

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 February 2, 2006 in Room 234-N of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Senator Barbara Allen
Brad Smoot, AIA
Senator Ruth Teichman

The Chair welcomed everyone to the meeting.

Introduction of bills

The Chair called on Senator Barbara Allen who introduced a bill relating to the internal review process on appeals that health insurance companies must follow. Under current law, Kansas does require health insurance companies to have an internal review process, but we do not stipulate what that process must be, she said.

She said the NAIC has a Health Carrier Grievance Procedure Model Act, parts of which are the basis of this bill. She said further that, according to information provided by the NAIC, 39 states have enacted either model/similar legislation, or related legislation/regulations. Kansas is one of eleven states that has taken no legislative action in this area, she said.

Senator Wysong moved to introduce this legislation. Senator Brungardt seconded the motion. Motion passed.

Next, the Chair called on Brad Smoot, Legal Counsel, American Insurance Association for bill introduction. Mr. Smoot said the legislation he was introducing would further deregulate commercial insurance rating and form filing requirements. AIA is a trade association of 430 insurers providing business and personal insurance to customers in all fifty states, he said, and their product lines include business, general liability, workers compensation, malpractice, homeowners and auto insurance. He said a bill draft is attached with the suggested changes. He said AIA asks that the bill be introduced as a committee bill and that the draft be subject to Revisor edits and minor modifications being discussed with the Kansas Insurance Department. (Attachment 1)

Senator Barone moved to introduce this legislation. Senator Wilson seconded the motion. Motion passed

Senator Teichman also introduced legislation. She said regarding the confirmation of John Smith, as she had stated on the Senate Floor, the problem with it was the date. She said now he is going to be confirmed with the date on the confirmation which is to expire November 1, 2009. That is not a usual time, it was just an arbitrarily picked time and we are going to correct that through statute to expire December 31, 2009 and every four years thereafter. It corrects the date we have with John now and moves him to December 31, 2009, she said. This is just to clear up the confusion of exactly when they have their dates turnover. Senator Wysong moved to introduce this legislation. Senator Wilson seconded the motion. Motion passed.

The Chair opened discussion on (**SB 321**) - relating to the Kansas Department of Revenue; providing for the development and implementation of an electronic motor vehicle financial security verification system;

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 2, 2006 in Room 234-N of the Capitol.

The Chair opened discussion on (**SB 321**) - relating to the Kansas Department of Revenue; providing for the development and implementation of an electronic motor vehicle financial security verification system;

The Chair said it was general consensus that there should be a task force to further study (**SB 321**). She said she has asked Ken Wilke to draw up a draft that would go into this bill and we would be passing this bill with the task force in it.

Ken Wilke said he has a balloon that will facilitate matters. He said what he has done is amend the title slightly so it will establish a task force to study the development and implementation of electronic motor vehicle financial security verification system and take out the amendment of K.S.A. 2005 Supp. 40-3118.

He said in effect, he was gutting the bill and creating a task force consisting of 17 members to include the commissioner of insurance or the commissioner's designee; the secretary of revenue or the secretary's designee; the director of the division of motor vehicles or the director's designee; one member appointed by the president of the senate; one member appointed by the minority leader of the senate; one member appointed by the speaker of the house of representatives; one member representing a domestic casualty insurance company appointed by the insurance commissioner from a list submitted by the Kansas Association of Property and Casualty Insurance Companies; one member representing foreign stock insurance companies appointed by the insurance commissioner from a list submitted by the National Association of Independent Insurers; one member representing a property and casualty insurance company appointed by the insurance commissioner from a list submitted by the Alliance of American Insurers; one member representing a property and casualty insurance company appointed by the insurance commissioner from a list submitted by the National Association of Mutual Insurance Companies; one member representing the licensed Kansas insurance agents appointed by the insurance commissioner from a list submitted by the Kansas Association of Insurance Agents and two members appointed by the governor representing law enforcement and one member appointed by the Governor representing the consumer interests.

He said the commissioner of insurance would serve as the chairperson and appoint the vice chairperson from the membership of the task force. The chairperson and vice chairperson would not be of the same political party. No task force member would receive any compensation, subsistence, mileage or other allowances for serving on the task force or attending any meeting.

He said the task force would study the issues relating to the implementation of an electronic motor vehicle financial security verification system for the real time verification of compliance with the financial security requirements. He said the development of the electronic motor vehicle financial security verification system would be done in consultation with the state commissioner of insurance, law enforcement agencies, county agencies and insurance companies.

He said in studying the development of the electronic motor vehicle financial security verification system, the task force would take into consideration the likelihood the system would reduce the number of insured motorists in the state; the reliability of the system; the cost-effectiveness of the system; privacy protections of the system; and data security and integrity of the system.

Mr. Wilke said the task force would prepare a report containing the results of the study and the task force's recommendations and conclusions coming from the study would be transmitted to the speaker of the house of representatives, the president of the senate, the chair of the house committee on insurance, and the chair of the senate committee on financial institutions and insurance no later than the convening of the 2007 Kansas legislature.

CONTINUATION SHEET

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The Chair asked for questions or comments.

Following lengthy discussion both pro and con, the Chair suggested that rather than putting the language into the bill, the bill be left as it is, and the task force language be put in the form of a resolution.

Senator Wysong commented, so the resolution would establish a task force to study the problem along the goals previously enumerated and the task force would produce a report that the Committee might implement in bill form. I so move. Senator Schmidt seconded the motion. Motion passed.

The Chair opened (**SB 322**) for discussion. Following discussion, the Chair suggested the committee continue looking at (**SB 322**) and address this bill at a later date.

The meeting adjourned at 10:30 a.m. The next meeting of the Committee is scheduled for February 7, 2006.

BRAD SMOOT
ATTORNEY AT LAW

800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)
bsmoot@nomb.com

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206

Statement of Brad Smoot
Legislative Counsel
American Insurance Association
Senate Financial Institutions & Insurance Committee
Request for Committee Bill Introduction
February 2, 2006

Madam Chair and Members:

On behalf of the American Insurance Association (AIA), we respectfully request the introduction of a bill to further deregulate commercial insurance rating and form filing requirements. AIA is a trade association of 430 insurers providing business and personal insurance to customers in all fifty states. Our product lines include business, general liability, workers compensation, malpractice, homeowners and auto insurance.

Attached, please find a draft bill with the suggested changes. We asked that the bill be introduced as a committee bill and that the draft be subject of Revisor edits and minor modifications being discussed with the Kansas Insurance Department.

Thank you for consideration of this request.

*Senate FI&I Com.
Attachment 1
February 2, 2006*

1 AN ACT

2
3
4 *Be it enacted by the Legislator of the State of Kansas:*

5 Sec. 1 K.S.A. 40-955 is hereby amended to read as follows: 40-955. Same; rate filings; review
6 and approval of certain lines; effective dates; exemptions from filing.
7

8 (a) Every insurer shall file with the commissioner, except as to inland marine risks where general
9 custom of the industry is not to use manual rates or rating plans, every manual of classifications,
10 rules and rates, every rating plan, policy form and every modification of any of the foregoing
11 which it proposes to use. Every such filing shall indicate the proposed effective date and the
12 character and extent of the coverage contemplated and shall be accompanied by the information
13 upon which the insurer supports the filings. A filing and any supporting information shall be
14 open to public inspection after it is filed with the commissioner. An insurer may satisfy its
15 obligations to make such filings by authorizing the commissioner to accept on its behalf the
16 filings made by a licensed rating organization or another insurer. Nothing contained in this act
17 shall be construed to require any insurer to become a member or subscriber of any rating
18 organization.
19

20 (b) Any rate filing for the basic coverage required by K.S.A. 40-3401 et seq. and amendments
21 thereto, loss costs filings for workers compensation, and rates for assigned risk plans established
22 by article 21 of chapter 40 of the Kansas Statutes Annotated or rules and regulations established
23 by the commissioner shall require approval by the commissioner before its use by the insurer in
24 this state. Policy forms shall require approval by the commissioner before use by insurers in this
25 state, consistent with the requirements of K.S.A. 40-216 and amendments thereto. As soon as
26 reasonably possible after such filing has been made, the commissioner shall in writing approve
27 or disapprove the same, except that any filing shall be deemed approved unless disapproved
28 within 30 days of receipt of the filing.
29

30 (c) Any other rate filing, ~~except personal lines filings,~~ shall become effective on filing or any
31 prospective date selected by the insurer, subject to the commissioner disapproving the same if
32 the rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fails to
33 meet the requirements of this act. ~~Personal lines rate filings shall be on file for a waiting period~~
34 ~~of 30 days before becoming effective, subject to the commissioner disapproving the same if the~~
35 ~~rates are determined to be inadequate, excessive, unfairly discriminatory or otherwise fail to~~
36 ~~meet requirements of this act. The term "personal lines" shall mean insurance for noncommercial~~
37 ~~automobile, homeowners, dwelling fire and renters insurance policies, as defined by the~~
38 ~~commissioner by rules and regulations.~~ A filing complies with this act unless it is disapproved by
39 the commissioner ~~within the waiting period or pursuant to subsection (e).~~
40

41 (d) In reviewing any rate filing the commissioner may require the insurer or rating organization
42 to provide, at the insurer's or rating organization's expense, all information necessary to evaluate
43 the reasonableness of the filing, to include payment of the cost of an actuary selected by the
44 commissioner to review any rate filing, if the department of insurance does not have a staff
45 actuary in its employ.
46

1 (e) If a filing is not accompanied by the information required by this act, the commissioner shall
2 promptly inform the company or organization making the filing. The filing shall be deemed to be
3 complete when the required information is received by the commissioner or the company or
4 organization certifies to the commissioner the information requested is not maintained by the
5 company or organization and cannot be obtained. If the commissioner finds a filing does not
6 meet the requirements of this act, the commissioner shall send to the insurer or rating
7 organization that made the filing, written notice of disapproval of the filing, specifying in what
8 respects the filing fails to comply and stating the filing shall not become effective. If at any time
9 after a filing becomes effective, the commissioner finds a filing does not comply with this act,
10 the commissioner shall after a hearing held on not less than 10 days' written notice to every
11 insurer and rating organization that made the filing issue an order specifying in what respects the
12 filing failed to comply with the act, and stating when, within a reasonable period thereafter, the
13 filing shall be no longer effective. Copies of the order shall be sent to such insurer or rating
14 organization. The order shall not affect any contract or policy made or issued prior to the
15 expiration of the period set forth in the order.

16
17 In the event an insurer or organization has no legally effective rate because of an order
18 disapproving rates, the commissioner shall specify an interim rate at the time the order is issued.
19 The interim rate may be modified by the commissioner on the commissioner's own motion or
20 upon motion of an insurer or organization. The interim rate or any modification thereof shall take
21 effect prospectively in contracts of insurance written or renewed 15 days after the
22 commissioner's decision setting interim rates. When the rates are finally determined, the
23 commissioner shall order any overcharge in the interim rates to be distributed appropriately,
24 except refunds to policyholders the commissioner determines are de minimis may not be
25 required.

26
27 Any person or organization aggrieved with respect to any filing that is in effect may make
28 written application to the commissioner for a hearing thereon, provided the insurer or rating
29 organization that made the filing may not proceed under this subsection. The application shall
30 specify the grounds to be relied on by the applicant. If the commissioner finds the application is
31 made in good faith, that the applicant would be so aggrieved if the applicant's grounds are
32 established, and that such grounds otherwise justify holding such a hearing, the commissioner
33 shall, within 30 days after receipt of the application, hold a hearing on not less than 10 days'
34 written notice to the applicant and every insurer and rating organization that made such filing.

35
36 Every rating organization receiving a notice of hearing or copy of an order under this section,
37 shall promptly notify all its members or subscribers affected by the hearing or order. Notice to a
38 rating organization of a hearing or order shall be deemed notice to its members or subscribers.

39
40 (f) No insurer shall make or issue a contract or policy except in accordance with filings which
41 have been filed or approved for such insurer as provided in this act.

42
43 (g) The commissioner may adopt rules and regulations to allow suspension or modification of the
44 requirement of filing and approval of rates as to any kind of insurance, subdivision or
45 combination thereof, or as to classes of risks, the rates for which cannot practicably be filed
46 before they are used.

1 (h) Except for workers compensation and employer's liability line, the following categories of
2 commercial lines risks are considered special risks which are exempt from the filing
3 requirements in this section: (1) Risks that are written on an excess or umbrella basis; (2)
4 commercial risks, or portions thereof, that are not rated according to manuals, rating plans, or
5 schedules including "a" rates; (3) large risks; and (4) special risks designated by the
6 commissioner, including but not limited to risks insured under highly protected risks rating
7 plans, commercial aviation, credit insurance, boiler and machinery, inland marine, fidelity,
8 surety and guarantee bond insurance risks.

9
10 (i) For the purposes of this subsection, "large risk" means: (1) An insured that has total insured
11 property values of \$5,000,000 \$:) or more; (2) an insured that has total annual gross
12 revenues of \$10,000,000 \$: or more; or (3) an insured that has in the preceding calendar
13 year a total *annual aggregate* paid premium of \$50,000 \$: | or more ~~for property insurance,~~
14 ~~\$50,000 or more for general liability insurance, or \$100,000 or more for multiple lines policies.~~

15
16 (j) The exemption for any large risk contained in subsection (h) shall not apply to workers
17 compensation and employer's liability insurance, insurance purchasing groups, and the basic
18 coverage required by K.S.A. 40-3401 et seq. and amendments thereto.

19
20 (k) Underwriting files, premium, loss and expense statistics, financial and other records
21 pertaining to special risks written by any insurer shall be maintained by the insurer and shall be
22 subject to examination by the commissioner.

23
24 Sec. 2 K.S.A. 40-216 is hereby amended to read as follows: 40-216. Business prohibited until
25 certain filings made; filing of contracts on behalf of insurer by rating organization or another
26 insurer; suspension or modification of filing requirements by commissioner; report to legislature.

27
28 (a) No insurance company shall hereafter transact business in this state until certified copies of
29 its charter and amendments thereto shall have been filed with and approved by the commissioner
30 of insurance. A copy of the bylaws and amendments thereto of insurance companies organized
31 under the laws of this state shall also be filed with and approved by the commissioner of
32 insurance. The commissioner may also require the filing of such other documents and papers as
33 are necessary to determine compliance with the laws of this state.

34
35 ~~No~~ *All* contracts of insurance or indemnity ~~shall be~~ issued or delivered in this state, *except for*
36 *contracts pertaining to large risks as defined in K.S.A. 40-955(i), shall become effective on filing*
37 *or any prospective date selected by the insurer, subject to until the form of the same has been*
38 ~~filed with the commissioner of insurance, nor if the commissioner of insurance gives giving~~
39 written notice within 30 days of such filing, to the company proposing to issue such contract,
40 showing wherein the form of such contract does not comply with the requirements of the laws of
41 this state; but the failure of any insurance company to comply with this section shall not
42 constitute a defense to any action brought on its contracts. An insurer may satisfy its obligation
43 to file its contracts of insurance or indemnity either individually or by authorizing the
44 commissioner to accept on its behalf the filings made by a licensed rating organization or another
45 insurer.

1 Under such rules and regulations as the commissioner of insurance shall adopt, the commissioner
2 may, by written order, suspend or modify the requirement of filing forms of contracts of
3 insurance or indemnity, which cannot practicably be filed before they are used. Such orders,
4 rules and regulations shall be made known to insurers and rating organizations affected thereby.
5 The commissioner may make an examination to ascertain whether any forms affected by such
6 order meet the standards of this code.

7
8 (b) The commissioner of insurance shall allow any insurance company authorized to transact
9 business in this state to deliver to any person in this state any contract of insurance or indemnity,
10 including any explanatory materials, written in any language other than the English language
11 under the following conditions:

12
13 (1) The insured or applicant for insurance who is given a copy of the same contract of insurance
14 or indemnity or explanatory materials written in the English language;

15
16 (2) the English language version of the contract for insurance or indemnity or explanatory
17 materials delivered shall be the controlling version; and

18
19 (3) any contract of insurance or indemnity or explanatory materials written in any language other
20 than English shall contain a disclosure statement in 10 point boldface type, printed in both the
21 English language and the other language used, stating the English version of the contract of
22 insurance or indemnity is the official or controlling version and that the version is written in any
23 language other than English is furnished for informational purposes only.

24
25 (c) All contracts of insurance or indemnity that are required to be filed with the commissioner of
26 insurance shall be accompanied by any version of such contract of insurance or indemnity
27 written in any language other than the English language.

28
29 (d) Any insurance company or insurer, including any agent or employee thereof, who knowingly
30 misrepresents the content of a contract of insurance or indemnity or explanatory materials
31 written in a language other than the English language shall be deemed to have violated the unfair
32 trade practice law.

33
34 (e) For the purposes of this section, the term 'contract of insurance or indemnity' shall include
35 any rider, endorsement or application pertaining to such contract of insurance or indemnity.

36
37 New Sec. 3 (1) Insurers may increase or decrease premiums on an individual risk basis up to
38 forty percent based on any factor except:

39
40 (a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the
41 insured;

42
43 (b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in
44 Insurance Act; and

1 (c) The rate adjustment cannot apply to (i) insurance covering risks of a personal nature,
2 including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile
3 homes, and other property and casualty insurance for personal, family, or household needs or (ii)
4 insurance covering farms and ranches, including crop insurance.
5

6 (d) Insurers shall not be required to document the reasons for either applying or not applying a
7 debit or credit for particular eligible risks.
8

9 (2) If the commissioner of insurance finds after a hearing that (a) the utilization of this section by
10 the insurance industry has produced a significant number of rate modifications at or near the
11 upper limit and at the lower limit of the allowable range of modification and (b) the modifiers at
12 and near the upper and lower limits of the allowable range of modification appear to be
13 predominantly correlated with individual risk factors that relate to expected losses and expenses,
14 the commissioner of insurance may, by rules and regulations, broaden the range of plus or minus
15 forty percent for any line or type of insurance subject to K.S.A. 40-955.
16

17 (3) If the commissioner of insurance finds after a hearing that modifiers at or near the upper or
18 lower limits of the allowable range of modification are not predominantly correlated with
19 individual risk factors that relate to expected losses and expenses, the commissioner of insurance
20 may, by rules and regulations, reduce the range of plus or minus forty percent for any line or type
21 of insurance subject to K.S.A. 40-955, but such reduction shall not be to less than plus or minus
22 twenty-five percent.