

Approved: 2-13-01  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Sandy Praeger at 9:30 a.m. on February 6, 2001 in Room 234-N of the Capitol.

All members were present except:

Committee staff present: Dr. Bill Wolff, Kansas Legislative Research Department  
Ken Wilke, Office of the Revisor of Statutes  
JoAnn Bunten, Committee Secretary

Conferees appearing before the committee:

LeRoy Brungardt, Director of Agents & Brokers Division, Kansas Insurance Department  
John C. Gann, Kansas Association of Insurance and Financial Advisors  
Larry Magill, Kansas Association of Insurance Agents  
David Hanson, National Association of Independent Insurers

Others attending: See attached list.

**Hearing on: SB 123 - Insurance; Model insurance producer licensing act**

LeRoy Brungardt, Director of Agents & Brokers Division, Kansas Insurance Department, presented testimony to the Committee in support of **SB 123**. Passage of the bill would create the Uniform Insurance Producers Licensing Act and integrate the National Association of Insurance Commissioners model act into the Kansas licensing statutes, moving states toward uniformity in licensing, as initiated by passage of the federal Gramm-Leach-Bliley Act. Mr. Brungardt outlined eight key benefits that would result if **SB 123** became law as noted in his written testimony. (Attachment 1) During Committee discussion Mr. Brungardt explained the department's proposed changes to the current statutes within **SB 123**, and noted that one of the concerns expressed by others was the use of the word "producer" instead of "agent" in the bill.

John C. Gann, Kansas Association of Insurance and Financial Advisors, testified in support of the bill and noted that his association believes 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. Mr. Gann is supportive of these guidelines. (Attachment 2)

Larry Magill, Kansas Association of Insurance Agents, also spoke in support of **SB 123** but suggested the following proposed amendments: (1) Convert the references to "producer" back to "agent" where the term producer is used in the bill, and (2) clean-up language relating to eliminating the reference to canceling the broker's license of someone who loses their producer's license since there will no longer be a brokers license on page 17, lines 8-10 of the bill. (Attachment 3)

David Hanson, National Association of Independent Insurers, spoke in opposition to **SB 123** by noting 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. Mr. Hanson requested the Committee replace language in the bill that was deleted in the Model Act which would recognize the needs of policyholders in trying to obtain information about their existing policies as outlined in his written testimony. (Attachment 4)

Committee discussion related to the terms "agent" and "producer" as defined in the bill, deleting Section 19, clean-up language on page 17, lines 8-10 of the bill, and deleting reference to K.S.A. 40-239 in the title. The Chair directed staff to draft the proposed amendments for consideration by the Committee at a later date.

**Approval of Minutes**

Senator Feleciano made a motion to approve the Committee minutes of January 30, 31 and February 1, seconded by Senator Brungardt. The motion carried.

**Adjournment**

The meeting was adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for February 7, 2001.

SENATE FINANCIAL INSTITUTIONS & INSURANCE  
COMMITTEE GUEST LIST

DATE: 2-6-01

NAME	REPRESENTING
Anne Spiess	KAIFA
John Gann	KAIFA
Jalynn Copp	Kansas Insurance Department
Leroy Brungardt	Ks Ins Dept.
Donald McChesney	KS Ins Dept
Wren M. O	Kathy Damon Assoc
Mr. G. H. Hest	Kearney Law Office
LARRY MAGILL	KAIFA
Jeremy Anderson	KS Ins Dept
Bill Sneed	Am Vestors
April Meyer	First Life America
George Barber	CBA / KAFS
Seth Briden	Sen. Brungardt
Kevin Davis	Am. Family Ins.



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

To: Senate Committee on Financial Institutions and Insurance

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

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

Date: February 6, 2001

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Chairwoman Praeger and Respected Members of the Committee,

Thank you for allowing me the opportunity to testify before you regarding S.B. 123. This legislation is being 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, then this NARAB initiative would be forestalled.

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 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 that practically all of them have been resolved.

Additionally, within 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 item we are retaining in the broker chapter is the compensation that a producer may now receive.

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.

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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. Kansas has always been an active participant on the national level, and as I'm sure you all know, Commissioner Sebelius is the current president of the NAIC. Our department continues to try to serve in the best interests of the Kansas consumer and Kansas agents.

I appreciate your consideration and time in your deliberations of 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 Senate Financial Institutions and Insurance Committee  
Senate Bill No.123 (Producer Licensing Model Act)  
February 6, 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.

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.

PRESIDENT  
Herchel A. Crainer, LUTCF

PRESIDENT-ELECT  
George E. Moore, LUTCF

VICE-PRESIDENT  
J. Fred Thurlow, LUTCF

SECRETARY/TREASURER  
F. Joe Seed, LUTCF

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COMMITTEEPERSON  
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Von W. Edman, LUTCF

John C. Gann, LUTCF

Shari S. Walls, LUTCF

Senate Financial Inst. & Insurance  
Date: 2-6-01  
Attachment No. 2



**Testimony on Senate Bill 123**  
**Before the Senate Financial Institutions & Insurance Committee**  
**By Larry Magill**  
**Kansas Association of Insurance Agents**  
**February 6, 2001**

Thank you madam chair and members of the committee for the opportunity to appear today in support of the Insurance Department's Model "Agents" Licensing Bill. We will be asking for an amendment to the proposal that does no harm to the reciprocity, which is so important 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) 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 "sale, 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 No. 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 consumers 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 would like to ask the committee to amend Senate Bill 123 by converting the references to "producer" back to "agent" everywhere where the term producer is used in the bill. 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.

## **Clean up Suggestions**

You probably will want to eliminate the reference to canceling the broker's license of someone who loses their producer's license since there will no longer be a brokers license. This is found on page 17 lines 8-10.

## **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 Senate Bill 123 with our amendment. 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

**Senate Financial Institutions and Insurance Committee**  
**Testimony on SB 123**  
**Presented by David A. Hanson**  
**February 6, 2001**

**Madam Chairperson 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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Attachment No. 4

X  
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