insurance Committee  
State Capitol of Topeka Kansas  
Topeka, KS 66612

Dear Mr. Chairman and Members  
of the House Insurance Committee:

David Hanson appears on behalf of the Kansas Life Association and the Kansas Association of Property and Casualty Insurance Companies whose members are domestic insurance companies in Kansas, and also on behalf of NAI, the National Association of Independent Insurers.

We oppose House Bill 2044 and feel that it is unwarranted and unduly oppressive. We do not believe any substantial need has been shown to justify the harsh penalty proposed in House Bill 2044.

The existing law set forth in K.S.A. 40-219 provides for injunctive relief if an insurance company neglects or refuses to pay a final judgment within three months where an appeal has not been filed. Unlike the existing law, the proposed section allows only 30 days instead of three months and does not exclude situations where an appeal has been filed. Also, the new section refers not only to final judgments, but also to settlements, thus raising additional questions as to when a settlement is entered into or effective to start the time running.

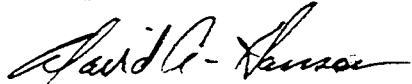
The extremely high interest rate of one percent (1%) per day with no exception for appeals will certainly encourage claimants to appeal or otherwise delay receiving payment of judgments in their favor in order to take advantage of the incredible growth potential offered in this bill. On the other hand, insurance companies and the insureds they defend will be discouraged from pursuing legitimate appeals in order to avoid the harsh interest penalty. Further, if there are legitimate issues for an appeal, payment of the judgment to avoid the interest penalty may bar an otherwise proper appeal under the doctrine of acquiescence.

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GLENN, CORNISH, HANSON & KARNS  
CHARTERED

House Insurance Committee  
February 7, 1989  
Page 2

For these reasons, we must oppose House Bill 2044 and  
we would welcome any questions you may have.

Respectfully,

A handwritten signature in cursive script, appearing to read "David A. Hanson".

DAVID A. HANSON

DAH:klg