

Approved: Robert Tomlinson
Date Feb. 4, 1999

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Bob Tomlinson at 3:35 p.m. On January 19, 1999 in Room 527-S of the Capitol.

All members were present except: Rep. Tom Burroughs

Committee staff present: Bill Wolff, Research
Bob Nugent, Revisor
Mary Best, Secretary

Conferees appearing before the committee: Rep. Mike O'Neal
Linda DeCoursey
Kevin Davis

Others attending: See attached guest list

The Chairman brought forth the "Conferee Rules" as well as the "Committee Rules", which were approved with corrections.

HB 2015: Relating to service of process upon insurance companies and fraternal benefit societies;

Rep. Mike O'Neal addressed the committee as a proponent of the bill. Written testimony was furnished to the committee and a copy is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Rep. O'Neal began by bringing to the attention of the committee, that stricken language in lines 32 & 32, should be reinserted. The bill is an effort to conform our current law to coincide with the laws governing process serving on foreign corporations. The amendment of this bill is to request the notice be served by registered mail rather than by regular mail. The registered mail provides an effective "paper trail" should ever questions arise regarding dates of service and any answer dates. Amendment of this bill, while it does not extend the time for the answer date, does provide the necessary information as to when the papers were sent and received.

Questions to Rep. O'Neal were asked by Chairman Tomlinson, Rep. Kirk, in regard to the fiscal note, certified vs. registered mail.

Linda DeCoursey, Director of Government Affairs of the Department of Insurance presented proponent's testimony. Written testimony was furnished to the committee and a copy of that testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. Ms. DeCoursey pointed out, current law allows for forty (40) days response to the petitions, while **HB 2015** strips away the forty (40) day rule and allows the normal rules of civil procedure to apply, which is twenty (20) days for in-state and thirty (30) days out-of-state defendants. The bill requires the petition and summons to be sent through restricted mail and the current law provides that the petition and summons be sent through regular mail. Ms DeCoursey continued on with typo changes and wording changes to the bill, outlined in the attachment.

Chairman Tomlinson questioned the Fiscal Note regarding fees and increases. Ms. DeCoursey then proceeded to explain restricted delivery fees and certified mail delivery. Rep. Cox questioned registered vs. certified restricted mail and Rep. Myers questioned subject material (479 lawsuits).

House Insurance Minutes 2-19-99 Continued

Chair then recognized Kevin Davis, American Family Insurance Group, who presented proponent testimony. Written testimony was furnished to the committee and a copy of the testimony (Attachment #4) is attached hereto and incorporated into the Minutes by reference. Mr. Davis also felt it necessary to maintain the language in lines 31 & 32 because of the time lag in the mail can cause default in responses. Secondly they feel the language in the existing bill designates a person to receive the summons, while the proposal only specifies the summons be address to the principal office in any state, meaning anyone could receive it. They would much rather designate the secretary in the office to receive the summons, therefore creating a paper trail. They offered a friendly amendment which is addressed in the attachment.

Questions were proposed by Chair. Rep. Cox spoke to Rep. O'Neal regarding support of the changes. Rep. O'Neal approved. Public discussion were closed.

Meeting adjourned at 4:15 p.m.

Next meeting is January 21, 1999



TOPEKA

HOUSE OF
REPRESENTATIVES

H.B. 2015
SERVICE OF PROCESS
UPON INSURANCE COMPANIES
Testimony before House Insurance Committee
January 19, 1999
Rep. Mike O'Neal

Chairman Tomlinson and members of the Committee, thank you for the opportunity to appear on H.B. 2015, relating to the procedure for obtaining service of process on insurance companies. The bill is an effort to conform our current law with the law relating to service of process on foreign corporations (K.S.A. 60-304 (f)).

The current law relating to service of process on insurance companies calls for service upon the Commissioner of Insurance, who is then required to forward the suit papers on to the insurance carrier. Unlike the current procedure for serving foreign corporations through the Secretary of State, the insurance procedure does not contain a requirement for service by the Commissioner by registered mail. The requirement of registered mail under K.S.A. 60-304 (f) serves to provide an effective "paper trail" in the event questions arise regarding dates of service and answer dates.

Unlike most actions, where a defendant's time to answer is measured from the date that defendant was "served" with suit papers, service against a foreign corporation or an insurance carrier is effective upon service on the Secretary of State or the Insurance Commissioner, as the case may be. Requiring that the defendant company be sent the important papers by registered mail does not extend the answer date but does provide a written record of when the papers were sent and received. Infrequently, papers are mishandled by regular mail and as a result a defendant's time to answer expires before the defendant even gets notice of suit.

I need to point out to the Committee that in the bill draft you have before you the stricken language in lines 31 & 32 should be reinserted.

HOUSE COMM ON INS.
ATTACHMENT 1
JANUARY 19, 1999 1-2
H2

60-304. Service of process, on whom made.

(f) *Foreign corporation or foreign limited partnership resident agent.* Service of process or service of any notice or demand required or permitted by law to be served on a foreign corporation or foreign limited partnership may also be made on the corporation or limited partnership by service thereof on the resident agent of the corporation or limited partnership. Whenever any foreign corporation or foreign limited partnership authorized to transact business or transacting business without authority in this state fails to appoint or maintain in this state a resident agent upon whom service of legal process or service of any such notice or demand may be had, whenever the resident agent of such corporation or limited partnership cannot with reasonable diligence be found at the registered office in this state or whenever the certificate of authority of any foreign corporation or foreign limited partnership is forfeited, the secretary of state shall be irrevocably authorized as the agent and representative of the foreign corporation or foreign limited partnership to accept service of any process or service of any notice or demand required or permitted by law to be served upon the corporation or limited partnership. Service on the secretary of state of any process, notice or demand against the foreign corporation or foreign limited partnership shall be made by delivering to and leaving with the secretary of state, or with any clerk having charge of the corporation department of the secretary of state's office, the original and two copies of the process and two copies of the petition, notice or demand, or the clerk of the court may send the original process and two copies of both the process and the petition, notice or demand directly to the secretary of state by restricted mail. In the event that any process, notice or demand is served on the secretary of state, the secretary shall immediately cause a copy thereof to be forwarded by restricted mail, addressed to the corporation or limited partnership at its principal office as it appears in the records of the secretary of state, or to the registered or principal office of the corporation or limited partnership in the state of its incorporation or formation. The secretary of state shall keep a record of all processes, notices and demands served upon the secretary under this subsection, and shall record in the record the time of the service and the action of the secretary with reference to it. A fee of \$30 shall be paid to the secretary of state by the party requesting the service of process, to cover the cost thereof. That fee shall not be included within or paid from any deposit as security for any costs or docket fee required by K.S.A. 60-2001 or 61-2501, and amendments thereto.

(g) *Insurance companies or associations.* Service of summons or other process may also be made on any insurance company or association, organized under the laws of the state of Kansas by service on the commissioner of insurance in the same manner as that provided for service on foreign insurance companies. All the requirements of law relating to service on foreign insurance companies so far as applicable shall also apply to domestic insurance companies.

2-2
P2012

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E

State Capitol Building

Topeka, Kansas 66612-1575

(785) 296-2436

FAX (785) 296-0231

January 19, 1999

Bill Graves
Governor

Duane A. Goossen
Director

The Honorable Bob Tomlinson, Chairperson
House Committee on Insurance
Statehouse, Room 112-S
Topeka, Kansas 66612

Dear Representative Tomlinson:

SUBJECT: Fiscal Note for HB 2015 by Representative O'Neal

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2015 is respectfully submitted to your committee.

HB 2015 amends the law concerning the service of process on insurance companies. The bill eliminates the requirement that an insurance company respond to a service of process within 40 days. The Office of the Insurance Commissioner indicates that this would reduce the amount of time companies have to respond to service of process to 20 days for in-state defendants and 30 days for out-of-state defendants. These deadlines are included elsewhere in the law and would be enforced by the Office of the Insurance Commissioner. The bill also would require that the notice be delivered to the general agent of the company in Kansas or to the principal office of the company in the state where the company is located. Finally, the bill deletes from current law antiquated language that describes how the Insurance Commissioner must handle any service of process against an insurance company.

The bill provides, in new language, that a service or notice of any action against an insurance company be delivered by the clerk of the court to the Insurance Commissioner, who would then be responsible for notifying the insurance company by restricted mail. It outlines the method by which that notice would be provided.

House Comm. on Ins.
January 19, 1999
Attachment 2 *pt*

Estimated State Fiscal Impact				
	FY 1999 SGF	FY 1999 All Funds	FY 2000 SGF	FY 2000 All Funds
Revenue	--	--	--	--
Expenditure	--	--	--	\$2,515
FTE Pos.	--	--	--	--

The Office of the Insurance Commissioner indicates that the bill would increase costs by \$2,515 in FY 2000. Costs would increase because the bill requires that all notices of service made to insurance companies by the Department be made by restricted mail. The Department indicates that at the current time all of the notices are mailed via regular mail. The additional costs are based on the average cost of restricted mail, in addition to postage, and the 479 mailings made in 1998. The Department's estimate of average cost is \$5.25. Therefore, the additional cost is estimated as follows: $5.25 \times 479 = \$2,514.75$. Any fiscal effect resulting from this bill would be in addition to the amounts included in *The FY 2000 Governor's Budget Report*.

Sincerely,



Duane A. Goossen
Director of the Budget

cc: Linda DeCoursey, Insurance Department
Jerry Sloan, Judiciary



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

January 19, 1999

TO: House Committee on Insurance
FROM: Linda J. De Coursey, Director of Government Affairs
RE: H. B. 2015 – Civil Procedure – relating to process upon insurance companies

Mr. Chairman and members of the Committee:

Thank you for allowing me the opportunity to provide information to you on H.B. 2015. H.B. 2015 amends K.S.A. 40-218, which provides for the service of process upon insurance companies. It is through this authorizing statute that the Kansas Insurance Department acts as the resident agent for service of process when a foreign or domesticated insurance company is sued in Kansas. The goal of K.S.A. 40-118 is to provide an effective and efficient manner for service of process to insurance companies that is fair to both plaintiffs and defendant insurance companies. Although we are not against fine tuning K.S.A. 40-118, it is our belief that the proposed changes to K.S.A. 40-118 will actually make service of process more difficult for both plaintiffs and insurance companies.

Current law allows the insurance company forty (40) days in which to file an answer with the Clerk of the District Court to the plaintiff's petition. H.B. 2015 strips away the forty (40) days and thereby allows the normal rules of civil procedure to apply, which is twenty (20) days for an in-state defendant, and thirty (30) days for an out-of-state defendant.

The bill also requires that the petition and summons be sent from the Clerk of the District Court to the Insurance Department and from the Insurance Department to the defendant insurance company through restricted mail. The current law provides that the petition and summons be mailed through regular U. S. mail.

The service of process procedure for filing a lawsuit against an insurance company in Kansas is as follows: 1) The plaintiff files the lawsuit with the Clerk of the District Court. 2) Forwards,

420 SW 9th Street
Topeka, Kansas 66612-1678

913 296-3071
Fax 913 296-2283
Printed on Recycled Paper

Consumer Assistance Hotline
1 800 432-2484 (Toll Free)

House Comm on Ins.
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Attachment 3
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by mail, a certified copy of the plaintiff's petition and several summons to the Insurance Department. 3) At the point the petition is received, the Insurance Department forwards the certified copy of the petition and summons to the defendant insurance company's registered agent or executive office. This normally occurs on the same day the petition and summons are received. 4) The Insurance Department completes the required paperwork and returns it to the Clerk of the District Court.

As I mentioned earlier, changes in H.B. 2015 would require the service process to be sent to the Insurance Department by restricted mail, and then would also require the Insurance Department to forward the appropriate papers by restricted mail to the defendant insurance company. Restricted mail could be considered one of the following: 1) certified mail, without return receipt; 2) certified mail with a return receipt; and 3) restricted delivery which would require that the specific person to whom the mail is address to actually sign for the mail, plus this person must also produce a photo identification to receive the mail. In 1998, the Insurance Department received and forwarded to insurance companies 479 lawsuits. Current costs of restricted delivery, which is the highest cost, is \$5.25. HB 2015 would result in a fiscal impact of \$2,514.75 if the same amount of lawsuits are filed in 1999, and they were all mailed with restricted delivery.

Again, we feel the goal of K.S.A. 40-118 should be to provide an effective and efficient manner for service of process to insurance companies that is fair to both plaintiffs and defendant insurance companies. We believe the law has worked well, however, that is not to say that it could use some fine tuning. We respectfully ask the Committee to consider the following recommendations:

1. Leave the 40 day answer period that is provided in current law. The rationale of giving defendant insurance companies a longer period to file an answer is because the defendant insurance company's period of time begins when the petition and summons reach the insurance department, not when the insurance company received the notice.
2. Change the restricted mail provision to require certified mail with return receipt. These changes are found on lines 46 and 48 of the attached balloon. Service would be inhibited if a specific person would have to be present to receive the petition and summons at the insurance department and the defendant insurance company. Additionally, the fiscal impact to the Insurance Department would be less since certified mail with return receipt required costs \$2.50 per piece, plus postage.
3. The word "original" on line 43 of the bill needs to be changed to "certified copy." This is necessary because the original copy of the petition cannot be mailed to the Insurance

Department since it is retained by the Clerk of the District Court. Also, on lines on 44 change the word "sent" to "send". I believe that is a typo. Also on line 44, again change the word "original" to "certified copy", and delete word "process."

4. Also, in line 51 of the attached balloon, the words "in which it is domesticated" needs to be deleted because an insurance company is only domesticated in one state. Also, many insurance companies have their executive office in a state where it is not domesticated. Many of these companies want to have service of process sent to their executive office rather than their office in the domesticated state.

I have attached a copy of our proposed changes to H.B. 2015. It is with these changes that we believe H.B. 2015 would ensure that an effective and efficient service of process procedure is in place for both plaintiffs and defendant insurance companies.

HOUSE BILL No. 2015
By Representative O'Neal
12-30

9 AN ACT concerning civil procedure; relating to service of process upon
10 insurance companies and fraternal benefit societies; amending K.S.A.
11 40-218 and repealing the existing section.

12

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

14 Section 1. K.S.A. 40-218 is hereby amended to read as follows: 40-
15 218. Every insurance company, or fraternal benefit society, on applying
16 for authority to transact business in this state, and as a condition prece-
17 dent to obtaining such authority, shall file in the insurance department
18 its written consent, irrevocable, that any action or garnishment proceed-
19 ing may be commenced against such company or fraternal benefit society
20 in the proper court of any county in this state in which the cause of action
21 shall arise or in which the plaintiff may reside by the service of process
22 on the commissioner of insurance of this state, and stipulating and agree-
23 ing that such service shall be taken and held in all courts to be as valid
24 and binding as if due service had been made upon the president or chief
25 officer of such corporation. Such consent shall be executed by the pres-
26 ident and secretary of the company, authenticated by the seal of the cor-
27 poration, and shall be accompanied by a duly certified copy of the order
28 or resolution of the board of directors, trustees or managers authorizing
29 the president and secretary to execute the same. The summons, accom-
30 panied by a fee of \$25, shall be directed to the commissioner of insur-
31 ance, ~~and shall require the defendant to answer by a certain day, not less~~
32 ~~than 40 days from its date.~~ , *and shall require the defendant to answer*
by a certain day, not less than 40 days from its date.

33 Such summons, ~~and a certified copy of the petition shall be forthwith~~
34 ~~forwarded by the clerk of the court to the commissioner of insurance,~~
35 ~~who shall immediately forward a copy of the summons and the certified~~
36 ~~copy of the petition, to the secretary of the company or fraternal benefit~~
37 ~~society sued, and a copy of the summons to the general agent of the~~
38 ~~company or fraternal benefit society if any such agent resides in this state;~~
39 ~~and thereupon the~~

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Hof

40 Service on the commissioner of insurance of any process, notice or de-
41 mand against an insurance company or fraternal benefit society shall be
42 made by delivering to and leaving with the commissioner or the commis-
43 sioner's designee, the ~~original~~ certified copy and two copies of the petition, notice of
44 demand, or the clerk of the court may ~~send~~ send the ~~original~~ certified copy ~~process~~ and two
45 copies of both the ~~process and petition~~, notice or demand directly to the
46 commissioner by ~~restricted mail~~ ^{keep} certified mail with return receipt. In the event that any process, notice or
47 demand is served on the commissioner, the commissioner shall immedi-
48 ately cause a copy thereof to be forwarded by ~~restricted mail~~ certified mail with return receipt to the in-
49 surance company or fraternal benefit society address to its general agent
50 if such agent resides in this state or to its registered or principal office in
51 any state ~~in which it is domiciled~~. The commissioner of insurance shall
52 make return of the summons to the court from whence it issued, showing
53 the date of its receipt ~~by him~~, the date of forwarding such copies, and
54 the name and address of each person to whom ~~he forwarded~~ a copy was
55 forwarded. Such return shall be under ~~his~~ the hand and seal of office,
56 and shall have the same force and effect as a due and sufficient return
57 made ~~by the~~ on process directed to a sheriff ~~on process directed to him~~.
58 The ~~said~~ commissioner of insurance shall keep a suitable record in which
59 ~~he shall docket~~ be docketed every action commenced against an insurance
60 company, the time when commenced, the date and manner of service;
61 also the date of the judgment, its amount and costs, and the date of
62 payment thereof, which shall be certified from time to time by the clerk
63 of the court.

64 Sec. 2. K.S.A. 40-218 is hereby repealed.

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

original process
not original petition

original process
not original petition

AMERICAN FAMILY INSURANCE GROUP
LEGAL DEPARTMENT
1300 S.W. ARROWHEAD ROAD
P.O. BOX 4384
TOPEKA, KS 66604-0384
(785) 273-5120
Fax (785) 273-1561

Kevin R. Davis

MEMORANDUM

January 19, 1999

To: Chair Tomlinson and House Insurance Committee

From: Kevin R. Davis, American Family Insurance Group

Subject: HB 2015

We understand the intent of this bill is to improve or clarify the procedure for the service of process, notice or demand on an insurance company in Kansas. We certainly have no problems with the intent of the bill, but do have two concerns.

First, we feel it is necessary to maintain the language in lines 31 & 32, on page 1, which provides for a certain answer date of not less than 40 days. Because of the time lag in mailing of the summons to the company and back to Kansas for defense we need this time to insure we are not in default on our answer. We understand this was an oversight in the drafting of the bill and that this language will be restored.

Second, the existing bill designates a person, that is the secretary of the company, to receive the summons. The proposal only specifies that the summons be addressed to the "...registered or principal office in any state which it is domesticated". We would like to retain the designation of the secretary to receive the mailing of the summons. This will further help trace the trail of the summons from the Insurance Department through the company. We would offer a friendly amendment to line 7 on page 2, to read as follows: ".....if such agent resides in this state or to *the secretary of the company or fraternal benefit society sued* at its registered or principal office in".

With these two changes we would support the bill.

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January 19, 1999
Attachment #