

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairman Representative Robert Tomlinson at 3:30 pm on February 19, 2002 in Room 527-S of the Capitol.

All members were present except: Representative Bill McCreary
Representative Gene O'Brien

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

Conferees appearing before the committee: Mr. Tony Kimmi, Farm Bureau Mutual Insurance
Company
Mr. Terry Arthur, Farm Bureau Mutual Insurance
Company

Others attending: See Attached Guest List

HB 2640 - NAIC Model Viatical Settlements Act

Upon calling the meeting to order Chairman Tomlinson made the committee announcements. He then called the committee's attention to **HB 2640** asking the committee's pleasure on the bill. Representative Bob Grant made the motion of accept a balloon (Attachment #1) supported by the Kansas Trial Lawyers Association. The Chairman polled the Kansas Insurance Department, Kansas Association of Insurance and Financial Advisors, and the Kansas Trial Lawyers Association to see if all parties agreed to the balloon. As all parties were in agreement the motion was back to the committee and seconded by Representative Nancy Kirk. A vote was taken and the balloon was adopted. Back to the bill Representative Nancy Kirk moved to pass the bill out marked favorable for passage as amended. The motion was seconded by Representative Bonnie Sharp. The vote was taken and passes. A copy of the balloon is attached hereto and incorporated into the Minutes by reference.

HB - 2879: Automobile insurance - cancellation of policy for nonpayment of dues to organization.

With this business complete the hearings were then opened on **HB 2879**. Mr. Tony Kimmi, Farm Bureau Mutual Insurance, introduced himself and Mr. Terry Arthur, General Counsel, Farm Bureau Mutual Insurance. He informed the committee that Mr. Arthur would actually be speaking to the bill. With that Mr. Arthur took the floor.

Mr. Arthur stated the changes sought were related to K.S.A. 40-267(a). He stated the new section would clean up wording and provide more up to date language, being used by the legislature. He stated the request would also allow Farm Bureau to require everyone to hold a membership as a prerequisite for receiving coverage from the company. He continued that this would "remove the disparity in eligibility rules that now exist in their company." The bill would also give the company "The ability to end the insurance relationship if the affinity group relationship is discontinued.

Questions were asked by Chairman Tomlinson, Representatives Boston, Sharp, Phelps Mayans and Kirk. Comments were made by Representative Dreher and Ostmeyer.

Questions covered included : applies to anyone selling insurance, membership same premiums different, who keeps all of the dues, do they currently write insurance for non-members, no real similarities as stated, what happens to the 500 high risk members, why change for only 500 people, can anyone be denied, where does the money go.

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February 19, 2002

Responses covered: the company keeps the money, and sponsors projects they are interested in, this way they can require everyone they write to buy a membership. They would like to see this become a universal bill.

There was no written testimony. Written testimony has been requested from the Conferees.

With no further discussion, the hearing was closed.

With no further business the meeting was adjourned. Time was approximately 4:40 p.m.

The next meeting will be Tuesday, February 26, 2002.

1 or representatives, or other regulatory body overseeing life insurance.
2 viatical settlements, securities or investment fraud; or

3 (E) the life insurer that issued the life insurance policy covering the
4 life of the insured.

5 (2) Paragraph (1) shall not apply to statements made with actual mal-
6 ice. In an action brought against a person for filing a report or furnishing
7 other information concerning a fraudulent viatical settlement act or a
8 fraudulent insurance act, the party bringing the action shall plead specif-
9 ically any allegation that paragraph (1) does not apply because the person
10 filing the report or furnishing the information did so with actual malice.

11 (3) A person identified in paragraph (1) shall be entitled to an award
12 of attorney fees and costs if such person is the prevailing party in a civil
13 cause of action for libel, slander or any other relevant tort arising out of
14 activities in carrying out the provisions of this act and the party bringing
15 the action was not substantially justified in doing so. For purposes of this
16 section a proceeding is substantially justified if it had a reasonable basis
17 in law or fact at the time that it was initiated.

18 (4) This section does not abrogate or modify common law or statutory
19 privileges or immunities enjoyed by a person described in paragraph (1).

20 (e) (1) The documents and evidence provided pursuant to subsection
21 (d) of this section or obtained by the commissioner in an investigation of
22 suspected or actual fraudulent viatical settlement acts shall be privileged
23 and confidential and shall not be a public record and shall not be subject
24 to discovery or subpoena in a civil or criminal action.

25 (2) Paragraph (1) of this subsection shall not prohibit release by the
26 commissioner of documents and evidence obtained in an investigation of
27 suspected or actual fraudulent viatical settlement acts:

28 (A) In administrative or judicial proceedings to enforce laws admin-
29 istered by the commissioner;

30 (B) to federal, state or local law enforcement or regulatory agencies,
31 to an organization established for the purpose of detecting and preventing
32 fraudulent viatical settlement acts or to the NAC; or

33 (C) at the discretion of the commissioner, to a person in the business
34 of viatical settlements that is aggrieved by a fraudulent viatical settlement
35 act.

36 (3) Release of documents and evidence under paragraph (2) of this
37 subsection does not abrogate or modify the privilege granted in paragraph
38 (1).

39 (4) The provisions of this subsection shall expire July 1, 2007, unless
40 the legislature acts to reenact such provisions. The provisions of this sec-
41 tion shall be reviewed by the legislature prior to July 1, 2007.

42 (f) This act shall not:

43 (1) Preempt the authority or relieve the duty of other law enforce-

or pursuant to a court order,

(D) at the discretion of the commissioner or pursuant to a court order, to a person that is aggrieved by a fraudulent viatical settlement act.

3

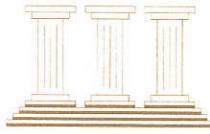
(A) and (B)

Supported by the Kansas Trial Lawyers Association

HOUSE INSURANCE

DATE: Feb 19, 2002

ATTACHMENT # 1



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

To: Members of the House Committee on Insurance

From: Kansas Trial Lawyers Association
Gary D. White, Jr.

Re: HB 2640

Date: Feb. 5, 2002

Chairman Tomlinson and members of the House Committee on Insurance: thank you for the opportunity to submit comments on HB 2640. I am Gary White, a Topeka attorney and a member of the KTLA Executive Committee.

KTLA opposes Sec. 7(e)(2-7) and Sec.12(e)(1) of this bill because it prohibits the public from obtaining documents by subpoena or court order in civil actions. The bill also prohibits prosecutors from obtaining the records in criminal prosecutions for embezzlement and other serious criminal proceedings.

Section 12(a)(1) provides that no person shall commit a fraudulent viatical settlement act. These fraudulent acts are identified in Section 2(f) and are designed to protect the public from a person who knowingly or intentionally defrauds a consumer for pecuniary gain. The bill further allows the Insurance Commissioner's office to investigate a person who commits such fraudulent acts.

The bill, however, prohibits an aggrieved consumer or a prosecutor in a criminal case from obtaining such investigative materials from the commissioner. This includes records that were obtained from the wrongdoer, his employer or other third persons. Specifically, Sec.12(e)(1) of the bill provides:

The documents and evidence provided to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record *and shall not be subject to discovery or subpoena in a civil or criminal action.*"

This provision protects the wrongdoer by precluding disclosure of relevant and material documents. The provision also acts as a deterrent to an aggrieved consumer and prosecutors who are pursuing criminal charges against a person who has defrauded the consumer for potentially thousands of dollars.

Terry Humphrey, Executive Director

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Sec. 12(e)(1), and a similar provision in Sec. 7(e)(2-7), are much broader than are necessary and would bar the discovery of relevant documents, witness statements and other information obtained by or disclosed to the Commissioner or any other person in the course of an investigation even where a court has issued a subpoena or an order finding the documents relevant and requiring production of the records.

Please note that we are **not** proposing that the release of documents be subject to the Kansas Open Records Act. We acknowledge that the Open Records Act provides that criminal investigative materials are not subject to disclosure. However, while the criminal investigative records are **not** open records under the act, such records are subject to subpoena in civil and criminal cases where the Court has determined the records are relevant.

For example, the records related to blood tests or statements by a drunk driver are not subject to the Open Records Act. However, in a civil case by a person who was injured due to the fault of the drunk driver, the injured person can subpoena the records or obtain the records by Court order.

Similarly, questions have arisen whether investigative materials regarding consumer protection complaints filed with the Attorney General's office are available to the public under the Act so a subpoena or Court order is often utilized to obtain production of the records.

By handling the records in this way, the person being investigated is protected by barring general public access to the documents while allowing production of the documents where a Court has determined their relevancy to the proceedings. Under this procedure, the person who was investigated is also allowed to file a motion for protective order or motion to quash if there is a valid objection to production of the records. Such procedure balances the interests of the injured party and the wrongdoer regarding discovery of the information.

The actions of Enron/Arthur Andersen further demonstrate the need for these materials to be available by subpoena and/or court order. Such accounting irregularities could certainly be identified in an examination under Sec. 7 of this bill and the public interest in pursuing recourse should not be deterred by barring such investigative materials from subpoena and court order. Only the wrongdoer is protected by allowing such a bar.

Thank you for the opportunity to express our serious opposition to these sections of this bill. We encourage you to oppose these provisions of the bill.