

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on March 9, 2006 in Room 527-S of the Capitol.

All members were present except:

Representative Mitch Holmes- 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:

Jarrold Forbes, Kansas Department of Insurance, Topeka, KS

Doug Wareham, Kansas Bankers Association, Topeka, KS

Matt Goddard, Heartland Community Bankers Association, Topeka, KS

Bill Henry, Kansas Credit Association, Topeka, KS

John Kiefhaber, Kansas Pharmacists Association, Topeka, KS

Brian Caswell, Kansas Pharmacists Association, Baxter Springs, KS

Alan DeFever, Kansas Pharmacists Association, Leawood, KS

Bill Sneed, ExpressScripts, Topeka, KS

Wyatt Hoch, Invista; Flint Hills Resources; Koch Industries, Inc., Wichita, KS

Others attending:

See attached list.

Hearings on:

SB 547: Kansas Pharmacy Benefits Manager Registration Act

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview on **SB 547**.

Proponents:

John Kiefhaber, Kansas Pharmacists Association, (Attachment #1), gave testimony in support of **SB 547**.

Brian Caswell, Kansas Pharmacists Association, (Attachment #2), appeared before the committee in support of **SB 547**.

Alan DeFever, Kansas Pharmacists Association, (Attachment #3), presented testimony in support of **SB 547**.

Opponent:

Bill Sneed, ExpressScripts, (Attachment #4), appeared before the committee in opposition to **SB 547**.

Hearing closed on **SB 547**.

SB 442: Surety Bonds - eliminating the need for more than one surety in certain statutes

Melissa Calderwood, Kansas Legislative Research Department, gave a brief overview on **SB 442**.

Proponents:

Jarrold Forbes, Kansas Department of Insurance, (Attachment #5), appeared before the committee in support of **SB 442**.

Doug Wareham, Kansas Bankers Association, (Attachment #6), presented testimony in support of **SB 442**.

Matt Goddard, Heartland Community Bankers Association, (Attachment #7), gave testimony in support of **SB 442**.

Bill Henry, Kansas Credit Association, (Attachment #8), appeared before the committee in support of **SB 442**.

Hearing closed on **SB 442**.

CONTINUATION SHEET

MINUTES OF THE House Insurance Committee at 3:30 P.M. on March 9, 2006 in Room 527-S of the Capitol.

Sub for SB 149: **Motor carrier transportation contracts; indemnification clauses contained therein void**

Opponent:

Wyatt Hoch, Invista; Flint Hills Resources; Koch Industries, Inc., (Attachment #9), appeared before the committee in opposition to **Sub for SB 149**.

Hearing closed on **Sub for SB 149**.

Sub for SB 338: **Construction contracts; indemnification clauses and additional insured requirements contained therein void**

Opponent:

Wyatt Hoch, Invista; Flint Hills Resources; Koch Industries, Inc., (See Attachment #9), appeared before the committee in opposition to **Sub for SB 338**.

Hearing closed on **Sub for SB 338**.

Next Meeting will be Tuesday, March 14, 2006, at 3:30 P.M., in Room 527-S.

Meeting adjourned at 5:30 P.M.



Kansas Pharmacists Association
Kansas Society of Health-System Pharmacists
Kansas New Practitioners Network
1020 SW Fairlawn Road
Topeka KS 66604-2275
Phone 785-228-2327 ♦ Fax 785-228-9147 ♦ www.kansaspharmacy.org

TESTIMONY

Before the
HOUSE COMMITTEE ON INSURANCE
By **John L. Kiefhaber, Executive Director**

Chairperson Shultz and members of the Committee:

The 1,300 members of the Kansas Pharmacists Association appreciate the opportunity to be heard today on **SENATE BILL 547: An ACT enacting the pharmacy benefit manager registration act**. This new legislation is an important addition to the Kansas Insurance Department's options for identifying out-of-state companies that are serving prescription drug beneficiaries throughout the state of Kansas. Members of KPhA wholeheartedly support this measure as a means of assisting the Insurance Department in its efforts to answer consumer questions and complaints concerning prescription drug services.

Most prescription drugs in Kansas, as in the nation, are partially paid for by private insurance plans or government programs such as Medicare and Medicaid. In order to accomplish the claims processing, utilization control and discount purchasing aspects of these coverage programs employers and government agencies often contract with prescription benefit managers (PBMs) to handle the delivery of benefits, from the wholesale purchase of the drug products to the claims processing of orders at the pharmacy. In Kansas most of those benefits are administered by just a handful of PBMs: Medco, ExpressScripts, Caremark (which has the state employee contract), Prime Therapeutics, Prescription Solutions and Wellpoint. Most of these companies are also contracted to deliver services under the new Medicare Part D drug benefit and could be covered by legislation recently approved by this committee and the full Senate (S. B. 405) to require registration by Prescription Drug Plans (PDPs).

Joining me today with expert testimony on this subject is Brian Caswell, RPh., owner of Wolkar Drug in Baxter Springs, and immediate past president of KPhA. Brian will be explaining the role of (PBMs) in the process of delivering safe and effective prescription drug products to patients and what problems can emerge in that process. Also today I have with me Alan DeFever, a pharmacist who sits on the KPhA Government Affairs Committee.

House Insurance
Date: 3-9-06
Attachment # 1

Pharmacy Benefits Manager Registration Act (SB 547)

Prepared for Testimony before House Insurance Committee

by Brian Caswell R.Ph.

March 9, 2006

Kansas State Capitol
Topeka, Kansas 66612

Good afternoon Chairman Shultz, distinguished members of the committee, my name is Brian Caswell. I am president of Wolkar Drug in Baxter Springs, Kansas and Immediate Past President of Kansas Pharmacist Association. I come today in support of SB 547, a registration act for pharmacy benefit managers operating within the state of Kansas.

Since graduating from the University of Kansas in 1987, I have witnessed the ever changing world of pharmaceutical care in which the insurance industry has become increasingly more involved with payment of services and drug therapy selection. During this evolutionary period of healthcare, a new industry began to market itself to major insurance carriers. This new business entity offered to streamline and manage the cost of prescription drugs for these insurance carriers. Pharmacy benefit managers (PBM's) key involvement was to contract with pharmacy providers for a discount fee and manage the claims as they were processed. With prescription drug usage on the rise and the predominant use of paper claims, it seemed to be a great idea for cost containment and efficiency. In fact, with more and more pharmacies becoming computerized the PBM industry tailored their business practice to utilize the technology to eliminate paper claims and gather more prescription data. This allowed them to increase their own efficiency and to collect specific patient demographic information along with physician information, drug usage, pricing, and other data to use at their own discretion. Today, with pharmacy cooperation, a prescription can now be adjudicated within a matter of a few seconds.

In the late 1980's, only a select few individuals had prescription drug coverage. Beginning in the early 1990's, healthcare witnessed a growing trend of PBM involvement while the insurance industry and managed care organizations looked more towards PBM's to manage the prescription benefit of their product. Since that point PBM's have steadily increased their presence within the industry to the point now that as much as 80-90% of prescriptions filled in a pharmacy will be covered by some form of a third party. During this period the PBM industry struggled financially. It was not until the industry teamed with HMO's and the concept and usage of formulary management and rebatès,

House Insurance
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was the industry to financially turn a corner. With lessons learned and revenue growing, the industry emerged as a major healthcare policy maker.

With increased oversight of prescription drug coverage for over 200 million Americans, the PBM industry has become the face of the insurance industry in terms of prescription benefits. Many patients who face the looming specter of a PBM chosen drug over the prescription choice of a physician, do so with the idea that it is their insurance that is making the choice rather than a sub-contracted company. Many pharmacists, physicians, nurses and patients will tell you that this scenario is becoming increasingly more prevalent in healthcare today. Drug selection along with therapy management is now in the hands of people outside of their healthcare team.

Medicare Part D, now 10 weeks old, is a great example of how the PBM process operates. PBM's are the true manager of the benefit. This example, coupled with the problems patients, doctors and pharmacists are experiencing, demonstrates a good reason for consideration of SB 547. Unfortunately, to date, there is no governmental agency within the state of Kansas which has any authority to investigate any claims either by patients or providers with regard to the patient/PBM relationship.

SB 547 is a step in the right direction for the critical need of giving Kansas consumers the ability to balance out what would otherwise be an imbalance within our healthcare system. SB 547 does nothing more than request a PBM operating in the state of Kansas, to register with the Kansas Insurance Commissioner's office. By doing so, it will give the Insurance Commissioner the ability to locate and investigate a PBM whom has had a grievance filed against it by a Kansas consumer

SB 547 is not only a good step in the right direction, as evident with prescription plans like Medicare Part D, it is a necessary step in order to keep a fair and balanced approach to our healthcare system of today.

Thank you for allowing me to address the committee today on such an important issue. I will be glad to answer any questions the committee would like to ask.

Pharmacy Benefits Manager Registration Act (SB 547)

Prepared for Testimony before House Insurance Committee

by Alan DeFever R.Ph.

March 9, 2006

Kansas State Capitol
Topeka, Kansas 66612

Good afternoon Chairman Shultz, distinguished members of the committee, my name is Alan DeFever. I am a pharmacist and the owner of The Prescription Shop in Coffeyville, KS.

I would like to voice my support for SB 547 today for a variety of reasons. First, I too would like to help bring some clarity to the pharmacy system as we know it today with regards to Pharmacy Benefits Managers. As Mr. Caswell noted, around 80-90% of all prescriptions today are handled by some form of a 3rd party payer. In my case, about 15% of the prescriptions are touched by the Kansas Medicaid system and around 65% of the prescriptions are touched by the Pharmacy Benefits Managers. Doing the math, that leaves around 20% of prescriptions that are paid out-of-pocket by the patients.

The statement that Pharmacy Benefit Managers are truly the face of the insurance industry is very accurate. Most patients only know to refer to their coverage by the insurance company name (ex. Blue Cross & Blue Shield of Kansas or Kansas City). They do not in most cases know that the claims are actually going to be electronically transmitted to a 3rd party vendor called a Pharmacy Benefits Manager (ex. Medco or Caremark). Therefore, the state of Kansas has Pharmacy Benefits Managers interacting with the public on about 65% of all prescriptions filled. When a question or complaint is heard in the local pharmacy, we don't call the insurance company. We instead are forced to contact the Pharmacy Benefit Manager directly to address this concern. Likewise, when the patients want answers, they too are required to call the Pharmacy Benefit Manager.

We are here today to discuss the issue of forcing these companies to register with the Kansas Insurance Commissioner. There are a variety of good reasons that this should be enacted. First, as stated above, these companies are creating and enforcing the pharmacy benefits for around 65% of all Kansans. This alone should give reason that we would want know who these companies are and who they represent.

Second, currently the Pharmacy Benefits Managers under the jurisdiction of no governmental agency within the state of Kansas which has any authority to investigate any claims

House Insurance
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Attachment # 3

either by patients or providers with regard to the patient/PBM relationship. Many examples come to mind when I think of the questions or problems that we face in the pharmacy on a daily basis that are a direct result of the Pharmacy Benefits Manager's requirements and policies.

I will give you a simple example to illustrate one such issue that I faced on Tuesday of this week. The patient's doctor had prescribed a medication for the patient that was not covered under the plan. It would require a prior authorization before coverage would result. The doctor filled out the requested paperwork for the prior authorization and faxed it to the Pharmacy Benefit Manager. This request was denied. At the bottom of the denial fax, it instructed the doctor to instead try one of two listed medications. The doctor faxed us this denial letter and prescribed one of the suggested medications. Upon sending in the electronic claim at the pharmacy, it was rejected and the message read "Prior Authorization Required". I then called the Pharmacy Benefit Manager and was told that it did require a prior authorization and the doctor would need to contact them to start this process. I informed them of their previous denial notice and suggested alternatives. I was told that while this was a correct denial notice, the suggested medications would still need this prior authorization. I was then forced to let the doctor know that they would need to go through the exact same process for these suggested alternatives.

This would be a good example of a complaint that I would like to lodge with someone beyond the less than friendly customer service representative that I spoke with at the Pharmacy Benefit Manager. The fact that not only is the patient going to probably have to wait an additional 1-2 days to begin treatment, but also the pharmacy staff and the doctor's office staff will now be wasting precious time dealing with "jumping through hoops" policies that should instead be used to treat patients is unacceptable. With this bill, at least we would have a mechanism to lodge our complaint with someone who could look in to it and make positive headway is very important. Most Kansans that have insurance coverage could relate to the above story and frustrations that they face because of the policies and restrictions of the Pharmacy Benefit Managers.

Third, as Mr. Caswell stated, this bill is simply a registration of the companies operating as Pharmacy Benefit Managers in the state of Kansas. We have seen much higher regulations placed on this industry by Medicare in the new Part D plans. They know that there must be a system to assure checks and balances are in place when Medicare patients are going to be required to interact with Pharmacy Benefit Managers for their prescriptions. In our case, we too must make sure that we have the authority to investigate claims made by either Kansas residents or Kansas businesses. SB 547 is a simple, but effective starting point to assure this ability by the government.

Thank you for allowing me to address the committee today on such an important issue. I will be glad to answer any questions the committee would like to ask.

Memorandum

TO: THE HONORABLE CLARK SHULTZ, CHAIR
HOUSE INSURANCE COMMITTEE

FROM: WILLIAM W. SNEED, LEGISLATIVE COUNSEL
EXPRESS SCRIPTS

RE: S.B. 547

DATE: MARCH 9, 2006

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent Express Scripts, one of America's largest pharmacy benefit managers, providing the pharmacy benefit for millions of people nationwide through employers, managed care plans, unions and governmental entities. Express Scripts is a company dedicated to making the use of prescription drugs safer and more affordable for plan sponsors and over fifty million members and their families. We appreciate the opportunity to present testimony on S.B. 547. Although the Senate did make significant changes to address my client's concerns, we would respectfully request that the Committee not act favorably on S.B. 547.

Generally, we are unaware of any major issues dealing with PBMs in the State of Kansas. My client holds six non-resident pharmacy registrations in Kansas. My client also holds three wholesaler licenses in Kansas. Further, Medicare Part D is regulated by CMS, and soon the Insurance Department, based upon action you all have taken through S.B. 405, will have purview over Medicare Part D. As you can see, my client is already involved in several levels of registration and regulation. We are unaware of any need for additional regulation or registration.

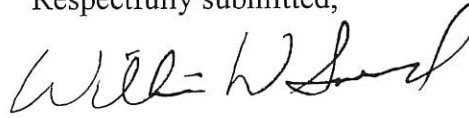
One specific issue that the Senate did not address is as follows. In Section (3)(c), the bill attempts to create standards by which the Commissioner can or cannot issue a certificate of registration. Although some of the components of those standards are very straightforward, there are others that are vague and overly broad. Further, in Section (3)(d), the PBM is to notify the Commissioner of any material change in its ownership without any definition of "material change." If the bill is only an attempt to have PBMs register, we question the need for these two sections.

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Attachment # 4

We appreciate the opportunity to raise our concerns around this bill. Based upon the above, we respectfully request that the Committee act unfavorably on S.B. 547.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will W. Sneed". The signature is fluid and cursive, with the first name "Will" and last name "Sneed" clearly distinguishable.

William W. Sneed

WBW:kjb

048290 / 099671
WWSNE 1311733



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
SB 442—ALLOWING CERTAIN LIENHOLDERS AND MORTGAGEES
TO BE SHOWN ON THE APPLICATION FOR INSURANCE
HOUSE INSURANCE COMMITTEE
March 9, 2006

Mr. Chairman and members of the committee:

Thank you for the opportunity to speak with you on behalf of the Kansas Insurance Department. SB 442 would amend K.S.A. 40-955 by allowing applicants for personal property and casualty insurance to identify lienholders and or mortgagees on their application.

The intent of this legislation is to reduce the occurrence of banks, credit unions and other lending institutions not having their name included on loss payee payments.

I am pleased to report that SB 442 is a work of compromise among the lending institutions, the insurance industry and our office. We believe the language provides a workable solution for the insurance industry while addressing the valid concerns of the lending institutions.

Thank you again for the opportunity to address the committee today and I would be happy to stand for any questions.

Jarrod Forbes
Government Affairs Officer

House Insurance
Date: 3-9-06
Attachment # 5



Date: March 9, 2006
To: House Insurance Committee
From: Doug Wareham, Senior Vice President-Government Relations
Re: Senate Bill 442

Mr Chairman and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 353 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear in support of S.B. 442.

More than a year ago, KBA began conversations with the Kansas Insurance Department, as well as representatives of several prominent insurance firms, in response to a growing number of complaints from Kansas bankers regarding the issuance of insurance claim checks that did not include lienholders/mortgagees as joint payees. It was during those early discussions with the Kansas Insurance Department that we discovered the Department does not presently have the statutory authority to require the identification of lienholders and mortgagees when a customer applies for vehicle or homeowners insurance. I'm certain you are all familiar with the fact that lenders typically require vehicle and/or property insurance when making vehicle and home loans.

S.B. 442 will ensure that customers seeking to obtain vehicle or property insurance are allowed to identify a lienholder or mortgagee on their insurance application. It is our hope this statutory requirement will accomplish two objectives:

- First, we believe S.B. 442 will allow insurance customers to notify their insurance provider when the property they are insuring is subject to a lien or mortgage.
- Second, we are hopeful S.B. 442 will also cause some insurance companies to refrain from establishing arbitrary thresholds, some as high as \$5,000 per insurance claim, in which they knowingly choose to not include lienholders/mortgagees on insurance claims checks.

The first objective should be achieved as it is specifically required by S.B. 442. Time will tell if the second objective is achieved. If insurance companies continue to apply arbitrary thresholds and fail to recognize the lienholder/mortgagee on insurance claim checks, we will first encourage banks to seek recourse from the Kansas Insurance Department. If the Insurance Department, under their existing authority, is unable to adequately respond to these complaints, then we will likely return to this body for a solution. I am sharing this because I want it to be clear that while we have agreed to this legislation, we do so with the understanding that it will meet the objectives I've outlined above. Just as insurance companies expect to receive their monthly premiums for the auto and home insurance policies they sell, so do bankers and other lenders expect to be included on insurance claim checks when the damaged property is collateral used to secure a loan or mortgage.

Once again, thank you for the opportunity to appear in support of S.B. 442 and I would be happy to stand for questions.

Farm Bureau Mutual Insurance Company
5400 University Avenue
West Des Moines, IA 50266-5997



FARM BUREAU FINANCIAL SERVICES

Bound
Farm Bureau Member's Choice Personal Package Policy
General Application
Farm Bureau Mutual Insurance Company
West Des Moines, Iowa

General Policy Information

Effective Date: [REDACTED] Expiration Date: [REDACTED] Policy # [REDACTED]

State: KS

Membership Account No: [REDACTED]

Coverage(s) Written: Vehicle: Yes Liability: Yes Property: Yes Umbrella: No

Billing: [REDACTED] Bill Insured: Yes Bill Mortgagee: Yes

Total Premium: [REDACTED]

Agent Information

Agent Name: [REDACTED] Phone: [REDACTED]

Applicant's (First Named Insured) Name/Mailing Address

[REDACTED] Relationship: Head of Household
[REDACTED] Marital Status: Married
[REDACTED] Primary Occupation: [REDACTED]
[REDACTED]

DOB: [REDACTED] Gender: Male
SSN: [REDACTED]

Additional Applicant's Name/Mailing Address

[REDACTED] Relationship: Spouse
[REDACTED] Marital Status: Married
[REDACTED] Primary Occupation: [REDACTED]
[REDACTED]

DOB: [REDACTED] Gender: Female
SSN: [REDACTED]

Household Members

Head of Household: [REDACTED]
[REDACTED] Relationship: Head of Household
[REDACTED] Marital Status: Married
[REDACTED] Primary Occupation: [REDACTED]

DOB: [REDACTED] Gender: Male
SSN: [REDACTED]

[REDACTED] Relationship: Spouse
[REDACTED] Marital Status: Married
[REDACTED] Primary Occupation: [REDACTED]

DOB: [REDACTED] Gender: Female
SSN: [REDACTED]

[REDACTED] Relationship: Child
[REDACTED] Marital Status: Single

DOB: [REDACTED] Gender: Male

[REDACTED] Relationship: Child
[REDACTED] Marital Status: Single

DOB: [REDACTED] Gender: Male

[REDACTED] Relationship: Child
[REDACTED] Marital Status: Single

DOB: [REDACTED] Gender: Female

[REDACTED]

Household (

Named Insured(s)

Your Private Passenger Personal Vehicle
2001 GMC YUKON XL K1500

VIN: [REDACTED]

Symbol: [REDACTED]

Place of Garaging

State: KS County: [REDACTED]

Township: [REDACTED]

Territory: [REDACTED]

Inside City Limits: No

Rated Driver

Name: [REDACTED]

DOB: [REDACTED] Gender: Female

Driver License/SSN: [REDACTED]

Driver(s)

Name: [REDACTED]

DOB: [REDACTED] Gender: Male

Driver License/SSN: [REDACTED]

Vehicle Use: [REDACTED]

Vehicle Class: [REDACTED]

Merit Rating Factor: [REDACTED]

Insurance Score: [REDACTED]

Vehicle Coverages

Coverages

Limits

Vehicle Liability Coverage

Bodily Injury

[REDACTED]

Property Damage

Auto No-Fault Coverage

Medical Expenses

[REDACTED]

Loss of Monthly Earnings

Amount per Month

[REDACTED]

Period of Time

[REDACTED]

Funeral Expenses

[REDACTED]

Damage To Your Vehicle Coverage

Collision

[REDACTED]

Comprehensive

[REDACTED]

Optional Coverages

Auto And Motorcycle Towing And Labor

[REDACTED]

Auto Uninsured And Underinsured Motor Vehicle Coverages

Uninsured Motor Vehicle

[REDACTED]

Underinsured Motor Vehicle

[REDACTED]

Total Annual Vehicle Premium

[REDACTED]

Loss Payee

[REDACTED]

Property Co [redacted] es for Dwelling

Coverages

Fire Department Service Charge [redacted]
Property Loss Assessment [redacted]

Limits

[redacted]
[redacted]

Dwelling/Household Personal Property Information

Fire District: [redacted]
Road Miles To Fire Department: [redacted]
Construction Type: Frame/Stucco
Occupancy Status: Owner occupied
Solid Fuel Heat: No
Number of Units Within Fire Walls of the Townhouse/Rowhouse: [redacted]
Replacement Cost: [redacted]

Fire Station: None Specified
Protection Class: [redacted]
Year Built: [redacted]
Seasonal Secondary Usage: [redacted]
Number of Families: [redacted]
Actual Cash Value [redacted]

Water Source: None Specified

Class: 1
Condition of Dwelling: [redacted]
Roofing Type: Composition [redacted]
Year Last Totally Rewired: [redacted]
Year Furnace Installed: [redacted]
Is There Continuous Foundation: [redacted]

Year Roof Installed: [redacted]
Approved Wiring: [redacted]
Year Last Totally RePlumbed: [redacted]
Is There Telephone Service: [redacted]

Roof Layers: [redacted]

Protective Devices

Fire or Smoke Alarms Ringing on Premises
Deadbolt Locks on All Exterior Doors and Fire Extinguishers

Dwelling Coverage

Payment Basis: [redacted]
Covered Causes of Loss: Special

Optional Coverages

Water Backup of Sewers/Drains [redacted]

Household Personal Property

Payment Basis: Replacement Cost
Covered Causes of Loss: Special

Special Limits of Insurance

Money [redacted]
Valuable Records [redacted]
Watercraft [redacted]
Trailers [redacted]
Jewelry/Furs [redacted]
Plateware [redacted]
Firearms [redacted]
Business Property On Premises [redacted]
Business Property Off Premises [redacted]
Electronic Apparatus [redacted]

Optional Coverages

Water Backup of Sewers/Drains [redacted]
Contents of Freezer or Refrigerated Unit [redacted]

Lienholder (First Mortgagee)

Lienholder (Second Mortgagee)

EFFECTIVE

JAN 15 2004

SANDY PRAEGER
Commissioner of Insurance

PROPERTY SECTION

SANDY PRAEGER
Commissioner of Insurance

This section, combined with the General Section and property modules, provides the property coverages you selected, as identified in the Declarations.

For each type of property you own or rent, you need specific property insurance protection. Dwellings, buildings, and other property are identified in the Declarations. Personal property is insured on an unscheduled (blanket) basis, except for items you have chosen to schedule individually.

This section includes:

Introduction

Notification of Loss

Payment for Loss

Additional Exclusions

Named Causes of Loss Index

Special Causes of Loss Index

Glossary - Property Section

INTRODUCTION

Your property coverages are determined by combining the terms and provisions of the General Section and Property Section with one or more of the following property modules:

- Dwelling Module for the homeowner or "farm/ranch" owner, providing coverage for owner occupied dwellings, seasonal use dwellings, rental dwellings and certain related property.
- Mobile Home Module for the mobile home owner, providing coverage for mobile homes and certain related property.
- Household Personal Property Module for the homeowner, "farm/ranch" owner, mobile home owner, or renter, providing coverage for household personal property.
- Condo-Owners Property Module for the owner of a condominium or cooperative unit

providing coverage for both household personal property and certain condominium property.

- Garages, Outbuildings and Other Structures Module providing coverage for the owner of detached garages, outbuildings or other structures.
- Farm/Ranch Personal Property Module for farmers/ranchers, providing blanket coverage and/or scheduled coverage for personal property used in the "farm/ranch" operation.
- Scheduled Personal Property Module providing scheduled, additional coverage for owners of specific items of personal property such as expensive jewelry, sporting goods or fine art.

COVERED CAUSES OF LOSS

The Scheduled Personal Property Module includes a separate Cause of Loss Index applicable only to that Module.

For the other modules (Dwelling, Mobile Home, Household Personal Property, Condo, Garages, Outbuildings and Other Structures, and Farm/Ranch Personal Property), the Declarations indicate whether property is insured for Named Causes of Loss or Special Causes of Loss.

Named Causes of Loss

When the Declarations indicate coverage for Named Causes of Loss, coverage is provided for only the causes of loss identified by number in the Declarations. Refer to the Named Causes of Loss Index in this Section.

Special Causes of Loss

When the Declarations indicate coverage for Special Causes of Loss, coverage is provided for accidental direct physical loss except as excluded.

For example, if fire causes a loss to property covered for Special Causes of Loss, we cover it since fire is not excluded. If freezing causes a

loss, it is not covered under certain circumstances as explained under the exclusions relating to freezing.

Refer to the Special Causes of Loss Index in this section.

NOTIFICATION OF LOSS

In case of an accident, "occurrence" or loss to which this insurance may apply, refer to the General Section for specific notification of loss instructions.

Pollutant Cleanup and Removal

We must be notified immediately of any loss that may require cleanup and removal of pollutants. Pollutant Cleanup expenses payable under the Extra Coverages in the property modules will be made only if the loss or occurrence is reported to us within 180 days of when it occurs.

PAYMENT FOR LOSS

The Payment For Loss provisions in the General Section apply and are expanded as follows with respect to coverage provided by this section.

Vacant or Unoccupied Property

Except where specifically limited elsewhere in this policy, coverage on buildings will not be affected by being "vacant" or "unoccupied" unless the "vacancy" or "unoccupancy" lasts more than 180 consecutive days. In the event of loss to buildings "vacant" or "unoccupied" for more than 180 consecutive days we will pay 50% of the amount we would have paid if the building had not been "vacant" or "unoccupied."

Outbuildings used seasonally due to the normal practices of "Farming/Ranching" are not considered vacant for the purposes of the Vacant or Unoccupied Property Payment For Loss provision.

Mortgagee

The word mortgagee includes contract for deed vendor.

If a mortgagee is named in the Declarations, any loss payable on property subject to the mortgage or contract will be paid to you and the mortgagee, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages or contracts.

If we deny your claim, the denial will not apply to a valid claim of the mortgagee if the mortgagee:

- Notifies us of any change in ownership, occupancy or substantial change in exposure of which the mortgagee is aware;
- Pays any premium due under this policy on demand if you have neglected to pay the premium; and
- Submits a Signed Sworn Statement in Proof of Loss within 60 days after receiving notice from us of your failure to pay the premium.

If this policy is canceled for any reason, the mortgagee will be notified in writing at least 10 days before the date cancellation takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- We assume all the rights of the mortgagee granted under the mortgage or contract and are entitled to an assignment of the mortgage or contract to the extent of our payment; or
- At our option, we may pay the mortgagee the entire amount of the principal on the mortgage or contract plus any accrued interest. In this event we will receive a full assignment and transfer of the mortgage or contract and all securities held as collateral to the debt.

EFFECTIVE

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SANDY PRAEGER

Commissioner of Insurance

This policy's Appraisal, Loss Payment and Legal Action Against Us provisions apply to mortgagees.

For example, the ordinance or law exclusion does not apply where the policy provides that we will replace glass with safety glazing material as required by ordinance or law.

Loss Payee

If a loss payee is named in the Declarations, any loss payable on property in which the loss payee has a financial interest will be paid to you and the loss payee as interests appear. The loss payee shall have no independent right of recovery. The loss will be settled only with you.

Ordinance or Law

There is no coverage for loss or expense "arising out of" the enforcement of any ordinance or law requiring or regulating the construction, repair or demolition of a building or other structure, unless specifically provided in this policy.

Additional Insured

If an additional insured is named in the Declarations, any loss payable on property in which the additional insured has a financial interest will be paid to you and the additional insured as interests appear. The additional insured shall have no independent right of recovery. The loss will be settled only with you.

Earth Movement

There is no coverage for loss "arising out of":

- Earthquake;
- Land shock waves or tremors before, during or after a volcanic eruption;
- Landslide;
- Mine subsidence;
- Mudflow; or
- Earth sinking, rising or shifting.

This exclusion applies regardless of whether human or animal forces or any act of nature caused the earth movement.

ADDITIONAL EXCLUSIONS

These exclusions apply in addition to those in the General Section and applicable property modules.

If loss or damage due to fire, explosion or theft results, we will pay for that resulting loss or damage unless another exclusion applies.

These exclusions apply regardless of whether the excluded cause or event is a direct or indirect cause of loss.

Water Damage

- There is no coverage for loss "arising out of" flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, even if driven by wind.
- There is no coverage for loss "arising out of" water originating from below the surface of the ground, including water which exerts pressure on, or seeps or leaks through, a building, sidewalk, driveway, foundation, swimming pool or other structure.
- There is no coverage for loss "arising out of" water or waterborne material that backs up through sewers or drains or overflows from a sump.

These exclusions apply regardless of whether any other cause or event contributes concurrently or in any sequence to the loss.

These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

If loss or damage due to fire, explosion or theft results, we will pay for that resulting loss or damage unless another exclusion applies.

If a provision elsewhere in your policy specifically states coverage is provided with respect to one of these exclusions, the exclusion does not apply with respect to that provision.

HCBA SERVICES

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To: House Insurance Committee

From: Matthew Goddard
Heartland Community Bankers Association

Date: March 9, 2006

Re: Senate Bill No. 442

The Heartland Community Bankers Association appreciates the opportunity to express our support for Senate Bill 442 with the House Committee on Insurance.

The bill requires that insurance applications for motor vehicles and real property allow the applicant to identify a lienholder or mortgagee for the vehicle or property. The creditor is what is known as a loss payee, someone with an insurable interest in the property to whom a claim is paid in the event of damage to the insured property. Although most insurers honor loss payees, some insurance companies doing business in Kansas do not. Some do not even accept the designation on their applications in the first place. This bill would rectify the latter situation.

It is important to our nation's credit system that creditors are fully recognized as loss payees. In any secured loan, the property subject to the loan is the collateral. If the borrower fails to repay the loan, the lender can seize the collateral to minimize any potential losses. If the collateral is somehow damaged, it is crucial that the insurance settlement payment be used to either bring the damaged property back to its full value or to pay off the loan. That is why a lienholder or mortgagee is listed as a loss payee. If the borrower received the claim payment in full but simply kept the money instead of using it to repair the damaged collateral, the lender would face a loss because the collateral would not cover the financial exposure of the loan. As losses would potentially mount for lenders, underwriting would tighten and the cost of borrowing would go up. So, loans would become harder to get and also become more expensive.

We respectfully request that the House Committee on Insurance recommend SB 442 favorable for passage.

Thank you.

House Insurance
Date: 3-9-06
Attachment # 7

Testimony for the House Insurance Committee
March 9, 2006

Mr. Chairman, I am Bill Henry, Director of Governmental & Regulatory Affairs for the Kansas Credit Union Association. I appear today as a proponent of SB 442.

For some time credit unions-- like other financial institutions—have run into situations where motor vehicles for which we are lien holders have been damaged and checks for repair are sent to the insured who do not make the authorized repairs. The loss in value to the motor vehicle by the unrepaired damage can be extreme. In some cases where the vehicle is a total loss and a loan remains outstanding the insured has utilized the funds for some other purpose leaving the lien holder with no security for the recovery of the loan.

In cases of real property damage we do not have as many difficulties as mortgagees. However, depending on the individual insurance company the same situation does occur.

We support SB 442 and the new language that is included on page three, lines 23-29, which we believe will be a good first step to protecting lien holders and mortgagees. The new language gives authority to the insurance department to deal with situations as have been previously described in the department's regulation of insurance companies operating in Kansas.

The value to the consumer in the passage of this bill is that secured financial institutions can loan more funds at lower rates to consumers because of less risk to the value of the item securing the loan

I would be happy to respond to any questions the committee may have.

Bill Henry
Director of Governmental &
Regulatory Affairs
Kansas Credit Union Association

House Insurance
Date: 3-9-06
Attachment # 8

Legislative Testimony
Presented by the Coalition to Preserve Freedom of Contract
Before the House Insurance Committee
Rep. Clark Schultz, Chairman
Thursday, March 9, 2006

MR. CHAIRMAN AND MEMBERS OF THE HOUSE INSURANCE COMMITTEE:

I am Wyatt Hoch, an attorney with Foulston Seifkin in Wichita, Kansas with a practice that includes substantial experience in the construction field, including the drafting of construction contracts. I am here today to offer testimony on behalf of a coalition of companies from all around the state that have strong concerns with Senate Bill No. 149 and Senate Bill No. 338.

In alphabetical order, the coalition includes Caterpillar Work Tools in Wamego [385 full and part-time employees], ExxonMobil Corp., Frontier/El Dorado Refining Company in El Dorado, KS [about 400 employees]; INVISTA in Wichita [about 230 employees in Kansas], Koch Nitrogen, with a plant in Dodge City that employs about 75 employees.

These bills contain severe restrictions on two kinds of risk transfer provisions frequently included in business contracts. The first of these is an indemnity provision. The second of these is an insurance provision, which should be of particular interest to this committee. Either or both might be included in a particular contract.

An indemnity provision is a promise to protect another party from the consequences of harm that exists now or may occur in the future. Many indemnity provisions also include "hold harmless" language that operates to relieve the indemnified party of liability to the indemnifying party for the type of harm described in the provision. Financial responsibility for the negligence of the indemnified party is "shifted," via the indemnity provision, to the indemnifying party as relating to the specified type of claim.

The breadth of indemnity provisions varies according to the degree of risk that the parties decide each party will bear. A complete indemnity provision could indemnify another party for all liability arising out of or incident to the work covered by the contract. A lesser provision would indemnify another party for all such liability, except to the extent such liability is caused by the sole 100% negligence of that other party. A still more restrictive provision might limit indemnity to (or exclude indemnity from) certain kinds of claims, such as personal injury or environmental claims. SB 149 would disallow all of these kinds of indemnity provisions.

The only kind of indemnity provisions SB 149 would allow are those that indemnify another party for liability arising out of the contractor's activities, except to the extent caused by the other party's sole or partial negligence (or only to the extent caused by the contractor's negligence).

Although some other states have restricted the enforceability of risk transferring indemnity provisions, this restriction frequently has taken the form of describing in detail the specific language that a contract must include in order for a risk transferring indemnity provision to be enforceable. That is not, however, the kind of restriction in SB 149. The bill before this committee would entirely invalidate such provisions as against public policy.

There are several reasons why these long-standing contract provisions make perfect sense. One main reason for these provisions is to protect the indemnified party from lawsuits brought by the indemnifying party's employee. Worker's compensation rules typically limit an employee's recovery against his own employer. Hence, there is a strong incentive for an employee facing a worker's comp bar to allege negligence (whether or not any existed) on the part of other parties. Obtaining contractual indemnification returns the risk of such a lawsuit by an employee back to the indemnifying party. This provision also promotes safety, because transferring liability back to the indemnifying party (i.e., the employer) ensures that the worker's comp bar does not become an excuse for that party to underinvest in the safety of its own employees.

Another reason for these provisions is to protect the indemnified party from having to pay a disproportionate and unfair share of damages. Although the proponents of this bill claim that this bill would create a comparative fault regime, that is not necessarily the case because laws like the worker's comp bar will limit the amount that can be recovered against the indemnifying party.

A third reason for these provisions is there could be significant legal wrangling over the percentage of fault that rests with each party in the absence of an indemnity provision. Business avoid these costs by assigning who will defend liability claims in advance via contract.

The second kind of risk transfer provision frequently included in business contracts is an additional insured provision. These provisions allow the shipper or premises owner to be named as an additional insured party on the liability insurance maintained by the motor carrier or the contractor.

An additional insured endorsement operates in much the same way as an indemnity provision with three key differences. First, the cost of the additional insured provision is known up front. That means that the cost of that additional premium can be included in any bid or contract. Second, the ultimate cost of paying for the liability will fall on an insurance company (to whom premiums have been paid). That may also be true for an indemnity provision, but an indemnitor does not always have to take out insurance to cover its indemnity obligations. Third, additional insured coverage comes with a duty to defend which is broader than typical indemnity coverage. This is especially important for small businesses and non-profits who may not be able to afford the costs of liability litigation.

The business reasons for additional insured provisions are similar to those already discussed for indemnity agreements. One additional benefit is that it can make joint defenses against third parties more manageable. However, some of the arguments used against indemnity agreements simply do not and cannot apply to additional insured endorsements. Because the cost is known up front and paid for with a premium, there is not a concern that listing someone as an ultimate insured is a bet the company decision. Because an insurance company pays the ultimate liability, the issue is not whether risk will be transferred but to whom. In other words, even if indemnity provisions are outlawed, companies will still seek insurance for liability they face. Whether they obtain that insurance as first parties to a policy or as an additional insured on someone else's policy, the ultimate liability will be paid by a third party. The question is just which insurance company pays, and the answer to that question does not make a difference for purposes of PUBLIC policy. This latter point explains why practically NO states have outlawed additional insured provisions that cover the negligence of the additional insured.

Proponents of this bill have told the committee that indemnity provisions and additional insured provisions violate public policy. Let me now turn to debunking those allegations.

First, this committee has been told that shifting liability by contract contradicts public policy. Of course if this were true then all insurance contracts would violate public policy, because that's precisely what every insurance contract does. Also, many other contractual provisions like limits on liability or limits on consequential damages have the same effect of transferring risk/shifting liability by contract. Risk transfer is a legitimate and often necessary part of the package of services that a shipper or premises owner needs to obtain in order for a transaction to make sense from a business standpoint.

Second, this committee has been told that these bills would promote safety. As noted above, indemnification helps makes sure that the worker's comp bar does not lead to cutting corners. In fact, this legislation would penalize safe facility operators. Such operators should be able to obtain these contractual provisions more readily and at a lower cost. Service providers can separate the good from the bad facility operators according to cost/risk, and price their contracts accordingly. Banning these provisions prevents safe facility operators from getting desired liability protection.

Third, this committee has been told there is nothing an indemnifying party can do to change the behavior of the indemnitee. But the indemnitor always has the option to refuse to deal with a risky contractual partner. An indemnitor also has the option of charging a higher price for the sought-after indemnity.

Fourth, this committee has been told that this bill would just introduce a comparative negligence rule into contracts. The argument that Kansas is a comparative fault state is somewhat beside the point. Comparative fault governs tort cases, not contract cases. Torts typically involve harms that occur between parties that are not in privity and thus were not in a position to contract in advance for how to allocate liability. When parties *DO* have the opportunity to contract in advance, the law should let them do so. The

law sets strict liability as the standard in many settings. Freely contracting parties ought to be able to adopt the same allocation of liability if they so choose.

Finally, this committee has been told that some motor carriers are offering indemnity that they cannot afford to cover and that the resulting house of cards is bad public policy. However, that is a decision for the contracting parties to make. The answer is not to prohibit these contract provisions any more than the answer is to prohibit those indemnifying parties from entering into those contracts.

And when you think about the kinds of contracts that DO violate public policy, it's pretty clear that these provisions are nothing like gambling contracts, contracts in restraint of trade, or contracts to perform an illegal act. Even when compared to something like covenants not to compete, there is no arguable similar harm to third parties by enforcing indemnity provisions or additional insured endorsements. Rather, these are standard contract provisions that businesses routinely include in all kinds of contracts and they have been around for decades. There is no reason to ban them now just because one or two special interest industries think it would be profitable to do so and think they can talk the Kansas legislature into granting them contract terms for free that they have not been able to obtain at the bargaining table in arm's-length negotiations.

Next, let me turn to some reasons why these indemnity and additional insured provisions represent good public policy. First and foremost, freedom of contract dictates preserving flexibility for arrangements that real world business circumstances have produced. This is not a business-to-consumer contract negotiation setting wherein "take-it-or-leave-it" contracts/ contracts of adhesion might sometimes leave the retail customer in a no-win situation. These are profitable contracts negotiated between sophisticated business entities that are fully capable of protecting their interests. Furthermore, the imbalance in bargaining position between the parties to contracts with these provisions, if any, does not rise to the level that courts have found to violate public policy. Kansas courts have upheld these provisions against claims that they violated public policy due to substantial differences in bargaining power. The court in these cases decided that the parties on each side were versed in business dealings and capable of representing their own interests.

The government should stay out of the business-to-business contract negotiation process. If the legislature starts down the road of offering special contract terms to favored constituencies within the state, the freedom of contract will be imperiled, Kansas will become a disfavored forum in which to execute business contracts, and the legislature will be approached for special contract terms by every business interest in the state. Contract terms should be bargained and paid for during contract negotiations, not based on pull or favor in the legislature.

Against a background of freedom of contract, parties can establish a wide variety of indemnity arrangements carefully calibrated to the needs of any given situation. For instance, it may be enough to have indemnity against the personal injury claims of another party's employees. By indiscriminately prohibiting all provisions that indemnify a party for his own partial negligence, this legislation cuts with far too little precision.

Proponents claim that this legislation will help them compete on a level playing field, but society has benefited from the deregulation of, for example, the trucking industry. The fact that some members of that industry would prefer to compete with some additional mandatory terms excluded from their contracts just indicates that there are some terms on which some companies do not want to have to compete.

SB 338 will have the greatest negative impact on new construction, including new plants and headquarters buildings—precisely the kind of economic development that Kansas should hope to attract.

Conclusion/ Recommendation

In sum, this is not a fairness issue, it is a commercial issue. At most, the legislature should pass a law only prohibiting indemnity provisions from covering the other party's *sole* negligence and/or require certain clear language in order for risk-transferring indemnity provisions to be upheld.

Less than a handful of states have adopted measures restricting additional insured endorsement provisions, and Kansas should not go down that path at all in either SB 149 or SB 338.

Thank you very much for your time and attention this afternoon.