

Approved: March 24, 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 March 12, 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: Lee Wright, Farmers Insurance Group
Michael Sullivan, State Executive, Farmers Insurance Group
Ken Omura, Allstate Insurance
Dave Wentz, Kansas Assoc. Of Life Underwriters
Pat Morris, KAIA

Others attending: See attached list

Hearing on SB 218--Transaction of insurance business

Lee Wright, Farmers Insurance Group, reminded the Committee of the Insurance Task Force's findings that unnecessary regulations limit competition and hurt the potential growth of the insurance industry (Attachment 1). Current restrictions such as not allowing unlicensed employees of a licensed insurance agent to prospect for customers burdens small businesses who cannot afford to hire licensed agents for such work. The Kansas Insurance Department has agreed to X-dating even though they originally supported licensure requirement for anyone participating in such activity. Mr. Wright assured the Committee that such solicitation would include only asking for interest for future service rather than offering a sales pitch or asking for credit card information. Currently large information networks sell "leads" to agents and such networks are not licensed because they are not exclusively in the insurance business. Consumer complaints have not been received in the surrounding states which allow X-dating. Mr. Wright offered a balloon amendment which is attached.

Michael Sullivan, Farmers Insurance Group, told the Committee their company views the current insurance statute which prohibits anyone not licensed to sell insurance to engage in any activity which may have anything to do with the transaction of insurance business as restrictive and subject to litigation (Attachment 2). Mr. Sullivan typified a prospecting encounter for the Committee explaining that it was well within the work scope of an unlicensed employee in an insurance office.

Ken Omura, Allstate Insurance, spoke in support of the bill which would enhance customer service and be considered a very efficient practice in the insurance market (Attachment 3). He explained that X-dating is simply asking the customer's permission to make an appointment for a licensed agent to call the customer sometime in the future and not a sales pitch for a particular insurance company. Other than Kansas, only Montana and Texas do not allow X-dating.

Dave Wentz, Kansas Association of Life Underwriters, spoke in strong opposition to the bill for the following reasons (Attachment 4):

1. Only licensed insurance agents and brokers should conduct insurance business.
2. Unlikely that X-dating would be limited to permitted activities.
3. Separation of "non-solicitation" or "non-advice" portions of contact would be extremely difficult to enforce.
4. Bill diminishes purpose of original insurance laws which protect the consumer and require appropriate professionalism and education of persons involved in insurance transactions.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on March 12, 1998.

Mr. Wentz reminded the Committee that it was not difficult to properly train and educate (license) regulated personnel to make such calls. Most potential customers would want more information than the proposed X-dating "script" allows.

Pat Morris, Kansas Association of Insurance Agents, stated their fundamental disagreement is based on two points (Attachment 5):

1. May have the effect of creating a group of telephone solicitors who will be largely unregulated.
2. Difficult for solicitors to refrain from offering insurance advice when asking for a policy expiration date.

Mr. Morris reminded the Committee that most insurance agencies license anyone who comes close to operating transactions. The cost is minimal: \$30 to register, \$83 to take a computerized test, and \$200 for a "crash course" on insurance. This is not viewed as a cost burden. Individually owned agencies value expiration date information and solicitation could cause lawsuits. Even though unlicensed personnel from insurance agencies are not allowed to solicit expiration dates, telemarketers can call potential customers in Kansas because they are classified as information vendors vs. insurance transactors. They can contact and ask for such expiration dates.

The hearing was closed and no action was taken.

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for March 17, 1998.



FARMERS INSURANCE GROUP OF COMPANIES

10850 LOWELL AVENUE
SHAWNEE MISSION, KANSAS 66210-1613
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Senate Financial Institutions
and Insurance Committee
Testimony by Lee Wright
RE: Senate Bill 218
March 12, 1998

Mr. Chairman and members of the committee, my name is Lee Wright and I am representing the Farmers Insurance Group of Companies. Testifying with me today is Michael Sullivan, State Executive of Kansas for Farmers Insurance. We appreciate this opportunity to appear before the committee in support of SB218.

After last year's hearing on this bill, Senator Feliciano and other committee members recommended that Farmers and the Kansas Association of Indep. Agents look for a compromise on this issue which both sides could support.

We have visited with the Independent Agents Assoc., but have been unable to find any common ground both sides can agree upon.

We are coming to you today with an amendment. The language for the amendment is taken from this year's HB2741 which was written and requested by the Kansas Insurance Department.

In addition to this amendment, the Department's HB2741 proposed a multitude of

changes to the agent's licensing laws. Many of those changes were considered controversial and no action was taken on the bill.

This amendment would eliminate the over-regulation that restricts employees of licensed agents from prospecting for customers.

It also corrects another problem with the current statute as Mr. Sullivan will further explain in his testimony.

Before I defer to my boss, I would like to remind the committee our border states all allow unlicensed employees to prospect for expiration dates.

Iowa, a state recognized nationwide as a leader in attracting and regulating the insurance industry also allows prospecting for expiration dates without licensure.

To determine what consumer problems unlicensed prospecting has caused in other states, I contacted the Insurance Departments of Missouri, Nebraska, Colorado and Iowa. Missouri and Nebraska indicated they are not receiving complaints on this issue. I am awaiting responses from Colorado and Iowa, but I expect their findings to be the same.

That concludes my testimony and I would be happy to answer questions.

Section of 1907

SENATE BILL No. 218

By Committee on Financial Institutions and Insurance

2-6

- 1 purposes of this section when it has been legally authorized to operate in
- 2 such other state or territory as a nonadmitted insurer. 3
- 3 ~~Sec. 2. K.S.A. 40-214 is hereby repealed.~~ 4
- 4 ~~Sec. 3. This act shall take effect and be in force from and after its~~
- 5 publication in the statute book.

1-5

9 AN ACT concerning insurance; transactions; amending K.S.A. 40-214 and
10 repealing the existing section.

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

12 Section 1. K.S.A. 40-214 is hereby amended to read as follows: 40-
13 214. It shall be unlawful for any person, company, corporation or fraternal
14 benefit society to transact the business of insurance, indemnity or sure-
15 tyship, or do any act toward transacting such business, unless such person,
16 company, corporation or fraternal benefit society shall have been duly
17 authorized under the laws of this state to transact such business and shall
18 have received proper written authority from the commissioner of insur-
19 ance in conformity with the provisions of the laws of this state relative to
20 insurance, indemnity and suretyship, and further, it shall be unlawful for
21 any insurance company to effect contracts of insurance in this state on
22 the life or person of residents of this state or on property located in this
23 state except through persons duly licensed and certified in accordance
24 with the insurance laws of this state and subject to the provisions of K.S.A.
25 40-245 and amendments thereto. ~~Personal telephone contact for the pur-
26 pose of requesting the expiration date and insurer of a current contract
27 or contracts of insurance shall not be considered an act toward transacting
28 the business of insurance for purposes of this section.~~ Neither the enroll-
29 ment of individuals under a group policy nor the inclusion of insurance
30 in a credit transaction under an arrangement for its purchase by the cred-
31 itor in compliance with the applicable provisions of the uniform consumer
32 credit code shall constitute the effecting of a contract of insurance.

34 It shall be unlawful for any insurance company organized under the
35 laws of this state to do business in any other state or territory of the United
36 States without being first legally admitted and authorized to do business
37 under the laws of such state or territory, and the insurance commissioner
38 may revoke the license of any insurance company organized under the
39 laws of this state and doing business in another state or territory without
40 being first authorized so to do, and may require said company to pay the
41 taxes upon the business so unlawfully written to the state or territory in
42 which the business was written as provided by the laws of said state or
43 territory. A company shall be considered admitted and authorized for the

Exemptions. The provisions of this act shall not apply

to:

(a) Any regularly salaried officer or employee of an insurance com-
pany who is engaged in the performance of usual and customary execu-
tive, administrative or clerical duties, other than the solicitation of insur-
ance;

(b) salaried employees of any property and casualty insurance pro-
ducer or registered firm, who devote their full time to clerical and ad-
ministrative services, including the soliciting of appointments with poten-
tial insureds for licensed producers, to include asking the potential
insured for the expiration dates of their current insurance, and receipt of
premiums in the office of their employer, as long as such employees do
not solicit insurance, provide insurance advice to insureds, receive any
commissions on such applications and their compensation is not varied
by the volume of applications or premium taken or received. Soliciting of
appointments on behalf of licensed insurance producers is not soliciting
insurance or transacting the business of insurance;

agents

agents

Sec. 2



FARMERS INSURANCE GROUP OF COMPANIES

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Senate Financial Institutions
and Insurance Committee
Testimony by Michael Sullivan
RE: Senate Bill 218
March 12, 1998

Mr. Chairman and members of the committee. My name is Michael Sullivan and I represent Farmers Insurance. I appreciate the opportunity to appear before you today in support of Senate Bill 218.

The current Insurance Code stipulates that any person who transacts insurance or who is engaged in activity toward the transaction of insurance, is required to be licensed by the State of Kansas to sell insurance.

Senate Bill 218 proposes two exemptions to this requirement. The first deals with employees of insurance carriers and the second deals with employees of property and casualty agents. From the Company standpoint, we view the current statute as a weakness in our operating environment. Strict interpretation and enforcement of the code will expose every carrier operating in Kansas to potential litigation. We believe this is beyond the intent of the original architects of our Insurance Code, and requires clarification. Senate Bill 218 will accomplish this.

*Attachment 2
Senate 7010
3-12-98*

From an agency standpoint, the current statute imposes business restrictions in the form of unnecessary regulation. Every person employed by a licensed agent is engaged in activity, whether directly or indirectly, toward the transaction of insurance. Again, this goes beyond the original intent of the Insurance Code and also requires clarification. And again, Senate Bill 218 will accomplish this.

So, where is the controversy?

To date no disagreement has arisen regarding insurance company employees. There is however considerable controversy surrounding the activities of agency employees. To elaborate on this topic let's look at 1) appointment setting, 2) asking potential insureds for the expiration date of their policy, and 3) receipting premiums in the agents office.

Appointment setting - This activity is a generally accepted practice for administrative assistants in professional offices. It is merely coordinating a mutually agreeable meeting time between a licensed agent and a current or prospective client.

Asking prospective clients for the expiration date of their policy -

This activity falls under the heading of prospecting. Every sales organization requires leads. That is, a list of prospective clients who have expressed interest in the product offered by that organization. Prospecting is not selling, and should not be confused with the sales process. Prospecting can take many forms, personal

interviews, telephone contacts, or requesting referrals. The important distinction that must be made is that prospecting is not part of the sales process. It is an information gathering process which will result in leads for a licensed agent to follow up on.

A typical prospecting encounter would progress as follows:

Agency Employee: Hello Mr. Johnson, I'm Lisa Smith with the Paul Peterson Farmers Insurance Agency.

Prospect: Hello Ms. Smith.

Agency Employee: We would like to provide you with an evaluation of your automobile insurance needs. May I ask you two quick questions?

Prospect: Sure

Agency Employee: Which company currently handles your automobile insurance?

Prospect: Brand-X

Agency Employee: And when will your current policy renew?

Prospect: Umm, in late June...June 17th or 18th.

Agency Employee: Thank you Mr. Johnson. I would like to have Mr. Peterson contact you on May 15th to review your insurance program with you. Is that acceptable to you?

Prospect: Certainly

Agency Employee: Thank you very much. Have a nice day.

There is no sale contemplated at the time of the prospecting encounter. It is a very brief discussion used to build a list of leads.

Receipt of premiums in the office of the agent - If a policyholder chooses to make a payment at their agents office they will generally arrive with or without an invoice and want to give someone a check and in return receive a receipt. It is a simple matter to ensure that the payment matches the amount due and write a receipt. This is not an activity that requires an agents license.

What are the objections to this amendment? They revolve around the prospecting activity. These are the objections as they have been relayed to me and my response to each.

1. Will this result in a group of telephone solicitors who will be largely unregulated?

Answer: No. As indicated above the prospecting can take many forms. If telephone contact is used it will, in large part, replace activity which is currently taking place. Large third party information vendors currently prospect for this type of information (e.g. Statewide Services - Florida, Gemini International - Wisconsin, etc.) Because these vendors are not in the business of providing insurance they are not required to be licensed under the current statute. Kansas agents today are purchasing leads from these vendors. Senate Bill 218 merely puts Kansas agents on an equal footing with out of state vendors.

2. It will be difficult for agency employees to stay clear of the very thin line that separates asking for a policy expiration date and offering insurance advise.

Answer: There is no thin line. There is a huge chasm between prospecting and offering insurance advice. If a prospective client wants to discuss their insurance program urgently, the agency employee will simply set an appointment for a meeting or telephone conversation with the licensed agent.

3. This amendment will dilute the authority of the Insurance Commissioner to regulate how insurance is represented and sold in the State. In addition, the Insurance Commissioner will be unable to protect the consumers of Kansas.

Answer: This in no way dilutes the Commissioners authority.

An agency employee is acting under the direction of a licensed agent. That agent is still accountable to the Commissioner to ensure that his or her employees are acting within the laws of the State of Kansas. In addition, the language of this amendment was drafted and proposed by the Insurance Department as part of House Bill 2741. It is well within the authority of the Insurance Department to monitor and control activity which will be permissible under this amendment.

That concludes my testimony and I would be happy to answer any questions.

Thank you.

**STATEMENT BEFORE THE KANSAS SENATE
COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE**

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Mr. Chairman and members of the Senate Committee on Financial Institutions and Insurance:

I am Kenneth Omura from the Home Office Law Department of Allstate Insurance Company in Chicago, Illinois.

For 1996, Allstate ranked number six in the Kansas private passenger auto market with \$35 million in premium written. We ranked number five in homeowners market share with \$14.6 million in premium written.

Last fall, I had the pleasure of serving on the Kansas Insurance Task Force which was chaired by Senator Don Steffes. The purpose of the task force was to explore ways to improve business conditions for insurers currently licensed in the state and encourage other carriers to move their business operations to Kansas.

Allstate strongly supports Senate Bill No. 218. In fact, when I was on the task force, permitting x-dating was one of Allstate's recommendations for improving business conditions in Kansas. Although it wasn't one of the final recommendations adopted by the task force, permitting x-dating is a measure that would enable insurance companies to sell their products more efficiently and to enhance customer service.

As SB 218 recognizes, X-dating is not solicitation of insurance business, where coverages are explained, quotes given, and policies sold. X-dating is in essence, asking the customer's permission to make an appointment for a licensed agent to call the customer sometime in the future. The unlicensed staff member just obtains two pieces of information: the expiration date of the customer's current policy; and whether the customer would like to be contacted by an agent at the appropriate time. The task is purely ministerial.

X-dating is like making an appointment with the receptionist of your doctor. The receptionist isn't licensed or qualified to treat you, but he or she is qualified to make an appointment for you to see the person who is licensed.

SB 218 would enable insurance agents to make more efficient use of their time. By allowing non-licensed staff to pre-screen customer interest, the agent is freed from an inefficient shot-gun approach to telephone prospecting. X-dating allows the agent to focus his or her sales efforts on those persons who have expressed a need for insurance and an interest in speaking with an agent.

Also, this efficiency frees up time for the agent to provide better service to new and existing customers. Customer service drives retention of a book of business and retention drives profitability. Profitability drives a healthy competitive marketplace.

Facilitating the ability of an insurance agent to offer products to the public fosters choice for the consumer. The more the customer has the opportunity to compare insurance coverages and prices, the more he or she can make an informed choice when buying insurance.

One could argue that SB 218 should not become law on the ground that there's a danger that unlicensed staff would not only get expiration dates from customers, they would also do things only a licensed agent may do, such as giving quotes or answering policy questions. In other words, there's a possibility that an insurer will break the law. The possibility that a law may be broken is not a good reason for not passing the law.

Take for example your glass repair shop law (Kan. Stat. §40-2,155), which expressly permits insurers to provide customers with a list of glass repair shops. The law also expressly prohibits insurers from requiring use of a particular glass repair shop. Allowing insurers to provide a glass repair shop list benefits the customer. Providing that benefit to the public is not outweighed by the possibility that a wayward claims adjuster might not only provide a glass shop list, but also require the use of a certain glass shop on the list. That is where enforcement comes in.

As with all the insurance statutes and regulations of this state, insurers strive to obey the law because failure to do so is not only bad business, it subjects them to penalties and sanctions imposed by the Department of Insurance. Bad press and payment of fines undermines a company's profitability and its ability to compete in the marketplace.

Finally, to our knowledge only two other states prohibit x-dating. They are Montana, and Texas, one of most highly regulated states in the country.

Allstate strongly supports SB 218. We also especially support the clarifying amendments to SB218 proposed by Farmers Insurance Group.

Thank you.

R. David Wentz, J.D., CLU
Legislation Committee Chairman
Kansas Association of Life Underwriters

Testimony Before The Senate Insurance Committee
Senate Bill 218
March 12, 1998

Mr. Chairman and Committee Members:

I appreciate the opportunity to address you today on behalf of the many members of the Kansas Association of Life Underwriters.

Our membership consists of 2000 Kansans located in all Kansas counties who are actively engaged as insurance agents and brokers. Approximately thirty-five percent of our members are multiline agents who market property and casualty insurance.

The KALU strongly opposes Senate Bill No. 218 which defines activities which do not require an insurance license for the following four reasons:

- Such activities should be conducted by licensed insurance agents and brokers themselves who are properly trained and regulated.
- In most instances it is unlikely that the permitted activities can be conducted without insurance solicitation or insurance advice being given to secure or provide the information being requested.
- Separation of the "non-solicitation" or "non-advice" portions of contact with the consumer will be extremely difficult to enforce.
- If the general tenor of the insurance laws is to protect the consumer and require appropriate professionalism and education of persons coming in contact with consumers on insurance matters, then this Bill diminishes those purposes.

Thank you for your time and consideration.

*Attachment 4
Senate 79+2
3-12-98*

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Testimony regarding Senate Bill 218

Presented by Patrick J. Morris

Executive Vice President of the Kansas Association of Insurance Agents
(March 12, 1998 - Senate Financial Institutions and Insurance Committee)

Thank you Mr. Chairman and members of this committee for the opportunity to appear today in opposition to Senate Bill 218. I am Pat Morris, the Executive Vice President of the Kansas Association of Insurance Agents, an association that represents over 600 independent agency members across Kansas who employ nearly 3,500 people, most of whom are licensed agents.

As the committee is well aware, this bill was given a hearing about 13 months ago --- on February 13, 1997. We are back to what is called "the X-dating issue," and I regret to say that my testimony this year will not differ greatly from my testimony then. The folks from Farmers Insurance Group are still are our friends (and we work very closely with them on a lot of issues that come before this legislature), and we still have a fundamental disagreement on the nature, content, and extension of legislation such as that proposed in Senate Bill 218. Our association continues to oppose this legislation for two fundamental reasons ---it may have the effect of creating a group of telephone solicitors who will be largely unregulated, and it will be very difficult for those solicitors to stay away from the very thin line that separates asking for a policy expiration date and offering insurance advice.

Let me begin by stating that "X-dating" (as it is referred to in the insurance business) --- the gathering of policy expiration dates --- is in no way some dark and mysterious art (or something related to the X-Files). It is done legally every day --- between independent

Attachment 05
Senate 92 + 1
3-12-98

insurance agents and direct writers competing for business, as well as between agents within the separate distribution systems. The question posed by this bill is “who will be allowed to do this by law, and will they no longer be required to hold an insurance agent’s license and fall under the regulatory auspices of the Kansas Insurance Department?”

The Kansas statutes are very clear on the authority of the Commissioner of Insurance to regulate the “business of insurance” in this state. To achieve that requirement, there are specific requirements on the insurance department regarding the licensing and monitoring of the behavior and representations of both licensed insurance agents and companies. We believe that the proposed amended language to K.S.A. 40-214 will dilute the authority of the Insurance Commissioner to regulate how insurance is represented and sold in this state. This measure would allow unlicensed representatives of those who wish to sell insurance to call consumers and at best, request only the expiration date and carrier of insurance, but at worst, offer insurance advice outside of the scope of their responsibilities. What are the chances that consumers will offer only those two pieces of information without asking about premiums, coverages, limitations of coverage, and other technical insurance questions? How will these telephone solicitors respond to requests for information? How will the Insurance Department ensure that those who are unlicensed do not unintentionally practice insurance without a license? We believe that there will be no way for the Department to protect consumers if this is passed, except for responding to complaints about egregious behavior. And, when responding to complaints, what authority will the Department have to stop these practices under this proposed language? What about those who solicit from New York or California or Florida? We believe that the Department has a large regulatory stake in ensuring that

consumers are protected, and that protection is at least controllable under the current system of licensed agents. Further, let's think outside the normal realms of insurance. What would prevent some entrepreneur from establishing a for-profit firm to collect these expiration dates as a business enterprise (with no licensed agents and no intention of engaging in writing those policies), and selling the information en masse to insurance companies? What are the long-term legal implications of this type of arrangement on the agency-company contract?

Under the current law, you must be a licensed agent to ask for these expiration dates; and we believe that this is a fair and measured approach to protect consumers. This approach ensures that those who ask for insurance information from the insuring public have passed an agent examination, have been contracted with an insurance carrier, and must meet continuing education requirements. Consider the implications of a telephone solicitor responding to a caller who asks "whether they might have insurance coverage if their old policy expires in nine days?" If the solicitor offers advice either way, they are in fact "transacting the business of insurance" and their answer and the potential for unbound or expired coverage between the old and new carriers has tremendous implications for the Insurance Department, the insurance companies involved, and the consumer who is led to believe that they might have coverage.

The language, as proposed, will create a new, unregulated group of insurance solicitors and we do not believe this is in the best interests of the consumer, the insurance industry, or the Insurance Department. Licensing and continuing education assures a level of proficiency and competency and regulation which we would hate to see diminished.

Finally, let me add that the proposal is silent as to the procedures for these types of calls (e.g. how will solicitors avoid giving insurance advice?), who is allowed to do this type of soliciting (only insurance companies?), and how these solicitations will be regulated. We do not believe it is in the best interest of the insurance consumers of Kansas to accept this change, and we would urge that you not pass SB 218.

Thank you, and I will attempt to answer any questions that you may have.