

Approved: February 19, 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 13, 1996 in Room 527S-of the Capitol.

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

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

Conferees appearing before the committee: Lori Callahan, KaMMCO
Tom Wilder, Insurance Department
Dave Hanson, Kansas Association of Property and Casualty
Cos.

Others attending: See attached list

Hearing on HB 2981 - Concerning professional liability insurance for health care providers relating to certain reports

Lori Callahan, representing KaMMCO (Kansas Medical Mutual Insurance Company), explained that all medical malpractice insurance companies in Kansas are required to send a report of the closure of all actions for damages to the Health Care Stabilization Fund which was originally a part of the Kansas Insurance Department (Attachment 1). The Fund was separated from the Insurance Department in 1995 and inasmuch as they are already aware of the closure of the actions, they no longer need the reports which were ultimately sent to the State Board of Healing Arts. This bill would authorize the medical malpractice insurance companies to send the reports directly to the State Board of Healing Arts. The opening of all cases are automatically reported to the Heath Care Stabilization Fund.

Tom Wilder, Kansas Insurance Department, presented testimony supporting the bill because insurers who sell professional liability policies to medical providers are required to report to the Insurance Department the final disposition of any legal action involving the insured under the policy (Attachment 2). The bill does provide that insurance companies who fail to report to the Board of Healing Arts would be liable to action by the Insurance Department under the provisions of the Kansas Insurance Code.

Representative Smith moved to pass the bill out favorably and place it on the Consent Calendar. Motion was seconded by Representative Welshimer. Motion carried.

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

Tom Wilder, Kansas Insurance Department, presented a balloon amendment which stated the exemptions from the application of this Act regarding any domestic property and casualty insurer (Attachment 3). Also addressed in the amendment was the confidentiality issue and responsibility of the Insurance Commissioner regarding RBC reports, RBC plans and any corrective orders. Discussion included the addition of "Model Act" after NAIC on Line 3 of Page 2 and adding that the act is in effect as of July 1 and that the current version should be adopted by this Legislature. Almost all states have adopted this ruling for life companies and most for property and casualty companies. By the addition of Section 10, accreditation would not be affected, nor would bookkeeping become a problem. Some crop insurance and mutual companies would come under this exemption if they meet all the collectives. Mr. Hanson, representing the Property and Casualty Companies, voiced his discomfort with having the bill placed in Rules and Regulations by the Commissioner.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 3:30 a.m. on February 13, 1996.

Representative Humerickhouse moved for the adoption of the balloon with conceptual and technical changes to be made by the Revisor. Motion was seconded by Representative Gilbert. Motion carried.

Representative Dawson moved for the passage of the bill as amended. Motion was seconded by Representative Humerickhouse. Motion carried.

Discussion and action on HB 2646 - Commissioner of Insurance, arson reports

This bill would add the Insurance Commissioner to the list of persons or agencies receiving information on suspected arson cases from the State Fire Marshall. The bill would offer immunity to those persons receiving the report and using the information contained within. Some law enforcement agencies are reluctant to share information on suspected arson cases during investigations. The State Fire Marshall is opposed to the legislation.

Representative Welshimer moved for the favorable passage of the bill. Motion was seconded by Representative Gilbert. Motion failed and a division was called. The recorded votes were seven opposed and six in favor of the bill.

Discussion and action on HB 2653 - Automobile insurance, coverage requirements

The Committee discussed the idea of forcing a selling entity to continue providing service for high-risk customers. This would ultimately make obtaining initial coverage for some customers very difficult and impact the rates of all those covered by insurance.

Representative Humerickhouse moved to table the bill. Motion was seconded by Representative Dawson. Motion failed and a division was called. Eight "Yes" votes and five "No" votes were recorded. Representative Sawyer and Welshimer asked to be recorded as "No" votes.

Discussion and action on HB 2629 - Insurance agents or brokers, separate fund for clients' funds

The Committee was reminded that only nine cases of fraud have been reported to the Insurance Department out of 30,000 licensed agents and brokers. This proposed legislation will not keep fraud out of the business place as separate accounts will not make agents more honest. At this time the insurance companies are responsible to their customers for any claims if the customer can prove payment to the agent via cancelled check, receipt, etc. All insurance agents have a fiduciary arrangement through common law or conversion.

Representative Smith moved to pass the bill out favorably. The motion was seconded by Representative Welshimer. Motion failed.

The meeting was adjourned at 5:00 p.m. The next meeting is scheduled for February 14, 1996.

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

TO: House Financial Institutions and Insurance Committee
FROM: Lori Callahan, General Counsel
RE: H.B. 2981
DATE: February 13, 1996

The Kansas Medical Mutual Insurance Company (KaMMCO) is a Kansas domestic physician-owned professional liability insurance company formed by the Kansas Medical Society. KaMMCO is the largest insurer of physicians in Kansas.

KaMMCO supports H.B. 2981.

Under current law, all medical malpractice insurance companies in the state of Kansas must send a report of the closure of all actions for damages to the Commissioner of Insurance. The Commissioner of Insurance is then statutorily required to provide the information to the State Board of Healing Arts. In 1995, the Health Care Stabilization Fund was separated from the Kansas Department of Insurance. The Health Care Stabilization Fund is the statutorily created excess coverage entity for all health care providers in the state of Kansas. In 1995, when the Fund was separated from the Insurance Department, the issue of where closure reports should be sent was not addressed in the statutory changes. As a result, an agreement was entered into between the Insurance Department and KaMMCO that closure reports would be sent directly to the Health Care Stabilization Fund. The Health Care Stabilization Fund does not need these reports since they are already aware of the closure of such cases. Accordingly, the Health Care Stabilization Fund has been sending these reports to the Kansas Insurance Department. The Kansas Insurance Department also has no need for these reports, thus, they send them on to the State Board of Healing Arts as is required by statute. It has recently been discussed by KaMMCO, the Health Care Stabilization Fund, the Insurance Department, and the Board of Healing Arts, that sending the reports directly from KaMMCO, and all other medical malpractice carriers in the state, to the State Board of Healing Arts would be much more efficient. That is the purpose of H.B. 2981. It merely replaces the Insurance Department as the reporting entity with the Board of Healing Arts, the only state agency which needs to receive notification of the closure of these matters.

KaMMCO would ask the committee to vote this bill favorable for passage.

Endorsed by the Kansas Medical Society

623 W. TENTH ST. - STE. 200 • TOPEKA, KANSAS 66612
913-232-2224 / 800-232-2259 / 913-232-4704 (FAX)

*House File
Attachment 1*

2-13-96



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. 2981 (Professional Liability Reports)

Date: February 13, 1996

The Kansas Department of Insurance supports H.B. 2981 which would lessen a paperwork burden on our agency. The current statute, K.S.A. 40-1126 requires insurers who sell professional liability policies to medical providers to report to the Insurance Department the final disposition of any legal action involving the insured under the policy. This information is then transmitted by the Insurance Department to the State Board of Healing Arts.

The Insurance Department does not need this data. The bill simplifies the process by requiring that the reports be sent directly to the Board of Healing Arts by the insurance company. The Kansas Department of Insurance would still be authorized to get this information if needed from insurers. The bill does provide that insurance companies who fail to report to the Board of Healing Arts would be liable to action by the Insurance Department under the provisions of the Kansas Insurance Code.

The Kansas Insurance Department requests the Committee approve H.B. 2981.

HOUSE BILL No. 2661

By Committee on Financial Institutions and Insurance

1-17

9 AN ACT concerning insurance; relating to risk-based capital require-
10 ments; amending K.S.A. 1995 Supp. 40-2c01, 40-2c03, 40-2c05, 40-
11 2c11, 40-2c13, 40-2c15, 40-2c18 and 40-2c24 and repealing the exist-
12 ing sections.
13

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

15 Section 1. K.S.A. 1995 Supp. 40-2c01 is hereby amended to read as
16 follows: 40-2c01. As used in this act:

17 (a) "Adjusted RBC report" means an RBC report which has been
18 adjusted by the commissioner in accordance with K.S.A. 1995 Supp. 40-
19 2c04, *and amendments thereto.*

20 (b) "Corrective order" means an order issued by the commissioner
21 specifying corrective actions which the commissioner has determined are
22 required to address a RBC level event.

23 (c) "Domestic insurer" means any life insurance company *or risk re-*
24 *retention group which is licensed and organized in this state pursuant to*
25 *K.S.A. 40-401 and amendments thereto.*

26 (d) "Foreign insurer" means any life insurance company *or risk re-*
27 *retention group not domiciled in this state which is licensed or registered*
28 *to do business in this state pursuant to K.S.A. 40-209, and amendments*
29 *thereto.*

30 (e) "NAIC" means the national association of insurance commission-
31 ers.

32 (f) "Life and health insurer" means any insurance company licensed
33 under article 4 or 5 of chapter 40 of the Kansas Statutes Annotated or a
34 licensed property and casualty insurer writing only accident and health
35 insurance.

36 (g) "Property and casualty insurer" means any insurance company
37 licensed under articles 9, 10, 11, 12, 12a, 15 or 16 of chapter 40 of the
38 Kansas Statutes Annotated, but shall not include monoline mortgage guar-
39 anty insurers, financial guaranty insurers and title insurers.

40 (h) "Negative trend" means, with respect to a life and health in-
41 surer, a negative trend over a period of time, as determined in accordance
42 with the "trend test calculation" included in the RBC instructions defined
43 in subsection (h) (j).

or Article 41 of Chapter 40 of the Kansas Statutes
Annotated

Shirley F. D. D.
Attachment 3
2-13-96

- 1 ~~(g)~~ (i) "RBC" means risk-based capital.
- 2 ~~(h)~~ (j) "RBC instructions" ~~means~~ *mean* the RBC report including
- 3 risk-based capital instructions promulgated by the NAIC and adopted as
- 4 rules and regulations by the commissioner.
- 5 ~~(i)~~ (k) "RBC level" means an insurer's company action level RBC,
- 6 regulatory action level RBC, authorized control level RBC, or mandatory
- 7 control level RBC where:
- 8 (1) "Company action level RBC" means, with respect to any insurer,
- 9 the product of 2.0 and its authorized control level RBC;
- 10 (2) "regulatory action level RBC" means the product of 1.5 and its
- 11 authorized control level RBC;
- 12 (3) "authorized control level RBC" means the number determined
- 13 under the risk-based capital formula in accordance with the RBC instruc-
- 14 tions; and
- 15 (4) "mandatory control level RBC" means the product of .70 and the
- 16 authorized control level RBC.
- 17 ~~(j)~~ (l) "RBC plan" means a comprehensive financial plan containing
- 18 the elements specified in K.S.A. 1995 Supp. 40-2c06, *and amendments*
- 19 *thereto*. If the commissioner rejects the RBC plan, and it is revised by
- 20 the insurer, with or without the commissioner's recommendation, the
- 21 plan shall be called the "revised RBC plan."
- 22 ~~(k)~~ (m) "RBC report" means the report required by K.S.A. 1995
- 23 Supp. 40-2c02, *and amendments thereto*.
- 24 ~~(l)~~ (n) "Total adjusted capital" means the sum of:
- 25 (1) An insurer's capital and surplus or surplus only if a mutual insurer;
- 26 and
- 27 (2) such other items, if any, as the RBC instructions may provide.
- 28 ~~(m)~~ (o) "Commissioner" means the commissioner of insurance.
- 29 Sec. 2. K.S.A. 1995 Supp. 40-2c03 is hereby amended to read as
- 30 follows: 40-2c03. ~~An~~ (a) *A life and health* insurer's RBC shall be deter-
- 31 mined in accordance with the formula set forth in the RBC instructions.
- 32 The formula shall take into account and may adjust for the covariance
- 33 between:
- 34 ~~(a)~~ (1) The risk with respect to the insurer's assets;
- 35 ~~(b)~~ (2) the risk of adverse insurance experience with respect to the
- 36 insurer's liabilities and obligations;
- 37 ~~(c)~~ (3) the interest rate risk with respect to the insurer's business; and
- 38 ~~(d)~~ (4) all other business risks and such other relevant risks as are set
- 39 forth in the RBC instructions;
- 40 determined in each case by applying the factors in the manner set forth
- 41 in the RBC instructions.
- 42 (b) *A property and casualty insurer's RBC shall be determined in*
- 43 *accordance with the formula set forth in the RBC instructions. The for-*

1 *mula shall take into account and may adjust for the covariance between:*
 2 (1) *Asset risk;*
 3 (2) *credit risk;*
 4 (3) *underwriting risk; and*
 5 (4) *all other business risks and such other relevant risks as are set*
 6 *forth in the RBC instructions;*
 7 *determined in each case by applying the factors in the manner set forth*
 8 *in the RBC instructions.*

9 (c) *An excess of capital over the amount produced by the risk-based*
 10 *capital requirements contained in this act and the formulas, schedules and*
 11 *instructions referenced in this act is desirable in the business of insurance.*
 12 *Accordingly, insurers should seek to maintain capital above the RBC lev-*
 13 *els required by this act. Additional capital is used and useful in the in-*
 14 *surance business and helps to secure an insurer against various risks in-*
 15 *herent in, or affecting, the business of insurance and not accounted for or*
 16 *only partially measured by the risk-based capital requirements contained*
 17 *in this act.*

18 Sec. 3. K.S.A. 1995 Supp. 40-2c05 is hereby amended to read as
 19 follows: 40-2c05. "Company action level event" means any of the follow-
 20 ing events:

21 (a) The filing of an RBC report by an insurer which indicates that:

22 (1) The insurer's total adjusted capital is greater than or equal to its
 23 regulatory action level RBC but less than its company action level RBC;
 24 or

25 (2) ~~the~~ *if a life and health* insurer has total adjusted capital which is
 26 greater than or equal to its company action level RBC but less than the
 27 product of its authorized control level RBC and 2.5 and also has a negative
 28 trend.

29 (b) The notification by the commissioner to the insurer of an adjusted
 30 RBC report that indicates the event described in subsection (a)(1) or (2),
 31 unless the insurer challenges the adjusted RBC report pursuant to K.S.A.
 32 1995 Supp. 40-2c19, *and amendments thereto*, and such challenge has
 33 not been rejected by the commissioner.

34 Sec. 4. K.S.A. 1995 Supp. 40-2c11 is hereby amended to read as
 35 follows: 40-2c11. "Regulatory action level event" means, with respect to
 36 any insurer, any of the following events:

37 (a) The filing of an RBC report by the insurer which indicates that
 38 the insurer's total adjusted capital is greater than or equal to its authorized
 39 control level RBC but less than its regulatory action level RBC;

40 (b) the notification by the commissioner to an insurer of an adjusted
 41 RBC report that indicates the result described in subsection (a) if the
 42 insurer does not challenge the adjusted RBC report pursuant to K.S.A.
 43 1995 Supp. 40-2c19, *and amendments thereto*;

1 (c) the filing of an adjusted RBC report that indicates the result de-
2 scribed in subsection (a) if the commissioner has rejected the insurer's
3 challenge after a hearing held pursuant to K.S.A. 1995 Supp. 40-2c19,
4 *and amendments thereto*;

5 (d) the failure of the insurer to file an RBC report by the filing date,
6 unless the insurer has provided an explanation for such failure which is
7 satisfactory to the commissioner and has cured the failure within 10 days
8 after the filing date;

9 (e) the failure of the insurer to submit an RBC plan to the commis-
10 sioner within the time period set forth in K.S.A. 1995 Supp. 40-2c07, *and*
11 *amendments thereto*;

12 (f) notification by the commissioner to the insurer that:

13 (1) The RBC plan or revised RBC plan submitted by the insurer is,
14 in the judgment of the commissioner, unsatisfactory; and

15 (2) (A) the insurer has not challenged the determination pursuant to
16 K.S.A. 1995 Supp. 40-2c19, *and amendments thereto*; or

17 (B) the commissioner has rejected such challenge.

18 (g) Notification by the commissioner to the insurer that the insurer
19 has failed to adhere to its RBC plan or revised RBC plan, but only if such
20 failure has a substantial adverse effect on the ability of the insurer to
21 eliminate the ~~regulatory~~ *regulatory company* action level event in accordance with
22 its RBC plan or revised RBC plan and the commissioner has so stated in
23 the notification, if:

24 (1) The insurer has not challenged such determination pursuant to
25 K.S.A. 1995 Supp. 40-2c19, *and amendments thereto*; or

26 (2) the commissioner has rejected such challenge.

27 Sec. 5. K.S.A. 1995 Supp. 40-2c13 is hereby amended to read as
28 follows: 40-2c13. In determining corrective actions, the commissioner
29 may take into account such factors as are deemed relevant with respect
30 to the insurer based upon the commissioner's examination or analysis of
31 the assets, liabilities and operations of the insurer, including, but not
32 limited to, the results of any sensitivity tests undertaken pursuant to the
33 RBC instructions. The RBC plan or revised RBC plan shall be submitted:

34 (a) Within 45 days after the occurrence of the regulatory action level
35 event;

36 (b) within 45 days after the notification to the insurer that the com-
37 missioner has rejected the insurer's challenge to an adjusted RBC report
38 pursuant to K.S.A. 1995 Supp. 40-2c19, *and amendments thereto*; or

39 (c) within 45 days after notification to the insurer that the commis-
40 sioner has rejected the insurer's challenge to a revised RBC plan *pursuant*
41 *to K.S.A. 1995 Supp 40-2c19, and amendments thereto*.

42 Sec. 6. K.S.A. 1995 Supp. 40-2c15 is hereby amended to read as
43 follows: 40-2c15. "Authorized control level event" means any of the fol-

1 lowing events:

2 (a) The filing of an RBC report by the insurer which indicates that

3 the insurer's total adjusted capital is greater than or equal to its mandatory

4 control level RBC but less than its authorized control level RBC;

5 (b) the notification by the commissioner to the insurer of an adjusted

6 RBC report that indicates the event described in subsection (a) if:

7 (1) The insurer does not challenge the adjusted RBC report pursuant

8 to K.S.A. 1995 Supp. 40-2c19, *and amendments thereto*; or

9 (2) the commissioner has rejected such challenge;

10 (c) the failure of the insurer to respond, in a manner satisfactory to

11 the commissioner, to a corrective order if the insurer has not challenged

12 the corrective order under K.S.A. 1995 Supp. 40-2c19, *and amendments*

13 *thereto*; or

14 (d) if the commissioner has rejected the challenge *to the corrective*

15 *order* or modified the corrective order *pursuant to K.S.A. 1995 Supp. 40-*

16 *2c19, and amendments thereto*, the failure of the insurer to respond, in a

17 manner satisfactory to the commissioner, to the corrective order subse-

18 quent to rejection or modification by the commissioner.

19 Sec. 7. K.S.A. 1995 Supp. 40-2c18 is hereby amended to read as

20 follows: ~~40-2c18.~~ *In the event of a mandatory control level event*

21 *(a) With respect to a life and health insurer*, the commissioner shall take

22 actions as are necessary to cause the insurer to be placed under regulatory

23 control under K.S.A. 40-3605 *et seq.* and amendments thereto. In that

24 event, the mandatory control level event shall be deemed sufficient

25 grounds for the commissioner to take action under K.S.A. 40-3605 *et seq.*

26 and amendments thereto, *and the commissioner shall have the rights,*

27 *powers, and duties with respect to the insurer as are set forth in K.S.A.*

28 *40-3605 et seq. and amendments thereto.* In the event the commissioner

29 takes actions pursuant to an adjusted RBC report, the insurer shall be

30 entitled to such protections as are afforded to insurers under the provi-

31 sions of K.S.A. 77-601 *et seq.* and amendments thereto, pertaining to

32 summary proceedings. Notwithstanding any of the foregoing, the com-

33 missioner may forego action for up to 90 days after the mandatory control

34 level event if there is a reasonable expectation that the mandatory control

35 level event may be eliminated within the 90-day period.

36 *(b) With respect to a property and casualty insurer*, the commissioner

37 shall take such actions as are necessary to place the insurer under regu-

38 latory control under K.S.A. 40-3605 *et seq.* and amendments thereto, or,

39 in the case of an insurer which is writing no business and which is run-

40 ning-off its existing business, may allow the insurer to continue its run-

41 off under the supervision of the commissioner. In either event, the man-

42 datory control level event shall be deemed sufficient grounds for the

43 commissioner to take action under K.S.A. 40-3605 *et seq.* and amendments

In the event of a mandatory control level event
with respect to:

Delete

S.S.

Sec. 8 K.S.A. 40-2c20 is hereby amended to read as follows: K.S.A. 40-2c20 (a) All RBC reports, RBC plans and any corrective orders, including the working papers and the results of any analysis of an insurer performed under this act shall be kept confidential by the Commissioner. The information shall not be made public or subject to subpoena, other than by the Commissioner and then only for the purpose of enforcement actions taken by the Commissioner pursuant to this act or any other provisions of the insurance laws of this state.

~~(b) 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 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.~~

New Sec. 10 The Commissioner may exempt from the application of this Act any domestic property and casualty insurer which:

- (a) Writes direct business only in this state;
- (b) Writes direct annual premiums of \$2,000,000 or less; and
- (c) Assumes no reinsurance in excess of 5% of direct premiums written

40-2c20

1 *thereto and the commissioner shall have the rights, powers and duties*
2 *with respect to the insurer as are set forth in K.S.A. 40-3605 et seq. and*
3 *amendments thereto. If the commissioner takes actions pursuant to an*
4 *adjusted RBC report, the insurer shall be entitled to such protections as*
5 *are afforded to insurers under the provisions of K.S.A. 77-601 et seq., and*
6 *amendments thereto, pertaining to summary proceedings. Notwithstand-*
7 *ing any of the foregoing, the commissioner may forego action for up to*
8 *90 days after the mandatory control level event if there is a reasonable*
9 *expectation that the mandatory control level event may be eliminated with*
10 *the 90-day period.*

11 Sec. 8. K.S.A. 1995 Supp. 40-2c24 is hereby amended to read as
12 follows: 40-2c24. In the event of a company action level event, regulatory
13 action level event or authorized control level event with respect to any
14 foreign insurer as determined under the RBC statute applicable in the
15 state of domicile of the insurer or, if no RBC provision is in force in that
16 state, under the provisions of this act, if the insurance commissioner of
17 the state of domicile of the foreign insurer fails to require the foreign
18 insurer to file an RBC plan in the manner specified under the RBC statute
19 or, if there are no RBC provisions in force in the state, under K.S.A. 1995
20 Supp. 40-2c05, 40-2c06, 40-2c07, 40-2c08, 40-2c09 and 40-2c10, and
21 amendments thereto, the commissioner may require the foreign insurer
22 to file an RBC plan with the commissioner. In such event, the failure of
23 the foreign insurer to file an RBC plan with the commissioner shall be
24 grounds to order the insurer to cease and desist from writing new insur-
25 ance business in this state.

26 Sec. 9. K.S.A. 1995 Supp. 40-2c01, 40-2c03, 40-2c05, 40-2c11, 40-
27 2c13, 40-2c15, 40-2c18 and 40-2c24 are hereby repealed.

28 Sec. 10. This act shall take effect and be in force from and after its
29 publication in the statute book.

3-6