

Approved

2/12/90
Date

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. on TUESDAY, FEBRUARY 6, 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 Edds, Revisors Staff
Bill Wolff, Research Department
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Senator Roy Ehrlich
Jim Gregory, Beech Aircraft
Dan Smartt, Beech Aircraft
Ron Todd, Assistant Commissioner of Insurance
Larry Magill, Kansas Independent Insurers
Jerry Banaka, Kansas Farm Bureau
Bill Pitsenberger, Governor's Commission on Access to Services for Medically Indigent.

Chairman Bond called the meeting to order at 9:14 a.m.

SB 445 - Eligibility for group sickness and accident insurance.

Senator Roy Ehrlich addressed the committee informing them that the primary purpose of the Commission on Access to Services for the Medically Indigent was to provide insurance for all persons, including those who are not well and are considered uninsurable. He further advised the committee that this bill was a rewrite of SB 539, introduced during the 1988 session, and that the only new language was contained in Section 1, lines 20-26. (Attachment 1)

A brief discussion followed with one committee member inquiring about the cost. Senator Ehrlich replied that there were indications that the costs would increase but that he had no exact figures.

SB 474 - Aircraft captive insurance companies.

Chairman Bond interrupted the proceedings on SB 445 in order to assure those from out-of-town, here to testify on SB 474, would be heard. Chairman Bond recognized Jim Gregory, Beech Aircraft, who introduced Dan Smartt, President, Travel Air Insurance Company, who testified before the committee in support of this bill and proposed amendments. He explained that Travel Air Limited, located in Bermuda, was a wholly owned subsidiary of Travel Air Insurance Company of Wichita, and that they wanted to move that company on shore because of the Federal Tax Law of 1986 which imposed 30% more tax on foreign companies. Mr. Smartt added that they would prefer to move the company to Kansas if several changes could be made in Kansas law. (Attachment 2)

During the discussion that followed, Mr. Smartt explained more fully the proposed amendments. He said that the company did not wish to add "captive" to their name because they have had a good working agreement with Lloyds of London, their underwriter, for fifteen years, and Lloyds would be uneasy about any change in name. He further explained that Beech would like to continue to manage their claims in order to help control product liability expense and these risks would be limited to Beech Aircraft.

Ron Todd, Assistant Commissioner of Insurance, rose to support the bill and advised that the Insurance Staff had reviewed the proposal and had no objections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 a.m./~~a.m.~~^{xxx} p.m. on TUESDAY, FEBRUARY 6, 1990.

Larry Magill, Kansas Independent Insurance Agents, informed the committee that his organization supported the bill with the proposed amendments. Mr. Magill further explained that the amendment to the bill clarified that Beech cannot sell insurance to outside third parties. Attachment 3)

Senator Kerr made a motion to accept the amendment to SB 474. Senator Salisbury seconded the motion. The motion passed.

Senator Kerr made a motion to pass the amended version of SB 474 out of committee favorably. Senator Parrish seconded the motion. The motion passed.

Chairman Bond announced that Senator Yost would carry SB 474 on the floor of the Senate.

Chairman Bond resumed the hearing on SB 445 and recognized Jerry Banaka, Kansas Farm Bureau, who advised the committee that his organization opposes this bill because they feel it would increase the cost of health insurance for small employers insured under a multiple employer trust arrangement. He explained that they were concerned with the proposal because it would allow persons with severe medical conditions to enter the group insurance plan and an additional concern was that the bill failed to indicate whether an insurance company can require that covered persons be full time employees or whether a waiting period is required for new employees. (Attachment 4)

Bill Pitsenberger, representing the Governor's Commission on Access to Services for the Medically Indigent, explained to the committee that the purpose of the bill was to preclude group insurers from refusing coverage to persons merely because of past health conditions under a group insurance policy. Mr. Pitsenberger offered an amendment to the bill which would extend coverage to contracts issued outside the state covering employees who are residents of the state. (Attachment 5)

Chairman Bond announced that the hearings on SB 445 would be continued on Monday, February 12, 1990. Also, at that time, Staff will present an overview of the interstate banking bill, SB 532.

Minutes of Thursday, February 1, 1990 were approved on a motion of Senator Reilly with Senator Yost seconding the motion. The motion passed.

The meeting adjourned at 10:01 a.m.

PRELIMINARY
MINUTES

COMMISSION ON ACCESS TO SERVICES FOR THE
MEDICALLY INDIGENT AND HOMELESS

October 26, 1989
Room 123-S -- Statehouse

Members Present

Senator Roy Ehrlich, Chairperson
Representative Jessie Branson, Vice-Chairperson
Senator Eugene Anderson
Representative Belle Borum
Ms. Barbara Jean Gibson
Mr. William Pitsenberger

Members Absent

Mr. Jeffrey Ellis
Mr. Ralph Turner
Mr. Leroy Tombs

Staff Present

Emalene Correll, Kansas Legislative Research Department
Bill Wolff, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes

Others Present

Chip Wheelen, Kansas Medical Society
Alan Cobb, Anderson, Conlee and Associates, Wichita
Lisa Getz, St. Francis Regional Medical Center, Wichita
Marlin Rein, University of Kansas Medical Center
Dennis Priest, Department of Social and Rehabilitation Services
Allyn Lockner, Department of Social and Rehabilitation Services
John Alquest, Department of Social and Rehabilitation Services
John C. Peterson, Kaiser-Permanente
Gigi Felix, Executive Director, Kansas Chapter, National Association of Social Workers
Shirley Markham, Medical Programs, Department of Social and Rehabilitation Services

Attachment 1
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S.B. 539, from the 1988 Session, in its original form was recommended by the Insurance Department to address a problem, one that is still growing, of insurers who underwrite group health insurance on an individual basis. As initially proposed, the recommendation would have prohibited this practice with regard to groups consisting of 25 or more persons. Opposition by two large and influential Kansas associations resulted in the amendment of the bill which now applies only to groups covered by a single employer. Many of the people excluded from the group coverage will join the ranks of the uninsured while insurance companies enjoy all the benefits of selling group insurance such as no rate regulation, reduced administrative costs due to bulk premium billings, and also avoid the disadvantages by underwriting the risk as though individual policies are issued.

Mr. Brock told the Commission that the development of a comprehensive regulatory program which was intended to assist the respective states and consumers in addressing health insurance issues in a general way was begun in the early 1970s. The minimum standards act and accompanying regulations proposed in 1976 and, in part, enacted have been disappointing. The model act was intended to do four things. It contained authorization for the commissioner to establish:

1. minimum standards for policy provisions,
2. minimum standards for benefits,
3. requirements for an outline of coverage to be presented to applicants or insureds, and
4. some limitations on the content of preexisting condition provisions that can be included in individual health insurance policies.

Due to legislative concern about interfering with contractual relationships between an insurance company and its insureds, the provisions relating to minimum standards for policy provisions were amended out of the bill. Mr. Brock stated that a bill will be recommended to the 1990 Legislature which will repeal the minimum standards statutes and thereby remove what some insurers may perceive as an obstacle to new and innovative benefit structures.

Mr. Brock stated that the outline of coverage requirements contained in the 1976 legislation has been disappointing since companies have prepared a standard outline of coverage for each of their products rather than the envisioned written summary of the agent's presentation in lay person's language, and the written record of what the agent said which would have resulted in a more knowledgeable buyer.

The limitations on preexisting condition language has performed as expected but do not apply to most situations.

A Commission member noted that Jim Petrich had testified that Dorth-Coones would support legislation to extend, essentially, the provisions in the original S.B. 539 to associations and trusts and asked whether the Insurance Department would seek such legislation. Mr. Brock stated his department would certainly support such legislation but did not have much hope of enactment based on previous experience although it was felt the bill was a good one in its original form.

(*) A motion was made by William Pitsenberger that staff draft a bill which would extend the provisions of 1987 S.B. 539, to contracts issued to associations and trusts so that a replacing carrier would be required to take persons enrolled under a contract issued by a previous carrier.

An explanation of the motion was made noting that originally the legislation included associations and multiple employer trusts. The two groups were amended out of the bill, and the proposed bill would result in their inclusion as was originally intended.

Senator Anderson seconded the motion.

Staff noted that the two groups that would be involved in this bill would be the Independent Insurance Agents of Kansas and the Kansas Farm Bureau.

It was noted by a Commission member that it was the member's understanding that the Kansas Farm Bureau was no longer engaged in the group health insurance business. The motion carried. #

It was noted that "association" is defined in the insurance statutes as a trade association being composed of members that have a common occupation, i.e., hospitals, gas stations, optometrists, etc. Such groups obtain coverage issued to the association covering members of the association and is a widespread form of insurance issuance.

Chip Wheelen presented an explanation to the Commission of Attachment 12 noting it was followup on previous testimony given by Dr. Alex Scott, M.D. on June 29, 1989. During that testimony a proposal was discussed that was believed would help deal with the problem of access to care by indigent patients and those on Medical Assistance programs. The Executive Committee of the Kansas Medical Society endorsed on October 21, 1989, a proposal that would essentially define any health care provider who renders services to a Medical Assistance patient or an indigent patient (charity care) to be an employee of the state for purposes of application of the Kansas Tort Claims Act. It was noted that the proposal does involve some controversial concepts and those issues were set out in the attachment.

Staff presented information from the 1980s Corporate Health Strategies, a Connecticut based consulting firm presenting information on the 142 percent per person growth of employer spending on outpatient services between 1984 and 1989 (Attachment 13).

Staff told Commission members that this information illustrates the magnitude of mandates concerning mental health and substance abuse services which have become quite popular around the country.

Attachment 14 was presented to Commission members and staff noted that it was a breakdown of expenditures under Medicaid and noted that it covered the FY 1990 approved budget. It was pointed out that the largest cost was inpatient hospital care followed by physician and pharmacy.

Staff presented 9 RS 1564 to Commission members, noting the Commission, at the September meeting, directed a revision in the legislation that has been referred to as the Medicaid buy-in. Five basic points were changed. They are as follows:

Travel Air Insurance Company (Kansas)

PAGE COURT • 220 WEST DOUGLAS
WICHITA, KANSAS 67202-3196

(316) 264-7304

TELEX 9102400479 TRAVEL AIR WIC

STATEMENT BY DAN SMARTT
PRESIDENT
TRAVEL AIR INSURANCE CO.
FEBRUARY 6, 1990
BEFORE THE KANSAS SENATE COMMITTEE ON
FINANCIAL INSTITUTIONS AND INSURANCE

THANK YOU MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS DAN SMARTT. I AM PRESIDENT OF TRAVEL AIR INSURANCE COMPANY, A WHOLLY-OWNED SUBSIDIARY OF BEECH AIRCRAFT CORPORATION. BEECH IS THE STATE'S SECOND LARGEST PRIVATE SECTOR EMPLOYER WITH APPROXIMATELY 6500 EMPLOYEES WORKING IN THE STATE OF KANSAS. TRAVEL AIR INSURES THE PRODUCT LIABILITY OF ITS PARENT, BEECH.

I AM APPEARING BEFORE YOU TODAY TO TESTIFY ON BEHALF OF SB 474 WHICH AMENDS THE KANSAS CAPTIVE INSURANCE STATUTES. ADDITIONALLY, YOU HAVE BEEN SENT A PROPOSED AMENDMENT TO SB 474 WHICH WOULD PROHIBIT THE CAPTIVE FROM WRITING INSURANCE FOR BEECH OWNERS AND OPERATORS. WE ALSO OBVIOUSLY SUPPORT THE PROPOSED AMENDMENT.

MOST OF YOU ARE AWARE THAT THE SOARING COST OF PRODUCT LIABILITY HAS BEEN A MAJOR PROBLEM FACING AIRCRAFT MANUFACTURERS DURING THE PAST DECADE. THE PROBLEM HAS REACHED SUCH LARGE PROPORTIONS THAT, SEVERAL YEARS AGO, ANOTHER KANSAS AVIATION MANUFACTURER HALTED PRODUCTION OF ALL OF ITS NEW SINGLE AND LIGHT TWIN PISTON-POWERED AIRCRAFT. THOUSANDS OF KANSAS JOBS HAVE BEEN LOST AS A RESULT OF HIGHER PRODUCT LIABILITY EXPENSES.

*Attachment 2
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EFFORTS ARE UNDERWAY TO OBTAIN FEDERAL LEGISLATION THAT WOULD PROVIDE SOME RELIEF TO MANUFACTURERS, BUT NOTHING OF SUBSTANCE HAS BEEN ACHIEVED IN THIS AREA TO DATE. THE CHANGE WE ARE PROPOSING WOULD ASSIST BEECH AIRCRAFT CORPORATION IN ITS EFFORTS TO CONTROL PRODUCT LIABILITY COSTS.

LET ME GIVE YOU A BRIEF LOOK INTO THE BACKGROUND OF THE BEECH EXPERIENCE. TRAVEL AIR INSURANCE COMPANY, LTD. WAS ORGANIZED IN 1972, AS A BERMUDA OFFSHORE CAPTIVE INSURANCE COMPANY, TO UNDERWRITE THE PRIMARY PRODUCT LIABILITY OF BEECH FOR THE SOLE PURPOSE OF ENABLING BEECH TO GAIN CONTROL OF ITS CLAIMS.

THE WORLD INSURANCE MARKET ALLOWS THE PRIMARY INSURER, NOT THE INSURED, TO CONTROL CLAIMS AND FUNCTION AS A COORDINATING AGENT WITH EXCESS INSURERS. AT LLOYDS OF LONDON, TRAVEL AIR AND BEECH WERE SUCCESSFUL IN A BATTLE WITH LLOYD'S UNDERWRITERS AND THE REST OF THE AVIATION INSURANCE INDUSTRY FOR THE RECOGNITION THAT TRAVEL AIR WAS A VIABLE PRIMARY INSURER WITH ACCEPTABLE CLAIMS CONTROL AUTHORITY.

FOR MORE THAN FIFTEEN YEARS TRAVEL AIR HAS HAD IN PLACE WITH LLOYDS AN AGREEMENT ON CLAIMS CONTROL, A SOUND WORKING RELATIONSHIP, AND A UNIQUE AND EFFICIENT SET OF RESERVING PRACTICES WHICH HAVE BEEN ACCEPTABLE TO AVIATION UNDERWRITERS, EVEN IN THOSE YEARS IN WHICH THE PRIMARY LAYER HAS BEEN EXHAUSTED AND CLAIMS AND DEFENSE EXPENSES HAVE PENETRATED THE EXCESS LAYERS.

BEECH IS THE ONLY AVIATION MANUFACTURER WHICH EXERCISES EFFECTIVE CLAIMS CONTROL THROUGH ITS CAPTIVE INSURANCE COMPANY. WE

WOULD LIKE TO CONTINUE TO MANAGE OUR CLAIMS IN ORDER TO HELP CONTROL PRODUCT LIABILITY EXPENSE. THE BEECH EXPERIENCE HAS SHOWN THAT OUR PRODUCT LIABILITY COST IS SUBSTANTIALLY LOWER THAN OUR COMPETITORS BOTH WITHIN AND OUTSIDE OF THE STATE OF KANSAS.

THE 1986 FEDERAL TAX ACT, AND SUBSEQUENT INTERPRETATIONS HAVE IMPOSED POTENTIAL NEW LIABILITIES ON TRAVEL AIR INSURANCE COMPANY LTD. WE BELIEVE THE POTENTIAL LIABILITY CAN BE ELIMINATED BY BRINGING TRAVEL AIR LTD. ONSHORE AS A DOMESTIC CAPTIVE FORMED IN ONE OF THE STATES HAVING CAPTIVE INSURANCE LAWS. KANSAS, OF COURSE, IS THE PREFERRED STATE IF A COUPLE OF CHANGES CAN BE MADE IN THE LAW.

OUR PROPOSED AMENDMENT TO THE LAW PROTECTS THE TRAVEL AIR NAME WITHOUT ADDING THE WORD "CAPTIVE" TO THAT NAME. THIS PROTECTS THE REPUTATION THE COMPANY HAS FIRMLY ESTABLISHED OVER MANY YEARS WITH LLOYDS OF LONDON.

CURRENTLY, TRAVEL AIR INSURANCE COMPANY OF KANSAS, A WHOLLY-OWNED SUBSIDIARY OF TRAVEL AIR LTD. WRITES THE PRIMARY POLICY FOR BEECH AIRCRAFT PRODUCTS LIABILITY. THE KANSAS COMPANY RETAINS 1% OF THE RISK AND REINSURES 99% OF THE REMAINING RISK WITH TRAVEL AIR LTD. THE CURRENT KANSAS LAW ALLOWS A CAPTIVE TO REINSURE ONLY RISKS OF ANOTHER CAPTIVE. OUR PROPOSED AMENDMENT WOULD ALLOW TRAVEL AIR LTD., AS A KANSAS DOMESTIC CAPTIVE, TO REINSURE THE RISKS OF ITS REGULATED SUBSIDIARY AFFILIATE, TRAVEL AIR OF KANSAS. THESE REINSURED RISKS WOULD BE LIMITED TO THE PRODUCT LIABILITY OF BEECH AIRCRAFT.

THIS, THEN, IS A BRIEF EXPLANATION OF WHY WE ARE PROPOSING THESE MODIFICATIONS TO EXISTING KANSAS LAW. WE WOULD APPRECIATE YOUR SUPPORT. I APPRECIATE THE PRIVILEGE OF APPEARING BEFORE YOU TODAY AND I AM AT YOUR DISPOSAL TO ANSWER ANY QUESTIONS.

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

Magill

Testimony on SB 474
Before the Senate Financial Institutions and Insurance Committee
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas
February 6, 1990

Thank you very much, Mr. Chairman, and members of the committee, for the opportunity to appear today in support of SB 474, including the proposed amendments offered by Mr. Gregory with Beech Aircraft Corporation.

We feel comfortable supporting the bill, assuming the proposed amendment is adopted by the committee, because it establishes a very limited exception for aircraft captive insurance companies under the Captive Insurance Company Act. Under the wording, these aircraft captive insurance companies can only insure risks within the same corporate system or, in other words, among related corporations in the same corporate family.

Since coverage under this exception cannot be provided to "outside third parties", we see no problem eliminating the word "captive" from the name of the insurance company or allowing an aircraft captive to reinsure another affiliated company.

This is different than if Beech wanted to provide aircraft liability and property damage insurance for owners of Beech planes or if Beech wanted to provide products liability insurance, for example, for manufacturers of aircraft parts not affiliated with the Beech Corporation.

Because the bill does not undermine the essential consumer protections passed by this legislature in the original captive insurance company act, we do support the proposed amendments. We urge the committee to act favorably on the bill once amended. We would be happy to provide additional information or answer any additional questions.

*Attachment 3
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SENATE BILL No. 474

By Committee on Financial Institutions and Insurance

1-17

9 AN ACT relating to captive insurance companies; concerning pure
10 captive insurance companies insuring risks of certain aircraft man-
11 ufacturers and affiliated companies; amending K.S.A. 1989 Supp.
12 40-4301, 40-4303 and 40-4311 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 1989 Supp. 40-4301 is hereby amended to read
16 as follows: 40-4301. As used in this act, unless the context requires
17 otherwise:

18 (a) "Affiliated company" means any company in the same cor-
19 porate system as a parent, an industrial insured, or a member or-
20 ganization by virtue of common ownership, control, operation or
21 management.

22 (b) "Aircraft captive insurance company" means any pure captive
23 insurance company which is formed under the provisions of this act
24 by a corporation or an affiliated company of a corporation engaged
25 in the manufacture of aircraft and having its principal place of
26 business within the state of Kansas and which insures only risks
27 ~~relating to products manufactured or services performed by such~~
28 ~~corporation engaged in the manufacture of aircraft or its affiliated~~
29 ~~companies.~~

in the same
corporate system.

30 (b) (c) "Captive insurance company" means any pure captive
31 insurance company or industrial insured captive insurance company
32 formed under the provisions of this act.

33 (e) (d) "Commissioner" means the commissioner of insurance.

34 (e) (e) "Industrial insured" means an insured:

35 (1) Who procures the insurance of any risk or risks by use of the
36 services of a full-time employee acting as an insurance manager or
37 buyer;

38 (2) whose aggregate annual premiums for the kinds of insurance
39 total at least \$50,000;

40 (3) who has at least 25 full-time employees;

41 (4) whose principal activity consists of the manufacture of a prod-
42 uct or products; and

43 (5) who contributes not less than \$10,000 to the capital or surplus

1 of the industrial insured captive insurance company that insures its
2 risks. Such contribution shall be in the form of cash which may be
3 returned at such time as the risks of the industrial insured cease to
4 be insured by the captive insurance company.

5 ~~(e)~~ (f) "Industrial insured captive insurance company" means any
6 company that insures risks of the industrial insureds that comprise
7 the industrial insured group, and their affiliated companies.

8 ~~(f)~~ (g) "Industrial insured group" means any group of not more
9 than 10 industrial insureds in the same or similar line of business
10 that:

11 (1) Collectively owns, controls or holds with power to vote all of
12 the outstanding voting securities of an industrial insured captive
13 insurance company incorporated as a stock insurer; or

14 (2) collectively has complete voting control over an industrial
15 insured captive insurance company incorporated as a mutual insurer;
16 or

17 (3) is created under the product liability risk retention act of 1981
18 (U.S. Public Law 97-45), as amended by the risk retention act of
19 1986, as a corporation or other limited liability association taxable
20 as a stock insurance company or a mutual insurer under the laws
21 of the state of Kansas:

22 (A) Whose primary activity consists of assuming and spreading
23 all, or any portion, of the product liability or completed operations
24 liability risk exposure of its group members;

25 (B) which is organized for the primary purpose of conducting the
26 activity described in subdivision ~~(f)(3)(A)~~ (g)(3)(A) of this section;

27 (C) which does not exclude any person from membership in the
28 group solely to provide for members of such group a competitive
29 advantage over such a person; and

30 (D) which is composed of members each of whose principal ac-
31 tivity consists of the manufacture, design, importation, distribution,
32 packaging, labeling, lease or sale of a product or products.

33 ~~(g)~~ (h) "Parent" means a corporation, partnership or individual
34 that directly or indirectly owns, controls or holds with power to vote
35 more than 50% of the outstanding voting securities of a pure captive
36 insurance company.

37 ~~(h)~~ (i) "Pure captive insurance company" means any company
38 that insures risks of its parent and affiliated companies.

39 Sec. 2. K.S.A. 1989 Supp. 40-4303 is hereby amended to read
40 as follows: 40-4303. The word "captive" shall be incorporated into
41 the name of every captive insurance company organized under the
42 laws of this state, *except that an aircraft captive insurance company*
43 *incorporating the word "air" or "aircraft" into its name shall not*

1 *be required to incorporate the word "captive" into its name*
2 *captive insurance company shall adopt a name that is the same,*
3 *deceptively similar or likely to be confused with or mistaken for any*
4 *other existing business name registered in the state of Kansas.*

5 Sec. 3. K.S.A. 1989 Supp. 40-4311 is hereby amended to read
6 as follows: 40-4311. (a) Any captive insurance company may provide
7 reinsurance, comprised in articles 9 and 11 of chapter 40 of the
8 Kansas Statutes Annotated as limited by subsection (a)(3) of K.S.A.
9 ~~1988~~ 1989 Supp. 40-4302, *and amendments thereto* on risks ceded
10 by any other captive insurance company.

11 (b) Any risks or portions of risks of any captive insurance company
12 that is reinsured shall be ceded to an insurance company that is
13 authorized to transact business in this state or that has been approved
14 by the commissioner. A captive insurance company may take credit
15 for reserves on risks or portions of risks ceded. The commissioner
16 may require any other documents, financial information or other
17 evidence that such a reinsurer will be able to provide adequate
18 security for its financial obligations. The commissioner may deny
19 authorization or impose any limitations on the activities of a reinsurer
20 that, in such commissioner's judgment, are necessary and proper to
21 provide adequate security for the ceding captive insurance company
22 and for the protection and consequent benefit of the public at large.

23 (c) *Any aircraft captive insurance company may provide rein-*
24 *surance, comprised in articles 9 and 11 of chapter 40 of the Kansas*
25 *Statutes Annotated as limited by subsection (a) (3) of K.S.A. 1989*
26 *Supp. 40-4302, and amendments thereto, on risks ceded by an in-*
27 *surance company which is an affiliated company and is authorized*
28 *to transact business in the state of Kansas, if the requirements of*
29 *either paragraph (1) or (2) of subsection (b) of K.S.A. 40-221a, and*
30 *amendments thereto, are met by the ceding insurer with respect to*
31 *the reinsurance provided by the aircraft captive.*

32 Sec. 4. K.S.A. 1989 Supp. 40-4301, 40-4303 and 40-4311 are
33 hereby repealed.

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



Kansas Farm Bureau Life Insurance Company, Inc.

2627 KFB Plaza, P.O. Box 3600, Manhattan, Kansas 66502-8509 / (913) 587-6000

Memo to: Senate Financial Institutions and Insurance Committee
From: Jerry Banaka, Corporate Development Manager
Subject: Senate Bill 445
Date: February 6, 1990

We oppose Senate Bill 445 because it will, in our opinion, increase the cost of health insurance for small employers insured under a multiple employer trust arrangement as permitted by KSA 40-2209 (A)(3). In addition, the amendment to the group insurance statutes as proposed by this bill is not sufficiently clear to ascertain its ultimate impact.

The advantage of the multiple employer trust arrangement is that small employers can associate to obtain the benefits of group insurance for their employees; e.g., lower rates than could be obtained from individual policies. Under this type of arrangement, a master contract is issued to the trust, all insured employees of the employers joining the trust are issued certificates of insurance from the group master contract, and the experience of all the employees is combined for developing rates.

*Attachment 4
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Senate Bill 445 would include all the employees of all employers belonging to the trust as one insured group. (For example, if a trust was comprised of 20 employers, each of whom had five employees, all 100 employees would be considered one group and the underwriting restrictions of Senate Bill 445 would apply because the total number exceeds 25.)

Consequently, under one possible interpretation, the bill will require the insurance company, if requested, to insure without underwriting all employees of any employer unit applying for coverage to a trust that has 25 or more insured employees. In addition, any new employees subsequently joining the employer unit will be eligible for coverage without underwriting. Under another interpretation, the bill will allow the insurance company to underwrite the employer unit at the time of initial application and insure all or none of the employees, but if the employer unit is accepted, all new employees subsequently employed are automatically eligible for coverage without underwriting.

Under either interpretation, the underwriting prohibition contained in Senate Bill 445 will allow persons with severe medical conditions to enter the group insurance plan needing immediate medical care which will greatly impact the ongoing experience of the entire group. As the experience worsens, the rates of the entire group will need to be increased and the employers with reasonable experience will

seek insurance elsewhere. As more persons with severe medical conditions enter the group, and employers with reasonable experience leave, the experience of the trust will deteriorate further in continually worsening cycles and require additional rate increases.

Each employer unit is dependent on the experience of every other employer unit for rate making although none have any control over who is insured in the other employer units. These employers are, therefore, dependent on the insurance company to underwrite new entrants, both employer units as well as new employees joining an employer unit, to prevent persons with existing medical conditions from severely and immediately impacting the experience of the entire group. Failure to allow underwriting will, therefore, increase the cost of insurance to employers insured under the trust.

We have additional concerns with the bill in that it does not indicate whether an insurance company can require that covered persons be full time employees or whether a waiting period can be required for new employees. These two provisions are common in group insurance programs to reduce administrative costs and to prevent persons with known medical conditions from seeking employment primarily to obtain medical benefits.

We, therefore, urge the committee to not act favorably on this bill.

TESTIMONY ON SENATE BILL 445
Senate Financial Institutions and Insurance Committee
February 6, 1990

Testimony of William Pitsenberger
Member, Governor's Commission on Access to Services
for the Medically Indigent and the Homeless

The Commission on Access to Services for the Medically Indigent and the Homeless was created by the Legislature in 1987, and its existence was extended in 1989.

Among its charges were to determine what problems existed in accessing medical care financing, and what solutions might exist to problems identified.

We considered persons to be medically indigent not if they were poor -- having Medicaid, for example, means that one is not medically indigent for many purposes -- but rather if one did not have resources for health care financing.

One group of the medically indigent we identified were working men and women who have no health insurance coverage. In some cases, this occurs because the employer does not offer group coverage. In others, it occurs because the amount of contribution required of the employee is unaffordable. In still others, it occurs because, while the employer offers group health insurance coverage, the insurance carrier refuses to cover persons with a history of past or current health conditions.

Two years ago, the legislature addressed this latter problem in part. Senate Bill 445 is designed to extend the remedy adopted then to other forms of group health insurance coverage.

Before talking about how Senate Bill 445 works, I want to explain the nature of the problem a little bit.

In insurance industry terminology, the problem is called "churning". It may be done by the employer seeking a lower rate and indifferent to the impact on some of his employees, or it may be done by an insurer seeking to increase profits.

Here is what happens.

Suppose an employer has four employees, who have had a consistent history of yearly health expenses like this:

Attachment 5
77 & 7
2/6/90

Employee A -- \$0.00
Employee B -- \$200.00
Employee C -- \$400.00
Employee D -- \$2,400.00
Total -- \$3,000.00

The average cost per employee, then, would be \$750.00 per year. To this, an insurer would add its retentions to develop the premium.

The employer, seeking to lower the cost of health insurance, starts shopping among insurance companies. Along comes an insurance company that tells the employer that if he will drop Employee D from the policy, the rate will go down to \$250.00 or \$300.00 per employee per year. Let's say the employer is paying half the cost. If he goes along with this, he cuts his costs by almost \$300.00 per employee, gives Employee D \$125.00 or \$150.00 -- the same as he is contributing towards the coverage for other employees -- and lets Employee D fend for himself.

Simply put, insurance companies find it easier and more profitable, and employers find it cheaper, to insure those who need insurance least, and to abandon the ones who need it most to conversion insurance pools of the sickest persons or to whatever coverage they can get in the non-group market.

That did not seem to the Commission to be what group health insurance should be about. Instead, it is more like non-group health insurance.

Now, you need to know that Kansas law on group health insurance is a little bit complicated. It stipulates the kinds of entities to whom a group insurance policy may be issued. It provides that, among others, a policy may be issued to:

- (1) An employer, insuring employees of the employer.
- (2) A trust established by two or more employers, covering employees of the employers.
- (3) An association, covering members of the association or employees of members of the association.

Two years ago, the legislature amended the provisions dealing with group policies issued directly to employers, but did not address group insurance policies which cover employers as a member of a trust or a member of an association. Those changes that were made two years ago are identified in Senate Bill 445 beginning on line 43 of page 1 and continuing through line 18 on page 2.

The intent of Senate Bill 445 is to apply generally similar changes to the other forms of issuance identified above -- contracts covering employees of employers who obtain coverage through a multiple employer trust, and contracts covering employees of employers who obtain coverage through an association.

In particular, Senate Bill 445 prohibits the exclusion of individual employees from eligibility or coverage under a policy issued to a group, except at the option of the employees, or except when employees are enrolling at other than an open enrollment opportunity -- if they are enrolling in the coverage at a time other than their first opportunity to do so, for example, merely in anticipation of health expense. The idea here is to preclude group insurers from refusing coverage to persons merely because of past health conditions under a group insurance policy. If they want to pick and choose among the healthy, they are free to do so in the non-group market, not in group insurance.

It appears to me that one change is necessary in Senate Bill 445 to make it more effective in assuring access to health insurance for employees under contracts issued to trusts or associations. Most multiple employer trusts covering employees of Kansas employers have their situs outside Kansas -- in Illinois, say, or California. As a result, this Bill would not affect the contracts issued to those trusts. To remedy this, I would suggest that the language I have noted relating to contracts issued outside the state covering employees who are residents of the state be included.

I think all of you received copies of the General Accounting Office report on problems of access to health insurance in small businesses. The underwriting activities Senate Bill 445 seeks to prohibit are specifically identified as one of the problems in that report.

The Commission recommends passage of this Bill.

SENATE BILL No. 445

By Senators Ehrlich and Anderson

1-8

10 AN ACT relating to insurance; concerning eligibility for coverage
11 under group sickness and accident insurance; amending K.S.A.
12 1989 Supp. 40-2209 and repealing the existing section.
13

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

15 Section 1. K.S.A. 1989 Supp. 40-2209 is hereby amended to read
16 as follows: 40-2209. (A) Group sickness and accident insurance is
17 declared to be that form of sickness and accident insurance covering
18 groups of persons, with or without one or more members of their
19 families or one or more dependents, ~~or one or more members of~~
20 ~~their families or one or more dependents, and except at the~~
21 ~~option of the employee or member and except employees or members~~
22 ~~enrolling in a group policy after the close of an open enrollment~~
23 ~~opportunity, no individual employee or member of an insured group~~
24 ~~consisting of 25 or more persons and no individual dependent or~~
25 ~~family member may be excluded from eligibility or coverage under~~
26 ~~a policy issued to such group upon the following basis:~~

27 (1) Under a policy issued to an employer or trustees of a fund
28 established by an employer, who is the policyholder, insuring at
29 least five employees of such employer, for the benefit of persons
30 other than the employer. The term "employees" shall include the
31 officers, managers, employees and retired employees of the em-
32 ployer, the partners, if the employer is a partnership, the proprietor,
33 if the employer is an individual proprietorship, the officers, managers
34 and employees and retired employees of subsidiary or affiliated cor-
35 porations of a corporation employer, and the individual proprietors,
36 partners, employees and retired employees of individuals and firms,
37 the business of which and of the insured employer is under common
38 control through stock ownership contract, or otherwise. The policy
39 may provide that the term "employees" may include the trustees or
40 their employees, or both, if their duties are principally connected
41 with such trusteeship. A policy issued to insure the employees of a
42 public body may provide that the term "employees" shall include
43 elected or appointed officials. No policy providing benefits for hos-

within this state or issued outside this
state covering persons who are residents
of this state