

Approved: January 23, 1996  
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on January 23, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Delbert Crabb  
Representative Tom Sawyer  
Representative Phill Kline

Committee staff present: Bill Wolff, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Tom Wilder, Insurance Department  
Ed Sable, Consumer Affairs, Insurance Department  
Jim Newins, Auto Insurance Division, Insurance Department  
Bill Sneed, State Farm  
Lee Wright, Farmer's Group  
Brad Smoot, American Insurance Association  
Dick Roseborough, State Fire Marshall's Office

Others attending: See attached list

**Hearing on HB 2653 - Auto insurance cancellation**

Tom Wilder, Director of Governmental Relations of the Kansas Insurance Department, introduced Jim Newins, Auto Insurance Department, and Ed Sable, Consumer Affairs, of the Kansas Insurance Department. Mr. Wilder stated this proposed legislation was in response to consumers who have been victims of insurance companies offering them only minimum or mandated automobile coverage upon renewal even though the consumer may request additional coverage (Attachment 1). This "stripping" technique is often used when the consumer has been involved in two or three accidents even though he was not at fault, owns an older vehicle, is an older driver, or lives in a location which has a higher incidence of accidents or storms. Insurers use this as a means to circumvent the law as they are required to stay on an automobile risk for five years. Policy holders are forced to seek insurance coverage from another company at a usually higher rate. All rating plans must be approved by the Insurance Department. An example used was that of a young driver being carried on parents insurance policy and suddenly is forced to buy insurance on an individual plan.

Bill Sneed, Legislative Counsel for State Farm, pointed out that the statutes being amended were specifically designed to affect liability automobile coverage and not property damage coverages (Attachment 2). Automobile liability coverage is mandatory in the state and property damage coverage is not. If this is the wish of the Department, he recommended a thorough study of the effect on pricing and ultimately the size of the uninsured motorist population. Reductions in coverages are mechanisms that insurers can use to retain the policy without canceling or nonrenewing an insured. Mr. Sneed said they would be willing to support a statute which dealt only with property damage but are opposed to including it in the current suggested amendments.

Lee Wright, governmental affairs representative for Farmers Insurance Group, said their company has a policy of using unilaterally reduction of coverage only as a last resort (Attachment 3). The interpretation of the Insurance Department that all events or reasons for non-renewal must occur within a six month period prior to renewal was inaccurate. If this interpretation were true, it would allow a person to be at fault in an accident and never have their policy non-renewed. Frequency of losses must be taken into account.

Brad Smoot, American Insurance Association, stated this amendment would expand mandated coverage for personal auto insurance by "locking in" property damage coverage at initial policy levels for five years

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
Room 527S-Statehouse, at 3:30 a.m. on January 23, 1996.

(Attachment 4). This would amount to all insurance buyers subsidizing the few drivers whose records justify a reduction in coverage. He urged the nonpassage of this bill as it would not encourage or reward careful driving.

**Hearing on HB 2646 - Arson reporting**

Tom Wilder, Kansas Insurance Department, explained the proposed legislation as adding the Department to the list of agencies which automatically receive information from an insurance company which suspects arson in an insurance claim (Attachment 5)

Dick Roseborough, Chief of the Fire Investigation Division of the Kansas State Fire Marshal Department, spoke in opposition to this request because the Insurance Department is a non law enforcement agency (Attachment 6). The Fire Marshal's Office is willing to share non-criminal files and has always worked in compliance with the Commissioner's office and sees no reason for the proposed legislation.

Representative Donovan moved for the approval of the minutes of the January 18 meeting. Representative Landwehr seconded the motion. Motion carried.

The meeting was adjourned at 4:25 p.m. The next meeting is scheduled for January 24, 1996.

# HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 1-23-96

NAME	REPRESENTING
Nick Lerebrough	Ks State Fire Marshal
Bill Sneed	State Farm
Gary Carter	KD&R DMV
Roger Trautle	KGC
Fred Hines	DOB
Kevin Davis	American Family
TERRY HOYDEN	KBA
Richard E Miller	Alliance Ins Co
Val Peterson	@@ Ks Assoc P+c / NAII
David Hanson	Ks Assoc P+c / NAII
Les Wright	James Ins. Group
Bud Smoot	AIA
Julia Garrett	James Ins. Group
Pat Morris	KAIA

**Kansas Insurance Department**

**MEMORANDUM**

To: House Financial Institutions  
and Insurance Committee

From: Tom Wilder, Director of  
Government and Public Affairs

Re: H.B. 2653 (Automobile Liability Insurance Coverage)

Date: January 23, 1995

The provisions of H.B. 2653 are in response to the numerous complaints which the Insurance Department receives each year from Kansas consumers about the actions taken by their automobile insurance company to only offer them the minimum automobile liability coverages upon renewal of their policies. As you are aware, the Kansas insurance laws require automobile insurance policies to include minimum coverage amounts for bodily injury and property damage losses suffered by third parties and for medical costs and lost wages incurred by the policy holder in the event of an accident. Most drivers also purchase additional collision and comprehensive coverage which covers damage to their automobile caused by an accident or by events such as a hail storm.

Some consumers find that when it is time to renew their automobile insurance policy, the insurance company only offers to sell them the minimum coverage required by law and may exclude any collision or comprehensive coverages even though they are willing to purchase and pay for the additional insurance. This technique of "stripping" coverage back to the minimum statutory limits is often used by automobile insurers as a means to force the policy holder to drop their coverage with the company. The consumers are then forced to find coverage with another company which is inconvenient and can be more expensive.

*House F.D.S.*  
*Attachment 1*  
*1-23-96*

Kansas law requires an insurer to stay on an automobile risk for a period of three years. Companies should not be permitted to deny additional coverages above the statutory limits as a means to circumvent this requirement in the law. The provisions of H.B. 2653 will require the insurance company to offer this additional coverage if requested by the consumer. The policy holder must pay for the extra insurance and if the motorist represents an increased risk to the insurance company because of prior accidents, the company can certainly take this factor into account in setting the premium.

The Kansas Insurance Department requests the House Financial Institutions and Insurance Committee provide an additional level of protection for Kansas consumers by approving H.B. 2653.

**MEMORANDUM**

TO: The Honorable Bill Bryant, Chairman  
House Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel  
~~AmVestors Financial Corporation~~ STATE FARM  
~~American Investors Life Insurance Company~~

DATE: January 23, 1996

RE: H.B. 2653

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Mr. Chairman and Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies. We appreciate the opportunity to testify before this committee with respect to House Bill 2653. Based upon our review of the bill we must respectfully oppose H.B. 2653 and request your disfavorable action.

Before specifically outlining our objections, we believe that an overall review of the particular statutes that are being amended and the interplay of those statutes within the insurance code is important to point out. The statutes that are being amended in H.B. 2653 were specifically designed to affect liability automobile coverage. These statutes go hand in hand with the state's mandatory automobile liability coverage laws commonly referred to as "no fault." The statutes were never designed to incorporate property damage coverages. The language of the statutes reflect liability concerns, i.e., items that relate to liability exposure measuring risk of accidents based on driver characteristics or behavior. They do not necessarily reflect property damage concerns. Although they may be similar, there are differences between the characteristics of the two types of

*House File  
Attachment 2  
1-23-96*

coverages.

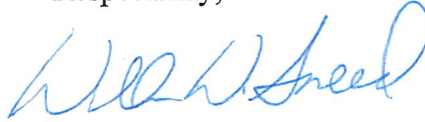
Further, automobile liability coverage is mandatory in the state of Kansas and property damage coverage is not. If the state wishes to examine whether property damage should be mandatory, we would respectfully request that such issue deserves great study. There are multitudes of reasons why such a study should occur, the least of which would be to determine what effect it would have on pricing and ultimately what effect it would have on the size of the uninsured motorist population.

Also, before entertaining whether unilateral reductions in coverages should or should not be allowed, the legislature must carefully balance the effect such reductions would have on individuals' ability to procure insurance. If such a law were in place, the same consumers who dislike unilateral reduction in coverages may find themselves in a situation where the only alternative left to them is a cancellation or nonrenewal. Again, you may be expanding the uninsured motorist population. Reduction in coverages, like increases in deductibles, are mechanisms that insurers can use to retain the policy in some fashion without canceling or nonrenewing an insured. It is a mechanism to keep individuals in the insurance marketplace and thus continue to provide the insured and the public insurance protection.

If the Insurance Department is interested in a similar statute applying only to property damage, we stand ready to work with them on such a bill. Several states have separate property damage-type statutes. However, our research indicates those laws are substantially different than what you have in front of you yet still guarantee that the insuring public is provided the maximum opportunity to retain property insurance coverage in the marketplace.

Based upon the foregoing, we respectfully request that the committee not act favorably on House Bill 2653. We appreciate the opportunity to present this testimony and if you have any questions, please feel free to contact me.

Respectfully,



William W Sneed



HOUSE BILL 2653

FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

TESTIMONY BY LEE WRIGHT

GOVERNMENTAL AFFAIRS REPRESENTATIVE FOR FARMERS INSURANCE GROUP

Mr. Chairman and members of the Committee. My name is Lee Wright and I represent the Farmers Insurance Group of Companies. I appreciate this opportunity to appear before you in opposition to HB 2653.

It is not a routine practice of my company to engage in the unilateral reduction or "stripping" of a customer's auto coverage. Our underwriting supervisor recalls only one policyholder having their coverages unilaterally reduced in the last year.

Unilaterally reducing coverages is an underwriting action done only as a last resort. It has resulted from what we believe is a misinterpretation by the Insurance Department of the non-renewal statute.

KSA 40.276a (d) allows an insurance company to non-renew an auto policy "when unfavorable underwriting factors, pertinent to the risk, are existent, and of a substantial nature, which could not have reasonably been ascertained by the company at the initial issuance of the policy or the last renewal thereof".

We feel the Insurance Department has mistakenly interpreted this provision to mean that all events or reasons for non-renewal must occur within a six month period prior to renewal.

*Lee Wright*  
*Attachment 3*  
*1-23-96*

So, based on the Insurance Department's logic, a person could have an accident that was their fault every six months and never have their policy non-renewed by their insurance company.

Obviously this Insurance Department's interpretation doesn't take into account frequency of losses over time as a legitimate underwriting criteria.

We do not believe it has ever been the intent of the legislature to force careful drivers to subsidize the poor driver's insurance rates.

Thank you Mr. Chairman, that concludes my remarks.

# BRAD SMOOT

ATTORNEY AT LAW

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## STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL FOR THE AMERICAN INSURANCE ASSOCIATION,

### PRESENTED TO THE KANSAS HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE REGARDING 1996 HOUSE BILL 2653, JANUARY 23, 1996

Mr. Chairman and Members of the Committee:

I am Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), a trade association representing more than 250 companies providing a variety of insurance products to Kansans and across the nation.

House Bill 2653 would expand mandated coverage for personal auto insurance by "locking in" property damage coverage at initial policy levels for five (5) years. A similar measure failed to gain this Committee's approval in 1994 (H 2630). Currently, the limitation on an insurer's right to cancel or non renew applies only to statutorily mandated liability coverage.

While some limitation on cancellation of liability coverage makes sense where such coverage is required by law, it does not make sense to limit a company's ability to reduce liability coverage since the insured could have purchased a lesser amount to begin with or could reduce or cancel it at any time. The effect of forcing carriers to maintain higher levels of coverage and thus risk, is to require all insurance buyers to subsidize the few drivers whose experience would justify a reduction in coverage.

In addition, the limitation on reduction or cancellation for physical damage by a carrier makes little sense when Kansas drivers are not required to carry such coverage in the first place. Carriers may be very reluctant to insure certain risks which they might now insure knowing that under this proposed law they would not be able to cancel or reduce their exposure. Rather than improving market availability, this type of legislation often has the unintended consequence of further reducing the availability of insurance and of increasing its costs.

*Hauser FLS*

*Attachment 4*

*1-23-96*

Under this bill, a household of poor drivers with high losses could continue their coverage with few consequences knowing that their carrier must continue to insure their vehicles. Such a policy hardly encourages careful driving.

Few, if any, other states have limitations such as those proposed by H 2653 and while we appreciate the Department's desire to respond to the complaints of some drivers, we believe this bill is unnecessary and counter-productive.

Thank you for this opportunity to comment on this legislation and I would be pleased to respond to questions from the Committee.

Kansas Insurance Department

**MEMORANDUM**

To: House Financial Institutions  
and Insurance Committee

From: Tom Wilder, Director of  
Government and Public Affairs

Re: H.B. 2646 (Arson Reporting)

Date: January 23, 1995

House Bill 2646 amends K.S.A. 31-402 to add the Kansas Department of Insurance to those agencies which automatically receive information from an insurance company that has a loss claim which the insurer believes is the result of suspected arson. A copy of the reporting statute, K.S.A. 31-403, is attached to this memo for your reference. Currently, information on possible arson related losses are reported by insurers to the Kansas Attorney General, State Fire Marshal, county or district attorneys and any appropriate law enforcement or fire-fighting agencies as well as the Federal Bureau of Investigation and the United States Attorney.

This change is made at the suggestion of the Johnson County District Attorney and the Kansas Insurance Department Fraud Unit. While most insurance companies would certainly comply with a request for information from the Insurance Department, the legislative amendment will make certain the agency receives all reports from insurers regarding suspected acts of arson which result in an insurance claim.

*House FD&I  
Attachment 5  
1-23-96*

**31-403****FIRE PROTECTION**

lowing words and phrases shall have the meanings ascribed to them in this section.

- (a) "Authorized agencies" means:
- (1) The office of state fire marshal;
  - (2) the office of the attorney general of Kansas;
  - (3) the office of a district or county attorney;
  - (4) all law enforcement agencies;
  - (5) all official fire fighting agencies;
- and solely for the purposes of K.S.A. 31-403(a):
- (6) The federal bureau of investigation or any other federal agency;
  - (7) the United States attorney's office.

(b) "Relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

(c) Material will be "deemed important", if within the sole discretion of the "authorized agency", such material is requested by that "authorized agency".

(d) "Action" shall include nonaction or the failure to take action.

(e) "Immune", as used in K.S.A. 31-403(e) and 31-404, shall mean that a civil action may not arise from any action taken pursuant to K.S.A. 31-403 and 31-404 in the absence of gross negligence, bad faith, malice or fraud on the part of an individual, insurance company, or person acting in its behalf, or authorized agency.

(f) "Insurance company" includes the Kansas Fair Plan.

History: L. 1979, ch. 132, § 2; July 1.

**CASE ANNOTATIONS**

1. Insurer who acts in bad faith is not immune under Kansas arson reporting immunity act. *Weathers v. American Family Mut. Ins. Co.*, 793 F.Supp. 1002, 1005, 1020 (1992).

**31-403.** Disclosure of information by insurance companies; disclosure of information by authorized agency; immunity from liability in civil actions. (a) Any authorized agency may, in writing, require an insurance company to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession, relating to a fire loss. Relevant information may include, without limitation herein:

(1) Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy;

- (2) premium payment records;
- (3) history of previous claims made by the insured; and
- (4) material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

(b) (1) When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, then, for the purpose of notification and for having such fire loss investigated, the company shall, in writing, notify an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss.

(2) When an insurance company provides any one of the authorized agencies with notice of a fire loss, it shall be sufficient notice for the purpose of this act.

(3) Nothing in subsection (b) of this section shall abrogate or impair the rights or powers created under subsection (a) of this section.

(c) The authorized agency provided with information pursuant to subsections (a) or (b) of this section or K.S.A. 31-404 and in furtherance of its own purposes, may release or provide such information to any of the other authorized agencies.

(d) Any insurance company providing information to an authorized agency or agencies pursuant to subsections (a) or (b) of this section shall have the right to request relevant information relating to such fire loss from an authorized agency and receive, within a reasonable time, not to exceed thirty (30) days, the information requested from an authorized agency.

(e) Any insurance company, or person acting in its behalf, or an authorized agency which releases information, whether oral or written, pursuant to subsections (a) or (b) of this section shall be immune from any liability arising out of a civil action by reason of providing such information.

History: L. 1979, ch. 132, § 3; July 1.

**Research and Practice Aids:**

Fires — 9.  
C.J.S. Fires §§ 17, 18.

**31-404.** Disclosure of information by an individual; immunity from liability in civil actions. Any individual who provides information

to an authorized agency ten, concerning the damage or property by fire shall liability arising out of a of providing such information.  
History: L. 1979, ch.

**31-405.** Confidential personnel of authorized agencies shall not be required to testify. (a) Except as provided in K.S.A. 31-403(c), any authorized agency or insurance company described in 31-403 which receives information pursuant to this section in confidence shall not be required to release such information in a civil proceeding.

5-2

**TESTIMONY  
PRESENTED TO THE  
COMMITTEE  
ON  
FINANCIAL INSTITUTIONS AND INSURANCE  
BY  
DICK ROSEBROUGH, CHIEF  
FIRE INVESTIGATION DIVISION  
KANSAS STATE FIRE MARSHAL DEPARTMENT  
ON  
TUESDAY, JANUARY 23, 1996**

*James P. H. H.*  
*Attachment 6*  
*1-23-96*

Good afternoon Mr. Chairman and members of the Committee.

My name is Dick Rosebrough and I am the Fire Investigation Division Chief for the Kansas State Fire Marshal Department. I am testifying in behalf of the State Fire Marshal, Gale Haag.

KSA 31-402 gives the list of Authorized Agencies and all the agencies involved are Law Enforcement related. The Fire Marshal's Office has a concern about a non Law Enforcement agency, The Commissioner of Insurance, having access to our criminal investigation files. We have no problem giving them non criminal files pursuant to the open records act. To receive these files does not require a change in KSA 31-402.

There has been no communication between the Fire Marshal's Office and the Insurance Commission in reference to this change and we have always been cooperative with the Insurance Commissioners Office and see no need for this change and therefore oppose any change to KSA 31-402.