Approved: February 1, 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 30, 1996 in Room 527S-of the Capitol.

All members were present except: Representative Delbert Crabb
Representative Phill Kline
Representative Troy Findley

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

Conferees appearing before the committee: Patrick Mulvihill, Kansas Insurance Department
Dave Hanson, Kansas Domestic Insurance Associations and National Association of Independent Insurers and GE Mortgage Guaranty Company
Tom Wilder, Kansas Insurance Department
Bill Sneed, Mortgage Guaranty Insurance Corporation

Others attending: See attached list

Hearing on HB 2661 - Risk-based capital, property and casualty companies

Patrick Mulvihill, Assistant Chief Examiner of the Kansas Insurance Department, explained that this bill would extend to property and casualty insurance companies the same risk-based capital requirements which are applicable to life insurance companies (Attachment 1). States are required to adopt the NAIC Risk-Based Capital for Insurers Model Act in order to comply with the NAIC Accreditation Standards. The bill would require property and casualty insurance companies to maintain an amount of capital and/or surplus that is commensurate with the risk inherent in each company's operations. The legislation would require a Kansas domestic property and casualty insurance company (or foreign company at the request of the Commissioner) to calculate its risk-based capital by applying factors to selected annual statement asset, liability and reserve items. If the company is found to be inadequately capitalized, based on the relationship which the formula produced risk-based capital bears to the company's total adjusted capital, the Commissioner of Insurance would be authorized to take four levels of progressively serious regulatory actions against the company.

Mr. Mulvihill requested two amendments be added to the bill:

1. Section 1(d) lines 28 and 29 on Page 1 should include statutory reference to risk retention groups.

2. Section 7, line 20 on Page 5 "In the event of a mandatory control level event" should not be deleted.

Dave Hanson, appearing for Kansas domestic Insurance Associations and National Association of Independent Insurers, informed the Committee that the RBC requirements were never intended to be considered by Insurance Commissioners for rate making or as evidence in rate making hearings (Attachment 2). The primary purpose of the Accreditation program was to ensure conformity in the regulation of insurers solvency.

Tom Wilder, representing the Insurance Department, and Dave Hanson agreed to prepare a balloon amendment which would be satisfactory to both the Department and NAII regarding risk-based capital requirements according to NAIC accreditation standards.

Hearing on HB 2712- Mortgage guaranty insurance, underwriting limitations

Dave Hanson, General Electric Mortgage Insurance Corporation, explained the amendment as removing limitations on underwriting activities of mortgage guaranty insurance companies who are members of holding company systems (Attachment 3). They would be allowed to underwrite insurance for mortgages which originated with the holding company system as long as the insurance is written on the same basis, for the same consideration and subject to the same insurability requirements as those of non-affiliates.

Bill Sneed, Mortgage Guaranty Insurance Corporation, presented testimony which stated that such legislation would allow mortgage guaranty companies to sell their insurance to consumers who have obtained mortgages through an entity which is part of the same holding company system as the mortgage guaranty company (Attachment 4). An entity arranging a mortgage would be enabled to simultaneously pitch the consumer on their holding company's mortgage guaranty product. Such practices are currently prohibited by statute. The problem of policing such practices in order to protect the consumer was discussed.

Representative Landwehr moved for the adoption of the January 25 minutes. Motion was seconded by Representative Gilbert. Motion carried.

The meeting was adjourned at 4:16 p.m. The next meeting is scheduled for January 31, 1996.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 4/30/96

NAME	REPRESENTING
R Brazier	St. Treasurer
Matthew Goddard	Heartland Community Bankers
Bill Sneed	Mortgage Guar. Ins Co.
Lee W Right	Farmers Ins Group
Tom Wilder	Kansas Insurance Dept
Patrick Malvihill	" " "
David Hanson	Ks Insur Assoc & NAII
Valerie Peterson	" "
DNA KRAMER	SECURITY BENEFIT
Chuck Stones	KBA

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

TO: House Financial Institutions and Insurance Committee

FROM: Patrick Mulvihill
Assistant Chief Examiner

DATE: January 30, 1996

SUBJECT: House Bill No. 2661 (Risk-Based Capital)

We presently have existing laws (Article 2c of Chapter 40 of the Kansas Statutes Annotated) which require life insurance companies to be subject to risk-based capital requirements. The primary purpose of House Bill No. 2661 is not to change these requirements but to make the necessary amendments to the statutes so that risk-based capital requirements are also applicable to property and casualty insurance companies.

House Bill No. 2661 is based off of model legislation from the National Association of Insurance Commissioners (NAIC). The model legislation, as it pertains to property and casualty insurance companies, had not yet been fully developed and approved by the NAIC when our state enacted similar legislation for life insurance companies in 1994. It should be noted that in order to comply with the NAIC Accreditation Standards, each state must adopt the NAIC's Risk-Based Capital for Insurers Model Act or a substantially similar law. It appears that by adopting House Bill No. 2661, the Kansas Insurance Department will be able to demonstrate compliance with this Accreditation Standard.

Currently, property and casualty insurance companies are subject to specified fixed minimum capital and/or surplus requirements to qualify for a Kansas Certificate of Authority. House Bill No. 2661 would supplement this fixed requirement by requiring property and casualty insurance companies to maintain an amount of capital and/or surplus that is commensurate with the risk inherent in each company's operations, i.e., the type of business they write, the strength of their

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420 SW 9th Street
Topeka, Kansas 66612-1678

913 296-3071
Fax 913 296-2283

☎ Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

investment portfolio, their underwriting philosophy, marketing strategies, rate of growth and so forth. Utilization of risk-based capital requirements is a more effective alternative to fixed minimum capital and/or surplus requirements in that the amount of risk-based capital that is required of property and casualty companies will be unique to each company and the required amount of risk-based capital will vary as a company's operating conditions change over time.

Specifically, this legislation would require a Kansas domestic property and casualty insurance company to calculate its risk-based capital by applying factors to selected annual statement asset, liability and reserve items. Such factors are established by the NAIC and represent the outcome of extensive technical analysis regarding the amount of capital needed to cover the identified risks. If a company is found to be inadequately capitalized, based on the relationship which the formula produced risk-based capital bears to the company's "total adjusted capital", the Commissioner of Insurance would be authorized to take four levels of progressively serious regulatory action against the company which are commensurate with various levels of inadequacy. This action may include requiring the company to file a plan indicating the steps it plans to take to eliminate the risk-based capital deficiency, issuing corrective orders directing the company to take certain actions, initiating receivership proceedings, and placing the company in receivership. Prior to taking any of these actions, insurers would have the right to an administrative hearing conducted by the Insurance Department.

Foreign property and casualty insurance companies would also be required to file risk-based capital information with the Insurance Department when requested to do so by the Commissioner. If a foreign insurer's risk-based capital is inadequate, the Commissioner would be authorized to take action if the company's state of domicile fails to react to the deficiency.

It appears the following amendments should be made to House Bill No. 2661 for clarification purposes and to correct an error:

1) Section 1(d), lines 28 and 29 on page 1, should be revised so that the definition includes the statutory reference to risk retention groups. The proposed revision should be as follows:

> ".....in this state pursuant to K.S.A. 40-209 *or Article 41 of Chapter 40 of the Kansas Statutes Annotated,* and amendments thereto."

2) The phrase "In the event of a mandatory control level event" in Section 7, line 20 on page 5, should <u>not</u> be deleted from the existing language in K.S.A. 40-2c18. This phrase is included in the model legislation.

If House Bill No. 2661 is approved, the new requirements would greatly enhance our ability to monitor the financial condition of property and casualty insurance companies and take appropriate regulatory action in a timely manner.

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TESTIMONY ON HB2661

TO: Chairman Bryant
House Financial Institutions and Insurance Committee
Capital Building
Topeka, KS

Re: House Bill No. 2661

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of Kansas domestic Insurance Associations and National Association of Independent Insurers regarding House Bill 2661.

We are very concerned about the lack of any restrictions on use of risk based capital data in rate making. The NAIC developed the RBC requirements solely for use by commissioners as a tool to monitor the solvency of insurers and the need for corrective action. They were never intended to be considered by commissioners for rate making or as evidence in rate making hearings. The NAIC felt strongly enough about the proper use of the RBC reports that they included a specific provision (Section 8C) in the model provisions prohibiting the use of RBC reports in rate making. The public policy reasons behind the inclusion of this prohibition are compelling. An exceptionally well capitalized insurer should not have to be concerned that their excess capital might prevent a regulator from approving a rate increase. On the other hand, a poorly managed insurer should not be rewarded with a rate increase to supplement its capital. The counterintuitive result would be an incentive for insurers to undercapitalize which is clearly not in the consumers interest.

We are not aware of any other state that has adopted the entire NAIC RBC model that has neglected to include the prohibition. Furthermore, the primary purpose of the Accreditation program is to ensure conformity in the regulation of insurers solvency. Departing from the model defeats this purpose.

Attached is a copy of the NAIC model provisions from Section 8C, which we believe should be incorporated into HB 2661 to prohibit the use of risk based capital data for rate making or use as evidence in any rate proceeding nor to calculate or use for appropriate premium level or rate of return. Without these provisions, we would have to oppose this bill.

Respectfully,

David A. Hanson

DAVID A. HANSON

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an inappropriate comparison of any other amount to the insurers' RBC Levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

C. It is the further judgment of the legislature that the RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

Section 9. Supplemental Provisions; Rules; Exemption

A. The provisions of this Act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, [cite rehabilitation and liquidation law and law pertaining to insurers in hazardous financial condition].

B. The commissioner may adopt reasonable rules necessary for the implementation of this Act.

C. The commissioner may exempt from the application of this Act any domestic property and casualty insurer which;

(1) Writes direct business only in this state;

(2) Writes direct annual premiums of [$X] or less; and

(3) Assumes no reinsurance in excess of five percent (5%) of direct premium written.

Drafting Note: It is the drafters' intent that the domiciliary commissioner have the ability to exempt certain insurers doing business only within the commissioner's jurisdiction. The intent is to limit this exemption to insurers that do not write in excess of $2,000,000 in annual premiums.

Section 10. Foreign Insurers

A. Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC Report as of the end of the calendar year just ended the later of:

(1) The date an RBC Report would be required to be filed by a domestic insurer under this Act; or

TESTIMONY IN SUPPORT
OF HB 2712

TO: Chairman Bryant
House Financial Institutions and Insurance Committee
Capitol Building
Topeka, Kansas

RE: House Bill No. 2712

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of General Electric Mortgage Insurance Corporation to support House Bill 2712.

The proposed amendment removes limitations on underwriting activities of mortgage guaranty insurance companies who are members of holding company systems. The amendment allows mortgage insurance companies to underwrite insurance for mortgages that originated with the holding company system, or any affiliate, as long as the insurance is written on the same basis, for the same consideration and subject to the same insurability requirements as insurance provided to nonaffiliates. The language of the amendment was taken from and is identical to the language of the Ohio Statute, as well as the Arizona Statute. We believe that removing the restrictions on insuring loans originated by affiliates will benefit both borrowers and lenders in Kansas by facilitating and increasing availability of mortgage guaranty insurance and therefore encourage your favorable consideration of House Bill No. 2712.

Respectfully,

David A. Hanson

DAVID A. HANSON

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House FI & I
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GE Capital

General Electric Mortgage Insurance Corporation
A unit of General Electric Capital Corporation
6601 Six Forks Road, Raleigh, NC 27615
919 846-4100

January 29, 1996

Chairman Bryant and Members of
the House Financial Institution and
Insurance Committee
Capitol Building
Topeka, KA

Dear Chairman Bryant and Members of the House Financial Institution and Insurance Committee:

I am writing this letter in support of Kansas House Bill 2712. The current law prohibits mortgage guaranty insurers from insuring loans originated by affiliates. This bill would amend the law to permit mortgage guaranty insurers to insure such loans provided that the insurance is offered under the same terms and conditions as insurance provided to nonaffiliated lenders. Thus, the law would continue to address potential conflict of interest concerns without unduly restricting the ability of mortgage insurers to insure their affiliates loans.

Currently, forty-five states place no restrictions on the ability of mortgage insurers to insurer loans originated by affiliates, three states (including Kansas) prohibit the insurance of such loans, and two states (Arizona and Ohio) have laws or regulations similar to those proposed by this bill.

Sincerely,

Gerhard A. Miller
Sr. Vice President & General Counsel

267/cdh

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MEMORANDUM

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

FROM: William W. Sneed, Legislative Counsel
Mortgage Guaranty Insurance Corporation

DATE: January 30, 1996

RE: H.B. 2712

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am appearing today on behalf of Mortgage Guaranty Insurance Corporation. We appreciate this opportunity to present testimony in opposition to H.B. 2712. This legislation amends K.S.A. 40-3515 to weaken the current prohibition against a mortgage guaranty insurance company underwriting insurance on mortgages originated by a member of a holding company system or any affiliate of which the insurance company is also a member.

K.S.A. 40-3515 in its current form is identical to the NAIC Model Law on mortgage guaranty insurance. This section appears in the model bill and was enacted in Kansas based on a concern about a mortgage guaranty insurer insuring loans which were originated by or to which credit was extended to by another entity in the holding company system.

The current statute cured two potential problems: 1) loans generated within the holding company system might be underwritten differently than loans from outside the holding company system; and 2) different classes of potential insureds might not receive equal treatment.

H.B. 2712 purports to eliminate the protection set out in K.S.A. 40-3515 to allow mortgage guaranty companies to sell their insurance to consumers who have obtained mortgages through an entity which is part of the same holding company system as the mortgage guaranty company. This allows two branches of the same holding company to "double team" the consumer. An entity

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arranging a mortgage is enabled to simultaneously pitch the consumer on their holding company's mortgage guaranty product.

The amendments to K.S.A. 40-3515 will create indirect pressure on the consumer to purchase a certain brand of mortgage guaranty insurance. Further, it will be impossible to determine compliance with the "same basis" rule for underwriting of these types of policies. This exception to the rule, set out in H.B. 2712, places an enormous regulatory burden on the Kansas Insurance Department. Policing this activity is further complicated by the fact that underwriting is judgmental in nature and is not totally objective. Therefore, it is almost impossible to say whether the underwriting is done on the "same basis."

If the exception to the 20-year-old prohibition set out in K.S.A. 40-3515 cannot be reasonably regulated, it should not be allowed to create potential exposure for the consumer. Thus, we respectfully request your disfavorable action on H.B. 2712. Please contact me if you have any questions.

Respectfully submitted,

William W. Sneed

William W. Sneed