

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on March 21, 2005 in Room 234-N of the Capitol.

All members were present except:

James Barnett- excused
Pete Brungardt- absent

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Bill Sneed, State Farm Insurance
Terry Humphrey, Kansas Trial Lawyers Association

Others attending:

See attached list.

Madam Chair called the meeting to order.

Madam Chair reopened the hearing on **HB 2357**.

HB 2357 -Establishing a self audit program for insurance

Bill Sneed, State Farm Insurance, offered a balloon amendment addressing page 2, line 28 of the bill, which expands the limitation of the bill; page 4, lines 39 through 41 of the bill, with intended language stating that if it was privileged information, it remains privileged information; and page 5, line 16 of the bill, setting a time limit. (Attachment 1)

Ken Wilke wanted clarification of where exactly the wording is going to be added on page 4. Mr. Sneed answered, after the word "law" on line 41.

Senator Brownlee asked if the balloon amendment on page 4 also worked in the reverse if the information was not privileged, did it remain unprivileged? Mr. Sneed answered that is correct.

Chair Teichman asked Barb Hinton if the amendment on page 2 would satisfy Post Audit? Ms. Hinton said yes, it would.

Terry Humphrey, Kansas Trial Lawyers, stated she was not prepared to comment on the balloon amendments.

Chair Teichman asked Ms. Humphrey if she felt the amendment on page 5 covered her concerns about having a time limit? Chair Teichman also asked Ms. Humphrey if she had looked at any of the banking bills to make a comparison between them and **HB 2357**? Ms. Humphrey answered she would need to obtain more details. Ms. Humphrey also stated she would be willing to work with all parties concerned.

Chair Teichman announced **HB 2357** would be worked tomorrow, March 22.

Madam Chair closed the hearing on **HB 2357**.

Madam Chair announced that action should be taken on **HB 2276**.

HB 2276 - Transmission of money charges

Senator Wysong moved to pass **HB 2276** out of committee favorably, Senator Brownlee seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on March 21, 2005 in Room 234-N of the Capitol.

Madam Chair announced that **HB 2172** would be put into **HB 2203** so the committee would have a vehicle.

Madam Chair announced that she had not heard back from the KCCI on **HB 2366**. The committee did not have enough information to work the bill. Therefore, it would be held open for hearings this summer.

Madam Chair announced the Committee would be hearing **HB 2138** March 22.

Madam Chair announced that the House had gutted **SB 100**, **SB 102** and **SB140**.

The meeting was adjourned at 9:55 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 3-21-05

NAME	REPRESENTING
Natalie Haag	Security Benefit
Alex Kotsyantz	P.I.A.
Abraa Bailey	KIDS
Bill Sneed	State Farm
Crazy Van Adst	KID
[Signature]	KID
Sonya Allen	office of the State Bank Commissioner
Danny J. Vapik	"
David Hanson	Ks Ins Assns
Lee Wilt	Farmers Int.
Ron Gaches	CBBA
John Campbell	KID
[Signature]	KID
[Signature]	KIAA
[Signature]	HEIN Law Firm
Brad Amost	AIA

Attachment 1
3/21/05
FI+I

1 the disclosure of an insurance compliance self-evaluative audit document
2 under other provisions of applicable law, any such report furnished to the
3 commissioner shall not be provided to any other persons or entities and
4 shall be accorded the same confidentiality and other protections as pro-
5 vided above for voluntarily submitted documents. Any use of an insurance
6 compliance self-evaluative audit document furnished as a result of a re-
7 quest of the commissioner under a claim of authority to compel disclosure
8 shall be limited to determining whether or not any disclosed defects in
9 an insurers' policies and procedures or inappropriate treatment of cus-
10 tomers has been remedied or that an appropriate plan for their remedy
11 is in place.

12 (1) Any insurance company's insurance compliance self-evaluative
13 audit document submitted to the commissioner shall remain subject to
14 all applicable statutory or common law privileges including, but not lim-
15 ited to, the work product doctrine, attorney-client privilege, or the sub-
16 sequent remedial measures exclusion.

17 (2) Any compliance self-evaluative audit document so submitted and
18 in the possession of the commissioner shall remain the property of the
19 insurance company and shall not be subject to any disclosure or produc-
20 tion under the Kansas open records act. The provision of this paragraph
21 shall expire on July 1, 2010, unless the legislature reenacts such provision.
22 The provision of this paragraph shall be reviewed by the legislature prior
23 to July 1, 2010.

24 (d) Disclosure of an insurance compliance self-evaluative audit doc-
25 ument to a governmental agency, whether voluntary or pursuant to com-
26 pulsion of law, shall not constitute a waiver of the privilege set forth in
27 subsection (a) with respect to any other persons or any other govern-
28 mental agencies.

29 Sec. 2. (a) The privilege set forth in section 1, and amendments
30 thereto, shall not apply to the extent that it is expressly waived by the
31 insurance company that prepared or caused to be prepared the insurance
32 compliance self-evaluative audit document.

33 (b) In a civil or administrative proceeding, after an in camera review,
34 a court or presiding officer may require disclosure of material for which
35 the privilege set forth in section 1, and amendments thereto, is asserted,
36 if the court or presiding officer determines one of the following:

- 37 (1) The privilege is asserted for a fraudulent purpose; or
- 38 (2) the material is not subject to the privilege.

39 (c) In a criminal proceeding, after an in camera review, a court may
40 require disclosure of material for which the privilege described in section
1, and amendments thereto, is asserted, if the court determines one of
the following:

- 41 (1) The privilege is asserted for a fraudulent purpose;

Nothing in this act shall prohibit the post auditor from access to all insurance compliance self-evaluative audit documents in the custody of the commissioner.

; or (3) even if subject to the privilege, the material shows evidence of noncompliance with applicable laws and regulations and appropriate efforts to achieve compliance with such laws or regulations were not promptly initiated and pursued with reasonable diligence upon discovery of noncompliance.

1 will not be considered to be a public document or be deemed to be a
2 waiver of the privilege for any other civil, criminal or administrative pro-
3 ceeding. A party unsuccessfully opposing disclosure may apply to the
4 court for an appropriate order protecting the document from further
5 disclosure.

6 (e) At the time of filing any objection to the disclosure, any insurance
7 company asserting the insurance compliance self-evaluative privilege in
8 response to a request for disclosure under this section shall provide to
9 the commissioner, attorney general, or a county or district attorney, all of
10 the following information:

11 (1) The date of the insurance compliance self-evaluative audit
12 document.

13 (2) The identity of the entity conducting the audit.

14 (3) The general nature of the activities covered by the insurance com-
15 pliance audit.

16 (4) An identification of the portions of the insurance compliance self-
17 evaluative audit document for which the privilege is being asserted.

18 Sec. 4. (a) Any insurance company asserting the insurance compli-
19 ance self-evaluative privilege set forth in section 1, and amendments
20 thereto, has the burden of demonstrating the applicability of the privilege.
21 Once any insurance company has established the applicability of the privi-
22 lege, the party seeking disclosure under paragraph (1) of subsection (b)
23 of section 2, and amendments thereto, has the burden of proving that the
24 privilege is asserted for a fraudulent purpose. The commissioner, attorney
25 general, or a county or district attorney seeking disclosure under subsec-
26 tion (c) of section 2, and amendments thereto, has the burden of proving
27 the elements set forth in subsection (c) of section 2 and amendments
28 thereto.

29 (b) The parties may at any time stipulate in proceedings under sec-
30 tions 2 or 3, and amendments thereto, to entry of an order directing that
31 specific information contained in an insurance compliance self-evaluative
32 audit document is or is not subject to the privilege provided under section
33 1 and amendments thereto. Any such stipulation may be limited to the
34 instant proceeding and, absent specific language to the contrary, shall not
35 be applicable to any other proceeding.

36 Sec. 5. The privilege set forth in section 1, and amendments thereto,
37 shall not extend to any of the following:

38 (a) Documents, communications, data, reports or other information
39 ~~expressly required to be~~ collected, developed, maintained or reported to
a regulatory agency pursuant to chapter 40 of Kansas Statutes Annotated,
and amendments thereto, or other provisions of federal or state law;

42 (b) information obtained by observation or monitoring by any regu-
43 latory agency; or

and would not otherwise be privileged;

1 (c) information obtained from a source independent of the insurance
2 compliance audit.

3 Sec. 6. As used in this act, the following words and phrases shall have
4 the meaning ascribed to them in this section: (a) "Commissioner" means
5 the commissioner of insurance or the commissioner's authorized
6 designee.

7 (b) "Insurance company" or "insurer" shall have the meaning as-
8 cribed to the term insurance company in K.S.A. 40-201 and amendments
9 thereto.

10 (c) "Insurance compliance audit" means a voluntary, internal evalu-
11 ation, review, assessment, audit or investigation for the purpose of iden-
12 tifying or preventing noncompliance with, or promoting compliance with
13 laws, regulations, orders, or industry or professional standards, which is
14 conducted by or on behalf of any insurance company licensed or regulated
15 under the Kansas insurance code, or which involves an activity regulated
16 under the Kansas insurance code.

17 (d) "Insurance compliance self-evaluative audit document" means
18 any document prepared as a result of or in connection with an insurance
19 compliance audit. An insurance compliance self-evaluative audit docu-
20 ment may include:

21 (1) A written response to the findings of an insurance compliance
22 audit.

23 (2) Any supporting information is collected or developed for the pri-
24 mary purpose and in the course of an insurance compliance audit includ-
25 ing, but is not limited to, field notes and records of observations, findings,
26 opinions, suggestions, conclusions, drafts, memoranda, drawings, photo-
27 graphs, exhibits, computer-generated or electronically recorded infor-
28 mation, phone records, maps, charts, graphs and surveys.

29 (3) Any of the following:

30 (A) An insurance compliance audit report prepared by an auditor,
31 who may be an employee of the insurance company or an independent
32 contractor, which may include the scope of the audit, the information
33 gained in the audit, and conclusions and recommendations, with exhibits
34 and appendices;

35 (B) memoranda and documents analyzing portions or all of the in-
36 surance compliance audit report and discussing potential implementation
37 issues;

38 (C) an implementation plan that addresses correcting past noncom-
39 pliance, improving current compliance, and preventing future noncom-
40 pliance; or

41 (D) analytic data generated in the course of conducting the insurance
42 compliance audit.

43 (e) Presiding officer shall have the meaning ascribed to it in K.S.A.

Once initiated an audit shall be completed within a reasonable period of time. Nothing in this section shall be construed to authorize uninterrupted or continuous auditing.