

Approved _____
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 February 21, 1990 in room 531-n of the Capitol.

All members were present except:

Representative Delbert Gross, excused

Committee staff present: Chris Courtwright, 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 Helgerson made a motion to approve the minutes of February 15, 1990. Representative Bryant seconded. The motion carried.

Hearings began on HB 2503.

HB 2503 -- relating to automobile liability insurance; concerning the cancellation thereof; concerning records of the division of vehicles relating to diversion agreements; eliminating the confidentiality provision therefor; amending K.S.A. 40-227 and 74-2012 and repealing the existing sections.

Chris Courtwright, Legislative Research Department gave an overview of the bill, explaining that it would amend the statute relating to motor vehicle liability insurance to allow cancellation for those persons in a diversionary agreement in lieu of further criminal proceedings, charges of operating a vehicle under the influence of alcohol or drugs. The bill would also strike language in the current law that keeps records of diversionary agreements confidential.

Lee Wright, Farmers Insurance Group provided testimony (Attachment 1) in support of HB 2503 which would allow insurers to obtain the record of drivers arrested for driving under the influence who have gone on the diversion program for underwriting purposes.

Bill Sneed, State Farm Insurance provided testimony (Attachment 2) supporting HB 2503. Mr. Sneed explained that this bill provides that information which is necessary in computing fair and accurate rates. He noted that such information should be included in the rate-making process so that all actuarially verified components can be utilized when spreading the entire risk throughout the general public.

Rick Wilborn and Glen Cogswell, Alliance Insurance briefly appeared to support the intent of HB 2503.

There were no others wishing to testify and the hearings on HB 2503 were closed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531-N, Statehouse, at 3:30 ~~am~~/p.m. on February 21, ~~199~~.

Hearings began on HB 2812.

HB 2812 -- relating to insurance companies and fraternal benefit societies; excluding certain assessments to pay claims of insolvent insurers from the retaliatory taxation, penalty and fee structure; amending K.S.A. 40-253 and repealing the existing section.

Chris Courtwright, Legislative Research Department gave an overview of the bill explaining that it would amend retaliatory premium tax statutes to specifically provide that assessments on or paid by companies of fraternal benefit societies for the payment of claims of policyholders and insolvent insurers and for associated costs not be considered part of the premiums tax burden as imposed by other states. Mr. Courtwright also provided at 1984 memorandum (Attachment 3) from the Legislative Research Department regarding retaliatory taxes and their relationship to premiums tax offsets.

Bill Sneed, State Farm Insurance provided testimony (Attachment 4) in support of HB 2812. Mr. Sneed explained that this legislation relates to whether assessments made by the Illinois Insurance Guaranty Fund should be treated as an Illinois burden for purposes of computing the Kansas retaliatory tax.

Dick Brock, Insurance Department briefly appeared on HB 2812 and explained that the Department does not have a position on this bill and noted that this bill is a public policy decision.

There were no others wishing to testify and hearings on HB 2812 were closed.

Hearings began on HB 3005.

HB 3005 -- concerning school district authority to purchase certain insurance; amending K.S.A. 72-8404 and repealing the existing section.

Chris Courtwright, Research Department gave an overview of the bill explaining that it would amend the statutes to strike a provision that requires a school district in Wichita to use a competitive bidding procedure which requires public notice and advertisement prior to procurement of motor vehicle liability insurance and medical payment insurance. In present language only the Wichita district is required to use this competitive bidding procedure.

Kathryn Dysart, Wichita Public Schools provided testimony (Attachment 5) supporting HB 3005. Ms. Dysart explained that the bill would amend the statute which is specific only to the Wichita Public Schools required to initiate expensive advertisement and bid procedures.

There were no others wishing to testify on HB 3005 and the hearings were concluded.

HOUSE BILL 2503
HOUSE INSURANCE COMMITTEE
February 21, 1990

TESTIMONY BY LEE WRIGHT
Farmers Insurance Group of Companies

Mr. Chairman and members of the Committee. My name is Lee Wright and I am representing Farmers Insurance Group of Companies. We appreciate this opportunity to appear in support of HB2503.

The intent of HB2503 would be to allow insurers to obtain the record of drivers arrested for driving under the influence who have gone on the diversion program.

If a driver is convicted of a DUI it is considered public record in Kansas and insurers have access to this information. However, our present law provides that entering into a diversion agreement for a DUI does not constitute a conviction and therefore is not subject to the Open Records Act. We feel this information should be available to insurers for underwriting purposes.

When insurance companies are prohibited from using this data, it levels out the premiums for all drivers with responsible drivers paying more than their fair share to support the unrecognized bad drivers.

According to the Kansas Division of Motor Vehicles, there were 5,103 DUI arrests in the state between January and November of 1989.

To give you a little history, this is virtually the same bill which passed the House Insurance Committee in 1986 and the House on Final Action by a vote of 108 to 16. It then passed the Senate F.I. and I. Committee only to be narrowly defeated by the Senate on Emergency Final Action from a vote of 20 to 19.

In 1987 Commissioner Bell's Ad Hoc Committee on Compulsory Auto Liability Insurance recommended DUI diversion information be accessible to insurers for purpose of rating and cancellation.

Representative Sprague chaired that committee and members included representatives from the Kansas Highway Patrol, the Kansas County and District Attorneys Association, the Kansas Municipal Judges Association, the Kansas Insurance Department, the Attorney General's Office and representatives of the insurance industry.

We believe this bill continues to deserve the legislature's consideration and we hope you will recommend it favorable for passage.

Thank you Mr. Chairman, that concludes my remarks.

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 : February 21, 1990

RE : House Bill 2503

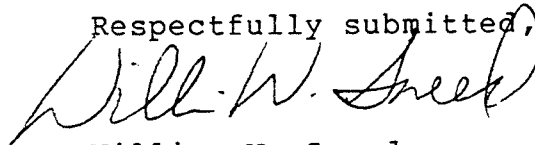
Mr. Chairman and Members of the House Insurance Committee, my name is Bill Sneed and I represent State Farm Insurance Company. House Bill 2503 was introduced during the 1989 legislative session regarding the effect of diversion programs as they relate to automobile premiums.

State Farm Insurance Company has been a long-time supporter of diversion programs within the various states that it transacts business. We do believe that the positive results attained from effective diversion programs are not endangered by the successful passage of H.B. 2503.

We concur with the other proponents that this bill only provides that information which is necessary in computing fair and accurate rates. We believe that such information should be included in the rate-making process so that all actuarially verified components can be utilized when spreading the entire risk throughout the general public.

Again, on behalf of my client, I wish to thank you for the opportunity to be heard, and we would respectfully request your favorable consideration of H.B. 2503.

Respectfully submitted,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in black ink and is positioned directly below the typed name.

William W. Sneed

MEMORANDUM

August 8, 1984

TO: House Committee on Pensions, Investments, and Benefits
FROM: Kansas Legislative Research Department
RE: Proposal No. 37 — Insurance Guaranty Association Acts

RETALIATORY TAXES AND THEIR RELATIONSHIP
TO PREMIUMS TAX OFFSETS

Introduction

This memorandum was prepared in response to the Committee's request for more information regarding the effect of the repeal of the current premiums tax offsets for assessments made by the Kansas guaranty associations. Testimony at the last meeting indicated that repeal of such offsets would result in Kansas insurance companies losing similar tax offsets in all states because of retaliatory tax provisions. The Committee then requested background information on the operation of the retaliatory tax provisions and the relationship of the retaliatory tax with the premiums tax offsets.

History of Retaliatory Tax Provisions

Retaliatory tax provisions were enacted in 1871 as part of the first comprehensive act regulating insurance companies in Kansas, Section 17, Chapter 93, 1871 Session Laws. While that original section has been amended several times since 1871, the retaliatory tax provisions have remained essentially unchanged. The Kansas retaliatory law is similar to the laws of 46 other states (according to a list compiled by the National Association of Insurance Commissioners, 47 states have retaliatory tax laws).

The Kansas retaliatory tax is currently found at K.S.A. 40-253. It provides, in pertinent part, that:

Whenever the existing or future laws of any other state or country shall require from insurance companies . . . organized under the laws of this state . . . any payment for taxes, fines, penalties, certificates of authority, licenses, fees, compensation for examination, or otherwise, greater than the amount required for such purpose from insurance companies . . . of other states by then existing laws of this state, then, and in every case, all companies . . . of any such state or country, doing business in this state shall . . . pay to the commissioner of insurance . . . an amount equal to the amount of such charges and payments imposed by the laws of such other state or country upon the companies of this state

Purpose and Operation

The purpose of the retaliatory tax was first stated in an 1883 Kansas Supreme Court opinion which upheld the constitutionality of the law. The Court, in an opinion that has been quoted in numerous other cases, said:

... Now our insurance laws provide that insurance corporations of other states may enter into this state and transact business upon certain limited conditions, designed only to protect the citizens of this state against irresponsible and fraudulent organizations elsewhere. In other words, this state holds itself out to all other states of the Union as willing to meet them upon a basis of substantial freedom as to all insurance transactions. It couples, however, with this general extension of freedom, a provision that if any other state shall, by its laws, hamper and restrict the privileges of corporations created under our laws, in the transaction of insurance business within its borders, the same burdens and restrictions shall be imposed upon corporations of that state, seeking to transact business with us. This provision is called in insurance circles a "retaliatory clause." It seems to us more justly to be deemed a provision for reciprocity. It says, in effect, that while we welcome all insurance corporations of other states to the transaction of business within our limits, we insist upon a like welcome elsewhere, and that if other states shall attempt, directly or indirectly, to debar our corporations from the transaction of insurance business within their borders, we shall meet their corporations with the same restrictions and disability. It is, in brief, an appeal for comity; a demand for equality. As such, it is manifestly fair and just. It arouses no sense of injustice, and simply says to every other state in the Union: "We will meet you on the basis of equality and comity, and will treat you as you treat us." (Phoenix In. Co. v. Welch, 29 Kan. 672 (1883) at pages 674-675)

The retaliatory tax in Kansas is calculated by each foreign insurance company listing the amount of all taxes, fees, or charges due under Kansas law and then listing all taxes, fees, or charges due from a Kansas insurance company doing the same amount and volume of business in the foreign state as the foreign company did in Kansas. (A copy of the Kansas retaliatory tax return is attached to this memorandum.) Several court opinions have emphasized that the total tax bills are to be compared, rather than merely comparing specific taxes, and that "the word 'amount' refers to all exactions under whatever name and in the aggregate" (Employers Casualty Co. v. Hobbs, 149 Kan. 774 (1939) at page 780).

Retaliatory Tax Revenue

The retaliatory tax revenue, along with the premiums tax revenue, is deposited in the State General Fund (a limited amount of premiums tax revenue is deposited in two regulatory expense funds). Net collections (after refunds) from the retaliatory tax and the foreign companies premiums tax for the past three fiscal years have totalled:

<u>Fiscal Year</u>	<u>Retaliatory Tax</u>	<u>Foreign Insurance Company Premiums Tax</u>	<u>Total</u>
1984	\$ 1,775,000	\$ 36,091,000	\$37,866,000
1983	3,677,000	32,976,000	36,653,000
1982	1,134,000	30,674,000	31,808,000

Guaranty Association Assessments and Retaliatory Taxes

Because the retaliatory tax provisions include a comparison of all taxes and fees due in a state, guaranty association assessments may be the subject of retaliation. A foreign company filing a retaliatory tax return in Kansas is not required to list any Kansas guaranty association assessment in its list of taxes due in Kansas if it is domiciled in a state with a guaranty association whose assessments are allowed as a premium tax credit. A foreign company from a state with associations whose assessments are not allowed as a premium tax credit will be retaliated against when its home state makes an assessment. The amount of retaliation would be calculated by applying its home state's assessment level to the amount of premiums the foreign company had in Kansas. Examples of how the guaranty association assessments are treated under current law and how they would be treated if the premiums tax offsets were eliminated are contained in the appendix to this memorandum.

Conclusions

Repeal of the Kansas premiums tax offsets will increase:

1. retaliatory tax for a Kansas company doing business in a state with a tax offset (examples 5 and 6);
2. Kansas taxes for a Kansas company; and
3. overall Kansas taxes for a foreign company from a state that gives premiums tax offsets (examples 1 and 2).

Repeal of the Kansas premiums tax offsets will not increase:

4. retaliatory taxes for a Kansas company doing business in a state with no tax offset (examples 7 and 8); and
5. overall taxes for a foreign company from a state that does not give a premiums tax offset (examples 3 and 4).

It should be noted, however, that while all 50 states have a property and casualty association act, only 15 states, including Kansas, have a tax offset for those assessments. Therefore, Kansas companies, upon repeal of the tax offsets, could only be subject to retaliation in 13 of the 50 states (Alabama has a tax offset but does not

have a retaliatory tax). For states that use the same procedure as Kansas in calculating retaliatory taxes, retaliation could only occur in years when a property and casualty assessment was made in Kansas. Such assessments have been made in Kansas in only four years since 1970. At least one state — Wisconsin — would deny a tax offset even when assessments are not made in Kansas.

On the life and health side, Kansas companies, upon repeal of the tax offsets, could be subject to retaliation in 36 states, because 11 of the 33 states with a life and health association do not allow a tax offset and two of the states with a complete offset — Alabama and Hawaii — have no retaliation statute. Life and health assessments have been made in Kansas in only four years since 1972.

APPENDIX

EXAMPLE RETALIATORY TAX RETURNS

The following eight example retaliatory tax returns are designed to illustrate both the current treatment of guaranty association assessments and the impact of repeal of the premiums tax offset for such assessments in Kansas. The examples show the impact on foreign companies' taxes in Kansas and the impact on Kansas companies' taxes in other states. Foreign states used are Nebraska and Maryland, which have both a property and casualty guaranty association and a life and health guaranty association. Those two states differ, however, in that Nebraska allows companies to offset Nebraska premium taxes with the associations' assessments, while Maryland does not allow premiums tax offsets. The examples also assume that all three states, Kansas, Nebraska, and Maryland, made equal guaranty association assessments in the example tax year, and that Nebraska and Maryland follow the same procedure as Kansas in calculating retaliatory taxes.

Example 1 - Current Kansas Law (tax offset allowed in Ka
 - Nebraska Company Filing in Kan. (tax offset
 allowed in Neb.)

All Insurers,
 Except Kansas
 Domestic Companies

RETALIATORY SUMMARY SHEET-YEAR 19__
 (INCLUDES TAXES, FEES, LICENSES,
 ASSESSMENTS AND OTHER PAYMENTS)

State of Kansas
 Insurance
 Department

Of the Mutual of Omaha Omaha, Neb. Company,
 for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) Kansas Basis	(3) Company's Home State Basis for Kansas Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment		
Other Taxes, Fees or Charges		
14.		
15.		
16.		
17.		
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19.		
20.		
21.		
22.		
23.		
24.		
25. Totals	\$ 2,000	\$ 2,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO KANSAS	
26. Amount shown on line 25, Column (3)	\$ 2,000
27. Subtract amount shown on line 25, Column (2)	\$ 2,000
28. Retaliatory amount owed to Commissioner of Insurance, State of Kansas. (If negative enter zero)	\$ - 0 -

Example 2 - Kansas Tax Offset Repealed

- Nebraska Company Filing in Kan. (tax offset allowed in Neb.)

All Insurers,
Except Kansas
Domestic Companies

RETALIATORY SUMMARY SHEET-YEAR 19__
(INCLUDES TAXES, FEES, LICENSES,
ASSESSMENTS AND OTHER PAYMENTS)

State of Kansas
Insurance
Department

Of the Mutual of Omaha, Omaha, Neb. Company,
for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) Kansas Basis	(3) Company's Home State Basis for Kansas Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment	\$ 1,000	\$ 1,000
Other Taxes, Fees or Charges		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25. Totals	\$ 3,000	\$ 3,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO KANSAS	
26. Amount shown on line 25, Column (3)	\$ 3,000
27. Subtract amount shown on line 25, Column (2)	\$ 3,000
28. Retaliatory amount owed to Commissioner of Insurance, State of Kansas. (If negative enter zero)	\$ - 0 -

Example 3 - Current Kansas Law (tax offset allowed in Kan.)
 - Maryland Company Filing in Kan. (tax offset not allowed in Md.)

All Insurers,
 Except Kansas
 Domestic Companies

RETALIATORY SUMMARY SHEET-YEAR 19__
 (INCLUDES TAXES, FEES, LICENSES,
 ASSESSMENTS AND OTHER PAYMENTS)

State of Kansas
 Insurance
 Department

Of the U.S. F. & G. Baltimore, Md. Company,
 for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) Kansas Basis	(3) Company's Home State Basis for Kansas Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment		\$ 1,000
Other Taxes, Fees or Charges		
14.		
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21.		
22.		
23.		
24.		
25. Totals	\$ 2,000	\$ 3,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO KANSAS	
26. Amount shown on line 25, Column (3)	\$ 3,000
27. Subtract amount shown on line 25, Column (2)	\$ 2,000
28. Retaliatory amount owed to Commissioner of Insurance, State of Kansas. (If negative enter zero)	\$ 1,000

Example 4 - Kansas Tax Offset Repealed

- Maryland Company Filing in Kan. (tax off. not allowed in Md.)

All Insurers, Except Kansas Domestic Companies
 RETALIATORY SUMMARY SHEET-YEAR 19__
 (INCLUDES TAXES, FEES, LICENSES, ASSESSMENTS AND OTHER PAYMENTS)
 State of Kansas Insurance Department
 Of the U.S.F. & G. Baltimore Md. Company,
 for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) Kansas Basis	(3) Company's Home State Basis for Kansas Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment	\$ 1,000	\$ 1,000
Other Taxes, Fees or Charges		
14.		
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18.		
19.		
20.		
21.		
22.		
23.		
24.		
25. Totals	\$ 3,000	\$ 3,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO KANSAS	
26. Amount shown on line 25, Column (3)	\$ 3,000
27. Subtract amount shown on line 25, Column (2)	\$ 3,000
28. Retaliatory amount owed to Commissioner of Insurance, State of Kansas. (If negative enter zero)	\$ - 0 -

Example 5 - Current Kansas Law (tax offset allowed in
 - Kansas Company Filing in Nebraska (tax offset allowed in Neb.)

RETALIATORY SUMMARY SHEET-YEAR 19__
 (INCLUDES TAXES, FEES, LICENSES, ASSESSMENTS AND OTHER PAYMENTS)
 State of Nebraska Insurance Department
 All Insurers, Except Nebraska Domestic Companies
 Of the Security Benefit Life Company,
 for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) <u>Nebraska</u> Basis	(3) Company's Home State Basis for <u>Nebraska</u> Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment		
Other Taxes, Fees or Charges		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25. Totals	\$ 2,000	\$ 2,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO <u>NEBRASKA</u>	
26. Amount shown on line 25, Column (3)	\$ 2,000
27. Subtract amount shown on line 25, Column (2)	\$ 2,000
28. Retaliatory amount owed to Commissioner of Insurance, State of <u>Neb.</u> (If negative enter zero).	\$ -0-

Example 8 - Kansas Tax Offset Repealed

- Kansas Company Filing in Maryland (tax offset not allowed in Md.)

All Insurers,
Except Maryland
Domestic Companies

RETALIATORY SUMMARY SHEET-YEAR 19__
(INCLUDES TAXES, FEES, LICENSES,
ASSESSMENTS AND OTHER PAYMENTS)

State of Mary
Insurance
Department

Of the Security Benefit Life Company,
for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) <u>Maryland</u> Basis	(3) Company's Home State Basis for <u>Maryland</u> Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment	\$ 1,000	\$ 1,000
Other Taxes, Fees or Charges		
14.		
15.		
16.		
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18.		
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23.		
24.		
25. Totals	\$ 3,000	\$ 3,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO MARYLAND	
26. Amount shown on line 25, Column (3)	\$ 3,000
27. Subtract amount shown on line 25, Column (2)	\$ 3,000
28. Retaliatory amount owed to Commissioner of Insurance, State of Md. (If negative enter zero)	\$ - 0 -

Example 7 - Current Kansas Law (tax offset allowed in k
 - Kansas Company Filing in Maryland (tax
 offset not allowed in Maryland)

All Insurers, Except Maryland Domestic Companies
 RETALIATORY SUMMARY SHEET-YEAR 19__
 (INCLUDES TAXES, FEES, LICENSES, ASSESSMENTS AND OTHER PAYMENTS)
 State of Maryland Insurant Department
 Of the Security Benefit Life Company,
 for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) <u>Maryland</u> Basis	(3) Company's Home State Basis for <u>Maryland</u> Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment	\$ 1,000	\$ 1,000
Other Taxes, Fees or Charges		
14.		
15.		
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17.		
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21.		
22.		
23.		
24.		
25. Totals	\$ _____	\$ _____

COMPUTATION OF RETALIATORY AMOUNTS OWED TO MARYLAND	
26. Amount shown on line 25, Column (3)	\$ <u>3,000</u>
27. Subtract amount shown on line 25, Column (2)	\$ <u>3,000</u>
28. Retaliatory amount owed to Commissioner of Insurance, State of <u>Md.</u> (If negative enter zero)	\$ <u>- 0 -</u>

Example 6 - Kansas Tax Offset Repealed

- Kansas Company Filing in Nebraska (tax offset allowed in Neb.)

All Insurers,
Except Nebraska
Domestic Companies

RETALIATORY SUMMARY SHEET-YEAR 19__
(INCLUDES TAXES, FEES, LICENSES,
ASSESSMENTS AND OTHER PAYMENTS)

State of Nebraska
Insurance
Department

Of the Security Benefit Life Company,
for the computation of retaliatory charges (K.S.A. 40-253, Copy on Reverse Side).

(1)	(2) <u>Nebraska</u> Basis	(3) Company's Home State Basis for <u>Nebraska</u> Companies
1. Filing Annual Statement Fee		
2. Certificate of Authority Fee		
3. Annual Premium Tax	\$ 2,000	\$ 2,000
4. Firemen's Relief Fund Tax		
5. Fire Marshal Tax		
6. Workers Comp. Fund (Second Injury)		
7. Workers Comp. Directors Assessment		
8. Assigned Claims Facility-Automobile		
9. Fines & Penalties Assessed		
10. Examination Fees		
11. Resident Agents License Fees		
12. Amended Certificate of Authority Fee		
13. Guaranty Association Assessment		\$ 1,000
Other Taxes, Fees or Charges		
14.		
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16.		
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18.		
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20.		
21.		
22.		
23.		
24.		
25. Totals	\$ 2,000	\$ 3,000

COMPUTATION OF RETALIATORY AMOUNTS OWED TO NEBRASKA	
26. Amount shown on line 25, Column (3)	\$ 3,000
27. Subtract amount shown on line 25, Column (2)	\$ 2,000
28. Retaliatory amount owed to Commissioner of Insurance, State of <u>Neb.</u> (If negative enter zero)	\$ 1,000

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 : February 21, 1990

RE : House Bill 2812

A. Introduction

Mr. Chairman and Members of the House Insurance Committee, my name is Bill Sneed and I represent State Farm Insurance Company. House Bill 2812 was introduced at our request in an effort to resolve an ongoing disagreement between my client and the Kansas Insurance Department relative to the Department's position on the Kansas retaliatory statute's (K.S.A. 40-253) application to the Illinois Insurance Guaranty Fund assessments. Currently there are 48 states that apply their respective retaliatory statutes in the manner which we are proposing, and based upon our review of the facts, we believe your favorable consideration of H.B. 2812 is warranted.

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 would be imposed by the foreign insurer's home state.

A simple example can illustrate the application of the retaliatory tax laws. Assume Insurer A is domiciled in Illinois and received \$100 of premiums for business done in Kansas. Kansas imposes a premium tax on foreign insurers at a rate of 2%, which would result in \$2.00 of premium tax. Illinois, however, imposes a premium tax at a rate of 3%. Kansas' retaliatory tax statute would require Insurer A to pay the greater retaliatory tax of \$3.00 to Kansas. The retaliatory tax is calculated by applying Illinois' tax rate of 3% to the \$100 of premiums received by Insurer A for its business done in Kansas, 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. 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. Examples.

Attached to this memorandum are several examples of the mechanics of the retaliatory tax and the premium tax offset. Example 1 would be the net result of retaliatory taxes under the Department's interpretation, whereas example 2 would be the net result under H.B. 2812.

This might initially lead one to the belief that the changes encompassed by H.B. 2812 would lead to a decrease in retaliatory taxes collected. However, if you change the amount of

assessment by the respective states, as in examples 3 and 4, there would be an increase in retaliatory taxes collected. Further, this is not just a mere theoretical argument. In 1987, State Farm paid \$155,912.40 in retaliatory taxes (related to guaranty fund assessments) and paid nothing in 1988. While it is true that under the changes in H.B. 2812 we would have paid nothing in 1987 as it relates to guaranty fund assessments, we would have paid \$154,630.15 in 1988.

D. Effect on Kansas Domestic Companies.

Another issue which has been raised concerns the implications of the Kansas retaliatory tax statute on Kansas insurance companies. It must be recognized that the proposal to modify the Kansas retaliatory tax relates to the method of computing the amount of tax owed to Kansas by foreign insurance companies and does not directly affect the tax owed to Kansas by Kansas insurance companies.

It is possible that the application of the Kansas retaliatory tax statute could impact the retaliatory tax paid by Kansas insurers doing business in other states. This will depend upon each state's interpretation of its own retaliatory tax statute and its definition of the burdens to be compared for purposes of retaliation. However, if the guaranty association assessments are not considered as burdens in Kansas for purposes of its own retaliatory tax statute, it seems the Kansas domestic companies

will have a stronger basis to contend the assessments should not be considered as burdens by the other retaliating state.

For example, assume a Kansas insurance company is doing \$100 of business in Colorado. Assume further that the Kansas assessment on a similar company would have been \$1.00. Colorado's premium tax rate on this company of 2.25% would generate a Colorado premium tax liability of \$2.25. The Kansas burdens on a similar company would be the \$2.00 of premium tax and the \$1.00 assessment. As a result, the Kansas insurer would pay a retaliatory tax of \$.75 if the assessment is considered as a burden. However, if Colorado agreed that the assessment should not be considered a burden in Kansas for purposes of retaliation, the Kansas insurer would owe no retaliatory tax in Colorado.

E. Conclusion.

Again, on behalf of my client, I wish to thank you for allowing us this opportunity to testify on House Bill 2812. We submit that based upon the foregoing, favorable passage of H.B. 2812 will place Kansas in line with the vast majority of states regarding this issue, and over time, have no major fiscal impact on the state. Thus, we urge your favorable consideration of House Bill 2812.

Respectfully submitted,

William W. Sneed

APPENDIX A

RETALIATORY TAX EXAMPLES

FACT PATTERN: An Illinois insurer is operating in Kansas and receives \$150,000,000 of premiums for risks insured in Kansas. Both Kansas and Illinois impose a flat premium tax rate of 2%. The fees charged by Kansas are \$110.00 while similar fees in Illinois would be \$200.00. Kansas imposes a tax on certain insurers for fire premiums that are not subject to the tax in Illinois. The fire tax in Kansas would be \$150,000.00. The guaranty association assessment in Kansas is \$100,000.00 and the guaranty association assessment in Illinois on the Kansas volume of business would be \$265,000.00.

Because the Kansas premium tax is shown as the gross amount before application of the premium tax offset, the guaranty association assessment is not listed separately in example 1. This example shows the result based upon the Kansas Department's interpretation of the retaliatory tax statute that the assessments should be considered a burden for purposes of retaliation in Kansas.

EXAMPLE 1

	<u>Kansas Basis</u>	<u>Illinois Basis</u>
Fees	110.00	200.00
Premium Tax	3,000,000.00	3,000,000.00
Fire Tax	150,000.00	-0-
Guaranty Assoc.	-0-	265,000.00
	<hr/>	<hr/>
Total	3,150,110.00	3,265,200.00
Retaliatory tax owed to Kansas	\$115,090.00	

In the second example, the same facts outlined above apply except the guaranty association assessments are not considered as burdens for purposes of the Kansas retaliatory tax. As a result, the Kansas premium tax is shown net of the credit allowed for the assessments. It is assumed that the credit equals the annual assessment.

EXAMPLE 2

	<u>Kansas Basis</u>	<u>Illinois Basis</u>
Fees	110.00	200.00
Premium Tax	2,900,000.00	3,000,000.00
Fire Tax	150,000.00	-0-
	<hr/>	<hr/>
Total	3,050,110.00	3,000,200.00
Retaliatory tax owed to Kansas		-0-

Examples 3 and 4 merely restate examples 1 and 2, respectively, with the exception that the guaranty association assessment in Kansas is \$256,000 and the assessment in Illinois would be \$100,00. As you will see in this example, the Department's position does not generate any retaliatory tax when the Kansas assessment is the larger amount. However, the retaliatory tax will be payable under the proposal when the Kansas assessment is the larger amount.

EXAMPLE 3

	<u>Kansas Basis</u>	<u>Illinois Basis</u>
Fees	110.00	200.00
Premium Tax	3,000,000.00	3,000,000.00
Fire Tax	150,000.00	-0-
Guaranty Assoc.	-0-	100,000.00
	<hr/>	<hr/>
Total	3,150,110.00	3,100,200.00
Retaliatory tax owed to Kansas		-0-

EXAMPLE 4

	<u>Kansas Basis</u>	<u>Illinois Basis</u>
Fees	110.00	200.00
Premium Tax	2,735,000.00	3,000,000.00
Fire Tax	150,000.00	-0-
	<hr/>	<hr/>
Total	2,885,110.00	3,000,200.00
Retaliatory tax owed to Kansas	\$115,090.00	

WICHITA PUBLIC SCHOOLS
Unified School District No. 259
ADMINISTRATIVE CENTER
217 N. Water
Wichita, Kansas 67202

Kathryn Dysart, Supervisor
Intergovernmental Affairs
316-533-4135

Testimony before the House Committee on Insurance
February 20, 1990

We ask you strike the language from KSA 72-8404 which is specific only to the Wichita Public Schools. We find it cumbersome and unrealistic to operate under the restrictions of this section, and do not believe we should be required to initiate expensive advertisement and bid procedures if the same measures are not required of the other 302 school districts in this state.

As you are no doubt aware, there are not very many insurance companies who handle insurance for school districts or other governmental units. Any agency which bids for our business is licensed with all the same big companies and the agency must increase its service or cut its commissions to win our bid. We don't actually bid the insurance itself.

We request that you relieve us of the restrictions of Section 1(b) and allow us to operate in the same venue as other districts.