

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on February 11, 2004 in Room 234-N of the Capitol.

All members were present except:

Senator David Corbin- excused

Committee staff present:

Bill Wolff, Legislative Research
Ken Wilke, Office of the Revisor of Statutes
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:

Sandy Praeger, Insurance Commissioner
Dave Hanson KS. Property and Casualty
Bill Sneed State Farm

Others attending:

See Attached List.

Senator Buhler introduced a group from Douglas County who were shadowing him for the day. The Chair welcomed Senator Buhler's constituents and introduced Commissioner Praeger as the first conferee.

Commissioner Praeger referenced the Committee to her testimony. (Attachment 1) **SB347-prohibiting counting an insurance related inquiry as an insurance claim** would eliminate the reporting of insurance inquiries to CLUE(Comprehensive Life Underwriting Exchange) or other similar databases. CLUE is a valuable database on any given consumer and the property they own.

The Department is not interested in doing away with the CLUE system which has been in place for about ten years. However, the Commissioner believes that we make certain what is being reported to the database is appropriate.

When a consumer/insured makes a claim that information is reported to CLUE. The information is then available to other insurers who may be offering coverage to consumers. The Department agrees that is an appropriate function of the database and does assist in accuracy of basing coverage and rates in evaluating property. However, the Department has seen what they consider a misuse of this process.

She sited an example of a consumer who makes an inquiry of their agent regarding a deductible etc. for a "minor" car accident. The consumer decides to not file a claim and take care of the damages themselves without filing a claim. The agent will report this call to the CLUE database, effecting the consumer's insurability and rate risk in the future. Since the consumer did not file nor did the insurance company pay on the claim the Department strongly believes that cases such as this should not be reported to CLUE.

The purpose of **SB347** is to allow only filed and paid claims to be reported to the database. The information inputted into the database goes unchanged unless a specific request is made by the insured.

Questions from Committee members concerned the frequency of incidents similar to this? *The Commissioner did not have data on that. Did every insurance company use CLUE? The majority of companies do. If a consumer called to check on their deductible only, was that reported? The Commissioner believed that some incident did have to occur albeit it would be small.*

Ken Wilke inquired as to whether the term consumer included anyone other than the policyholder or someone insured under the policy? *The Commissioner replied that the consumer is the policyholder. Mr. Wilke also wanted to know what happened if a company violated this.....what are the penalties? The response was that there were no penalties included and that the regulation would be part of the market conduct activity. The Department is not looking to increase their authority for regulating and therefore any violations would not fall under the unfair trade practice.*

CONTINUATION SHEET

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on February 11, 2004 in Room 234-N of the Capitol.

David Hanson, testified as an opponent of **SB 347**. (Attachment 2) They understand the concerns of the Department on the Bill and have offered some language to Department staff they hope to have brought back that will be acceptable. The industry concerns focuses mostly on who is a consumer and what is an inquiry? The issue really is when should insurance companies be able to use this information?

If it's going to affect the underwriting, the industry likes to know anything that reveals the condition of the property they are about to insure. The industry does not wish to over or under insure or put anyone in the wrong classification. If the property is in poor condition or has prior damage the industry needs to know that and CLUE is one way of gathering that information.

Bill Sneed testified as an opponent on **SB 347**. (Attachment 3) He indicated that the industry does understand some of the Department's concern. CLUE does provide a substantial benefit to the consumer as it may expedite the entire insuring process for the consumer.

Speaking for State Farm only, Mr. Sneed indicated that they use CLUE on the eligibility side only and not on the renewal side and if we are "hamstrung" on the front side, with our due diligence it would add time and inconvenience for the consumer. On the second page of his testimony Mr. Sneed indicated some proposed language changes that would, in his opinion, strike a reasonable balance.

The Chair stated that the industry had indicated they would be willing to work on a compromise with the Department and wanted to know how much time they would need? The industry would put due urgency on meeting with the Department, Mr. Sneed responded.

The Chair would like to have additional information back to the Committee in the next couple days.

The hearing was closed on **SB 347** and the meeting was adjourned at 10:10 a.m.

The next meeting is scheduled for February 12, 2004.

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 2-11-24

Name:

Representing:

Bill Sneed

State Farm

Catherine Rankin

State Farm

Lee Wright

FARMERS INS

Janet Jones

KID

Sandy Prager

KID

Jerry Wells

KID

David Hanson

K's Insur Assns



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 347—PROHIBITING COUNTING AN INSURANCE RELATED INQUIRY
AS AN INSURANCE CLAIM
February 11, 2004

Madam Chair and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. Senate Bill 347 would prohibit the reporting of inquiries to C.L.U.E. or other similar databases.

This bill affects a system those in the industry have come to know as C.L.U.E. (Comprehensive Loss Underwriting Exchange). C.L.U.E. is a database containing valuable information on any given consumer and the property they own. I am not interested in doing away with the C.L.U.E. system, and this bill does not do that. However, I do believe we need to make sure what is being reported to the database is appropriate.

When a consumer is paid for a loss on property, that loss and the pertinent facts surrounding the claim are reported to C.L.U.E. That information is then available to other insurers who may be offering coverage to a consumer. We agree this is an appropriate function of the database and does help in the accuracy of basing coverage and rates for a given piece of property.

However, we have seen this process misused. For example, a consumer backs their car into a light pole slightly scratching their rear bumper. Let's say that consumer cannot remember what their deductible is, so they call their agent or insurance company to find out. Naturally, the consumer explains the situation so the agent knows why they are calling. When the consumer goes to the body shop they find out that the cost to fix the bumper is not worth filing a claim over, and so they pay for the repair.

Senate FI & I Committee

Meeting Date: 2-11-04

Attachment No.: 1

The problem occurs when that phone call to the agent is reported to C.L.U.E. Since the consumer did not file, nor did the insurance company pay on a claim, we do not believe this case should be reported to C.L.U.E. The insurance company did not pay on a loss, and yet the simple inquiry may be reported to C.L.U.E. as a claim.

These are the instances we are attempting to prohibit from being reported. As you will notice on the attached FAQ sheet any reporting of information to the database goes unchanged unless specifically requested by an insurer. The purpose of Senate Bill 347 is to only allow filed claims to be reported to this database.

We want C.L.U.E. to function within the industry, but we do not believe it is always being used appropriately. With that, madam chair, I would be happy to stand for questions.

Sandy Praeger
Insurance Commissioner



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

C.L.U.E. FAQ's

What is a C.L.U.E. Report?

CLUE stands for Comprehensive Loss Underwriting Exchange. It is a comprehensive database of personal property information relating mainly to insurance claims on private property. CLUE was developed by, and is currently operated by, ChoicePoint. *(Another significant provider of this type of database is A-PLUS, managed by the Insurance Services Office (ISO))*

What type of information is found on a C.L.U.E. report?

The typical CLUE report contains information about either a consumer or a particular property. Included is general information about the consumer such as their name, birth date, and sex, as well as current and previous addresses. The key information on the report is the claims history of the individual or the property. This section includes a list of all claims made in the last seven years. The claim history report includes the date of the claim, the name of the insurance company involved, policy number, claim number, address, cause of loss, amounts paid, status of the claim, and the name of the insured and the claimant. It is important to note that the CLUE report details the "claim history" of a given consumer.

Many consumers have been surprised to find that such history may include any call made to an insurance representative regarding a loss, whether or not a claim is actually filed. Thus, showing the need for SB 347.

How can an individual obtain a copy of their CLUE report?

The reports can be obtained from ChoicePoint over the web at www.choicetrust.com or through regular mail. ChoicePoint charges \$9.00 for each report requested via standard mail and \$12.95 for each electronic report. Furthermore, a consumer who has been the subject of adverse action based on the information in the report is entitled to a free copy of the report if they request it within 60 days of the adverse action. Adverse action can include denial of coverage or an increase in premium charges. Insurers are obligated to notify consumers when adverse actions have been taken.

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Who determines what information is put on the report?

While ChoicePoint compiles the information from all the contributors and maintains the database, the information on the report comes directly from insurance companies who give information on claims to ChoicePoint.

ChoicePoint clearly states that they do not change the substance of any claims information unless directed to by the insurance company that contributed the data.

Who, besides the individual owner of a property, has access to CLUE Reports?

Insurance companies also have access to CLUE reports. The report is used by insurance companies for evaluating potential customers. Only insurance companies that provide information to ChoicePoint on claims made by their current policy-holders are allowed to access the CLUE database which contains the claims information from all other participating providers. Currently, approximately 90 percent of American insurance companies participate in the service. Under the FCRA, ChoicePoint may only furnish reports to entities it believes will use the information for underwriting purposes related to the individual consumer whose report was requested. Parties (other than owners) requesting reports from ChoicePoint must certify that they intend to use the information for permissible purposes such as insurance underwriting only.

How can a CLUE report pose problems for homeowners or future homeowners?

When faced with a prospective insured, insurance providers use the CLUE database to find out information not only about the customer, but also about the residence to be covered. Often this will cause problems for homeowners who have recently purchased a property. If a consumer assumes they will be able to get insurance easily because they always have had coverage and have never made any claims, they may be surprised when they are turned down based on claims made on their new property by the previous owners.

GLENN, CORNISH, HANSON & KARNS, CHARTERED

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TESTIMONY ON SB 347

February 11, 2004

TO: **Senate Financial Institutions and Insurance Committee**

RE: **Senate Bill No. 347**

Madame Chair and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of the Kansas Association of Property and Casualty Insurance Companies, whose members are domestic insurance companies in Kansas, and also on behalf of PCI, the Property Casualty Insurers Association of America, with over 1,000 member companies across the country.

We understand and appreciate the concerns of the Kansas Insurance Commissioner in attempting to address inquiries by consumers regarding their property coverage. However, we are concerned with the broad terms of SB 347 and the potential for unintended consequences. We have shared these concerns with the Commissioner and have provided her staff with some suggested revisions that may help clarify the applicability of the restrictions imposed by the bill. We appreciate the Commissioner's consideration of our concerns and suggested revisions.

Without these revisions and clarifications, we fear that underwriting in Kansas will be significantly affected. Under the broad terms of the bill, we are concerned that more and more reports of property damage will be categorized as merely inquiries and not "formal claims" in order to avoid reporting of loss information. In order to effectively underwrite and manage its book of business, a company needs to be able to use information relating to the condition of the property being insured under the policy. If the insured finds that the damage is not covered by their policy or is less than their deductible in the policy, they are likely to suggest that they had simply made an inquiry, not a formal claim. That may seem fair in some situations, but not in others where significant damage has been sustained and reported. One of the critical elements then becomes how to distinguish between an inquiry and a claim.

We are also concerned that this proposal may have an unintended effect of impeding growth and competition, since companies would generally be reluctant to enter new market areas where there are excessive restrictions on underwriting and controlling coverages. Undue restrictions on the ability to underwrite will hurt availability as companies are forced to become more cautious in the risks they will accept.

We appreciate your consideration of our concerns and assure you that we are willing to continue working on suggested revisions to address these concerns.

Respectfully,



DAVID A. HANSON

Senate FI & I Committee

Meeting Date: 2-11-04

Attachment No.: 2

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Memorandum

TO: THE HONORABLE RUTH TEICHMAN, CHAIR
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
THE STATE FARM INSURANCE COMPANIES

RE: SENATE BILL 347

DATE: FEBRUARY 10, 2004

Madame Chair, Members of the Committee: My name is Bill Sneed and I represent State Farm Insurance Companies ("State Farm"). State Farm is the largest insurer of homes in the United States and Kansas. We appreciate the opportunity to testify on Senate Bill 347. Senate Bill 347 limits an insurer's ability to report and use inquiries for underwriting purposes.

As you know, there have been recent media reports regarding the use of CLUE® by insurance companies. CLUE, Comprehensive Loss Underwriting Exchange, has existed for over ten years. It is a database of claim information that insurers use to assist them in assessing the risk of loss. Insurers use CLUE to verify the accuracy of the applicant's prior loss information.

Prior to CLUE, underwriters sent "experience letters" to an applicant's prior insurers to obtain loss history information. This process was time intensive and delayed the processing of homeowners insurance applications. With the advent of CLUE, insurers no longer had to exchange correspondence about an applicant's loss history. CLUE allows insurers to access this information almost instantaneously. This enables insurers to quickly respond to an insurance application. Loss history reports are more efficient and convenient than experience letters. Consumers expect and benefit from the greater efficiency this database offers.

CLUE, due to its comprehensive nature, is a more accurate way to confirm prior loss history. Its greater accuracy allows insurers to appropriately assess the risk and price their product accordingly.

Minimal damage or uncovered claims can be predictive of future loss. Damage such as cracked foundations, construction defects or repeated water seepage is not covered by homeowners insurance. However the existence of this type of damage indicates a greater likelihood of future covered claims under the policy from this peril. Minor dog bite cases may not result in a claim,

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Senate FI & I Committee

Meeting Date: 2-11-04

Attachment No.: 3

but their occurrence indicates an increased risk of loss. Insurers need to know this information to properly underwrite the risk. Unfortunately, since Senate Bill 347 prohibits the reporting of all inquiries, subsequent insurers may not have access to this important underwriting information.

The primary providers of loss history reports are insurance support organizations such as ChoicePoint® and ISO. The prohibition on reporting inquiries under Senate Bill 347 is complete. This ban prevents insurers from sharing suspicious inquiries with regulatory, law enforcement and fraud reporting agencies. The ability to advise these agencies of suspicious inquiries is an effective fraud detection tool. Unfortunately, the broad scope of Senate Bill 347 prevents insurers from providing law enforcement and other fraud detection agencies with this information.

State Farm recognizes Kansans' concerns regarding the use of inquiries for underwriting purposes. State Farm and the industry have worked on a legislative proposal that addresses these concerns, yet allows insurers to continue to use inquiries when appropriate. We believe this proposal strikes a reasonable balance between the interest of consumers and insurers.

Be it enacted by the Legislature of the State of Kansas:

(a) As used in this act:

(1) "Inquiry" means any oral or written communication.

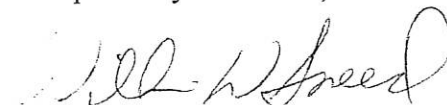
(2) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating information on consumers for the purpose of furnishing consumer reports to third parties.

(b) No inquiry by a consumer on any property, real or personal, shall be reported by an insurer to a consumer reporting agency with respect to a policy of homeowner's insurance if such inquiry only involves a request for information regarding the terms, conditions or coverage's afforded under a homeowner's insurance policy and such request is not related to any property or liability loss and no damage has occurred to the insured property. Nothing in this act shall be construed to prohibit or otherwise restrict any insurer from reporting information to any regulatory agencies, law enforcement or fraud reporting agencies.

We appreciate the opportunity to speak to the Committee on this issue, and we would be happy to discuss this with you at any time. Based upon the foregoing, State Farm would respectfully urge the Committee to not act on S.B. 347.

If you have any questions, please feel free to contact me.

Respectfully submitted,


William W. Sneed