

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on March 15, 2005 in Room 527-S of the Capitol.

All members were present except:

Representative Eber Phelps- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Terri Weber, Kansas Legislative Research Department

Ken Wilke, Revisor of Statutes Office

Sue Fowler, Committee Secretary

Conferees appearing before the committee:

Larry Magill, Topeka, KS

Lee Wright, Overland Park, KS

Bob Tomlinson, Topeka, KS

Others attending:

See attached list.

Hearing on:

SB 140: **Insurance; limitation on insurance value on improvements on real property**

Melissa Calderwood, Kansas Legislative Research Department gave a brief overview on **SB 140**.

Proponents:

Larry Magill, Kansas Association of Insurance Agents, (Attachment #1), appeared before the committee in support of **SB 140**.

Lee Wright, Farmers Insurance Group, (Attachment #2), appeared before the committee in support of **SB 140**.

Hearing closed on **SB 140**.

Hearing on:

SB 175: **Insurance companies; requirements on certain types of securities**

Melissa Calderwood, Kansas Legislative Research Department gave a brief overview on **SB 175**.

Proponent:

Jarrad Forbes, State of Kansas Insurance Department, (Attachment #3), presented testimony in support of **SB 175**.

Hearing closed on **SB 175**.

Hearing on:

SB 176: **Insurance brokers; change of terminology to insurance producers**

Melissa Calderwood, Kansas Legislative Research Department gave a brief overview on **SB 176**.

Proponent:

Bob Tomlinson, State of Kansas Insurance Department, (Attachment #4), presented testimony in support of

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on March 15, 2005 in Room 527-S of the Capitol.

SB 176.

Hearing closed on **SB 176.**

Representative Grant moved to approve the minutes of the March 3, 2005 and March 10, 2005 meetings. Seconded by Representative Schwab. Motion passed.

Next meeting will be Thursday, March 17, 2005.

Meeting was adjourned at 4:10 P.M.

**House Insurance Committee
Guest Sign Sheet
Tuesday, March 15, 2005**

Name	Representing
Patrick Mulyihill	Kansas Insurance Dept.
Rick Wilborn	Farmers Alliance
Lee Wright	Farmers Insurance
Alex Kotogantz	P.I.A.
DAVID MAZUR	KHA
LARRY MAZUR	KHA
Bill Speed	State Farm
WANDA JILL BIRCH	LMHA
Robert Tomlinson	KID
Christopher Tomlinson	KID
David Hanson	Ks Ins Assns



Testimony on House Bill 140
Before the House Insurance Committee
By Larry Magill
March 15, 2005

Thank you mister chairman and members of the committee for the opportunity to appear today in support of SB 140, a measure we asked the Senate Financial Institutions and Insurance Committee to introduce. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas. Independent agents are free to represent a number of different insurance companies.

This legislation is intended to accomplish what SB 456 would have accomplished last year, had it passed. Last year's bill prohibited lenders from requiring insurance for more than the replacement cost of the improvements to the real property, in other words, the house. We delayed the hearing in 2004 on SB 456 in hopes of working out a compromise with groups that were concerned with the bill. Unfortunately, we were not able to reach any agreement before the deadline and hoped it would be assigned to an interim. It wasn't and we decided to work on it again this year.

This year we hoped to avoid some of those problems by taking a different approach and simply prohibiting insurers from insuring property for more than its replacement cost. A bit indirect, but we thought it might work. At least two insurers had concerns with the potential liability that would place on them, and frankly, our legal counsel was advising us that agents could have some new liability as a result of the original language in SB 140 as well. On the other hand, lenders did not want the bill directed at them either, as was the case with the language as it came out of Senate FI&I prohibiting lenders from requiring a limit of insurance that included the land values.

Therefore, we supported an amendment on the Senate floor that removed the reference to lenders and the value of land and added a provision that the bill does not create a private cause of action. The Senate floor amendment still caused some concerns for State Farm who has suggested that we add the language, "required to be" as shown in the balloon attached to my testimony.

Foremost Insurance Company has suggested the second change incorporated in our balloon, which defines "improvements to real estate."

Senate Bill 140, with these changes, accomplishes what we need without placing any new liabilities on the agents, the insurer or the lender. There is no penalty in this statute and we see no need for one. We feel that just being able to point to the law will be sufficient to resolve any disagreements. We think this language satisfies the insurance companies on the one hand and the lenders on the other.

To our knowledge there is no state or federal banking requirement that says a lender must have insurance equal to the amount of the loan. Unfortunately that doesn't stop some mortgage companies from requiring insurance equal to the loan to close. That puts the agent in the untenable position of having a client who needs a policy limit greater than the property is worth on a replacement cost basis. As you can see from the remainder of KSA 40-905, our valued policy law, if the property is completely destroyed, the insured will be paid the policy limit. The valued policy statute prohibits an insurer from arguing after the fact that the home was really not worth what it was insured for. Our association supports the valued policy law as a good consumer protection.

An agent in this situation may be pressured to violate their contract with their insurer and knowingly inflate the replacement cost figures, which could place the agent in the position of having committed fraud. At the very least, it would leave the agent open to a professional error & omission claim by their carrier. What's more, the insured would be forced to pay for coverage they do not need.

This problem most often occurs when a relatively low value home is built on either an expensive lot, or a number of acres of high value ground, or the home has depreciated in value. Occasionally the lender wants the primary amount of insurance to cover both the residence and the outbuildings when the detached structures are subject to a separate sub limit. With today's very low interest rates, there are an exceptional number of properties being financed or refinanced and some lenders are beginning to consolidate personal debts under the home mortgage. Some are routinely loaning as much as 125% of the home's value and then asking for an insurance policy in that amount.

Keep in mind that insurers, when calculating replacement cost, exclude land values, foundations and items below the foundation. These items are assumed to not be subject to an insured loss. And insurance is concerned with replacement cost in most homeowners policies. That is the cost to build a new home like the one destroyed. That is different than market or appraised value, which is what the house and land, in its present condition, neighborhood and area of the country, will sell for to a willing buyer. Finally some homes can only be insured for their actual cash value, which is defined as their replacement cost less depreciation. This is generally offered when the replacement cost of the home is considerably higher than the market value creating a moral hazard.

The insurance industry uses a number of appraisal services to determine replacement cost but the most common is Marshall & Swift/Boeckh. Our proposal allows room for the lender to argue for a different replacement cost if it can be supported by the facts.

I recently asked my members at our largest conference of the year how many have had problems with mortgage lenders on this and nearly half the audience of several hundred raised their hands. While admittedly not statistically valid research, it points to the fact that this is not an isolated problem. It comes up occasionally for many of my members. Last year we surveyed our members during the legislative session and were surprised at the extent of the problem. A large number of our members responded to the survey, one of them indicating that the issue comes up 50 times per year. The survey results are available if anyone is interested.

You will hear from one of the other proponents that a large number of states including Missouri and Oklahoma have enacted similar statutes.



This is a serious concern to our members and for their clients. We urge the committee to amend SB 140 with our balloon and pass the bill out favorably. Thank you for your time today. We would be happy to answer questions or provide additional information.



SENATE BILL No. 140

By Committee on Financial Institutions and Insurance

1-31

9 AN ACT concerning insurance; relating to limiting the insurance value of
10 improvements on real property to its replacement cost; amending K.S.A.
11 40-905 and repealing the existing section.
12

13 *Be it enacted by the legislature of the state of Kansas:*

14 Section 1. K.S.A. 40-905 is hereby amended to read as follow: 40-905.

15 (a) (1) Whenever any policy of insurance or an increase in the amount of
16 coverage in an existing policy of insurance shall be written to insure any
17 improvements upon real property in this state against loss by fire, tornado,
18 windstorm or lightning, and the property insured shall be wholly destroyed,
19 without criminal fault on the part of the insured or the insured's assigns, the
20 amount of insurance written in such policy shall be taken conclusively to be
21 the true value of the property insured, and the true amount of loss and
22 measure of damages, and the payment of money as a premium for insurance
23 shall be prima facie evidence that the party paying for such insurance is the
24 owner of the property insured.

25 (2) ~~Improvements on real property shall not be insured for more than~~
26 ~~replacement cost of such improvements as determined by a recognized~~
27 ~~appraisal method or service. Nothing herein shall prohibit an insurer from~~
28 ~~offering an inflation guard endorsement on a replacement cost policy. No~~
29 ~~lienholder of mortgagee shall required insurance on improvements to~~
30 ~~real property that includes land value. [Improvements on real property~~
31 ~~shall not be insured for more than the reasonably estimated~~
32 ~~replacement cost such improvements. Nothing herein shall prohibit a~~
33 ~~policy or endorsement to a policy as described in the subsection from~~
34 ~~contain an inflation guard provision or similar provision. Nothing in~~
35 ~~this section shall be deemed to create a private cause of action.]~~

required to be

(3) For the purposes of this paragraph, improvements on real property means a fixture, building or other structure attached to real property and intended as a permanent addition to the property.

36 (b) The provisions of subsection (a) shall not apply to:

37 (1) New policies of fire insurance or existing policies of fire insurance
38 where there has been an increase in the amount of coverage of 25% or more,
39 until such policies have been in effect for at least 60 days. If there is a total
40 loss by fire within the sixty-day period and the insurer pays less than the
41 face value of the policy, the insurer shall refund the difference in premium
42 between the amount of insurance purchased and the premium applicable for
43 the amount of the loss actually paid. This paragraph shall not apply to a loss

1 by fire caused by lightning.

2 (2) Builder's risk policies of insurance covering property in the process
3 of being constructed. The value of the property insured shall be the actual
4 value of the property at the time of the loss.

5 Sec. 2. K.S.A. 40-905 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.



FARMERS

Kansas State Executive Office
10850 Lowell
Overland Park, Ks. 66210
Bus 913.661.6580
Fax 913.323.6172

March 15, 2005

Testimony on Senate Bill 140
House Insurance Committee
By Lee Wright
Position: Support

Mr. Chairman and Members of the Committee. My name is Lee Wright and I am representing FARMERS Insurance. FARMERS is a property and casualty insurer serving Kansas customers since 1930. Thank you for this opportunity to appear before you today in support of Senate Bill 140.

To begin with, we would advise the Committee we are in support of the latest amendments proposed today by Mr. Magill of the Independent Agent's Association. We would also like to express our appreciation to those representatives from the lending institutions for working with the insurance industry on the bill.

There are currently 28 states that have passed this type of legislation. In 2004, Missouri, Oklahoma, Illinois, Indiana and Ohio all passed similar bills.

FARMERS believes requiring someone to carry more insurance than they need is unnecessary, unfair to premium paying consumers and can create an incentive for insurance fraud, such as arson. For these reasons we believe this bill represents good consumer legislation and we respectfully urge the Committee to support SB 140 and find it favorable for passage.

Thank you.

House Insurance
Date: 3-15-05
Attachment # 2



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 175—RELATING TO SECURITIES HELD BY A COMPANY
HOUSE COMMITTEE ON INSURANCE
March 14, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department.

Senate Bill 175 is a technical change. This bill deals with securities held by an insurance company. We are simply changing the phrase "subsection (a)" to "this section". We believe this is a technical error made when the original law was passed.

We believe this bill is an excellent candidate for the consent calendar if the committee so desires. With that Madam Chair I would be happy to stand for any questions the committee may have.

Jarrod Forbes
Assistant Director
Government Affairs

House Insurance
Date: 3-15-05
Attachment # 3



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 176—RELATING TO NEW TERMINOLOGY FOR INSURANCE
BROKERS
HOUSE COMMITTEE ON INSURANCE
March 15, 2005

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department.

Senate Bill 176 is a technical style change. This bill deals with a captive insurer writing business for a controlling company. Current law makes reference to a licensed “agent or broker”, terms that are no longer appropriate for this area of the law. Therefore, we are proposing replacing those references with “producer”.

This change would bring the law into compliance with the uniform insurance agent licensing act. We do believe this bill to be a technical clean up and would urge you to support Senate Bill 176.

With that Mr. Chairman I would be happy to stand for any questions the committee may have.

Bob Tomlinson
Assistant Insurance Commissioner

House Insurance
Date: 3-15-05
Attachment # 4