

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:12 a.m. on January 18, 1996 in Room 529-S of the Capitol.

Members present were: Senator Clark, Senator Corbin, Senator Emert, Senator Lee, Senator Steffes

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Kathleen Sebelius, Kansas Commissioner of Insurance
David Hanson, KS Assn. of Property & Casualty Ins.
William Sneed, State Farm Insurance/Amvestors Financial
James Maag, Kansas Bankers Association

Others attending: See attached list

The hearing was opened on **SB 443**, relating to cancellation or non-renewal of property insurance. Kathleen Sebelius, Kansas Commissioner of Insurance, appeared before the committee to testify in favor of this legislation and to provide background history of the need to protect homeowners from cancellation or non-renewal of their homeowner's insurance following weather related losses. (Attachment #1) In response to Senator Emert's question, Commissioner Sebelius stated that the problem had been encountered with insurance carriers across the board and was not restricted to any certain company or companies. Senator Bond asked whether a company could renew a policy but substantially increase the deductible and Ms. Sebelius stated that companies, if this bill passes, could not cancel but it would have no impact on their ability to increase deductibles.

David Hanson, Kansas Association of Property and Casualty Insurance Companies, expressed concern that the bill will force continuation of coverage when reduction or cancellation of coverage would otherwise be justified and prudent. (Attachment #2) Mr. Hanson also advised the committee that the National Association of Independent Insurers and Farmers Insurance Group also oppose this bill on the same grounds. Senator Steffes expressed a desire to know what other states are doing and if they are following the NAIC model.

William Sneed, State Farm Insurance, also appeared in opposition to **SB 443**, although they support the NAIC model. (Attachment #3) In response to Senator Steffes' earlier request, Mr. Sneed advised that 29 states have passed the NAIC model or similar legislation.

Bradley Smoot submitted written testimony also in opposition to **SB 443** (Attachment #4)

Chairman Bond appointed a subcommittee consisting of Senator Steffes (chair), Senator Corbin and Senator Lee to compare the NAIC model legislation with the Insurance Commissioner's proposal and report back to the committee at a future date.

The hearing was opened on **SB 416**, relating to tax credit for insurance companies for establishment of a qualified business facility. William Sneed, representing Amvestors Financial Corporation, appeared as a proponent of this legislation and explained its intent to the committee. (Attachment #5)

James Maag, Kansas Bankers Association, appeared before the committee to request that the bill be extended to include privilege tax paid by financial institutions. (Attachment #6) Because of the committee's interest in knowing the fiscal impact of **SB 416**, the hearing was suspended pending receipt of a fiscal note from the Division of the Budget.

Senator Corbin moved to approve the minutes of the meeting of January 17 as submitted. Senator Clark seconded the motion, the motion carried.

The committee adjourned at 10:02 a.m. The next meeting is scheduled for Monday, January 22.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions and
Insurance Committee

From: Kathleen Sebelius, Commissioner
of Insurance

Re: S.B. 443 (Homeowners Insurance)

Date: January 18, 1996

Senate Bill 443 will offer an important protection to Kansas consumers against the cancellation of their homeowners insurance because they filed a claim for weather related losses. The bill will prohibit property and casualty insurance companies from canceling or failing to renew a homeowners insurance policy because the insured files a claim for losses which are caused by wind storm, hail storm or other acts of nature. The bill sets out specific requirements for insurers who cancel or decide not to renew a policy. Insurers are required to keep a policy in force for a period of at least five years provided the insured keeps the premium payments current and does not violate any of the terms of the insurance contract.

Based on the 1990 Census, there are over 640,000 owner-occupied homes in Kansas. In most cases, these consumers have purchased insurance to protect their homes and personal property. As you are aware, homeowner insurance is usually a requirement of banks and other lending institutions as a condition to making a loan on the property. The purpose of S.B. 443 is to make sure homeowners do not have their insurance canceled because they have suffered losses from weather related causes--losses which are beyond their ability to control. The Kansas Insurance Code has similar non-cancellation requirements in force for automobile liability insurance. It is good public policy to extend these same protections to homeowners.

*Senate 4/4/1
1/18/96*

Each year the Kansas Insurance Department receives a number of complaints from consumers who have their homeowners insurance canceled or nonrenewed because they have filed a claim for hail or wind storm losses. In many instances, these individuals were insured by the same company for a number of years. Because they have suffered losses and file a claim under the policy, they find that their insurance is suddenly canceled or that the company chooses not to renew the insurance. I have attached to my testimony excerpts from a number of letters which the Department has received from consumers regarding this issue.

Recently, the Insurance Department conducted a study of the availability of homeowners insurance in Kansas. The Kansas Legislature mandated the establishment of a Territorial Rating Task Force to determine if the use of a rating system for homeowners insurance based on geographical regions of the state would help increase the availability of homeowners insurance in areas of the state which have suffered significant storm losses over the past few years. A number of legislators, including Senator Steffes, served on this committee. The Task Force concluded that there were certain regions in Kansas where homeowners faced limited choices for the purchase of homeowners insurance. The group recommended the adoption of territorial rating and the Insurance Department recently issued a bulletin which permits the use of such rates by insurance companies.

However, the switch to Territorial Rating is only one part of the program initiated by the Insurance Department to address the availability issue. Because of the problem of the availability of homeowners insurance, consumers who have their insurance canceled due to weather related claims may often find it difficult to find alternative coverage from another company. Senate Bill 443 will assist homeowners by allowing them to keep insurance protection for their homes and personal property. Kansas consumers should not be penalized because they have filed an insurance claim based on losses over which they have no control. I urge this committee to favorably recommend S.B. 443 for passage.

9/21
1/18/96
1-2

Kansas Insurance Department

News Release

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Topeka, Kansas 66612-1678
(913)296-3071
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Kathleen Sebelius
Insurance Commissioner

For More Information
Please Contact Joe Scranton (913) 296-7822

For Immediate Release
January 8, 1996

Insurance Commissioner Kathleen Sebelius Proposes Her Homeowners Insurance Availability Plan

Insurance Commissioner Kathleen Sebelius proposes her four point Homeowners Insurance Availability Plan to insure homeowners insurance will continue to be available and affordable to Kansas consumers.

"I have become concerned that the availability of homeowners insurance is approaching a crisis stage in some parts of Kansas. A series of catastrophic storm losses over the past five years has significantly impacted the homeowners insurance market. The major companies in Kansas have experienced losses of 146% during that period, which means for every dollar these companies took in, they had to pay out \$1.46 in claims."

"Since 1992, 14 companies have left the homeowners insurance market entirely in Kansas. State Farm Insurance, which has the largest portion of homeowners' business at 24% of the market, has stopped writing new homeowners' insurance because of recent losses. Other companies have placed restrictions on the types of property they will insure, or the areas of the state where they will write homeowners insurance."

"Losses have been exceptionally hard on Kansas domestic insurance companies. In the last eight years 30% of the domestic companies selling homeowners' insurance have folded or merged into larger companies to survive their loss experiences. Companies cannot continue to sustain this level of loss and stay in business."

"The worst situation for Kansas consumers would be to have no homeowners' insurance available in some parts of the state. Therefore, I am proposing a four point plan to insure the continued availability and affordability of homeowners insurance in Kansas," said Sebelius.

"1. I will ask the Kansas Legislature to prohibit insurance companies from canceling and/or refusing to renew a homeowner's insurance policy because a policyholder files a storm related claim. This kind of cancellation is currently permitted under Kansas law."

"2. I am forming a Homeowners Availability Action Team to explore new and innovative ways to encourage insurance companies to sell homeowners' insurance in underserved areas of our state, both urban and rural. This Action Team will include representatives from consumer groups, insurance agents, industry executives, mortgage banks, and mortgage companies. I am committed to aggressive promotion of Kansas to the homeowners' insurance industry to attract more companies and to focus on underserved areas of the state."

7/41
1/18/96
1-3

"3. Kansas will join 46 other states in the country allowing companies selling homeowners' insurance based on different loss rates for different areas of the state."

"The new rating system will not result in a company windfall. If Insurance companies propose higher rates for some areas in the state, they must propose decreases for other areas. The new system will be phased in over the next three years, and the Department will closely analyze all loss experience presented to justify the new rates."

"We intend to monitor closely rate changes as well as availability to make sure that new flexibility in the market does not lead to redlining in certain markets," said Sebelius.

"4. Our Property and Casualty Division will closely track the availability and affordability of homeowners' insurance as this plan progresses. I am prepared to alter or discard any portion of this plan which does not improve our current situation."

7/14
1/18/96
1-4

Companies withdrawn from writing homeowners insurance in Kansas 1992-1995

<u>Company</u>	<u>Effective Date</u>
Equity Mutual Insurance Company	after July 10,1995
Reciprocal Exchange	after July 10,1995
Government Employees Insurance Company	1996
John Deer Insurance Company	9-15-94
Northwestern National Insurance Company	1-1-91
American and Foreign Insurance Company	4-1-94
Globe Indemnity Company	4-1-94
Newark Insurance Company	4-1-94
Royal Insurance Company of America	4-1-94
Safeguard Insurance Company	4-1-94
Utica Mutual Insurance Company	6-1-92
*Upland Mutual	10-1-95
American Fidelity	9-26-95
*Cimarron Insurance Company Inc.	9-26-95

*Domestic Companies

7141
1/18/96
1-5

January 10, 1995

Dear Commissioner:

I have enclosed a copy of a notice I received from the insurance agency who writes the insurance on my home and personal property located in Wichita.

As you can see, it is a notice of "Non Renewal" by the underwriter. The reason for the non renewal is two claims, one in 1993 and another in 1994. Both claims were related to damage from weather.

I submit that this is not justified, and in fact, is a violation of the trust placed with the underwriter.

How is it possible that the (Insurance Company) can suddenly decide they will not insure my home anymore because they had to pay two claims for damage totally uncontrollable by me or anyone or anything else. This is why we insure. If they don't want to pay, why underwrite?

How is it possible for our state insurance commission to stand by and let this unjustifiable action continue?

I am told by the insurance commissioner's office that they can't do anything about this and for me to write to my state representative.

This is very frustrating to me. As I understand an insurance underwriter can give thirty day's notice and walk away. The bad part about this is that if I look for insurance with another company then the record of nonrenewal and or cancellation is picked up by any other company and most often they will turn down any application for insurance.

I am certainly not alone with this frustrating dilemma. I hear many other people complain about the same thing. We need some help from you and our state insurance commissioner. May I please have your reply.

Sincerely,

A Wichita resident

Kansas Insurance Department response:

The notice of nonrenewal showed that this person had a 3/28/93 wind and hail loss for \$5748.00 and a 7/2/94 wind damage loss for \$480.00. This persons homeowner policy was written on February 7, 1993. The KS Ins. Dept. was not able to obtain re-instatement for the consumers.

015002050

714
1/18/96
1-6

January 17, 1995

Dear Commissioner:

I had a plastic water line break in my bathroom when my wife and I were not at home on 3/3/1994. We had a water damage claim of \$2,992.32. On 4/9/1994 we had a hail storm, the hail damage loss was \$2,832.74. Our insurance company sent us a nonrenewal notice that stated we were non renewed because of "poor experience." I attempted to get a homeowners policy from four other companies. None of these companies would offer me a policy after I was black listed. One company said that they would offer me a FAIR insurance policy for \$850 a year.

I feel we need a state law that requires insurance companies to prove that a policy holder was a poor risk. The fact that I had two claims is not in dispute. The fact that I caused them is absurd. God decides when it's going to hail and he doesn't consult me. A plastic water line that breaks at the connection - sounds like to me that a good insurance company would have wanted to look at a product liability suit against the manufacturer, but hell no, let's just throw this customer's butt into the FAIR insurance pool and we can get our money back through higher insurance rates we charge him. Now if the client tells all his friends what happened to him the insurance companies won't have to pay as many claims.

I feel the insurance companies have unfairly colluded to deny me my right to a reasonable competitive homeowners insurance rate. I have paid insurance companies money for auto and home owners insurance and never have I been denied or canceled before since I started using insurance in 1961. I feel that my company should be denied the right to sell insurance in the State of Kansas. If they can cut off one of their customers for some capricious reason and force the customer out into the cold, cruel world I think what goes around comes around. Kansas is going to deny them the right to do business in Kansas because of "poor experience."

Sincerely,

A Park City resident

Kansas Insurance Department response:

The company responded by saying that they have insured him since February 12, 1993. In the two years of insurance the consumer has incurred two claims. March 3, 1994 - water pipe in bathroom broke - \$2,292 paid and April 9, 1994 - hail damage - \$2,469 paid. Based on the consumers' two losses in two years, they elected to nonrenew the coverage.

015004360

7/21
1/18/96
1-7

January 10, 1995

Dear Commissioner:

I am writing this letter in regard to the enclosed copy of the notice I received from my insurance company. As you can see it is a notice of non-renewal! The two claims in question were "Acts of Nature"! One was a wind and hail storm, the other was a terrific wind that possibly was a funnel that didn't reach the ground. But it sure had the "roar" of a funnel! They are saying we live in an unprotected area! We found out this means -- not in a city! Also more than 6 miles from a fire station or fire hydrant. We live 5 1/2 miles out of Augusta, 4 miles south of Towanda.

I thought this was why we buy insurance coverage! Our company investigated this area and wrote a homeowner's policy on this property, accepted our premiums and also renewed our policy on 3-8-94. How do we protect ourselves from wind and hail? As for "unprotected area", does our company not write any policies on people who live in rural areas? I really doubt that!! Since there is a massive move of people to rural America! It seems they insure you until you have a claim that costs them, then they cancel you out!

I have this insurance company on everything I own. Life (2), auto (2), R.V., with one "life" since 1956! I am in the process of looking for another company to insure everything with, as I don't feel I care to patronize a company who will do such as this! This sure makes it more difficult to get another carrier! A lot of homes on this section received wind and hail at the same times we did!

It seems that we should have some kind of protection from situations such as this! We pay these companies the high premiums they ask, only to be canceled out once we make a claim on the protection we bought! It just doesn't seem fair! I would appreciate your looking into this, and at least, being aware of it. Thank you for any help you can give us.

Sincerely:

An August resident

Kansas Insurance Department response:

These consumers purchased their current homeowners policy on 3/8/92.

The company responded by acknowledging that they nonrenewed due to unacceptable loss history. Additionally, they said that their underwriting section rule states that a household may have no more than two losses within the prior thirty six months. These consumers have had three losses within the past twenty four month period, and therefore, no longer qualify for coverage.

045027990

7/4/96
1/18/96
1-8

January 6, 1994

Dear Commissioner:

Effective 12-6-93 the above named policy was non-renewed by my insurance company. The reason they gave for non-renewal was claim history. I feel like I have been treated unfairly by my company because none of the claims that I have reported have been due to any negligence on my part. Below find a list of the claims that I have reported to the company.

5-27-91	sewer backup in the basement
10-1-91	lightening strike to my satellite dish
9-7-92	lightening strike to my satellite dish
12-9-92	roof leak

Only one of these claims is not weather related and the sewer back-up is certainly not negligence on my part. The reason I carry insurance is to cover claims such as these. It is clear to me that my company wants to collect premiums but they are not very excited about payout of money for justified claims.

I want to register a formal complaint against my insurance company in the State of Kansas for unfair treatment.

Sincerely,

An Overland Park resident

Kansas Insurance Department response:

The insurance company was unwilling to negotiate a settlement. The non renewal on the policy stood, and the consumer was forced to find insurance elsewhere.

01400098

December 8, 1993

Dear Commissioner:

I am writing you concerning my Homeowners policy. I am 39 years of age, I have a wife and daughter of 5 years. One morning, on October 16, 1993 around 10:00, a storm was blowing through our town of Leon. Me and my wife heard a large cracking sound above our heads. We were sitting in our living room at the time, which is adjacent to our dining room. These two rooms are divided by an entry way, the header above the entry way had buckled the wall out at both ends.

The wind that morning had caused several limbs to fall around town, but I haven't heard of any structural damage done to anyone else. Well, we called our insurance company. I'm sending you a copy of our policy and cancellation notice with this letter.

The point is when I took up the insurance, they never came out and inspected the structure. The people who I bought the house from had the same insurance for some 20 odd years. They are very upset also.

Well, they sent someone out to look at the damage and refused to cover it. Along with that, a week later, they canceled my insurance on the house. I don't think they have a right to let me pay my premiums since May 1st, 1991 and then to cancel me like this. Would you please look into this for me?

Sincerely yours,

A Leon resident

Kansas Insurance Department response:

The insurance company revoked notice of cancellation since there was a clerical error on the notice that confused the dates. Instead the company issued a non-renewal effective May 1, 1994. The Kansas Insurance Department was unable to help the consumer, and he had to find insurance elsewhere.

12309046

September 7, 1994

Dear Commissioner:

I first wanted to thank you for taking the bull by the horns and stepping up to the plate for my wife and I regarding this matter. We began our renters insurance policy September 27, 1991 and have made two justified claims as noted on the enclosed letter. However, the first claim on the water damage was not covered due to a clause in the agreement stating that "surface water" was not covered, which I understood once it was explained. The second claim was from a lightening strike which critically damaged our family's home computer. There was a \$250.00 deductible and our company assisted in \$200.00 of the loss.

It was my understanding that insurance is designed so policy holders can routinely make premium payments to cover losses at times when the financial burden is beyond what an individual or family can afford to pay in one lump sum. My wife & I have been contributing premiums in the amount of \$113.00 annually for the last three years.

I find it very disheartening as I am sure you do, that for a very poor reason an Insurance company can discontinue coverage. I understand that policies canceled by an insurance company do not reflect well on ones record. It is my goal to maintain coverage with this company.

It really disappoints both my wife & myself when in good faith we enter into an agreement with a large financially wealthy institution who can, at the drop of a hat, decide they want to take our hard earned money and run. I guess, if my wife and I were "rolling in the dough" it probably would be more a fight of principal. However, we are just your basic middle class working poor trying to do the best we can with what we have and to be raked over the coals by this company is not something we can either afford financially or allocate the time to fight.

Please keep in contact and let me know what can be done about this matter.

Thank you greatly,

An Overland Park resident

Kansas Insurance Department response:

The Insurance Department was unable to help the consumer. The company is currently allowed to deny renewal for any reason. The notice of non-renewal was given immediately after a claim was made for a lightening loss.

09406761

Senate 4/41
1/18/96
1-11

November 12, 1994

Dear Commissioner:

Enclosed is a copy of the notice that my insurance company sent me telling me they were canceling my home policy. I received two claims - one for my barn because the ice and snow caved it in, the other one on my roof.

I never missed a premium payment. Could you help me in any way?

Yours truly,

A DeSoto resident

Kansas Insurance Department response:

The company agreed to rescind the non-renewal and offered renewal with an increased deductible of \$1,000. The consumer was faced with the choice of taking a higher deductible or finding insurance elsewhere, which would be difficult since her policy was dropped.

03401593

March 1, 1994

Dear Commissioner:

I want you to know of my disgust for the insurance company captioned above for the manner in which they have canceled the insurance on our home. They make decisions as to why they want to non-renew the policy, but those reasons keep changing as they change the rules.

The third letter we received stated that they were non-renewing because we have had 2 losses in 3 years. When in fact, we have had 2 losses in 6 years since the company has written our insurance on both our home and auto since 1988. In these 6 years we have paid our company \$2,521.00 in homeowners premium and over \$2,700.00 in auto premium. Mr. Commissioner, one loss was a hail storm in March 1993 which was a catastrophe and the other loss was on December 29, 1992. A simple little ring that is scheduled on the policy and we pay extra premium to have it covered. The loss was for \$340.00.

I think that you should investigate the company's standards and practices. They have taken on the attitude of "the insurance company" that being that they can charge whatever they want but don't you dare have a claim or we will cancel you. This is an attitude I find disgusting and cannot defend.

Thanks for your consideration in this matter.

Sincerely,

A Dodge City resident

Kansas Insurance Department response:

The company canceled this policy after a claim for hail damage was filed. The company agreed to renew the policy after we pointed out the minor nature of one of the claims. However, the consumer had lost confidence in the company by that time and secured insurance elsewhere.

03401593

February 6, 1995

Dear Commissioner:

[I received a notice from my insurance company] telling me that my company will not renew my 13 year long policy due to claims which they have paid to me for damage to my property due to Acts of God. Lightening, ice, etc.

I would like to know if this is their legal right and do I have an objection or appeal under state laws of Kansas. Notice that in April of 1995 two riders to my homeowners policy due to having had damage from and wind. I, not the insurance company, took the loss. The reason I took the loss is because the company agent pointed out to me that my outside antenna coverage was only for the sum of \$200.00. So, the company sent out a representative to my home to look and take pictures of my ham radio antennas and equipment. They then wrote and initiated an additional rider to my policy just to cover my outdoor antennas and inside expensive Ham radio electronics. Also at this time the representative told me that I would have insurance for any type of damage to my equipment.

In December 1994 an ice storm broke my outdoor antennas and damaged my ham equipment and now the company is denying me further coverage. I feel this is wrong and with prejudice. Please advise what I can or can not do.

Thank you,

Junction City resident

Kansas Insurance Department response:

The insurance company refused to renew the homeowners policy, but offered a dwellingowners policy in its place. The new policy would only cover actual cash value, providing less coverage than the additional policy. Additionally, the insurance company placed a \$1,000 deductible on the policy.

02500922

7141
1/18/96
1-14

February 22, 1995

Dear Commissioner:

Per our telephone conversation we had regarding my home owners insurance. I have had this insurance since 1985. We tried to insure another house that I own, located at 2510 N. 10th, Kansas City, Kansas, and they refused to insure it.

I believe that I am being red-lined and the losses were not that great. I also found out that they won't insure any of the homes around in our area.

So, I have come to you for assistance on this matter.

Sincerely,

A Kansas City resident

Kansas Insurance Department response:

The company refused renewal on the number of losses in the last three years. Of her two losses, both were due to acts of nature, wind and lightening. However, because Kansas statutes maintain that a consumer can be dropped for any reason, the department was unable to help.

02501413

July 29, 1994

Dear Commissioner:

Two years ago, April 1992, I had damage to my roof. I did get a new roof from Sears, but I've had interior water damage on four ceilings. After making my claims which were caused by my faulty roof, I've been canceled by my insurance company.

I have had homeowners insurance for over fifty years and never had a claim. I do not think this was fair.

I am a widow, 76 years old.

Hope you will give this your immediate attention and that I will hear from you soon. Thank you in advance.

I remain yours truly,

An Overland Park resident

Kansas Insurance Department response:

The claims the company paid on were very minor. There was one major loss due to hail damage. The company based its non-renewal on the grouping of water damage losses the consumer claimed. The Insurance Department was unable to help this consumer get her insurance reinstated.

07405462

May 17, 1994

Dear Commissioner:

This is to appeal a cancellation - expiration 6/26/94.

About two years ago I contacted my insurance company to explore a roof leak in my upstairs bathroom extending to downstairs bathroom. A man came out, climbed up on the roof and said I need a new roof because of hail damage. I was surprised as I did not recall recent or serious hail in this area. He proceeded to tell me he was a roofer (not an adjuster) and would give the company damage claim for an amount in excess of \$2,000. He planned to do the work and wanted \$500 - \$600 in excess of the claim reported. He stated this was for anticipated damage to structure after removal of old shingles. He became angry/defensive when I questioned him about this.

I secured someone to do the roof with the money paid by my insurer. Later in the midst of a rain, water poured in through my wall above my kitchen window. In response, a man from my insurance company came with an umbrella, walked into my kitchen, and saw what was happening. The damage also destroyed my telephone answering machine, but I didn't know this then. I believe he allowed me about \$100.

I appeal this cancellation. I ask that the insurance be reinstated with a \$500 deductible, so what you might call frivolous claims can be avoided. I feel the irresponsible behavior of the claims department contributed to this sad calamity for us.

Respectfully,

Kansas City resident

Kansas Insurance Department response:

Since the company is allowed to non-renew for any reason, the Insurance Department was unable to help this consumer. The consumer was informed that the only remedy for a situation like this could be through protection from the legislature.

05403243

August 28, 1995

Dear Commissioner:

We have been insured by this company since we purchased our home in 1961. Within a 2 1/2 year period, approx., we had hail damage to our roof and car - flooded kitchen carpet replaced from broken pipe and our refrigerator caught fire and they replaced it.

Because of these unavoidable, authorized claims we've been issued a termination notice as of 10-16-95. We are in our 70's and are devastated that our insurance company could do this to us after all these years. Can you please help us. We feel like this is an injustice and cannot afford a more expensive policy since our income is solely our social security.

Thank you,

Mission residents

Kansas Insurance Department response:

The company responded by offering to reinstate the policy with no lapse in coverage. However, the company raised the deductible to \$1,000. This put the consumers in a difficult position since it is hard to obtain insurance after one has been dropped from a company.

09505703

7141
1/18/96
1-18

July 15, 1994

Dear Commissioner:

This is to register a complaint against our insurance company and to seek continuation of coverage as previously written. Please note the enclosed cancellation notice. We have suffered four losses under this policy in recent years. Three were due to violent weather and only one which might have been preventable.

3/26/91	Wind damage	\$750
4/26/91	Wind damage	\$1197
9/21/93	Hail damage	\$3660
11/27/93	Linoleum damage	\$1325

The two 1993 claim were, then, at our new residence. The result of the company's incompetent recording of policy changes and the unfortunate if uncontrollable series of claims is the notice of cancellation enclosed. The insurance company has informed me, through my agent, that they will continue our coverage only if I will consent to a \$1000 deductible.

My contention is that the insurance company is intolerably incompetent in their handling of policy changes and that they now propose to refuse to re-underwrite unless I consent to up my deductible to \$1000, based on previous losses which are primarily classified as "Acts of God."

If your office chooses to become involved here I would prefer to continue my 24 year relationship with Duane O'Hara, our agent, due to his excellent personal service in spite of the main office. I would, of course, only consider continuation under the conditions of the current policy. If you find this in not rectifiable under those conditions, please advise me of my options with regard to the next level of complaint available to me because I have a sense that if the previous loss is not admissible in my case, the company is using not only unethical, but possibly illegal leverage to cause me to modify my policy. Please excuse the urgent nature of the communication: we have been attempting to reconcile with the company since 6/20/94 to no avail.

Sincerely,

A Topeka resident

Kansas Insurance Department response:

The company responded that the policy no longer conforms to their underwriting guidelines due to six losses in seven years, all but one a result of an act of nature. Since the consumer did not accept the increased deductible, the company proceeded with non renewal.

07404745

June 9, 1994

Dear Commissioner:

Enclosed is a NOTICE OF NON RENEWAL from my homeowners policy, dated 6-1-94 with the expiration date to take effect 7-9-94.

I received a letter from my agent that my insurance claims were "excessive". These were 1-18-93 and 5-14-94 claims for damage to appliances caused by lightening.

I began insurance with this company in 1984 or 85 and have always paid my monthly premiums on time, mainly early. My last premium was sent in a day before I received the non-renewal notice.

My feeling that the claims are "excessive" is ridiculous. The 1987 roof damage was SEVEN YEARS AGO! The robbery and lightening damage are simply things I have no control over. Acts of nature and crooked thieves are nothing I made happen, and I feel I have worked with this company in good faith; that I have not made unusual or unfair demands.

I would appreciate it if you would look into this. I want to remain insured with this company, and would appreciate any efforts you can offer to bring this to a fair and equitable solution.

Sincerely,

A Topeka resident

Kansas Insurance Department response:

The company responded by reinstating the consumer's policy if she agreed to increase the deductible to \$500. The consumer was informed of the changes that the Insurance Department has attempted to make within the legislature, but without success.

06403733

January 18, 1996

Senate Financial Institutions and
Insurance Committee
State Capitol Building
Topeka, Kansas

Re: Senate Bill 443

Chairman Bond and Members of the Committee:

I am David Hanson appearing on behalf of the Kansas Association of Property and Casualty Insurance Companies, which consists of domestic property and casualty insurers in Kansas.

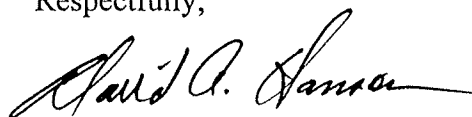
The Association is concerned about the amendments proposed in Senate Bill 443. Our primary concern is that the proposed amendments will force a continuation of coverages when reduction or cancellation of coverage would otherwise be justified and prudent. By restricting management decisions in this way, exposure is both increased and extended. The domestic insurance companies need to be allowed to manage our businesses, including management of coverage concentrations. We rely on reinsurance to help spread the risk of loss and to secure the payment of losses. Our reinsurers review our coverage concentrations and we believe the proposed reduction of our ability to manage those concentrations will affect our reinsurance rates and availability.

We also believe this proposal will discourage outside insurance companies from coming into Kansas and, in effect, will hurt insurance availability and affordability in Kansas.

As you all are aware we have seen at least five years of severe and catastrophic losses in our industry. These provisions will not help the companies as they try to survive and manage their businesses, nor will these restrictions ultimately help Kansas consumers.

We must therefore oppose Senate Bill 443. Thank you for your consideration.

Respectfully,



DAVID A. HANSON

Senate, 7141
1/18/96

Attachment #2

MEMORANDUM

TO: The Honorable Dick Bond, Chairman
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

DATE: January 18, 1996

RE: S.B. 443

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent The State Farm Insurance Companies. We appreciate the opportunity to testify before this Committee with respect to S.B. 443.

This bill is similar to the 1994 House Bill No. 2637, which after a hearing in the House Financial Institutions and Insurance Committee did not move out of committee. We submit that the issues surrounding the inaction on H.B. 2637 are also found in S.B. 443. Further, it is important to note that this proposal is substantially different from the NAIC Model and of the surrounding states (based on our preliminary review). However, prior to discussing the specifics of S.B. 443, we would go on record that my client does support the NAIC Model Property Insurance Declination, Termination and Disclosure Model Act (copy attached). It would appear for drafting purposes that Sections 1 through 6 would be the appropriate sections to codify if the Legislature believed that some action needed to be taken.

Section 1 of the bill provides the definition of "policy of property insurance" that is to be covered by this proposal. We are concerned with the language found on line 16 in which the

*Senate 7/41
1/18/96
Attachment # 3*

bill proposed to define the type of dwelling. We believe this language is vague and could in some instances lead to unnecessary conflicts on what is actually covered by this proposal. We would urge that after the word on the "a" be deleted and insert the phrase "an owner occupied." Also, the end of the section, on line 17 we would recommend that the following sentence be added: "Notwithstanding the foregoing, 'policy of property insurance' does not include policies issued under apportionment agreements entered into by insurers pursuant to K.S.A. 40-2101, and amendments thereto." This would eliminate the FAIR Plan from this provision because of their special underwriting considerations.

On line 22 as it relates to Section 3(b), we believe that for purposes of contract law a standard of "material misrepresentation" is inappropriate. It is our contention that the more appropriate standard would be one similarly adopted by the NAIC, which utilizes a more comprehensive standard.

Next, starting on line 37, new Section 3(e), the bill states that the policy may be canceled or non-renewed if underwriting factors have turned "unfavorable," but only if they are in the control of the insured. Initially, we would contend that such provisions are vague and would be a very difficult standard to apply. Further, this again goes against the general principles of contract law inasmuch as a contract requires a meeting of the minds. Since it is undefined as to what is in the reasonable control of the insured, it would be difficult at best to determine what underwriting factors could or could not be utilized under this proposal. For example, after a period of time, could an insurance company non-renew a policy because an insured failed to undertake "major maintenance," thereby in the opinion of the insurer creating an unfavorable underwriting factor?

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This could create a situation where the insured would argue that such a factor is beyond his or her control (lack of funds, etc.), thus creating severe underwriting problems for the insurance company.

Next, starting on line 40, the bill attempts to specifically itemize wind, hail and acts of nature losses. Again, we believe the NAIC version, which covers all losses, would be more appropriate. If not, we would urge the Committee to delete this section and treat all losses on the same level.

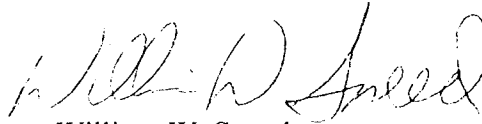
New Section 4 establishes that a company cannot non-renew unless the basis of that non-renewal is one of the categories listed in new Section 4 including those factors in new Section 3. It is important to note that Section 3 deals with when a policy has been in effect for sixty days or has already been renewed. Section 4 goes on to state that a company is limited in its decision to renew a policy and can only non-renew if it fits in one of the categories in Section 4. There are management differences between cancellation and non-renewal. The language found in Section 4 is usually associated with mandatory insurance law. The key is that such coverages are mandatory. Thus, there is a public policy rationale to limit an insurance company's ability to non-renew these types of insurance coverages. These kinds of public policy issues simply do not exist in "homeowners" insurance. The underwriting of the risk for a mandatory insurance product is substantially different than the underwriting of an individual's home.

We are also concerned that New Section 4(a)(4) may force the elimination of binding property insurance until all of the items delineated in the bill can be reviewed. Also, the insurer would inspect the property and either require the insured to correct all defects or reject homes with such problems. This could also lead to another public policy problem in that a real dilemma will

exist if the insured does not have the financial resources to correct the problems needed in order to write to policy.

We understand the Department is attempting to provide a legislative means to assure reasonable availability of insurance products in the marketplace. However, we believe this bill may in rare instances provide such availability to those who are having difficulty obtaining insurance, but for the most part will act as a disincentive to expanding the current insurance companies in the marketplace. Thus, we respectfully request your disfavorable action on S.B. 443.

Respectfully submitted,



William W. Sneed

Model Regulation Service—July 1992

**PROPERTY INSURANCE DECLINATION,
TERMINATION AND DISCLOSURE MODEL ACT**

Table of Contents

Section 1.	Scope
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Preamble: The purpose of this Act shall be to regulate declinations, cancellations and refusals to renew certain policies of property insurance and to require specific reasons for such action.

Section 1. Scope

This Act shall apply to policies of property insurance, other than policies of inland marine insurance and policies of property insurance issued through a residual market mechanism, covering risks to property located in this state which take effect or are renewed after the effective date of this Act and which insure any of the following contingencies:

- A. Loss of or damage to real property which consists of not more than four residential units, one of which is the principal place of residence of the named insured, or
- B. Loss of or damage to personal property in which the named insured has an insurable interest where:
 - (1) The personal property is used for personal, family or household purposes; and
 - (2) The personal property is within a residential dwelling.

Drafting Note: Property insurance policies issued through a state FAIR Plan or other residual market mechanism are excluded from this Act because of the special underwriting considerations and regulatory treatment afforded such policies under state law. While the application of many of the substantive principles of this Act to such policies would be desirable and should be encouraged, the mechanism for implementing these principles should be the plan of operation of the state FAIR Plan or residual market mechanism, not a state law governing property insurance declinations and terminations in the voluntary market.

Section 2. Definitions

- A. "Renewal" or "to renew" means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. For purpose of this Act, any policy period or term of less than six (6) months shall be considered a policy period or term of six (6) months and any policy period or term of more than one year or any policy with no fixed expiration date shall be considered a policy period or term of one year.
- B. "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on policies of property insurance subject to this Act, whether such payments are directly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" shall include the failure to pay dues or fees where payment of such dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

Property Insurance Declination, Termination

- C. "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in Subsection A. For purposes of this Act, the transfer of a policyholder between companies within the same insurance group shall be considered a termination, but requiring a reasonable deductible, reasonable changes in the amount of insurance or reasonable reductions in policy limits or coverage shall not be considered a termination if such requirements are directly related to the hazard involved and are made on the renewal date for the policy.
- D. "Declination" means either the refusal of an insurer to issue a property insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or the refusal of an agent or broker to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. For the purposes of this Act, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage shall be considered a declination.

Section 3. Notification and Reasons for a Declination or Termination

- A. (1) Except as provided in Paragraph (2) of this subsection, upon declining to insure any real or personal property subject to this Act the insurer, agent or broker making such declination shall either provide the insurance applicant with a written explanation of the specific reason(s) for the declination at the time of the declination or advise the applicant that a written explanation of the specific reasons for the declination will be provided within twenty-one (21) days of the time of the receipt of the applicant's written request for such an explanation. An applicant's written request shall be timely under this subsection if received within ninety (90) days of the date of that notice to the applicant.
- (2) In the event of the declination of the insurer of a risk submitted by an agent or broker on behalf of the applicant, the insurer shall provide the agent or broker with a written explanation of the reasons for the declination. In the event that the agent or broker is unable to effect insurance for the applicant through an admitted insurer other than a residual market mechanism, the agent or broker shall submit an explanation in writing to the applicant of all such declinations.
- (3) No agent, broker or insurer not represented by an agent or broker, shall refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requires insurance coverage from the agent, broker or insurer.
- B. A notice of cancellation of property insurance coverage by an insurer shall be in writing, shall be delivered to the named insured or mailed to the named insured at the last known address of the named insured, shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reason(s) for the cancellation.

Drafting Note: No time period for the effective date of a cancellation is included in this subsection because states may already have time periods specified in their insurance codes. In addition, a legislatively mandated time period for the effective date of a cancellation would encourage fraud if too long or place undue burdens on policyholders if too short. Finding an appropriate balance between these competing considerations is extremely complex. For those states which may desire a specified time period, however, such states may wish to consider that the cancellation of a property insurance policy which occurs within 60 days of the date of issuance be effective 14 days from the receipt of notice of cancellation, while the cancellation of a property insurance policy which occurs more than 60 days after the date of issuance be effective 30 days from the receipt of notice of cancellation.

- C. No insurer shall refuse to renew a property insurance policy unless at least thirty (30) days before the end of the policy period, as described in Section 2A of this act, the insurer shall deliver or mail to the named insured, at the last known address of the named insured, written notice of the insurer's intention not to renew the policy upon expiration of the current policy

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period. The notice of intention not to renew shall include or be accompanied by a written explanation of the insurer's specific reason or reasons for the nonrenewal.

No notice of intention not to renew shall be required where the named insured is given notice of the insurer's willingness to renew the policy by the mailing or delivering of a renewal notice, bill, certificate or policy. If notice as required by this subsection is not provided, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate premium under the same terms and conditions, and subject to the provisions of Section 4 of this Act, until the named insured has accepted replacement coverage with another insurer or until the named insured has agreed to the nonrenewal.

Proof of mailing a notice of intention not to renew or business records of the notice of the insurer's willingness to renew shall be retained for a period of not less than one year by the insurer or agent or broker giving such notice.

Section 4. Permissible Cancellations

After coverage has been in effect for more than sixty (60) days or after the effective date of a renewal policy a notice of cancellation shall not be issued unless it is based on at least one of the following reasons:

- A. Nonpayment of premium;
- B. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- C. Discovery of willful or reckless acts or omissions on the part of the named insured which increase any hazard insured against;
- D. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;
- E. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
- F. A determination by the Commissioner of Insurance that the continuation of the policy would place the insurer in violation of the insurance laws of this state;
- G. Real property taxes owing on the insured property have been delinquent for two (2) or more years and continue delinquent at the time notice of cancellation is issued.

Section 5. Termination/Declinations: Prohibited Reasons

The declination or termination of a policy of property insurance subject to this Act by an insurer, agent or broker is prohibited if the declination or termination is:

- A. Based upon the race, religion, nationality, ethnic group, age, sex or marital status of the applicant or named insured;
- B. Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to an insurer, agent or broker which limits its market to one lawful occupation or profession or to several related lawful occupations or professions;
- C. Based upon the age or location of the residence of the applicant or named insured unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;

Property Insurance Declination, Termination

- D. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured;
- E. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.

Section 6. Enforcement Provisions

A. **Complaint and Hearing.** Upon a complaint of a person filed within ninety (90) days of any violation of this Act, the Commissioner shall determine whether such complaint is reasonably founded. If the Commissioner determines that such complaint is reasonably founded, or if the Commissioner otherwise has reason to believe that an insurer, agent or broker has engaged in practices which violate this Act and that a proceeding in respect thereto would be in the public interest, the Commissioner shall set a date for a public hearing to determine whether a violation of this Act has in fact occurred. Such hearing shall be held upon no less than ten (10) days notice to the person charged and the complainant, if any. Such notice shall set forth the specific grounds upon which the complaint is based. If a hearing is based upon a complaint, the hearing shall be set no later than thirty (30) days from the date the complaint was filed. The hearing shall take place before a hearing examiner who shall make a record of the evidence and set forth findings and conclusions. Once a prima facie violation of this Act has been established, the person charged in the complaint shall have the burden of showing that such violation was based on a reason not prohibited by this Act. The findings of fact determined by the hearing examiner shall be reviewed by the Commissioner who shall issue a final order. A petition for rehearing may be filed within thirty (30) days of the final order of the Commissioner.

B. **Sanctions.** If the Commissioner determines in a final order that:

- (1) An insurer has violated Sections 4 or 5 of this Act, the Commissioner may require the insurer to:
 - (a) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated; or
 - (b) Reinstate insurance coverage to the end of the policy period; or
 - (c) Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
- (2) Any person has violated any provisions of this Act, the Commissioner may:
 - (a) Issue a cease and desist order to restrain such person from engaging in practices which violate this Act; or
 - (b) Assess a penalty against such person of up to \$500 for each violation of this Act; or
 - (c) Assess a penalty against such person of up to \$5,000 for each willful and knowing violation of this Act.

C. **Civil Liability and Actions.**

- (1) If the Commissioner determines in a final order that an insurer has violated Sections 4 or 5 of this Act, the applicant or named insured aggrieved by the violation may bring an action in a court of competent jurisdiction in this State to recover from such insurer any loss, not otherwise recovered through insurance, which would have been paid under the insurance coverage that was declined or terminated in violation of this Act.
- (2) Any amount recovered under Paragraph (1) above shall not be duplicative of any recovery obtained through the exercise of any other statutory or common law cause of

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action arising out of the same occurrence. No action under this section shall be brought two (2) years after the date of a final order of the Commissioner finding a violation of Section 4 or 5 of this Act.

- D. **Judicial Review.** Any person aggrieved by any determination or order of the Commissioner under this Act may seek judicial review in the proper court. Failure of the Commissioner to act upon a complaint under this Act within thirty (30) days of the filing of such complaint shall constitute a determination that the complaint was not reasonably founded.

Section 7. Immunity

A. There shall be no liability on the part of and no cause of action shall arise against:

- (1) The Commissioner of Insurance;
- (2) Any insurer or its authorized representatives, agents or employees;
- (3) Any licensed insurance agent or broker; or
- (4) Any person furnishing information to an insurer as to reasons for a termination or declination, for any communication giving notice of or specifying the reasons for a declination or termination or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a declination or termination under this Act.

B. Subsection A above shall not apply to statements made in bad faith with malice in fact.

Section 8. Effective Date

This Act shall take effect on [insert date].

Legislative History (all references are to the Proceedings of the NAIC).

1979 Proc. II 31, 34-35, 525, 548-552 (adopted).

1980 Proc. I 33-34, 39, 669, 672 (amended).

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3-9

BRAD SMOOT

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

PRESENTED TO THE KANSAS SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE REGARDING 1996 SENATE BILL 443, JANUARY 18, 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. We appreciate the opportunity to address S 443.

The American Insurance Association generally opposes legislation that, while well-intentioned, limits the ability of insurers to terminate insurance contracts, especially upon expiration. Such laws amount to guaranteed renewal. A similar bill was proposed in 1994 (H 2637) by the Insurance Department but was not passed by the either house. Although this bill removes some of the objections we expressed two years ago, it does not respond to our fundamental concern.

At the market level, such "lock-in" provisions impede competition. Exit barriers, like S 443, deter potential companies from entering new insurance markets. In other words, the harder it is to get out, the less eager companies will be to get in. Moreover, there is little evidence that such efforts ultimately keep companies in existing markets. At the individual homeowner level, S 443 makes it very difficult for one party to the contract to get out and creates a one-sided five year obligation which will make the insurer even more hesitant to issue policies in the first place. It is hard for us to see how this is good for insurance markets or consumers.

While we recognize that the business of insurance is one of the most highly regulated industries in the country, we also believe that the "product or service" of insurance is still a contract between an individual buyer and seller. If one party is no longer willing to

*Senate 7141
1/18/96
Attachment 4*

provide the product or service or the other no longer wishes to purchase the product or service, it should not be the business of government to force the continuation of the contract.

The Department's objective of increasing the availability of homeowners' insurance is laudable. However, we do not convinced that S 443 will successfully accomplish that objective and may well have the opposite unintended consequence. We would instead prefer that the Department and the Legislature consider the NAIC model which appears to have been widely considered and is more likely to be adopted in the several states in which our member companies operate.

For these reasons, we encourage the Committee to reject S 443. I would be pleased to respond to questions.

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1/18/96
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MEMORANDUM

TO: The Honorable Dick Bond, Chairman
Senate Financial Institutions and Insurance Committee

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

DATE: January 16, 1996

RE: S.B. 416

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent AmVestors Financial Corporation and its wholly-owned subsidiary, American Investors Life Insurance Company. S.B. 416 is an amendment to K.S.A. 1995 Supp. 79-32,160a, which in its present form sets out an income tax credit for establishment of a qualified business facility. This amendment would allow the same credit to be taken against the privilege tax on the net income of insurance companies in a completely revenue-neutral manner.

K.S.A. 1995 Supp. 79-32,160a created an income tax credit for any taxpayer who invested in the establishment of a qualified business facility. Qualified business facility is defined in K.S.A. 1995 Supp. 74-50,114(a) and 1995 Supp. 79-32,154(b) in general terms as a facility employed by the taxpayer in the operation of a revenue-producing enterprise. The statute is designed to promote economic development through the creation of jobs and the stimulation of local economies.

The statute allows the taxpayer to deduct from the taxpayer's income tax owed an amount based on how much the taxpayer invested in a business facility. The credit is a one-time

credit, and is applied during the taxable year in which commercial operations commenced in the facility.

The statute sets out the formula for figuring the tax deduction. There are two formulas; one for facilities built in nonmetropolitan regions and one for metropolitan facilities. To give you an idea of the size of the tax credit, the statute allows \$1,500.00 for each qualified business facility employee (\$2,500.00 for nonmetro facilities) and \$1,000.00 per \$100,000.00 of taxpayer investment in the facility. At no time may the tax credit exceed 50% of the tax owed in the taxable year. If it does, the average may be carried over for credit in the following year until used up, under certain circumstances.

Most taxpayers, corporations included, pay what is called income tax. Insurance companies pay the same tax, except it is called a privilege tax. This tax is imposed on the net income of insurance companies for the privilege of doing business in Kansas. It is, for all intents and purposes, an income tax.

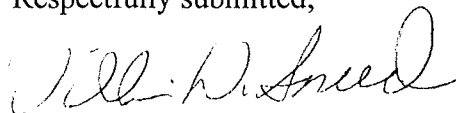
Under the present scheme, a parent holding company can list the new business facility as an asset, take advantage of the tax credit, then rent the facility to its subsidiary insurance company. Our amendment would allow insurance companies the flexibility to carry the business facility as an asset. This is desirable for three reasons: 1) the Insurance Department exercises greater regulatory authority over the assets of the insurance company as opposed to the assets of the parent holding company; 2) allowing the insurance company to hold the asset while receiving the tax credit enhances the insurance company's bottom line; and 3) the amendment would eliminate the grey area created by financial transactions between the parent holding company and the subsidiary insurance

company. For instance, our amendment would delete issues involving how much rent the parent charges the subsidiary for use of the facility, and the attendant transactions incident to ownership and rental of a business facility.

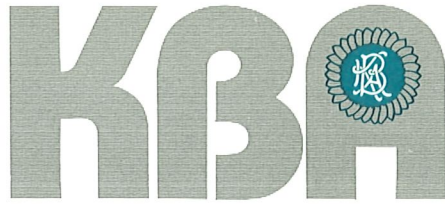
This amendment does nothing more than allow insurance companies that invest in a qualified business facility to take advantage of a tax credit available to all other taxpayers. It gives Kansas insurance companies incentive to establish business facilities in Kansas, and the opportunity to receive the same tax credit treatment as other investing taxpayers. We must emphasize that this amendment is completely revenue-neutral. The credit against the income or privilege tax may be taken one way or another--the question is simply whether it is taken by a parent corporation or its insurance company subsidiary.

In closing, we respectfully request your favorable action on S.B. 416. We appreciate this opportunity to present our testimony. Please feel free to contact me if you have any questions.

Respectfully submitted,



William W. Sneed



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 16, 1996

TO: Senate Committee on Financial Institutions and Insurance
RE: SB 416 - Credits against privilege tax on insurance companies

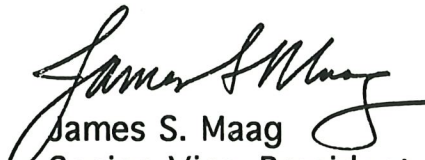
Mr. Chairman and Members of the Committee:

The State Affairs Committee of the Kansas Bankers Association has requested that SB 416 be amended to include reference to the state privilege tax paid by financial institutions. As introduced, the provisions of SB 416 would amend the qualified business facility tax credit act to include insurance companies paying the insurance company privilege tax. Currently only companies paying the Kansas corporate income tax qualify for the tax credit under the provisions of the act.

We respectfully request that SB 416 be amended to allow banks and s&ls which pay the state privilege tax on financial institutions to be eligible for the tax credits allowed for qualified business facilities. We believe it is simply a matter of tax fairness since financial institutions are required to pay a privilege tax in lieu of a corporate income tax, but are not allowed to access the tax credit since the act refers only to the corporate income tax.

Such an amendment should have little fiscal impact since most banks are subsidiaries of bank holding companies and those companies pay the Kansas corporate income tax and would, therefore, be eligible for the tax credit. However, there may be instances where there would be a preference to have the qualified facility in the name of the bank rather than the holding company and the proposed amendment would provide that flexibility.

Your positive consideration of the proposed amendment to SB 416 would be greatly appreciated.


James S. Maag
Senior Vice President

Senate 7141
1/18/96
Attachment #6

SENATE BILL No. 416

By Committee on Financial Institutions and Insurance

1-9

9 AN ACT concerning credit against privilege tax on insurance companies
10 for establishment of a qualified business facility; amending K.S.A. 1995
11 Supp. 79-32,160a and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1995 Supp. 79-32,160a is hereby amended to read
15 as follows: 79-32,160a. (a) Any taxpayer who shall invest in a qualified
16 business facility, as defined in subsection (b) of K.S.A. 79-32,154, and
17 amendments thereto, and also meets the definition of a business in sub-
18 section (a) of K.S.A. 74-50,114 and amendments thereto, shall be allowed
19 a credit for such investment, in an amount determined under subsection
20 (b) or (c), as the case requires, against the tax imposed by the Kansas
21 income tax act or the privilege tax on net income of insurance companies
22 imposed under article 28 of chapter 40 of the Kansas Statutes Annotated,
23 for the taxable year during which commencement of commercial opera-
24 tions, as defined in subsection (f) of K.S.A. 79-32,154, and amendments
25 thereto, occurs at such qualified business facility. In the case of a taxpayer
26 who meets the definition of a manufacturing business in subsection (c)
27 of K.S.A. 74-50,114 and amendments thereto, no credit shall be allowed
28 under this section unless the number of qualified business facility em-
29 ployees, as determined under subsection (d) of K.S.A. 79-32,154, and
30 amendments thereto, engaged or maintained in employment at the qual-
31 ified business facility as a direct result of the investment by the taxpayer
32 for the taxable year for which the credit is claimed equals or exceeds two.
33 In the case of a taxpayer who meets the definition of a nonmanufacturing
34 business in subsection (e) of K.S.A. 74-50,114 and amendments thereto,
35 no credit shall be allowed under this section unless the number of qual-
36 ified business facility employees, as determined under subsection (d) of
37 K.S.A. 79-32,154, and amendments thereto, engaged or maintained in
38 employment at the qualified business facility as a direct result of the
39 investment by the taxpayer for the taxable year for which the credit is
40 claimed equals or exceeds five.

41 (b) The credit allowed by subsection (a) for any taxpayer who invests
42 in a qualified business facility which is located in a designated nonmetro-
43 politan region established under K.S.A. 74-50,116 and amendments

, or the privilege tax on net income of financial institutions imposed under Article 11 of chapter 79 of the Kansas Statutes Annotated,

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1/18/96
4/14/1

1 thereto, on or after the effective date of this act, shall be a portion of the
2 income tax or *privilege tax*, but not in excess of 50% of such tax imposed
3 by the Kansas income tax act or *the privilege tax on net income of insur-*
4 *ance companies imposed under article 28 of chapter 40 of the Kansas*
5 *Statutes Annotated*, on the taxpayer's Kansas taxable income, for the tax-
6 able year for which such credit is allowed. Such portion shall be an
7 amount equal to the sum of the following:

, or the privilege tax on net income of financial institutions imposed under Article 11 of chapter 79 of the Kansas Statutes Annotated

8 (1) Two thousand five hundred dollars for each qualified business
9 facility employee determined under K.S.A. 79-32,154, and amendments
10 thereto; plus

11 (2) one thousand dollars for each \$100,000, or major fraction thereof,
12 which shall be deemed to be 51% or more, in qualified business facility
13 investment, as determined under K.S.A. 79-32,154, and amendments
14 thereto.

15 (c) The credit allowed by subsection (a) for any taxpayer who invests
16 in a qualified business facility, which is not located in a nonmetropolitan
17 region established under K.S.A. 74-50,116 and amendments thereto and
18 which also meets the definition of business in subsection (a) of K.S.A. 74-
19 50,114 and amendments thereto, on or after the effective date of this act,
20 shall be a portion of the income tax or *privilege tax*, but not in excess of
21 50% of such tax imposed by the Kansas income tax act or *the privilege*
22 *tax imposed under article 28 of chapter 40 of the Kansas Statutes Anno-*
23 *tated*, on the taxpayer's Kansas taxable income, for the taxable year for
24 which such credit is allowed. Such portion shall be an amount equal to
25 the sum of the following:

, or the privilege tax on net income of financial institutions imposed under article 11 of chapter 79 of the Kansas Statutes Annotated

26 (1) One thousand five hundred dollars for each qualified business
27 facility employee as determined under K.S.A. 79-32,154, and amend-
28 ments thereto; and

29 (2) one thousand dollars for each \$100,000, or major fraction thereof,
30 which shall be deemed to be 51% or more, in qualified business facility
31 investment as determined under K.S.A. 79-32,154, and amendments
32 thereto.

33 (d) The credit allowed by subsection (a) for each qualified business
34 facility employee and for qualified business facility investment shall be a
35 one-time credit. If the amount of the credit allowed under subsection (a)
36 exceeds 50% of the tax imposed by the Kansas income tax act or *the*
37 *privilege tax on net income of insurance companies imposed under article*
38 *28 of chapter 40 of the Kansas Statutes Annotated*, on the taxpayer's Kan-
39 sas taxable income for the taxable year, the amount thereof which exceeds
40 such tax liability may be carried over for credit in the succeeding taxable
41 years until the total amount of such credit is used, except that, before the
42 credit is allowed, a taxpayer, who meets the definition of a manufacturing
43 business in subsection (c) of K.S.A. 74-50,114 and amendments thereto,

, or the privilege tax on net income of financial institutions imposed under article 11 of chapter 79 of the Kansas Statutes Annotated

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1 shall recertify annually that the net increase of a minimum of two qualified
 2 business facility employees has continued to be maintained and a tax-
 3 payer, who meets the definition of a nonmanufacturing business in sub-
 4 section (e) of K.S.A. 74-50,114 and amendments thereto, shall recertify
 5 annually that the net increase of a minimum of five qualified business
 6 employees has continued to be maintained.

7 (e) Notwithstanding the foregoing provisions of this section, any tax-
 8 payer qualified and certified under the provisions of K.S.A. 1995 Supp.
 9 74-50,131 and amendments thereto and that has received written approval
 10 from the secretary of commerce and housing for participation and has
 11 participated, during the tax year for which the exemption is claimed, in
 12 the Kansas industrial training, Kansas industrial retraining or the state of
 13 Kansas investments in lifelong learning program or is eligible for the tax
 14 credit established in K.S.A. 1995 Supp. 74-50,132, shall be entitled to a
 15 credit in an amount equal to 10% of that portion of the qualified business
 16 facility investment which exceeds \$50,000 in lieu of the credit provided
 17 in subsection (b)(2) or (c)(2) without regard to the number of qualified
 18 business facility employees engaged or maintained in employment at the
 19 qualified business facility. The credit allowed by this subsection shall be
 20 a one-time credit. If the amount thereof exceeds the tax imposed by the
 21 Kansas income tax act or the privilege tax on net income of insurance
 22 companies imposed under article 28 of chapter 40 of the Kansas Statutes
 23 Annotated on the taxpayer's Kansas taxable income for the taxable year,
 24 the amount thereof which exceeds such tax liability may be carried for-
 25 ward for credit in the succeeding taxable year or years until the total
 26 amount of the tax credit is used, except that no such tax credit shall be
 27 carried forward for deduction after the 10th taxable year succeeding the
 28 taxable year in which such credit initially was claimed and no carry for-
 29 ward shall be allowed for deduction in any succeeding taxable year unless
 30 the taxpayer continued to be qualified and was recertified for such suc-
 31 ceeding taxable year pursuant to K.S.A. 1995 Supp. 74-50,131 and amend-
 32 ments thereto.

33 (f) This section and K.S.A. 1995 Supp. 79-32,160b and amendments
 34 thereto shall be part of and supplemental to the job expansion and in-
 35 vestment credit act of 1976 and acts amendatory thereof and supplemen-
 36 -tal thereto.

37 Sec. 2. K.S.A. 1995 Supp. 79-32,160a is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its
 39 publication in the statute book.

, or the privilege tax on net income of financial institutions imposed
 under Article 11 of chapter 79 of the Kansas Statutes Annotated,

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