

Approved: February 6, 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 February 1, 1996 in Room 527S-of the Capitol.

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

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

Conferees appearing before the committee: Representative Jo Ann Pottorff
Tom Wilder, Kansas Insurance Department
Ed Sable, Kansas Insurance Department
Jim Newins, Kansas Insurance Department
John Peterson, Budget and Enterprise Car Rental
Bruce Krunegel, Enterprise Leasing
Howard Steinberg, Budget Rental Car
Larry McPherson, Budget Rental Car
Bob Muhs, Avis Car Rental
Bob Lytle, Attorney for Hertz
Richard Kirkham, Hertz of Wichita

Others attending: See attached list

Representative Jo Ann Pottorff appeared before the Committee to request the introduction of legislation which would amend the uniform transfer on death security registration act to define person as meaning an individual, a corporation, a partnership, an association, or an organization.

Representative Correll moved for the introduction of the proposal as a committee bill. The motion was seconded by Representative Donovan. Motion carried.

Representative Landwehr requested the introduction of legislation which would make available plans for liability insurance for teachers and law enforcement personnel. These professions are currently forced to join professional organizations in order to purchase liability insurance.

Representative Samuelson moved for the introduction of the proposal as a committee bill. The motion was seconded by Representative Gilbert. Motion carried.

Hearing on HB 2652 - Kansas automobile reparations act, self insurers, requirements

Tom Wilder of the Kansas Insurance Department explained that consumer complaints which have been filed with the Department are usually from a third party driver who suffered personal injuries or vehicle damage because of an accident involving a "self-insured" rental car where the driver of the leased or rented vehicle is at fault (Attachment 1). At this time self-insured companies are only required to pay a "judgment" against them when a law suit is filed with the judgment being awarded to the third party. This legislation would require that self-insured companies be held responsible for such injuries and handle the claims in a prompt manner. Approximately six such complaints are received in writing each year. Fleets of vehicles owned by governmental agencies are not affected by the current statute.

Approximately 90% of insurance plans exclude personal liability insurance for the individual when they are driving a leased or rented car. Car rental agencies have followed the policy of holding the driver of the automobile responsible for third party injuries and have the right to subrogate against them. If rental car companies are held responsible, this will cause a rise in rental or leasing rates. Rental cars can offer liability

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 3:30 a.m. on February 1, 1996.

insurance in addition to the regular insurance they now charge.

John Peterson, representing Enterprise and Budget Rental Agencies, reported on the progress of the language compromise which is currently being worked out in cooperation with the Kansas Insurance Department.

Bruce Krunegel, Enterprise Car Rental from Kansas City, Lawrence, and Topeka, assured the Committee no innocent third parties involved in accidents with vehicles owned by Enterprise Car Rental have been left without recourse.

Howard Steinberg, Budget Rental Car of Kansas City and Wichita, stated that their loss damage waiver enables customers to pay a fee and not be liable for damages to Budget Rental Car. If no other liability insurance is available, Budget Rental Car must offer liability insurance according to state limitations. Supplemental insurance is usually available.

Larry McPherson, Budget Rental Car, said they have paid out less than \$50,000 in Kansas this past year to third parties claiming injuries or damages. Cost for liability insurance is usually about \$10.00 per day and covers only the renter or leaser of the vehicle or the designated driver.

Bob Muhs of Avis Corporation, said they were currently working out technicalities regarding "claims" language with the Kansas Insurance Department.

Bob Lytle, attorney for Hertz, and Richard Kirkham of Hertz of Wichita, reiterated their position of the driver of the car being primarily responsible for his/her actions as driver of the vehicle.

Chairman Bryant appointed a Subcommittee to explore possible alternatives to protect both the consumer and the rental car companies. Representative Clyde Graeber will serve as Chairman, with Representatives Les Donovan and Vernon Correll as members.

Action on HB 2683 - Unclaimed property bank deposits and funds

Representative Cox moved to accept the amendments proposed by the State Treasurer's Office and the Credit Union Association which affect K.S.A. 5839-35. The motion was seconded by Representative Correll. Motion carried. Representative Humerickhouse moved to pass the bill out favorably as amended. Motion was seconded by Representative Gilbert. Motion carried.

Chairman Bryant announced the informational meeting on the Reigle-Neal Act and issues surrounding interstate bank branching which will be held on Monday, February 5. William Grant, Jr., General Counsel of the State Bank Commissioner's Office will be guest speaker. Meetings on February 6 and 7 will be held in the Appropriations Room, 514 South. There will be no meeting on Thursday, February 8.

Representative Gilbert moved to approve the minutes of January 29 and 30, 1996. The motion was seconded by Representative Correll. Motion carried.

The meeting adjourned at 4:29 p.m. The next meeting is scheduled for February 5, 1996.

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NAME	Company	City
Bob LITTLE	BENNETT & LITTLE LAWYERS	So Co Ks
Richard KIRKHAM	HERTZ CORP	WICHITA
Bill Carpenter	ENTERPRISE RENT A CAR	Wichita
Mindy Dodd	Enterprise Rentalcar	Wichita
Pat Morris	K.A.I.A.	Topeka
Rogers Brazier	ST. TREASURER	Topeka
Danielle Koe	KCUA	Topeka
Lee Wygal	Family Ins Group	Oxford Park
Kevin Davis	American Family	Topeka
DARYL RICHARDSON	KANSAS INS. DEPT.	Topeka
Jim Newins	Kansas Ins Dept	Topeka
EDWIN SABLE	KANSAS INS DEPT	TOPEKA
Michelle Peterson	Peterson Public Affairs Group	Topeka
Alicia Vaughn	Kansas Ins. Dept	Topeka
Tom Wilber	Kansas Insurance Dept.	Topeka
John Peterson	K's Governmental Consulting	Tynler
Pat Theroff	Ks Farm Bureau	McLouth, KS
E Theroff	KEB	McLouth, KS
LARRY McPherson	Budget Rent A Car	Memphis, TN



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: House Financial Institutions and
Insurance Committee

From: Tom Wilder, Director of Government
and Public Affairs

Re: H.B. 2652 (Self-Insured Automobile Fleets)

Date: February 1, 1996

House Bill 2652 was introduced at the request of the Kansas Department of Insurance in an attempt to deal with a source of numerous consumer complaints received by the Department each year. The statute which is amended by this bill, K.S.A. 40-3104, permits any owner of more than 25 motor vehicles registered in Kansas to obtain a Certificate of Self-Insurance from the Kansas Insurance Department provided they have the financial ability to pay judgments against them arising out of the operation of those vehicles. Currently, 14 companies in Kansas have a Self-Insurance Certificate pursuant to this law. Five of these businesses are rental car companies.

The consumer complaints filed with the Department usually involve a third party driver who suffers personal injuries or vehicle damage because of an accident involving a "self-insured" rental car where the driver of the leased or rented vehicle is at fault. A summary of some of the complaints is attached to my testimony. The existing statute only requires the self-insured company to pay a "judgment" against them. There are several rental car companies which take the position that their responsibility in an accident to pay for the damages of the third party, only arises when a law suit is filed

Tom Wilder
Attachment 1

against them and judgment awarded to the third party driver by a court. The third party is forced to hire an attorney and engage in litigation with the self-insured rental car company in order to recover their claim for damages.

The purpose of this legislation is to make the self-insured company responsible for the injuries and vehicle damages suffered by a third party in those cases where the driver of the self-insured vehicle is at fault. The limits of liability are those set out in K.S.A. 40-3107 under the Kansas "no-fault" law. The bill also requires self-insured companies to promptly investigate claims and pay those claims where liability is clear.

I have attached to my testimony a revised version of the bill which more clearly sets out the rights and responsibilities of the self-insured vehicle owners. The new language was drafted based on discussions between the Kansas Insurance Department and representatives of several self-insured rental car companies. They had expressed legitimate concerns about how the bill was originally drafted. Hopefully, these changes will accomplish the desired result of protecting Kansas consumers consistent with the objections raised by the companies which would be impacted by this legislation.

I would ask the House Committee to favorably approve H.B. 2652 with the suggested amendments.

National Rental Car Companies
Self-Insurer Problems in Kansas

1. Complainant - Michael Lee Kobe
11124 Georgia
Kansas City, KS 66109

innocent third party damaged by vehicle owned by Budget Rent-A-Car. Budget denied because they said self-insurers do not have to provide financial security.

2. Complainant - Phillip Geist
309 S. Oak
Ottawa, KS 66067

innocent third party damaged by vehicle owned by Enterprise Leasing. Enterprise denied because driver of their vehicle not authorized person in whose name agreement written.

3. Complainant - Attorney John Bryan
Bryan, Lykins & Hejtmanek, P.A.
222 W 7th
Topeka, KS 66601-0797

representing clients Daughter injured in auto accident where Enterprise Leasing would not pay PIP benefits. Enterprise relying upon court decision Overbaugh v. Strange, which states rental car agreements are not insurance; thus, financial responsibility, including PIP not necessary.

4. Complainant - Penny Staufenberg
625 Lincoln Street
Osage City, KS 66523

innocent third party damaged by vehicle owned by Enterprise Leasing. Enterprise initially denied, then after our involvement of threats of legislative action, Enterprise paid 100% of damage.

5. Complainant - Attorney John J. Bryan
Bryan, Lykins & Hejtmanek, P.A.
P.O. Box 797
Topeka, KS 66601-0797

representing client's 9 year old child who was injured riding in Enterprise Leasing's vehicle. Enterprise denied PIP and physical damage, claiming, client did not purchase collision damage waiver, and current court cases stated they did not have to provide liability, including PIP.

6. Complainant - Carrie Snodgrass
617 Muncie Road
Leavenworth, KS 66048

innocent third party damaged by vehicle owned by Enterprise Leasing. Initially, Enterprise denied claim 100%; however, after our involvement and us contacting the driver's insurance company of the person driving the Enterprise vehicle, we were able to get Enterprise to pay 50% and the driver's insurance was to pay the other 50%; therefore, Ms. Snodgrass recovered 100%.

7. Complainant - Irvan E. Moore
1636 Kentucky
Lawrence, KS 66044

innocent third party damaged by vehicle owned by Avis Rent-A-Car. After our involvement, Avis paid 100%.

SPECIAL NOTE: Prior to 1995, complaints from public, mostly innocent third-parties damaged by vehicles owned by several Kansas certificate-holder self-insurers, otherwise known as National Car Rental type firms, our records were never properly identified as to whom complaints were about, i.e. the drivers insurance company or the national rental car company. We did not have a system to properly code and disseminate as to whom the complaint was against. Therefore, we believe there are many more of these type of complaints; but we did not properly record such. In addition, with court rulings across the country incorrectly siding with these rental car companies and because Kansas law permits any private insurance company to exclude liability when their insureds make a contract or agreement not known by such insurance company, then most of our complaints have been handled by phone and not recorded. Without having these so-called self-insurers comply with the Kansas Unfair Claims Settlement Practices Act, then our regulatory authority has been seriously compromised, even though we grant them a Certificate of Self-insurance, we have no teeth in the law currently to make them properly comply with claim handling priorities. Hopefully, proposed legislation will alter that course.

(f) Any person in whose name more than 25 motor vehicles are registered in Kansas may qualify as a self-insurer by obtaining a certificate of self-insurance from the commissioner of insurance. The certificate of self-insurance issued by the commissioner shall cover such owned vehicles and those vehicles, registered in Kansas, leased to such person if the lease agreement requires that motor vehicle liability insurance on the vehicles be provided by the lessee. Upon application of any such person the commissioner of insurance may issue a certificate of self-insurance if the commissioner is satisfied that such person is possessed and will continue to be possessed of ability to pay any ~~judgment obtained~~ **claims** against such person arising out of the ownership, operation, maintenance or use of any motor vehicle described in this subsection. **A self-insurer shall provide liability protection subject to the provisions of K.S.A. 40-3107(e) arising out of the ownership, operation, maintenance or use of a self-insured motor vehicle in those instances where the lessee or the rental driver, if not the lessee, does not have insurance coverage pursuant to a motor vehicle liability insurance policy or certificate of insurance, or such insurance policy or certificate specifically excludes coverage for such leased or rented vehicle. Such liability coverage shall be provided to any person operating a self-insured motor vehicle with the expressed or implied consent of the self-insurer.**

Upon notice and hearing in accordance with the provisions of the Kansas administrative procedure act, the commissioner of insurance may cancel a certificate of self-insurance upon reasonable grounds. Failure to **provide liability protection or personal injury protection benefits required by K.S.A. 40-3107 and K.S.A. 40-3109 and amendments thereto, or pay any liability imposed by law** ~~pay any judgment~~ against a self-insurer arising out of the ownership, operation, maintenance or use of a motor vehicle registered in such self-insurer's name, ~~within 30 days after such judgment shall have become final,~~ **or to otherwise comply with the requirements of this subsection** shall constitute reasonable grounds for the cancellation of a certificate of self-insurance.

Self-insureds shall promptly investigate claims, handle such claims in a reasonable manner based on available information and effectuate prompt, fair and equitable settlement of claims in which liability has become reasonably clear.