

Approved _____

Date

2/14/89

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

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

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

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

Committee staff present:

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

Conferees appearing before the committee:

Dick Brock, Administrative Assistant, Kansas Insurance Department
David Hanson, Kansas Life Associates and Kansas Property and Casualty Insurance
Robert E. Keeshan, Attorney
Stephen Robertson (in absentia), Health Insurance Association of America

Chairman Bond called the meeting to order at 9:13 a.m.

SB 108 - Staff informed the committee members that this bill adds an additional provision concerning cancellation of a health insurance policy.

Dick Brock, Kansas Insurance Department, appeared in support of the bill which was introduced at the request of his department. Mr. Brock stated that this bill was introduced to address a problem some Kansas citizens had experienced and that all it does is permit individual accident and sickness policyholders to cancel the policy and be entitled to a refund of any unearned premium. (attachment 1)

In answer to an inquiry by a committee member, Mr. Brock stated that if benefits have been paid on the policy and they exceed the unearned premium, then there would be no refund. Another committee member asked about the effect it would have on prepaid policies and Mr. Brock answered that it would affect them the most. He also stated that SB 108 would only deal with individual accident and health policies.

Stephen Robertson, Health Insurance Association of America, sent written testimony to the committee opposing SB 108. (attachment 2)

Following further discussion, Senator Kerr made the motion that the committee pass the bill out favorably. The motion was seconded by Senator Parrish. The motion carried and SB 108 was passed out favorably.

SB 110 - Dick Brock, Kansas Insurance Department, appeared in support of this bill which was introduced by the committee at the Department's request and attempts to address a problem which arises frequently enough that the Department feels that SB 110 is needed. This bill would provide that after the insurer and the claimant have reached an agreement and both are aware of the amount to be paid, then payment must be made by the insurance company within 15 business days. If payment is not made, then a penalty of 18% per annum would be imposed. This bill would not apply to life insurance claims or to automobile insurance as these two areas are covered by specific statues. (attachment 3)

Considerable discussion followed. David Hanson, Kansas Life Associates and Kansas Property and Casualty Insurance, appeared before the committee briefly and said that he would like to have the term "final determination" clarified. He also stated that the 15 business days would not allow enough time to get everything accomplished in some cases. Robert E. Keeshan, Attorney, appeared in support of SB 110. He stated to the committee that present statues did not adequately protect the policyholder against delay of payment by the insurance companies and he would like to see stronger penalties imposed on a company which delays payment, thus preventing the policyholder from having the use of his money. (attachment 4)

CONTINUATION SHEET

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

Senator Yost made the motion to amend the bill by deleting the language following "payable" on line 24 and ending with the word "filed" on line 27. Senator Kerr seconded this motion and the motion carried.

Senator Yost made a motion to change the 15 business days in SB 110 to read 30 calendar days. Senator Salisbury seconded this motion and the motion carried.

Discussion continued with a committee member inquiring how one would arrive at the point of "final determination" if oftentimes the agreement is verbal. Mr. Brock answered that that the point begins when the authorization is given, written or oral. Another committee member asked about making a distinction between "final judgment" and "final determination". A committee member queried if section 3 of the bill was relevant at all.

Senator Yost made the motion to delete section 3 of the bill. Senator Reilly seconded the motion. The motion carried.

Senator Yost made a motion to amend the bill further by changing the interest rate from 18% per annum to 1% a day up to 100%. Senator Parrish seconded the motion and the motion carried.

Chairman Bond requested Staff to balloon, clean-up, and clarify the language in SB 110 per committee action and the committee would consider the amended bill next week.

The minutes of February 6 and 7 were approved as written on a motion of Senator Reilly with Senator Salisbury seconding the motion. The motion carried.

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

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

Thurs. Feb. 9

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/9	Bob Keeshan	Topeka	HPTK
2/9	Dick Brock	"	Ks Ins Dept
	John Peterson		4th Federal Corp
2/9	Jim Hacc	TOPEKA	SECURITY BENEFIT LIFE
2/9	JIM OLIVER	"	PIA of Ks
2/9	David Hanson	"	KS Life Assoc KS Assoc P & C
2/9	LARRY MAGILL	"	IIAK
"	Dick Scott	Overland Park	State Farm Ins

TESTIMONY BY

DICK BROCK
ADMINISTRATIVE ASSISTANT
KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

SENATE BILL NO. 108

FEBRUARY 9, 1989

*Attachment 1
Sen. Fin Inst & Ins
2/9/89*

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. The Insurance Department has adopted 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 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 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 and, 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.

Consequently, the Insurance Department has 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 currently contains 12 provisions every accident and sickness policy must contain. Subsection (B) of the current law 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).

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.

STATEMENT TO THE SENATE COMMITTEE
ON FINANCIAL INSTITUTIONS AND INSURANCE
OF THE KANSAS LEGISLATURE
CONCERNING SENATE BILL 108

FEB 8 - 1989

LEGAL DEPT

The Health Insurance Association of America (HIAA) represents approximately 350 insurance companies responsible for over 85% of the health insurance written by insurance companies in the United States today. As a result, in Kansas or any of the 50 states, when legislation affecting health insurance is introduced, the HIAA is concerned.

The proposed amendments to K.S.A. 40-2203 contained in SB 108 are opposed by the HIAA for the following reasons:

Proposed amendments to K.S.A. 40-2203 would amend the Kansas version of the National Association of Insurance Commissioners 1950 Uniform Policy Provision Law (UPPL). The UPPL requires individual health insurance policies to use the mandatory provisions in Subsection A and allows the use of the optional provision in new Paragraph (13) would make mandatory the provisions now contained in Paragraph (B)(8) dealing with cancellations that is presently optional.

Paragraph (B)(8) is optional under the UPPL because in the 1950's, health insurance was evolving and it was written by casualty companies (which normally write auto and homeowners insurance) and life insurance companies.

A life insurance premium is deemed fully earned when paid because active life reserves must be maintained for the period for which premiums are paid. In contrast, in casualty insurance, premiums are deemed earned as coverage is provided through the period for which premiums are paid. Thus, a refund of "unearned" premium is appropriate in casualty insurance only.

Today, health insurance is written by both life and casualty companies. Some companies compute reserves for health insurance like life insurance which means premiums were fully earned when paid. In casualty companies, health insurance is more often treated like casualty insurance (auto and homeowners) and premiums are deemed earned only if coverage is provided which results in reserves being calculated in a like fashion. The cancellation provision should be optional to allow treatment of premiums and reserves in accordance with the method of providing coverage. Additionally, health insurance is written on a guaranteed renewable form of contract that resembles the permanent nature of life insurance. In these forms, additional reserves are required and they are based on permanent concepts of coverage which is "premiums are fully earned when paid." In other forms of health insurance that are optionally renewable, the characteristics of permanent life insurance are not present and then therefore additional reserves are not required. In these forms of coverage, it is not necessary to treat premiums as fully earned when paid and a refund of "unearned" premiums might be more appropriate when the insured cancels.

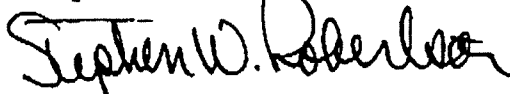
*Attachment 2
Sen. Fin Inst 5/89
2/9/89*

For these reasons, it is appropriate to have provisions for cancellation that are an option in the statute as in Paragraph (B)(8) to allow use of the cancellation provision in appropriate forms of health insurance. It would be inappropriate to make such cancellation provisions mandatory as this bill would require, since a refund or premium for guaranteed renewable forms of policies would be inconsistent with the necessity to treat such policies like permanent life insurance. This would require the maintenance of additional active life reserves required for these kinds of policy forms.

As long as the cancellation provisions and their ramifications are disclosed to policyholders, the consumer should continue to make an informed choice.

The HIAA appreciates the opportunity to submit this statement on Senate Bill 108. If there are additional questions or information needed, please do not hesitate to contact the undersigned.

Respectfully submitted,



Stephen W. Robertson
Senior Counsel
Health Insurance Association of
America

REMARKS BY

DICK BROCK
ADMINISTRATIVE ASSISTANT
KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

SENATE BILL NO. 110

FEBRUARY 9, 1989

*Attachment 3
Sen. Fin Inst & Ins
2/9/89*

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.

Article 24 of chapter 40 of Kansas Statutes Annotated contains 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. 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.

Senate Bill No. 110 is much simpler than that. Senate Bill No. 110 would come into play only after the claimant and the insured have agreed or both are otherwise aware of the amount to be paid. In other words,

everything is done except writing the check. When this point of agreement or acceptance is reached, Senate Bill No. 110 allows the insurer 15 business days -- 3 weeks -- to pay the claim. This should be more than ample time.

The bill applies to any claim other than the payment of death proceeds under life insurance policies and personal injury protection benefits under private passenger automobile insurance policies. These two areas are covered by separate, specific statutes and there seems to be no need for duplication or alternatives. As the language of the bill evidences, the possibility of appeals from judgements and claims that are paid in other than a lump sum have been recognized.

In summary, we see absolutely no reason a claimant under an insurance policy should not be entitled to prompt payment of their claim once the amount payable is known. Similarly, we know of no legitimate reason that insurers should not make prompt payment. Most of the time most companies do but there are too many instances when they don't. Senate Bill No. 110 will, we believe, provide an incentive to pay promptly and a disincentive to procrastinate by imposing a significant but realistic penalty of 18% per annum on payments not made within 15 business days of determination. It won't affect insurers and claims that are paid in a reasonable time -- only those that aren't.

We believe Senate Bill No. 110 is needed and is worthy of your support.

STATEMENT OF
ROBERT E. KEESHAN
In Support of S.B. 110

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 15 days are Appropriate.

Similar penalties are provided for insurance companies. K.S.A. 40-3110. Stronger penalties may be appropriate. (H.B. 2044 - 1% a day) (K.S.A. 44-315(b) [1% a day to 100%]).