

Approved: January 30, 2008

Date

MINUTES OF THE HOUSE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 P.M. on January 29, 2008 in Room 527-S of the Capitol.

All members were present except:

Representative Tom Burroughs- excused
Representative Cindy Neighbor- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Ken Wilke, Revisor of Statutes Office
Sue Fowler, Committee Secretary

Conferees appearing before the committee:

Representative Virgil Peck, District #11
Bob Tomlinson, Kansas Department of Insurance
Richard Cram, Department of Revenue

Others attending:

See attached list.

Introduction of Bill:

Representative Clark Shultz moved for introduction of a payday loan bill. Seconded by Representative Dillmore. Motion carried.

Hearing on:

HB 2675 **Insurance agents, disciplinary license actions by another state for failure to pay income tax in such state**

Proponent:

Representative Virgil Peck, District 11, (Attachment #1), gave testimony in support of **HB 2675**.

Neutral:

Bob Tomlinson, Kansas Department of Insurance, (Attachment #2), presented neutral testimony on **HB 2675**.
Richard Cram, Department of Revenue, (Attachment #3), presented neutral testimony on **HB 2675**.

Hearing closed on **HB 2675**.

Next meeting will be Wednesday, January 30, 2008, 3:30 PM.

Meeting adjourned at 4:32 PM.

STATE OF KANSAS

VIRGIL PECK, JR.
REPRESENTATIVE, DISTRICT 11
BOX 277
TYRO, KANSAS 67364



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COMMITTEES:
FINANCIAL INSTITUTIONS AND INSURANCE
TAXATION
VICE-CHAIR: TRANSPORTATION
LEGISLATIVE POST AUDIT

HOUSE OF REPRESENTATIVES

Missouri – Back Off!

Testimony Regarding HB 2675

January 29, 2008

Mr. Chairman, Mr. Vice-Chairman, Mr. Ranking Minority Member and Citizens of the HIFI Committee. Kansas is giving up revenue to our neighbor to the east (Missouri) and I don't like it.

In November 2005 I had a meeting with the Sr. Vice-President/Marketing Director from one of the insurance companies I am licensed with. During our conversation he asked if I was aware of what Missouri is doing to non-resident agents. I replied I did not. He proceeded to tell me that he had received a letter from the Missouri Department of Insurance informing him that since he had not filed a Missouri income tax return and had not paid Missouri income taxes, they were going to suspend his insurance license. They said he had fifteen (15) days to comply. (see attached)

To my knowledge there is no other state asking non-resident agents to pay income taxes to them; only Missouri.

Those of you who served on this committee in '06 may remember we passed a bill (HB 2771) to deal with this issue. However, after it passed the House I was asked to stand down to give Missouri time to remedy this problem. Therefore, I did not push it through the Senate. Now I wish I had.

We are all aware of the most recent grab of Kansas tax dollars by the Missouri Legislature. Effective for tax year 2007 Missouri does not allow the property taxes paid in another state to be deducted when filing Missouri state income taxes. What will they think of next?

I asked this committee to sponsor **HB 2675** because Kansas insurance agents are giving income tax dollars to Missouri that belong to Kansas. This bill is a reciprocal bill that would only affect states, currently Missouri, which require our insurance agents to pay income taxes to them. Simply put, if states take money away from us we're going to take money back from them. I believe this bill will have a positive fiscal note.

I'll answer questions when the Honorable Chairman says it's time.

House Insurance
Date: 1-29-08
Attachment # 1

State of Missouri

Department of Insurance
P.O. Box 690
Jefferson City, Missouri 65102-0690



Matt Blunt, Governor

W. Dale Finke, Director

October 12, 2005

NATHAN [REDACTED]
[REDACTED] S WHISPER BROOK BAY
DRAPER, [REDACTED]

Dear Nathan [REDACTED]

This office has been notified by the Missouri Department of Revenue that you have either failed to file a state income tax return or pay income taxes owed to the state. You should have already received notification from the Missouri Department of Revenue regarding this delinquency. Please be advised that Section 324.010 of the Revised Statutes of Missouri provides that your insurance license shall be suspended by operation of law within 90 days after receiving notification from the Missouri Department of Revenue of your failure to file a state income tax return or to remit payment of any taxes owed.

You must contact the Department of Revenue in order to meet your obligation or make arrangements to file a tax return or pay any delinquent tax amount. Once you have made arrangements, the Department of Revenue will issue you a "tax compliance" letter. If you have not made arrangements to remedy your tax situation and not received a "tax compliance" letter within fifteen (15) days of the date of this letter, your insurance license will be suspended by operation of law.

Should you have any questions regarding this notice, please contact the Missouri Department of Revenue at (573) 751-7200. The Missouri Department of Insurance cannot provide any assistance regarding tax compliance issues and will refer all inquiries to the Department of Revenue.

Sincerely,

Mike Duffeck
Licensing Manager



Kansas Insurance Department

Sandy Praeger, Commissioner of Insurance

TESTIMONY ON HB 2675

HOUSE INSURANCE AND FINANCIAL INSTITUTIONS COMMITTEE January 29, 2008

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to speak to HB 2675 today. This bill is an attempt to hold insurance agents accountable for actions unbecoming an individual holding a professional license, specifically referring to tax delinquency. The Kansas Insurance Department adamantly supports any bill that requires insurance agents to also behave as good citizens (the vast majority already do). However, before we are able to support the bill we would like to make a couple suggestions.

Recently, concerns from the NAIC and the insurance industry have pushed state legislatures to adopt policies that foster uniformity in insurance regulation. One area that has been emphasized is producer licensing. In order to eliminate state retaliatory action there has been a push to treat domestic insurance agents and foreign insurance agents the same. We feel that this is not only the fair thing to do but also the appropriate thing to do for business interests in a national and global economy.

This consistency doesn't just provide for fundamental fairness; it is in fact required by the accreditation standards of the NAIC. In three days the NAIC will issue a report to the Kansas Insurance Department outlining the areas where our statutes are congruent and/or non-compliant with federal uniformity standards. The current bill before you potentially renders that report obsolete by instantly making our licensing laws less uniform.

In conclusion, I would like to make it clear that the Insurance Department supports the spirit of this bill. However, changes must be made to comply with federal standards before we could support HB 2675.

Thank you for the opportunity to appear and I would be happy to answer any questions.

Bob Tomlinson
Assistant Insurance Commissioner

House Insurance
Date: 1-29-08
Attachment # 2

Testimony to the House Insurance and Financial Institutions Committee

Richard Cram

January 29, 2008

Department Concerns with House Bill 2675

Representative Clark Shultz, Chair, and Members of the Committee:

House Bill 2675 focuses solely on taxpayer compliance by non-resident licensed insurance agents. The bill requires the Secretary of Revenue and Insurance Commissioner to exchange information on non-resident licensed insurance agents, identify those with income tax delinquency, and mail notices to those non-resident agents with income tax delinquencies. The bill would further authorize the Insurance Commissioner to deny, revoke or suspend the license of a non-resident agent with an income tax delinquency. Authorizing the State to revoke or deny a professional license when the licensee has delinquent taxes can be a very effective tax compliance tool. Tax compliance would be enhanced if the proposal were expanded encompass other types of professional licenses, and it applied to resident and non-resident licensees.

Commerce Clause Issue

The Commerce Clause of the United States Constitution prohibits a state from enacting laws that discriminate against interstate commerce. By authorizing license revocation for income tax delinquency only for non-resident agents, the bill may raise a Commerce Clause issue. Out-of-state agents may argue that this bill would unfairly hamper their ability to conduct business in Kansas when resident agent licensees are not subject to the same restriction. The Commerce Clause issue would be resolved if the bill applied to both resident and non-resident licensees.

Confidentiality

The bill requires the exchange of confidential taxpayer information between the Department of Revenue and the Insurance Commissioner, but does not propose to amend K.S.A. 79-3234, the confidentiality statute specifically governing disclosure of income tax information. K.S.A. 79-3234 should be amended as part of this proposal, if the Department is to going to be required to provide confidential taxpayer information to the Insurance Commissioner.

Current Compliance Processes

The Department of Revenue currently uses W2s, 1099s, Department of Labor, and IRS data to ensure individuals, such as non-resident insurance agents, are paying their Kansas

income taxes. Individuals found to have Kansas source income that have not properly filed and paid tax are referred for tax discovery and collection/civil tax enforcement actions.

The Department also operates the Professional Licensee Discovery Matching program with a number of state licensing agencies, including the Insurance Commissioner. This program matches professional license holders to the Kansas master tax files. Individuals found to be non-compliant are referred for tax discovery and collection/civil tax enforcement actions. This compliance program includes resident and non-resident insurance agents. Since the implementation of this program in 2005, the Department has recovered over \$12.2 million in delinquent tax liabilities from professional licensees.

Administrative Provisions

The bill appears to require a manual process between the Secretary of Revenue and Insurance Commissioner for notifying tax-delinquent non-resident licensees, which would be inefficient and costly. The Department recommends that the bill provide for electronic notification of delinquency, and that one agency be responsible for the notification, in order to streamline the process.

2008 House Bill 2675b Fiscal Note

Introduced as a House Bill

Brief of Bill

House Bill 2675, as introduced, provides that the commissioner of insurance provide a list of all insurance agents licensed in Kansas from states that withhold nonresident license renewal for Kansas insurance agents pending proof of filing income tax returns by such Kansas insurance agents in the nonresident state.

The commissioner and the secretary of revenue shall review the listed licensees for income tax delinquency and shall mail notice of income tax delinquency to the delinquent licensee and the commissioner of insurance. The secretary shall notify the commissioner whenever any listed licensee has satisfied the income tax delinquency.

Section 2 amends K.S.A. 40-4906, to add suspended, revoked or refused renewal as reasons a nonresident person should not receive a nonresident agent license.

Section 3 amends K.S.A. 40-4909 to allow the commissioner to deny, suspend, revoke or refuse renewal of a license to a nonresident agent licensee when the commissioner receives a notice of income tax delinquency from the secretary of revenue.

The effective date of this bill is on publication in the statute book.

Fiscal Impact

Passage of this bill would have a positive impact on state general fund revenues.

The Kansas insurance department indicates that there are about 52,000 nonresident agents licensed in Kansas. Nearly 7,700 nonresident insurance agents are Missouri residents. We believe Missouri is the only state that denies a nonresident insurance agent a license if that nonresident has an income tax delinquency.

Current experience indicates about an 8% noncompliance rate for resident taxpayers that are required to have a license to practice business in Kansas. Assuming 8% of Missouri taxpayers with a Kansas insurance agents license have not filed a Kansas income tax return, that their total income averages about \$50,000, with about 10% of that gross income from Kansas sources, and an average Kansas tax rate of 3.5%, the additional Kansas income tax would be about \$107,800 ($7,700 \times .08 \times \$50,000 \times 10\% \times 3.5\%$).

Administrative Impact

None.

Administrative Problems and Comments

Taxpayer/Customer Impact

Legal Impact

The bill may raise a Commerce Clause issue, in that it imposes a license restriction (compliance with tax liability) that applies only to non-residents.