Approved 3/18/92
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson

9:18 a.m./~~p.m.~~ on Tuesday, March 17, 19 92 in room 529-S of the Capitol.

All ~~XXX~~ members ~~were~~ present ~~except~~ ~~XXXX~~: Senators Bond, Francisco, Kerr, McClure, Moran, Parrish, Strick, Ward, Yost.

Committee staff present:
Fred Carman, Revisor
Bill Wolff, Research
June Kossover, Committee Secretary

Conferees appearing before the committee:

Richard Brock, State Insurance Department
Lori Callahan, KAAMCO

The meeting was called to order by Chairman Bond at 9:18 a.m.

Chairman Bond announced that on Thursday, March 19, at 4:15 p.m., room 527S, there will be a meeting to consider technical changes to SB 480. Attending will be Representatives Gross and Graeber, Fred Carman and Bruce Kinzie of the Revisor's Office, Bill Wolff and Richard Ryan of Research, Treasurer Sally Thompson, Jim Maag of Kansas Bankers Association, and Chairman Bond. All F I & I committee members are invited to attend.

On a motion by Senator Strick, seconded by Senator Yost, the minutes of the meeting of March 5, 1992, were approved as submitted.

The Chairman opened the hearing on **HB 2787**, a bill to update regulation of insurance holding companies. Richard Brock, State Insurance Department, appeared before the committee to testify in favor of **HB 2787** and to explain the need for the legislation. (Attachment #1.) In response to Senator Ward's question, Mr. Brock explained that the bill will prevent undesirable parties from gaining control of insurance companies and depleting the assets of the insurer. There being no further questions, the Chairman declared the hearing closed. Senator Kerr made a motion, seconded by Senator Yost, to move **HB 2787** favorably. The motion carried.

The hearing on **HB 2753** was opened. Mr. Brock testified in support of the bill (Attachment #2) and explained that this bill would simply change the required reporting date to make it consistent with the end of the fiscal year for each group-funded workers' compensation pool. There were no questions and no further conferees and the hearing was declared closed. Senator Parrish moved to favorably recommend **HB 2753** and to place it on the Consent Calendar. Senator Kerr seconded the motion. The motion carried.

Chairman Bond announced that Senators Moran, Francisco and Strick along with Representatives Graeber, Gross and Shallenburger will form a Joint Subcommittee for the purpose of holding hearings with regard to issues surrounding the bankruptcy of Bankers Thrift. The subcommittee will meet on March 31, 1992.

The Chairman opened the hearing on **HB 3040**. Lori Callahan, KAAMCO, appeared before the committee to testify in support of the bill (Attachment #3). Ms. Callahan explained that no tax payer money is involved and the bill would simply allow money to be transferred from the Stabilization Fund, if needed, on a quarterly basis instead of annually. Senator Parrish made a motion to report **HB 3040** favorably and to place the bill on the Consent Calendar. The motion was seconded by Senator Yost. The motion carried.

The committee adjourned at 9:40 a.m.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 3/17/92

NAME	ADDRESS	ORGANIZATION
Lois Gallehar	Topeka	KAMMCO
[illegible]	TOPEKA	KAMMCO
JIM OLIVER	TOPEKA	PIAK
Norm Wilks	TOPEKA	KASB
Roger Traxler	Topeka	Ks Govt Consult.
Debra Wozniak	Bloomington IL	StateFarm Insurance
Bill Sneed	Topeka	State Farm
Tom Slattery	Topeka	AGC of Ks.
Lee Wright	Overland Park	Farmers Ins. Group
Dick Brock	Topeka	Ins Dept
JEFF SONNICH	TOPEKA	KACSI

Testimony by

Dick Brock, Kansas Insurance Department

Before the Senate Committee on Financial Institutions and Insurance

House Bill No. 2787

In the late 1960s and early '70s, the American business community discovered the advantages of diversification. Some observers at the time were suspicious of the motives of those seeking to acquire ownership and control of insurance companies believing that the primary purpose of such activity was to circumvent many of the statutes that regulate the formation, management, investments and other operations of insurance companies. Others were less suspicious in that the acquisition of insurance companies by non-insurance interests would produce more access to capital markets, enhance profitability through new lines of business, and better serve expanding public needs through a more comprehensive range of financial services.

Regardless of which view was correct, it became evident that the interests of policyholders could be adversely affected if control of an insurer was sought for nefarious reasons, such acquisition would substantially lessen competition and/or, more important, the assets of the insurer were depleted or its financial condition otherwise jeopardized by transactions or relationships over which there was inadequate or no regulatory oversight or control.

Therefore, to meet the regulatory needs revealed by the acquisition and merger of insurance companies, the National Association of Insurance Commissioners developed and adopted the Insurance Holding Company System Regulatory Act.

With the exception of a section relating to permissible investments, Kansas enacted this basic act in 1974. The original and continuing purpose of the Holding Company Act is to protect the interests of the policyholders insured by a domestic insurance company if a controlling interest in such company is acquired by a new person or entity. Aside from some fairly technical amendments such as removing the act's

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Attachment #1

application to securityholders, removal of some notification requirements and assigning responsibility for the payment of some of the costs incurred when formal hearings are conducted, the Kansas law relating to holding company systems had not been materially changed since its inception until 1991. As many of you will recall, we proposed and you enacted Senate Bill No. 67 last year which amended various provisions of the Holding Company Act.

House Bill No. 2787 is another update because: (1) our current holding company act includes an exemption that is simply not appropriate or acceptable in today's environment; (2) the definition of an extraordinary dividend in the current Kansas law is very substantially different than that contained in the current NAIC model; and (3) because of the need to propose amendments in these areas, we believe it appropriate to simply bring other provisions of our Holding Company Act up-to-date so it will be comparable to the current NAIC model and therefore more comparable to the holding company acts in effect or which will be in effect in the other states.

Many of the amendments are editorial in nature or are self-explanatory but the more substantive amendments will:

(1) Page 3, lines 6 through 15 -- Clarify that non-insurance entities must file the required preacquisition notification even though the transaction may ultimately not be subject to the Commissioner's approval. The preacquisition notice will permit him or her to be satisfied that the holding company to be acquired is not primarily engaged in the business of insurance.

(2) Page 6, lines 13 through 23 -- These provisions relate to the merger and acquisition provisions added by 1991 Senate Bill 67 regarding acquisitions of non-domestic insurers. In effect, this additional language will make acquisitions of domestic insurers subject to the

same competitive standards as were applied to non-domestic insurers last year.

(3) Page 6, lines 36 and 37 -- This amendment would require the Commissioner to consider whether an acquisition of a domestic insurer is likely to be hazardous or prejudicial to the insuring public as a reason the Commissioner may disapprove the transaction.

(4) Page 7, lines 24 through 29 -- This amendment removes an exemption from application of the Holding Company Act provisions and is one of the most important amendments proposed by House Bill 2787. Specifically, control of a domestic insurance company can currently be acquired without approval or oversight if accomplished through the purchase of unissued stock.

At the time the Holding Company Act was first developed by the NAIC, it was designed to address the problems created by "hostile takeovers" where current owners and management interests and those seeking control often ignored the policyholder's welfare. Unissued stock was not involved because such securities are obviously under the control of management and therefore protected from unwanted or unwelcome purchase. However, it has become clear that any acquisition of a domestic insurer must be subject to scrutiny and meet certain tests regardless of the reason for or manner in which the change in control occurs.

Therefore, deletion of the exemption is essential to prevent injury to policyholders by the acquisition of a domestic insurer through a "friendly" purchase of unissued stock by undesirable interests.

(5) Pages 11 and 12, lines 17 through 43 and 1 and 2 respectively -- This is really an editorial amendment but because of the amount of language stricken and added it is worthy of comment. These

provisions have been deleted but reinserted on pages 14 and 15, lines 27 through 43 and lines 1 through 9 respectively.

(6) Page 13, lines 2 through 18 -- This is actually a correction of 1991 Senate Bill 67. For some reason, they were unintentionally omitted from our 1991 proposal and therefore were not included in the 1991 legislation. They are, however, a significant part of the requirements added in 1991 which requires domestic insurers to notify the Commissioner of certain transactions.

(7) The second really important amendment proposed by House Bill No. 2787 appears on page 13, line 32 where the word "greater" should be deleted and the word "lesser" substituted.

Obviously, when we make this change of one word it has a profound effect on the definition of extraordinary dividend. Consequently, the ability of insurers to pay a dividend to shareholders without the approval of the Commissioner is more limited. For example, under the current definition a life insurer with a surplus of $4 million and a net gain from operations of $500,000 as of December 31 would be able to make a dividend distribution of $500,000 to shareholders without the Commissioner's approval. Under the language proposed by House Bill 2787, the insurer's unfettered dividend authority would be $400,000 because 10% of $4 million is less than the net gain from operations. This doesn't at all mean the insurer is prevented from distributing a larger dividend but it would change the level at which the Commissioner's approval is needed. This difference, of course, would be much greater for life insurers with a huge surplus but a minimal gain from operations.

It is important to note that we are talking only about dividends to shareholders. This provision doesn't have anything to do with policyholder dividends. Thus, the purpose of this amendment is

simply to add a further safeguard against a distribution of dividends to a parent or other shareholders of such magnitude that the solvency of the insurer and therefore the welfare of policyholders might be endangered.

The remaining changes are simply clarifying or editorial amendments, however, if any changes I haven't mentioned raise a question I will try to respond.

Testimony by

Dick Brock, Kansas Insurance Department

Before the Senate Committee on Financial Institutions and Insurance

House Bill No. 2753

House Bill No. 2753 suggests a technical amendment to the statutes governing group-funded workers' compensation pools. Obviously, the fiscal year of each pool does not end at the same time yet the current statute establishes a common date of March 31 as the deadline for submission of a certified financial statement to the Commissioner. As a result, the statement is either very difficult to develop by the reporting date or its content is somewhat outdated by the time the Commissioner receives it. House Bill No. 2753 suggests a minor amendment that will make the reporting date consistent with the end of the fiscal year for each pool. This change would also make the reporting date provision for group-funded workers' compensation pools and municipal group-funded pools the same.

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Attachment #2

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY
ON BEHALF OF
KANSAS HEALTH CARE PROVIDER INSURANCE AVAILABILITY PLAN

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori Callahan, General Counsel

RE: H.B. 3040

DATE: March 10, 1992

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas domestic, physician-owned, professional liability insurance company formed by the Kansas Medical Society pursuant to legislation enacted by the Kansas Legislature. KaMMCO currently insures over 800 Kansas physicians.

On July 1, 1990, KaMMCO became the servicing carrier for the Kansas Health Care Provider Insurance Availability Plan. The Plan is a joint underwriting association for health care providers who cannot obtain medical malpractice insurance in the private market. Since July 1, 1990, the Plan has been greatly depopulated due to the increase in competition in the medical malpractice insurance market in the state of Kansas. The Plan is funded through premiums paid by its insureds and then is supplemented by the Health Care Stabilization Fund.

When KaMMCO became the servicing carrier for the Plan it applied its aggressive claims management procedure to the Plan claims. This procedure results in the moving of claims more quickly through the system, which results in a reduction of transaction costs. As a result, the numerous claims which occurred during the time when the Plan had a higher population have been settled or resolved in annual numbers greater than that resolved annually prior to July 1, 1990. This has occurred during a time when the depopulation in the Plan has resulted in lower premiums being collected by the Plan.

In order to make up this deficit, K.S.A. 40-3403 and K.S.A. 40-3413 provide for an annual comparison of the Plan to the Fund for Fund reimbursement purposes. Due to the new lower amounts of money in the Plan, due to depopulation, a mechanism is needed within the law to allow for more frequent reimbursement from the Health Care Stabilization Fund to the Kansas Health Care Provider Insurance Availability Plan, in order to continue the aggressive claims

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Attachment #3

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management of the Plan. H.B. 3040 would facilitate such reimbursements by allowing quarterly, as opposed to annual, reimbursements. H.B. 3040 passed the House on a vote of 125-0. KaMMCO, therefore, as the servicing carrier for the Kansas Health Care Provider Insurance Availability Plan supports H.B. 3040 and urges this Committee to report it favor for passage.