Approved January 29, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Representative Turnquist at
Chairperson

3:35 a.m./p.m. on Thursday, January 24, 1991 in room 531-N of the Capitol.

All members were present except:

Theo Cribbs - ill
Tom Sawyer - excused

Committee staff present:

Chris Courtwright - Research
Fred Carman - Revisors
Nikki Feuerborn - Committee Secretary

Conferees appearing before the committee:

Mr. Richard Mason
Mr. Bill Sneed

Others attending: See Attached Sheet

Representative Ensminger moved that the minutes for the January 24, 1991, meeting be approved.. Motion seconded by Representative Campbell. Motion carried.

Appearing before the Committee was Richard H. Mason, representing the Kansas Trial Lawyers Association. He requested that the Committee introduce two legislative proposals of which he included drafts Attachment 1). Proposed legislation includes:

1. Auto insurance reform - a) require carriers to offer high option umbrella coverage; b) clarify a gross inequity in underinsured motorist coverage by making such coverage apply to the extent an insured's damages exceed their recovery from the other person's bodily injury coverage; and c) require, rather than leave to the discretion of a judge, that the attorney fees be paid by an insurance company when its PIP payments are overdue.

2. First party bad faith - Unless a plaintiff can demonstrate that an insurance company's failure to pay a claim is "a general business practice" there is no bad faith cause of action. This is an unreasonably high burden and effectively means Kansas has no first party bad faith cause of action.

Representative Campbell moved that both bills be introduced. Representative Welshimer seconded. Motion carried.

Appearing before the Committee was William W. Sneed, representing State Farm Insurance Companies. He requested that HB 3082 which was not passed in 1990 be readmitted for introduction. This proposal Attachment 2 is an effort to resolve an ongoing disagreement between State Farm Insurance 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 Assessment. The issue that the proposed legislation relates to is whether assessment made by the Illinois Insurance Guaranty Fund should be treated as an Illinois burden for purposes of computing the Kansas retaliatory tax.

Representative Sprague moved that the bill be introduced. Representative Campbell seconded the motion. Motion carried.

The meeting was adjourned at 3:55 p.m.

GUEST LIST

COMMITTEE: Insurance - House DATE: 1-24-91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bill Snee	Topeka	State Farm
Wendell Strom	"	CCTF - AARP
J. Haughey	Topeka	KDA
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Debra Schuzett	"	Legis. wife
[illegible]	"	KTCA
John Peterson	"	Ks Assn Pest Mgt
Lee WRIGHT	O.P. Ks	Farmers Ins. Group
Dick Brock	Topeka	Ins Dept
Bob Wootton	Topeka	Speaker's Office

KANSAS TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

January 24, 1991

Rep. Larry Turnquist
Statehouse
Topeka, KS 66612

Dear Larry:

On behalf of the Kansas Trial Lawyers Association, I respectfully request your Committee introduce the two legislative proposals summarized below. A draft of each is attached.

1. Auto insurance reform - a) require carriers to offer high option umbrella coverage; b) clarify a gross inequity in underinsured motorist coverage by making such coverage apply to the extent an insured's damages exceed their recovery from the other person's bodily injury coverage; and c) require, rather than leave to the discretion of a judge, that the attorney fees be paid by an insurance company when its PIP payments are overdue.

2. First party bad faith - Unless a plaintiff can demonstrate that an insurance company's failure to pay a claim is "a general business practice" there is no bad faith cause of action. This is an unreasonably high burden and effectively means Kansas has no first party bad faith cause of action.

Thank you for the opportunity to present these issues to the House Insurance Committee.

Sincerely,

Richard H. Mason
Executive Director

RHM/ll
encls.

Jan. 24, 1991
House Ins.
Attachment 1

LEGISLATIVE PROPOSAL NO._____

AN ACT relating to automobile liability insurance policies; concerning coverage for injury or death caused by uninsured and underinsured motorists; concerning subrogation of insurers providing payments under such coverage; concerning the award of attorney fees for failure to provide PIP benefits; amending K.S.A. 40-287, K.S.A. 1989 Supp. 40-284 and K.S.A. 40-3111 and repealing the existing sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. K.S.A. 1989 Supp. 40-284 is hereby amended to read as follows: 40-284. (a) No automobile liability insurance policy covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, unless the policy contains or has endorsed thereon, a provision with the coverage limits equal to the limits of liability coverage for the bodily injury or death in such automobile liability insurance policy sold to the named insured for payment of part or all sums which the insured or insured's legal representative shall be legally entitled to recover as damages from the uninsured owner or operator of a motor vehicle because of bodily injury, sickness or disease, including death, resulting therefrom, sustained by the

insured, caused by accident in arising out of the ownership, maintenance or use of such motor vehicle, or providing for such payment irrespective of legal liability of the insured or any other person or organization. ~~No insurer shall be required to offer, provide or make available coverage conforming to this section in connection with any excess policy, umbrella policy or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation or use of a specifically insured motor vehicle.~~

(b) Any uninsured motorist coverage shall include an underinsured motorist provision which enables the insured or the insured's legal representative to recover from the insurer the amount of damages for bodily injury or death to which the insured is legally entitled from the owner or operator of another motor vehicle with coverage limits equal to the limits of liability provided by such uninsured motorist coverage to the extent ~~such coverage~~ the amount of damages exceeds the ~~limits of~~ insured's recovery from the bodily injury coverage carried by the owner or operator of the other motor vehicle.

(c) The insured named in the policy shall have the right to reject, in writing, the uninsured motorist coverage required by subsection (a) which is in excess of the limits for bodily injury or death set forth in K.S.A. 40-3107 and amendments thereto. A rejection by an insured named in the policy of the uninsured motorist coverage shall be a rejection on behalf of all parties insured by the policy. Unless the

insured named in the policy requests such coverage in writing, such coverage need not be provided in any subsequent policy issued by the same insurer for motor vehicles owned by the named insured including, but not limited to, supplemental, renewal, reinstated, transferred or substitute policies where the named insured has rejected the coverage in connection with a policy previously issued to the insured by the same insurer.

(d) Coverage under the policy shall be limited to the extent that the total limits available cannot exceed the highest limits of any single applicable policy, regardless of the number of policies involved, persons covered, claims made, vehicles or premiums shown on the policy or premiums paid or vehicles involved in an accident. Any limiting provision shall be void if the name insured has purchased separate coverage on the same risk and has paid a premium calculated for full reimbursement under that coverage.

(e) Any insurer may provide for the exclusion or limitation of coverage:

(1) when the insured is occupying or struck by an uninsured automobile or trailer owned or provided for the insured's regular use;

(2) when the uninsured automobile is owned by a self-insurer or any governmental entity;

(3) when there is no evidence of physical contact with the uninsured motor vehicle and when there is no reliable competent evidence to prove the facts of the accident from a disinterested witness not

making claim under the policy;

(4) to the extent that workers' compensation benefits apply;

(5) when suit is filed against the uninsured motorist without notice to the insurance carrier; and

(6) to the extent that duplicative personal injury protection benefits apply.

(f) An underinsured motorist coverage insurer shall have subrogation rights under the provisions of K.S.A. 40-287 and amendments thereto. If tentative agreement to settle for liability limits has been reached with an underinsured tortfeasor, written notice must be given by certified mail to the underinsured motorist coverage insurer by its insured. Such written notice shall include written documentation of pecuniary losses incurred, including copies of all medical bills and written authorization or a court order to obtain reports from all employers and medical providers. Within 60 days of receipt of this written notice, the underinsured motorist coverage insurer may substitute its payment to the insured for the tentative settlement amount. The underinsured motorist coverage insurer is then subrogated to the insured's right of recovery to the extent of such payment and any settlement under the underinsured motorist coverage. If the underinsured motorist coverage insurer fails to pay the insured the amount of the tentative tort settlement within 60 days, the underinsured motorist coverage insurer has no right of subrogation for any amount paid under the underinsured

motorist coverage.

Section 2. K.S.A. 40-287 is hereby amended to read as follows: 40-287. The policy or endorsement affording the coverage specified in K.S.A. 40-284, and amendments thereto, may further provide that payment to any person of sums as damages under such coverage which duplicates sums received as damages shall operate to subrogate the insurer to any cause of action in tort which such person may have against any other person or organization legally responsible for the bodily injury or death because of which such payment is made, and the insurer shall be subrogated, to the extent of such payment, to the proceeds of any settlement or judgment that may thereafter result from the exercise of any rights of recovery of such person against any person or organization legally responsible for said bodily injury or death for which payment is made by the insurer. Such insurer may enforce such rights in its own name or in the name of the person to whom payment has been made, as their interest may appear, by proper action in any court of competent jurisdiction.

Section 3. K.S.A. 40-3111 is hereby amended to read as follows: 40-3111. (a) A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an injury covered by personal injury protection benefits and a person or institution providing a rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the

amount the person or institution customarily charges for light products, services and accommodations in cases not involving insurance, and allowances for medical benefits under this act do not include that portion of the charge for a room in any hospital, clinic, convalescent or nursing home, extended care facility or any similar facility in excess of the reasonable and customary charge for semiprivate accommodations unless intensive care is medically required.

(b) An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal injury protection benefits which are overdue. The attorney's fee shall be a charge against the insurer or self-insurer in addition to the benefits recovered, ~~if the court finds that the insurer or self-insurer unreasonably refuse to pay the claim or unreasonably delayed in making proper payment~~.

Within the discretion of the court, an insurer or self-insurer may be allowed an award of a reasonable sum as attorney's fee, based upon actual time expended, and all reasonable costs of suit for its defense against the person making claim against such insurer or self-insurer where such claim was fraudulent, excessive or frivolous, and such attorney's fee and all such reasonable cost of suit so awarded may be treated as an offset against any benefits due or to become due to such person.

Section 4. K.S.A. 40-287, K.S.A. 1989 Supp. 40-284 and K.S.A. 40-3111 are hereby repealed.

Section 5. This act shall take effect and be in force from and after its publication in the statute book.

AN ACT relating to insurance; concerning unfair claim settlement practices; amending K.S.A. 40-2404 and repealing the existing section.

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

Section 1. K.S.A. 40-2404 is hereby amended to read as follows: 40-2404. *(a)* The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

~~(a)~~ *(A)* Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

~~(b)~~ *(B)* misrepresents the dividends or share of the surplus to be received on any insurance policy;

~~(c)~~ *(C)* makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

~~(d)~~ *(D)* is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

~~(e)~~ *(E)* uses any name of title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

~~(f)~~ *(F)* is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

~~(g)~~ *(G)* is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance

8-4-1

policy; or

~~(h)~~ *(H)* misrepresents any insurance policy as being shares of stock.

(2) *False information and advertising generally.* Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, misrepresentation or statement with respect to the business of insurance or with respect to any person in the conduct of such person's insurance business, which is untrue, deceptive or misleading.

(3) *Defamation.* Making, publishing, disseminating or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(4) *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the business of insurance, or by any act of boycott, coercion or intimidation monopolizing or attempting to monopolize any part of the business of insurance.

(5) *False statements and entries.* ~~(a)~~ *(A)* Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

~~(b)~~ *(B)* Knowingly making any false entry of a material fact in

any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

(6) *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Nothing herein shall prohibit the acts permitted by K.S.A. 40-232, and amendments thereto.

(7) *Unfair discrimination.* ~~(a)~~ *(A)* Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

~~(b)~~ *(B)* Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(8) *Rebates.* ~~(a)~~ *(A)* Except as otherwise expressly provided by law, knowingly permitting ~~or~~, offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon~~, or~~; paying ~~or~~, allowing, ~~or~~ giving or offering to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, ~~or~~ any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, ~~or~~ selling, ~~or~~ purchasing or offering to give, sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other

securities of any insurance company or other corporation, association~~,~~ or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

~~(b)~~ *(B)* Nothing in subsection (7) or paragraph ~~(a) of this subsection~~ *(a)(7) or (a)(8)(A)* shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance. Any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; *or*

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice of any of the following:

~~(a)~~ *(A)* Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;)

~~(b)~~ *(B)* failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

~~(c)~~ *(C)* failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

~~(d)~~ *(D)* refusing to pay claims without conducting a reasonable investigation based upon all available information;

~~(e)~~ *(E)* failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

~~(f)~~ *(F)* not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

~~(g)~~ *(G)* compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

~~(h)~~ *(H)* attempting to settle a claim for less than the amount to which a reasonable person would have believed that such person was entitled by reference to written or printed advertising material accompanying or made part of an application;

~~(i)~~ *(I)* attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

~~(j)~~ *(J)* making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

~~(k)~~ *(K)* making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

~~(l)~~ *(L)* delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

~~(m)~~ *(M)* failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; *or*

~~(n)~~ *(N)* failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222, and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. ~~This~~ *The* record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of ~~these~~ *the* complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" ~~shall mean~~ *means* any written communication primarily expressing a grievance related to the acts and practices set out in this section.

(11) *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

(12) *Statutory violations.* Any violation of any of the provisions of K.S.A. 40-276a or 40-1515, and amendments thereto.

(13) *Disclosure of information relating to adverse underwriting decisions.* Failing to provide applicants, policyholders and individuals proposed for coverage with the information required under K.S.A. 40-2,112, and amendments thereto, within the time prescribed in such section.

(14) *Rebates and other inducements in title insurance.* ~~(a)~~ *(A)* No title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction or abatement of any rate or charge made incident to the issuance of such insurance, any special favor or advantage not generally available to others of the same classification, or any money, thing of value or other consideration or material inducement. The words "charge made incident to the issuance of such insurance" includes, without limitations,

escrow, settlement and closing charges.

~~(b)~~ *(B)* No insured named in a title insurance policy or contract nor any other person directly or indirectly connected with the transaction involving the issuance of the policy or contract, including, but not limited to, mortgage lender, real estate broker, builder, attorney or any officer, employee, agent representative or solicitor thereof, or any other person may knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement referred to in ~~paragraph (a) of this section~~ *subsection (a)(14)(A)*.

~~(c)~~ *(C)* Nothing in this section shall be construed as prohibiting:

(i) The payment of reasonable fees for services actually rendered to a title insurance agent in connection with a title insurance transaction;

(ii) the payment of an earned commission to a duly appointed title insurance agent for services actually performed in the issuance of the policy of title insurance; or

(iii) the payment of reasonable entertainment and advertising expenses.

~~(d)~~ *(D)* Nothing in this section prohibits the division of rates and charges between or among a title insurance company and its agent, or one or more title insurance companies and one or more title insurance agents, if such division of rates and charges does not constitute an unlawful rebate under the provisions of this section and is not in payment of a forwarding fee or a finder's fee.

(b) A person may bring suit against an insurance company for engaging in any practice described in subsection (a)(9). For the purposes of the individual action, it is not necessary to prove that the act was committed or performed with such frequency as to indicate a general business practice. If the individual prevails in the action, the individual shall be entitled to reasonable attorney fees, settlement of the claim and any other damages allowed by law.

Sec. 2. K.S.A. 40-2404 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

MEMORANDUM

TO: Larry Turnquist
Chairman, House Insurance Committee

FROM: William W. Sneed
State Farm Insurance Companies

DATE: January 23, 1991

RE: Kansas Retaliatory Law

As you will recall, during the 1990 Legislative Session, my client, State Farm Insurance Companies, introduced H.B. 2812. H.B. 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 Assessment.

After some miscommunication on my part, H.B. 2812 eventually was drawn as H.B. 3082, which was subsequently passed by the House Insurance Committee. Because of its potential fiscal effect, H.B. 3082 was not moved off general orders from the House floor. We are again requesting the introduction of such a bill, and I am enclosing a copy of H.B. 3082 for your information.

Again, we believe we will have an additional year's history to demonstrate the various items we addressed during the 1990 Session. Inasmuch as I will provide specifics at the appropriate hearing on this proposed piece of legislation, I will not take up any more of your time. I have, however, enclosed a copy of my memorandum to the House Committee when H.B. 3082 (2812) was debated in the House Committee last year.

House Ins.
Jan 24, 1991
Attachment 2
Page 1 of 2

I appreciate your assistance in this matter, and if you have any questions, please feel free to contact me.

Respectfully submitted,

William W. Sneed

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 1, 1990

RE : Kansas Retaliatory Law

A. Introduction

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

B. Retaliatory Taxes

1. General Discussion

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

tax statute calculates the amount of the retaliatory tax imposed upon a foreign insurer by substituting the general tax laws of the foreign insurer's state of domicile for the general tax laws of the retaliating state. This is done by applying the foreign insurer's home state tax laws to the business conducted by the foreign insurer in the retaliating state. If the foreign insurer's state of domicile has tax laws that are more burdensome than the retaliating state's tax laws, the foreign insurer pays a tax to the retaliating state equal to the tax which 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 State A and received $100 of premiums for business done in State B. State B imposes a premium tax at a rate of 2% which would result in $2.00 of premium tax. State A, however, imposes a premium tax at a rate of 3%. State B's retaliatory tax statute would require Insurer A to pay the greater retaliatory tax of $3.00 to State B. The retaliatory tax is calculated by applying State A's tax rate of 3% to the $100 of premiums received by Insurer A for its business done in State B, the retaliating state.

2. Kansas

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

4 of 2

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. <u>Conclusion.</u>

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

Respectfully submitted,

William W. Sneed

MEMORANDUM

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

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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

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APPENDIX A

RETALIATORY TAX EXAMPLES

FACT PATTERN: An Illinois insurer is operating in Kansas and receives $150,000,000 of premiums for rsks 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 o fthe 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

	Kansas Basis	Illinois Basis
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
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

	Kansas Basis	Illinois Basis
Fees	110.00	200.00
Premium Tax	2,900,000.00	3,000,000.00
Fire Tax	150,000.00	-0-
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

	Kansas Basis	Illinois Basis
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
Total	3,150,110.00	3,100,200.00

Retaliatory tax owed to Kansas -0-

EXAMPLE 4

	Kansas Basis	Illinois Basis
Fees	110.00	200.00
Premium Tax	2,735,000.00	3,000,000.00
Fire Tax	150,000.00	-0-
Total	2,885,110.00	3,000,200.00

Retaliatory tax owed to Kansas $115,090.00

1592

Session of 1990

HOUSE BILL No. 2812

By Committee on Insurance

2-5

AN ACT 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.

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

Section 1. K.S.A. 40-253 is hereby amended to read as follows: 40-253. Whenever the existing or future laws of any other state or country shall require from insurance companies or fraternal benefit societies organized under the laws of this state, applying to do business in such other state or country, 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, greater than the amount required for such purpose from insurance companies or agents of other states by the then existing laws of this state, then, and in every case, all companies and agents of any such state or country, doing business in this state shall make the same deposit, for a like purpose, with the commissioner of insurance of this state, and pay to the commissioner of insurance for taxes, fines, penalties, certificates of authority, licenses, fees, compensation for examination, or otherwise, 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 and the agents thereof. *For purposes of this section, assessments on or paid by insurance companies or fraternal benefit societies for the payment of claims of policyholders of insolvent insurers and for costs and expenses associated therewith, shall not be considered as a burden, charge, deposit or payment for taxes, fines, penalties, certificates of authority, licenses, fees, compensation for examination or otherwise imposed or required by this state or any other state or country.*

New Sec. 2. This act shall apply to assessments levied on or after the effective date of this act.

Sec. 3. K.S.A. 40-253 is hereby repealed.

1692

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

1782

Session of 1990

HOUSE BILL No. 3082

By Committee on Appropriations

3-14

AN ACT 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.

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

Section 1. K.S.A. 40-253 is hereby amended to read as follows: 40-253. Whenever the existing or future laws of any other state or country shall require from insurance companies or fraternal benefit societies organized under the laws of this state, applying to do business in such other state or country, 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, greater than the amount required for such purpose from insurance companies or agents of other states by the then existing laws of this state, then, and in every case, all companies and agents of any such state or country, doing business in this state shall make the same deposit, for a like purpose, with the commissioner of insurance of this state, and pay to the commissioner of insurance for taxes, fines, penalties, certificates of authority, licenses, fees, compensation for examination, or otherwise, 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 and the agents thereof. *For purposes of this section, assessments on or paid by insurance companies or fraternal benefit societies for the payment of claims of policyholders of insolvent insurers and for costs and expenses associated therewith, shall not be considered as a burden, charge, deposit or payment for taxes, fines, penalties, certificates of authority, licenses, fees, compensation for examination or otherwise imposed or required by this state or any other state or country.*

New Sec. 2. This act shall apply to assessments levied on or after the effective date of this act.

Sec. 3. K.S.A. 40-253 is hereby repealed.

1872

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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