

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 3:30 p.m. on March 9, 2000 in Room 527-S of the Capitol.

All members were present except: Representative Hummerickhouse
Representative Boston
Representative Burroughs

Committee staff present: Dr. Bill Wolff, Research
Ken Wilke, Revisor
Mary Best, Secretary

Conferees appearing before the committee: Linda DeCoursey, Kansas Insurance Department
David Hanson, Kansas Insurance Associations

Others attending: See attached Committee Guest List

SB 574-Insurance; Risk-based capital requirements

With committee announcements having been made and the committee having been made aware of the possibility of special meetings being held, the Chairman called the committee's attention to the balloon (Attachment #1) which is attached hereto and incorporated into the Minutes by reference, which was being offered on **SB 574**. Revisor Ken Wilke, addressed the committee in regards to lines 27 to 29, where there was an oversight in the language. *The words marketed, promoted, advertised and otherwise were to be deleted.*

He then referred to page 2, line 24, where the phrase "a pharmacy registered with the state board of pharmacy," to be inserted between "...macy, and a dentist". Mr. Wilke, the Insurance Department and the Pharmacists Association were in agreement with the language and had worked closely to correct this problem. The balloon went to the committee, and a motion was made by Representativeto accept the balloon. The motion was seconded by Representative Phelps and a vote was taken from the committee. The balloon was unanimously accepted. The Chair then returned to the committee for any further discussion on the bill. Representative Kirk also, at that time offered her balloon to the bill (Attachment #2). A copy of her bill is attached hereto and incorporated into the Minutes by reference. Representative Kirk made the motion to accept her balloon into the bill, and Representative Showalter seconded the motion. As the balloon had not been discussed with the Pharmacists Association or the Kansas Insurance Department, a few moments were taken for everyone to quickly read the balloon. Representative Kirks' balloon added a new privacy section to the bill. Discussions on the bill were held with Representatives Myers, Kirk, and Chairman Tomlinson, with Revisor Ken Wilke responding. Representative Showalter offered changes to the balloon, and the Chairman directed a question to Representative Kirk on check casking cards being used to pay for pharmaceutical supplies and keeping information private. Representative Jenkins posed a question regarding third party liability and Representative Kirk again addressed the need for privacy. Finally the motion was recognized, a vote was taken and the amendment was accepted. Back on the bill, Representative Kirk moved to report SB 574 amended and scheduled for passage. The motion was seconded by Representative Myers. The motion passed with one no vote.

SB440-Insurance; Risk-based capital requirements.

With this business completed the Chairman then recognized Ms. Linda DeCoursey. Ms. DeCoursey, Kansas Insurance Department, presented Proponent Testimony to the committee on **SB440**. A copy of the testimony is (Attachment #3) attached hereto and incorporated into the Minutes by reference. Ms. DeCoursey gave an overview of the bill and explained the change, "to the law dealing with filing of financial reports by insurance companies with the Department." She explained that meaning of risk based capital ("RBC"), which is defined as "a method used by the Department to evaluate the financial solvency of insurance carriers doing business in this state." Companies file financial reports with the Department following the formulas and instructions set down by the National Association of Insurance Commissioners. These formulas are changed annually by the National Association to reflect the continually changing accounting procedures.

Ms. DeCoursey informed the committee the bill also struck the language "and adopted as rules and regulations by the Commissioner." She explained the Commissioner had not adopted the rules from the Federal Association, as she felt that since the Insurance Department came before the committee each year and requested the insertion of a new date there was no reason to adopt their program. She stated that no company or individual had ever requested a copy of the Federal instructions from their office, so the Commissioner saw no reason to take on their rules and/or duplicate our own. The Department asked the committee for favorable passage of the bill and Ms. DeCoursey stood for questions. The only question came from Representative Myers.

The next conferee to be recognized by the Chairman was Mr. David Hanson, Kansas Insurance Associations. Mr. Hanson also spoke favorably to the bill and a copy of his testimony is (Attachment # 4) attached hereto and incorporated into the Minutes by reference. Mr. Hanson stated the bill allowed for the Department of Insurance to check on all or any of the companies doing business in Kansas, but that the companies are not under total control of the Department. He informed the committee that his organization "had requested the reference date in the statutory definition of "RBC instructions" to make sure that the adopted instructions and formula were limited to those that we had had an opportunity to review, rather than potential future revisions, which could adversely affect our companies' risk-based capital and the resulting action or control levels." He completed his testimony by relating to the committee that his companies had been reviewing the proposed changes to the bill and saw no adverse effect from these changes. Mr. Hanson then stood for questions.

Representative Kirk asked about knowledge of any companies under supervision. Mr. Hanson related there were none to his knowledge. With this the public hearings on **SB 440** were closed.

Representative Cox made the motion to place the bill on consent calendar and the motion was seconded by Representative Phelps. The committee vote was taken and the motion passed.

With no further business, the meeting was adjourned. The time 4:18 p.m.

The next committee meeting will be held March 14, 2000, at 3:30 p.m.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: March 9, 2000

NAME	REPRESENTING
David Hanson	Ks Insur Assoc
Carrie Donovan	KAAIA
Pat Morris	KAAIA
Kevin BARONE	Henn/Weir Chrt'd
Linda McLawrence	KS Insurance Dept
Darin Couklin	KS. Pharm. Assoc.
Larrie Ann Lower	KAHP

SENATE BILL No. 574

By Committee on Financial Institutions and Insurance

2-7

9 AN ACT concerning insurance; relating to deceptive practices involving
10 discount cards.

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

13 Section 1. As used in this act:

14 (a) "Discount card" means a card or any other purchasing mechanism
15 or device, which is not insurance, that purports to offer discounts or access
16 to discounts in health-related purchases from health care providers.

17 (b) "Health care provider" means any person licensed to practice any
18 branch of the healing arts by the state board of healing arts, any person
19 who holds a temporary permit to practice any branch of the healing arts
20 issued by the state board of healing arts, a medical care facility licensed
21 by the department of health and environment, a podiatrist licensed by
22 the state board of healing arts, an optometrist licensed by the board of
23 examiners in optometry, a pharmacist licensed by the state board of phar-
24 macy, a dentist licensed by the Kansas dental board, a respiratory thera-
25 apist, a professional corporation organized pursuant to the professional
26 corporation law of Kansas by persons who are authorized by such law to
27 form such a corporation and who are health care providers as defined by
28 this subsection, a Kansas limited liability company organized for the pur-
29 pose of rendering professional services by its members who are health
30 care providers as defined by this subsection and who are legally author-
31 ized to render the professional services for which the limited liability
32 company is organized, a partnership of persons who are health care pro-
33 viders under this subsection, a Kansas not-for-profit corporation organ-
34 ized for the purpose of rendering professional services by persons who
35 are health care providers as defined by this subsection.

36 (c) "Person" means an individual, corporation, business trust, estate,
37 trust, partnership, association, joint venture, limited liability company,
38 government, government subdivision or agency or any other legal, gov-
39 ernmental or commercial entity.

40 Sec. 2. It shall be unlawful for any person to sell, market, promote,
41 advertise or otherwise distribute any discount card where:

42 (a) The discount card does not expressly state in bold and prominent
43 type that such discount is not insurance;

a pharmacy registered with the state board of pharmacy,

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1 (b) any discount offered by such discount card is not specifically au-
2 thorized by a separate contract with each health care provider listed in
3 conjunction with the discount card; or

4 (c) the discount or range of discounts offered by such discount card
5 or the access to any range of discounts offered by such discount card are
6 misleading, deceptive or fraudulent, regardless of the literal wording used
7 on such discount card.

8 Sec. 3. (a) Any person may maintain an action to enjoin any violation
9 of this act, for the recovery of damages or both.

10 (b) Any person subject to liability under this act shall be deemed, as
11 a matter of law, to have conducted business or activities within the state
12 of Kansas sufficient to subject such person to the personal jurisdiction of
13 any court in this state.

14 (c) An action for violation of this act may be brought:

15 (1) In the county where the plaintiff resides;

16 (2) in the county where the plaintiff conducts business; or

17 (3) in any county where the discount card was sold, marketed, pro-
18 moted, advertised or otherwise distributed.

19 (d) (1) If the court shall find that the defendant is violating or has
20 violated any provision of this act, the court shall enjoin the defendant
21 from such violation or any continuation thereof.

22 (2) Except as required for the recovery of actual damages under
23 clause (B) of paragraph (3) of subsection (d), it shall not be necessary in
24 any such action, that actual damage to the plaintiff be alleged or proved.

25 (3) In addition to injunctive relief, the plaintiff in the action shall be
26 entitled to recover from the defendant:

27 (A) An amount equal to \$100 per discount card sold, marketed, pro-
28 moted, advertised or otherwise distributed within the state of Kansas, or
29 \$10,000, whichever is greater;

30 (B) three times the amount of the actual damages, if any, sustained;

31 (C) reasonable attorney's fees;

32 (D) costs; and

33 (E) any other relief which the court deems proper.

34 (e) All actions under this act shall be commenced within two years
35 after the date on which the violation occurred or within two years after
36 the person bringing the action discovered, or in the exercise of reasonable
37 diligence, should have discovered, the occurrence of the violation of this
38 act. The period of limitation provided in this section may be extended for
39 a period of 180 days if the person bringing the action proves by a pre-
40 ponderance of the evidence that the failure to timely commence the ac-
41 tion was caused by the defendant engaging in conduct solely calculated
42 to induce the plaintiff to refrain from or postpone the commencement of
43 the action

- 1 (f) The remedies prescribed in this section are cumulative and in
- 2 addition to any other applicable criminal, civil or administrative penalties.
- 3 Sec. 4. Any person who sells, markets, promotes, advertises or oth-
- 4 erwise distributes any discount card in Kansas shall designate a resident
- 5 agent, who is a resident of Kansas, for service of process and such resident
- 6 agent shall register with the secretary of state.
- 7 Sec. 5. If any provision of this act or the application to any person
- 8 or circumstances is held invalid, the validity of such provision to other
- 9 persons and circumstances shall not be affected thereby.
- 10 Sec. 6. This act shall take effect and be in force from and after its
- 11 publication in the statute book.

SENATE BILL No. 574

By Committee on Financial Institutions and Insurance

2-7

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26 corporation law of Kansas by persons who are authorized by such law to
27 form such a corporation and who are health care providers as defined by
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29 pose of rendering professional services by its members who are health
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1 (b) any discount offered by such discount card is not specifically au-
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5 or the access to any range of discounts offered by such discount card are
6 misleading, deceptive or fraudulent, regardless of the literal wording used
7 on such discount card.

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9 of this act, for the recovery of damages or both.

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12 of Kansas sufficient to subject such person to the personal jurisdiction of
13 any court in this state.

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23 clause (B) of paragraph (3) of subsection (d), it shall not be necessary in
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37 diligence, should have discovered, the occurrence of the violation of this
38 act. The period of limitation provided in this section may be extended for
39 a period of 180 days if the person bringing the action proves by a pre-
40 ponderance of the evidence that the failure to timely commence the ac-
41 tion was caused by the defendant engaging in conduct solely calculated
42 to induce the plaintiff to refrain from or postpone the commencement of
43 the action

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1 (f) The remedies prescribed in this section are cumulative and in
2 addition to any other applicable criminal, civil or administrative penalties.

5 3 Sec. 4. Any person who sells, markets, promotes, advertises or oth-
4 erwise distributes any discount card in Kansas shall designate a resident
5 agent, who is a resident of Kansas, for service of process and such resident
6 agent shall register with the secretary of state.

6 7 Sec. 5. If any provision of this act or the application to any person
8 or circumstances is held invalid, the validity of such provision to other
9 persons and circumstances shall not be affected thereby.

7 10 Sec. 6. This act shall take effect and be in force from and after its
11 publication in the statute book.

New Sec. 4. (a) Except as required by subsection (b), no person shall disclose, sell, transmit or convey any personal or health related information which pertains to any individual who uses or has been issued a discount card.

(b) Any person who provides to the holder or user of a discount card any discount or access to a discount in conjunction with a health-related purchase from a health care provider may transmit to the issuer of the discount card only such personal or health related information pertaining to the holder or user of the discount card as is necessary to provide any benefit under the discount card.

(c) For the purposes of this section, the term "personal information" means an individual's name, address telephone number, e-mail address and any other information which identifies such individual.

(d) For the purposes of this section, the term "health related information" means any information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to:

- (1) The past, present or future physical, mental or behavioral health or condition of an individual or a member of the individual's family;
- (2) the provision of health care to an individual;
- (3) information prescription drugs that have been prescribed for the holder or user of a discount card; or
- (4) payment for the provision of health care to an individual.

(e) A violation of this section is a class A nonperson misdemeanor.

(f) In addition to such criminal penalty under subsection (e), any person who is convicted of any violation of this act shall be prohibited from conducting any further business of any kind in the state of Kansas.



Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

TO: House Committee on Insurance
FROM: Linda J. De Coursey, Director of Government Affairs
RE: S.B. 440 (Risk Based Capital)
DATE: March 9, 2000

Mr. Chairman and members of the Insurance Committee:

I am appearing in support of Senate Bill 440, which was introduced at the request of the Kansas Department of Insurance. This bill makes a change to the law dealing with the filing of financial reports by insurance companies with the Department.

Risk based capital ("RBC") is the method used by the Department to evaluate the financial solvency of insurance carriers doing business in this state. Companies must file financial reports with the Department using RBC instructions and formulas developed by the National Association of Insurance Commissioners ("NAIC"). These instructions are amended each year by the NAIC to reflect changes in accounting procedures.

Our current law (K.S.A. 1999 Supp. 40-2c01) requires companies to use the 1998 version of the RBC instructions. The bill would reflect a change in the date of the standard so that carriers use the RBC formulas in effect as of December 31, 1999.

The bill also strikes the language "and adopted as rules and regulations by the Commissioner." The Insurance Department has not adopted the RBC formulas as rules and regulations in the past, and does not think there is a need to do that, if in fact, we come before you every year and insert the new date. We do not think that by merely defining where the RBC instructions come from in any way defers Kansas law to the National Association of Insurance Commissioners (NAIC). Insurance Department staff indicates that no company or individual has ever requested from the Insurance Department a copy of these instructions, and that to adopt them even by reference just isn't necessary, and even duplicative.

I respectfully ask that this committee approve S.B. 440 favorably for passage.

KANSAS INSURANCE ASSOCIATIONS

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800 S.W. Jackson
Topeka, Kansas 66612-1259

PHONE 785-232-0545
FAX 785-232-0005

Kansas Association of Property & Casualty Insurance Cos.

Member Companies:

Armed Forces Insurance Exchange
Ft. Leavenworth

Bremen Farmers Mutual Ins. Co.
Bremen

Columbia Insurance Group
Salina

Farm Bureau Mutual Ins. Co.
Manhattan

Farmers Alliance Mutual Ins. Co.
McPherson

Farmers Mutual Ins. Co.
Ellinwood

Kansas Mutual Ins. Co.
Topeka

Marysville Mutual Ins. Co.
Marysville

Mutual Aid Assn. of the
Church of the Brethren
Abilene

Upland Mutual Ins., Inc.
Chapman

House Insurance Committee Testimony on Senate Bill 440 Presented by David A. Hanson on behalf of Kansas Insurance Associations March 9, 2000

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas.

The risk based capital provisions referenced in Senate Bill 440 were developed by the NAIC for adoption and use by the states as a standardized method of monitoring the solvency of insurers and the need for corrective action. We had requested the reference date in the statutory definition of "RBC instructions" to make sure that the adopted instructions and formula were limited to those that we had had an opportunity to review, rather than potential future revisions, which could adversely affect our companies' risk-based capital and the resulting action or control levels. While we believe our companies' remain in good standing under the previously adopted NAIC instructions and formula, we also believe any significant changes in those instructions and formula by the NAIC should be carefully considered before adopting them in Kansas.

Our companies have been reviewing the proposed changes and we do not believe there will be any substantial adverse effect from the revisions proposed in Senate Bill 440. Thank you for your consideration.

Respectfully,



DAVID A. HANSON

Kansas Life Insurance Association

Member Companies:

The American Home Life Ins. Co.
Topeka

American Investors Life Ins. Co.
Topeka

Blue Cross & Blue Shield of
Kansas
Topeka

Employers Reinsurance Corp.
Overland Park

First Life America Corporation
Topeka

Kansas Farm Bureau Life Ins. Co.
Manhattan

The Pyramid Life Insurance Co.
Shawnee Mission

Security Benefit Life Ins. Co.
Topeka