

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Rep. Robert Tomlinson at 4:30 p.m. on February 14, 2001 in Room 313-S of the Capitol.

All members were present except: Representative Carlos Mayans
Representative Gene O'Brien
Representative Ralph Ostmeyer
Representative Bonnie Sharp
Representative Jene Vickery

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

Conferees appearing before the committee: Commissioner Kathleen Sebelius, Kansas Insurance Dept.
Mr. Matthew All, Kansas Insurance Department
Mr. Brad Smoot, American Insurance Association
Blue Cross/Blue Shield and of Kansas City
Ms. Larry Ann Lower, Kansas Association of Health Plans
Mr. John Peterson, Security Benefit Group
Mr. David Hanson, National Association of Independent Insurers
Mr. Lee Wright, Farmers Insurance
Mr. Kevin Davis, American Family Insurance

Others attending: See Attached Guest List

The hearing scheduled was on **HB 2480**-Adoption of model regulations concerning privacy of financial health information of consumers. The power-point presentation was set up and the first conferee was recognized by the Chairman. Commissioner Sebelius spoke without written testimony giving an overview of the bill. She then recognized Mr. Matt All, of the Kansas Insurance Department. Mr. All's Proponent Testimony was with power-point and a written copy of this testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Mr. All explained the bill would allow the Insurance Department to "adopt strong, effective, privacy standards to protect consumers financial and health information from disclosures by insurance companies. He stated the statute was translated into insurance language and it was then determined it was necessary to be sure all people who used insurance products regardless of the kind or purpose (household, personal, family etc) needed to be included. This would also include beneficiaries. He continued on to state that the Model Regulation bill was passed unanimously by all insurance commissioners and mirrored Title V and the federal regulation for financial information. He stated that the Model offered more protection for health information. It requires companies to obtain, in advance, the consumers consent if the are going to disclose personal information outside of the broad realm of business and functional exceptions. The Model provides an "opt-out" notice to the consumers, if the insured is going to disclose personal information about the consumer. Mr. All discussed the Gramm-Leach-Bliley Act, 1999. He explained that health and financial information is to be protected.

Mr. All explained that the Model Regulation is to bring uniformity state to state, be generally uniform with the federal regulation, translate the Title V program into language real and understandable by the insurance industry, and "provide enhanced protection for health information, since insurers, unlike banks, are likely to have health information." He related to the committee that Congress made Title 5 a "federal floor", allowing states to enact provisions for privacy on their own, as long as those provisions offer as much or more protection to the consumer than Title V does. Mr. All then explained why the Insurance Department felt this bill should be passed. They believe very simply put that Kansans need it and deserve it. They feel this is the only way to developing uniform privacy standards from one state to the next. They feel it offers balance between consumers and realities doing business in the insurance market. Mr. All stood for questions. There were none.

Mr. Brad Smoot, representing Blue Cross Blue Shield of Kansas, and the American Insurance Association, was the next conferee to come to the committee with Proponent Testimony. A copy of the testimony is (Attachment #'s 2 & 3) attached hereto and incorporated into the Minutes by reference. Mr. Smoot stated his companies agreed with and supported the NAIC model privacy regulation and felt this was the best way to uniformity within all of the states. They applaud the Committee and the KID for their work in developing the privacy implementation schedule in the bill. Mr. Smoot stood for questions. A question was asked by Representative Kirk.

Ms. Larry Ann Lower, Kansas Association of Health Plans, gave Proponent Testimony to the committee next. A copy of the testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference. Ms. Lower informed the committee that her clients approved the bill and greatly supported it. Ms. Lower represents the HMO's of Kansas, and that they have already begun the process of bringing themselves into compliance with regulations. She stood for questions. A question was asked by Representative Kirk.

Representative Jim Garner, Mr. Roger Viola, Security Benefit Life Insurance Company, by way of Mr. John Peterson, and Ms. Chris Collins, Kansas Medical Society, each gave written testimony only to the committee in support of the bill. Their Proponent Testimony is (Attachment #'s 5,6,7) attached hereto and incorporated into the Minutes by reference.

Mr. David Hanson, National Association of Independent Insurers, offered Opponent Testimony on behalf of Ann Weber, Counsel, Des Plaines, Ill. A copy of the testimony is (Attachment #8) attached hereto and incorporated into the Minutes by reference. Mr. Hanson related to the committee the concerns had by the NAI. They do not feel the GLB includes health information and therefore does not need any action by any of the states now. They feel the regulations are inconsistent with and required for compliance with GLB. They feel it could result in dual compliance standards in the insurance industry regarding property and casualty insurers. They also feel it can bring about confusion and frustration for the consumer. He stated that many of the businesses property/casualty companies do business with fall under federal regulation. They feel to be made to follow these regulations will be costly to the insurers and that cost will be passed on to the consumer. They also pointed out that GLB excludes workers' compensation since it is a limited coverage. They feel this will subject carriers and businesses to new privacy practices and procedures.

Mr. Hansen continued on to relate that they felt the model may create new producer liability, and that "consumer" is a broad enough base to include third party claimants. Mr. Hanson summarized the testimony for the committee and stood for questions. Chairman Tomlinson, Representatives Huff, and Kirk had questions for Mr. Hanson.

Mr. Lee Wright, Farmers Insurance, gave Opponent Testimony. A copy of the testimony is (Attachment #9) attached hereto and incorporated into the Minutes by reference. Mr. Wright supported Mr. Hanson's testimony. There were no questions.

Mr. Kevin Davis, American Family Insurance offered written testimony only. A copy of the testimony is (Attachment #10) attached hereto and incorporated into the Minutes by reference.

Commissioner Sebelius informed the Chairman that her office would provide the committee with the most up to date information they had, as well as information on other states policies.

The meeting was adjourned. The time was 5:30 p.m.

The next meeting will be February 15, 2001.

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: Feb. 14, 2001

VB2408

NAME	REPRESENTING
John Peterson	Security Benefit Group
Jessie J. DeCoursey	KS Ins. Dept
Bill Speed	Am West
Byrd Smoot	AIA / BCBS
Kevin Davis	Am. Family Ins
Jeremy Anderson	KS Ins. Dept
Cassie Thompson	NAII
Jamie Ann Porter	KATA
Cileen Muller	Kathy Danron + ASSOC
LARRY MAGILL	KAIN
Anne Stess	KIFA
MATT ALL	KID
Cennit Crow	Jedrick Consulting
Michelle Peterson	Peterson Public Affairs
Carol McDonnell	Delta Dental
Jerry Slaughter	Kansas Medical Society
Chris Collins	Kansas Medical Society
Rich Wellou	Farmers Alliance

Testimony on House Bill 2480
Before the House Committee on Insurance

MATTHEW D. ALL
Assistant Commissioner
Kansas Insurance Department
February 14, 2001

To the Chairman and Members of the Committee:

Thank you for allowing me to testify this afternoon on House Bill No. 2480, which would allow the Kansas Insurance Department to adopt strong, effective, privacy standards to protect consumers financial and health information from disclosures by insurance companies.

You may ask why we should adopt privacy standards this legislative session. There are several answers to that question. First, protecting the privacy of consumers' personal financial and health information is crucial to upholding the fundamental Kansas values of individual integrity and dignity. We do not believe that this is an issue owned by either party or other political persuasion. All Kansans of all types care about protecting their personal information, and all Kansans deserve to have their personal information protected.

Second, Kansans' personal information is vulnerable to disclosure by insurance companies. Today there is no general, comprehensive Kansas law stopping an insurer from trading consumers' personal information. This has always been a problem, but with more advanced technology and a greater role for managed care in today's insurance market, the problem is much more serious today. These trends have made it much easier for insurers to concentrate and disclose consumers personal financial and health

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Feb. 14, 2001
Attachment #1*

information to anyone who seeks it. Moreover, new technology has set the stage for the growth of the target marketing industry, in which businesses compile personal information about consumers and sell consumer profiles to other businesses for the purposes of marketing. All of these things make protecting Kansans personal information more important today than ever before.

The immediate cause of this bill, however, is the passage of the Gramm-Leach-Bliley Act ("GLBA") in November 1999. GLBA advanced the concept of "financial services modernization" by breaking down many of the Depression-era barriers between banks, insurance companies, and securities firms. Because of GLBA, these financial institutions can affiliate within a financial holding company for the first time. Because each of these financial institutions possess large amounts of sensitive personal information, many in Congress became concerned about how these new financial conglomerates would concentrate, share, and disclose this information.

In response, Congress included privacy standards in Title V of GLBA. These privacy standards, however, are quite modest. They create an "opt-out" right for disclosure of consumer's private information to nonaffiliated third parties. That means that if a bank, insurance company, or securities firm wishes to disclose a consumers personal information to anyone except those other firms with whom they are affiliated, they must give the consumer an opportunity to opt-out of these disclosures.

To do this, the consumer would have to read the insurers' privacy notice included in a mailing or billing statement, recognize its meaning, and take the affirmative step of sending the form back to the financial institution making the disclosure. If a consumer failed to do that, that institution could share the consumer's personal information with the rest of the world.

In addition, Title V of GLBA allows information sharing without restriction between affiliated financial institutions. This creates the possibility that a consumer will find that his health information has been

disclosed to his bank without him having the opportunity to prevent the disclosure. Wisely, Congress made Title V a “federal floor,” which allows states to enact their own privacy provisions, so long as those privacy provisions offer as much or more consumer protection than Title V.

You may remember that last legislative session you passed language that allowed the insurance commissioner to adopt regulations to implement Title V of GLBA. Commissioner Sebelius has begun that process. Financial privacy regulations pursuant to last year’s legislation are in the works. The hearing on these regulations is set for April 16, and they will be effective July 1st.

But certain things have changed since you passed the grant of regulatory authority last session. Specifically, in May 2000 the federal agencies charged with enforcing Title V of GLBA upon banks and securities firms issued their final regulations. In addition to extending the compliance date for these regulations from November 2000 to July 2001, these regulations made clear that Title V of GLBA applies not only to financial information, but also to health information. This troubled many of us because it left health information with only the fairly modest protections of Title V – that is, an opt-out for health information and sharing between affiliates with no restrictions at all.

Insurance commissioners across the country determined that it would be important to develop a Model Regulation to deal with these new challenges in privacy. The NAIC put together a working group on privacy and named Commissioner Sebelius its chairperson. Last year, this working group set forth to develop a Model Regulation that would be (1) uniform from state to state; (2) generally uniform with the federal regulations; (3) translate Title V into insurance terminology and the realities of the insurance market; and (4) provide enhanced protection for health information, since insurers, unlike banks, are likely to have health information.

After months of public and industry input, the Model Regulation passed unanimously by all insurance commissioners, Republicans and Democrats, appointed and elected. In general, it mirrors Title V and the federal regulations implementating Title V for financial information. But it provides enhanced protection – an opt-in – for health information.

More specifically, for financial information, like Title V, the Model Regulation provides for an opt-out right for disclosures to nonaffiliated third parties. It allows disclosures to affiliated companies without restriction. It requires that companies give an opt-out notice to “consumers” – those who may have one-time or little contact – only if the insured is going to disclose that consumer’s personal information. But companies are required to give notices more frequently to “customers” – those consumers with whom they have a continuing relationship – including an annual notice and initial notice.

For health information, the Model Regulation provides greater protection. It requires that companies obtain affirmative consent from consumers in advance if they intend to disclose personal information outside of a broad set of business and functional exceptions. These exceptions were developed in conjunction with the industry and should be enough to allow the industry to provide the services that Kansans need. In addition, the Model Regulation provides an exemption for the new health privacy regulations issued by the U.S. Department of Health and Human Services. That is, if an insurer must or simply prefers to comply with the standards set forth in these new federal regulations, that insurer will be deemed compliant with the Model Regulation. And, as you can see, we have also included an interim period of good faith compliance to allow companies to bring their privacy standards up to par with these new regulations.

One issue that you may hear about today from some opponents of this bill pertains to the definition of “consumer.” What you must know about this issue is that Gramm-Leach-Bliley was a banking bill written by bankers in

the banking committee for banks. When we translated this statute into insurance terminology and the realities of the insurance market, we determined that it was necessary to include all individuals who use insurance products for personal, family or household purposes. This includes claimants and beneficiaries, and not just the direct consumers of these products. A workers compensation claimant, for example, who has had to give personal health information to a workers compensation insurer, would have that information protected by this regulation.

Put simply, we did this because we believe this information deserves protection. We believe working Kansans who are hurt or made sick on the job deserve to have their personal information protected. Some may argue that this will create an undue burden on the industry, but we simply do not believe it—and, frankly, neither does the vast bulk of the industry. What you must keep in mind is that these claimants and beneficiaries only receive protection under the Model Regulation when an insurer decides to disclose those consumers private information to nonaffiliated third parties. If they merely use the information within the normal course of their business, there is no regulatory burden whatsoever.

So why should you pass this bill? It's really quite simple: Kansans deserve this protection, and they need it. In addition, this Model Regulation is the only path to developing uniform privacy standards from state to state, which is so crucial to avoiding an irrational, inefficient patchwork of standards.

If you pass this bill, you will be showing bipartisan leadership that will set an excellent example for the rest of the country.

The Model Regulation provides a balanced approach to privacy. It balances the needs of consumers and the realities of doing business in the insurance market.

Thank you for your time.

Protecting Kansans' Privacy

Testimony on House Bill 2480
Matthew D. All
Assistant Insurance Commissioner

Why should we adopt privacy standards now?

- Protecting personal information is crucial to fundamental Kansas values: individual integrity and dignity.
 - Not a Republican or Democratic, conservative or liberal issue.
 - All Kansans care about it.
 - All Kansans deserve it.

Why should we adopt privacy standards now?

- Kansans' personal information is vulnerable
 - Currently there is no general, comprehensive Kansas law stopping an insurer or bank from trading consumers' personal information.
 - New technology, concentration of information makes this even more of a problem.
 - Market for personal information.

Why should we adopt privacy standards now?

- Gramm-Leach-Bliley Act
 - Passed November 1999.
 - Advanced the concept of “financial services modernization” and “functional regulation.”
 - Broke down Depression-Era barriers between banks, insurance companies, and securities firms.
 - Privacy concerns!

Why should we adopt privacy standards now?

- Title V of GLBA
 - Created “opt out” right for disclosures of consumers’ private information to non-affiliated third parties.
 - But it allows affiliated companies to share consumers’ private information freely.
 - Required state insurance commissioners to adopt regulations and enforce Title V upon insurers.
 - Created a “federal floor”; it allowed states to offer more consumer protection, but not less.

So what did you do last year?

- Passed language that allowed the insurance commissioner to adopt regulations to implement Title V of GLBA.
- Financial privacy regulations are in the works.
 - Hearing is April 16.
 - Effective July 1.

So what has changed?

- In May 2000, the federal agencies issued their final privacy regulations for banks and securities firms.
 - Extended compliance date from November 2000 to July 2001.
- The preamble to this regulation made clear that "nonpublic personal information" included health information.
 - Opt-out for health information!
 - Sharing with affiliates with no restrictions!

In the meantime . . .

- Insurance commissioners got together . . .
 - Put together a working group on privacy
 - Developed a Model Regulation.
- Principles:
 - Uniformity from state to state.
 - Uniformity with federal regulations.
 - Translate Title V, federal regulations into insurance terminology.
 - Greater protection for health information.

What is the Model Regulation?

- Developed after months of public and industry input.
- Passed unanimously by all insurance commissioners.
 - Republican and Democrat
 - Appointed and elected
- Generally mirrors Title V, federal regs for financial information.
- Provides simple "opt in" for health information.

What does the Model Regulation do for financial information?

- Generally mirrors Title V, federal regs.
- Opt out for disclosures to non-affiliated third parties.
- No restrictions on disclosures to affiliates.
- Opt out notice for “consumers” only if insurer is going to disclose the information.
- Opt out notice for “customers” annually.

What does the Model Regulation do for health information?

- Greater protection.
- Opt in.
- Broad business and functional exceptions to allow the industry to provide service.
 - List developed in cooperation with industry.
 - Commissioner can add additional exceptions as needed.
- Exemption for HHS Regulations.
 - And a “good faith” period for health information.

Anything else I should know?

- Yes!
- Definition of “consumer”
 - Banking bill written by bankers in the banking committee for banks.
 - Had to conform to realities of insurance.
 - All individuals who use insurance products for personal, family, or household purposes.
 - Includes claimants and beneficiaries.
 - » Workers compensation claimants.
 - » Life insurance beneficiaries.

Why did you do that?

- We believe these individuals' information deserves protection.
 - Working Kansans who are hurt or made sick on the job deserve to have their personal information protected.
- Some will argue that this is a problem . . .
- Don't believe the hype.
 - These individuals only receive protection if an insurer decides to share their information with a non-affiliated third party.

Why should we pass this bill?

- Kansans deserve it, and need it.
- Uniformity.
 - Substantial majority of states will adopt Model Regulation.
- Bipartisan leadership.
- Balanced approach.

Who says it's a balanced approach?

- ACLI
 - September 27, 2000 statement of support by President and CEO Carroll Campbell: "The bottom line is that the NAIC model balances consumers' competing demands for financial and medical information privacy and the benefits resulting from responsible information sharing."

Who else?

- The Council of Insurance Agents & Brokers, Independent Insurance Agents of America, National Association of Insurance and Financial Advisers, National Association of Professional Insurance Agents.
 - September 26, 2000 joint letter: "We ... appreciate your willingness to work with the industry to draft a product that not only provides meaningful protections for consumers' private financial and health information, but that still allows the industry to [be] able to perform the services and functions that are necessary to the sale and servicing of insurance policies for consumers. We believe this regulation represents a thoughtful and balanced approach."

Anyone else?

- Prudential
 - November 10, 2000 letter: "A uniform, national approach, such as that suggested in the NAIC model regulation, would ensure that insurers and our customers not be disadvantaged by a costly patchwork of differing state laws."
- AIA
 - September 28, 2000 testimony to NCOIL: "There is a simple solution to the federal challenge, providing NCOIL an opportunity to perform an enlightened leadership role in the states. The solution would recognize the achievement of the NAIC in fashioning a practical model regulation addressing privacy protection in detail"

Anyone else?

- AARP
- AFL-CIO
- Others . . .

BRAD SMOOT

ATTORNEY AT LAW

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STATEMENT of BRAD SMOOT
LEGISLATIVE COUNSEL
BLUE CROSS BLUE SHIELD OF KANSAS
and
BLUE CROSS BLUE SHIELD OF KANSAS CITY

THE HOUSE INSURANCE COMMITTEE
2001 HOUSE BILL 2480

February 14, 2001

Mr. Chairman and Members,

Blue Cross Blue Shield of Kansas is a non profit Topeka-based health insurer serving 103 Kansas counties and Blue Cross Blue Shield of Kansas City, also a non profit insurer serving western Missouri and Johnson and Wyandotte Counties in Kansas. Together, they provide insurance coverage for 1 million of your fellow Kansans. We support 2001 House Bill 2480, authorizing the Kansas Insurance Department to promulgate the NAIC model regulations governing consumer health information privacy pursuant to the Graham-Leach-Bliley Act. As health insurers, BCBS plans have jealously guarded the privacy of their insureds and we all want our customers to have complete confidence that their personally identifiable health information is protected. To that end, we are making plans to meet the extensive requirements of new federal regulations recently promulgated pursuant to the Health Insurance Portability and Accessibility Act of 1996, which will require us to develop computer systems, contract provisions and administration procedures to assure continued health information privacy. For BCBSKS alone, the cost of this process is expected to exceed \$14 million and take several months to implement.

The NAIC GLBA model regulation recognizes these federal HIPAA obligations of health insurers and H 2480 "dovetails" the implementation schedules for state and federal regulation. We support the Legislature and Commissioner in their efforts to assure Kansans that their health information will be protected. H 2480 is an important step toward that assurance. We encourage your support of this measure. Thank you.

House Common Inc
Feb. 14, 2001
Attachment # 2

BRAD SMOOT

ATTORNEY AT LAW

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STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
AMERICAN INSURANCE ASSOCIATION

HOUSE INSURANCE COMMITTEE
2001 HOUSE BILL 2480

February 14, 2001

Mr. Chairman and Members:

The American Insurance Association is a trade association representing more than 300 property and casualty insurers, most of whom do business in Kansas. AIA member companies provide auto, homeowners, business liability and workers compensation insurance. We are pleased to support 2001 House Bill 2480.

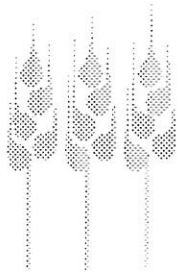
The American Insurance Association (AIA) believes that the NAIC model privacy regulation strikes an appropriate balance between consumer privacy concerns and the consumer benefits that flow from necessary information sharing by insurers. Last year, Kansas led the nation in authorizing the Kansas Insurance Department to promulgate the NAIC model regulation governing privacy of consumer financial information. We encourage the legislature to further authorize the Kansas Insurance Department to promulgate the NAIC regulation with regard to consumer health information pursuant to Title V of the Graham-Leach-Bliley Act.

We support the enactment of these privacy protections through the regulatory process in the interests of nationwide uniformity which is of substantial interest to our carriers who must develop systems to operate under the laws of many states. We believe the regulatory process will promote uniformity and allow states to more quickly respond to any future changes required by federal law.

Again, we encourage the Committee to act favorably on H 2480 and applaud the Committee and the KID for their work in developing the privacy implementation schedule contained in this bill. Thank you.

House Counsel on Ins.
Feb. 14, 2001
Attachment # 3

3-1



Kansas Association of Health Plans

1206 SW 10th Street
Topeka, KS 66604

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Fax 785-233-3518
kahp@kansasstatehouse.com

**Testimony before the
House Insurance Committee
Hearings on HB 2480
February 14, 2001**

Mr. Chairman and members of the Committee. Thank you for allowing me to appear before you today. I am Larrie Ann Lower, 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 all of the Kansans enrolled in a Kansas licensed HMO. KAHP members also serve the Kansans enrolled in HealthWave and medicaid HMO's and also many of the Kansans enrolled in PPO's and self insured plans. Thank you for the opportunity to provide comment on and appear in support of HB 2480.

We have appreciated the opportunity to work with Chairman Tomlinson, the Kansas Insurance Department and other parties interested in the issue of Privacy. We have participated in many meetings and conference calls concerning this issue and believe the legislation before you satisfies the concerns of most of the interested parties. The members of the KAHP recognize the desire to assure Kansans that their financial and medical records are kept confidential, and are willing to help with that assurance. The members of the KAHP are beginning the process of coming into compliance with the complicated, lengthy and expensive HIPAA regulations and appreciate the Chair, the Commissioner and the Committee recognizing this enormous task.

I will be happy to answer any questions you may have.

Larrie Ann Lower, Inc.
Feb. 14, 2001
Attachment # 4



**The Security Benefit
Group of Companies**

Security Benefit Life Insurance Company
Security Benefit Group, Inc.
Security Distributors, Inc.
Security Management Company, LLC

700 SW Harrison St.,
Topeka, Kansas 66636-0001
(785) 431-3000

Date: February 14, 2001

To: Members of the House Committee on Insurance

From: Roger Viola
Senior Vice President,
General Counsel & Secretary
Security Benefit Life Insurance Company

Subj: House Bill 2480

The Security Benefit Group of Companies ("Security Benefit") offers fixed and variable annuities, money management services, employee benefit plans and a family of mutual funds. Security Benefit offers its annuity products through Security Benefit Life Insurance Company, a Kansas life insurance company located in Topeka, Kansas, and First Security Benefit Life Insurance and Annuity Company of New York, a New York insurance company located in White Plains, New York. Security Benefit has approximately \$10 billion in assets under management.

The regulation of the privacy of consumer financial information will impact the various lines of Security Benefit's business. Security Benefit supports the approach to financial privacy in House Bill 2480 and the National Association of Insurance Commissioners' ("NAIC") model regulation entitled "Privacy of Consumer Financial and Health Information." The insurance industry is uniquely situated among its competitors in the financial services industry, in that it is regulated by the individual states. Uniformity in the area of consumer privacy is therefore critical to ensure the success of state regulation on this important issue -- the failure of the states to adopt a uniform approach could prompt Congress to preempt state regulation of privacy. Uniformity will also guarantee that insurers and their customers are not disadvantaged by the added costs of compliance with a myriad of state privacy laws. Furthermore, Articles II-IV of the NAIC model regulation contain essentially the same requirements as Title V of the Gramm-Leach Bliley Act and the regulations issued by the various federal regulators. Compliance is therefore streamlined for companies like Security Benefit that are subject to state regulation of their insurance business and SEC regulation of their securities business. In summary, Security Benefit believes that the NAIC model regulation efficiently satisfies the needs of both consumers and insurers by permitting insurers to protect their customers' privacy in a cost-effective manner.

*House Comm of Ins.
Feb. 14, 2001
Attachment #5*

State of Kansas

House of Representatives

JIM D. GARNER
House Democratic Leader



Topeka Address
State Capitol
Room 327-S
Topeka, Kansas 66612-1504
(785) 296-7630

Office of the Democratic Leader

February 14, 2001

**House Insurance Committee
Testimony in Support of House Bill 2480
Representative Jim Garner**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to submit testimony in support of House Bill 2480.

In health care today, privacy is not assured. Changes in medical care and technological advances have put the intimate details of our lives into databanks. With barriers between banks, insurance companies and other financial institutions evaporating, the number of people and institutions having access to this personal information is growing significantly. Kansans need control and protection over the privacy of their medical information.

While we hope that banks and insurers would be responsible with our personal information, the fact remains that there is nothing that prohibits the selling, disclosing or sharing of our personal financial and health information.

House Bill 2480 allows the Insurance Commissioner to adopt Model Privacy Regulation developed by the National Association of Insurance Commissioners (NAIC) on September 26, 2000. The NAIC model regulation effectively balances the interests of insurers and consumers. In addition, it provides greater protection for consumers by making clear that insurers wishing to sell or market health information must first receive permission.

In this high-speed information age, privacy is at a premium. Kansans today are vulnerable. A few years ago, former Rep. Phill Kline and I appeared on a community television show at Johnson County Community College discussing the need for legislation protecting personal privacy. After we were finished, a woman who worked at the studio approached us and shared that she was receiving material from a pharmaceutical company which knew what birth control pill she was using and suggesting she change to a new drug. She was amazed that the company knew so much about such a personal matter in her life. The need is real for substantive privacy protections.

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Attachment # 6*

6-1

American law concerning the individual right to privacy began with U.S. Supreme Court Justice Louis Brandeis' opinion in *Olmstead v. U.S.* (1928). Justice Brandeis stated, "The right to be left alone is the most comprehensive of rights, and the right most valued by a free people." This is just as true today as in 1928. Public opinion polls consistently reveal that people highly value their personal privacy.

Securing the privacy of Kansas health care consumers must be a priority. I respectfully urge you to favorably support House Bill 2480.

Thank you.



KANSAS MEDICAL SOCIETY

TO: House Committee on Insurance
FROM: Chris Collins *Chris Collins*
Director of Government Affairs
DATE: February 14, 2001
RE: HB 2480: Financial and Health Information Privacy

The Kansas Medical Society appreciates the opportunity to submit written testimony today in favor of HB 2480, which enables the Kansas Insurance Commissioner to enact regulations that create protections for private consumer health and financial information.

HB 2480 is a well reasoned bill that creates a very specific delegation of authority to the Kansas Insurance Commissioner. The bill also balances the interests of all affected parties. Consumers' private health and financial information will be protected. Health insurers and financial institutions will have a reasonable amount of time to ensure that their internal operations are compliant with new requirements. Health care providers will be able to alter their operating systems accordingly. Finally, the Insurance Commissioner maintains effective enforcement mechanisms to ensure the regulations are complied with.

For the foregoing reasons, the KMS urges this committee to recommend HB 2480 as favorable for passage. Thank you for your time and consideration.

*House Comm on Ins.
Feb 14, 2001
Attachment #7*

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February 14, 2001

Chairman Robert Tomlinson
House Insurance Committee
State House
Topeka, KS 66612

RE: HB 2480

Chairman Tomlinson:

The NAII represents hundreds of property/casualty insurers doing business in Kansas. These companies provide approximately 38% of the state's property/casualty insurance coverage. NAII respectfully submits to you and the members of the House Insurance Committee NAII's position on HB 2480 which includes the NAIC Model Regulation.

As you may know, the NAII joined the Alliance of American Insurers, the American Association of Health Plans and the Health Insurance Association of America in opposing adoption of the NAIC Model. We believe the Model is not the route to follow in Kansas and the reasons for our opposition are outlined below.

First and foremost of the NAII's concerns in the Model is the inclusion of health information privacy standards (Article V). GLB does not include health information privacy and therefore does not require any action on the states' part on this issue. Nevertheless, the NAIC Model includes health information privacy provisions that are inconsistent with and not required for compliance with GLB. This is of grave concern to the NAII. It could result in dual compliance standards for property/casualty insurers and confusion and frustration for the consumer. The dual compliance issue arises from regulations on health information privacy promulgated by the United States Department of Health and Human Services. While these regulations do not impact property/casualty insurers directly, they probably will do so indirectly. Many people with whom or entities with which property/casualty insurers contract or otherwise do business with clearly fall within the federal regulations.

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Entities directly regulated by the HHS rules will have to insist that the property/casualty insurers comply with the federal health information standards in order to do business with those insurers. This will entail costs for insurers and these costs will be passed along to consumers. It most likely also entails problems for the consumer such as multiple authorization forms for release of the same information, duplicate but inconsistent notices on privacy protection policies, and delay in claims payment because necessary information takes longer to obtain. In addition, the Model is not limited to sharing of health information with nonaffiliated third parties for marketing purposes, as is GLB for financial information.

Second, workers' compensation coverage is included in the Model. The definition of "consumer" expressly references workers' compensation (Section 4 F [2] [e]). GLB excludes workers' compensation coverage in that it is limited to products or services used primarily for personal, family or household purposes. The Model goes beyond GLB and adoption of the Model in Kansas will subject workers' compensation carriers and the businesses they insure to new privacy practices and procedures.

Third, the Model may create new producer liability. Section 4 Q (2)(a) states that a producer is not subject to the notice and opt out requirements of the Model if the principal otherwise complies with, and provides the notices required by, the Model. How is a producer to know if all insurers with which the producer has an appointment are in compliance with the Model?

Fourth, the definition of "consumer" in Section 4 F is broad enough to include third party claimants. A third party claimant is an individual that seeks to obtain, obtains or obtained an insurance service. The examples make quite clear that an individual is a consumer if he or she is a claimant under an insurance policy (Section 4 F [2][d][II]). This will require the insurer to provide a notice of its privacy policies and practices as well as an opportunity to "opt out" to all third party claimants before it discloses nonpublic personal financial information to nonaffiliated third parties.

Fifth, we find the prohibitions in Section 23 dealing with unfair discrimination unclear. In the usual insurance context, "unfair discrimination" involves an action not actuarially justified or not supported by sound business judgment. Is that what is meant by this language? If so, that should be specified or a court interpreting the language could give it a different meaning.

Finally, and with all due respect, Kansas law adopted last year does not allow the regulatory authority to adopt the Model as the NAIC Model Regulation goes far beyond the requirements of GLB (as discussed above).

The above critique of the Model being said, the NAII recognizes that all of us are concerned about the privacy of health information. If the committee concludes that health must be included in the Act we respectfully submit that there is a better approach than the NAIC Model. However, as part of this discussion, it is always important to keep in mind the broader objective of GLB: the lowering and/or removal of artificial barriers between and among banks, insurers and securities firms. The Model fails in this important objective in that it adds additional layers of compliance for state regulated insurers.

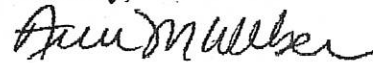
The NAI does support a strong, uniform standard for protecting the confidentiality of personally identifiable consumer financial information. We believe consumers and the industry will be best served if there are consistent standards for how information is protected and with respect to the disclosure of that information. Therefore, we generally support and appreciate the fact that NCOIL recognized the need for uniformity and took an approach consistent with the federal rules in order to implement and enforce GLB. As legislators interested in the economic development and well being of their states, NCOIL felt it was important that whatever they do, they maintain parity between and among the various branches of the financial services industry, so that all have a "level playing field."

NCOIL accomplished this in several ways. For example, we believe that NCOIL appropriately excluded commercial lines from the scope of their model. Title V of GLB applies to personally identifiable financial information derived from transactions where individuals have obtained a financial product, including insurance, for personal, family or household use. When translated into the context of insurance, this was intended by Congress to regulate privacy practices as to personal line applicants or policyholders, not commercial line policies. Thus, the approach taken by NCOIL is consistent with that taken by relevant federal agencies as to banks and securities firms, thereby maintaining parity and promoting a level playing field.

Another example is the way NCOIL will treat health information privacy. Although we do not believe that health information privacy should be included, we do believe that the approach taken in the NCOIL model better conforms to the general underlying objectives of GLB's Title V. The NCOIL approach addresses specific concerns about the disclosure of health information, absent affirmative consent by the consumer (i.e. opt-in), to non-affiliated third parties for use in marketing of products or services. We believe that to go beyond this standard would create significant challenges for insurers faced with complying with GLB.

Thank you again for this opportunity to comment.

Sincerely,



Ann M. Weber

AMW/rp

cc: NAI members doing business in Kansas
Robert Zeman
Michael Duncan
Bill Bradford

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February 14, 2001

To: Representative Robert Tomlinson and
The House Insurance Committee

From: Lee Wright, GCA

Subject: House Bill 2480

Thank you for this opportunity to provide written testimony on HB2480, the NAIC Privacy Model bill requested by the Kansas Insurance Department.

Farmers is opposed to HB2480 in its current form. Our reasons include the following:

- The NAIC model requires insurers to obtain written permission from policyholders, i.e. "opt-in", for the sharing of all health information with a third party for any reason. This goes beyond the requirements of the Gramm-Leach-Bliley federal legislation. We would suggest the "opt-in" provision for sharing policyholders health information with a third party be limited to that information being used for marketing purposes.
- The NAIC model requires insurers to send annual privacy notices which reflect their privacy policies and practices to policyholders, beneficiaries and claimants. This also goes beyond requirements set out in Gramm-Leach-Bliley. To avoid additional and unnecessary costs which will ultimately be borne by the consumer, we would recommend limiting the annual privacy notice requirement to policyholders only.

Thank you for this opportunity to express these concerns of Farmers on HB2480.

Lee Wright, GCA
Governmental Affairs Representative - Kansas

LW:pk

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Kevin R. Davis
Government Affairs Counsel

February 14, 2001

**Representative Robert Tomlinson and
The House Insurance Committee**

Subject: Kansas House Bill 2480

We take the position that the existing law is perfectly adequate to implement the mandates of the federal government due to the passage of the Gramm-Leach-Bliley (GLB) act of 1999. We believe that the requested amendment and the referenced NAIC model regulation go far beyond the requirements of the GLB act, and is therefore unwarranted and inconsistent with the goal of making the laws of the various states uniform.

It is our understanding that few states are adopting the model act without substantive amendments. Among the reasons for this is the model act includes a section on health privacy, or Article V of the model regulation. Health privacy is being addressed on the federal level with the adoption of rules and regulations by the U.S. Department of Health and Human Services. As a result, many states are deleting the health section of the model as the federal government is addressing this issue.

Additionally, the NAIC model includes the application of this law to workers compensation and other commercial insurance. Our reading of the GLB act is that it is intended to apply to products obtained for personal, family or household purposes, which would clearly exclude workers compensation and other commercial policies which are issued to an employer or business owner and are not obtained for personal purposes.

Further, the NAIC model appears to include in the definition of consumer certain third party claimants. We believe that the GLB act was intended to focus on the individual who "seeks to obtain, obtains or has obtained" a personal insurance product. This definition is therefore inconsistent with the intent of the GLB act.

We think that the existing law adopted last year has the necessary language to fulfill the requirements of the GLB act and no further legislation is warranted or necessary at this time.

Kevin R. Davis
American Family Insurance Group

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