

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 22, 2005 in Room 234-N of the Capitol.

All members were present.

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:

Jarrold Forbes, Kansas Insurance Department
Callie Denton, Kansas Trial Lawyers Association
Brad Smoot, American Insurance Associations

Others attending:

See attached list.

Madam Chair called the meeting to order.

Madam Chair opened the hearing on **HB 2138**.

HB 2138 - Amusement rides; insurance requirements

Melissa Calderwood, Kansas Legislative Research Department, presented an overview of **HB 2138**. **HB 2138** amends K.S.A. 40-4802 to provide that the insurance policy for amusement rides be written by an insurance company doing business in Kansas. Under current law it is written by an insurance company authorized to do business in Kansas. The House committee heard from a home owned carnival organization that the organization is having increases on policies written each year by out of state carriers and have a number of increase costs associated with those policies.

Senator Wysong asked if there were any insurance companies in Kansas writing these policies? Ms. Calderwood stated, that is "authorized."

Jarrold Forbes, Kansas Insurance Department, testified in support of **HB 2138**. When the language was drafted, it said "authorized carrier." There is no carrier admitted through the KID offices that writes these policies. The change will state an insurance policy shall be written by an insurance company doing business in Kansas. (Attachment 1)

Senator Wysong asked, how old is this law? The Insurance Department stated it was three years old. Senator Wysong stated that the one million-dollar cap seems low. Senator Brungardt said this issue was dealt within Fed and State a couple of years in a row.

Ken Wilke stated this statute was part of a bill put together by Rep. Sloan about three or four years ago. It was run through the local government committees and it stalled and he ended up bringing it to a conference committee. Rep. Sloan was able to talk the conference committee into putting the bill into the conference committee report and that is how it got passed.

Senator Wilson asked if **HB 2138** does not pass, how would that effect the state fair? Mr. Forbes stated that it would not affect the state fair.

Senator Barone asked, why can an insurance company not be authorized in Kansas? Mr. Forbes answered that they can, but there are no insurance companies presently in Kansas that are authorized that choose to write these policies. Senator Barone asked, by not be authorized in Kansas, are they not escaping certain regulations. The Kansas Insurance Department stated that the two different types of companies are basically the authorized companies and the non-authorized companies. The authorized are ones that are admitted and are issued a

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certificate of authority through the insurance department. The non-authorized carriers are the ones such as Lloyds of London which are on a white list measured by virtue of a statute. They have financial backing to put on a white list, but within that statute it also says that those carriers do not have to be regulated by the insurance department. So a non-authorized insurer can write this type of business whereas an authorized insurer is not willing to write this type of business. There were no further questions.

Madam Chair closed the hearing on **HB 2138**.

Madam Chair announced she would like the committee to work **HB 2138**.

Senator Barnett moved to pass **HB 2138** out favorably, Senator Brungardt seconded the motion. The motion carried.

Madam Chair opened the hearing on **HB 2172**.

HB 2172 - Insurance agents; revocation of license

Melissa Calder, Kansas Legislative Research Department, presented an overview on **HB 2172**. **HB 2172** was requested by the Insurance Commissioner and would remove the citations of K.S.A. 40-241 and K.S.A. 40-246. **HB 2172** passed the House 121 - 0.

Jarrod Forbes, Kansas Insurance Department, presented testimony in support of **HB 2172**. **HB 2172** would now reference K.S.A. 40-4909 in this law. (Attachment 2)

There were no questions.

Madam Chair closed the hearing on **HB 2172**.

Madam Chair announced that the committee would now deal with some of the issues that are on going in the House.

Madam Chair's first action was to recommend to the committee that the contents of **SB 2172** be removed and amended into **SB 2203** which the committee heard yesterday. **SB 2172** would become an open vehicle for other bills.

HB 2203 - Medical and hospital service corporations; termination of coverage for cause approved by commissioner of insurance

HB 2203 would permit Blue Cross and Blue Shield of Kansas City to refuse coverage if there is fraud involved.

Senator Steineger confirmed that the provisions of **HB 2172** would be moved into **HB 2203**.

Senator Schmidt made a motion to amend the contents of **HB 2172** into **HB 2203**. Senator Brownlee seconded the motion. The motion carried

Madam Chair announced that **HB 2172** is now empty.

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

HB 2357 -Establishing a self audit program for insurance

The committee has before them the proponents' balloon amendments to **HB 2357** that were presented yesterday. (Attachment 3)

There was discussion on the first amendment and at Senator Brownlee's suggestion the name was changed

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to "Division of Legislative Post Audit"

Senator Brownlee moved to adopt the balloon amendment with the changes discussed on page 2, line 28 of the bill. Senator Steineger seconded the motion. The motion carried.

Senator Brownlee moved to adopt the balloon amendment inserting language on page 2, line 38 of the bill. Senator Schmidt seconded the motion. The motion carried.

There was discussion on the third amendment on page 4, line 41 of the bill regarding the language proposed to be inserted concerning privileged documents. Mr. Wilke, Revisor, offered alternate language which the committee appeared to prefer.

Senator Wysong moved to adopt the balloon amendment inserting language on page 4, line 41 of the bill. Senator Barnett seconded the motion. The motion carried.

There was discussion on the fourth amendment on page 5, line 16 of the bill regarding language taken from the Environmental Audit law.

Senator Brownlee moved to adopt the amendment inserting language on page 5, line 16 of the bill. Senator Schmidt seconded the motion. The motion carried.

Callie Denton, Kansas Trial Lawyers Association, presented their amendments to **HB 2357** for consideration. Their major change is on page 2 that would strike the lines 29 through 32 and replace them with a new section 2. There were other minor changes on page 4 and 5. (Attachment 4)

Madam Chair stated since the committee had not had an opportunity to review the KTLA amendments, she would wait until the end of the meeting to address the amendments.

HB 2366 - Accident and health insurance; removal on limitation on deductibles, coinsurance and similar payments

Madam Chair made a statement about **HB 2366**. It has been the decision not to run **HB 2366** at this time. In deference to the fact that there were so many questions from Committee, Madam Chair is asking for an interim study.

Madam Chair once again informed the committee that **SB 100**, **SB 102** and **SB 140** have been gutted in the House Insurance Committee and will be put into **SB 176**.

The House Insurance Committee still has not passed **SB 103**, **SB 175**, **SB 207**, **SCR 1602** or **SB 176**. Madam Chair's concern is about the HIPAA bill.

Madam Chair announced the committee has a vehicle open which is **HB 2172**. The House has put together into **SB 223** the following bills, **SB 196** and **HB 2145**. Given that the contents of House Substitute for **SB 223** will be amended into the shell of **HB 2172**.

House Substitute Bill SB 223 contains the contents of: **HB 2145 - Consumer credit code, regulations, penalties; SB 196 - Kansas mortgage business act amendments; and SB 223 - Payday loans; changes affecting fees and military personnel**

There was some discussion regarding concerns over mixing these bills together. Mr. Wilke, Revisor, offered an explanation that satisfied the committee.

Senator Barone moved to put the contents of House Substitute SB 223 into HB 2172 and designate the amended bill as a substitute bill. Senator Brungardt seconded the motion. The motion carried.

Senator Steineger asked if this rolled together all three of the bills? Chair Teichman, yes. Senator Steineger announced that he had a motion to add an amendment to **HB 2172**. This amendment would address the car

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title loan industry by putting 120% per annum cap on the amount the industry can charge the consumer on a title loan. This would bring the car title loan people under further regulation by the bank commissioner. The amendment is called the "Loan Max Amendment."

There was much discussion about Senator Steineger's timing in bringing this issue before the committee between the committee. Senator Brungardt and Senator Wilson stood in opposition of the amendment because there was never a hearing for discussion.

The committee took a vote and the amendment dies.

Senator Steineger moved to add the Loan Max Amendment to **HB 2172**. Senator Barone opposed the motion. The motion failed.

Senator Brownlee moved to pass **HB 2172** as amended out favorably. Senator Schmidt seconded the motion. The motion carried.

Madam Chair readdressed **HB 2357**.

Brad Smoot, American Insurance Associations, stated that at a glance, he has many concerns about the KTLA amendments, mostly because of the assertion that much of this amendment comes from the existing environmental law. The language the KTLA is proposing to strike is directly out of the current state's environment audit law. Then there is other language that cannot be found anywhere.

Senator Brownlee suggested leaving the language the way it already is.

Callie Denton, Kansas Trial Lawyers Association, stated that they have concerns if their language is not adopted.

Senator Brownlee moved **HB 2357** be passed as amended, Senator Schmidt seconded the motion. There was a show of hands vote and the motion passed five to three with Senator Wilson, Senator Barone and Senator Steineger voting no.

Madam Chair announced the remaining four sets of committee minutes would be delivered to each committee member for approval within three days of the time they received them.

The meeting was adjourned.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: Tues, March 22, 2005

NAME	REPRESENTING
Natalie Haag	Security Benefit
Alex Kotofantz	P.I.A.
Jamie	KID
Ron GACHES	GBBA
Whitney Damron	KS Payday Loan Assn.
Patricia Lightner	HSBC
Sonya Allen	Office of State Bank Comm.
Danny J. Vopny	"
Frank Capella	'
Joe Duck	KC BPU
Gerald Hanson	KS Ins Assns
Jamie Antrower	KATP
De Murray	Federico Casu A.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
HB 2138 – AN ACT CONCERNING AMUSEMENT RIDES
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
March 22, 2005

Madam Chair and members of the committee:

Thank you for the opportunity to speak with you today. HB 2138 is a proposal to amend K.S.A. 40-4802 and allow amusement ride operators a choice in purchasing insurance.

Under current law, an amusement ride operator in Kansas is required to purchase insurance for liability and bodily injury from an insurance company authorized to do business in Kansas. At this time, no authorized insurance company in Kansas offers the necessary commercial general liability insurance to amusement ride operators required by state law.

HB 2138 would amend K.S.A. 40-4802 to allow amusement ride operators to purchase insurance written by a company doing business in Kansas. Under current law, an amusement ride operator may purchase insurance only from an authorized or admitted carrier, not a non-admitted carrier. This change would allow amusement ride operators to purchase insurance from an admitted or non-admitted carrier.

If this legislation does not pass the Kansas Insurance Department would have no choice but to prohibit all for-profit carnivals from having amusement rides unless they could secure insurance from an admitted carrier. Being that Kansas does not currently have an admitted carrier writing the appropriate line of insurance, this requirement would be impossible to comply with.

Thank you for the opportunity to appear before your committee. I would be happy to answer any questions the committee may have.

Jarrod Forbes
Assistant Director
Government Affairs

*Attachment 1
3/22/05
FII*



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
HB 2172—INSURANCE AGENTS; REVOCATION OF LICENSE
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
March 22, 2005

Madam Chair and members of the committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. This bill is a proposal to amend K.S.A. 40-246d by removing the reference of 40-246 and replace it with 40-4909. K.S.A. 40-246 no longer exists, and 40-4909 along with 40-241 are now the appropriate statutes for insurance agent license revocation.

Thank for the opportunity to speak today I would be happy to stand for any questions the committee may have.

Jarrod Forbes
Assistant Director
Government Affairs

*Attachment 2
3/22/05
FII*

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
 41 1, and amendments thereto, is asserted, if the court determines one of
 the following:

- 43 (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.

Attachment 3
3/22/05
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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
40 a regulatory agency pursuant to chapter 40 of Kansas Statutes Annotated,
and amendments thereto, or other provisions of federal or state law;

43 (b) information obtained by observation or monitoring by any regu-
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.

Attachment #4
FILE
3/22/05

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
41 1, and amendments thereto, is asserted, if the court determines one of
42 the following:

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

Sec. 2. (a) The privilege set forth in section 1, and amendments thereto, shall not apply:

- (1) to the extent that it is expressly waived by the insurance company that prepared or caused to be prepared the insurance compliance self-evaluative audit document; or
- (2) if the insurance compliance self-evaluative audit document shows evidence of noncompliance with applicable laws or regulations; or
- (3) if the insurance compliance self-evaluative audit document shows appropriate efforts to achieve compliance with such laws or regulations were not promptly initiated and pursued with reasonable diligence upon discovery of noncompliance; or
- (4) in a civil, criminal, or administrative proceeding, it is determined that public disclosure of an insurance compliance self-evaluative audit document outweighs the benefit of assertion of the privilege.

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.~~

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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 priv-
22 ilege, 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
40 a regulatory agency pursuant to chapter 40 of Kansas Statutes Annotated,
41 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;

4-3

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.