

Approved \_\_\_\_\_

Date

1/31/90

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./~~xxx~~ on TUESDAY, JANUARY 30, 1990 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~:

Senators Karr, Kerr, McClure, Moran, Parrish, Reilly, Salisbury, Strick, and Yost.

Committee staff present:

Bill Wolff, Research Department  
Bill Edds, Revisors Office  
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Pat Hurley, HOYLAKE, Inc.

Chairman Bond called the meeting to order at 9:10 a.m.

Pat Hurley, Hoylake, Inc., appeared before the committee for the purpose of requesting the introduction of a bill relating to insurance holding companies; concerning notices, hearings and administrative costs. Mr. Hurley explained that this bill was to be introduced as an Insurance Department bill, however, in the package reduction before the session, this was one of the proposals eliminated. He advised that the Insurance Department would not contest the bill. (Attachment 1)

Senator Reilly made a motion to introduce this bill as a committee bill. Senator Strick seconded the motion. The motion passed.

SB 475 - Insurance: technical amendments in rate hearing statutes.

Bill Edds, Assistant Revisor of Statutes, explained to the committee that in 1988 and 1989, amendments were made which appear twice in the statute books because the sections containing the amended portions were never reconciled. He stressed that there was no substantive change in this bill and that it merely eliminated the duplicating sections.

Senator Parrish made a motion to pass SB 475 out of committee and place it on the Consent Calendar. Senator Yost seconded the motion. The motion passed.

SB 476 -- Insurance: technical amendments to deceptive acts of practices statute.

Mr. Edds, explained to the committee that SB 476 contained nothing new and that the bill incorporates the language in HB 2502 into this bill. Mr. Edds informed the committee that there was a case pending in District Court which, if upheld, might result in a section of this bill being declared unconstitutional. Mr. Edds also informed the committee that there was another bill pending in the Legislature, SB 530, which also addresses this same statute. He, nevertheless, urged the committee to approve this bill in order to expedite the "cleaning up" of the statutes.

Senator Parrish made a motion to pass this bill out of committee favorably and to place it on the Consent Calendar. Senator Salisbury seconded the motion. The motion passed.

Senator Yost requested the minutes to show that he abstained from the foregoing vote on SB 476 because of a conflict of interest.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m.~~pm~~ on TUESDAY, JANUARY 30, 1990.

SB 477 - Health maintenance organization law; technical amendment.

Mr. Edds advised the committee that this was another bill used as a means of cleaning up the statutes by combining the language of similar bills. In answer to a question by a committee member, Mr. Edds suggested that these efforts to clean up the statutes should not be tied to any bill of substance that might cause the bill to get bogged down.

Senator Parrish made a motion to pass SB 477 out of committee favorably and to place it on the Consent Calendar. Senator Salisbury seconded the motion. The motion passed. Minutes of January 23, 24 and 25, were approved as written on a motion by Senator Yost with Senator Strick seconding the motion. The motion passed.

Chairman Bond reminded the committee members of the Joint Insurance Meeting today, Tuesday, January 30, in the Old Supreme Court Room and urged all members to be present.

Chairman Bond adjourned the meeting at 9:40 a.m.



SENATE BILL NO. \_\_\_\_\_

By Committee on Financial Institutions and Insurance

AN ACT relating to insurance holding companies; concerning notices, hearings and administrative costs; amending K.S.A. 40-3301 and K.S.A. 1989 Supp. 40-3304 and repealing the existing sections.

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

Section 1. K.S.A. 40-3301 is hereby amended to read as follows: 40-3301. (a) It is hereby found and declared that it may not be inconsistent with the public interest and the interest of policyholders ~~and-shareholders~~ to permit insurers to:

- (1) Engage in activities which would enable them to make better use of management skills and facilities;
- (2) diversify into new lines of business through acquisition or organization of subsidiaries;
- (3) have free access to capital markets which could provide funds for insurers to use in diversification programs;
- (4) implement sound tax planning conclusions; and
- (5) serve the changing needs of the public and adapt to changing conditions of the social, economic and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) It is further found and declared that the public interest and the interests of policyholders ~~and-shareholders~~ are or may be adversely affected when:

(1) Control of an insurer is sought by persons who would utilize such control adversely to the interests of policyholders ~~or-shareholders~~;

(2) acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business

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in this state;

(3) an insurer which is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) an insurer pays dividends ~~to--shareholders~~ which jeopardize the financial condition of such insurer.

(c) It is hereby declared that the policies and purposes of this act are to promote the public interest by:

(1) Facilitating the achievement of the objectives enumerated in subsection (a) of this section;

(2) requiring disclosure of pertinent information relating to changes in control of an insurer;

(3) requiring disclosure by an insurer of material transactions and relationships between the insurer and its affiliates, including certain dividends ~~to--shareholders~~ paid by the insurer; and

(4) providing standards governing material transactions between the insurer and its affiliates.

(d) It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this state shall exercise regulatory authority over domestic insurers and, unless otherwise provided in this act, not over nondomestic insurers, with respect to the matters contained herein.

Sec. 2. K.S.A. 1989 Supp. 40-3304 is hereby amended to read as follows: 40-3304. (a) No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer

unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner of insurance and has sent to such insurer, ~~and such insurer has sent to its shareholders,~~ a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner of insurance in the manner hereinafter prescribed. The requirements of this section shall not apply to the merger or consolidation of those companies subject to the requirements of K.S.A. 40-507 and 40-1216 to 40-1225, inclusive, and amendments thereto.

For the purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) The statement to be filed with the commissioner of insurance hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) of this section is to be affected, hereinafter called "acquiring party", and: (A) If such person is an individual, such individual's principal occupation and all offices and positions held during the past five years and any conviction of crimes other than minor traffic violations during the past 10 years; (B) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions

appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A) of this subsection;

(2) the source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose and the identity of persons furnishing such consideration, except that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in subsection (a) of this section which each acquiring party proposes to acquire and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section, and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in subsection (a) of this section which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) of this section in which any acquiring party is

involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in subsection (a) of this section during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in subsection (a) of this section made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) of this section, and, if distributed, of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this section for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner of insurance may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited partnership, syndicate or other group, the commissioner of insurance may require that the information called for by



paragraphs (1) through (12) of subsection (b) of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) of this section is a corporation, the commissioner of insurance may require that the information called for by paragraphs (1) through (12) of subsection (b) of this section shall be given with respect to such corporation, each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner of insurance and sent to such insurer pursuant to this section, and amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner of insurance and sent to such insurer within two business days after the person learns of such change. ~~Such insurer shall send such amendment to its shareholders.~~

(c) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) of this section is proposed to be made by means of a registration statement under the securities act of 1933 or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) of this section may utilize such documents in furnishing the information called for by that statement.

(d) (1) The commissioner of insurance shall approve any merger or other acquisition of control referred to in subsection (a) of this section unless, after a public hearing thereon conducted in accordance with the provisions of the Kansas administrative procedure act, the commissioner finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(C) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

(D) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(E) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in paragraph (1) of subsection (d) of this section shall be held as soon as practical after the statement required by this subsection (a) of this section is filed, and at least 20 days' notice thereof shall be given by the commissioner of insurance to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other persons as may be designated by the commissioner of insurance. ~~The insurer shall give such notice to its securityholders.~~ At such hearing, the person filing the statement shall be a party. Notwithstanding the provisions of K.S.A. 77-521 and amendments thereto, the insurer, any person to whom notice of hearing was sent, and any other person whose

interests may be affected thereby shall have the right to intervene in the hearing and to present evidence, examine and cross-examine witnesses, and offer oral and written arguments. In the absence of intervention, such insurer or person shall have the right to present oral or written statements in accordance with subsection (c) of K.S.A. 77-523 and amendments thereto.

(e) ~~All statements, amendments or other material filed pursuant to subsection (a) or (b) of this section, and all notices of public hearings held pursuant to subsection (d) of this section, shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner of insurance an acceptable bond or other deposit in an amount to be determined by the commissioner of insurance.~~ No statement, information, notice or other material filed with the commissioner pursuant to this section shall be required to be provided to any securityholder by mail or otherwise from and after the effective date of this act.

(f) The provisions of this section shall not apply to:

(1) Any offers, requests, invitations, agreements or acquisitions by the person referred to in subsection (a) of this section of any voting security referred to in subsection (a) of this section which, immediately prior to the consummation of such offer, request, invitation, agreement or acquisition, was not issued and outstanding;

(2) any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as: (A) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or (B) as otherwise not comprehended within the purposes of this section.

(g) The following shall be violations of this section:

(1) The failure to file any statement, amendment or other

material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner of insurance has given the commissioner's approval thereto.

(h) The courts of this state are hereby vested with jurisdiction over every securityholder of a domestic insurer and every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner of insurance under this section and over all actions involving such person arising out of violations of this section. Each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the commissioner of insurance to be such person's true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner of insurance and transmitted by registered or certified mail by the commissioner of insurance to such person at such person's last known address.

New Sec. 3. The cost of making a record and publishing notices of any administrative hearing authorized or required by article 33 of chapter 40 of the Kansas Statutes Annotated shall be borne by the insurer or person whose actions or decisions gave rise to the hearing.

Sec. 4. K.S.A. 40-3301 and K.S.A. 1989 Supp. 40-3304 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.