

Approved _____

2/4/91
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. ~~xxxx~~ on THURSDAY, JANUARY 31, 1991 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~xxxxx~~

Senators Francisco, Kerr, McClure, Parrish, Reilly, Salisbury, Strick and Yost.

Committee staff present:

Bill Wolff, Legislative Research
Fred Carman, Revisors Office
Louise Bobo, Secretary

Conferees appearing before the committee:

Jim Braden, S.S.&G. Administration, Inc.
Bill Sneed, State Farm Insurance
Lori Callagan, KAMMCO
Terry Tiede, Assistant Insurance Commissioner

Chairman Bond called the meeting to order at 9:11 a.m.

Jim Braden, S.S. & G. Administration, Inc., appeared before the committee to request introduction of two bills. One bill would amend K.S.A. 40-2222 to explicitly recognize a letter of approval under IRC 501 (c)(9) from the IRS to show the document is subject to the jurisdiction of the IRS. The second bill would (1) adopt Third Party Administrators legislation proposed by the NAIC and (2) permit the Commissioner to license and monitor the operations of the Multiple Employer Welfare Arrangement (MEWA). Mr. Braden concluded by saying that the professional trade associations believe their plans are working well for their membership and that they should be exempt from jurisdiction of the state insurance commissioner. (Attachment 1)

Senator Yost made a motion to allow introduction of these two bills, seconded by Senator Kerr. The motion carried.

SB 53 - relating to examinations of insurance companies.

The Chairman continued, from yesterday (Wednesday, January 30), hearings on the above-mentioned bill.

Bill Sneed, State Farm Insurance, informed the committee that he supported SB 53 but would request two amendments. The first amendment would insert the word "reasonable" before the word cost on page 3, line 8 of SB 53. The second request would strike the language on page 3, lines 13-15. He added that Lori Callagan would explain this amendment more thoroughly.

A brief discussion followed. Mr. Brock remarked that one of the purposes of the bill was to speed up examinations of companies. In answer to a question by a committee member, Terry Tiede, Assistant Insurance Commissioner, said that it would take about six months and three or four examiners to complete the examination of a large company, such as Blue Cross Blue Shield. For a smaller company, it would take one or two people about three weeks to complete an examination.

Lori Callagan^h, KAMMCO, appeared in support of this bill but requested an amendment to delete page 3, lines 13-15, which "would allow a shifting in the burden of proof from the regulator to the effected entity in any legal or regulatory action brought by the Insurance Department." Ms. Callagan also stated that she supported the change in language requested by Mr. Sneed. (Attachment 2)

Discussion ensued. Chairman Bond asked Mr. Brock if his department had any objection to these changes in SB 53. Mr. Brock said that they would rather not have the changes but needed the bill with or without the changes. A committee member inquired of Mr.

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on THURSDAY, JANUARY 31, 1991

Brock if these changes would endanger accreditation. He replied, "No." Another member wanted to know if other states had adopted this language. Mr. Brock said that a national company had raised objections to the language so other states will probably delete the language. Chairman Bond inquired of Mr. Brock if there was a conflict between sec. 5, permitting disclosure, and sec. 7, requiring confidentiality. Mr. Brock replied that he saw no conflict.

Senator Kerr made a motion to accept both of the amendments to SB 53. Senator Parrish seconded the motion. The motion carried.

Senator Salisbury made a motion to recommend SB 53 favorably as amended. Senator Kerr seconded the motion. The motion carried.

SB 52 - relating to investments by insurance companies.

Terry Tiede, Assistant Insurance Commissioner, appeared before the committee in support of this bill. He explained that proposal of this bill was prompted by some insurance companies investing in "junk" bonds. This bill would amend the statutes to conform to the National Association of Insurance Commissioners' method of identifying bonds. Attachment 3)

During the discussion which followed, a member asked Mr. Tiede who was responsible for rating the bonds. He replied that the Securities Valuation Office of the NAIC, located in New York and made up of professional people, played an important regulatory role.

Senator Kerr made a motion to recommend SB 52 favorably. Senator Salisbury seconded the motion. The motion carried.

Minutes of Tuesday, January 29, 1991, were submitted for approval. Senator Reilly made a motion to approve the minutes as written. Senator Strick seconded the motion. The motion carried.

Chairman Bond advised the members that the committee would meet Monday, February 4, 1991, for discussion and action on bills previously heard. He adjourned the meeting at 9:55 a.m.

PROPOSAL BEFORE THE SENATE COMMITTEE
ON COMMERCIAL AND FINANCIAL INSTITUTIONS

January 31, 1991

I am Jim Braden, CLU, appearing before you today on behalf of SS&G Administrators, Inc.

The escalating cost of health care is a concern of both state and federal legislators and administrators. As a former legislator and an insurance professional with 26 years experience in the life and health insurance field, I am not only aware of this concern but, as many of you know, I have put a great deal of effort in recent years into attempting to provide solutions and alternatives to this problem. As a small businessman, I am also very much aware and concerned that this has become a serious problem for the employer who wants to provide fair and adequate benefits to employees. Therefore, while I believe it is important to do everything possible to protect the consuming public, I believe we must also do everything possible to provide our small businesses with affordable alternatives and to encourage their creativity in providing for themselves and their employees.

Here in Kansas, three professional trade associations have established health insurance plans through IRC 501(c)(9)

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1/31/91
Attachment 1

Voluntary Employee Beneficiary Association (VEBA) trusts.

Specifically, these are:

1. Kansas Society of Architects, A.I.A.
2. Kansas Dental Association
3. Community Bankers of Kansas (formerly KIBA)

These three VEBA trusts consider themselves to be "Employee Welfare Benefit Plans" as defined in Section 3(1) of ERISA, being established by a "group or association of employers" acting for an employer under the ERISA Section 3(5) definition of "employer." Further, the Department of Labor has established criteria for a bona fide group or association of employers to establish a "single employer" benefit plan. Each of these VEBAs believes it satisfies that criteria and should not be deemed to be either (1) an insurance company or (2) a multiple employer welfare arrangement (MEWA) as defined in ERISA Section 3(40). ERISA preempts from state insurance regulation any welfare benefit plan subject to ERISA except for self-funded MEWAs. Kansas law, as well as that of more than twenty other states which adopted the NAIC model in 1983, presumes that every plan providing health benefits is subject to Kansas insurance law unless it shows a certificate or other document issued by an agency of the federal or state government that the plan is subject to that agency's jurisdiction. The Kansas Commissioner of Insurance has recently said that IRS letters of approval for VEBA plans under IRC 501(c)(9) do not satisfy this evidence requirement.

It must be recognized that there are a large number of legitimate plans established by professional and trade associations which elect from among their own participants those persons who make all the decisions affecting benefits, claims, premium contributions, expenses, desirable insurance protection and investments of the plan. These self-insured plans truly offer the small businessman an affordable alternative to the insurance marketplace. Those that obtain exemption from tax under IRC 501(c)(9) operate on a not-for-profit basis as well. These three programs have been operating since as early as 1980 and have afforded the participants substantial savings as compared to alternative coverages available to the individual member employers through the insurance community.

Based on the above information, we ask that the Kansas Legislature take the following actions:

1. Amend K.S.A. 40-2222 to explicitly recognize a letter of approval under IRC 501(c)(9) from the IRS as a document issued by an agency of the Federal government showing the plan is subject to jurisdiction of the IRS.
2. Adopt Third Party Administrators legislation proposed by the NAIC, with certain enhancements that would assure greater integrity among licensed third party administrators.

Request 1

*Request 2
(also includes
point 3)*

3. Adopt legislation that deals with Multiple Employer Welfare Arrangements under the ERISA definition, that would permit the commissioner to license and monitor the operations of the MEWA.

Without the first of these requested legislative changes, these self insured plans, which have been operating satisfactorily for nearly ten years will be forced by the Insurance Department to purchase their insurance plans through commercial insurance companies.

In summation, the professional trade associations involved, and their officials, believe that their plans are working well for their membership, that they are providing necessary health care benefits and employee benefits at an affordable rate and that their qualification as 501(c)(9) associations, and as "Employee Welfare Benefit Plans" as defined by ERISA should exempt them from jurisdiction of the state insurance commissioner.

We respectfully request that the committee introduce the proposed legislative changes for consideration and action by the 1991 session of the Kansas Legislature.

Respectfully submitted,

James D. Braden, CLU

Proposed Legislation for 1991 Session

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

Section 1. K.S.A. 40-2222 is hereby amended to read as follows:
40-2222. Any person or other entity which provides coverage in this state for medical surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the commissioner of insurance unless the person or other entity conclusively shows by submission of an appropriate certificate, license or other document issued by a governmental agency that it is subject to the jurisdiction of an agency of this state or the federal government. Any entity that has obtained recognition of its exempt status under Section 501(c)(9) of the Internal Revenue Code, and is sponsored by a nonprofit trade or professional association, shall be considered to be subject to the jurisdiction of an agency of the federal government and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated or of the jurisdiction of the commissioner of insurance provided that such entity files satisfactory proof with the commissioner that it is covered by stop loss or excess insurance for claims expense in excess of anticipated contributions by or on behalf of individuals covered by the entity.

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

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

AND

KANSAS MEDICAL INSURANCE SERVICES CORPORATION

January 29, 1991

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori M. Callahan
Legislative Counsel

SUBJECT: S.B. 53

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas, physician-owned, non-profit professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures 750 Kansas doctors. KaMMCO appreciates the opportunity to testify today.

Senate Bill 53, a Kansas Insurance Department proposal, is a model law drafted by the National Association of Insurance Commissioners (NAIC). KaMMCO is supportive of Senate Bill 53, and the Insurance Department's efforts to seek NAIC accreditation through adoption of the NAIC model laws. KaMMCO, however, is concerned about one sentence in this bill.

Page 3, lines 13-15, of Senate Bill 53 contain the following language:

"Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action"

This provision would allow a shifting in the burden of proof from the regulator to the effected entity in any legal or regulatory action brought by the Insurance Department. Currently, the Insurance Department, as well as all other state agencies, must prove its case and meet the requisite burden of proof at a hearing prior to taking any action that would effect those entities it regulates. After meeting this burden of proof, the effected entity must then defend against the allegations by disproving the evidence presented by the Department. Such hearings occur after an investigation is conducted by the Department's personnel who make findings of fact and conclusions.

FI & I
1/31/91
Attachment 2

Senate Bill 53 would mandate that this initial investigation by the Department personnel would be sufficient proof of a violation of the law so as to negate the need for the Department to make any level of proof at the hearing prior to requiring the effected entity to proceed to defend itself.

Such is a violation of Due Process and is in contravention of the principles of administrative law. To remove this sentence would not effect the goal of the Department in seeking passage of Senate Bill 53 and would preserve the integrity of the administrative hearing process.

Accordingly, KaMMCO urges the Senate Financial Institutions and Insurance Committee to amend Senate Bill 53 by striking lines 13-15 on page 3.

Thank you for your time, and please let me know if I may answer any questions.

TESTIMONY BY

TERRY TIEDE
KANSAS INSURANCE DEPARTMENT

BEFORE THE

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
ON SENATE BILL NO. 52

JANUARY 31, 1991

*FI + I
1/31/91
Attachment 3*

Senate Bill No. 52 consists of an editorial amendment to the statutes governing investments of domestic insurance companies. The designation used by the National Association of Insurance Commissioners (NAIC) to identify investment grade bonds has been changed from a "yes"/"no" designation to a "1" through "6" designation as part of a revised procedure adopted by the NAIC to establish a more refined system for valuing the quality of bonds. The new expanded NAIC designations arose out of the concern about insurance company investments in high-yield, non-investment grade securities commonly known as "junk" bonds. Designations "1" and "2" of the revised NAIC categories generally parallel the "Baa3" or better Moody's rating otherwise used in Kansas investment statutes (line 26, page 1 and line 31, page 2 of Senate Bill No. 52).

A complete comparison of the NAIC categories to those of recognized rating agencies is shown on the attached pages. In this comparison "SVO" refers to the Securities Valuation Office of the NAIC. This office is located in the New York financial district and plays an important regulatory role in providing stabilized values on securities owned by insurers for accounting and annual statement purposes.

Recognized Rating Agencies and the Rating Equivalent of
Their Systems to the SVO Rating System

1. Moody

o Corporate, Government and Municipal Ratings	SVO
Aaa; Aa 1, 2, 3; A1, 2, 3	1
Baa 1, 2, 3,	2
Ba 1, 2 3,	3
B 1, 2, 3	4
Caa, Ca, C	5 or 6
o Commercial Paper	
P-1	1
P-2	2
P-3	3
N-P	4

2. Standard and Poors

o Corporate and Municipal ratings	
AAA, AA+, AA, AA-, A+, A, A-	1
BBB+, BBB, EBB-	2
BB+, BB, BB-	3
B+, B, B-	4
CCC+, CCC, CCC-, CC, C	5
CI, D	6
o Commercial Paper	
A	1
A-1, A-2	2
A-3	3
B	4

C	5
D	6

3. Duff and Phelps

o Fixed Income Rating Scale	
AAA, AA+, AA, AA-, A+, A, A-	1
BBB+, BBB, BBB-	2
BB+, BB, BB-	3
B+, B, B-	4
CCC	5 or 6
o Commercial Paper and Certificate of Deposit	
D1+	1
D1	1
D1-	1
D2	2
D3	2