

Approved: March 24, 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 March 17, 1999, in Room 529 S of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Research
Ken Wilke, Office of Revisor
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Bill Sneed, AmVestors
Mark Heitz, AmVestors
Kathleen Sebelius, Commisisoner of Insurance
Margaret Gatewood, Kansas Insurance Department

Others attending: See Attached

Hearing on HB 2266 - Insurance; mutual holding companies' redomestication

Bill Sneed, Legislative Counsel for AmVestors Financial Corporation, explained the bill as being an amendment to a statute passed in 1996 which created guidelines on criteria that a mutual insurance company must meet in order to demutualize (Attachment 1). Mr. Sneed walked the Committee through the organizational structure of mutual insurance companies and the hierarchy of a demutualized insurance company regarding the rights of ownership of policy holders. Current law requires policy holders of demutualized companies to own directly or indirectly 51% or more of the capital stock of the new insurance company. The bill defines the meaning of "51% of the voting stock" as being one share of stock issued by the new stock insurance company to the mutual holding company with that share representing 51% of the voting stock of the company. The stock insurance company can then issue new shares of stock and would not be required to issue additional paper simply to meet a 51% requirement. Equity interest within the company would not be in direct relationship to the voting interest. Mr. Sneed's client initiated this change in Iowa and is requesting identical language in Kansas in order to avoid potential conflict should AmerUs Life Holdings, Inc. decide to attempt redomestication in Kansas.

Commissioner Sebelius stated that policy holders in mutual companies have always had the right to vote and own part of the equity of the company (Attachment 2). She reminded the Committee that the Commissioner retains jurisdiction over any mutual holding company or stock holding company organized to assure that policy holder interests are protected. The passage of this proposed legislation would alter her ability to protect Kansas policy holders by allowing the separation of policy holder's economic value in the company and their voting rights i.e., policy holder can help elect the Board of Directors but stockholders receive the dividends. She presented an amendment which would codify the Legislature's policy of recognizing policy holder's ownership rights. Commissioner Sebelius expressed concern that AmVestor had not discussed this proposed legislation before the Session began in January nor had they been a player in the development of legislation in 1996 regarding demutualization. The Commissioner's greatest concern appeared to be that demutualization might enrich officers and directors of the company through shifting dividends away from policy holders.

Margaret Gatewood, KID, said two Boards of Directors may be necessary for demutualized companies if this bill is passed: one for the stock holders and one for the policy holders.

Mark Heitz, AmVestors, explained their lack of participation in the 1996 legislation because at that point they were a stock company but have since been purchased by a mutual company in Iowa. AmerUs may wish to redomesticate to Kansas and the Commissioner's amendment would "gut" the AmVestor provision. Mutual holding companies need capital to grow and this is the only way they can accomplish this goal.

Written testimony supporting the bill was presented by Dave Hanson, Kansas Life Insurance Association (Attachment 3).

The hearing was continued until March 18, 1999.

Senator Becker moved for approval of the minutes of March 16, 1999. Motion seconded by Senator Corbin. The motion carried. The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for March 18.

SENATE FINANCIAL INSTITUTIONS AND INSURANCE
COMMITTEE GUEST LIST

DATE: 3/11/99

NAME	REPRESENTING
Trish Heim	Security Benefit
John Mugler	AmVestors Financial
Bill Sreed	AmVestors
David Hanson	Ks Life Insur Assn
MARK HEITZ	AmVESTORS
Paul Davis	Kansas Insurance Dept.
Rebecca Sanders	Kansas Insurance Dept
Margaret M. Sanders	KID
Brian Malin	Perman
Ken Am Byg	—
Commissioner Schelmer	
R. Luan Lee Coursey	
Lori Callahan	Kanaco
Halter	attny @ KID
Paul Curtis	
Frankie	

MEMORANDUM

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

FROM: Bill Sneed, Legislative Counsel
AmVestors Financial Corporation
American Investors Life Insurance Company

DATE: March 17, 1999

RE: H.B. 2266

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I appear today on behalf of AmVestors Financial Corporation and its subsidiary, American Investors Life Insurance Company. We appreciate the opportunity to appear before you today to support H.B. 2266.

H.B. 2266 is an amendment to K.S.A. 40-4003a. K.S.A. 40-4003a is part of the statutory structure relating to the demutualization of an insurance company. Two years ago, the legislature amended current Kansas law and created highly sophisticated statutory guidelines on criteria that a mutual insurance company must meet in order to demutualize.

In a nutshell, a mutual insurance company is "owned" by its policyholders. In order to partake of the capital markets to raise money, the statutes have provided a mechanism whereby the company can demutualize and create a new entity that has capital stock.

As a protection to the policyholders, Kansas law requires that the policyholders who will be members of the new mutual holding company must own, directly or indirectly, 51% or more of the capital stock of the new stock insurance company.

As we previously testified on H.B. 2280, my client is currently owned by a mutual holding company. Inasmuch as they are considering moving the mutual holding company from Iowa to Kansas, we have requested that the legislature make a technical change so that our law is identical to the Iowa law. As a side note, when Kansas created the mutual holding company act two years ago, it utilized Iowa law as its benchmark.

The technical change is found on page five, lines 20-24. This is simply a definition of what "51% of the voting stock" means as it relates to the mutual holding company. Commonly referred to as the "golden share rule," this allows a mutual holding company to issue one share of stock from the new stock insurance company to the mutual holding company, and that certificate will represent 51% of the voting stock of the company. Thereafter, the stock insurance company can issue new shares of stock and would not be required to issue additional paper simply to meet a 51% requirement.

This is consistent with Kansas law and has been followed by the Kansas Insurance Department in the most recent mutualization. However, since my client has had this changed in Iowa, and in order to avoid any potential conflict, they have requested to have the identical language in Kansas law. Thus, we believe the proposed amendment does not change any substantive law.

We look at this proposal as an additional effort at economic development. When the original Mutual Holding Company Act was passed by the Kansas Legislature, it came after the summer interim meetings that reviewed various insurance laws that could be changed to increase the viability of Kansas as a good home for insurance companies and their policyholders. As was the case when the original law was passed, we believe this amendment will assist in the likelihood of

AmerUs redomesticating its holding company from Iowa to Kansas. Additionally, this bill passed the House 98-26.

We respectfully request your favorable consideration of this bill. If you have any questions regarding this, please feel free to contact me.

Respectfully submitted,



William W. Sneed



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen Sebelius, Insurance Commissioner

RE: HB 2266 – Mutual Holding Companies – Definition of Voting Stock

DATE: March 17, 1999

Mr. Chairman and members of the Committee:

I am appearing today to oppose HB 2266, because I believe it changes the fundamental balance that I supported with the original passage two years ago of a mutual holding company act. K.S.A. 40-4003a(c)(12) provides that the "commissioner shall retain jurisdiction over any mutual holding company or stock holding company organized to assure that policyholder interests are protected." The most significant revision that H.B. 2266 makes to the mutual holding company law is to include a definition of the phrase "at least 51% of the voting stock" that appears throughout K.S.A.40-4403a. I think passage of this law would be a serious departure from the original intent of the legislation and would dramatically alter my ability to protect Kansas policyholders.

Background

There has always been a fundamental difference between a "mutual insurance company" and a "stock insurance company". In mutual companies, policyholders not only received insurance protection, they also owned the company, including all the equity interests. In a stock

company, the policyholder bought an insurance product for a premium, and had rights to be paid when a loss occurred. But, stockholders owned the equity of the company, and enjoyed the profits and suffered the losses of business practices.

In 1985, the Kansas Legislature enacted laws setting out the procedure by which a mutual insurance company, having voted to demutualize,(either go out of business or become a stock company), would compensate each policyholder for the economic value of his or her proportionate ownership rights. Those ownership rights consisted of the right to vote on the management of the company and a share of the economic value of the company.

The Committee on Financial Institutions and Insurance worked hard in 1997 on the creation of another corporate alternative for mutual insurance companies. The Mutual Holding Company Act, K.S.A. 40-4001, et seq., allows for three alternative methods of demutualization which permits the reorganization of a mutual company into a to mutual holding company structure.

The Legislature and the Kansas Department of Insurance were concerned that a balance be maintained between the company's interest in accessing additional capital, and the ownership rights of the mutual policyholders. That's why the 51% formula was developed in Kansas and other states which have approved this new entity, to make sure that the original policyowners maintained majority control of voting shares of the new holding company and any downstream subsidiaries.

In 1997, Kansas was one of 11 states to add a mutual holding company law. Currently over 20 states allow an alternative mechanism of demutualization. Most states recognized that interests of the outside stockholders and those of policyholders may at times be in conflict, and while recognizing the economic pressures of the marketplace, felt it was good public policy to design a formula for distribution of future equity and voting rights which protected the original

owners. The 1997 law reaffirmed the 1985 intent of the Legislature, with regard to mutual policyholders, and is consistent with the original distinction between mutual policyholders and stock company policyholders.

What HB 2266 does

This bill provides a definition of the "51% principal" which fundamentally changes the original intent of the legislation in that it allows for the separation of policyholders' economic value in the company and their voting rights. The new definition says that the original policyholders will always have 51% of the voting rights, but does not give them a guarantee to 51% of the equity right in the new company. Stated another way, if you owned IBM stock and you have only voting rights, you can help elect the Board of Directors, but stockholders could get your dividends.

Regulating

K.S.A. 40-4001 states: "because it is not possible to anticipate all the circumstances and considerations which may arise incidental to a conversion from a mutual insurer to a stock insurer, the Commissioner has broad authority in review of such conversion, and the procedure and criteria to be applied by the Commissioner are flexible within the parameters of this act."

It is clear that the Legislature envisioned mutual insurer conversion as an ongoing and evolving process with "broad authority" left with the Insurance Commissioner to review the various stages of conversion. While HB 2266 doesn't change the review steps in the process, it does change the standard of fairness to policyholders. My ability to deny a transaction that isn't fair to policyholders will be seriously hampered by changing the long-standing legislative policy.

The review of this relatively new statute has prompted us to offer the following amendment on page five line 24: “and the right to receive a proportionate share, but not less than 51% of any dividends or other value distributed to shareholders. The shareholders of a mutual holding company shall never hold anything less than 51% of the voting and controlling stock and shall retain at all times at least 51% of the economic value of the mutual holding company, the intermediate holding company, and any downstream stock insurers.”

With the suggested amendment, I believe, HB2266 helps codify the Legislature’s longstanding policy of recognizing that policyholder’s ownership rights are to remain with the policyholder.

We would urge the Committee to either leave the current statute alone, or to support the bill with Insurance Department amendment. The critical balance of owner/policyholder rights with capital interests is protected with either decision. Passage of HB2266 with the suggested industry amendments, substantially alters the long-standing public policy which protect mutual policyholders in Kansas.

Thank you for your consideration and I will be happy to answer questions.

HOUSE BILL No. 2266
By Committee on Insurance
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1 may:

2 (A) Merge or consolidate with, or acquire the assets of, a mutual
3 holding company;

4 (B) together with its converted insurer subsidiary, merge or consoli-
5 date with or acquire the assets of any other insurer; or

6 (C) engage in any other merger, consolidation or acquisition trans-
7 action which may be approved by the commissioner;

8 (10) a member of a mutual holding company is not, as a member,
9 personally liable for the acts, debts, liabilities or obligations of such com-
10 pany. No assessment of any kind may be imposed upon the members of
11 a mutual holding company by the board of directors, members or credi-
12 tors of such company or because of any liability of any company owned
13 or controlled by the mutual holding company or because of any act, debt
14 or liability of the mutual holding company;

15 (11) a membership interest in a mutual holding company shall not
16 constitute a security under the laws of this state; and

17 (12) the commissioner shall retain jurisdiction over any mutual hold-
18 ing company or stock holding company organized pursuant to this section
19 to assure that policyholder interests are protected; and

20 (13) as used in this section, "at least 51% of the voting stock" means
21 shares of the capital stock which carry the right to cast a majority of the
22 votes entitled to be cast by all of the outstanding shares of capital stock
23 of the company for the election of directors and on all other matters sub-
24 mitted to a vote of the shareholders of the company.

25 (d) Plan of conversion in which policyholders exchange their mem-
26 bership interests for an option to purchase a proportionate amount of
27 stock in the converted company.

28 A mutual insurer seeking to convert pursuant to this subsection may
29 do so by filing a plan of conversion containing:

30 (1) A description of any amendments to the insurer's articles of in-
31 corporation to effect a conversion from a mutual corporation into a stock
32 corporation. Any other amendments proposed for the articles of incor-
33 poration shall be set forth in the plan.

34 (2) The establishment of a conversion value, as of the calendar quar-
35 ter ending immediately preceding the date of the adoption of the reso-
36 lution specified in subsection (a) of K.S.A. 40-4002, and amendments
37 thereto. The conversion value shall be equal to the company's policyhol-
38 ders' surplus, determined in accordance with the statutory method of
39 accounting used in preparing the last annual statement filed with the
40 commissioner of insurance. The insurer shall submit a list of qualified
41 disinterested appraisers, from which the commissioner shall appoint one
42 or more such appraisers, who shall establish the conversion value in ac-
43 cordance with the above procedure.

along with the right to receive a proportionate share, but not less than 51%, of any dividends or other value distributed to shareholders. The shareholders of a mutual insurance company never hold anything less than 51% of the voting and controlling stock and shall retain at all times at least 51% of the economic value of the mutual insurance holding company, the intermediate holding company and any downstream stock insurers.

Kansas Life Insurance Association

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

TELEPHONE (785) 232-0545
FAX (785) 232-0005

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE

Re: HB 2266

March 17, 1999

Mr. Chairman and Members of the Committee:

The Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas, would like to express its support for House Bill 2266. We believe this bill will help clarify existing law in Kansas and will help encourage insurers, including mutual holding companies, to consider redomesticating in Kansas.

We would, therefore, urge your favorable consideration of this bill.

Respectfully,



DAVID A. HANSON

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Member Companies

American Investors Life Insurance Company, Topeka
American Home Life Insurance Company, Topeka
Employers Reassurance Corporation, Overland Park
Kansas Blue Cross/Blue Shield, Topeka

Kansas Farm Bureau Life Insurance Company, Manhattan
The Pyramid Life Ins'
Security Benef Senate Financial Institutions & Insurance

Date 3/17/99

Attachment # 3