

Approved: January 20, 1999  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Senator Don Steffes at 9:00 a.m. on January 12, 1999 in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff  
Ken Wilke  
Nikki Feuerborn

Conferees appearing before the committee:

Others attending: (See Attached)

Chairman Steffes welcomed the Committee, staff and audience to the 1999 Session and reviewed the interim activities through a memo (Attachment 1). In reviewing the agenda for this and the following week, the Chair announced that heads of financial regulatory departments would be asked to speak to the Committee and be available for questions during the week of January 19.

The Health Care Commission is reviewing the economic feasibility of including school district employees under the State Health Care Plan reserved presently for state employees. They are to report their findings and recommendations to the House and Senate Insurance Committees by February 1, 1999.

Bill Sneed, representing Reinsurance Association of America, requested the introduction of legislation which would amend the laws governing reinsurance in Kansas (Attachment 2). They are currently working with the Insurance Department on acceptable language.

Senator Praeger moved for the introduction of the legislation proposed by Mr. Sneed. Motion was seconded by Senator Corbin. Motion carried.

Meeting was adjourned at 9:45 a.m. The next meeting is scheduled for January 13, 1999.



REMARKS  
CHAIRMAN DON STEFFES  
FINANCIAL INSTITUTIONS AND INSURANCE  
JANUARY 12, 1999

As on the first day of our meetings during the past two sessions, it may again be of some value to outline some of my thoughts concerning our past years activities and some of the challenges and opportunities which lay before us. Since the Committee has the same membership, it will not be necessary to go through the formality of introductions. However, it is very appropriate to welcome each of you and to express my sincere hope that 1998 was kind to you and add that I personally look forward to this Session, working with each of you.

We do have several new staff members to introduce, but before we do, it is again, with a great deal of relief that I can announce that Dr. Wolff will again be giving us the benefit of his many years of experience in both banking and insurance legislation. He was of immeasurable help during the interim meetings and I will have a few comments on that later. He is the epitome of a great public servant. Obviously, I am also pleased that Nikki will again be serving as our secretary and that is a tremendous benefit to me. We will greatly miss another remarkable public servant, Fred Carman, who passed away during

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Attachment # 1

this past year after a lifetime of service to the State of Kansas. We welcome Ken Wilke to represent the Revisors office and who has already shown himself to be eager to be of assistance. Another new face who will be with us two days a week will be my new intern, Joni Koehler. Many of you will remember Liza Van Meter who did a superb job for two sessions assisting Nikki while attending K State. Like Liza, Joni is from McPherson and is an Honor student. Also like Liza, she was a member of the championship McPherson Debate team and is attending K U on a scholarship. She is working on a double major, one of which is French. Welcome to all of you.

Of course, all of the Committee members have helped me to look "almost" good. At the top of the list is Senator Prager who is a wonderful Vice Chairman and who is really a national expert on many health care matters and, since she did work in the banking industry, is also a real help in this area. Certainly, I greatly appreciate all of the help, advise and assistance which Senator Feliciano has provided me during the past two years. We have accomplished a great deal for the people of Kansas in a very bi-partisan spirit. This same cooperation and spirit was shown by both Senators Barone and Biggs during our rather intense interim meetings. While I am on this subject and before I forget, the three Senators I have just mentioned plus Senator Becker, who also was very helpful, served on this Interim Committee. The degree of cooperation was outstanding and I sincerely appreciate the effort which each of you put into these very important meetings.

As I mentioned, the last years Committees activities were intense as was the prior year. In the 1997 Session our activities seemed to focus on insurance issues and we made remarkable progress. Last year we spent a great deal of time on banking issues. Much of this effort was triggered by the discovery of the use of subsidiary corporations by many banks of Kansas which had a dramatic impact on bank taxation. Of course, of great importance was the bill providing health care to uninsured children. Senator Prager did

much of the work on this important activity and also spent a lot of time this Summer and Fall overseeing the startup of this program. There were many other bills on which we worked, some passed and some did not.

It is with real pleasure that I look forward to working again with Commissioner Sebilus. We will miss Tom Wilder but feel sure that Linda DeCoursey will relay to us the wishes of the Commissioner and I feel certain that Linda will relay back to the Commissioner her impressions of the wishes of the Committee. Tom provided the committee with a very relaxed atmosphere, one of cooperation and good-will, and I know Linda will do the same. The Chairman and the committee members sometimes "picked" on Tom in a spirit of friendship and I hope that we can do the same with Linda.

I am looking forward to a report from the Insurance Commissioner on the progress in response to the Insurance Task Force which took place during the Summer and Fall of 1997. This was an intra-industry group which reached remarkable agreement on several initiatives to help both the people of Kansas and the insurance industry. One of our major goals was to make Kansas an insurance friendly state to encourage the growth of the industry in Kansas. We have heard of some interesting developments and look forward to the Commissioners comments and suggestions on how the legislature can be of assistance.

The Commissioner has delivered to us her proposed legislative agenda for this year. We are eager to start work on it. You will remember some of the massive changes which we have already made. The solution to the huge premium tax liability problem was a real accomplishment. Some of you may recall that this presented Kansas with a potential liability of almost one-half billion dollars. Of course, we had many other major pieces of legislation including the authorization of the demutualization of the insurance companies in

Kansas. We should follow up on this to see what is happening and how the people of Kansas are being affected. It appears to me, however, that the Commissioner has already tackled many of the big problems and now we are in the process of fine-tuning legislation which is of importance to both the regulator and the regulated and the people of Kansas. It is impossible to expect that we will all agree on all of the issues, but if the past is an indication of the future, we will be able to disagree agreeably on these matters when there are differences of opinion. In addition to a report on the progress of the Insurance Task Force recommendations, the Insurance Department agreed to provide a setting for the different interest groups to discuss the very complicated TIAA-Cref issue. I have heard that such a meeting has taken place and I am hopeful that some agreements are being reached.

After the Session was completed last year, I was advised that the Legislative Coordinating Council had assigned the FI & I interim committee several major responsibilities. They directed that the Committee review the Privilege Tax matter, the possibility of a change in the regulatory oversight of the financial regulatory group and also a major review of health care mandates. As you all know the matter of mandates in the health field is an issue which has been with us and will continue to be for many years to come. Last session, we adopted two additional mandates relating to prostate cancer and diabetes.

The LCC gave the committee 12 days to study these matters and make recommendations back to them. The Committee, five Senators and eight Representatives met on eleven days for some very intense discussions and hearings. After we began our meetings, the LCC assigned us an additional topic. This was in regard to the matter of health insurance coverage for school employees. This a major problem and we will be working on that issue during this session.

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Dr. Wolff and his staff prepared four outstanding reports on these four sensitive issues. I would encourage each of you to read and re-read them. It will be very helpful as we go through these issues as this session unfolds. I again compliment the Senate members of the interim meetings for the manner in which they dedicated themselves to listening to the many conferees and then coming together to make recommendations to the LCC. It is my opinion that we will review many of the items which we discussed during this session. I encourage each of the four Senators who were not on the committee to visit with either myself or the Senators who were on the Committee on any specific item.

The Committee first took up the matter of health insurance mandates. I believe that we heard testimony on about ten potential additional mandates. As you all know, these issues are of intense concern to many people and our meetings were crowded. We held the meetings in the Ways and Means room on the first floor and we needed the space. We heard from many conferees. Again, Dr. Wolff did an outstanding job in reviewing these issues from a state and national perspective. Also, we received some very valuable information in regard to the fiscal note on these mandates. The committee came together and recommended two new mandates-breast reconstructive surgery and certain oral dental procedures. Several other mandates received a great deal of support. I feel sure that we will be reviewing several of these this session to get additional information. A major recommendation was adopted which would require that we test new health care mandates on state employees before we require other employers to provide this coverage. Several bills have been prepared for introduction as a result of these interim committee meetings.

A total of seven days were devoted to banking issues. The first four days were devoted to a review of the regulatory oversight process of four financial agencies - banking, credit unions, consumer credit and the securities commission office. Again, Dr.

Wolff did a superb job of researching and reviewing the situation throughout the nation and also the history of this regulatory oversight in Kansas. There was some preliminary thought that Kansas should work toward an umbrella type of agency which is in existence in many states with functional examination of each of the different financial service providers. After much discussion, it was determined that this was an idea whose time had not yet come to Kansas. However, the Committee did recommend to the LCC that a gubernatorial task force be appointed to research all approaches to this regulatory oversight. In all probability, with the rapidity of the changes in the delivery of financial services, this matter will continue to receive a great deal of thought. It is unlikely that all of the states operating under this model are completely wrong and Kansas is completely right.

Probably the most important decision which was made and which was unanimously passed by the committee with very little discussion was the determination that the primary function of regulators and each regulatory agency is that they exist for the public benefit. Since my experience has been primarily in the banking community, it appears to me that it is very easy for bank regulators, who are required to be a banker in Kansas, to become primarily interested in the well-being of the industry which he or she regulates. Further, it was recommended, with both Senate and House member support, including both Republicans and Democrats, that the four financial commissioners be required to spend full time on their job, that they should not be allowed to simultaneously be an employee or have involvement with a firm which they regulate and that the pool of qualified people from which the Governor appoints to these important positions be greatly expanded. In addition, there was support in the committee to consider placing the Consumer Credit department under the jurisdiction of the Banking Department but there was also significant concern that before this could be done there would have to be a major re-structuring of the Bank Board to eliminate the actual or perceived appearance of one financial services



industry regulating their competition. Certainly, if this change were to occur, the background and experience of the Bank Commission would be of great importance. All of these matters will be more thoroughly reported upon, reviewed and discussed in the course of this years Session.

It is my plan that this committee will have several days to discuss these matters and then come to some consensus to develop several bills which address the concerns of the Interim Committee. I strongly doubt that all of the details can be worked out before such bills are introduced but many of the general ideas can be in the bills and then we can attempt to fine-tune them for presentation to the full Senate. Certainly one of the first bills which I would like to again introduce is the "Sunshine" bill which the Senate passed last session and which was not considered by the House. This bill addresses the issuance of Special Orders which caused the major shortfall in the Privilege Tax collections beginning in 1995. All of the these matters will be reviewed in more depth.

We devoted three days to privilege tax matters. As usual, Shirley Sicilian of the Revenue Department did an outstanding job in gathering information for the Committee. She reported that the use of subsidiary corporations by the banks of Kansas during the years of 1995, 1996 and 1997 reduced the banks privilege tax obligations by about 23 million dollars. The reduction in rates initiated by the banking interests of Kansas in 1998 will cause about a 12.5 million dollar reduction in receipts this year for a total reduction of about 36 million dollars up to the end of this year. Of course, the annual reduction will continue indefinitely unless rates are changed back to pre-1998 levels.

It was the determination of the Interim Committee that we should make no recommendation in regard to the privilege tax rates. It was our decision that we should only advise the LCC that we had obtained some very valuable information and that this

should be provided to an appropriate committee for further consideration. It is my opinion that further action on this matter will depend upon whether there is a need for more tax revenue for some specific purpose or a determination as to whether the banking industry was being unfairly taxed in the past or are now benefiting unfairly. As you recall the leadership assigned this tax matter to this committee last year and the idea of requiring consolidated returns was a result of efforts of our committee to close this tax loophole.

Because I felt that at some time in the future, someone might attempt to make an issue of my past association with McPherson Bank and Trust, then Bank IV, then Boatmans, then Nationsbank and now Bankamerica, I advised each of you and all of the world on the first day of each of the last two sessions that Jane and I continue to own stock in the successor bank. We purchased our first shares over 30 years ago and have held it and watched it grow. As you know, this has become an issue and we felt compelled to identify the amount of these shares during our hearings. However, the press did not report that we owe about \$350,000 on this stock to a brokerage firm. All of our stock was purchased at market price and none was inherited. It is truly ridiculous to imply that any action which I might take in Kansas on this Committee would have any significant impact on the value of this stock, our percent of ownership is so infinitesimal. For others involved in this controversy, the press neglected to point out that a 25% ownership of a one hundred and fifty million dollar bank, which could represent controlling shares, is worth significantly more than the value of our stock.

These and many other matters will come before us. I am so pleased that we have an outstanding group of Senators who are also truly interested in serving the people of Kansas. We will not agree on all of the issues, but I feel confident that we will have an honest and open discussion on how we can change things for the better. Our biggest obstacle is the natural resistance to change and certainly, bankers, because of the natural

desire for predictability, are probably their own worst enemy. In all the years I have been involved in Kansas banking activities, I do not know of a single major change which many of them really wanted. They accepted the changes gradually and reluctantly. And the changes have profited many of them greatly. Also, I want to emphasize that it is my sincere desire to help this vital and important part of the Kansas economy. Even though I am accused of it, I am not working for the big banks to the detriment of small banks or for out-of-state banks rather than locally owned banks. The people of Kansas are served best by competition and this can come in many ways. Fortunately, most of the editors of Kansas who have studied this issue are supportive. I hold no animosity toward any of my former banking acquaintances as I feel sure they are of the opinion that they think what they are doing is right and proper and, certainly, in their best interests. However, we should remember and as I pointed out in an interim meeting, the people have no lobbyists. We are their representatives and their lobbyists on these very complicated regulatory and financial issues.

I am looking forward to working with the three commissioners and will actively seek their advice and counsel as we discuss matters relating to the regulatory function of their respective agencies. I feel sure that David Brant, Securities and Consumer Credit Commissioner, Jerel Wright, Credit Union Administrator, and Acting Bank Commissioner Judy Stork will each be of enormous help in providing input to the committee in attempting to come up with ideas to reflect the wishes of the interim committee. We feel confident that they have no conflicts of interest and are primarily interested in the welfare of the people of Kansas and also in the interests of the organizations they regulate. We will have other matters come up which we do not expect.

Also, I am looking forward to working with the new chairman of the House Insurance Committee, Representative Tomlinson, the third House Insurance chairman in

as many years. Chairman Cox of the House Banking Committee and I have already met and I provided him additional information concerning the findings of the Interim Committee in regard to banking matters.

Now, let us begin another productive year, one in which we can look back upon our work with a sense of pride and accomplishment, and if we have a little fun along the way, that's an added benefit. Thanks for your help and friendship.

## MEMORANDUM

TO: The Honorable Don Steffes, Chairman  
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed  
Legislative Counsel  
Reinsurance Association of America

DATE: January 11, 1999

RE: Proposed Legislative Changes to K.S.A. 40-221a and 40-3634

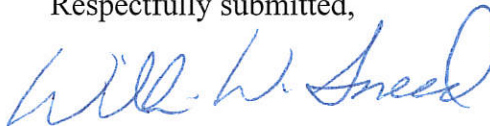
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Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the Reinsurance Association of America ("RAA"). RAA is a trade association representing insurance companies that predominantly sell and service reinsurance, not only in the United States, but throughout the world.

I am here today to request that the Senate Financial Institutions and Insurance Committee introduce amendments to K.S.A. 40-221a and 40-3634, which are two statutes that relate to the laws governing reinsurance in the State of Kansas. We have been working with the Kansas Insurance Department, and we have yet to reach a conclusion as to their position regarding this bill, or if we will have to make changes in order to address any concerns they may have. However, we would like to have this bill introduced, and we will continue our dialogue with the Insurance Department. As soon as appropriate, we will request a hearing on this bill.

On behalf of my client, I respectfully request that this bill be introduced, and I appreciate your assistance. If you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed

**40-221a. Reinsurance of risks of and by Kansas companies.** (a) Any insurance company organized under the laws of this state may (1) with the consent of the commissioner of insurance, cede all of its risks to any other solvent insurance company authorized to transact business in this state or accept all of the risks of any other company, (2) accept all or any part of an individual risk or all or any part of a particular class of risks which it is authorized to insure, and (3) cede all or any part of an individual risk or all or any part of a particular class of risks to another solvent insurer or insurers having the power to accept such reinsurance.

(b) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss and unearned premium reserves on such ceded risks to the extent reinsured by an insurer or insurers authorized to transact business in this state, but such credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken in an amount not exceeding:

(1) The amount of deposits by, and funds withheld from, the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if such deposits or funds are held subject to withdrawal by, and under the control of, the ceding insurer or are placed in trust for such purposes in a bank which is insured by the federal deposit insurance corporation or its successor, if withdrawals from such trust cannot be made without the consent of the ceding company;

(2) the amount of a clean and irrevocable letter of credit issued by a bank which is insured by the federal deposit insurance corporation or its successor if such letter of credit is initially issued for a term of at least one year and by its terms is automatically renewed at each expiration date for at least an additional one-year term unless at least 30 days prior written notice of intention not to renew is given to the ceding company by the issuing bank or the assuming company and provided that such letter of credit is issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under paragraph (1) of this subsection; or

(3) the amount of loss and unearned premium reserves on such ceded risks to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in (b)(3)(D), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liability attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall



maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(A) Such trust must be in a form approved by the commissioner of insurance. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming group or insurer shall be subject to examination as determined by the commissioner. The trust, described herein, must remain in effect for as long as the assuming group or insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(B) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(C) The credit authorized under subsection (b)(3) shall not be allowed unless the assuming group or insurer agrees in the reinsurance agreements:

(i) That in the event of the failure of the assuming group or insurer to perform its obligations under the terms of the reinsurance agreement, the assuming group or insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

(iii) This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation to do so is created in the agreement.

(D) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(i) Is organized, or (in the case of a U.S. branch or agency office of a foreign banking organization) licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(ii) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

The foregoing provisions of paragraphs (1), (2) and (3) of subsection (b) shall not apply to a domestic title insurance company subject to the provisions of K.S.A. 40-1107a and amendments thereto.

(c) *No credit shall be allowed, as an admitted asset or deduction from liability, to ~~any ceding insurer reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must, for~~ reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract(s) reinsured pursuant to express provisions contained in the reinsurance agreement, be payable by the assuming insurer on the basis of reported claims allowed in the liquidation proceedings, subject to court approval, the liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company and any such reinsurance agreement which may be canceled on less than 90 days' notice must provide in the reinsurance agreement for a run-off of the reinsurance in force at the date of cancellation. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (a) where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or (b) where the assuming insurer, with the consent of the direct insured(s), has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.*

*The domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense(s) to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.*

**History:** L. 1965, ch. 296, S. 2; L. 1967, ch. 249, S. 1; L. 1970, ch. 175, S. 1; L. 1974, ch. 185, S. 1; L. 1985, ch. 157, S. 1; L. 1995, ch. 155, S. 1; L. 1996, ch. 78, S. 1; July 1.



40-3634 Recovery from reinsurers

Except as provided in K.S.A. 40-3602 and amendments thereto, in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract(s) reinsured by the assuming insurer on the basis of reported claims allowed in the liquidation proceedings, subject to court approval, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (a) where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or (b) where the assuming insurer, with the consent of the direct insured(s), has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees, the amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of such obligation.