

Approved: 4-10-97  
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Janice Hardenburger at 1:40 p.m. on March 20, 1997 in Room 529-S of the Capitol.

All members were present except: Senator Petty, excused

Committee staff present: Dennis Hodgins, Legislative Research Department  
Mike Heim, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Bonnie Fritts, Committee Secretary

Conferees appearing before the committee: Anthony Hensley, State Senator, District 19  
Kathleen Sebelius, Commissioner, Kansas Insurance Department  
Patrick J. Morris, Executive Vice-President, Kansas Association of Insurance Agents

Others attending: See attached list

Chairperson Hardenburger opened the hearing on SB 339.

SB 339

Concerning election campaign finance; prohibiting contributions in elections for the office of insurance commissioner from certain entities; and prescribing penalties for the violation thereof

Senator Hensley appeared before the committee and gave an overview of the bill. He testified the passage of this bill would codify the intentions of Commissioner Sebelius to prevent the Insurance Commissioner from abusing his or her position and it should be illegal for the Kansas Insurance Commissioner to receive campaign contributions from the very industry he or she is responsible for regulating. He outlined the prohibitions listed in the bill and stated the voters of Kansas have made it clear that they want more honest elections, and more accountable public officers (Attachment 1). He strongly supports this legislation.

Kathleen Sebelius, Kansas Insurance Commissioner, testified in support of the bill. She asked the committee to look at the issue, not as a partisan issue, but as a policy issue. The insurance commissioner is the only elected regulator in this state. Everyone else who serves in a regulatory capacity is in an appointed position. She stated this legislation will help assure Kansans that the office of Insurance Commissioner will work for consumer interests and not be affected by financial ties with the industry regulated by the office. She testified there are 12 elected state insurance Commissioners and at least two of these states prohibit industry contributions to their elected Commissioner. She again, stated she is the only elected regulator in Kansas, so this bill has a unique and specific application. The Commissioner concluded her testimony by stating the people of Kansas deserve a free and independent regulator that will protect their interest and not those of the insurance industry (Attachment 2). She urged the committee to pass the bill.

Chairperson Hardenburger noted the Commissioner presented a good argument to have her position be an appointed one. The Commissioner responded by saying that in 1990, when she served in the House of Representatives, she introduced a bill to make the officer of insurance commissioner appointed. Her concern was focused on the enormous money ties between the commissioners office and the industry, but the bill didn't even get a hearing in 1990.

Senator Becker asked who is eligible to contribute to that campaign. Staff submitted a list of persons licensed or regulated by the Kansas Department of Insurance (Attachment 3).

Chairperson Hardenburger asked if someone who contributed \$10 or \$25 is being too influential. She noted that donations less than \$50 do not have to be reported by name.

Patrick Morris appeared before the committee, on behalf of the Kansas Association of Insurance Agents, in opposition of the bill. He testified there is a serious question as to the constitutionality of a prohibition on individuals contributing to the candidates of their choice - regardless of where that individual happens to work. He stated this proposal infringes on the right of our members as citizens to participate in the political process, to petition government and to free speech. The agency also believes that people involved in or employed by the insurance industry have a right to be involved as citizens in the political process, and that includes becoming actively involved in determining who is elected commissioner if they so choose.

He also stated, it is possible that a prohibition on individual contributions will end up in the courts. Mr. Morris further stated the definition of a "regulated entity" covers anyone associated with any portion of the insurance business, but excludes other groups who have an interest in the election of an insurance commissioner. Their members represent consumers and want an Insurance Commissioner who will be a strong consumer advocate while maintaining a healthy industry. He testified the bill, as currently drafted, is unconstitutional because it picks out only a select portion of a huge industry that will be subject to its restrictions (Attachment 4). He urged the committee to reject the bill in its present form.

There was brief discussion on the California and Georgia statutes.

Chairperson Hardenburger closed the hearing on the bill.

Senator Lawrence submitted an amendment to the bill (Attachment 5). Senator Gooch expressed the need for more time to study the amendment stating it goes beyond the intent of the bill. Chairperson Hardenburger stressed to the committee that each elected person has the right to reject a contribution from anyone they want to and that a bill restricting this is not needed.

The meeting was adjourned at 2:30 p.m.

The next meeting is scheduled for March 24, 1997.



# State of Kansas

## Senate Chamber

ANTHONY HENSLEY  
STATE SENATOR, NINETEENTH DISTRICT  
SHAWNEE, DOUGLAS & OSAGE COUNTIES

HOME ADDRESS:  
2226 S.E. VIRGINIA AVENUE  
TOPEKA, KANSAS 66605-1357  
(913) 232-1944—HOME



## Office of Democratic Leader

ROOM 347-N, STATE CAPITOL  
TOPEKA, KANSAS 66612-1504  
(913) 296-3245  
1-800-432-3924

COMMITTEE ASSIGNMENTS  
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LEGIS. POST AUDIT  
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Madame Chairperson and members of the Committee:

Senate Bill 339 would prohibit the Insurance Commissioner, or a candidate for Insurance Commissioner, from soliciting or accepting campaign contributions from any person or political committee licensed or regulated by the Insurance Commissioner, or any person employed by an entity which is regulated by the Insurance Commissioner. When she ran for Insurance Commissioner in 1994, Kathleen Sebelius refused to accept any campaign contributions from the insurance industry, setting an unprecedented standard of honesty and accountability in that race. Senate Bill 339 would codify the intentions of Commissioner Sebelius to prevent the Insurance Commissioner from abusing her or his position.

Without this law, the potential for dishonesty and corruption is great. Consequently, I strongly believe that it should be illegal for the Kansas Insurance Commissioner to receive campaign contributions from the very industry he or she is responsible for regulating.

Senate Bill 339 defines "regulated entity" in lines 18 through 22, and "contracting entity" in lines 23 through 25. "Contracting entity" is a new addition to this bill, and includes second injury fund attorneys. Senate Bill 339 then specifies that neither entity, nor any individual or political committee acting on their behalf, would be allowed to make a campaign contribution to a candidate for Insurance Commissioner. Finally, in lines 38 through 40, this bill requires that any person or entity violating this act would be subject to the penalty prescribed by K.S.A. 25-4181, which would be a civil fine of up to \$5,000 per person.

The voters of Kansas have made clear that they want more honest elections, and more accountable public officers. Senate Bill 339 is an important step toward achieving both.

Thank you for the opportunity to testify on this bill.

SENATE ELECTIONS  
& LOCAL GOVERNMENT



Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

**MEMORANDUM**

TO: Senate Committee on Elections and Local Government  
FROM: Kathleen Sebelius  
RE: Senate Bill 339 (Political Contributions to Insurance Commissioner)  
DATE: March 20, 1997

I am appearing today to ask for your support of SB 339 which prohibits individuals and companies regulated by the Kansas Insurance Department from making political contributions to the Insurance Commissioner or to candidates for that office. I believe this legislation will help assure Kansans that the office of Insurance Commissioner will work for consumer interests and not be affected by financial ties with the industry regulated by the office.

As you are aware, during the 1994 campaign, I refused to take money from insurance companies and agents. As I traveled throughout Kansas during the campaign, I met with citizens, political activists, insurance agents and company representatives. What I heard in all parts of the state, from insurance representatives as well as those not in the industry, was a concern about the money ties between the Commissioner's office and the industry which is regulated by the Insurance Department.

Insurance agents in Hutchinson described a fundraising lunch for the commissioner, where names were taken and people felt the "need" to attend. A company president talked about being solicited routinely for substantial contributions, which he felt was a mandatory part of doing business in Kansas. There is a legitimate concern by the insurance consumers in this state, who spend over \$6 billion a year on insurance, whether the office of Insurance Commissioner is for sale to the industry it regulates.

420 SW 9th Street  
Topeka, Kansas 66612-1678  
ksebelius@ins.wpo.state.ks.us

913 296-3071  
Fax 913 296-2283

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There are 12 elected state insurance Commissioners. At least two of these states, Delaware and Georgia, prohibit industry contributions to their elected Commissioner. The issue is currently before the California legislature, and has been instituted by regulation and practice in numerous other states. Other states prohibit contributions to elected regulators, such as Railroad or Utility Commissioner by their regulated industry. The law in Georgia, which is similar to SB 339, has been upheld by their state supreme court as a permissible constitutional limit on the political activities of the insurance industry.

Under K.S. A. 46-231, the Legislature has already set “those who license, regulate and inspect” in a special category under the campaign finance law. That provision, combined with the Kansas Commission on Governmental Standards and Conduct Opinion No. 91-33, limits the amount a person “licensed, regulated or inspected” by a state agency can give to an employee of that agency to \$40 each calendar year. This dollar limit includes hospitality in the form of food and beverages. It makes little sense that I am prohibited from accepting meals worth more than \$40 during a calendar year from an insurance agent or company that I regulate, but could accept \$4,000 from that same individual during a campaign season.

I am the only elected regulator in Kansas, so SB 339 has a unique and specific application. There are literally hundreds of decisions made each year which affect the financial well-being of insurance companies and the livelihood of insurance agents. While I will continue the practice of refusing financial contributions while I hold this office, passage of SB 339 will ensure that never again will there be financial ties between the Kansas Insurance Department and the regulated industry. In 1996, similar language of this bill passed the Kansas House by a vote of 99 to 16, and passed the Kansas Senate with 27 votes. Since there wasn't a reconciled ethics bill ultimately passed by the Legislature, the law was never enacted. Finally, I want to address the additional issue of prohibiting contributions by lawyers. While the constitutionality of prohibiting contributions from those “licensed and regulated” has withstood constitutional challenges, lawyers hired by the Kansas Insurance Department do not have a unique relationship. In fact, the lawyers hired by our office are in the same category as lawyers

intent of the section, but would urge the Committee to include a severability clause, to make sure that if this provision is found to be unconstitutional, the remainder of the law is not lost.

The Insurance Commissioner's office is critical to all Kansans. They deserve a free and independent regulator that will protect their interest and not those of the insurance industry. I would ask that you approve SB 339.

**Persons Licensed Or Regulated By The Kansas Department Of Insurance**

Alien insurance companies [companies licensed in other countries] (K.S.A. 40-210)

Automobile clubs (K.S.A. 40-2501)

Automobile fleet self-insurers (K.S.A. 40-3104)

Captive insurance companies (K.S.A. 40-4301)

Domestic insurance companies (K.S.A. 40-401; 40-501; 40-601; 40-901; 40-1001; 40-1101; 40-1201; 40-12a01;

Firefighters relief associations (K.S.A. 40-1701)

Foreign insurance companies [companies licensed in other states] (K.S.A. 40-209)

Health maintenance organizations (K.S.A. 40-3204)

Fraternal benefit societies (K.S.A. 40-738)

Health Care Stabilization Fund (K.S.A. 40-3403)

Insurance agents (K.S.A. 40-239)

Insurance brokers (K.S.A. 40-3703)

Insurance holding companies (K.S.A. 40-3301)

Insurance premium financing companies (K.S.A. 40-2601)

Kansas Insurance Guaranty Association (K.S.A. 40-2901)

Life and Health Guaranty Association (K.S.A. 40-3001)

Mortgage guaranty insurance companies (K.S.A. 40-3501)

Municipal group-funded pools (K.S.A. 12-2612)

Non-admitted "excess lines" insurance companies (K.S.A. 40-246c)

Nonprofit Dental Service Corporations (K.S.A. 40-19a01)

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Nonprofit Optometric Service Corporations (K.S.A. 40-19b01)

Nonprofit Medical Service Corporations (K.S.A. 40-1901)

Nonprofit Medical and Hospital Service Corporations (K.S.A. 40-19c01)

Non-resident insurance agents (K.S.A. 40-246)

Prepaid legal and dental service plans (K.S.A. 40-4201)

Reciprocal Interinsurance Exchanges (K.S.A. 40-1601)

Reinsurance companies and trusts (K.S.A. 40-221a)

Reinsurance intermediaries and brokers (K.S.A. 40-4503)

Risk retention groups (K.S.A. 40-4101)

Third party administrators (K.S.A. 40-3801)

Workers compensation pools (K.S.A. 44-501)



## Testimony regarding Senate Bill 339

Presented by Patrick J. Morris

Executive Vice President of the Kansas Association of Insurance Agents  
(March 20, 1997 - Senate Elections and Local Government Committee)

Thank you Madam Chair and members of the committee for the opportunity to appear at the hearing today on Senate Bill 339. I am Pat Morris, the Executive Vice President of the Kansas Association of Insurance Agents, an association that represents over 600 independent agency members across Kansas who employ nearly 3,500 people, most of whom are licensed agents. You may recall, Madam Chair, that I made my initial appearance in front of your committee last year on a bill that looked very similar to today's bill (Senate Bill 452). We were opposed to the bill last year, and we once again come before you in opposition to the language and intent of this bill.

Our opposition is grounded in a number of things, the first being the serious constitutional questions that this bill raises. *There is a serious question as to the constitutionality of a prohibition on individuals contributing to the candidates of their choice - regardless of where that individual happens to work.*

I would cite two sources for your reference regarding the dubious constitutionality of this measure - the Constitution of the State of Kansas, Bill of Rights and the U.S. Constitution, Amendment 14 - Rights and Immunities of Citizens:

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Constitution of the State of Kansas, Bill of Rights:

§ 2. **Political power; privileges.** All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit...

U.S. Constitution, Amendment 14 - Rights and Immunities of Citizens:

§ 1. **Citizenship; privileges or immunities; due process clause.** ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...nor deny to any person within its jurisdiction the equal protection of the laws.

We believe that this proposal infringes on the right of our members as citizens to participate in the political process, to petition government and to free speech. Secondly, we believe that people involved in or employed by the insurance industry have a right to be involved as citizens in the political process, and that includes becoming actively involved in determining who is elected commissioner if they so choose. Thirdly, if passed, we believe that a prohibition on individual contributions would will undoubtedly end up in the courts.

Our second concern with this language is the same that we had last session ---*The definition of a "regulated entity" in this bill covers anyone associated with any portion of the insurance business - yet excludes other groups who have an interest in the election of an insurance commissioner.*

There are many interest groups, not just insurance agents or insurance companies, that also have an interest in the election of an insurance commissioner which are not mentioned in the legislation. Yes, in Senate Bill 339, "attorneys who contract with the department to provide legal services for the department in cases in which the workers compensation fund is involved" are included this year, but what about other attorneys who have business before the department or an interest in a particular decision of the department, associations that sponsor pools, associations that own insurance companies, health care provider groups, labor unions concerned about workers compensation issues, lobbyists who work for insurance interests, other lobbyists who may potentially have business with or an interest in action or inaction by the department, associations interested in insurance issues, and employees of the department. Under the existing language in Senate Bill 339, these groups would still be allowed to contribute. If the intention of the legislation is to exclude all regulated groups from the political process, should not the list of those I recited also be included?

Our third concern is one of practicality. *How, under the Commissioner's current policy of not accepting contributions, or under this law do you determine who qualifies to contribute and who doesn't?* As the Commissioner noted in her testimony yesterday before the House Insurance Committee, the lines between the insurance industry and the financial services industry continue to be blurred. Will this definition of a regulated entity have to be adjusted on an ongoing basis to reflect the changing regulatory environment and how much interpretation will the candidates be required to do to comply with this law?

One of the challenges facing a state the size of Kansas is to maintain an open, competitive market for the various types of insurance which will provide the most options to buyers at the lowest cost. As independent small businessmen and women, our members are free to

represent as many insurance companies as they need and can attract to provide their clients with the best coverage at the best price. Our members represent consumers and want an Insurance Commissioner who will be a strong consumer advocate while maintaining a healthy industry. They could certainly be classified as informed voters. In fact, you could make an excellent argument that the people employed in the insurance industry are more informed on issues that affect the industry, are more informed on the background and performance of the Commissioner relating to insurance issues, and more able to compare the performance of the Commissioner and the Department relative to the insurance environment in other states.

As I stated last year, we are not here petitioning the committee for special treatment. We are looking for the same rights to the political process as other citizens - the opportunity to be active participants in the political process and the elections that directly affect our members' livelihood and their clients' well being. Senate Bill 339, as currently drafted, we believe is unconstitutional because it bans individual contributions and it picks out only a select portion of a huge industry that will be subject to its restrictions.

We would urge the committee to reject Senate Bill 339 in its present form.

SENATE BILL No. 339

By Senators Hensley, Barone, Biggs, Downey, Feleciano, Gilstrap,  
Goodwin, Jones, Karr, Petty and Steineger

2-14

AN ACT concerning election campaign finance; prohibiting contributions in elections for the office of insurance commissioner from ~~certain entities~~; and prescribing penalties for the violation thereof.

*persons other than individuals*

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

Section 1. (a) (1) Except as otherwise provided in this subsection, the definitions set forth in K.S.A. 25-4143, and amendments thereto, shall be applicable to the provisions in this section.

(2) As used in this section: (A) ~~“Regulated entity” means any person who is required by law to be licensed by the insurance commissioner, or any person who engages in a business or profession which is regulated by the insurance commissioner, or any person employed by a company regulated by the insurance commissioner; and (B) “contracting entity” means any person who contracts with the department of insurance to provide legal services for the department in cases in which the workers compensation fund is involved.~~

*Person other than an individual*

*committee, corporation, partnership, trust, organization, political committee, union, health care provider group, or association.*

(b) No ~~regulated entity or contracting entity~~ and no person or political committee acting on behalf of a ~~regulated entity or contracting entity~~ shall make a contribution to or on behalf of a person holding the office of insurance commissioner, to or on behalf of a candidate for the office of insurance commissioner or, to or on behalf of a candidate committee of any such candidate.

*“person other than an individual”*

*“person other than an individual”*

(c) No person holding the office of insurance commissioner and no candidate for the office of insurance commissioner and no candidate committee of a candidate for the office of insurance commissioner shall knowingly solicit or accept a contribution from any ~~regulated entity or contracting entity~~ or any person or political committee acting on behalf of a ~~regulated entity or contracting entity~~.

*“person other than an individual”*

*“person other than an individual”*

(d) Any ~~person or entity~~ violating the provisions of this act shall be punished in the manner and be subject to the penalties prescribed by K.S.A. 25-4181, and amendments thereto.

*“person other than an individual”*

*(e) Nothing contained in this section shall be construed to prevent any person who may be employed by a “person other than an individual”, including a person in whose name a license or lease is held, from voluntarily making a campaign contribution for that person’s personal funds to or on behalf of a person*

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*holding office as insurance commissioner or candidate for the office of insurance commissioner or on behalf of a campaign committee of any such candidate. It shall be unlawful and a violation of this section for any "person other than an individual" or other person to require another by coercive action to make any such contribution.*

*(f) Campaign contributions collected by the insurance commissioner or candidate for the office of insurance commissioner from a "person other than an individual" prior to the effective date of this act may not be expended by the insurance commissioner or candidate for the office of insurance commissioner after the effective date of this act.*

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.