

## 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 13, 2001 in Room 527-S of the Capitol.

All members were present except: Representative Nancy Kirk

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

Conferees appearing before the committee: Mr. LeRoy Brungardt, Kansas Insurance Department  
Mr. John Gann, Kansas Association of Insurance and Financial Advisors  
Mr. Larry Magill, Kansas Association of Insurance Agents  
Mr. David Hansen, National Association of Independent Insurers

Others attending: See Attached Guest List

The subject for the day was **SUB 123** - Insurance; model insurance producer licensing act. The first conferee to be recognized by the Chairman was Mr. LeRoy Brundgardt, Kansas Insurance Department. Mr. Brungardt gave Proponent Testimony and a copy of such testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference. Mr. Brungardt gave an overview of the bill to the committee explaining under the Gramm-Leach-Bliley Act, the states were to develop procedures, to make licensing for agents easier and more convenient. They were in all actuality produce a uniform procedure for all of the state to follow, and it was to be completed within three years. November 12, 2002 is the deadline given to be completed. If the states did not comply with this charge, then the National Association of Registered Agents and Brokers would be established and they would not only write the procedure, they would take over all of the licensing procedures of each state insurance department. But, if all of the states or at least twenty-nine of the states could get together and put together a common procedure, then there would be no need for NARAB. Mr. Brungardt continued on to related that there were several interested parties involved in forming the final product. To name a few: state regulators, insurance company and national agent associations representative, and a few others.

Mr. Brungardt continued on to let the committee know that 75-80 percent of the procedures were already being followed here in Kansas. He continued on to relate their proposal which is to "meld the model act into our current pertinent statutes and repeal the statutes no longer necessary." He then listed the key benefits to adopting the bill. He also offered some changes to the current statute of which there were four changes. They also found a duplication in Sec. 13 and suggested striking lines 20-25 and then move the subsequent sections up so that (e) becomes (d) and so on. There are currently four states that have passed the model act, and thirty-four more that are in the same mode as Kansas. They will be introducing the act to their legislatures in this same time period and the remainder states are looking to introduce it next year. Mr. Brungardt explained that they feel this will give an edge to insurance regulators, industry and agent. The conferee summarized his report and asked for the committee's support. Questions were asked by Grant, Boston, Phelps, Huy. Questions covered Gramm-Leech-Bliley, "termination for cause and not for cause", and effective date.

The next conferee to come before the committee was Mr. John Gann, Kansas Association of Insurance and Financial Advisors. A copy of the testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference. His members are in favor of the bill changing the reference from "producer" back to "agent" where ever the word "producer" appears in the bill. They agree there should be uniformity with the other states in licensing, commissions related to the sale of the insurance policy, how regulators, companies and agents report and resolve "not for cause and for cause terminations," and finally uniformity should be created to process both resident and non-resident applications. His members also feel those who are involved in "ex-dating" should be licensed.

Current guidelines do not make such requirements. He also stated the supported the guidelines set down by the Kansas Insurance Department regarding this matter. Mr. Gann spoke of an amendment to the bill which had yet to be presented, but one that had been accepted by parties involved. This was the balloon to eliminate the word "producer" and insert "agent." Mr. Gann stood for questions. Questions were asked by Representatives Mayans, Phelps, Boston, and comments by the Chairman. Questioning consisted of x-dating, elimination of broker licenses, definition of "broker", where the bill came from.

Mr. Larry Magill, Kansas Association of Insurance Agents, was the final conferee to present Proponent Testimony. A copy of the testimony is (Attachment #3) attached hereto and incorporated into the Minutes by reference. Mr. Magill stated his members supported the bill and felt it would streamline licensing and modernize the way things were done. They supported the definition of who should be licensed, but were opposed to licensing inside people. They were opposed to watering down telemarketing laws. They supported the "broker" changes, and the wording changes for "producer" to "agent". He stated they were also comfortable with today's wording regarding the controversy surrounding "sharing commissions." He stated they were also for a uniform bill because it would eliminate the need for an agent to hold multiple licenses when practicing outside of the state. Mr. Magill stood for questions. Questions were asked by Representative Mayans and Boston.

Mr. David Hanson, National Association of Independent Insurers, was last to come before the committee. Mr. Hanson gave Opponent Testimony and a copy of the testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference. He stated that "the bill as presented does not contain an essential provision necessary for many insurance companies to provide basic customer service to insurance policyholders in Kansas." He address Gramm-Leach-Bliley Act of 1999, and the possibility of establishing NARAB to create a uniform policy if the companies could not do so on their own. The NAII is opposed to such organizations "because it displaces state authority over nonresident producer licensing and is contrary to the principle of state regulation of insurance." They feel the Model Act addresses several issues,(who must be licensed, who is exempt, requirements to appointing agents and for terminating appointments and setting standards for suspending or revoking licenses.)

He continued on to state that he and his clients offered an exemption. This exemption is bolded and contained within his testimony, and reads, "Employees of an insurer or of an insurance producer who respond to requests from existing policyholders on existing policies provided that those employees are not directly compensated based on the volume of premiums that may result from these services." With this Mr. Hanson stood for questions. There were none. Public hearings on the bill were closed.

The meeting was adjourned at 4:40 p.m.

The next meeting will be held March 15, 2001.







Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**  
Agents and Brokers Division

To: House Committee on Insurance

From: LeRoy Brungardt, Director of the Agents and Brokers Division  
of the Kansas Insurance Department

Re: Substitute S.B. 123—An Act concerning insurance; relating to the licensure  
of insurance agents

Date: March 13, 2001

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Chairman Tomlinson and Respected Members of the Committee,

Thank you for allowing me the opportunity to testify before you regarding Substitute S.B. 123. This legislation has been introduced as part of a response to the Gramm-Leach-Bliley Act passed by the U.S. Congress in November 1999. In that act, there was a charge that the states were to develop procedures, either through reciprocity or uniformity with an emphasis toward uniformity, to make the licensing process for agents easier and more convenient; namely, the procedures of each state were to start resembling each other. If this was not accomplished within a three-year period, November 12, 2002, being the deadline, a federal entity, NARAB—National Association of Registered Agents and Brokers—would be established and take over the licensing functions of the state insurance departments. However, there was a caveat. If 29 states and territories associated with the NAIC were able to establish common procedures, this NARAB initiative would be forestalled.

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*House Comm on Ins.*  
*MAR 13, 2001*  
*Internet Attachment #1*  
<http://www.ink.org/public/kid>

A study committee was formed at the NAIC level to study this issue, and the producer licensing model act came about as a response to that challenge. There were many state regulators, insurance company representatives, national agent association representatives, and other interested parties involved in the formation of the final product.

Our purpose today is to very briefly explain this proposed legislation to you. We want you to be aware that the department was already implementing 75%-80% of the model act in our daily licensing procedures. We don't want you to get the idea that we are completely revamping everything we are doing in the licensing function. Our proposal is to meld the model act into our current pertinent statutes and repeal the statutes no longer necessary.

The key benefits in adopting Substitute S.B. 123 include:

- Uniform definitions for the terms "solicit," "negotiate," and "sell." Also, there would be uniform exceptions to licensing requirements.
- Uniform application for resident and nonresident agents.
- Uniform definitions for six major lines of insurance—life, health, property, casualty, variable, and personal.
- Uniform exemptions for pre-licensing education, continuing education, and examinations for nonresidents.
- Uniform standards for license denials, non-renewals, and revocation.
- Uniform standards on receiving commissions.
- Uniform standards for agent appointments.
- Uniform standards on termination for cause and not for cause.

Many hours and meetings have been had by myself with our Agents and Brokers Advisory Committee, the three Kansas agents associations, and interested industry representatives regarding this proposal. There were concerns expressed regarding the bill, and time has been spent to arrive at a consensus on those concerns. I believe those have been resolved.

Additionally, within Substitute S.B. 123, we are proposing some changes to the current statutes based upon eleven years of experience. These changes are:

- Reduce the maximum inactive period that an agent can apply for from six years to four years.
- Require the fulfillment of the continuing education requirement before reactivating the license for agents coming off inactive status.
- Require an exam if an agent has not had an active license for more than four years.
- Eliminate the exam requirement for noncompliance of continuing education.

One other change is to eliminate the broker's license we currently have. We feel the model act will allow us to accomplish the same intent of the broker's license. Therefore, our current statutes would be redundant. The only items we are retaining of the broker chapter are the compensation that a producer may now receive and the definition of broker as it relates to this legislation.

It is with some embarrassment that we suggest a cosmetic change. In reviewing the bill, we found a duplication in Sec. 13. We've discussed this with Mr. Wilke, the reviser on this bill.

We suggest the following change—strike the words of lines 20-25 on page 20 and move all the subsequent sections up so that (e) becomes (d), (f) becomes (e), etc. We apologize for this oversight.

I have highlighted the key items in this bill. The department feels that the passage of this bill will move us into the future at what we consider some cutting edge issues for insurance regulators, the industry, and the agents. There are currently four states that have passed the model act. There are 34 states that are in the same mode we are now—introducing it to their legislatures in this time period. The other states are looking at introducing it next year.

In summary, the bill would accomplish some of the uniformity that we wish to attain for the future. It would also put Kansas in a position to show the leadership that this department has shown over the past decades on the national level. It would also put us on the list of 29 states and territories that have adopted this legislation in order to retain the licensing function on the state level.

I appreciate your consideration and time in your deliberations of Substitute S.B. 123.



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John C. Gann, LUTCF  
Law and Legislation Committee Chairman  
Kansas Association of Insurance and Financial Advisors (KAIFA)

Testimony Before the House Committee on Insurance  
Senate Bill No.123 (Producer Licensing Model Act)  
March 13, 2001

Mr. Chairman and Committee Members

I appreciate the opportunity to address you today on behalf of the many members of the Kansas Association of Insurance and Financial Advisors. Our membership consists of 1,500 Kansans located in all Kansas counties who are actively engaged as insurance agents and brokers.

KAIFA is a proponent of Senate Bill No. 123 for the following reasons:

- We agree that the act should match other states and not require a high school diploma or equivalent GED to be licensed.
- We agree that the act should combine the powers of the brokers license and agents license and eliminate the brokers license.
- We agree that the act should establish uniform standards for commissions related to the sale of the insurance policy (i.e. paying upstream commissions to the financial service holding companies).
- We agree that uniform procedures should be established as to how regulators, companies and agents should report and administratively resolve not for cause and for cause terminations.
- We agree that a uniform application should be created to process both resident and non-resident applications.

We are supportive of an amendment to the bill introduced by Kansas Association of Insurance Agents converting the references to "producer" back to "agent" everywhere the term producer is used in the bill. The general perception of the public is for us to be known as insurance agents, not insurance producers.

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The issue that is a concern to our association is "ex-dating". We believe that any individual that "ex-dates" should be licensed. The current guidelines of the Kansas Insurance Department state that unlicensed personnel may not initiate telephone calls to prospects for the purpose of gathering underwriting information, often referred to as ex-dating or fact finding . We are supportive of these guidelines.

Thank you for your time and consideration.

**Testimony on Senate Bill 123  
Before the House Insurance Committee  
By Larry Magill  
Kansas Association of Insurance Agents  
March 13, 2001**

Thank you Mister chairman and members of the committee for the opportunity to appear today in support of the Insurance Department's Model "Agents" Licensing Bill. We support the bill as amended and passed by the Senate. The legislation is vital to avoid Federal intervention and dual regulation of our business.

As you undoubtedly heard from the Kansas Insurance Department this legislation is necessary in light of the mandate in the Gramm-Leach-Bliley Act (GLBA) for 29 states to pass either the model or a bill establishing reciprocity before November 2002 to avoid triggering NARAB. NARAB is the National Association of Registered Agents and Brokers and would establish for the first time a federal insurance licensing procedure. Our association staunchly supports state regulation of the insurance business under the McCarren-Ferguson Act and opposes any intrusion by the Federal government into insurance regulation or any efforts at dual regulation.

Senate Bill 123 takes the reciprocity approach to compliance with GLBA rather than passing a verbatim model. We support that approach as it does the least damage to a licensing system in Kansas that is working very well.

**Who Must Be Licensed**

We have worked closely with the Kansas Insurance Department on this legislation and they have incorporated many of our suggestions into the bill before you. One of those suggestions was to preserve the current Kansas law governing who must be licensed, KSA 40-214, that states that anyone doing any act toward the transaction of the business of insurance must be licensed. The model defines "sell, solicit or negotiate" and says that anyone performing one of those functions must be licensed. We are concerned that that is a narrower definition of who must be licensed and, as new language, leaves Kansas' law open to unknown future interpretations by the Insurance Department. By preserving Kansas' current law in this respect, there are no doubts as to how it will be interpreted.

**Oppose Any Exception for Inside Service Personnel**

A related issue that was resolved at the NAIC was the controversy over the section "4(b)(8)" exception to who must be licensed that would have allowed persons to sell to existing clients without a license but not to new clients. It was an unsupportable distinction. Licensing is designed to insure that the person dealing with the consumer is knowledgeable and can be held accountable for their actions through the licensing process. To say that this critical protection is important to new customers but not to existing customers makes no sense. I only bring this up because there are some in the industry who would like to add this exception back and we would strongly oppose such an effort.

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Attachment #3*

## **Oppose Watering Down Telemarketing Requirements**

A second controversy over who must be licensed involves telemarketing of consumers by unlicensed individuals. Of course it saves companies money if they can do the telemarketing with unlicensed individuals but that subjects the public to insurance solicitations by individuals who know nothing about the product and may misrepresent their product offering out of ignorance in order to obtain what is known as an x-date. An x-date is the expiration date of the consumer's current insurance. Again we are comfortable preserving current law and the department's interpretation in this regard and would oppose any effort to carve out "x-dating" from licensing requirements.

## **Agent vs. Producer**

KAIA sought the amendment in Senate Bill 123 to convert "producer" back to "agent" that lead to the Substitute bill before you. We consider this a "friendly" amendment to the Department's bill that preserves a name for insurance agents that the public understands, "agent", and that conveys what we do better than the term "producer". The bill would define agent to include producer, which would satisfy GLBA without bringing into common use in Kansas' law the term producer.

An agent is thought of as someone who represents someone else's interests. In the case of insurance agents the courts have generally held that it is a dual agency where they may represent the interests of the consumer at one point in the transaction and the insurance company at another. We're not sure what the term "producer" would connote to the public but suspect it would be somewhat negative as someone who is simply pushing policies rather than providing professional advice.

Our national association's representatives that worked on the NAIC model told us that the term producer was chosen simply to provide a neutral term between agent and broker. Some people like to call themselves brokers and others like the term agent. But the Kansas Insurance Department has no problem with agents who choose to call themselves brokers. Broker connotes larger size in some peoples' minds and implies that the person represents the consumers' interests more, although brokers have agency contracts with their insurance companies just as agents do.

## **Sharing of Commissions**

We urged the Department to modify the Model bill in another way with regard to sharing of commissions. Under the model bill, any licensed individual or agency could share commissions with any unlicensed party—with no restrictions. Under current law, only licensed parties may share commissions. Thus an agent cannot share commissions with an unlicensed realtor, a CPA or an attorney that refers business to the agent if it is tied to the sale of insurance. In other words, if the agent pays a finders fee for a name that is permissible but not if the payment is contingent on the agent making the sale.

With our support, the Department changed the model to allow an agency to share commissions with a parent or controlled corporate entity without the other party needing to be licensed. This takes care of the situation where a financial holding company owns an agency and the agency wants to "up stream" commission income.

We would be opposed to any further expansion of the sharing of commissions among unlicensed parties.

### **Significant Improvements in Bill**

The NAIC model agent licensing bill includes a number of very important improvements in agent licensing. Once these are adopted by most states, as we believe they will be, the national licensing process will be much simpler, more economical and more efficient. Some of these important changes are:

- A streamlined standardized process for agent licensing that uses a standard agent application form and simply requires the agent to pay the appropriate non-resident fees so long as the agent is licensed in good standing in their home state and that state is reciprocal
- Reciprocity among states on continuing education requirements
- An exemption from multi-state licensing if the agent is simply writing a Kansas domiciled risk that has locations in other states and the agent is not soliciting new business in the other states
- An exemption from licensing for websites and the internet as long as the agent does not intend to sell, solicit or negotiate insurance in the other state
- Allows non-resident E&S licenses
- Allows agents to charge fees with a written contract and eliminates the Brokers License

### **Summary**

KAIA appreciates the chance to appear today in support of Substitute for Senate Bill 123 with our amendments. We would be happy to answer questions or provide any additional information the Committee desires.

**National Association of Independent Insurers**  
2600 River Road  
Des Plaines, IL 60018

**House Insurance Committee**  
**Testimony on SB 123**  
**Presented by David A. Hanson**  
**March 13, 2001**

**Mister Chairman and Members of the Committee:**

I am David Hanson and am appearing on behalf of the National Association of Independent Insurers with 675 member insurance companies nationwide and with 294 member companies doing business in Kansas writing about 48% of personal lines coverage in this state.

As an organization that represents numerous independent insurers, NAII is concerned with and must oppose SB 123 in its current form. Simply put, we believe that the bill as presented does not contain an essential provision necessary for many insurance companies to provide basic customer service to insurance policyholders in Kansas.

By way of background, the federal government in the Gramm-Leach-Bliley Act of 1999 is requiring the National Association of Registered Agents and Brokers, also known as NARAB, to be created unless a majority of states adopt a producer licensing system that is either uniform or reciprocal by November of 2002. Membership in NARAB would be open to any person who has a producer license in his or her home state and would grant authority to act as an agent/broker in all states. NAII is opposed to the creation of NARAB because such a system displaces state authority over nonresident producer licensing and is contrary to the principle of state regulation of insurance.

The NAIC Producer Licensing Model Act includes provisions which meet the reciprocity criteria by automatically granting a nonresident license to an agent who is licensed and in good standing in his or her home state. In addition to the reciprocity provisions, the Model Act addresses a number of other important issues, including who must be licensed, who is exempt from licensure, requirements to appointing agents and for terminating appointments, as well as standards for suspending and revoking producer licenses.

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March 13, 2001  
Attachment # 4*



As originally adopted by the NAIC last year, the Model Act contained certain exemptions from licensure, including an exemption for employees of insurance companies or producers when those employees are responding to requests from existing policyholders with regard to existing policies. However, in October this exemption was deleted from the Model Act and we are therefore asking you to replace this exemption in the bill before you in order to recognize the needs of policyholders in trying to obtain information about their existing policies. Specifically, the exemption is needed for the following:

**Employees of an insurer or of an insurance producer who respond to requests from existing policyholders on existing policies provided that those employees are not directly compensated based on the volume of premiums that may result from these services.**

We appreciate the work of Commissioner Sebelius and her staff on this bill and their willingness to work with the various groups. NAII sees great merit in many of the provisions of the bill, especially the reciprocity provisions. We would submit that the exemption which NAII seeks is reasonably limited to only allowing a response to a request made by an existing policyholder regarding an existing policy. This is critical to the continued service by our member companies of existing policies and in order to maintain adequate service to current policyholders. Without this exemption, NAII must oppose the bill and, in order to avoid implementation of the federal NARAB provisions, we would suggest adoption of a stand-alone bill containing the reciprocity provisions from the NAIC Model Act.

Respectfully,



DAVID A. HANSON