Approved February 12, 1990
Date

MINUTES OF THE House COMMITTEE ON Insurance.

The meeting was called to order by Dale Sprague at
Chairperson

3:30 xx.m./p.m. on February 6, , 89 in room 531-n of the Capitol.

All members were present except:

Representative Helgerson, excused
Representative Hoy, 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 meeting was called to order at 3:40 p.m.

Representative Littlejohn made a motion to approve the minutes of January 30, and January 31, 1991. Representative Flower seconded. The motion carried.

Bob Frey, Kansas Trial Lawyers requested the committee to introduce a bill (Attachment 1) making legislative changes in K.S.A. 40-284, subsection B, involving underinsured motorist.

A motion was made by Representative Gross, seconded by Representative Cribbs to introduce the bill. The motion carried.

Representative Turnbaugh requested the committee to introduce a bill (Attachment 2) relating to the cancellation or termination of certain agency contracts.

Representative Littlejohn made a motion to introduce the bill. Representative Wells seconded. The motion carried.

The Committee began hearings on HB 2676, HB 2701 and HB 2722.

HB 2676 -- relating to health maintenance organizations; concerning contract provisions; amending K.S.A. 1989 Supp. 40-3209 and repealing the existing section; also repealing K.S.A. 1989 Supp. 40-3209a.

Chris Courtwright, Legislative Research Department gave an overview of the bill. He explained that HB 2767 was a request of the Insurance Department and would amend Supp. 40-3209 to mandate that all written contracts between HMO's and providers, stipulate that enrollees or their covered dependents will not be liable to the provider for any amounts that should have been paid by the HMO. The bill also clarifies language that the enrollees will never be held liable for such covered services even if there is no written contract between the provider and the HMO.

Dick Brock, Insurance Department provided testimony (Attachment 3) stating that the bill was designed to clarify the relationship between subscribers to a health maintenance organization and the health care providers who provide health care services pursuant to such subscription agreements.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N, Statehouse, at 3:30 xx.m./p.m. on February 6, 19 90.

Briefly appearing in favor of HB 2676 was Cheryl Dillard, HMO.

There were no other wishing to testify and the hearings on HB 2676 were closed.

HB 2701 -- relating to health maintenance organizations; concerning deposit requirements; amending K.S.A. 1989 Supp. 40-3227 and repealing the existing section.

Chris Courtwright, Research Department gave a brief overview of the bill. He explained that HB 2701 was a request of the Insurance Department and would amend K.S.A. 1989 Supp. 40-3227 to raise the annual deposit requirement for new HMO's from $25,000 to $100,000.

Dick Brock, Insurance Department provided testimony (Attachment 4) which suggests a significant increase in the deposit requirements applicable to health maintenance organizations. Mr. Brock explained that this increase would be effective for all HMO's becoming licensed in Kansas after the effective date of the amended law. However, existing HMO's would continue to be subject the $25,000 requirement until April 1, 1991 and would then be required to increase their deposit by $25,000 annually until the $100,000 requirement is reached.

Briefly appearing in favor of HB 2701 was Cheryl Dillard, HMO.

There were no others wishing to testify and the hearings on HB 2701 were closed.

HB 2722 -- concerning continuing education requirement for agents; amending K.S.A. 1989 Supp. 40-240f and repealing the existing sections.

Chris Courtwright, Research Department gave an overview of the bill. He explained that HB 2722 was a request by the Professional Insurance Agents of Kansas (PIAK) and would amend the new agents licensing law enacted in 1988, providing that the CEC's earned from any approved course other than correspondence or independent courses will be based solely on the amount of time spent of the course and not on satisfactory completion of an examination. Mr. Courtwright suggested that should the Committee decide to move HB 2653 -- concerning licensing of agents requested by the Insurance Department, that these two policy considerations could be coupled into one bill.

Jim Oliver, Professional Insurance Agents provided testimony (Attachment 5) supporting HB 2722 and strongly urged that an agent should receive credit for the maximum 12 continuing education credits considering the number of classroom hours he has spent, even if he has chosen not to attain the recognized professional designation and has not passed the examination.

Dick Brock, Insurance Department testified in opposition to HB 2722 explaining that it would appear unreasonably inconsistent to statutorily provide that continuing education credits assigned to a a particular program should be the same when an examination is taken and successfully completed at the end of the program as it is when the examination is not taken or successfully completed. Mr. Brock asked that should favorable action of this bill be taken that it be amended in Section 3 to provide an effective date of April 1, 1991 (Attachment 6.)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,

room 531-N, Statehouse, at 3:30 xxm./p.m. on February 6, 1989.

Larry Magill, Independent Insurance Agents, briefly appeared in opposition of HB 2722 for reasons previously heard and asked that should favorable action of the bill be taken that it be amended to not include a carryover provision.

There were no others wishing to testify on HB 2722 and the hearings were concluded.

The meeting adjourned at 5:10 p.m.

GUEST LIST

COMMITTEE: Ins Committee DATE: 2/6

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Cheryl Dillard	Kaiser Permanente	Kansas City
Dick Brock	Topeka	Ins Dept
JIM OLIVER	TOPEKA	PIA
Rick Wilson	McPherson	Alliance Ins Co
[illegible]	Topeka	CCTF, AARP
Jayne [illegible]	[illegible]	[illegible]
KRISTIN BRUNGARDT	SALINA	Close Up Foundation
Gary Hauptli	Salina	" " "
Bo BUTTERS	" "	" " "
KIM ALMQUIST	"	" " "
ALAN COBB	Wichita	KS RESP CARE SOC.
CHUCK STUART	Topeka	United School Admin.
LARRY MAGILL	"	IIAK
LISA GETZ	Wichita	ST FRANCIS REGIONAL MEDICAL CENTER

BILL REQUEST

PROPOSED AMENDMENTS TO K.S.A. 40-284 & 287

1. Amend K.S.A. 40-284(b) by changing the words "...to the extent such coverage exceeds the limits of bodily injury coverage ..." to

"...to the extend the amount of damages exceed the limits of bodily injury coverage..."

Reason: K.S.A. 40-284(b) does not provide any underinsured motorist protection when the minimum limits are purchased. Kansas insurers are thus getting a free ride for the first $25,000 worth of coverage.

2. Add at the end of K.S.A. 40-284(d):

"Any limiting provision is void if the named insured has purchased separate coverage on the same risk and has paid a premium calculated for full reimbursement under that coverage."

Reason: K.S.A. 40-284(d) is designed to prevent stacking of coverage. However, many policyholders pay a separate premium for uninsured/underinsured motorist coverage. Present law prohibits stacking these policies to recover full compensation. Many states have added the language shown above to correct this inequity.

3. Amend K.S.A. 40-287 by adding the underlined language as shown below:

"The policy or endorsement affording the coverage specified in K.S.A. 40-284 may further provide that payment to any person of sum as damages under such coverage which duplicate sums received as damages shall operate to subrogate the insurer to any cause of action in tort which such person may have against any other person or organization legally responsible for the bodily injury or death because of which such payment is made, and the insurer shall be subrogated, to the extend of such payment, to the proceeds of any settlement or judgment that may thereafter result from the exercise of any rights of recovery of such person against any person or organization legally responsible for said bodily injury or death for which payment is made by the insurer. Such insurer may enforce such rights in its own name or in the name of the person to whom payment has been made, as their interest may appear, by proper action in any court of competent jurisdiction."

Reason: It is patently unfair that an insurer is entitled to reimbursement through subrogation before the insured (victim) is fully compensated.

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FAX
(913) 357-1729

November 22, 1989

Mr. Richard H. Mason
KANSAS TRIAL LAWYERS ASSOCIATION
700 S.W. Jackson, Suite 706
Topeka, KS 66603

Mr. Timothy M. Alvarez
WELLS, VERBANIC & ALVAREZ
Suite 800, New Brotherhood Bldg.
P.O. Box 171654
Kansas City, KS 66117

Re: legislative changes, underinsured motorist coverage

Dear Gentlemen:

Three serious inadequacies in underinsured motorist coverage have come to my attention. I think we need to push for an amendment this session.

1. K.S.A. 40-284(b) does not provide any underinsured motorist protection when the minimum limits are purchased. Kansas insurers are thus getting a free ride for the first $25,000 worth of coverage.

To illustrate, if a victim with $25,000 in underinsured motorist coverage is injured by a tortfeasor with $25,000 in liability coverage and sustains $50,000 in damages, he gets $25,000 from the tortfeasor and nothing in underinsured motorist coverage. This is because K.S.A. 40-284(b) provides that underinsured motorist coverage must be provided "...to the extent <u>such coverage</u> exceeds the limits of bodily injury coverage carried <u>by...</u>" the underinsured motorist. In this situation, even though the victim has paid a premium for underinsured motorist coverage, he gets nothing for his premium.

Other states have statutes which would provide the victim in this example with $25,000 in underinsured motorist coverage. K.S.A. 40-284(b) would need to be amended to simply change the words "such coverage" to "the amount of damages." See <u>Elovich v. Nationwide Ins. Co.</u>, 104 Wash.2d 543, 707 P.2d 1319 (1985).

Also, another example serves to illustrate the inequity in present Kansas law. Assume 3 people are seriously injured in one accident by a tortfeasor who has $25,000 per person and $50,000 per accident bodily injury liability limits. The 3 split the $50,000 equally, each getting $16,666. Assume each of the three have minimum $25,000 underinsured motorist coverage. Once again, none of them recover any underinsured motorist benefits because none of them have underinsured motorist coverage which exceeds the tortfeasor's bodily injury coverage, and even though none of them actually received those bodily injury limits! Also, assume one of the victims had $50,000 damages and had $100,000 in under insured motorist coverage (such that they really only have $75,000 in actual limits); only $25,000 underinsured motorist benefits would be recovered because the statute only provides coverage to the extent it exceeds the tortfeasor's bodily injury limits---even though those limits were not received!

2. We all know that K.S.A. 40-284(d) was enacted to prevent stacking. Once again, even though each of us pays a separate premium for un/underinsured motorist coverage in each policy, we cannot stack those polices to recover full compensation. However, other states have added a kicker to an anti-stacking statute which states:

> Any limiting provision is void if the named insured has purchased separate coverage on the same risk and has paid a premium calculated for full reimbursement under that coverage.

See Nev.Rev.Stat. 687B.145. How could the insurance industry logically argue against such an addition to K.S.A. 40-284(d)? If this provision were added, either all of our premiums would be reduced or we would all get the coverage for which we're paying.

3. K.S.A. 40-284(f) states that an insurer has a right to subrogation under K.S.A. 40-287. But as stated by Alan Widiss in his treatise on uninsured and underinsured motorist coverage (pp. 129-130, enclosed):

> The fundamental characteristic of the underinsured motorist insurance is that it is only relevant when the tortfeasor's insurance is not adequate to provide indemnification. When this is the case, the assertion of a right of subrogation---by the underinsured motorist insurer in regard to the

> tortfeasor or the tortfeasor's insurer---is inimical to the very character of the underinsured motorist coverage so long as the insured has not been fully indemnified. The proposition that an insurer should be precluded from seeking reimbursement unless the insured has been fully indemnified seems to be almost beyond rational dispute.

Nevertheless, this is exactly what happens under K.S.A. 40-287. The statute must be amended to make clear that no right of subrogation arises unless and until the insured/victim has been fully indemnified.

An example illustrates the inequity. Assume a victim goes to trial and recovers a $150,000 judgment against a tortfeasor who has $100,000 liability limits. Assume the victim has $25,000 in underinsured motorist coverage. For the reasons discussed in #1 hereinabove, under present Kansas law he receives no underinsured motorist benefits. But assume the law is changed such that he would have $25,000 in underinsured motorist coverage. Thus, plaintiff initially recovers the $100,000 policy limits and $25,000 in underinsured motorist coverage. Further assume the tortfeasor does have some personal assets and offers $10,000 to plaintiff to fully settle the remaining $25,000 of the judgment or else he will file bankruptcy. Under present Kansas law, the underinsurer is subrogated to that $10,000 even though plaintiff has not been fully indemnified! In other words, the insurer is entitled to be reimbursed for payments it makes pursuant to its underinsured motorist coverage before the victim recovers his full damages!

K.S.A. 40-287 needs amendment to make clear that subrogation rights arise only after the insured victim has been fully indemnified, i.e. to the extent there exist other possible sources of compensation which duplicate compensation paid to the victim by underinsured motorist coverage.

I would think the following additional underlined language in K.S.A. 40-287 would suffice:

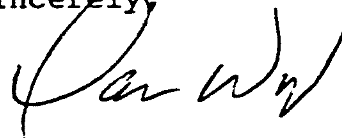
> The policy or endorsement affording the coverage specified in K.S.A. 40-284 may further provide that payment to any person of sums as damages under such coverage <u>which duplicate sums received as</u>

> damages shall operate to subrogate the insurer to....

As noted by Professor Widiss, it is patently inappropriate that an insurer would be entitled to reimbursement from any source before the insured/victim is fully compensated. Present law serves only to reduce underinsured motorist insurance for which a premium has been paid.

I believe these matters are serious and urgent. Please let me know if there is anything I can do to facilitate passage of these suggested amendments this session.

Sincerely,



Dan L. Wulz

DLW/mky
Enclosure

PROPOSED AMENDMENTS TO K.S.A. 40-284 & 287

1. K.S.A. 40-284(b) needs amendment by changing the words

"...to the extent such coverage exceeds the limits of bodily injury coverage..." to

"...to the extent the amount of damages exceed the limits of bodily injury coverage...."

2. Add at the end of K.S.A. 40-284(d):

> "Any limiting provision is void if the named insured has purchased separate coverage on the same risk and has paid a premium calculated for full reimbursement under that coverage."

This is the same as Nev.Rev.Stat. 687B.145

3. K.S.A. 40-287 needs to be amended to add the underlined language:

> "The policy or endorsement affording the coverage specified in K.S.A. 40-284 may further provide that payment to any person of sums as damages under such coverage which duplicate sums received as damages shall operate to subrogate the insurer to...."

HOUSE BILL NO. ____

By Representative Turnbaugh

AN ACT concerning insurance; relating to cancellation or termination of certain agency contracts.

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

Section 1. (a) No insurer shall cancel a contract with an exclusive agent or reduce or restrict an exclusive agent's underwriting authority or require the agent to execute procedures that are not required of all agents of the insurer with respect to property or casualty insurance based solely on the loss-ratio experience of such exclusive agent's book of business, if the insurer required the exclusive agent to submit insurance applications for underwriting approval, all information on the insurance applications was fully complete, and the exclusive agent did not omit or alter any information provided by applicants for insurance.

(b) No insurance company may terminate or otherwise penalize an insurance agent solely because the agent contacted any government department or agency regarding a problem that the agent or an insured may be having with an insurance company.

(c) An insurer that cancels a written agreement with an agent under this section shall pay to the agent all commissions earned by that agent prior to or after termination.

(d) For the purposes of this section:

(1) "Loss-ratio experience" means the ratio of premiums paid on policies sold by the exclusive agent divided by the claims paid on such policies sold by the exclusive agent during the previous two years; and

(2) an exclusive agent is defined as an agent who writes 80% or more of such agent's gross annual insurance business for one company or any or all of its subsidiaries and is not in the

direct employ of the company.

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

Kansas Insurance Department
Testimony Before the
House Insurance Committee
on House Bill No. 2676
Presented by Dick Brock

This is a relatively simple bill designed to clarify the relationship between subscribers to a health maintenance organization and the health care providers who provide health care services pursuant to such subscription agreements. Specifically, the additional language included in Section 1(b) of House Bill No. 2676 is intended to make it very clear that the failure of a health maintenance organization to pay a contracting or employed health care provider for covered services performed for a subscriber is not and shall not be a liability of the subscriber.

In addition, this proposal makes several editorial amendments necessary to merge the provisions of K.S.A. 1989 Supp. 40-3209a and K.S.A. 1989 Supp. 40-3209. Despite the stricken and italicized language appearing in Section 1, subsections (a) and (e), existing law is not affected by these amendments.

Kansas Insurance Department
Testimony Before the
House Insurance Committee
on House Bill No. 2701
Presented by Dick Brock

House Bill No. 2701 suggests a significant increase in the deposit requirements applicable to health maintenance organizations. This is not a new proposal nor is it one this committee has not previously considered.

The initial legislation which governed the creation of health maintenance organizations (HMO's) imposed no financial requirements on HMO's. This was understandable and acceptable public policy at this point in the HMO history because the idea of preventive medicine, the competition fostered between HMO's and traditional insurance or prepaid service plans, and the efficiencies fostered by a managed care environment all suggested that HMO's should not be restricted by the imposition of other than absolutely essential requirements during their formative years.

The HMO concept is now a mature means of financing health care -- so mature in fact that insolvencies are becoming more frequent and the National Association of Insurance Commissioners has now incorporated some specific insolvency provisions in its model act. In fact, much consideration has been given to the establishment of a guaranty fund mechanism to assume the obligations of an insolvent HMO.

We don't believe the HMO environment in Kansas requires or would even support this kind of action but obviously a $25,000 deposit is inadequate in relation to the financial obligations HMO's now incur. Accordingly, House Bill No. 2701 recommends an increase in the deposit requirement from the current $25,000 to a still very modest $100,000. This increase would be effective for all HMO's becoming licensed in Kansas after the effective date of the amended law. However, existing HMO's would

Attachment 4

continue to be subject to the $25,000 requirement until April 1, 1991 and would then be required to increase their deposit by $25,000 annually until the $100,000 requirement is reached.

THE POSITION OF THE PROFESSIONAL INSURANCE AGENTS OF KANSAS ON H.B. 2722

PROFESSIONAL INSURANCE AGENTS

DOROTHY M. TAYLOR
EXECUTIVE DIRECTOR

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Back in 1988 the Insurance Commissioner appointed an insurance industry committee to examine the insurance laws affecting the regulation of insurance agents.

One of the issues examined by the committee was continuing education. Don Graves, a director of PIA, was the chairman of the continung education subcommittee of the overall committee. The recommendations of the subcommittee became the basis for the continuing education provisions which the Insurance Department requested the Legislature to pass in the 1989 session. PIA supported that legislation.

However, when the Insurance Department issued its rules and regulations those rules and regulations required a double standard for approved courses leading to a recognized professional designation and an approved course dealing with any insurance subject.

The rules provided that an agent must complete the courses leading to a recognized professional designation by taking and passing an examination.

Other approved courses may or may not require completion of the course by passing an examination and would be credited only by attendance of the number of hours approved by the Insurance Department based on the number of classroom hours of the course.

THIS IS GROSSLY UNFAIR! Agents enrolled in recognized professional courses spend about double the number of classroom hours above the maximum 12 hours required to receive 12 continuing education credits. (see course comparison sheet attached) Yet another course of only 12 classroom hours with no examination may receive (and actually do receive) Insurance Department credit for 12 continuing education credits.

If an agent is not interested in attaining the recognized professional designation or if he does not pass the examination he still should receive credit for the maximum 12 continuing education credits when you consider the number of classroom hours he has spent.

Actually, the agent who wants to pursue a recognized professional designation is rewarded doubly if he takes and passes two parts of the course. He will be awarded credit for two bieniums. (See Line 36-41 of Page 2 of H.B. 2722) The agent who is not interested in the designation and who does not take and pass the examination will only receive 6 credits. Many agents take the recognized professional courses for the knowledge they receive. The continuing education law should not rest on attaining a designation.

It should be a law to encourage agents to be more knowledgeable about the insurance business.

The only change in the continuing education law which is proposed by H.B. 2722 is in lines 32-37, Page 4 which reads:

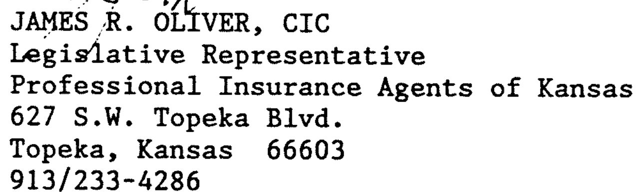
"(8) The C.E.C. value assigned to any course, program of study, or subject, other than a correspondence course or other course pursued by independent study, shall be based solely on time spent in attendance and shall in no way be contingent upon passage or satisfactory completion of any exmaination given in connection with such course, program of study, or subject."

This provision will not affect those agents wishing to pursue a recognized professional designation as the Societies administering those designations will still require the passing of the examination and those agents will still receive the bonuses set out in Lines 36-41, Page 2 of the law.

Other professionals (lawyers, doctors, CPAs, etc.) are not required to take an examination of courses they must take to receive credit for continuing education. Why should insurance agents?

The Professional Insurance Agents of Kansas would appreciate your support of House Bill 2722.

If there is any part of the continuing education law you don't understand or if you don't understand House Bill 2722, I would be glad to discuss it with you at your convenience.



JAMES R. OLIVER, CIC
Legislative Representative
Professional Insurance Agents of Kansas
627 S.W. Topeka Blvd.
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JRO/dt
encl

COURSE COMPARISON

Program/Name (Example)	Actual Number of Hours Required in Classroom	Kansas CE Credit
CLU-HS316 Personal Risk Management	30	12
CPCU #3 Commercial Property Risk Management	30	12
ARM #54 Essentials of Risk Management	26	12
CEBS II Retirement Plans	30	12
LUTC I Personal Insurance	65	12
LOMA #10-SR Selection of Risks	26	12
CFP II Risk Management	30	12
CIC Commercial Property	28	12

Each of the above courses is representative of their respective programs, and each leads to a professional designation. Each also requires the passage of an exam in order to receive 12 hours credit. Anyone not passing the exam or not taking the exam receives ½ credit.

Kansas Insurance Department
Testimony Before the
House Insurance Committee
on House Bill No. 2722
Presented by Dick Brock

House Bill No. 2722 is not a bill the Insurance Department can support if the original intent of the agents licensing study group which originally developed the continuing education requirements is to be maintained. The original intent of the study group was that, if Kansas was to have a continuing education requirement for insurance agents, it was to be of sufficient quality and integrity that the vast majority of agents fulfilling the requirement would be better informed and better equipped to serve the insurance needs of their clients than would otherwise be the case.

As many of you will recall, the minimum number of hours required for continuing education was materially reduced from the study group's recommendation during the course of the legislative process which led to its original enactment. Thus, the notion of quality as contemplated by the study group has already been compromised. We believe House Bill No. 2722 will compromise the quality even more.

In the first place, it seems unreasonably inconsistent to statutorily provide that continuing education credits assigned to a particular program should be the same when an examination is taken and successfully completed at the end of the program as it is when the examination is not taken or successfully completed. We, of course, realize the proponents of House Bill No. 2722 have a particular program in mind and given the nature and operation of this program, little deterioration in quality would be expected if the bill was enacted. However, there are more than 700 courses on the Department's list of approved continuing education courses. Of these, probably 60 or 70 would not be affected because they

are independent study programs for which House Bill No. 2722 provides an exception. And only the course sponsored by the proponents and perhaps 1 or 2 others could be confidently predicted to maintain a high standard of quality if this bill is enacted. Even then, we would still have the very significant incongruity caused by being required to allocate the same credit for a person who simply sits in class and does not take or pass an examination as one who demonstrates proficiency by passing the examination.

Finally, the requirement that restricts the Commissioner to basing the assignment of continuing education credits solely on time spent in attendance, would effectively remove any quality control now available. We can reach some objective judgements about the value of a course by reviewing its content, the way it is to be presented, qualifications of instructors and so forth but why do we even need to know these details if they can't be taken into consideration in the assignment of credits? And, if a sponsor tells us a course will consume "x" hours of attendance, how can or why should we argue because they can make sure attendees are there for whatever period of time they choose whether they are learning anything or not.

Having said all that, we realize and agree with the general principle that the agent community is better equipped to monitor the professional performance of Kansas insurance agents than we are. Therefore, if they are supportive of a dilution of the continuing education requirements, we will not consider favorable legislative action on House Bill No. 2722 to be a major catastrophe or the end of agent competency in Kansas. Nevertheless, if favorable action on this bill is to be taken, we hope, beg, and plead the legislature will be mindful of the fact that we are right in the middle of the first biennium. That is, the law became effective in 1989 and agents have until March 31 of 1991 to fulfill the

continuing education requirements for the first time. Enactment of House Bill No. 2722 with its present effective date would change the rules in the middle of the game. This would be unfair to agents who have or are in the process of meeting their continuing education needs through the courses and the credits now published. Furthermore, it would create extremely difficult administrative problems for the Department which would almost certainly and despite our best efforts result in some agents not being granted earned credits because of incorrect data in the agents' files. Consequently, we sincerely hope that, if House Bill No. 2722 is recommended favorably by this committee and enacted by your colleagues, it will be amended in Section 3 to provide an effective date of April 1, 1991.