

Approved March 28, 1989
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Dale Sprague at
Chairperson

3:30 ~~xx~~ a.m./p.m. on March 22, 89 in room 531-n of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Research Department
Emalene Correll, 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 and opened hearings on HB 2448,
SB 108, SB 109, and SB 110.

HB 2448 -- An Act relating to prepaid legal and dental service plans;
authorizing such plans to present letters of credit in lieu of depositing
securities to guarantee performance; amending K.S.A. 1988 Supp. 40-4211 and
repealing the existing section.

Chris Courtwright, Legislative Research Department, gave a brief overview
of HB 2448 which amends K.S.A. 1988 Supp. 40-4211, to allow prepaid legal
and dental service plans regulated by the Insurance Commissioner to
provide letters of credit from a Kansas Bank, in lieu of the filing of
security bonds.

Representative Rex Hoy testified in support of HB 2448 explaining that it
was at his request the committee introduce this bill. Rep. Hoy provided a
letter he received from John E. Carlin, Kansas City Dental Care,
requesting the law be changed to allow an irrevocable letter of credit, in
lieu of the deposit of securities (Attachment 1.)

Dick Brock, Kansas Insurance Department, testified that the
Department had no problems with this bill.

There were no others wishing to testify and hearings on HB 2448 were
closed.

The Committee began hearings on SB 108 .

SB 108 -- An Act relating to insurance; requiring that individual
accident and health policies contain a "cancellation by insured" provision;
amending K.S.A. 40-2203 and repealing the existing section.

Chris Courtwright, Legislative Research Department, gave the Committee a
brief overview of SB 108 . Mr. Courtwright explained that the bill
mandates that accident and sickness policies, issued by Insurance
Companies, obtain a provision on the policies indicating that insurers have
the right to cancel a policy anytime, in writing, and be entitled to any
unearned premiums. The bill would also cover that in the event of death of
the insured, the state could proceed to have the policy cancelled. This
bill would not apply to policies issued by HMO's and Blue Cross and Blue
Shield.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 xx a.m./p.m. on March 22, 89
19

Dick Brock, Kansas Insurance Department, testified in support of SB 108. Mr. Brock explained that the bill was a request of the Insurance Commissioner to permit individual accident and sickness insurance policyholders to cancel the policy and be entitled to a refund of any unearned premiums that are in excess of any benefits paid or payable under the policy. (Attachment 2)

There were no other conferees wishing to testify and the hearings on SB 108 were closed.

Representative Hoy made a motion to recommend SB 108 favorable for passage. Representative Allen seconded. The motion carried.

The Committee began hearings on SB 109.

SB 109 -- An Act relating to insurance; amending the Kansas insurance premium finance company act; amending K.S.A. 40-2603 and repealing the existing section.

Chris Courtwright, Legislative Research Department, gave the Committee an overview of the bill. Mr. Courtwright told the Committee that SB 109 would amend one section of the insurance premium finance company act to correct an internal study reference.

Dick Brock, Kansas Insurance Department, testified in support of SB 109 and explained that the bill, technical in nature, was recommended by the Insurance Commissioner to strike reference to a repealed statute and to cite the correct statute.

There were no other conferees wishing to testify and hearings on SB 109 were closed.

A motion was made by Representative Bryant, seconded by Representative Campbell that SB 109 be recommended favorable for passage. The motion carried.

The Committee opened hearings on SB 110.

SB 110 -- An Act relating to insurance; concerning the payment of claims; providing for accrual of interest on amounts owing under certain circumstances.

Chris Courtwright, Legislative Research Department, gave the Committee a brief overview of the bill. Mr. Courtwright explained that SB 110 would impose an interest penalty on most insurance entities in the state for failure to pay claims in a timely fashion.

Dick Brock, Kansas Insurance Department, provided testimony (Attachment 3) supporting SB 110 and explained that this bill was requested by the Insurance Commissioner addressing the problem of unnecessary and unwarranted delays in the payment of claims. Mr. Brock also provided a balloon amendment (Attachment 4), which clarifies the language in Section 1, lines 37-39.

The Chairman suggested that in Section 1, line 33, the word "due" be clarified to read "at the time and in the amount agreed between the claimant and the insurer".

Mr. Brock told the Chairman that the Insurance Department would not have a problem with this change.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 xx a.m./p.m. on March 22, 89

Dick Scott, State Farm Insurance, provided testimony in opposition to SB 110 as being a well intended concept, but explained that there are instances when it is necessary, in the normal course of business, to have payments that are made beyond the 30 days after an agreement has been made. Mr. Scott also testified that the penalties were grossly high and asked that the Committee consider imposing a lower rate of interest. (Attachment 5.)

There were no other conferees wishing to testify on SB 110 and the hearings were concluded.

The meeting adjourned at 4:45 p.m.

March 17, 1989

Dear Representative Hoy:

J. Dennis Dlabal, D.D.S., P.C., d/b/a Kansas City Dental Care is a private, professional corporation currently registered as a prepaid dental plan in the State of Kansas pursuant to K.S.A. 40-4201, et seq.

Current law requires a deposit of securities equal to 50% of the membership fee in force or \$50,000 whichever is less.

In lieu of this deposit the legislation provides for the filing of a Surety Bond. The Insurance Department has specified that this takes the form of a Qualifying Bond. To make a very long story short, the bonding companies have no experience with the prepaid dental industry and have declined to issue such bonds.

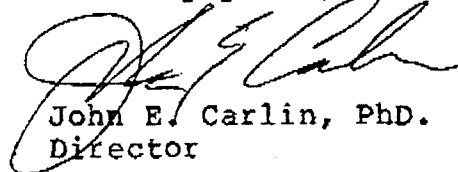
Kansas City Dental Care now requests that the law be changed to allow an Irrevocable Letter of Credit in lieu of the Deposit of Securities. Kansas City Dental Care has deposited cash in the form of a Bank Certificate of Deposit with the Insurance Department.

The use of an Irrevocable Letter of Credit would release these funds for use in a current expansion effort in the St. Louis area.

Mr. Mike Brummer of the Kansas Insurance Department has indicated that the department has no objection to this change in the legislation.

Thank you for your kind consideration of this matter.

Sincerely yours,



John E. Carlin, PhD.
Director

JEC:mln

TESTIMONY BY

DICK BROCK
ADMINISTRATIVE ASSISTANT
KANSAS INSURANCE DEPARTMENT

BEFORE THE

HOUSE INSURANCE COMMITTEE

SENATE BILL NO. 108

MARCH ²² 16, 1989

Senate Bill No. 108 addresses a very simple question. Should persons who purchase an individual policy of accident and sickness insurance be entitled to cancel that policy and receive a refund of the unearned premium? Existing Kansas law imposes no such requirement and, even though they may do so, many, many insurers do not include a provision in their contract that permits cancellation and return of unearned premium even if the policyholder dies. We do have an administrative regulation which requires insurers to permit policyholders to return policies and receive a full refund of premium if the policy is returned within 10 days of its receipt -- 30 days in the case of medicare supplement and long-term care policies -- but we know from the complaints and inquiries we receive that if people miss their so-called "free look" opportunity, the policy often does not permit cancellation. I want to emphasize that when we receive a complaint most companies cooperate with our Consumer Assistance Division quite well and we normally are able to work out a cancellation agreement of some kind. However, we also know we probably receive or become aware of only a fraction of the situations that occur. In any event, it shouldn't be necessary for individuals to have to resort to some kind of extraordinary action to cancel an accident and sickness insurance contract.

For these reasons we developed the legislative recommendation incorporated in Senate Bill No. 108. K.S.A. 40-2203 which this bill proposes to amend is patterned after a model law adopted a number of years ago by the National Association of Insurance Commissioners to promote uniformity in the contract language of individual accident and sickness policies. Subsection (A) of this law which begins on line 20 currently contains 12 provisions every accident and sickness policy must contain. Subsection (B) of the current law which begins on line 226 lists 11 provisions an accident and sickness policy shall not contain unless the language of such provisions is identical to that specified in the statute or the Commissioner approves different wording that is more favorable to the insured. In other words, the subsection (B) provisions are optional but, if used, the language is subject to specific

requirements. Included in these optional provisions is a provision captioned "cancellation". This optional cancellation provision permits cancellation by either the insurer or the insured. Thus, what we basically did was adapt this same statutory language to refer only to cancellation by the insured and add it as a new required policy provision in subsection (A). This is the new language that begins on line 212.

Again, all it does is permit individual accident and sickness insurance policyholders to cancel the policy and be entitled to a refund of any unearned premiums that are in excess of any benefits paid or payable under the policy.

As I have indicated, this bill is intended to address a problem some Kansas citizens have experienced and will continue to experience until something is done. Accordingly, we hope you will give the proposal your careful consideration and support. (Actually, we need your support more than your consideration but we will appreciate both.)

TESTIMONY BY

DICK BROCK
ADMINISTRATIVE ASSISTANT
KANSAS INSURANCE DEPARTMENT

BEFORE THE

HOUSE INSURANCE COMMITTEE
SENATE BILL NO. 110

MARCH 22, 1989

Senate Bill No. 110 is a recommendation developed by the Insurance Department and introduced by this committee at the Department's request. The bill addresses a recurring problem that is somewhat sporadic in nature in that the situations of concern are not necessarily created by the practices of a large number of insurers or even produced by a consistent pattern of behavior that can usually be attributed to the same insurers. Nevertheless, the problem occurs frequently enough and, when it occurs, the interests of insureds and claimants are affected enough to warrant attention. As is obvious from the bill itself, the "problem" to which I refer arises because of unnecessary and unwarranted delays in the payment of claims.

Kansas Statutes currently contain what is commonly referred to as the Unfair Trade Practices Act. While this act is lengthy and covers a number of issues it can be summarized by simply saying that the Unfair Trade Practices Act is really a set of standards that insurance companies and others involved in the insurance business are expected to meet with regard to the way policyholders, claimants and applicants are treated. Among these standards are what might be called a subset of standards dealing specifically with unfair claim settlement practices. These have been supplemented by an administrative regulation which, among other things, sets forth specific periods of time within which insurers must acknowledge and investigate claims, respond to inquiries, provide necessary claim forms and so forth. As a result, there is a regulatory framework that helps assure that claims are processed within a reasonable time while at the same time recognizing that some claims are simply more complicated and take more time than others. Doesn't always work to everyone's satisfaction but even so, the guidelines are very helpful. This background is provided in an effort to avoid confusion over what Senate Bill No. 110 is intended to do. Senate Bill No. 110 does not address the investigation or settlement of claims.

The objective of Senate Bill No. 110 is much simpler than that. Senate Bill No. 110 is intended to provide a disincentive to insurers who

otherwise inappropriately and unnecessarily delay payment of a claim after the amount due is known. As amended by the Senate, the situations to which this disincentive applies are of two different kinds. The first situation is when the claim is to be paid directly to the claimant. In this situation the bill provides that interest at the rate of 1% per day up to a maximum of 100% should be paid on the amount due when the claim is not paid within 30 calendar days after the amount to be paid has been determined.

The second situation deals with those claims when payment is not made directly to the claimant but, rather, is made to the person or entity that provides the repairs or services necessary to repair or replace the insured damage. In this case, the bill provides that the interest penalty would start 30 days after the services are rendered and -- with the proposed amendment -- the insurer receives the bill from the person or entity that made the repairs or rendered the services.

Section 2 of the act simply accommodates situations when a claim is payable on some basis other than a lump sum payment.

Finally, because claim situations can involve a number of different considerations, section 3 authorizes the Commissioner to adopt necessary regulations to fulfill the public policy established in section 1.

SENATE BILL No. 110

By Committee on Financial Institutions and Insurance

1-30

Attachment 1

Attachment 4

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

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

Section 1. Except as otherwise provided by K.S.A. 40-447 and 40-3110, and amendments thereto, each insurance company, fraternal benefit society and any reciprocal or interinsurance exchange licensed to transact the business of insurance in this state which fails or refuses to pay any amount due under any contract of insurance within 15 business days after final determination of the amount payable or which fails to pay any judgment against any entity to which this act applies within 45 days after final judgment and there being no appeal pending and no supersedeas bond filed shall pay interest at the rate of 18% per annum on the amount due the time prescribed herein shall pay interest on the amount due. If payment is to be made to the claimant and the same is not paid within 30 calendar days after the payment is due, interest shall be payable from the date such payment was due. If payment is to be made to any other person for providing repair or other services to the claimant and the same is not paid within 30 calendar days following the date of completion of such services, interest on the amount agreed to shall be payable to the claimant from the date of completion of the services. The rate of such interest shall be equal to 1% multiplied by the number of days that such amount remained unpaid, but not exceeding 100%.

_____ and receipt of the billing statement
_____ between the claimant and the insurer
_____ the billing statement

Sec. 2. For purposes of this act, if a claimant agrees to accept other than a lump sum payment, the penalty interest payable as provided by section 1 shall apply separately with respect to each

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45 payment.

46 Sec. 3. Nothing in this act shall be construed to allow any
47 insurance company, fraternal benefit society, reciprocal or in-
48 terinsurance exchange to withhold payment of money for a
49 period longer than reasonably necessary to transmit such pay-
50 ment *The commissioner of insurance is hereby authorized to adopt*
51 *such rules and regulations as may be necessary to carry out the*
52 *provisions of this act.*

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

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State Farm Insurance Companies



State Farm Insurance Claim Office
 11661 College Boulevard
 P.O. Box 26008
 Shawnee Mission, Kansas 66225

TESTIMONY ON SENATE BILL 110

BY: RICHARD W. SCOTT
 STATE FARM INSURANCE COMPANIES
 BEFORE THE KANSAS HOUSE COMMITTEE ON INSURANCE

DATE: MARCH 22, 1989

Mr. Chairman and Members of the Committee:

I represent State Farm Insurance Companies and we oppose Senate Bill 110 as being legislation based on good intentions but with much too broad application. We believe this point is best demonstrated by the two or three early drafts of this Bill and the two or three different amendments which have been made to the Bill in an effort to eliminate its flaws and improper application. For instance:

1. Many payments are made to mortgageholders, not the insured. Is that "payment" within the meaning of this Bill?
2. The claim representative and the plaintiff attorney reach an agreement on a personal injury settlement. A release is drafted and delivered to the attorney. The attorney procrastinates or is unable to reach his client because of the client being out-of-town. In any case, the 30 days passes before the release is returned and payment is made. If the settlement was for \$10,000.00, the insurance company is suddenly faced with an immediate penalty of \$3,000.00 on the 31st day following the agreement to settle.
3. Valued Policy Law. The insured building is destroyed by fire and is covered by a \$100,000.00 fire policy. By law, regardless of the value of that building, the face amount of the policy is due and owing immediately. The insurance company suspects arson and involvement of the insured. However, an arson investigation cannot be completed in 30 days. In some cases, the fire marshall's report is not even available in 30 days. With Senate Bill 110 as the law, the insurance company will undoubtedly pay the \$100,000.00 prior to 30 days in order to avoid the \$30,000.00 penalty which commences on the 31st day and grows at the rate of \$1,000.00 per day. By passage of Senate Bill 110, you have placed a sizable weapon in the hands of the arsonist or any other insured or claimant who is attempting to defraud the insurance company.
4. The claim representative and the car owner reach an agreement on the settlement of a total loss. The owner discovers he has lost the car title. It takes more than 30 days to get the title and actually make payment for the car. If the 30 days expires before

Testimony on Senate Bill 110
March 23, 1989
Page Two

payment can be made, the insurance company is faced with the penalty. Instead of the actual cash value of the car representing the settlement of \$10,000.00, the insurance company must now add \$3,000.00 in penalty.

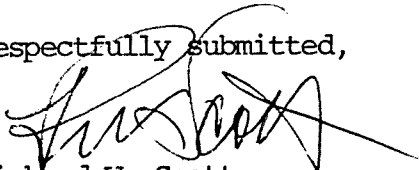
5. A severely injured plaintiff reaches an agreement with the liability carrier of the other car to settle for \$25,000.00 policy limits. Based on the legislation passed by this legislature two years ago, the injured plaintiff will then present this agreed settlement to his/her own insurance company for consideration of underinsured coverage. The underinsured coverage carrier must then act within 60 days to determine whether it will waive subrogation rights under that coverage. In the meantime, the injured party cannot accept payment from the liability carrier. Senate Bill 110 and the Underinsured Statute regarding settlement are in total conflict.

My point in these examples is to demonstrate to this committee that Senate Bill 110 does, in fact, create more problems than it cures and that the broad brush approach of penalizing any insurer who does not make payment within 30 days is simply not good legislation.

The penalty of 30, on up to 100 percent, is simply inconsistent with normal business practices. No other industry is faced with such steep penalty. To be consistent, shouldn't the State of Kansas be faced with a similar penalty for a delay in a tax refund? What about delays in making payments to highway and building contractors by the State? The penalty of Senate Bill 110 is totally out of sync with the problem being addressed by the Kansas Insurance Department Building.

All of the redrafting of this Bill, all of the amendments made and proposed on this Bill, have not cured the many and various misapplications which could and will arise from implementation of this legislation. We urge the committee to reject Senate Bill 110. We believe the Kansas Insurance Department has sufficient power and authority through present statutes and regulations to address each and every improper insurance payment delay which has been brought to their attention.

Respectfully submitted,



Richard W. Scott
Divisional Claim Superintendent
State Farm Insurance Companies

RWS/R75mlb*