

Approved February 6, 1990
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 January 31, 89 in room 531-n of the Capitol.

All members were present except:

Representative Theo Cribbs, absent
Representative Delbert Gross, excused

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:

see attached list

The Chairman called the meeting to order at 3:40 p.m. and directed the Committees attention to the minutes of January 23 and January 24, 1990.

Representative Helgerson made a motion to approve the minutes of January 23 and January 24, 1990. Representative Turnbaugh seconded. Motion carried.

Bill Sneed, State Farm Insurance presented a bill request (Attachment 1) which would allow assessments paid by foreign insurance companies into their domestic states guaranty associations, when that guaranty association is not connected with the State, be excluded when retaliatory taxes are determined by the various states.

A motion was made by Representative Helgerson to introduce the bill, seconded by Representative Turnquist. The motion carried.

The Chairman asked Emalene Correll, Research Department to give an overview of the testimonies heard at the Joint Insurance Committee meeting, January 30, 1990.

Emalene Correll, Research Department explained the many concepts heard at the joint meeting. Ms. Correll brought to the attention several areas of general topics which could be further investigated. She impressed on the Committee the multidimensional problem of health care, that it cannot be looked at in one or two aspects and that the solving of one problem leads to the effect on another.

The Chairman asked the Committee to think about four or five general area topics on specific component parts of health care, to use for some indepth hearings scheduled for next week.

The Committee directed their attention to action on previously heard bills.

HB 2655 -- relating to firefighters relief associations; concerning calculation of tax distributions to be made thereto; amending K.S.A. 1989 Supp. 40-1706 and repealing the existing section.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N, Statehouse, at 3:30 ~~xx~~ a.m./p.m. on January 31, ~~19~~ 89.

Bill Edds, Revisor of Statutes reminded the Committee that a similar bill, SB 55 relating to firefighters relief association, was still in the committee and could be amended into HB 2655.

SB 55 -- concerning the firefighters relief act; relating to expenditures from the firefighters relief fund.

Representative Sawyer made a motion to amend SB 55 into HB 2655. Representative Littlejohn seconded. The motion carried.

A motion was made by Representative Sawyer, seconded by Representative Littlejohn to recommend HB 2655, as amended, favorable for passage. The motion carried.

HB 2654 -- concerning rate filings of certain rating organizations and authority of the commissioner of insurance with respect thereto.

Representative Hoy made a motion to recommend HB 2654 favorable for passage. Representative Turnbaugh seconded. The motion carried.

HB 2652 -- concerning licensing of agents and penalties for failure to provide information to the commissioner of insurance; amending K.S.A. 1989 Supp. 40-240 and repealing the existing section.

Representative Turnquist made a motion to change the language on page 2, line 18 from 15 days to 30 days. Representative Brown seconded. The motion carried.

A motion was made by Representative Turnquist, seconded by Representative Brown to recommend HB 2652, as amended, favorable for passage. The motion carried.

The meeting was adjourned at 5:00 p.m.

M E M O R A N D U M

TO : Dale Sprague
House Insurance Committee

FROM : William W. Sneed
State Farm Insurance Company

DATE : January 23, 1990

RE : Kansas Retaliatory Law

A. Introduction

The first portion of this memo contains a general explanation of retaliatory taxes imposed upon insurance companies. The general discussion will be followed by a description of the Kansas retaliatory tax statute and the issue presently at hand. In order to understand the issue and State Farm's basis for disagreeing with the Kansas Department's position regarding the retaliatory tax statute's application to the Illinois Insurance Guaranty Fund assessments, this memo briefly describes the Illinois Insurance Guaranty Fund.

B. Retaliatory Taxes

1. General Discussion

State retaliatory tax statutes deal with the taxation of insurance companies that are not domiciled in the state that is imposing the retaliatory tax. For purposes of this discussion, the insurer subject to the retaliatory tax will be referred to as a foreign insurer and the state imposing the retaliatory tax will be referred to as the retaliating state. Typically, the retaliatory

tax statute calculates the amount of the retaliatory tax imposed upon a foreign insurer by substituting the general tax laws of the foreign insurer's state of domicile for the general tax laws of the retaliating state. This is done by applying the foreign insurer's home state tax laws to the business conducted by the foreign insurer in the retaliating state. If the foreign insurer's state of domicile has tax laws that are more burdensome than the retaliating state's tax laws, the foreign insurer pays a tax to the retaliating state equal to the tax which ~~Wednesday~~^{would} be imposed by the foreign insurer's home state.

A simply~~y~~ example can illustrate the application of the retaliatory tax laws. Assume Insurer A is domiciled in State A and received \$100 of premiums for business done in State B. State B imposes a premium tax at a rate of 2% which would result in \$2.00 of premium tax. State A, however, imposes a premium tax at a rate of 3%. State B's retaliatory tax statute would require Insurer A to pay the greater retaliatory tax of \$3.00 to State B. The retaliatory tax is calculated by applying State A's tax rate of 3% to the \$100 of premiums received by Insurer A for its business done in State B, the retaliating state.

2. Kansas

With the general background of retaliatory tax statutes in mind, this discussion will now focus upon K.S.A. 40-253, which is the Kansas retaliatory tax statute. As you will see from your review of K.S.A. 40-253, Kansas' retaliatory tax statute requires an insurer doing business in Kansas to pay a retaliatory tax to

Kansas if the foreign insurer's home state burdens, which would be imposed on a similar Kansas insurance company doing business in the foreign insurer's home state equal to the amount of business conducted by the insurer in Kansas, exceed the Kansas burdens imposed upon the insurer. Thus, it is open to interpretation what types of burdens should be considered for purposes of calculating the Kansas retaliatory tax.

The issue that the proposed legislation relates to is whether assessments made by the Illinois Insurance Guaranty Fund should be treated as an Illinois burden for purposes of computing the Kansas retaliatory tax.

The Kansas retaliatory tax statute defines the burdens to be compared as follows:

. . . any deposit of securities in such state or country for the protection of policyholders therein, or otherwise, or any payment for taxes, fines, penalties, certificates of authority, licenses, fees, compensation for examination, or otherwise . . .

The Kansas Department is contending that assessments paid to the Illinois Insurance Guaranty Fund should be considered as a burden in Illinois for purposes of calculating the Kansas retaliatory tax. The Illinois Insurance Guaranty Fund is a private non-governmental non-profit organization which is designed to pay claims to policyholders of member insurance companies that become insolvent. Although an insurance company must be a member of the Fund in order to do business in Illinois, the contributions to the Fund are not levied by or paid to the state or any other governmental unit.

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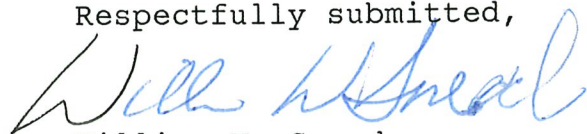
Furthermore, contributions to the Fund are refunded to the member insurers to the extent of any recoveries from the insolvent insurance companies.

The characteristics of the Illinois Insurance Guaranty Fund distinguish the assessments paid to it from general taxes. The purpose of the retaliatory tax statute is to equalize the state tax burdens imposed upon insurance companies. Because assessments paid to a fund which are used to pay claims of insolvent insurance companies in Illinois are not in the nature of taxes, the assessments paid to the Illinois Insurance Guaranty Fund should not generate a retaliatory tax liability in Kansas, or any other state. However, the Kansas Department's interpretation of the Kansas retaliatory tax statute has the effect of imposing a Kansas tax for assessments used to pay the claims of policyholders of insolvent Illinois insurance companies.

C. Conclusion.

Attached to this memorandum is a proposal which would codify that such assessments would not be considered as "taxes" under Kansas retaliatory laws. We appreciate your assistance and would respectfully request that the attached proposal be considered by your committee.

Respectfully submitted,


William W. Sneed