

Approved \_\_\_\_\_

Date

2/20/89

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 WEDNESDAY, FEBRUARY 15, 1989 in room 529-S of the Capitol.

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

Committee staff present:

Bill Wolff - Legislative Research  
Bill Edds - Revisors Office  
Myrta Anderson - Legislative Research  
Louise Bobo - Committee Secretary

Conferees appearing before the committee:

Ron Todd, Assistant Commissioner of Insurance  
Larry Magill, Independent Insurance Agents

Chairman Bond called the meeting to order at 9:15 a.m.

SB 106 - Ron Todd, Assistant Commissioner of Insurance, explained the ballooned version of this bill which was requested by the committee on February 7, 1989. Mr. Todd explained that the ballooned version attempted to meet two of the main objections: (1) the penalties were open-ended and (2) not make the penalty quite so onerous as it relates to the agents and brokers. Mr. Todd explained that the main purpose of this bill was to have the option of an intermediate penalty rather than imposing a flat suspension. (attachment 1)

Larry Magill, Independent Insurance Agents, spoke before the committee briefly stating that his organization appreciated the approach the Insurance Department was trying to take, however, there were no general guidelines and there was a need for a continuing education process to keep abreast of new language and new laws. With reference to Mr. Todd's earlier statement that the language in SB 108 closely parallels that of the Unfair Trade Practices Act, Mr. Magill reminded the committee that it had been about four years since that Act was written. Mr. Magill continued that he was concerned about several points in the bill; (1) the phrase in line 57 "should have known", (2) the possibility that someone in an office who is a clerical employee might be fined excessively and (3) the penalty on companies is in multiples of five while the penalty on agents is in multiples of ten.

It was suggested by a committee member that it should be incorporated into the minutes that it was the understanding of the committee that the wording in Section 2, subsection (e), the penalty section, means that a violation of any of the acts listed in subsection (a) of Section 2 would place a person at risk to have penalties imposed by this section.

Following further discussion, Senator Parrish made a motion to change the amount of \$5000 in section (e) to \$2500 and, in the same section, the amount of \$10,000 to \$5000. Senator Karr seconded the motion. The motion passed.

Senator Salisbury moved that the committee vote favorably for the ballooned amendments. Senator Reilly seconded the motion and the motion carried.

Senator Salisbury made the motion to pass SB 106 out of committee as amended. Senator Yost seconded the motion. The motion carried and SB 106, as amended, was passed out of committee favorably.

Chairman Bond announced to the committee that SB 110 would be held over until Thursday, February 16, and that Bill Edds has a ballooned version of that bill for consideration.

The meeting was adjourned at 9:55 a.m.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

Wed. Feb. 15

DATE	NAME	ADDRESS	REPRESENTING
2/15	Pam Scott	Topeka	Ks Ins Dept
"	Ron Todd	"	" " "
	Dick Scott	OP Kc	State Farm Ins
"	R.G. Fry	Topeka	KTLA
	Lori Callahan	Topeka	AIA
	Lee Wright	Ovula Park	Farmers Ins. Group
	Daryl Richardson	Topeka	Kansas Ind & Cas. Co.
"	David Hanson	Topeka	Ks LIFE ASSOC & Ks ASSOC PROP CAS.
"	Mr. Hawver	"	Can-Journal
"	LARRY MAGILL	"	IAA
"	Dick Brock	Topeka	Ins Dept
"	Glenn Cogswell	Topeka	Alliance of Am. Insurers

SENATE BILL No. 106

By Committee on Financial Institutions and Insurance

1-30

15  
16 AN ACT relating to insurance; authorizing the commissioner of in-  
17 surance to impose administrative penalties on certain persons vi-  
18 olating the insurance laws, administrative rules and regulations or  
19 orders issued thereunder.

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

21 Section 1. (a) If the commissioner determines after notice and  
22 opportunity for a hearing that any person has engaged or is engaging  
23 in any act or practice constituting a violation of any provision of  
24 Kansas insurance statutes or any rule and regulation or order there-  
25 under, the commissioner, by order, may require that such person  
26 cease and desist from the unlawful act or practice and take such  
27 affirmative action as in the judgment of the commissioner will carry  
28 out the purposes of the violated or potentially violated provision.

29 (b) If the commissioner makes written findings of fact that there  
30 is a situation involving an immediate danger to the public health,  
31 safety or welfare or the public interest will be irreparably harmed  
32 by delay in issuing an order under subsection (a), the commissioner  
33 may issue an emergency temporary cease and desist order. Such  
34 order, even when not an order within the meaning of K.S.A. 1988  
35 Supp. 77-502 and amendments thereto, shall be subject to the same  
36 procedures as an emergency order issued under K.S.A. 1988 Supp.  
37 77-536 and amendments thereto. Upon the entry of such an order,  
38 the commissioner shall promptly notify the person subject to the  
39 order that: (1) It has been entered, (2) the reasons therefor and (3)  
40 that upon written request within 15 days after service of the order  
41 the matter will be set for a hearing which shall be conducted in  
42 accordance with the provisions of the Kansas administrative proce-  
43 dure act. If no hearing is requested and none is ordered by the  
44 commissioner, the order will remain in effect until it is modified or

*Attachment 1  
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45 vacated by the commissioner. If a hearing is requested or ordered,  
46 the commissioner, after notice of and opportunity for hearing to the  
47 person subject to the order, shall by written findings of fact and  
48 conclusions of law vacate, modify or make permanent the order.

49 (c) If, after notice and an opportunity for hearing, the commis-  
50 sioner finds that a person has violated the insurance laws of this  
51 state or a rule and regulation of the commissioner, the commissioner,  
52 in addition to any specific power applicable to such violation, may:

53 (1) Censure the person; or

54 (2) issue an order against any person who violates the insurance  
55 laws of this state, or a rule and regulation, or order of the com-  
56 missioner, imposing an administrative penalty up to a maximum of  
57 \$5,000 for each violation.

but not to exceed \$25,000 for the same violation occurring within any six consecutive  
calendar months unless such person knew or reasonably should have known the act was a  
violation of the insurance laws, rules and regulations or order of the commissioner.  
If the person knew or reasonably should have known the act was a violation as afore-  
mentioned the commissioner may impose a penalty up to a maximum of \$10,000 for each  
violation but not to exceed \$50,000 for the same violation occurring within any six  
consecutive calendar months.

58 (d) For purposes of this act:

section

59 (1) "Person" means any individual, corporation, association, part-  
60 nership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal  
61 benefit society and any other legal entity engaged in the business  
62 of insurance, ~~including agents, brokers and adjusters.~~ Person also  
63 means mutual nonprofit hospital service organizations, nonprofit  
64 medical service corporations, nonprofit medical and hospital service  
65 corporations, as defined in articles 18, 19 and 19c of chapter 40 of  
66 the Kansas Statutes Annotated and amendments thereto; adminis-  
67 trators, as defined in article 38 of chapter 40 of the Kansas Statutes  
68 Annotated and amendments thereto; and health maintenance orga-  
69 nizations, as defined in article 32 of chapter 40 of the Kansas Statutes  
70 Annotated and amendments thereto and prepaid service plans as  
71 defined in article 42 of chapter 40 of the Kansas Statutes Annotated  
72 and amendments thereto.

but shall not include insurance agents licensed pursuant to K.S.A. 40-241 or 40-246  
or insurance brokers licensed pursuant to K.S.A. 40-3701 et seq.

73 (2) "Commissioner" means the commissioner of insurance of this  
74 state.

Sec. 2. K.S.A. 40-242 is hereby amended to read as follows: 40-242 (See attached)

75 ~~Sec. 2.~~ This act shall take effect and be in force from and after  
76 its publication in the statute book.

3

(a) The commissioner of insurance may impose a penalty prescribed by subsection (e) of this section or revoke or suspend the license of any broker or agent in the event that investigation by the commissioner discloses the fact that such license was obtained by fraud or misrepresentations or that the holder of such license had misrepresented the provisions, terms and conditions contained in any contract of insurance or that the holder of such license has rebated the whole or any part of any insurance premium or offered in connection with the presentation of a contract of insurance any other inducement not contained in the contract of insurance, or that the holder of such license has intentionally omitted any material fact in such presentation, or that the holder of such license has made any misleading representations or incomplete comparisons of policies to any person for the purposes of inducing or tending to induce such persons to lapse, forfeit or surrender such person's insurance then in force, or in the event that the interests of the insurer or the insurable interests of the public are not properly served under such license. Actions affecting any license or imposing any penalty shall be taken only after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) The imposition of a penalty, or the lapse or suspension of any license by operation of law, by failure to renew or by its voluntary surrender shall not deprive the commissioner of jurisdiction or right to institute or proceed with any disciplinary proceeding against such licensee, to render a decision suspending or revoking such license, or to establish and make a record of the facts of any violation of law for any lawful purpose. No such disciplinary proceedings shall be instituted against any licensee after the expiration of two years from the termination of such license.

(c) In the event the commissioner of insurance imposes a penalty as permitted under subsection (e) of this section or suspends or revokes the license of any agent or broker, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against the broker or agent who is the subject of the hearing or the company or companies represented by such broker or agent who is the party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with the reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(d) No person whose license as an agent or broker has been suspended or revoked shall be employed by any insurance company doing business in this state either directly, indirectly, as an independent contractor or otherwise to negotiate or effect contracts of insurance, suretyship or indemnity or do any act toward soliciting or otherwise transacting the business of insurance during the period of such suspension or revocation.

(e) In lieu of revocation or suspension of the agent's or broker's license, the commissioner may:

(1) Censure the person; or

(2) issue an order imposing an administrative penalty up to a maximum of \$500 for each violation but not to exceed <sup>2500</sup> \$5,000 for the same violation occurring within any six consecutive calendar months unless the agent or broker knew or reasonably should have known the act could give rise to disciplinary action under subsection (a) of this section. (If the agent or broker knew or reasonably should have known) the act could give rise to disciplinary proceedings as aforementioned the commissioner may impose a penalty up to a maximum of \$1,000 for each violation but not to exceed ~~\$10,000~~ <sup>5,000</sup> for the same violation occurring within any six consecutive calendar months.

*Revised  
guaranteed*