

Approved Feb. 20, 1992
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Representative Turnquist at
Chairperson

3:30 ~~a.m.~~ p.m. on Tuesday, February 18, 1992 in room 531 N of the Capitol.

All members were present except:
Representative Helgeson: Excused
Representative Sebelius: Excused

Committee staff present:

Mr. Chris Courtwright, Research
Mr. Fred Carman, Revisor
Mrs. Nikki Feuerborn, Secretary

Conferees appearing before the committee:

Discussion on HB 2787 - Activities of insurance holding companies
Mr. Chris Courtwright gave a staff review of the bill. Mr. Fred Carman, staff revisor, presented a proposed technical amendment. (See Attachment 1).

Representative Cornfield moved to adopt the amendment prepared by the revisor's office and the Insurance Department. Representative Gilbert seconded the motion. Motion carried.

Representative Campbell moved to adopt the suggested language change by the Insurance Department by adding "with customary" after the word conformity on Page 11, Line 6 of the bill. Representative Cozine seconded the motion. Motion carried.

Representative Campbell moved for favorable passage with amendments for HB 2787. Representative Cozine seconded the motion. Motion carried.

Mr. Dave Hanson, representing Kansas Association of Property and Casualty Insurance, distributed copies of proposed amendments to HB 2755. Representative Turnquist thanked him and said this bill would be discussed next week after the committee had had an opportunity to digest the information. (See Attachment 2).

Meeting adjourned at 4:10 p.m.

GUEST LIST

COMMITTEE: House Insurance

DATE: Feb. 18, 1992.

NAME (PLEASE PRINT) ADDRESS COMPANY/ORGANIZATION

NAME

CITY

REF

Bill Sneed

Topeka

State Farm

Rick Wilson

MaPher

Alliance

Dick Brock

Topeka

Ins Dept

JIM OLIVER

TOPEKA

PIAK

Dave Hanson

Topeka

Ks Assoc P & C

BRAD SMOOT

"

BCBS

Lee Wright

Orient Park

Farmers Ins. Group

R G Frey

Topeka

KILA

1 law.
 2 (c) A domestic insurer may not enter into transactions which are
 3 part of a plan or series of like transactions with persons within the
 4 holding company system if the purpose of those separate transactions
 5 is to avoid the statutory threshold amount and thus avoid the review
 6 that would occur otherwise. If the commissioner determines that
 7 such separate transactions were entered into over any 12 month
 8 period for such purpose, the commissioner may exercise authority
 9 under K.S.A. 40-3311 and amendments thereto.

10 (d) The commissioner, in reviewing transactions pursuant to par-
 11 ~~agraph (2) of subsection (c)~~, shall consider whether the transactions
 12 comply with the standards set forth in ~~paragraph (1) of subsection~~
 13 (a), and whether they may adversely affect the interests of
 14 policyholders.

15 (e) The commissioner shall be notified within 30 days of any
 16 investment of the domestic insurer in any one corporation if the
 17 total investment in such corporation by the insurance holding com-
 18 pany system exceeds 10% of such corporation's voting securities.

19 ~~(d)~~ (f) (1) No insurer subject to registration under K.S.A. 40-
 20 3305, and amendments thereto, shall pay any extraordinary dividend
 21 or make any other extraordinary distribution to such insurer's share-
 22 holders until: (A) Thirty days after the commissioner of insurance
 23 has received notice of the declaration thereof and has not within
 24 such period disapproved such payment; or (B) the commissioner of
 25 insurance shall have approved such payment within such 30-day
 26 period.

27 (2) For purposes of this section, an extraordinary dividend or
 28 distribution includes any dividend or distribution of cash or other
 29 property, whose fair market value together with that of other div-
 30 idends or distributions made within the preceding 12 months exceeds
 31 the ~~greater~~ of: (A) Ten percent of such insurer's surplus as regards
 32 policyholders as of December 31 next preceding; or (B) the net gain
 33 from operations of such insurer, if such insurer is a life insurer, or
 34 the net investment income, if such insurer is not a life insurer, *not*
 35 *including realized capital gains* for the 12-month period ending De-
 36 cember 31 next preceding, but shall not include pro rata distributions
 37 of any class of the insurer's own securities. An extraordinary dividend
 38 or distribution shall also include any dividend or distribution made
 39 or paid out of any funds other than surplus profits arising from the
 40 insurer's business, as defined in K.S.A. 40-233, and amendments
 41 thereto. The provisions of K.S.A. 40-233, and amendments thereto,
 42 shall not be construed so as to prohibit an insurer, subject to reg-
 43 istration under K.S.A. 40-3305, and amendments thereto, from mak-

Delete
 (b)
 Delete

lesser

Insurance Commission
 January 21, 1998
 Attachment 1

HOUSE BILL No. 2755

By Committee on Insurance

1-23

8 AN ACT concerning insurance; uninsured and underinsured auto-
9 mobile insurance coverage; exclusions; amending K.S.A. 1991
10 Supp. 40-284. and repealing the existing section.
11

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

13 Section 1. K.S.A. 1991 Supp. 40-284 is hereby amended to read
14 as follows: 40-284. (a) No ~~automobile~~ liability insurance policy covering
15 liability arising out of the ownership, maintenance, or use of
16 any motor vehicle shall be delivered or issued for delivery in this
17 state with respect to any motor vehicle registered or principally
18 garaged in this state, unless the policy contains or has endorsed
19 thereon, a provision with coverage limits equal to the limits of li-
20 ability coverage for bodily injury or death in such ~~automobile~~ liability
21 insurance policy sold to the named insured for payment of part or
22 all sums which the insured or the insured's legal representative shall
23 be legally entitled to recover as damages from the uninsured owner
24 or operator of a motor vehicle because of bodily injury, sickness or
25 disease, including death, resulting therefrom, sustained by the in-
26 sured, caused by accident and arising out of ownership, maintenance
27 or use of such motor vehicle, or providing for such payment irre-
28 spective of legal liability of the insured or any other person or
29 organization. No insurer shall be required to offer, provide or make
30 available coverage conforming to this section in connection with any
31 excess policy, umbrella policy or any other policy which does not
32 provide primary motor vehicle insurance for liabilities arising out of
33 the ownership, maintenance, operation or use of a specifically insured
34 motor vehicle.

35 (b) Any uninsured motorist coverage shall include an underin-
36 sured motorist provision which enables the insured or the insured's
37 legal representative to recover from the insurer the amount of dam-
38 ages for bodily injury or death to which the insured is legally entitled
39 from the owner or operator of another motor vehicle with coverage
40 limits equal to the limits of liability provided by such uninsured
41 motorist coverage to the extent such coverage exceeds the limits of
42 the bodily injury coverage carried by the owner or operator of the
43 other motor vehicle.

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Attachment 2
2-18-92

1 (c) The insured named in the policy shall have the right to reject,
 2 in writing, the uninsured motorist coverage required by subsections
 3 (a) and (b) which is in excess of the limits for bodily injury or death
 4 set forth in K.S.A. 40-3107 and amendments thereto. A rejection
 5 by an insured named in the policy of the uninsured motorist coverage
 6 shall be a rejection on behalf of all parties insured by the policy.
 7 Unless the insured named in the policy requests such coverage in
 8 writing, such coverage need not be provided in any subsequent
 9 policy issued by the same insurer for motor vehicles owned by the
 10 named insured, including, but not limited to, supplemental, renewal,
 11 reinstated, transferred or substitute policies where the named in-
 12 sured had rejected the coverage in connection with a policy pre-
 13 viously issued to the insured by the same insurer.

14 (d) Coverage under the policy shall be limited to the extent that
 15 the total limits available cannot exceed the highest limits of any
 16 single applicable policy, regardless of the number of policies in-
 17 volved, persons covered, claims made, vehicles or premiums shown
 18 on the policy or premiums paid or vehicles involved in an accident.

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

21 ~~(1) When the insured is occupying or struck by an uninsured~~ or underinsured motor vehicle
 22 ~~automobile or trailer owned or provided for the insured's regular~~ , which is not the vehicle insured under the policy;
 23 ~~use~~

24 (2) when the uninsured ~~automobile~~ is owned by a self-insurer or or underinsured motor vehicle
 25 any governmental entity;

26 (3) when there is no evidence of physical contact with the un- or underinsured
 27 insured motor vehicle and when there is no reliable competent
 28 evidence to prove the facts of the accident from a disinterested
 29 witness not making claim under the policy;

30 (4) to the extent that ~~workers' duplicative workers compensation~~ (delete)
 31 benefits apply;

32 (5) when suit is filed against the uninsured motorist without notice or underinsured
 33 to the insurance carrier ~~and~~

34 (6) to the extent that ~~duplicative~~ personal injury protection ben- or when the insurer is not given an opportunity to
 35 efits apply ~~], which are not subject to subrogation or reimbursement~~
 36 under K.S.A. 40-3113a;

37 (f) An underinsured motorist coverage insurer shall have sub- (7) to the extent of any liability coverage payment .
 38 rogation rights under the provisions of K.S.A. 40-287 and amend-
 39 ments thereto. If a tentative agreement to settle for liability limits
 40 has been reached with an underinsured tortfeasor, written notice
 41 must be given by certified mail to the underinsured motorist cov-
 42 erage insurer by its insured. Such written notice shall include written
 43 documentation of pecuniary losses incurred, including copies of all
 44 medical bills and written authorization or a court order to obtain

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1 reports from all employers and medical providers. Within 60 days
 2 of receipt of this written notice, the underinsured motorist coverage
 3 insurer may substitute its payment to the insured for the tentative proposed liability payment or
 4 settlement amount. The underinsured motorist coverage insurer is
 5 then subrogated to the insured's right of recovery to the extent of to any
 6 such payment and any settlement under the underinsured motorist full
 7 coverage. If the underinsured motorist coverage insurer fails to pay
 8 the insured the amount of the tentative tort settlement within 60
 9 days, the underinsured motorist coverage insurer has no right of
 10 subrogation for any amount paid under the underinsured motorist
 11 coverage. [, regardless of whether such payment or settlement
 12 Sec. 2. K.S.A. 1991 Supp. 40-284 is hereby repealed. is duplicative or non-duplicative.
 13 Sec. 3. This act shall take effect and be in force from and after
 14 its publication in the statute book.

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40-287. Same; subrogation rights. The policy or endorsement affording the coverage specified in K.S.A. 40-284 may further provide that payment to any person of sums as damages under such coverage 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.

History: L. 1968, ch. 273, § 4; July 1

regardless of whether the same may be considered duplicative or non-duplicative,
full or partial payment, recovery,

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MEMORANDUM OF TESTIMONY
RE: HOUSEBILL 2755

Mr. Chairman and Members of the House Insurance
Committee:

I appear on behalf of the Kansas Association of Property and Casualty Insurers to reiterate concerns we have with the proposed amendments in Housebill 2755. You may recall that we expressed concern with the proposed insertion of the word "duplicative" as part of the amendments proposed last year by the Trial Lawyers in Housebill 2126. We still believe that insertion of this word will not clarify, but rather confuse the issue of what may be excluded and lead to more litigation to determine what items of damage may or may not be "duplicative". If clarification is needed, we believe better language can be found to express the legislative intent and to resolve any problems that may exist with the existing exclusion provisions.

We would submit that the use of the word "duplicative" is unnecessary and, with regard to worker's compensation benefits, will cause further confusion and litigation. By law, worker's compensation is the exclusive remedy for an injured employee against the employer. Benefits are awarded on the basis of scheduled injuries for a percentage of work

disability. By their terms, the types of awards do not correspond or duplicate awards for damages in a typical automobile accident case, although the same medical bills and lost earnings may ultimately be paid in both types of action. We do not feel that your motor vehicle insurance policy should now be treated as a supplement to worker's compensation or as a source of additional damages that could not otherwise be collected from the employer.

Underinsured motorist coverage is a mandatory coverage included in the mandatory uninsured motorist coverage of K.S.A. 40-284. As recognized by the Kansas Court of Appeals in Hammerman v. Southwestern Insurance Group, 1 Kan. App. 2d 445 (1977) "Uninsured motorist coverage does not, and was never intended to, afford the insured motorist the same amount of potential recovery against the insured's uninsured motorist insurance carrier as the insured might have against the uninsured tortfeasor personally." Certainly, the same rationale would apply to underinsured motorist coverage. In addressing the coverages mandated under K.S.A. 40-284, the decision of the Kansas Supreme Court in Bartee v. R.T.C. Transportation, Inc., 245 Kan. 516 (1989) contains the following "The statute insures that motorists are protected against loss caused by uninsured motorists to the same extent they themselves provide protection

for the rest of the world." Motor vehicle liability policies in Kansas are allowed to exclude any obligation of the insured for any damages or injuries to any employees or fellow employees or otherwise arising under any type of worker's compensation law. K.S.A. 40-3107(i)(3, 8 and 9).

We would be glad to work with the Insurance Department to address any problems that may have arisen and to try to provide any necessary clarifying language. Thank you for your consideration.

Respectfully,

DAVID A. HANSON

DAH:sah/8446B