

Approved _____

Date

2/9/89

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by RICHARD L. BOND at _____
Chairperson

9:00 a.m./~~p.m.~~ on TUESDAY, FEBRUARY 7, 1989 in room 529-S of the Capitol.

~~All~~ members were present ~~except~~: Senators Anderson, Bond, Karr, Kerr, Parrish, Reilly, Salisbury, Strick, Yost, and Moran.

Committee staff present:

Bill Edds, Revisor's Office
Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Jim Maag, Kansas Bankers Association
Ron Todd, Assistant Commissioner of Insurance
Larry Magill, Independent Insurance Agents
David Hanson, Kansas Association of Independent Insurers and Kansas Association of Property and Casualty Insurers

Chairman Bond called the meeting to order at 9:10 a.m.

Jim Maag, Kansas Bankers Association, requested the privilege of presenting an amendment to an existing statute which would further define limited partnership as it relates to the state banking code. (attachment 1)

Senator Yost made the motion that the committee allow this bill to be introduced. Senator Kerr seconded the motion and the motion carried.

SB 106 - Bill Edds, Revisor's Office, informed the committee of the major points in this bill. It provides that the Commissioner may issue a cease and desist order if he deems an act or practice to be unlawful, also, the bill makes provision for an emergency cease and desist order after proper notification. SB 106 also allows the Commissioner, after notification and a hearing, to censure the person being regulated or impose a fine up to \$5000.

Ron Todd, Assistant Commissioner of Insurance, told the committee that the purpose of this bill was not to seek any new requirements but to put more teeth into the rules and regulations they already have. SB 106 will give the Insurance Department an all-purpose enforcement section which they need for various reasons including, (1) one specific penalty for person using a policy that has not been filed with the Commissioner, (2) violations relative to the cancellation of auto insurance, (3) and agencies operating without a license.

Larry Magill, Independent Insurance Agents, appeared in opposition to SB 106. Mr. Magill said that, because of the nature of their membership, the complexity of the present laws were beyond the comprehension of most of their membership. He also stated that his organization was concerned about the bill because there were a lot of inadvertent violations such as an agency forgetting to license an employee for a new company the agency might begin business with. He also stated that they were concerned because there was no maximum on multiple violation situations. Mr. Magill said there were already penalties in place in the statutes and that this bill would

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529 S, Statehouse, at 9:00 a.m./~~p.m.~~ on TUESDAY, FEBRUARY 7, 1989

give broad blanket authorization to the Commissioner. Mr. Magill said that passage of this bill would have substantial greater impact on the agents than on companies and that a \$5000 fine would be a substantial amount to small agents. According to Mr. Magill, a major problem with the proposal is the uncertainty of what types of violation would be included. (attachment 2)

David Hanson, Kansas Association of Independent Insurors and Kansas Association of Property and Casualty Insurors, appeared in opposition to the bill. Mr. Hanson said that they supported the points expressed by Mr. Magill. He said that his organizations were content operating with the status quo and that they were concerned with the latitude given the Insurance Department and that any violation would be subject to a rather serious fine imposed by the Commissioner.

Following considerable discussion, Chairman Bond stated that the committee should study this matter in more depth and that some guide lines needed to be set for appropriate violations. He further asked the Insurance Commissioner to prepare alternate language.

SB 109 - Ron Todd emphasized to the committee that all this bill does is put in the proper statutory reference. Senator Salisbury made the motion that the bill be passed out favorably and Senator Reilly seconded the motion. The motion carried and the bill passed.

The meeting was adjourned at 10:00 a.m.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

Tues. Feb. 7, 1989

DATE NAME ADDRESS REPRESENTING

<i>2/7/89</i>	<i>David Hanson</i>	<i>Topeka</i>	<i>KS Assoc of Prop + Cas.</i>
<i>"</i>	<i>Ron Tedd</i>	<i>"</i>	<i>Ks. Ins. Dept</i>
<i>2/7/89</i>	<i>Bread Smoot</i>	<i>Topeka</i>	<i>Bank III</i>
<i>"</i>	<i>LARRY MAGILL</i>	<i>"</i>	<i>I. I. A. K.</i>

STATUTORY AMENDMENT

SEC. 1. K.S.A. 1988 Supp. 9-1104 is hereby amended to read as follows: 9-1004.

(a) The total liability to any bank of any person, co-partnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof, and, except as provided herein for the liability of a limited partner, including the liabilities of a member of a copartnership or association the liability of the copartnership or association, shall not at any time exceed 15% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank. If under the limited partnership agreement a limited partner is not liable for the debts or actions of the partnership, the liability of the limited partnership shall not be included in the liability of the limited partner. These limitations on total liability to any bank are subject to the following:

(1) So long as the obligation of a drawer, endorser or guarantor remains a secondary, . . .

SEC. 2. K.S.A. 1988 Supp. 9-1104 is hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the statute book.

*Attachment 1
Fin. Inst. & Ins.
2/7/89*

Testimony on SB 106
Before the Senate Financial Institutions & Insurance Committee
February 7, 1989
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

Thank you, Mr. Chairman, and members of the committee for this opportunity to appear in opposition to SB 106. SB 106 seeks to give the Insurance Department broad administrative authority to impose fines up to \$5,000 per violation of any of the insurance statutes in our state on insurance companies, agents and brokers, with no maximum on the number of \$5,000 fines per type of violation.

We have a number of concerns about the bill. Because of the complexity and sheer volume of insurance laws and regulations, it is virtually impossible for agents to have a thorough understanding of all the laws and regulations. Unlike insurance companies, agents do not have attorneys on their staffs.

Secondly, we know that a number of inadvertent violations occur today by agents who are not aware that they are violating Kansas insurance statutes or regulation. Two examples would be the excess and surplus lines law where the law requires that coverage not be available from any admitted market before it can be placed in a non-admitted market. This is a nearly impossible standard to meet and could always form the basis for a fine. A second area where an inadvertent violation could occur would be in the company certification process by a licensed agent. If an agent contracted with a new company that failed to license all people in their office, anybody not certified with that new carrier could be in violation of Kansas insurance statutes every time they sold a policy for that carrier. In both of these instances, we do not think that consumers' interests have been

*Attachment 2
Sen. Fin Inst & Ins.
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hurt necessarily, but they could lead to severe fines nevertheless.

We have a serious reservation about the lack of a maximum on the number of violations involving the same mistake. For example, an agent that was not certified to represent an insurance company could sell hundreds of policies before the mistake was caught. This could lead to hundreds of fines for essentially the same mistake.

There are already a number of penalty statutes in the major consumer laws in Kansas including the adverse underwriting decision law and the Unfair Trade Practices Act. There are general statutes giving the Insurance Department the right to call hearings and suspend or revoke an agent's license. Frankly, I did not know the insurance code well enough to know where all of the penalties are, but I suspect that there are far more than anyone realizes.

While we have no concerns about the administration of the Insurance Department under Commissioner Fletcher Bell, we are concerned about subsequent commissioners. Obviously, a statute like this giving broad general authority to the commissioner could be abused by a subsequent one.

We are also unclear as to whether the NAIC has any model act similar to this legislation or whether other insurance departments have similar "broad brush" authority to impose significant penalties.

We have questions about whether the actions of a company that an agent represents can provide the basis for a penalty or fine against the agent as well as the company. Under agency law, the agent is generally representing the insurance company. If a company breaks a law, can the agent also be fined?

Finally, we would like to point out to the committee that there is

a substantially greater impact on insurance agents from this legislation than on insurance companies, because of the vast difference in resources. If you compare the financial statement of an Aetna, a Travelers or a St. Paul to the financial statement of our average member, you would see that this legislation is far more than the additional "hammer" referred to by the Insurance Department, but more like a mack truck hitting agents.

We are appearing in opposition to this legislation reluctantly, We do not want it to be construed that we are supporting a lax attitude by the Insurance Department or the state of Kansas toward agents who violate the insurance laws, especially where consumers suffer. We totally agree that the Department ought to have ample authority to deal with serious violations in the statutes, whether committed by agents or companies.

Nevertheless, we have grave concerns about the financial impact of this legislation on agents who may inadvertently violate Kansas laws, reservations about how the act would be applied and concerns about the size and complexity of the insurance laws in our state and the number and type of violations that could be brought under this type of a "broad brush" approach.

For all of these reasons, we must oppose the legislation and urge the committee to not act favorably on it. Thank you very much for your time and consideration.