

Approved: Robert Tomlinson
Date: March 9, 1999

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Bob Tomlinson at 3:30 p.m. on February 9, 1999 in Room 527-S of the Capitol.

All members were present except:

Lynn Jenkins

Committee staff present:

Bill Wolff, Research
Bob Nugent, Revisor
Mary Best, Secretary

Conferees appearing before the committee:

Linda DeCoursey- Kansas Department of Insurance
Bill Sneed-State Farm Insurance
Sandy Barnett-Kansas Coalition Against Sexual and
Domestic Violence
Marilyn Ault-Battered Women's Task Force
Kevin Davis-American Family Insurance
David Hansen-National Association of Independent
Insurers
Robyn Simon-National Association of Independent
Insurers
Jim Schwartz-Kansas Employer Coalition on Health,
Inc.
Larrie Ann Brown-Kansas Association of Health Plans
Brad Smoot-Blue Cross/Blue Shield of Kansas City &
Kansas
Roland E. Smith-Smith Insurance Services

Others attending:

See attached list

Meeting was called to order by Chairman Tomlinson. Public hearings were then opened with first speaker Linda DeCoursey, Kansas Department of Insurance.

HB 2089- Unfair acts and practices; domestic violence

Ms. DeCoursey, Director of Government Affairs, Kansas Insurance Department, gave Proponent Testimony to the Committee. Written testimony was furnished to the Committee and a copy of that testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Ms. DeCoursey gave an overview of the bill and then spoke of the new language on the policy. She stated the wording was an attempt to halt potential fraudulent acts against the insurance company. She stated the bill protects the insurance companies rights. Companies were not being asked to expand their coverages, but to change those property and casualty policies which act as exclusions on basis of abuse. The intent of the bill is to limit use of the intention act of exclusion, rather than to broadly add coverages to existing policies. Ms. DeCoursey pointed out an error on page 3 of the bill line 38 & 39, the word is "*international*" instead of "*intentional*".

Questions were posed to Ms. DeCoursey by Rep. Burroughs, Showalter, Boston and Vining.

Bill Sneed, State Farm Insurance Companies, gave Proponent Testimony to the Committee. A copy of the testimony is (Attachment #2) is attached hereto and incorporated into the Minutes by reference.

Mr. Sneed stated to the committee that State Farm was paying claims in states already honoring this type of bill. They supported this bill. Most companies do not cover intentional acts, therefore id they are not covered and if they are not covered they are not paid, and therefore there is no way to track these kind of claims, or losses that are out there. uestions were taken from Rep. Empson, Vining, Boston, Burroughs, Kirk.

Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence, gave Proponent Testimony to the committee. A copy is (Attached #3) attached hereto and incorporated into the Minutes by reference. Ms. Barnett stated the co-insured was not defined in this bill. Decision to press charges against the abuser is a State decision, not by any particular victim.

Questions were posed by Rep. Cox, Boston

Ms. Marilyn Ault, Battered Women's Task Force, gave Proponent Testimony. A copy of the written testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference.

Mr. Kevin R. Davis, American Family Insurance Group, gave Neutral Testimony to the committee. A copy of the testimony is (Attachment #5) attached hereto and incorporated into the Minutes by reference. They have concerns about the applicability of the bill. The bill seems to prohibit underwriting of any kind where the applicant may have ben associated with domestic abuse. They suggest the bill ave the word "solely" inserted on line 22 of the bill..

Questions by Rep. Boston.

Mr. David Hanson, Kansas Association of Property and Casualty Insurance Companies, gave Opponent Testimony to the committee. A copy of the written testimony is (Attachment #6) attached hereto and incorporated into the Minutes by reference. Feels there too broad of a range in the bill, and reaches every type of insurance covered by the Unfair Trade Practices Act. They feel the legislature should exercise caution in any mandates it issues regarding insurance coverage.

Ms. Robyn Simon, National Association of Independent Insurers, gave Opponent Testimony. A copy of the written testimony is (Attachment #7) attached hereto and incorporated into the Minutes by reference.

Questions by Rep. Phelps.

Public hearings closed on **HB 2089**.

HB 2090: Small employer health plans; mandatory requirements .

Ms. Linda DeCoursey, Kansas Department of Insurance, gave Proponent Testimony to the committee. A copy of the testimony is (Attachment #8) attached hereto and incorporated into the Minutes by reference. Requests were made to change some of the current language in the bill. The changes occur in Sections 1,2, 3, 4 and 5. Refer to the attachment for suggested changes. Requested technical changes on page 1, line 23 regarding hours per week of up to 30 hours was changed several years ago but never picked up, and they are not requesting it be done. On page 2, line 12 words were omitted and are asking to insert "health status of" be inserted after " not condition eligibility or members on the.." Ms. DeCoursey then asked the committee to pass out the bill as amended.

Questions by Rep. Cox,.

Mr. Jim Schwartz, Kansas Employer Coalition on Health, Inc. offered Proponent Testimony. A copy of the written testimony is (Attachment #9) attached hereto and incorporated into the Minutes by reference. He also requests the insertion of "health status" on page 2. Stated uninsured on the rise in Kansas.

Questions by Rep. Cox, Boston.

House Insurance Committee Minutes 2-9-99 Continued

Ms. Larrie Ann Brown, Kansas Association of Health Plans, gave Proponent Testimony. A copy of the written testimony is (Attachment #10) attached hereto and incorporated into the Minutes by reference. Ms. Brown agrees with the testimony offered by the previous conferees.

Mr. Brad Smoot, Blue Cross/Blue Shield of Kansas and Kansas City, gave Proponent Testimony to the committee. A copy of the testimony is (Attachment #11) attached hereto and incorporated into the Minutes by reference. They are in support of the bill.

Mr. Roland E. Smith, Smith Insurance Services, Wichita, Ks., gave Opponent Testimony. A copy of the testimony is (Attachment #12) attached and hereto incorporated into the Minutes by reference. Feels that this bill would put further expenses on the taxpayers and could include small businesses that do provide health coverage to their employees now.

Questions by Rep. Tomlinson,

Public Hearings on **HB 2089** closed.

Meeting closed.

Next meeting February 11, 1999



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Insurance
FROM: Linda J. De Coursey, Director of Government Affairs
RE: HB 2089 – Unfair discrimination against subjects of abuse
In Property and Casualty Insurance
DATE: February 9, 1999

Mr. Chairman and members of the committee:

Thank you for allowing me this opportunity to discuss with you H.B. 2089. The Kansas Insurance Department requested the bill. The purpose of the bill is to prohibit unfair discrimination by property and casualty insurers on the basis of abuse. The intent of the bill is to limit the use of intention acts exclusion rather than broadly adding coverages to existing policies. Some policies have intention act exclusions, some do not. We are not asking companies to expand those coverages. These changes are addressing only those policies that have intentional act exclusions, and that those exclusions be waived only for the acts based on abuse. The are: 1) Policy related; and 2) Claim denials based on abuse.

Before, I continue, Mr. Chairman, I would like to point out that we have an error in the bill, and we need to make sure it is corrected. On page 3 of the bill, lines 28 and 39 the word international is incorrect. The correct word is "intentional" is the correct word. We respectfully ask the committee to make the change to reflect the correct wording.

420 SW 9th Street
Topeka, Kansas 66612-1678

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

ATTACHMENT #1
HB 2089
FEBRUARY 9, 1999
House Committee on Insurance

1-1
7-3

The language in K.S.A. 40-2404 (g) - Unfair discrimination, makes it unlawful for accident and health insurance companies, life insurance companies, and property and casualty companies to discriminate by: 1) refusing to insure; 2) refusing to renew or reissue; 3) limiting the amount, extent or kind of coverage available to an applicant; 4) charging a different rate for the same coverage; 5) excluding or limiting coverage for losses; 6) or denying a claim incurred by an insured as a result of abuse based on the fact that the applicant or proposed insured is, has been, or may be the subject of domestic abuse.

K.S.A. 40-2404 (g) (4) was amended in 1996 to apply to life and/or accident and health insurance companies. We are proposing to strike the references to life and accident and health insurance, thereby making the statute applicable to property and casualty coverage, life, and accident and health insurance.

New language added to K.S.A. 40-2404 establishes protection for the innocent co-insured. It states that if a policy excludes property and casualty coverage for intentional acts, the insurance company may not deny payment to an innocent coinsured if:

- 1) the loss is caused by an intention act of abuse by another insured under the policy. To give you an example of a recent complaint we received at the Kansas insurance department; a man tried to set fire to his wife and, in the process, damaged some of the personal property in the house. He was convicted of attempted murder and sent to prison. The insurance company denied the wife's claim because the loss was intentionally caused by her husband. In this case, the statutes as amended through HB 2089 would require the insurance company to pay for the loss because the insured is an innocent coinsured.
- 2) the insured claiming the loss files a policy report, and cooperates with any law enforcement investigation relating to the act of abuse

2/3

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~~2-3~~

3) the insured claiming the loss did not cooperate in or contribute to the creation of the property loss. These final two provisions thwart attempts at fraud.

Payment to the insured by the insurance company may be limited to the person's insurable interest in the property, less payments made to a party with secured interest in the property, i.e., mortgagee. The proposed changes would give an insurance company rights of subrogation to recover against the perpetrator for amount of the loss. Again, I'll bring in the man that tried to murder his wife by setting her on fire. Through this bill, the insurance company could recover some of the loss by subrogating the man's assets.

I would also like to mention that the new language added to the bill was actually a compromise between a representative of property and casualty company, State Farm, and the insurance department. In December, we normally announce our legislative package to the industry. We use that month to try to work out any differences or problems with language. This is one of those success cases, Mr. Chair, whereby our differences were worked out prior to testimony.

We respectfully ask for your favorable consideration of HB 2089 which adds property and casualty companies to the existing law.

MEMORANDUM

TO: Rep. Bob Tomlinson, Chair
House Insurance Committee

FROM: William W. Sneed
The State Farm Insurance Companies

DATE: February 9, 1999

RE: HB 2089

Mr. Chairman, members of the committee, my name is Bill Sneed, and I appear today on behalf of The State Farm Insurance Companies, one of the largest property and casualty insurers in the state of Kansas. We appreciate this opportunity to appear today in support of HB 2089.

HB 2089 expands the current prohibition against discrimination in the issuance or continuation of accident and health insurance for victims of domestic abuse. The expansion would include all lines of insurance in the prohibition, not just accident and health. Further, HB 2089 provides language which specifically addresses the issue of an intentional acts exclusion contained in property and casualty coverage, and its affect upon an innocent co-insured.

Let us state at the outset that State Farm appreciates the willingness of the Kansas Insurance Department to work with us to craft language addressing the issue of an innocent co-insured. The language you see in Section 1(g)(4)C is the result of the joint

*ATTACHMENT #2
February 9, 1999
House Committee on Insurance
HB. 2089*

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R-B

efforts of State Farm and the Kansas Insurance Department. State Farm was concerned with the difficulty of applying the nondiscrimination provisions of the current law to property and casualty insurers. The nature of the insurance product is quite different than that of accident and health insurance; the nondiscrimination provisions of current law were not as natural a fit.

State Farm, as a property and casualty insurer, was concerned with the potential for fraud created by the nondiscrimination provisions in the property and casualty context. The classic example is a husband and wife, co-insureds on a homeowners insurance policy, who conspire to burn down the house as part of a fraudulent domestic violence incident. The insurer is then forced to pay under the policy--even though it suspects fraud—to avoid any accusation of discrimination against a victim of domestic violence.

State Farm, while concerned about the potential for fraud, is also deeply committed to the battle against domestic violence. State Farm has long been a partner in a nationwide task force to fight domestic violence itself, as well as minimize discrimination against victims in all areas of life. This is why State Farm worked with the Kansas Insurance Department to craft language which attempts to address our concerns about fraud and abuse while retaining protection for victims of domestic violence.

The language in Section 1(g)(4)C requires that an insurer not deny payment to an innocent co-insured if: 1) the loss is caused by an act of domestic abuse by another insured under the policy; 2) the innocent co-insured files a police report of the incident and cooperates with law enforcement in the investigation of the incident; and 3) the

innocent co-insured did not cooperate or contribute to the property loss. This language is taken from current statutes in force in two other states. We are comfortable that this language addresses any fraud concerns while ensuring protection for victims of domestic violence.

We appreciate the opportunity to support HB 2089. Please do not hesitate to contact me if you have questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in dark ink and is centered on the page.

William W. Sneed



KANSAS COALITION AGAINST SEXUAL AND DOMESTIC VIOLENCE

820 S.E. Quincy, Suite 422 • Topeka, Kansas 66612 • 785-232-9784 • FAX 785-232-9937

UNITED AGAINST VIOLENCE

Testimony to: Committee on Insurance
Chairperson: Representative Tomlinson
Bill Number: HB 2089
Position: Proponent
Hearing Date: February 9, 1999
Testimony by: Sandy Barnett, Executive Director

Chairman Tomlinson and members of the Committee

I am the director of The Kansas Coalition Against Sexual and Domestic Violence (KCSDV). KCSDV represents 28 programs across Kansas that provide advocacy and safety services to victims of domestic violence.

Each year in Kansas more than 6,000 victims and their families reach out to programs for support in resolving violence in their lives perpetrated by a family member, most frequently a husband, boyfriend, or an ex-partner. In 1997, more than 17,000 incidents of crimes considered to be perpetrated within the context of domestic violence were reported by law enforcement agencies and tabulated in the Kansas Attorney General and the Kansas Bureau of Investigation report on "Domestic violence and Rape in Kansas 1995-1997."

Kansas has had a long history of caring about and for victims of domestic violence. Kansas was one of the first states to tend to domestic violence in the arena of public policy in 1979 when it passed the original Protection from Abuse Act. HB 2089 is another example of how public policy and compassion for those who are victimized can merge to create protection in unusual situations.

Our interest in HB 2089 comes from our experience in advocating for victims who are, or have been victimized in many different ways by their abusers. It is not uncommon for physical abuse to be accompanied by abuse to children and pets, threats of violence and death, and the destruction of property.

I wish I could tell you that the threats of harm to children, pets, and property were always empty threats, sometimes they are, but not always. Attached is a list of Kansas Statute Violations perpetrated by abusers during 1997 (Report on Domestic Violence and Rape 1995-1997). Of particular interest to this committee are the crimes of arson, criminal damage to property, and burglary – 1,614 incidents were reported to police that constitute one of these crimes.

*ATTACHMENT #3
February 9, 1999
House Committee on Ins.*

In such an event, under current statute the victims may not be able to claim the loss through their insurance because their abuser is the co-insured.

For some victims, that loss is devastating as Marilyn Ault, Director of the Battered Women's Task force will tell you in a minute.

The passage of HB 2089 will make a difference to these victims, but particularly to those victims whose loss is substantial and perhaps life changing such as the loss of a home or a car.

When considering this bill, please remember with compassion those who have already experienced devastating loss of dignity and their sense of walking safely in this world.

The 28 programs in Kansas and KCSDV support HB 2089 and ask you to report it out of committee with a recommendation for passage.

Thank you for your time and attention.

DOMESTIC VIOLENCE
STATUTE VIOLATIONS
1997*

STATUTE NUMBER	VIOLATION DESCRIPTION	TOTAL	PERCENT OF TOTAL**
21 - 3401	MURDER, FIRST DEGREE	18	0.1%
21 - 3402	MURDER, SECOND DEGREE	4	0.0%
21 - 3408	ASSAULT, SIMPLE	807	1.8%
21 - 3409	ASSAULT, SIMPLE ON LAW ENFORCEMENT OFFICER	66	0.3%
21 - 3410	ASSAULT, AGGRAVATED	681	2.6%
21 - 3411	ASSAULT, AGGRAVATED ON LAW ENFORCEMENT OFFICER	6	0.0%
21 - 3412	BATTERY	12,636	60.9%
21 - 3413	BATTERY, ON LAW ENFORCEMENT OFFICER	67	0.3%
21 - 3414	BATTERY, AGGRAVATED	385	1.8%
21 - 3415	BATTERY, AGGRAVATED ON LAW ENFORCEMENT OFFICER	5	0.0%
21 - 3419	TERRORISTIC THREAT	403	2.0%
21 - 3420	KIDNAPPING	17	0.1%
21 - 3421	KIDNAPPING, AGGRAVATED	14	0.1%
21 - 3424	RESTRAINT, UNLAWFUL	120	0.6%
21 - 3426	ROBBERY	6	0.0%
21 - 3502	RAPE	68	0.3%
21 - 3506	SODOMY, AGGRAVATED CRIMINAL	3	0.0%
21 - 3517	SEXUAL BATTERY	16	0.1%
21 - 3518	SEXUAL BATTERY, AGGRAVATED	5	0.0%
21 - 3609	ABUSE OF A CHILD	6	0.0%
21 - 3701	THEFT	285	1.3%
21 - 3705	DEPRIVATION OF PROPERTY, UNLAWFUL	11	0.0%
21 - 3715	BURGLARY	80	0.3%
21 - 3716	BURGLARY, AGGRAVATED	38	0.2%
21 - 3718	ARSON	5	0.0%
21 - 3719	ARSON, AGGRAVATED	3	0.0%
21 - 3720	CRIMINAL DAMAGE TO PROPERTY	1,488	7.4%
21 - 3721	TRESPASS, CRIMINAL	911	4.5%
21 - 4101	DISORDERLY CONDUCT	2,310	11.5%
21 - 4113	HARASSMENT BY TELEPHONE	46	0.2%
OTHER	MISCELLANEOUS OFFENSES	674	3.3%
TOTAL***		21,184	100.0%

* Statistics compiled from the Kansas Incident Based Reporting System.

** All percentages rounded to the nearest percent.

Taken from "Domestic Violence and Rape in Kansas: 1995 - 1997" prepared by Office of Attorney General Carla J. Stovall and the Kansas Bureau of Investigation, October 1998.

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Member Agency
United Way of
Greater Topeka

225 SW 12th Street
Topeka, KS 66612-1345
785-233-1750
FAX 785-233-4867

Committee on Insurance
February 9, 1998
RE: HB 2089

Battered Women Task Force
225 SW 12th St., Topeka, KS 66612
354-7927 (233-1730 after hours)
Toll Free (outside Topeka)
1-888-822-2983

Career Assistance Network
1129 Wanamaker Rd.
Topeka, KS 66604
273-5190

Girls-to-Girls
Mail To: 225 SW 12th St.
Topeka, KS 66612
1407 S.E. 6th Street
232-3027

Day Care

Kids-Quest

Robinson Middle School

Fitness/Recreation

Teen Pregnancy Prevention

Volunteer Program

Chairman Representative Tomlinson and Committee Members

I am Marilynn Ault, Program Director of the Topeka YWCA Battered Women Task Force. We provide services for both sexual assault and domestic violence victims.

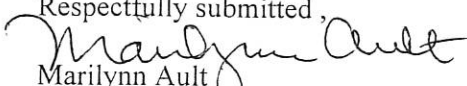
On behalf of the victims of domestic violence that our staff and volunteers help each year I want to support the inclusion of domestic violence victims in this document. Let me share a couple of situations with you.

One woman who came into our shelter because of physical abuse from her husband was further traumatized because her husband took the car that they shared and totaled it. She was unable to collect insurance because her husband was the other insured. She was left to pay off the lien against the car **and** she had to get an additional loan to purchase another car so that she could keep her job.

We also know of situations of arson that many people do not think about when they think about domestic violence. In one case of a married couple who shared insurance, house payment, and a deed one partner battered the other then left to stay with a friend. Three days later he came over and burned the house down. Again the mortgage was paid, but she couldn't claim any equity because he is the co-insured.

We work with many victims of abuse who are trying so very hard to survive the abuse that they have received. Having access to insurance coverage would be a great help to many victims who are struggling to survive the horrors of domestic abuse.

Thank you very much for the opportunity to share some of our experiences with you.

Respectfully submitted,

Marilynn Ault
Program Director
YWCA Battered Women Task Force

ATTACHMENT #
February 9, 1998
House Insurance Committee

American Family Insurance Group
1300 SW Arrowhead Road
PO Box 4384
Topeka, Kansas 66604-0384
Phone (785) 273-5120



Kevin R. Davis
Government Affairs Counsel

February 9, 1999

To: Representative Tomlinson and
The House Insurance Committee

From: Kevin R. Davis

RE: House Bill 2089

Our appearance here today is to express concern for the applicability of this legislation to property and casualty insurance coverage. The bill amends a statute which was originally intended to apply to accident, health and life insurance to include all insurance coverages. This bill carves out a single class of individuals for special consideration.

This bill would appear to prohibit underwriting, of any kind, of an applicant or insured who "...is, has been, or may be the subject of domestic abuse." The way the language is written, it would seem that we could not do any underwriting if we presumed that all of us, or at least those of us who reside with one or more individuals, may be subject to abuse. Since we do not currently ask the abuse status of our applicants or insureds, let alone the prospective status of their potential to be an abuse victim, we would always be in jeopardy for an inappropriate action on a policy. In this regard, it would appear the language is far too broad and may effectively prohibit the established underwriting process. As has been suggested, adding the word "solely" to the language would provide some help. That is, that any underwriting decision could not be based solely on the abuse status of an applicant or insured. *line 22*

In regard to claims issues, the bill provides a special status for innocent co-insureds who are abuse victims. I am not certain that we can always make the determination of whether a loss was caused by a domestic dispute without the successful prosecution and conviction of the abuse. Absent a conviction and a finding that not only was there abuse, but that the loss was caused by an act of domestic abuse, this bill would not apply. The bill does give the insurer subrogation rights against the perpetrator of the act. However, since the perpetrator of the act would also be one of our insureds, this creates an adversarial situation between the insurance company and their insured. Obviously we prefer not to be in this situation as we do not want to breach the terms of our contract as to any of our insureds

Again, we are not certain how this bill will or should apply to property and casualty insurance coverage and urge caution when establishing any special class of individuals.

*ATTACHMENT # 5
February 9, 1999
House Committee on Insurance*

Kansas Association of Property and Casualty Insurance Companies

David A. Hanson, Legislative Counsel
900 Mercantile Bank Tower
800 S.W. Jackson
Topeka, KS 66612-1259

Phone 785-232-0545
Fax 785-232-0005

House Insurance Committee Testimony on HB 2089 Presented by David A. Hanson February 9, 1999

Mr. Chairman and Members of the Committee:

Thank you for giving me the opportunity to present concerns for the Kansas Association of Property and Casualty Insurance Companies, whose members are domestic insurance companies in Kansas.

Our member companies are very concerned about the provisions of House Bill 2089 and are opposed to passage of the bill in its present format. Essentially, the bill attempts to amend the current statutory provisions prohibiting unfair competition and trade practices, which include provisions prohibiting unfair discrimination in terms of life insurance and accident and health insurance coverage in connection with domestic abuse. The bill attempts to broaden the prohibition of discrimination to other types of insurance by deleting existing references to life and accident and health insurance, thereby making the prohibition applicable to all lines of insurance, including property and casualty insurance. Unfortunately, the existing law with its various exceptions was designed for application to life and accident and health insurance and is not well suited to other lines, such as property and casualty insurance.

Property and casualty insurance is probably most familiar as vehicle insurance and homeowners' or farmowners' insurance. Life and accident and health insurance generally involve first-party coverage, for life and health related risks that we buy for ourselves, whereas property and casualty insurance often combines first-party coverage for our property, together with third-party coverages for liability we may have to other people. By trying to treat all of these coverages in the same way, we end up with very different coverages and risks, which require far different underwriting, rating, risk classification, exclusions and limitations. Existing statutory provisions may work for life or accident and health coverages, but are not appropriate for property and casualty coverages.

As we all want to prevent domestic abuse and help victims, we need to know what the specific problems are relating to property and casualty insurance in order to draft appropriate solutions. Without specific problems being presented, drafting legislative solutions becomes somewhat speculative. It also sometimes becomes counter productive to broad based good intentions. Specifically, we would urge caution in legislative mandates for insurance coverage that may in fact encourage or facilitate collusion and fraud, which may be easier and more tempting with property and casualty coverages, than with life and health insurance.

*ATTACHMENT #6
February 9, 1999
Newse Committee on Insurance*

MEMBER COMPANIES

Armed Forces Insurance Exchange, Ft. Leavenworth
Bremen Farmers Mutual Insurance Co., Bremen
Columbia Mutual Insurance Group, Salina
Farm Bureau Mutual Insurance Company, Manhattan
Farmers Alliance Mutual Insurance Company, McPherson

Farmers Mutual Insurance Company, Ellinwood
Kansas Mutual Insurance Company, Topeka
Marysville Mutual Insurance Company, Marysville
Mutual Aid Assn. of the Church of the Brethren, Abilene
Upland Mutual Insurance, Inc., Chapman

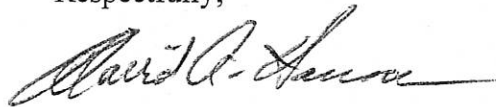
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Testimony on HB 2089
February 9, 1999
Page 2

Property and casualty policies provide several important protections, including property protection against various perils such as fire, wind, hail, lightning, explosion, theft, etc. Those perils are defined in the insurance policy and should not be expanded by statute to also cover damage from domestic abuse. By mandating such additional coverage for everyone, companies will need to be allowed to underwrite and charge appropriate rates for the additional coverage. Property and casualty insurance, such as homeowner's or automobile insurance, generally also provides liability coverage to pay damages to third parties subject to policy conditions, exclusions and limitations. However, liability coverage generally does not pay for injuries to the insured or family members residing in the household nor for damage to the insured's property, nor to injuries or damages caused by intentional acts of the insured or resulting from assault, battery, criminal conduct, abuse or harassment. The proposed language appears to override the standard exclusion for intentional acts, at least to the extent an innocent co-insured who cooperates in reporting and prosecuting. However, it should be noted this does not require cooperation in reporting or prosecuting the alleged abuser who is not insured under the same policy or where one of the other applicable exclusions or limitations may be applicable. Ignoring the policy coverage provisions will result in increased claims frequency and loss payments, which in turn lead to increased rates and preferential treatment for some insureds at the expense of others. While we sympathize and recognize the tragedy and social ill posed by domestic abuse, we cannot support the provisions of House Bill 2089. We respectfully urge you not to pass the bill in its present form.

Respectfully,



DAVID A. HANSON

**National Association
of
Independent Insurers**

2600 River Road
Des Plaines, IL 60018

**House Insurance Committee
Testimony on HB 2089
Presented by Robyn B. Simon
February 9, 1999**

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to present the views of the National Association of Independent Insurers (NAII). The NAII is a property and casualty trade association representing over 619 companies nationwide, many of which write business in Kansas.

Our members believe that domestic violence is a tragedy and that as a society we should do what we can to prevent it. We need to be careful, however, not to let that admirable zeal lead us to take actions that have unwarranted or unnecessary consequences. We have a number of concerns about HB 2089 as currently drafted. The attached analysis of the bill discusses those concerns.

Respectfully,



Robyn B. Simon

Attachment
deb/legis99/naii2089.tst

ATTACHMENT # 7
February 9, 1999
House Committee on Insurance

KANSAS HOUSE BILL 2089

Creates Special Class of Customers

- Insurers deplore domestic violence and agree that its victims should not be discriminated against. However, House Bill 2089 goes beyond preventing discrimination by granting special status to victims of abuse.
- HB 2089 prohibits property and casualty insurers from considering claims that involve domestic abuse when underwriting or rating a policy. This exempts subjects of abuse from the same cancellation and non-renewal laws that effect every other insured.

Creates Unfair Cross-Subsidization

- HB 2089 would prohibit insurers from requiring that subjects of abuse pay for this special treatment. Unfortunately, other policyholders could end up shouldering the increased cost of providing subjects of abuse with preferential treatment.

Creates Unprecedented and Unnecessary Approach to Unfair Trade Practices Law

- The common and time-tested approach to prevent the use of unfairly discriminatory criteria, such as blindness, is to prohibit insurers from using the unacceptable factor as the sole basis for making an underwriting or rating decision. House Bill 2089 is an unwarranted departure from this proven approach.
- Every state that has passed domestic violence legislation impacting property and casualty insurance has ensured that abuse victims receive fair, not special treatment. Missouri, Illinois and Washington provide recent examples of such laws.
- A substantial market problem should exist to justify HB 2089's radical departure from unfair trade practices law and sound actuarial principles. However, there are only a handful of anecdotal incidents involving property and casualty insurers nationwide. In fact, the Oregon Insurance Department recently conducted a study that concluded that unfair discrimination of subjects of abuse was not occurring in the marketplace
- Property and casualty insurers do not consider whether a consumer is a subject of abuse when rating or underwriting an auto or homeowners policy. Property and casualty insurers rely on the frequency and severity of claims, not the source of those claims. Further, property and casualty insurers do not generally use medical records or police reports in the underwriting or rating process.

To Create Fairness and Balance

The National Association of Independent Insurers (NAII) encourages the Kansas legislature to adopt language that protects subjects of abuse from unfair discrimination without establishing a privileged class of insurance consumers. HB 2089 does not create this balance.

NAII developed model legislation providing a fair and equitable approach that was adopted by the National Conference of Insurance Legislators (NCOIL). We urge you to modify this legislation to conform to this benchmark.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Insurance
FROM: Linda J. De Coursey, Director of Government Affairs
RE: HB 2090 – Small Employers Health Benefit Plans
DATE: February 9, 1999

Mr. Chairman and members of the committee:

Thank you for allowing me the opportunity to discuss with you H.B. 2090. The Kansas Insurance Department requested the bill. The idea actually came from Jim Schwartz, and he discussed it with Commissioner Sebelius. Mr. Schwartz suggested that in a recent scientific poll of small groups in Kansas, it found that 38% of uninsured groups would consider sponsoring health insurance if the cost could be relatively low. Commissioner Sebelius agreed that this opportunity could help provide health care for a population currently without health insurance.

K.S.A. 40-2239 through 40-2247 was enacted in the 1990's to encourage small employers to purchase health insurance for their employees. The incentives included exemption from insurance premium tax and income tax credit. No plans were actually established through these statutes. The reasons given by some as to why no plans were established is that the coverage was not very good, and companies wouldn't write the plans. But, by changing some of the current language, small health benefit plans could provide some incentives for groups to provide health care coverage.

*ATTACHMENT #8
February 9, 1999
House Committee on Insurance*

A group representing insurance companies, employer groups, managed care groups and regulatory oversight met and discussed the issue. Commissioner Sebelius set a parameter that these small employer health benefit plans had to follow small group reform laws. H.B. 2090 is the result of that group's effort.

Section 1 – Establishes definitions of eligible employee; family member; health benefit plan, premium, and small employer health benefit plan. The definition of small employer health benefit plan now is expanded to include associations, trusts, or any arrangement providing a health benefit plan for employees, members, etc.

Section 2 – Allows small employers to establish health benefit plans for the purpose of providing insurance coverage. However, if an association or trust is used for such purposes, the association or trust may not condition eligibility of its members on their health status.

Employers or others desiring to offer these small group health benefit plans shall notify the commissioner and provide information requested by the Commissioner. These groups are issued a certificate.

Section 3 - In order to participate, an employer or group would need to comply with the small group reform laws. The employer can not have contributed within the preceding two years to any health insurance premium on behalf of an employee who is to be covered by the employer's contribution. The employer paying his own health insurance premiums or for his dependents does not qualify as paying premiums on an employee.

Section 4. This section allows for tax credits for the small group benefit plan for five years. The amount is somewhat graduated. It allows: \$35 per month per eligible covered employee or member or 50% of the total amount paid by the employer during the taxable year, whichever is less for the first two years of participation. In the third year, the tax credit is 75% of the lesser

of \$35 per month per employee or 50% of the total amount paid by the employer during that taxable year. The fourth year the credit is equal to 50% of the lesser \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit is 25% of the less of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the sixth and subsequent years, no credit shall be allowed. Also, the language sets out how the claim for the credit is made, and that it shall apply to taxable years after 1999.

Section 5. Makes the health benefit plans follow the mandates for benefits that are in small group reform laws.

Mr. Chairman, we have several technical amendments. On the first page, line 23, the hours per week for an "eligible employee" was changed several years ago to 30. Apparently, this statute was not picked up, and so we need to make that correction now. Also, on page two, line 12, some words were omitted. We would ask that the words "health status of" be inserted after the phrase "not condition eligibility or members on the..."

I would respectfully ask the committee to pass HB 2090 out as amended, favorable for passage.

HOUSE BILL No. 2090
By Committee on Insurance
1-21

9 AN ACT concerning accident and health insurance; relating to small em-
10 ployer health benefit plans; amending K.S.A. 40-2239, 40-2240, 40-
11 2242 and 40-2246 and K.S.A. 1998 Supp. 40-2241 and repealing the
12 existing sections; also repealing K.S.A. 40-2244 and 40-2245.

13

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

15 Section 1. K.S.A. 40-2239 is hereby amended to read as follows: 40-
16 2239. As used in this act, unless the context requires otherwise:

17 (a) "Carrier" means an insurance company, medical or hospital serv-
18 ice corporation, medical and hospital service corporation or health main-
19 tenance organization which holds a valid certificate of authority from the
20 insurance commissioner.

21 (b) "Commissioner" means the commissioner of insurance.

22 (c) "Eligible employee" means an employee who is employed by the
23 employer for an average of at least ~~17.5~~ 30 hours per week and who elects
24 to participate in one of the benefit plans provided under this act, and
25 includes individuals who are sole proprietors, business partners and lim-
26 ited partners. The term "eligible employee" does not include individuals:

27 (1) Engaged as independent contractors;

28 (2) whose periods of employment are on an intermittent or irregular
29 basis; or

30 (3) who have been employed by the employer for fewer than 90 days.

31 (d) "Family member" means an eligible employee's spouse and any
32 unmarried dependent child or stepchild.

33 (e) "Health benefit plan" means a contract for group medical, sur-

34 gical, hospital or any other remedial care recognized by state law and
35 related services and supplies.

36 (f) "Premium" means the monthly or other periodic charge for a
37 health benefit plan.

38 (g) "Small employer health benefit plan" means an ~~organization of~~
39 ~~small employers~~ *arrangement providing a health benefit plan* for the pur-
40 pose described in K.S.A. 40-2240, and amendments thereto.

41 Sec. 2. K.S.A. 40-2240 is hereby amended to read as follows: 40-

42 2240. (a) Any ~~two or more employers~~ *small employer as defined in sub-*
43 *section (4) of K.S.A. 40-2209d, and amendments thereto,* may establish a

Page 2

1 small employer health benefit plan for the purpose of providing a health

2 benefit plan as described in ~~K.S.A. 40-2244 and 40-2245~~ *subsection (u)*

3 *of K.S.A. 40-2209d, and amendments thereto,* covering such employers'

4 eligible employees and such employees' family members. ~~Small employer~~

5 ~~health benefit plan member employers shall adopt a plan of operation~~

6 ~~providing for the selection of a board of directors and such additional~~

7 ~~provisions necessary or proper for the execution of the plan's purposes.~~

8 ~~Such plan of operation may provide for a delegation of powers and duties~~

9 ~~to a corporation, association or other organization which performs func-~~

10 ~~tions similar to those of the small employer health benefit plan~~ *If an*

11 *association or trust is used for such purposes, the association or trust may*

12 *not condition eligibility or membership on the health status of members or employees.*

13 (b) Employers desiring to ~~organize~~ *offer* a small employer health ben-

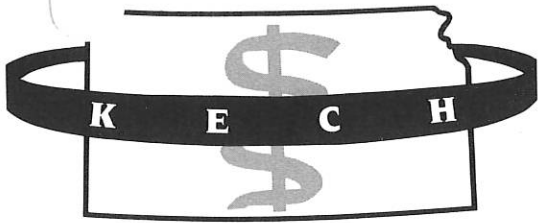
14 efit plan shall notify the commissioner and provide the commissioner with

15 information on the number of employees and family members to be cov-

16 ered by the insurance described in K.S.A. ~~40-2244 and 40-2245~~ *40-2209d,*

17 and amendments thereto. The commissioner shall provide assistance to

8-5



Kansas Employer Coalition on Health, Inc.

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Testimony to House Committee on Insurance

on HB 2090

(Trial period for health insurance mandates)

by James P. Schwartz Jr.
Consulting Director
February 9, 1999

I am Jim Schwartz, director of the Kansas Employer Coalition on Health. The Coalition is over 70 employers across Kansas, and about a third of those groups are small companies.

Early this decade Kansas was in the forefront of states that were trying to do something about the problems of health insurance among small businesses. You tightened the allowable rate variations, and you guaranteed that any small group, regardless of claims experience, could get a quote on a basic employee health plan. About the same time, some measures were written into law (KSA-40-2239 to 2247) to provide incentives for previously uninsured groups to become covered.

Since then two relevant things have happened:

First, the problem of the uninsured has worsened. In 1997 a KU study found that at any one time, 200,000 Kansans are without coverage. National statistics have shown that the number of uninsureds has increased by about one million per year throughout this decade, despite a slowdown in costs for the past five years. That equates to about 10,000 additional uninsured Kansans per year. We also know through several studies that most of the uninsured are in families working for small businesses. About a quarter of small groups in Kansas currently offer no coverage (KECH, July 1998).

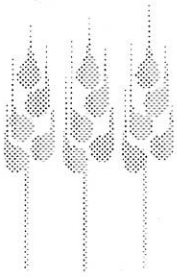
Second, the bill that provided incentives for small groups to become covered was never marketed. As a result it never was applied. Not a single group was affected.

Now that the problem of uninsured small groups is worse than ever, many of us would like to give another try to the incentive concept. The problem with the legislation as currently crafted is that it is too restrictive. The coverage requirements are archaic and far too limited, and the approach to aggregating groups is too narrow.

HB 2090 would open up the coverage provisions, raise the incentive slightly to account for inflation, and nullify the controversial provisions dealing with waivers from state mandates. Basically what we're looking at is a \$35 per employee per month tax credit for small groups that have been uninsured for two years, with that amount declining over a period of five years. There is also a waiver of the premium tax for that period. The bill would also change existing language by applying to any small group insurance product, thus giving the concept the widest possible application.

One technical correction is in order: line 55 should have included the words "health status of" before the word "member." The omission was apparently a typographic error but is significant.

*ATTACHMENT #29
February 9, 1999
House Committee on Insurance*



Kansas Association of Health Plans

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**Testimony before the
House Insurance Committee
The Honorable Robert Tomlinson, Chairman
Hearings on HB 2090
February 9, 1999**

Chairman Tomlinson and members of the committee. Thank you for allowing me to appear before you today. I am Larrie Ann Brown Executive Director of the Kansas Association of Health Plans (KAHP).

The KAHP is a nonprofit association dedicated to providing the public information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations and others who support managed care. KAHP members serve many Kansans.

I am here in support of HB 2090 which offers an incentive for small employers to offer health insurance to their employees. The KAHP is aware of the fact that the number of uninsured is growing in the state of Kansas and this bill seems to be a mechanism to address this problem. The KAHP is supportive of anything that can be done to mitigate the problem of the growing number of uninsured.

Thank you again for allowing me to make comments on this bill and I will be happy to try and answer any questions the committee may have.

*ATTACHMENT #10
February 9, 1999
HOUSE COMMITTEE ON INSURANCE*

BRAD SMOOT

ATTORNEY AT LAW

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**Statement of Brad Smoot, Legislative Counsel
Blue Cross Blue Shield of Kansas
Blue Cross Blue Shield of Kansas City
To
House Insurance Committee
Regarding 1999 House Bill 2090
February 9, 1999**

Blue Cross Blue Shield of Kansas is a not-for-profit mutual insurance company providing health insurance to more than 700,000 Kansans in 103 counties. We are pleased to support House Bill 2090.

When the first small employer health insurance incentive bill was passed in 1990, Blue Cross Blue Shield of Kansas was the first -- possibly the only-- company to develop, file an approved policy and market it to the business community. No one wanted it, probably because of the limited benefit packages. So when the guaranteed issue for small groups law was passed some years later (making all types of benefit packages available), this 1990 law truly became obsolete.

The changes proposed by the Kansas Insurance Department in HB 2090 could revive the concept of encouraging employers to participate in the health insurance market for the benefit of their employees. This new proposal opens up the benefit packages available and increases the income tax credit from \$25 per month per eligible employee to \$35. In addition, employers are not required to form an association or trust in order to benefit from the tax credit.

Whether this is the best effort we can make is unclear. HB 2090 does, however, focus our attention on encouraging more Kansans to seek coverage and contribute to the health insurance pool. It is a positive step. A carrot, not a stick. We encourage you to look favorably on this proposal. Thank you for consideration of our views.

*ATTACHMENT #14
February 9, 1999
House Committee on Insurance*

Smith Insurance Services

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316-942-8805 FAX 316-942-8988 1-888-663-6717

February 11, 1999

Roland E. Smith - Agent

STATEMENT TO: House Committee on Insurance
FROM: Roland E. Smith
SUBJECT: HB 2090

Mr. Chairman and members of the committee, I thank you for the opportunity to comment on HB 2090. I am Roland Smith, an independent insurance agent and owner of Smith Insurance Services in Wichita, Kansas. I specialize in group health insurance for small businesses.

I have been deeply involved in group health insurance for small business issues for many years. I served as Executive Director for the Wichita Independent Business Association for 17 years and retired from WIBA last year. I opened my insurance office in July last year and contracted with WIBA to be the agent of record for the WIBA sponsored health plan which has almost 600 small independent businesses enrolled. Since opening my office I have enrolled a number of small businesses in addition to those in the WIBA sponsored plan.

While in Topeka a couple weeks ago some friends alerted me about their concerns with this bill. After reading the bill I also became quite concerned about what HB 2090 really contained. The wording is complicated and contains many related references. The original concern really started from an error by the revisor's office in the bills wording supplied by the insurance department that left out three words and changed the entire meaning of one paragraph. It was on line 12 page 2 where "health status of" should have been inserted. Also there was serious concern about striking lines 34-36 which appeared to scrap the 50-employee maximum. The insurance department staff assured me that this bill still applied to the employers with 2 to 50 employees. I realized that this bill was a rehash of legislation passed in 1990 or 1991 in an attempt to get more small businesses to have health plans for their employees. I testified against the bill at that time as not being workable and that proved to be the case. This bill is far more workable, but I personally doubt that many small businesses would take advantage of it unless a real concerted effort and expense was made to inform qualifying businesses.

With the help of the Insurance Department staff, Linda De Coursey and Anne Haught, I researched all the details and references contained in HB 2090. As I now understand it, it boils down to providing a method for small businesses with 2 to 50 employees, that has not had a health plan or the employer that has a plan, has not contributed to the employee's premiums for two years, to receive tax credits by applying to the insurance department for a certificate so they can take the credits on their taxes as outlined in the bill.

I have a number of clients that would benefit from the passage of this bill, however I do not support it for philosophical and practical reasons. I do not believe that other taxpayers should subsidize an employer who has not contributed to his employees' health insurance coverage. It will not create more jobs or tax revenues to justify doing it. One of the big problems of government today is so much tax revenue is going to subsidies of all kinds and they have, unfortunately become a way of life in this country.

The effort to have more small employers to provide health insurance for their employees is admirable, but I can not support the effort at the expense of taxpayers, which also include other small businesses that do provide health insurance for their employees.

Thank You! I will be glad to answer any questions.

Group Life, Disability, Dental and Health Insurance
Individual Life, Health and Cancer Insurance

ATTACHMENT #17
February 9, 1999
HOUSE COMMITTEE ON INS.