

Approved: Feb. 23, 1998  
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on February 11, 1998 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Insurance Commissioner Kathleen Sebelius  
Bill Sneed, State Farm  
Brad Smoot, AIA  
Lee Wright, Farmers Group  
Dave Heidorn, NAII, Chicago  
Joan Roberts, Progressive Insurance, Kansas City  
Rick Wilborn, Alliance Insurance  
Kevin Davis, American Family Insurance

**Hearing on SB 422--Cancellation or Non-Renewal**

Kathleen Sebelius, Insurance Commissioner, informed the Committee of the Kansas statute which disallows the cancellation of auto insurance but does allow rates to be raised due to claims or to place them in a high risk pool (Attachment 1). There are high risk pools for some homeowners but it does not offer full coverage. It is at the option of the insurance company whether they choose to non-renew or cancel a homeowner's policy. The first part of the bill would prohibit the cancellation or non-renewal of a homeowner's policy because the insured has filed a single claim for loss due to windstorm, hailstorm or other act of nature within any three consecutive years the policy is in force. The second part of the bill would not allow an insurance company to refuse to issue or non-renew coverage, limit the amount of coverage, or charge higher rates on a homeowner's policy based solely on using a credit history as the only underwriting criteria.

Catastrophes due to weather have been a factor in foreign companies moving from Kansas and domestic insurance companies closing due to heavy claims. In the past two years Kansas has allowed territorial ratings. Twenty-three companies have filed for such ratings and they expect more to join in such filing; American Family has just filed for such ratings but State Farm has not as they have their own system.

Section 2 of the bill disallows using a credit history only for underwriting criteria. Many times people who have qualified for a home loan are unable to get insurance coverage due to losses, a less than perfect credit history, judgements, and/or a bankruptcy. This means that they are usually unable to qualify for the purchase of a home as mortgage companies and banks require them to purchase homeowner's insurance.

Claims can mean that the insurance company is notified of damage and comes out and makes an estimate of damages. Even if the homeowner elects to pay the damages, it is still placed on the homeowner's record as a loss.

Bill Sneed, representing State Farm, informed the committee that his company did not cancel or non-renew a property insurance policy after one storm loss and this practice is used only as a last resort after considering a number of factors (Attachment 2). This bill would restrict their writing of policies as it makes the underwriting of a three-year loss limitation less of a mathematical function of risk of loss and more of an uneducated guess. State Farm has remained in Kansas throughout the heavy storm loss years and not left as many companies have. This bill appears to be aimed at those companies who were canceling policies and ultimately left the state. Mr. Sneed stated their support for the NAIC model. State Farm does not use credit reports in its personal lines book of business but expressed concern that the bill uses credit history rather than credit reports. Credit reports are generated by credit bureaus whereas this bill would prohibit consideration of all types of information relevant to the evaluation of an application for insurance which may or may not be included in a standard credit report. State Farm wants to the option to use credit information at some point in the future. Mr. Sneed requested the committee not act on this bill. State Farm has 28% of the property owners policies in the state.

## CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 11, 1998.

Brad Smoot, AIA, said his opinion of the bill was that it was not good for consumers as it is a "lock in" and impedes competition (Attachment 3). Such exit barriers for insurance companies deter them from entering new markets. Insurance is a private contract between individual buyer and seller and it should not be the business of government to enforce such contracts. He urged the committee to consider the NAIC model which lays out the basis of how, when, and why to terminate a contract. He did not support the part of the bill which would disallow using credit history as criteria for denying coverage.

Lee Wright, Farmers Group, reported that his company is the third largest writer of homeowner's policies in Kansas with approximately 12% of the market (Attachment 4). He disagreed with the portion of the policy which would disallow cancellation or non-renewal had one claim been filed for some act of nature even through there had been six thefts. Mr. Wright also expressed concern over the fact that an insured merely needs to file a claim for loss, not actually incur a loss. The passage of this proposed legislation would hinder the growth of the insurance industry in this state.

Dave Heidorn, NAIH of Chicago, asked for proof that a problem in cancellation or non-renewal actually exists (Attachment 5). The implementation of this proposed law would keep insurance companies from moving into Kansas as they would be unable to get out of contracts. Credit reports or "histories" are very important in establishing the payment histories of people. It allows underwriters to factor in good credit in writing insurance in questionable neighborhoods. Their 192 member association write more than 35 percent of homeowners and 44 percent of personal auto insurance in Kansas.

Joan Roberts, Product Manager of Progressive Insurance Companies, said their experience had been that credit histories provide a very valuable measure of bill paying behavior (Attachment 6). Consumers with good credit ratings have a much lower loss rate. Their company is the sixth largest writer of auto insurance in the United States.

ChoicePoint Inc., of Alpharetta, Georgia, presented written testimony on the advantages of the use of credit scoring which positively affects over 90% of Americans (Attachment 7).

David A. Hanson, Kansas Association of Property and Casualty Insurance Companies, said the bill fails to address the problem where a policyholder may have already had a number of non-storm related loss claims, such as repeated fire, theft, or vandalism claims, or been the owner of a vicious dog which attacks someone. If this policyholder then turns in a storm loss claim, the company may have a problem in trying to cancel or non-renew under this proposed legislation (Attachment 8).

Farm Bureau presented written testimony only (Attachment 9).

Richard E. Wilborn, Vice President of Alliance Insurance Companies in McPherson, said the inability of an insurer to make a sound underwriting decision based upon loss history, whether it be storm related or not, has an impact on Kansas citizens (Attachment 10). He reminded the committee of the recommendations of the Task Force on the Kansas Insurance Industry which recommended deregulation not more.

Kevin Davis, American Family Insurance Group, stated their company cancels or non-renews only as a last resort (Attachment 11). This bill may have the opposite effect and become non-consumer friendly if there are fewer companies to choose from in the future. He also pointed out the long range implications of more instead of less regulation from the Kansas Insurance Department.

Senator Steffes appointed a Subcommittee to further study the issue: Senator Steffes, Chair; Senator Biggs, and Senator Becker. The hearing was continued.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 12, 1998.

SENATE FINANCIAL INSTITUTIONS & INSURANCE  
COMMITTEE GUEST LIST

DATE: 2/11/98

NAME	REPRESENTING
David Hanson	Ks Insur Assns + NAI
David Heidorn	NAI
Rick Wilkerson	Farmers Alliance
Kevin Davis	Am. Family
Bill Sneed	State Farm
Lee Wright	Farmers Ins. Group
Brad Smoot	AIA
Amy Liguori	AP
Susan Anderson	Hein + Weir
Venera Sorenson	State Farm
Callie Hill Denton	KAFP
Chuck Stokes	KBA
Matt Goldard	ACBA
Juan Roberts	Progressive Ins



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

TO: Senate Committee on Financial Institutions and Insurance  
FROM: Kathleen Sebelius, Commissioner of Insurance  
RE: SB 422 - Concerning property insurance; cancellation or nonrenewal of coverage  
DATE: February 11, 1998

The first section of SB 422 prohibits the cancellation or nonrenewal of a policy of homeowners insurance policy because the insured has filed a single claim for loss due to windstorm, hailstorm or other act of nature within any three consecutive years the policy is in force. The second part of the bill prohibits an insurance company from: refusing to issue or renew coverage, limiting the amount of coverage, or charging higher rates on a policy of homeowners insurance based solely on using a credit history as the only underwriting criteria.

Harsh weather is a fact of life in Kansas. In the winter, we have freezing temperatures and in the spring, we have high winds and quite often-- tornadoes. If you choose to live in Kansas, you have no choice but to live with the weather.

Unfortunately, some Kansans are currently being penalized because of the often harsh weather conditions of this state. The Insurance Department receives many complaints each year from Kansans who have lost their homeowners coverage based on the filing of a storm loss claim. One example is a complaint received from an elderly Mission, Kansas man. He writes, "We have been insured by this company since we purchased our home in 1961. ....Because of unavoidable claims we've been issued a termination notice. We are in our 70's and are devastated..." I have attached similar letters to my testimony for your review.

*Senate F.D.S.D  
Attachment 1  
2/11/98*

Over 640,000 owner-occupied homes exist in Kansas. Most of these homes are insured. In fact, purchasing insurance is usually a requirement of banks and other lenders as a condition of making home loans. SB 422 will give consumers protection from being canceled or nonrenewed just because they file a storm loss claim.

The bottom line is that Kansas needs to adopt an insurance code that does not penalize its citizens for using insurance they have bought and paid for. I've heard from too many consumers who say, "I lost my insurance because I used it."

In Kansas, we protect car owners from losing insurance for filing a single claim. I believe it is time to include home cancellation language to provide homeowners with that same kind of insurance protection. Consumers should not have their homeowners insurance canceled just because the insured must file a storm loss claim.

#### Credit Reports

The language in the second portion of SB 422 arises out of my growing concern about the use of credit reports in insurance underwriting of insurance policies. The Fair Credit Reporting Act allows the use of credit reports in insurance underwriting, which encompasses determining one's eligibility for insurance when consumers apply for insurance. I strongly feel that insurers should not be permitted to use credit history of consumers as the sole criterion to make underwriting decisions.

I am sure you will hear that studies such as the one Tillinghast-Towers Perrin conducted proves a relationship does exist between insurance bureau scores, based on consumer credit information, and personal lines loss ratio. How insurers use credit reports in underwriting is important. Are they doing it for cancellation, non-renewals, or all new business? If a person is a "good" credit risk, but has a worse than average loss history, does the company write the risk? And, the reverse could also be asked. If a person has a bankruptcy, but otherwise has a better than average

loss history, does an insurer cancel or nonrenew the policy due to the bankruptcy or does the company write based upon the acceptable loss history. These are very real questions when companies want to cancel policies based solely on credit reports or financially related information.

Since 1995, attention has focused on national settlements undertaken by a number of homeowner insurers, Allstate, State Farm, American Family, and Nationwide, and housing groups which alleged discrimination in the selling of homeowners policies. The decrees or agreements resulting from these settlements have common themes. In each case, these insurance companies signed agreements that the insurer will no longer use credit reports as the sole reason to underwrite a policy, or, at least limit their use of credit report. These four companies have a major share, 41.6% (1996 premium figures) of the homeowners' premium in Kansas, and by court settlement have agreed to the change suggested by this legislation.

#### Credit Report Accuracy

One reason I feel that credit reports should not be used as the sole underwriting criteria is the accuracy or should I say, inaccuracy of credit history data. There are three major reporting agencies and each maintains approximately 150 million files. With this huge volume of data, mistakes are inevitable. Logically, the accuracy of the credit history data is of critical importance to the businesses that use it to provide an accurate picture of an individual's financial standing. However, stories of inaccuracies abound, and the nation's credit reporting system has increasingly been called into question.

Consumer's Union, a leading nonprofit consumer's group, has surveyed credit reports from the three major credit bureaus. The results indicated approximately 48 percent of the reports contained inaccurate information, and that nearly 20 percent contained errors that would adversely affect a consumer's eligibility for credit. To be fair to the credit reporting agencies, not all the errors are their fault. The reporting agency may receive inaccurate information from

public records, i.e., tax liens, or the agency might merge negative information from another person's credit report, i.e. two names are similar.

If a consumer finds him/herself in the nightmare of having to correct a credit reporting error, it has been indicated that it takes an inordinately long time to have an error corrected. One Federal Trade Commission study showed that the average consumer spent 31 weeks complaining to a credit bureau before any action was taken. Sixty-three percent of the consumers in the study had contacted the credit bureau more than five times without getting any result.

SB 422 will not prevent insurance companies from using credit reports as one of the tools in underwriting insurance products. It will stop insurers from refusing to issue, renew coverage, limit the amount of coverage, or charge higher rates on a policy of homeowners insurance based solely on the applicant's credit history.

In the past three years, we have given far more rating flexibility to companies writing homeowners' insurance in Kansas, in order to respond to the charge that the Insurance Department was too restrictive. The measures in SB 422 are designed to provide the consumer protections which are an important balance to market flexibility.

October 29, 1997

Dear Commissioner:

Please find enclosed the letter from my insurance company stating that they would not renew my insurance on my property! Also the loss statement for the period 1994-1997.

The first claim is not my claim, it is my daughter's reported on my loss statement!

All of the losses were not under any of my control or any negligence on my part. They were acts of God (weather) and of thieves!

It is my belief that the Kansas All-Industry Placement is the same as assigned risks (automobile) coverage--I am not a risk to the insurance industry when it was beyond my control!!

I would like to make an appointment and talk to a person in your office as to how the claims were handled as far as adjustments were made.

Sincerely,

A Mayetta resident

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Kansas Insurance Department response:

The Insurance Department was able to convince the insurance company to renew the consumer's insurance, although at a very high deductible. However, paying a high deductible would be easier than finding new insurance. Once a policy is canceled it is very difficult to purchase insurance with another company.

1197CA06140



October 901997

Dear Ms. Sebelius:

I am writing this letter to your office to file an official complaint against the above mentioned insurance company and the cancellation of my homeowner's policy.

I have enclosed a copy of the cancellation notice for your review. You will note that all claims were for storm damage (and this company never paid the claim amount in full- subject to proof of replacement). The 1993 claim was theft of the home.

I am appalled that the very service this company markets across the media is subject to nonuse. I am appalled that the use of the service this company advertises is cause for cancellation.

I appreciate your review and opinion of this unacceptable situation.

Respectfully,

A Topeka resident

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Kansas Insurance Department response:

The consumer was told that the cancellation is allowable if the company provided at least 30 day written notice. Kansas statutes allow cancellation when one consumer has more losses over time than a similar insured.

1097CA060996

February 11, 1997

To Whom it May Concern:

We are writing due to our insurance company canceling our homeowner's insurance. We took out a renter's insurance policy, then rolled that policy over to a mobile homeowner's policy. On Dec. 19, 1996 we had an electrical wiring short which caused a fire. We were living in a motel and trying to get our home fixed and had some temporary electrical work done on it so we could keep heat in it to keep the pipes from freezing and causing further damage. On Dec. 30, 1996 the fire started again behind the new wiring. These were two separate fires but due to the fact they were caused by the same fault the adjuster made it one claim with one deductible and totaled out the mobile home. On Feb. 10, 1997 we were notified by telephone from our agent that an underwriter was in the process of canceling our policy. We have not received any written notice as of yet. We called the underwriter and asked for an explanation who. He gave us the following reasons: frequency of claims (one claim), amount of money that was paid out, short length of time we have had the policy.

The renewal date for this policy is July 12, 1997. Our agent has been very cooperative and seems to not completely understand this himself. We feel the underwriter is being unfair about this. We have a new home now which should not have any problems and we have had only one claim on the old home. The amount of money paid out was more in their control than in ours. We have insurance in case of unfortunate disasters like this. In no way was this due to any negligence or wrong doing on our part and we are questioning the justification of canceling our policy.

Thank you,

A Topeka resident

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Kansas Insurance Department response:

Under pressure from the Insurance Department the company agreed to keep the policy in force until it expired in January of 1998. At that time the company could non-renew the policy and be in compliance with Kansas law.

02700647

1-7

July 11, 1997

Dear Commissioner:

I am writing this letter to file a complaint regarding my insurance company. I have had insurance through this company since purchasing my home several years ago. I was informed by my agent that my home owner's policy was not going to be renewed and I would be receiving a letter to that effect. When I asked my agent why, she said that it was due to claims filed. The claims that were filed were for wind and hail damage and theft. These are things that I cannot control. Why have insurance if you are going to be punished for using what you paid for? When my agent went over the claims, she listed a water loss claim. As I told her, this was an instance when it rained for many days without stopping and everyone who had never had water in their basements now had water damage.

I cannot control the weather and I certainly cannot control people who choose to break in and burglarize the premises. As a home owner and taxpayer, I feel that this is a matter that needs to be looked into and if that is the way insurance companies are going to operate, then it seems rather fruitless for homeowners to have insurance if they are going to be punished for using what they paid for.

Thank you for your time and consideration in this matter.

A Meridian resident

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Kansas Insurance Department response:

This consumer was told that the insurance company had acted within the law in non-renewing the policy. The company told the insurance department that some of the losses sustained were within the insider's control, although most of them were due to wind and hail damage.

MEMORANDUM

TO: Senator Don Steffes, Chair  
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed  
The State Farm Insurance Companies

DATE: February 11, 1998

RE: SB 422

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Mr. Chairman, members of the committee, my name is Bill Sneed and I represent the State Farm Insurance Companies. We appreciate the opportunity to present testimony in opposition to SB 422. SB 422 would prohibit an insurance company from canceling or nonrenewing a policy of property insurance based on one storm loss within any three-year consecutive period that the policy is in force. It would also prohibit an insurance company from refusing to issue or renew coverage, or limit the amount of coverage or charge higher rates on a policy of homeowners insurance based solely upon the knowledge of the applicant's or insured's credit history.

First, it is important to note that State Farm, like many of the property/casualty companies doing business in this state, does not cancel or nonrenew a property insurance policy after one storm loss. The decision to cancel or nonrenew is not taken lightly at State Farm, and is always made only as a last resort after considering a number of factors which arise in connection with a property insurance policy.

*Senate F&I  
Attachment 2  
2/11/98*

State Farm is opposed to SB 422 because it unduly restricts our writing of policies in this state. The three-year loss limitation makes underwriting a homeowners policy in Kansas more difficult. The restrictions make pricing the policy less of a mathematical function of risk of loss and more of an uneducated guess. Ultimately, this may affect the pricing and availability of homeowners policies in this state.

Further, we view the restriction as a penalty on the very companies who have remained in Kansas notwithstanding recent less-than-favorable homeowners climate due to heavy storm loss. State Farm does not engage in the practice of canceling or nonrenewing a homeowners policy after a single storm-related claim. Neither, we understand, do many of the companies that continue to do business in this state. The real culprits--the ones that this legislation seeks to affect--have long ago canceled their policies and withdrawn from the Kansas insurance market.

Finally, State Farm supports the NAIC model act dealing with this issue. We would be happy to provide information to the committee on this or other alternatives in addressing the content of Section 1 of SB 422.

Section 2 of the bill prohibits an insurance company from considering an applicant or insured's credit history in the decision to issue or renew policies, and prohibits companies from using credit history to charge higher rates or to limit coverage. We would like to make it clear from the outset that State Farm does not use credit reports for any purpose in its personal lines book of business. We do, however, still have concerns about the language in Section 2.

Our first concern is that it deals with credit history rather than simply credit reports, or some other more specific mechanism. Credit reports are specific documents

generated by credit bureaus. Credit history within the knowledge of the insurer encompasses much more. This broad language could prohibit consideration of all types of information relevant to our evaluation of an application for insurance which may or may not be included in a standard credit report. One example is a question found on many insurance applications which asks whether the applicant has had his or her insurance canceled by another company for nonpayment of premiums. The answer would be considered credit history under this bill.

Our second concern is that should State Farm at some point in the future decide to utilize credit information in its decision-making process for personal lines, we want to be free to do so. Studies have shown that there is a direct correlation between the quality of an individual's credit rating and the amount of risk associated with insuring that individual. Credit reports are just one of many tools that insurance companies can use to evaluate and underwrite risk.

At its most basic level, this legislation seeks to place more restrictions on the writing of insurance in the state of Kansas. We urge you to reject SB 422.

We appreciate the opportunity to present our testimony. Please feel free to contact me if you have any questions.

Respectfully submitted,



William W. Sneed

# BRAD SMOOT

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

KANSAS SENATE  
FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE  
1998 SENATE BILL 422  
FEBRUARY 12 1998

I am Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), a trade association representing more than 270 companies providing a variety of insurance products to Kansans and across the nation. We appreciate the opportunity to address S 422.

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. Similar bills have been proposed by the Insurance Department in the past. See 1994 H 2637; 1996 S 443 and 1997 S 48. None of these measures have ever passed committee in either house. And, despite slightly different wording, all these proposals create the same fundamental concern: Such "lock-in" provisions impede competition.

Exit barriers, like S 422, deter 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. For the individual homeowner, S 422 creates a one-sided three year obligation which will make the insurer even more hesitant to issue policies in the first place. It is difficult for us to see how this is good for insurance markets or consumers.

While we recognize that the business of insurance is highly regulated, we also believe that the "product or service" of insurance is still a private contract between an individual buyer and seller. If one party is no longer willing to 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 are not convinced that S 422 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 is more likely to be considered in the several states in which our member companies operate.

For these reasons, we encourage the Committee to reject S 422. I would be pleased to respond to questions.

*Senate FWD  
Attachment 3  
2/11/98*

## Model Regulation Service—April 1997

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

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**Preamble:** The purpose of this Act is 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 that take effect or are renewed after the effective date of this Act and that ensure any of the following contingencies:

- A. Loss of or damage to real property that consists of not more than four (4) 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 these policies under state law. While the application of many of the substantive principles of this Act to these 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. "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 that 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.



**Property Insurance Declination, Termination**

- 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 the 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 the dues or fees is a prerequisite to obtaining or continuing property insurance coverage.
- C. "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, a policy period or term of less than six (6) months shall be considered a policy period or term of six (6) months and a 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.
- D. "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 C. 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 the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

**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 the declination shall either provide the insurance applicant with a written explanation of the specific reasons 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 an explanation. An applicant's written request shall be timely under this subsection if received within ninety (90) days of the date of 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.

## Model Regulation Service—April 1997

- 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 reasons 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 that may desire a specified time period, however, the 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 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 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 that increase a hazard insured against;
- D. The occurrence of a change in the risk that substantially increases a hazard insured against after insurance coverage has been issued or renewed;

Property Insurance Declination, Termination

- E. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to an insured property or the occupancy thereof that 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 and 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 that 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 that decision is for a business purpose which is not a mere pretext for unfair discrimination;
- 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 the complaint is reasonably founded. If the commissioner determines that the complaint is reasonably founded, or if the commissioner otherwise has reason to believe that an insurer, agent or broker has engaged in practices that 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. The hearing shall be held upon no less than ten (10) days notice to the person charged and the complainant, if any. The 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 the 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.

## Model Regulation Service—April 1997

- 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;
    - (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 the person from engaging in practices that violate this Act;
    - (b) Assess a penalty against the person of up to \$500 for each violation of this Act; or
    - (c) Assess a penalty against the 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 the insurer any loss, not otherwise recovered through insurance, that 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 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.** A 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 the 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) An insurer or its authorized representatives, agents or employees;

## Property Insurance Declination, Termination

- (3) A 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 that 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].

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*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).*

Model Regulation Service—July 1995

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

The date in parentheses is the effective date of the legislation or regulation, with latest amendments.

<b>NAIC MEMBER</b>	<b>MODEL/SIMILAR LEGIS.</b>	<b>RELATED LEGIS/REGS.</b>
Alabama	NO ACTION TO DATE	
Alaska		ALASKA STAT. §§ 21.36.210 to 21.36.310 (1970/1987).
Arizona	ARIZ. REV. STAT. ANN. §§ 20-1651 to 20-1656 (1977) (Not as comprehensive as model).	
Arkansas		ARK. STAT. ANN. § 23-66-206 (11) (1987).
California		CAL. INS. CODE §§ 675 to 679.6 (1971/1985).
Colorado	NO ACTION TO DATE	
Connecticut	NO ACTION TO DATE	
Delaware	DEL. CODE ANN. tit. 18 §§ 4122 to 4128 (1986).	
D.C.		D.C. R. & REGS. tit. 26 §§ 300 to 399 (1985).
Florida	NO ACTION TO DATE	
Georgia		GA. CODE §§ 33-24-44, 33-24-46 (1960/1984).
Guam	NO ACTION TO DATE	
Hawaii	NO ACTION TO DATE	
Idaho	NO ACTION TO DATE	
Illinois		215 ILL. COMP. STAT. 5/143.23a (1979/1982).
Indiana	NO ACTION TO DATE	
Iowa	NO ACTION TO DATE	

Model Regulation Service—July 1995

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

<b>NAIC MEMBER</b>	<b>MODEL/SIMILAR LEGIS.</b>	<b>RELATED LEGIS./REGS.</b>
Kansas	NO ACTION TO DATE	
Kentucky	KY. REV. STAT. §§ 304.20-300 to 304.20-350 (1986).	
Louisiana		LA. REV. STAT. ANN. §§ 22:636, 22:636.2 (1958/1987).
Maine		ME. REV. STAT. ANN. tit. 24-A §§ 3048 to 3056 (1973/1984).
Maryland		MD. ANN. CODE art. 48A § 240A (1965/1973).
Massachusetts	NO ACTION TO DATE	
Michigan		MICH. COMP. LAWS §§ 500.2101 to 500.2104, 500.2122 to 500.2124 (1981).
Minnesota		MINN. STAT. §§ 65A.27 to 65A.29 (1979/1984).
Mississippi	NO ACTION TO DATE	
Missouri		MO. REV. STAT. §§ 375.001 to 375.008 (1977).
Montana		MONT. CODE ANN. § 33-23-401 (1971/1975).
Nebraska		NEB. REV. STAT. § 44-379 (1986).
Nevada		NEV. REV. STAT. §§ 687B.310 to 687B.400 (1971).
New Hampshire		N.H. REV. STAT. ANN. §§ 417-B:1 to 417-B:8 (1971/1983).
New Jersey	NO ACTION TO DATE	
New Mexico	NO ACTION TO DATE	

## Model Regulation Service—July 1995

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

<b>NAIC MEMBER</b>	<b>MODEL/SIMILAR LEGIS.</b>	<b>RELATED LEGIS/REGS.</b>
New York		N.Y. INS. LAW § 3425 (1984).
North Carolina	NO ACTION TO DATE	
North Dakota	N.D. CENT. CODE §§ 26.1-39-11 to 26.1-39-21 (1985).	
Ohio	NO ACTION TO DATE	
Oklahoma	NO ACTION TO DATE	
Oregon	NO ACTION TO DATE	
Pennsylvania	NO ACTION TO DATE	
Puerto Rico		P.R. R. RULE LV (1984).
Rhode Island	NO ACTION TO DATE	
South Carolina		S.C. CODE ANN. §§ 38-75-710 to 38-75-790 (1988).
South Dakota	S.D. CODIFIED LAWS ANN. §§ 58-33-59 to 58-33-65 (1985); § 58-1-14 (1986).	
Tennessee	NO ACTION TO DATE	
Texas		TEX. INS. CODE ANN. art. 21.49-2 (1971/1983) (Gives Commissioner authority to promulgate rules).
Utah		UTAH CODE ANN. § 31A-21-303 (1986).
Vermont		VT. STAT. ANN. tit. 8 §§ 3879 to 3882 (1977).
Virgin Islands	NO ACTION TO DATE	
Virginia	NO ACTION TO DATE	
Washington		WASH. REV. CODE ANN. §§ 48.18.290 to 48.18.2901 (1985/1986). <u>See also</u> BULL. 86-3 (1986).

3-10



## Model Regulation Service—July 1995

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

<b>NAIC MEMBER</b>	<b>MODEL/SIMILAR LEGIS.</b>	<b>RELATED LEGIS/REGS.</b>
West Virginia	NO ACTION TO DATE	
Wisconsin		WIS. STAT. § 631.36 (1975/1986).
Wyoming	NO ACTION TO DATE	

Model Regulation Service - July 1992

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

**Legislative History**  
Cited to the Proceedings of the NAIC

This model was developed in conjunction with efforts by the NAIC to identify the problem of redlining. One of the principles adopted by the committee was that consumers should have information on exact reasons for cancellations, nonrenewals and rejections. 1978 Proc. I 628.

The proposed regulation was developed by the advisory committee as a partial response to the question of what the industry could do to improve the perception of the consumer that redlining occurred. 1979 Proc. I 721.

**Section 1. Scope**

**Section 2. Definitions**

**Section 3. Notification and Reasons for a Declination or Termination**

The advisory committee that drafted the model considered developing some model forms which would disclose reasons for a turn down and what the risk might do to make itself acceptable in the future. 1979 Proc. I 727.

A. It was suggested by one commenter that the procedures for notification of declination be changed so the company would inform the agent and the agent could attempt to place the business with another company. If the company informs the applicant directly, it may cause confusion and embarrassment and erode the applicant's confidence. 1979 Proc. II 578.

B. The advisory committee felt development of model declination forms that would meet all state law requirements was not possible. Instead they developed sample letters that would clearly state reasons and offer alternatives. Further development of individual company termination forms should have the goal of educating as well accomplishing their primary purpose of notification. 1979 Proc. I 734.

**Section 4. Permissible Cancellations**

**Section 5. Terminations/Declinations: Prohibited Reasons**

In Section 5 of the model act, certain discriminatory practices are prohibited. Some factors are essentially precluded from any consideration in the underwriting decision concerning property insurance. Other factors may be considered, but may not be the sole reason given for termination or declination of a risk. 1979 Proc. I 752.

Model Regulation Service - July 1992

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

**Legislative History**  
Cited to the Proceedings of the NAIC

**Section 6. Enforcement Provisions**

B. Before adoption, one person commented that the \$500 fine for any violation should be deleted. The section penalizes a party for mere errors or inadvertence resulting in unintentional violations. The commenter thought a fine should only be imposed after a willful and knowing violation. 1979 Proc. II 578.

C. One comment was received which expressed concern about a provision imposing civil liability on agents and brokers. The concern was that this would place a large burden on the agent who was not in a financial position to defend against such suits nor to assume the position of an insurer of such losses. This provision was not in the version adopted. 1979 Proc. II 578.

**Section 7. Immunity**

**Section 8. Effective Date**

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**Chronological Summary of Actions**

June 1979: Model adopted.

December 1979: Technical amendments.

Model Regulation Service - July 1992

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

**Case Law**

The following cases are a sampling of court decisions on the subject.

[See 43 Am. Jur. 2d Insurance §§ 380-442. Used by permission of Lawyers Cooperative Publishing Co.]

**§ 388. Notice of cancellation; form and sufficiency, generally.**

**CA** Lee v. Industrial Indemnity Co. 223 Cal. Rptr. 254 (App. 1986). The issue was whether the cancellation notice received by the insured complied with the California Code requirements. The court found it didn't fully comply, so was ineffective to cancel coverage. The code requirements are mandatory; substantive compliance is not adequate.

**MN** McQuarrie v. Waseca Mutual Insurance Co. 337 N.W.2d 685 (Minn. 1983). The insurer attempted to cancel homeowners coverage when it found out the house was one-half mile from the nearest road. The court held the notice did not meet the statutory requirements that notice be explicit, unconditional and unequivocal. The first notice just said that a letter of cancellation would be sent at a later date. By the time the actual cancellation notice was sent, 60 days had passed, and the law does not allow cancellation after 60 days except for specified reasons. However, the court found the policy was cancelled by mutual consent when the homeowners obtained substitute coverage.

**NY** Victor v. Turner 496 N.Y.S.2d 761 (App. 1985). New York law requires notice of cancellation to terminate coverage. A renewal notice was mailed, but never paid, and then fire destroyed the property. The court looked to the legislative history of the provision to find that its purpose was to strengthen protections against cancellations and nonrenewals and to guarantee continuity of coverage for consumers, who are not in as good a bargaining position as commercial insureds. There are no loopholes in the act; enforce it as written. The onus is on the insurer to make an effective cancellation.

**§ 389. Period of notice.**

**GA** Southern Trust Insurance Co. v. First Federal Savings and Loan Association of Summerville 310 S.E.2d 712 (Ga. App. 1983). The insurer contended it had given written cancellation notice in accordance with the statute. The Georgia Code provided two statutes with directions for computing time, and the court held it was improper to use the rules governing court proceedings, because these events preceded court involvement. Use the general statute governing computation of time.

**WA** Whistman v. West American of the Ohio Casualty Group of Insurance Co. 686 P.2d 1086 (Wash. App. 1984). The insured homeowner died, and the agent sent a letter saying the insurance would be cancelled for nonpayment of premium, effective 3-9-81. Fire destroyed the house 2-28-81, after the policy had expired and no premium had been paid. The court found coverage existed because the policy could expire no sooner than 10 days after a cancellation notice. Whether or not the renewal premium had been paid was not the deciding factor.

Model Regulation Service - July 1992

**PROPERTY INSURANCE DECLINATION, TERMINATION  
AND DISCLOSURE MODEL ACT****Case Law****§ Communication of notice, generally.**

**NY** Zeman v. Zach Agency 429 N.Y.S.2d 444 (App. 1980). The insurer's agent wrote to the insureds twice before the policy renewal date asking if they desired to increase the coverage. There was no response. No notice of the premium payment required for renewal or notice of cancellation was mailed. The court held that as a matter of law, the communication described did not constitute notice of cancellation. The statute in effect at the time had been changed shortly before the events in question and the court found this significant. The prior statutory phrasing said the insured could renew upon "payment of the premium." The legislature changed the statute to require timely payment of the premium "billed to the insured." The onus was on the insurer to bill the insured to trigger liability. In the absence of nonrenewal notice and a bill for further premium, the liability of the insurer was extended for 14 months to cover the fire.

**§ 391. Notice by mail as dependent upon receipt thereof.**

**ME** St. Pierre v. North End Insurance Co. 471 A.2d 1049 (Me. 1984). The issue was whether receipt of the cancellation notice was required, or merely mailing by the insurer. The Maine statute in effect at the time of the attempted cancellation required mailing by the insurer at least 20 days prior to the effective date of cancellation. After the occurrence of the events in this case, the section was amended to require receipt by the named insured 20 days prior to cancellation. If the legislature had intended the earlier law to require receipt, they could certainly have expressed it.

**§ 393. Sending notice by registered mail, or failure to do so.**

**CT** Stratton v. Abington Mutual Fire Insurance Co. 520 A.2d 617 (Conn. App. 1986). The court held that the term "mailing," used in the policy to describe the method of cancellation, was not vague and the insurer had complied with the cancellation rules by sending a certified letter which was unclaimed. There was no further duty of the insurer.



## FARMERS INSURANCE GROUP OF COMPANIES

Senate Financial Institutions and Insurance Committee

Testimony by Lee Wright

Re: Senate Bill 422

February 10, 1998

10050 LOWELL AVENUE

SHAWNEE MISSION, KANSAS 66210-1613

Mailing Address: P.O. BOX 2910

SHAWNEE MISSION, KANSAS 66201-0387

Mr. Chairman and members of the Committee, my name is Lee Wright and I represent the Farmers Insurance Group of Companies. We appreciate the opportunity to testify in opposition to Senate Bill 422.

Farmers is the 3rd largest writer of Homeowner's Insurance in Kansas, with approximately 12% of the market share.

Farmers does not cancel or non-renew homeowners policies on the basis of a single claim filed for windstorm, hailstorm or other acts of nature. Our underwriting criteria is to look at the total loss history of a policyholder.

We do have a concern with the way Section I is drafted and could be interpreted.

The wording would indicate as long as a policyholder had one claim filed for windstorm, hailstorm, or any other act of nature, we could not cancel or non-renew, even if they're had six thefts to go with the one storm claim.

Furthermore, the language states the insured merely needs to file a claim for loss, not actually incur a loss. The claim could be denied because of no damage and the same restriction applies.

We do not believe there is a Homeowner's Insurance availability problem within our state resulting from storm losses. But if there is, then the best remedy is to encourage new companies to come to Kansas.

FARMERS. GETS YOU BACK WHERE YOU BELONG

*Senate F.I.S.I.*  
*Attachment 4*  
*2/11/98*

Regulatory underwriting restrictions on Homeowners business will discourage rather than attract new companies to enter the Kansas marketplace.

As clearly indicated in the 1997 Final Report of The task Force on The Kansas Insurance Industry in which the Commissioner served as Vice-Chairperson, they determined and I quote, "Regulatory excess operates as a disincentive to do business in any state. Industry representatives stated that even the perception of excess regulation could hinder the growth of the industry."

Regarding the use of credit history, Farmers does not use credit history to refuse to issue or renew coverage. However, we do on occasion use a person's credit history to enhance coverage.

As an example, we might have a policyholder requesting specific personal property coverage for \$17,000 on a jewelry item when the most we would normally accept on a single item per our guidelines is \$15,000. However, we might decide to run a credit report and if it comes back favorable, we would make an exception and write the coverage for \$17,000

Mr. Chairman restrictions on use of credit history is but another piece of unnecessary regulation on the industry.

Furthermore, I understand federal law already addresses this issue. The Fair Credit Reporting Act, as amended in 1986, specifically states that the use of information in credit reports in connection with the underwriting of insurance is a permissible purpose.

Thank you Mr. Chairman and I would be happy to answer questions.

**Testimony of the**  
**National Association of Independent Insurers**  
**to the**  
**Senate Financial Institutions and Insurance Committee**  
**Regarding Senate Bill 422**  
**February 11, 1998**

Good morning, Chairman Steffes and Members of the Committee. My name is Dave Heidorn, and I represent the legislative and regulatory interests of the National Association of Independent Insurers' 192 member property and casualty insurance companies who do business in Kansas. Our members write more than 35 percent of homeowners and about 44 percent of personal auto insurance in Kansas.

Our members strongly oppose SB 422. Simply put, the restrictions this bill would place on the way insurers do business provide little protection to consumers but make it difficult for insurers to make the decisions necessary for them to offer competitive insurance products in Kansas.

This past summer, representatives of three NAI member companies joined with legislative leaders, Commissioner Sebelius, and business development leaders in a task force to explore ways to improve the business climate for insurance in Kansas. The task force recognized the positive impact that insurers have on the economy of the state and sent a clear message to insurers that Kansas wants insurers to bring the jobs and other benefits that only an increased competitive environment in insurance, like any industry, can bring.

One of the conclusions reached by the task force was that the regulatory climate in Kansas has been unnecessarily burdensome for too long for insurers to want to come to Kansas to compete. Commissioner Sebelius has made some very positive advancements in improving that environment during her term of office. Last week we expressed strong support for her bill, SB 494, to change the way the Department of Insurance is funded, fulfilling one of the other key recommendations of the task force.

Nevertheless, when insurers see a bill like SB 422, they question whether Kansas really does want the regulatory environment here to be less burdensome. The restrictions contained in this bill, how ever well intentioned, go to the very heart of the decisions insurers need to be able to make without interference in order to be competitive. And, to be competitive in insurance means to be able to offer the best possible rates to consumers.

*Senate F.I.S.I.*  
*Attachment 5*  
*2/11/98*



### Single Loss Cancellation

Section 1 of SB 422 would bar insurers from canceling or nonrenewing a homeowners policy for a single claim due to a wind or hail storm or other act of nature for three years. Insurers understand the consumer protection goal aimed at here. People should not be cancelled simply for a single claim for a loss due to an act of nature. The problem insurers have with this provision is not that they would be kept from canceling the person with the single claim. A competitive environment keeps that from happening now. This restriction would, instead, protect the person who has a string of claims that become unreasonable in their frequency or in the nature of the claims but then has a single loss from a wind storm. As SB 422 is written, insurers would then have to keep insuring this otherwise bad risk for three years no matter the person's other claim history. The bill would force insurers to do something that insurance is not meant to do – insure a known, bad risk.

Who pays for these restrictions? Every other similarly insured customer of a company covers the extraordinary claims of an individual who, in any other case, would have been taken out of the pool of insureds in which this person has proved he does not belong. SB 422 would keep him there, against the best interests of the rest of the people covered by similar insurance.

This restriction also has the potential of placing an insurer in the impossible position of having to continue offering a line of business that it may no longer want or even be able to provide. From the plain reading of this bill, an individual covered under a particular line would have to continue to be insured for three years following any claim due to an act of nature whether or not the insurer wants to continue to offer that line. This is the kind of restriction that insurers consider closely when deciding whether to enter a new market or offer a new product in an existing market. Insurers need to be able to know that they can reasonably make decisions based on competitiveness, not on whether a law will keep them in a market beyond when it is possible for them to remain.

In the end, if this provision of SB 422 were enacted, insurance consumers would gain little actual new protection but could very well be forced to bear the additional cost of insurance that results when insurers are forced to insure risks that should not be insured. Likewise, the goal of encouraging competitive insurance rates is not served if Kansas enacts restrictions that, in the end, keep insurers from entering this market.

### Use of Credit History

Likewise, the intent of Section 2 to protect consumers from the unreasonable use of their credit history in the insurance marketplace may be well-meaning, but, from all that we know about insurer's use of credit information, any limitation on the use of credit history will result, on the whole, in less protection for consumers.

What NAII's member companies are finding is that the use of credit history is actually helping them provide more coverage to more people at lower rates. The common perception is that insurers use credit histories in a simplistic, haphazard way to enable them to reject a consumer because of his bad character. On the contrary, their use is well established and based in fact. Insurers have been using credit reports for more than 20 years. The federal Fair Credit Reporting Act, as amended in 1996, specifically

permits that the use of information from credit reports in connection with insurance underwriting. More importantly, research demonstrates an extremely strong correlation between unacceptable credit history and bad insurance risk and that insurers are using credit information to enable them to serve customers with good credit histories but who otherwise have bad insurance risks in their history.

The independent research firm of Tillinghast-Towers Perrin, in a 1996 study commissioned by Fair, Isaac, found a 99 percent correlation between credit history and the losses experienced by insureds in eight of the nine insurance companies Tillinghast surveyed. The correlation in the ninth company was 92 percent. Allstate Insurance Company, in recent legislative testimony in Arizona, stated that its own data show that individuals with unacceptable financial stability are 40 percent more likely to incur losses.

If this evidence merely supported the argument that insurers effectively use credit history to keep the costs of insurance lower for those who are good credit and insurance risks, it would be proof enough that SB 422 should not be enacted in Kansas. But property and casualty insurers are in an extremely competitive market for insurance across the country. While common perception may have it that insurers would look for reasons not to insure marginal risks in a competitive marketplace, common sense says that insurers, like any other consumer business, are looking for reasons to insure risks at the margin of the products they sell.

In NAII's own surveys of member auto companies, we have found that all of the companies who have reported using credit reports in their underwriting process also reported either that a positive credit history could help justify a favorable underwriting action or that they rewarded good credit. Allstate Insurance Company, again in its recent testimony before an Arizona legislative panel, stated unequivocally that using credit reports for underwriting allows Allstate to accept applicants on the borderline of Allstate's underwriting criteria who Allstate otherwise would reject. Other insurers who come before you today will confirm the same positive use of credit history.

Insurers establish insurance products and rates for those products contemplating a certain level of risk. An insurer succeeds only if it selects applicants who present loss potential proportionate to the premiums that will be collected for that product. It is in the insurer's best interest to find measurable ways to include as many reasonable risks as possible within the rates established for a product. Where an applicant may not qualify for insurance because of some other risk factor, perhaps a difficulty in the individual's claims history, the applicant's good credit history allows an insurer to include a positive factor in the mix of criteria it uses to achieve the insurer's overall goal of attracting as many consumers as possible to its product.

Insurers are often the targets of complaint because consumers do not understand the complicated, highly technical factors that individual insurers use to make underwriting decisions. Credit reports are one of the most commonly used and widely understood tools that insurers can use in underwriting, and consumers have easy and ready access to their own credit histories. Consumers understand and approve of their use in insurance. A 1994 Harris survey revealed that nearly 70 percent of the public was in favor of having insurance companies receive information on their credit histories so financially stable individuals could pay lower premiums. Of the 30 percent who disagreed with the use of credit information, almost half said they would change their

opinion if safeguards were in place allowing them to examine and challenge credit information.

Banks and other financial institutions, retail establishments and mass marketing sellers all use this tool to make decisions that effect everything from the purchases of homes to lunches. In those contexts, the power credit gives consumers to move about the marketplace with freedom and choice is welcomed. But in the context of insurance, where the use of credit history encourages uniformity in the insurance application process and provides consumers with good credit histories a better chance to be insured, for some reason that same power is seen as a liability. It would be ironic if SB 422, which is meant to help consumers, were to eliminate the use of the underwriting tools most understood by consumers.

### Conclusion

For these reasons, NAI and its member companies urge this Committee to consider carefully the impact that the restrictions SB 422 would have on the market for insurance in Kansas and to reject this bill. While SB 422's intent to protect consumers is well meaning, its impact will strain the ability of insurer's to offer the least expensive insurance coverage to their customers. This summer's task force to improve the environment for insurance in Kansas recognized the need to improve the regulatory climate for insurers here. Rejection of SB 422's unnecessary restrictions provides an opportunity to help accomplish that goal.



**PROGRESSIVE**



**PROGRESSIVE**

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*Senate F D D  
Attachment 6  
2/11/98*



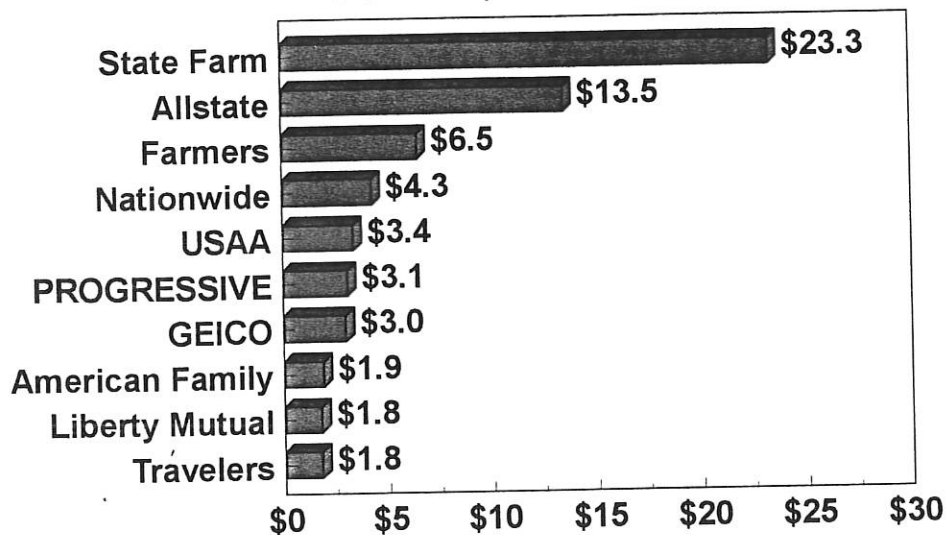
**PROGRESSIVE**

## About Progressive...

- An auto insurer for all drivers in 46 states
- A.M. Best rating: A++
- In business since 1937
- Over 11,000 employees nationwide and in Canada.
- 6th largest private passenger auto insurer in the US.
- Net premiums in 1996 of \$3.4 billion

## USA Total Auto Written Premium

1996 \$Billions



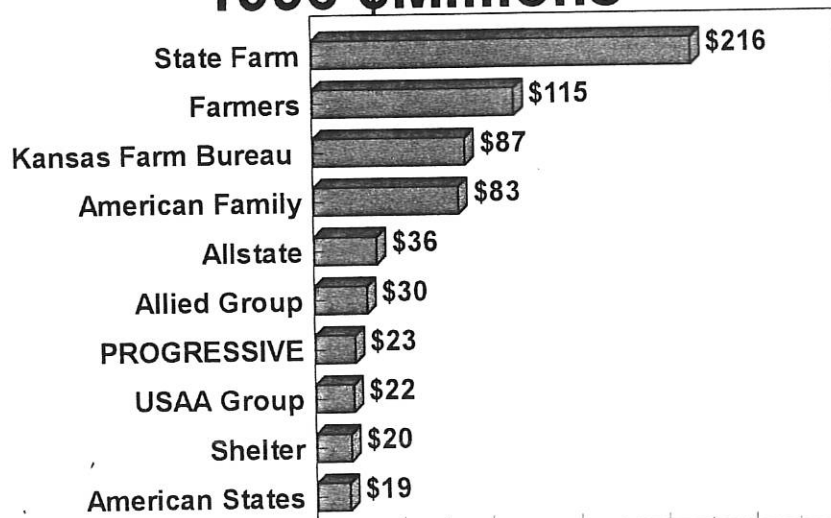


**PROGRESSIVE**

## About Progressive in Kansas

- Consistent availability
- 7th largest personal Auto insurer
- 2nd largest in Independent agency channel
- Available in more locations than any other auto insurer

## Kansas Auto Written Premium 1996 \$Millions





**PROGRESSIVE**

## **Financial Responsibility Overview**

- Introduction to Financial Responsibility
- NAIC Concerns
- Correlation to Loss Results



**PROGRESSIVE**

## **FINANCIAL RESPONSIBILITY**

- Financial responsibility is a person's demonstrated behavior to meet their financial obligations.
- Progressive has worked with major consumer credit bureaus to develop a scoring methodology to measure a consumer's financial responsibility.
- Various credit bureaus have different scoring systems, but can be matched with loss data to normalize them to the same rating/underwriting outcome. (For example, in one system, a higher score indicates good financial responsibility. In another lower is better.)



**PROGRESSIVE**

## Why use financial responsibility?

Consumers with better financial responsibility have lower loss ratios and loss costs.

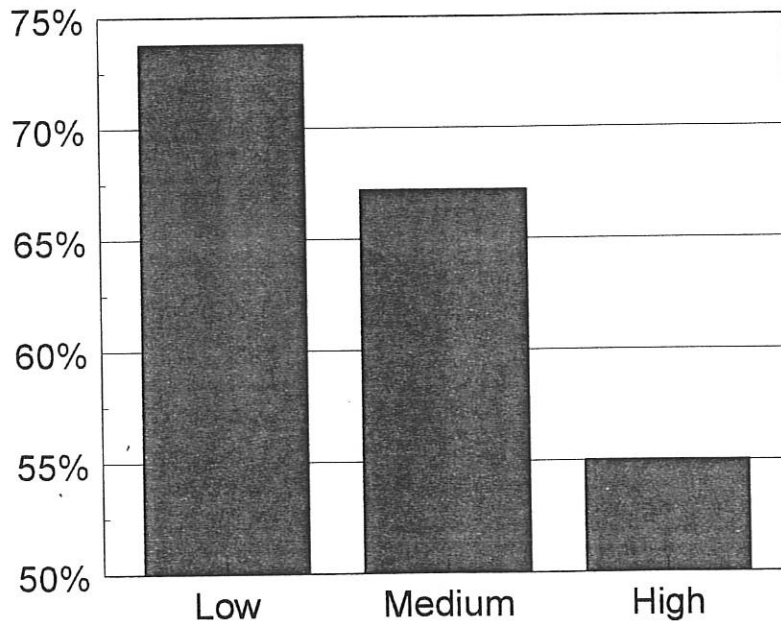
Without financial responsibility, the majority of consumers with better financial responsibility, and better loss experience, subsidize those consumers who do not.

Everyone controls their financial responsibility. If you pay your bills, your financial responsibility will be favorable.



**PROGRESSIVE**

## FINANCIAL RESPONSIBILITY - Loss Ratio

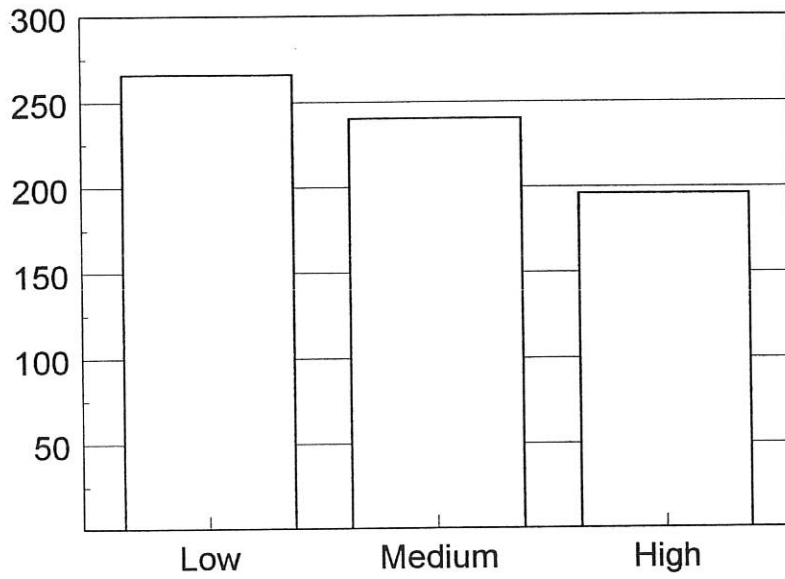






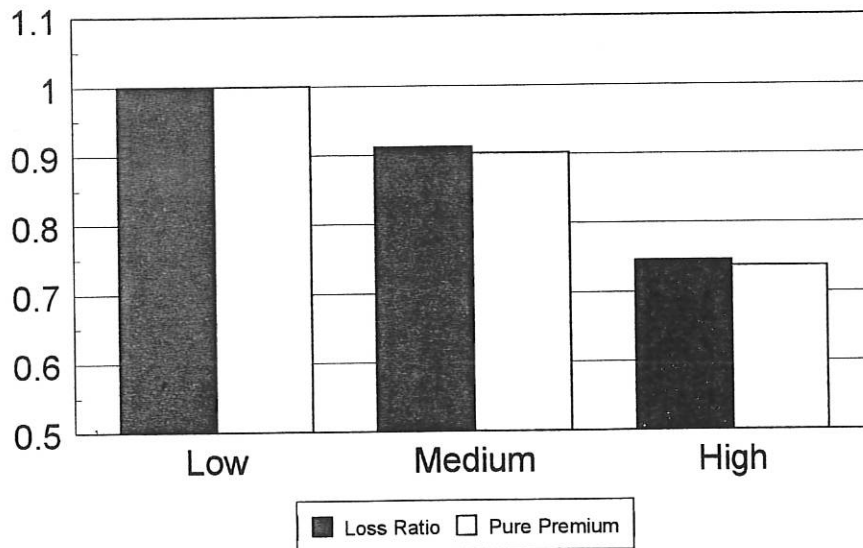
**PROGRESSIVE**

## FINANCIAL RESPONSIBILITY - Pure Premium



**PROGRESSIVE**

## FINANCIAL RESPONSIBILITY - Relativities





**PROGRESSIVE**

## **FINANCIAL RESPONSIBILITY -**

### **Overview . . .**

- Lower Rates for Majority of Consumers
  - Under new program <20% will be in highest rated tier vs. >40% today.
- High Consumer Acceptance
- Progressive's Design Addresses NAIC Concerns



**PROGRESSIVE**

### **Consumer Acceptance . . .**

Consumers who said it is "very fair" or "somewhat fair" for insurers to use the following information in its rating process:

Marital status	24%
Record of not paying bills on time	63%

If assured that applicants who are charged a higher rate could examine the information and correct any errors, support for financial responsibility increases to **80%**.

Source: 1994 Equifax - Louis Harris Associates Survey



**PROGRESSIVE**

## **NAIC Concerns . . .**

Progressive enthusiastically supports The National Association of Insurance Commissioners (NAIC) and their work on the *Credit Reports and Insurance Underwriting* white paper. (12/14/96)

Progressive has addressed every recommendation made by the NAIC in our product design. (recommendations from 12/14/96, page 38-39)



**PROGRESSIVE**

## **NAIC Concerns . . .**

- No rejections or cancellations
- Financial responsibility is confirmed at point of sale so consumers won't be surprised
- Consumer report information is not available to agents or Progressive customer service people
- Dispute process is easy and free



**PROGRESSIVE**

### **NAIC Concerns . . .**

- Progressive Uses Information Fairly and Consistently
- Objective, Verifiable Underwriting Rules
  - ▶ Applies to Every Insured Over Age 21
  - ▶ Market Determination is Automated
- Financial Responsibility is Never the Sole Underwriting Criteria



**PROGRESSIVE**

### **NAIC Concerns . . .**

- Proven Relationship to Risk of Loss
  - ▶ Loss Ratio Univariate Analysis
  - ▶ Multivariate Pure Premium Analysis
- We do not Require Credit Card Ownership



**PROGRESSIVE**

### **NAIC Concerns . . .**

- Progressive has worked with our credit vendors to insure that our customers receive high quality customer support. All of our customers can not only receive a free copy of their credit report, but can also access knowledgeable credit vendor representatives to help them with questions and disputes.
- Tillinghast report independently has confirmed the relationship between credit history and risk of loss. (NAIC White paper, 12/14/96, p. 107-135)



**PROGRESSIVE**

### **NAIC Concerns . . .**

#### **Models Progressive will use Comply with FCRA, ECOA**

Section 701 of the Equal Credit Opportunity Act ("ECOA") and Regulation B prohibit discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, or because the applicant's income is derived from public assistance or because the applicant has in good faith exercised any right under the Federal Consumer Credit Protection Act (which includes ECOA and FCRA).

*Progressive's use of credit information does not use any factor prohibited by ECOA and Regulation B. We comply with the Federal Consumer Credit Protection Act, which includes the FCRA and ECOA.*



**ChoicePoint Inc.**  
**Government Relations Position Paper**  
**Kansas Senate Bill 422**

**On the Use of Credit Reports in the Insurance Underwriting Process**

ChoicePoint, formerly known as Equifax Services Inc., is a provider of credit reports to personal lines insurers in Kansas. Senate Bill 422 would prohibit insurers from relying solely upon an applicant's credit history in decisions regarding policy issuance, renewal, coverage, or rates for homeowners insurance. ChoicePoint is concerned about the impact of this proposed restriction on the citizens of Kansas.

The use of consumer credit reports by insurance companies as they make their underwriting decisions benefits the individual Kansas citizens by providing lower rates. An insurance company's ability to properly assess risk and avoid possible loss makes these lower rates possible. The use of credit scoring, expressly allowed in the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), positively affects over 90% of Americans. It is ChoicePoint's hope that these savings for Kansas citizens are not placed in jeopardy.

The use of consumer credit reports helps insurance companies provide better rates to their customers by better determining which customers are high risks and which are not, thereby charging a more accurate rate to their customers. Without the use of credit reports in the underwriting process, everyone pays more for someone else's risk.

According to a Equifax-Harris Consumer Privacy poll, 63% of Americans believe it is fair for insurance companies to consider credit history in making risk assessments. Not surprisingly, more than 70% prefer that insurance companies collect credit data so that good credit risks pay lower premiums. Even among those who expressed concerns about the use of credit reports by insurance companies, 47% of respondents indicated that they would change their opinion and support their use if proper safeguards were in place.

In fact, under both the federal and Kansas Fair Credit Reporting Acts, safeguards are already in place. Included among the safeguards in both acts is the requirement that insurers notify their customers any time the insurers take adverse action based, in whole or in part, on a credit report. (K.S.A. 50-714) Both acts also allow consumers to review their credit reports and to challenge any information they believe to be in error. In addition, the acts provide that in the case of a dispute regarding information contained in a credit report, the consumer reporting agency must investigate the complaint and remove any inaccurate information. If this does not resolve the dispute, the consumer has the right to file a brief statement of explanation of the dispute and either that statement or an accurate summary of the statement must accompany subsequent consumer reports. (K.S.A. 50-710)

Americans understand what studies have borne out: the use of consumer credit reports is a legitimate tool for insurance companies, which benefits the individual. As Sam Sorich, Assistant Vice President of the National Association of Independent Insurers, writes, "More than

90 percent of the population have good credit histories. The use of credit reports by insurance companies gives this 90 percent of the population a better chance to find insurance.”<sup>i</sup>

While some are not swayed by the common-sense understanding of the American public on this issue, study after independent study has confirmed a correlation between credit histories and insurance risks. One of the main studies on the issue was conducted by the respected firm of Tillinghast-Towers Perrin. Tillinghast studied data from nine home and auto insurance companies to determine if there is any relationship between credit scores and loss ratios. In eight of the companies, Tillinghast determined that there was a 99% chance of a relationship, and in the ninth company, it established a 92% probability of a link.<sup>ii</sup>

A survey conducted by the National Association of Independent Insurers (NAII) found that companies that use credit reports for underwriting assessment report that automobile insurance claims are 60% higher for drivers with a poor credit rating. Also, homeowners or renters with bad credit reports file twice as many claims as individuals with the best credit ratings. These insurance companies also told the NAII that they end up paying those with poor credit ratings more than three times what they pay those with good credit.<sup>iii</sup>

Among the findings of other studies conducted on this issue are:

- According to a Fair, Isaac, and Company, Inc. study, auto policyholders with at least one delinquent account had losses 15 percent higher than policy holders without similar credit problems. Those with an account in collection had losses 84 percent higher than those without such an account.<sup>iv</sup>
- In 1995, the Arizona Department of Insurance collected information that insurers used to justify their use of credit reports as a predictor of loss. The Department then turned the information over to an independent actuarial consultant. This consultant verified that the use of credit reports is a valid and sound underwriting tool.<sup>v</sup>

Opponents of the use of credit reports by insurance companies have claimed that this process is discriminatory toward those with lower incomes or minorities. This is simply not true.

Credit report scoring is a purely analytical function without regard to race, income, or gender. Credit report scoring is more objective than many traditional criteria. As Sam Sorich has written, “There is no criteria more objective than a credit score. . . . To the extent that objective underwriting criteria are seen as a consumer protection, credit scores are a consumer protection.”<sup>vi</sup> Due to the objective nature of credit report scoring, many insurance companies have reported that they have underwritten coverage for people who would have been refused coverage by the more traditional factors.<sup>vii</sup>

Credit report scoring is an important part of the underwriting process. Its use ensures lower insurance rates for responsible Americans and makes insurance available to people who might otherwise be uninsured. With the support of the overwhelming majority of Americans, the studies establishing a probable relationship between credit scores and loss ratios, and the consumer protections provided by both the federal and Kansas Fair Credit Reporting Acts, it is ChoicePoint’s hope that this tool will not be taken away from insurance companies.

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- <sup>i</sup> “Credit Reports And the Search for Reasonable Insurance Regulation”, Sam Sorich, **Underwriters’ Report**, January 1, 1998.
- <sup>ii</sup> “Insurance Bureau Scores vs Loss Ratio Relativities”, Wayne D. Holdredge, ACAS, MAAA, Tillinghast-Towers Perrin, December 10, 1996.
- <sup>iii</sup> “Consumers, Credit, and Classification: The NAIC Misses the Mark”, Leah E. Braesch and Michael Harrold, Citizens for a Sound Economy, September 12, 1997.
- <sup>iv</sup> “A Good Credit History Can Hold Down Your Insurance Rates”, GEICO, **Plain Talk**.
- <sup>v</sup> “Overview: Consumer Credit Report Information and Personal Lines Insurance Underwriting”, Fair, Isaac and Company, Inc., **Insurance Innovations**, September 1996.
- <sup>vi</sup> “Credit Reports And the Search for Reasonable Insurance Regulation”, Sam Sorich, **Underwriters’ Report**, January 1, 1998.
- <sup>vii</sup> “Credit Reports And the Search for Reasonable Insurance Regulation”, Sam Sorich, **Underwriters’ Report**, January 1, 1998.

wrs01/28



David A. Hanson  
Kansas Association of Property  
and Casualty Insurance Companies

**TESTIMONY ON SB 422**  
**February 11, 1998**

TO: **Senate Financial Institutions and Insurance Committee**

RE: Senate Bill No. 422

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Association of Property and Casualty Insurance Companies, whose members are domestic insurance companies in Kansas.

Our member companies have remained in Kansas through six recent years of catastrophic storm losses and have continued to provide insurance coverage while some other companies left the State. We are concerned with this legislative proposal to limit our companies' ability to cancel or nonrenew policies due to storm loss claims for a number of reasons, several of which we presented last year on this same proposal in Senate Bill 48. First, we believe that such cancellations and nonrenewals are not the general practice in Kansas. The proposed restriction would therefore be unwarranted and unduly encroach on appropriate underwriting of risks. Our companies need to be allowed to reasonably manage their businesses, including management of coverage concentrations. The proposed restriction on cancellation and nonrenewal would in effect penalize our companies that have tried to continue providing coverage, even taking on higher risks in some areas where others have withdrawn.

We are also concerned that the proposed restriction fails to address the problem where a policyholder may have already had a number of nonstorm related loss claims, such as repeated fire, theft or vandalism claims, or where they own a vicious dog that has attacked and seriously injured someone and they insist on keeping the dog, the company may need to cancel or nonrenew the policy, but if the policyholder then turns in a storm loss claim, the company may have a problem in trying to cancel or nonrenew under this proposed legislation. Thus, we could be forced to continue providing coverage when cancellation or nonrenewal may otherwise be justified and prudent. Undue retrictions on the ability to limit coverage will hurt availability as companies are forced to become more cautious in the risks they will accept.

This bill would also prohibit our companies from refusing to issue or renew coverage or limiting coverage or charging higher premiums based solely upon knowledge of the applicant's credit history. Again, we do not believe such restrictions are warranted, especially in light of the federal government's review and 1996 amendments to the Fair Credit Reporting Act, a subdivision of the Consumer Credit Protection Act, specifically permitting the use of information from credit reports "in connection with the underwriting of insurance involving the consumer." 15 U.S.C.A. 1681b. Substantially similar provisions have been adopted in Kansas' Fair Credit Reporting Act. K.S.A. 50-701 et seq. Credit information is a valid factor in reasonably assessing appropriate risk levels for insurance coverage and our companies should not be unnecessarily restricted in use of this information as permitted under our existing state and federal law.

We are also concerned that this proposal may have an unintended effect of impeding growth and competition, since companies would be reluctant to enter new market areas with these types of restrictions on underwriting and controlling coverages. This not only affects our companies, but may also discourage other companies from coming into Kansas, contrary to the recommendations of the Kansas Insurance Task Force. We must therefore oppose this bill.

Respectfully,



DAVID A. HANSON

*Senate File 4*  
*2/11/98*  
*Attachment 8*



**Farm Bureau Mutual Insurance Company, Inc.**  
**KFB Insurance Company, Inc.**

2627 KFB Plaza, Manhattan, Kansas 66503-8155 / (785) 587-6000

February 10, 1998

Senator Don Steffes & Members of the Committee  
Chairperson Financial Institutions and Insurance Committee  
128-S State Capitol  
Topeka, KS 66612-1590

RE: Senate Bill No. 422

Senator Steffes and Committee members:

Farm Bureau Mutual Insurance Company is concerned with Senate Bill No. 422 and opposes this bill.

Farm Bureau Mutual does not cancel a policy of insurance due to a single claim for loss due to windstorm, hailstorm, or another act of nature within any three consecutive years such policy is in force. We feel that this portion of the proposed legislation is unnecessary.

The Kansas All Industry Placement Facility (FAIR Plan) has been declining in the number of risks assigned to this plan over the past few years. If companies are restricted in the way they can cancel a property insurance policy, we may see an increase in stricter underwriting guidelines for new business policies. This change could subsequently increase the number of risks insured under the FAIR Plan.

Credit "history" is broader than credit report and reports have been used for a number of years as an underwriting tool to help decide whether to accept or reject an application for insurance. We have had very few complaints from applicants related to this process. The credit reports are very valuable in the risk selection process. Statistics show that, on average, a poor credit rating results in higher loss experience, which eventually results in higher rates for all our Kansas consumers. We're concerned credit "history" may be broad enough to restrict our ability to cancel for repeated late payments of premium. In an effort to keep rates down for our Kansas consumers, we must be able to continue to utilize the underwriting tools which are now available to us. We believe this bill could unfairly increase premium on the better-than-average insured.

The decade of the '90s, with more than five years of catastrophic storm losses, has not been kind to insurance companies writing property insurance in the state of Kansas. We feel that the utilization of various loss control measures in addition to the underwriting tools available to us allowed us to have a more favorable underwriting year during 1997. We also feel that these types of unnecessary restrictions discourage good competition and are contrary of the recommendations of the Kansas Insurance Task Force.

*Sen. F.D.J.*  
*2/11/98*  
*Attachment 9*

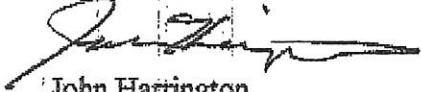
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Senator Don Steffes & Members of the Committee

February 10, 1998

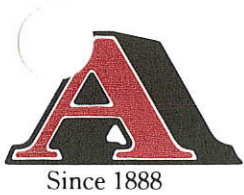
In closing, we feel that additional restrictions placed on our ability to underwrite a risk will force us and other companies to be more selective in writing property insurance. We hope that the current market is allowed to continue as it has and that no unnecessary rules are imposed on our ability to underwrite property insurance.

Respectfully Submitted,



John Harrington

Property Underwriting Manager



# FARMERS ALLIANCE MUTUAL INSURANCE COMPANY

P.O. BOX 1401

McPHERSON, KANSAS 67460-1401

(316) 241-2200

## Senate Bill 422

I am Richard E. Wilborn, Vice President, Government Affairs, with the Alliance Insurance Companies in McPherson, Kansas. We are a domestic insurer that provides property and casualty insurance coverage in eleven west central states. We insure approximately 50,000 policyholders in the State of Kansas.

Senate Bill 422 would prohibit an insurer from canceling or nonrenewing a policy of Homeowners insurance because the insured had filed a single claim for loss due to windstorm, hail, or other acts of nature within any three consecutive years after the policy is in force. In addition, it would prohibit insurers from relying solely upon an applicant's credit history to make a decision regarding policy issuance, renewal, coverage or rates for Homeowners insurance.

The Alliance Insurance Companies are concerned about the impact of the proposed restrictions on the citizens of Kansas. The ability of an insurer to make a sound underwriting decision based upon loss history, whether it be storm related or not, has an impact on Kansas citizens. Without the insurance companies' ability to properly select and maintain appropriate risk in our book of business would require us to charge existing policyholders more than if we were able to select policyholders who had a more favorable loss history.

In addition, the use of consumer credit reports helps us to provide better rates to most policyholders by better determining which policyholders are high risk and which are not, thereby charging a more accurate rate to the policyholder. Without the use of credit reports and the underwriting process, everyone pays more for everyone else's risk.

In December of 1997, "the Final Report of the Task Force on the Kansas Insurance Industry" was released. The message was deregulation not more. The mere perception of regulation meddling with the right to underwrite would hinder the growth of the industry. It would affect domestic companies and companies licensed in Kansas, requiring us to be more selective in underwriting a particular risk. This would only add to the availability problem of any line of insurance. In addition, it would discourage new companies from becoming licensed in Kansas to write business.

Mr. Chairman, we respectfully request that you report this bill unfavorably.

*TRUST YOUR FUTURE TO A PROVEN PAST®*

ALLIANCE COMPANIES

*Senate F.D.S.  
Feb. 11, 1998  
Attachment 10*

## MEMORANDUM

February 11, 1998

**To:** Senator Steffes and the Senate Financial Institutions and Insurance Committee

**From:** Kevin R. Davis, AMERICAN FAMILY INSURANCE GROUP

**RE:** Senate Bill 422 -- Cancellation & Credit Reports

We oppose SB 422 for two reasons; first, as an insurance carrier trying to underwrite and rate risks, and secondly for consistency of public policy with the **Task Force on the Kansas Insurance Industry**.

In regard to Section 1 on storm loss cancellation, American Family does not cancel or non renew a policy based **solely** on one storm loss in three years. Our agents have worked hard to secure this business and the company cancels or nonrenews a policy only as a last resort. Our objection is that this bill placed additional restrictions and limitations on our ability to evaluate our risk and underwrite our business. While this bill is intended to be consumer orientated, it may create the opposite unintended consequence of having less, rather than more companies willing to write business in Kansas. I would also note that this section of the bill does not include the word "solely," and thus could be interpreted that no cancellation could occur if there was one storm loss in the three year time period, irrespective of other factors.

In regard to Section 2, American Family does use "credit history" in its underwriting and in certain circumstances "credit reports." It is important to distinguish these two terms as our application for homeowners insurance, and I expect most carriers, asks a question which discloses the applicant's "credit history." Our question reads: has the applicant "...had any collections, charge-offs, repossessions, judgments, liens, foreclosures, or bankruptcies in the past three years." This is "credit history" as defined in the bill. If the applicant said yes to this question we could not use this answer as the sole reason to deny issuing a policy. If we get an affirmative response our underwriters would probably order a "credit report" to further evaluate the applicant's insurability with American Family. Many times, in cases like this and others, the credit report actually provides information which will allow us to write the policy. We believe that restricting the use of this underwriting factor places severe limitations on our ability to properly evaluate and rate our risks.

Next, I would point out that the **Task Force on the Kansas Insurance Industry** received testimony and reports on the impact of excessive regulation on the insurance industry. One report indicated that state regulation on cancellation/nonrenewal (i.e., Section 1) and underwriting restrictions (i.e., Section 2) ranked as the second and third (rating was

*Senate F.I.I.*  
*Attachment 11*  
*2/11/98*

number one) most significant regulatory burdens on insurers.<sup>1</sup> Recommendation number four of the Task Force "...concludes that this process of deregulation should continue if Kansas is to remain competitive with other states." I suggest that this bill is the converse of the Task Force recommendation of **deregulation**, and instead imposes new and unnecessary regulation on businesses and the insurance consumer in Kansas.

We urge your opposition to SB 422.

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<sup>1</sup> Over-Reaching Authority an Analysis of Regulatory Excess, National Association of Independent Insurers, November, 1995.