

Approved: 3-18-10

Date

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on March 17, 2010, in Room 152-S of the Capitol.

All members were present except:

Senator Jeff Colyer- excused

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes  
Melissa Calderwood, Kansas Legislative Research Department  
Terri Weber, Kansas Legislative Research Department  
Beverly Beam, Committee Assistant

Conferees appearing before the Committee:

Rep Nile Dillmore,  
Bill Sneed, State Farm Insurance  
Brad Smoot, American Insurance Association  
Kerri Spielman, KAIA  
David Monaghan (written only), American Family Insurance  
Lee Wright (written only), Farmers Insurance  
Jim Hall , American Council of Life Insurers

Others attending:

See attached list.

Rep Nile Dillmore, (Attachment 1)

Bill Sneed, State Farm Insurance (Attachment 2)

Brad Smoot, American Insurance Association (Attachment 3)

Kerri Spielman, KAIA (Attachment 4)

David Monaghan (written only), American Family Insurance (Attachment 5)

Lee Wright (written only), Farmers Insurance (Attachment 6)

Jim Hall , American Council of Life Insurers

The Chair called the meeting to order

Hearing on

**HB 2390 - Sub. For H 2390 by Committee on Insurance-Requiring insurance companies that use credit scoring to determine rates to allow for exceptions for extraordinary life circumstances that cause adverse credit scoring**

Due to his lack of time, the Chair called on Rep. Nile Dillmore who testified in support of HB 2390. Rep. Dillmore said property and casualty insurers base their premiums on a multitude of factors. He said past claims, age, driving record, and many other aspects all play a part in setting the rate. He noted that one of the factors considered is the applicant's credit score. He said the algorithms used to determine a given applicants risk is proprietary information that is not available to you or me to examine. He continued that therefore, it is uncertain just how heavily those credit scores influence the premium. He said what is certain is that the extent of the layoffs has been injurious to consumers and their credit score. He said through no fault of their own, they may experience a considerable increase in their insurance premium as they purchase or renew a policy. He said all agree that this bill represents an improvement to our current statutes. It allows consumers some control of their credit/insurance score during extraordinarily difficult times, it allows the insurance company to modify a confusing and misleading notice requirement and, it eliminates the mandated update of these scores every three years. (Attachment 1)

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions and Insurance Committee at 9:30 a.m. on March 17, 2010, in Room 152-S of the Capitol.

The Chair then requested a brief overview of the bill from Melissa Calderwood, Research Department. Ms. Calderwood stated that HB 2390 would amend the Kansas Insurance Score Act and enact new law supplemental to the Act. Specifically, the bill would enact new law to create an exception to the Kansas Insurance Score Act for extraordinary life circumstance. She said an insurance company that uses credit information would be required, upon written request from an applicant for insurance coverage or its insured, to provide "reasonable exceptions" to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by an extraordinary life circumstance. She said the bill outlines those circumstances for which an exception would be granted as: Catastrophic event, as declared by the federal or any state government; serious illness or injury to the consumer or the consumer's immediate family; death of a spouse, child or parent of the insured; or divorce or involuntary interruption of legally-owed alimony or support payments; identity theft; temporary loss of employment for a period of three months or more, if it results from involuntary termination; military deployment overseas; or any other events as determined by the insurer. She said the bill also would provide that if a consumer submits a request for an exception, an insurer may, in its sole discretion, require the consumer to provide reasonable written and independently verifiable documentation of the event; require the consumer to demonstrate that the event had a direct and meaningful impact on the consumer's credit information and require such request to be made no more than 60 days from the date of the application for insurance or the policy renewal.

Bill Sneed, State Farm Insurance Companies, testified in support of HB 2390. Mr. Sneed said on December 1, 2009, various representatives of the insurance industry met with several legislators to discuss the current state of the law in Kansas and what other additional activities have occurred throughout the country. He said that meeting resulted in several items that the group believed warranted further exploration and may lead to avoidance of some unintended consequences of the insurance credit score law. Those items were to consider adding the new extraordinary life circumstances NCOIL amendment to the Kansas law; to eliminate or amend the mandatory three-year look-back statute; and to amend or eliminate the mandatory adverse action notice regarding best possible rates. He said after the Joint Committee meeting of January 21, 2010, these three items were present in HB 2563. He said HB 2563 eventually became Sub HB 2390. He said we believe that the new NCOIL language in the bill will provide additional safeguards for the consumer and the changes on "look back" and "best possible rate" will eliminate some of the confusion that surrounds insurance scoring. (Attachment 2)

Brad Smoot, representing American Insurance Association, testified in support of HB 2390. In summary, he stated that AIA believes that the changes proposed in HB 2390 improve an otherwise sound regulatory scheme. He said while they can live with the current system, they think consumers, insurers, regulators and lawmakers will have less trouble, confusion and difficulty understanding the use of credit information in insurance pricing with the passage of this bill. (Attachment 3)

Kerri Spielman, Kansas Independent Insurance Agents, while supporting the bill, asked the committee to consider one additional amendment to the Kansas Insurance Score Act. She said the credit score is just one factor in the insurance score which is what companies use to calculate premiums. She said KAIA agrees with their position and is not asking for the formulas, just a list of those factors that are included. She said consumers need to know what factors are included in a formula that may affect their premium so they can correct it. She said transparency in insurance scores would result in better, smarter consumers. (Attachment 4)

David Monaghan, American Family Insurance, presented written testimony only supporting HB 2390. (Attachment 5)

Lee Wright, Farmers Insurance, presented written testimony only supporting HB 2390. (Attachment 6)  
The Chair closed the hearing on HB 2390.

Hearing on

HB 2345 - Sub. For HB 2345 by Committee on Insurance - Authorizing the insurance commissioner to adopt rules and regulations to regulate the formation of insurance companies

## CONTINUATION SHEET

Minutes of the Senate Financial Institutions and Insurance Committee at 9:30 a.m. on March 17, 2010, in Room 152-S of the Capitol.

Melissa Calderwood gave an overview of Sub HB 2345. She stated that this bill would amend a provision in the Insurance Code to allow the incorporation of long-term care insurance into annuities. She said under current law, long-term care insurance can be incorporated into life insurance policies, if approved by the Insurance Commissioner. She said the bill also would provide that the insurance Commissioner is permitted to adopt rules and regulations to implement provisions of the statute that apply to the formation of life insurance companies.

Cindy Hermes, Kansas Insurance Department, testified in support of Sub HB 2345. She stated that stand alone products for an annuity and long-term care have been around for years and life insurance products with long-term care benefits are currently being sold in Kansas. She said when talking to individuals about long-term care, they often are leery of paying premiums for something they may never use. She added that the annuity/long-term care hybrid product would allow for the surrender and annuitization benefits even if the long-term care was never needed. She added that Sub HB 2345 allows the Insurance Department to approve the hybrid product and the licensed health agent in Kansas to sell the annuity/long term care hybrid product. She said this bill would allow Kansas consumers more choice in their decision-making for the future. (Attachment 7)

Jim Hall, American Council of Life Insurers, offered brief testimony in support of Sub HB 2345, but had no written testimony.

The Chair closed the hearing on Sub HB 2345.

The next meeting is scheduled for March 18, 2010.

The meeting was adjourned at 10:23 a.m.



Testimony to the Senate Insurance & Financial  
Institutions Committee

March 17, 2010

Submitted by Rep. Nile Dillmore

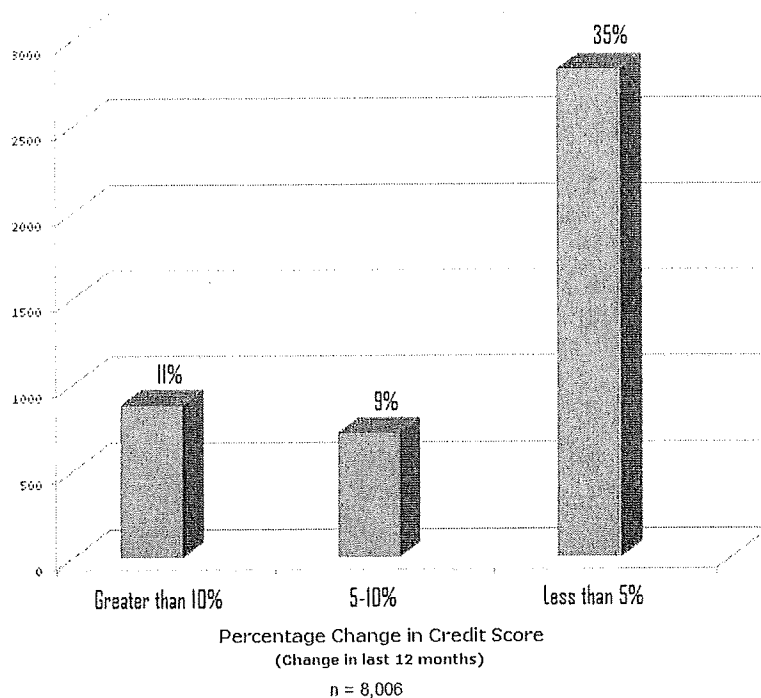
It will come as no surprise to the thousands of laid off Kansans that it is very hard to make ends meet and that sometimes bills are not paid as promptly as they used to be. It is also not surprising for their credit to suffer during this difficult time. What will surprise those Kansans is to learn that the premium for their car or house insurance may go up because of that lower credit rating.

Property and casualty insurers base their premiums on a multitude of factors. Past claims, age, driving record, and many other aspects all play a part in setting the rate. One of the factors considered is the applicant's credit score. The algorithms used to determine a given applicants risk is proprietary information that is not available to you or I to examine. Therefore, it is uncertain just how heavily those credit scores influence the premium. What is certain is that the extent of the layoffs has been injurious to consumers and their credit score. Through no fault of their own, they may experience a considerable increase in their insurance premium as they purchase or renew a policy.

Last December it became very apparent to me that consumers are seeing a significant reduction in their credit scores. It was then that the financial institution that I work for updated the credit scores of their borrowers. The following graph shows the result of that update:

*FI & I Committee  
3-17-10  
Attachment 1*

Number and Percent of Total Borrowers  
With Declining Credit Score



I should like to note that extraordinary life circumstances as defined in the bill, do not account for all declines in scores. However, this shift of the last 12 months is dramatic and unprecedented in my experience. I believe that the economy and subsequent layoffs caused a significant number.

How much impact does this shift have in premiums? As you know credit scores generally range between 350 and 850. If your credit score was 750 and declined by 10%, your score would be 675. That shift is enough to make a big difference in the rate you pay for a car loan or a home loan. I have to believe it will make a difference in your insurance score.

I think we all agree that HB 2563 represents an improvement to our current statutes. It allows consumers some control of their credit/insurance score during extraordinarily difficult times, it allows the insurance company to modify a confusing and misleading notice requirement, and it eliminates the mandated update of these scores every three years.

I would caution you not to let the perfect get in the way of the good. Some feel that the use of insurance scoring should be repealed altogether. Should you feel the temptation to use this bill as means to that end, you will be doing your constituents and consumers in Kansas a disservice. **A ban on insurance scoring will not become law!**

HB 2563 can become law and will serve Kansans. I urge your support for this bill.

TO: The Honorable Ruth Teichman, Chair  
Senate Financial Institutions and Insurance Committee

FROM: William W. Sneed, Legislative Counsel  
The State Farm Insurance Companies

SUBJECT: Sub. H.B. 2390

DATE: March 17, 2010

Madam Chair, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for the State Farm Insurance Companies. State Farm is the largest insurer of homes and automobiles in Kansas. State Farm insures one out of every three cars and one out of every four homes in the United States. Please accept this memorandum as our testimony in support of Sub H.B. 2390.

Please allow me the opportunity for a quick review of the Kansas law and the events that occurred after the 2009 session.

During 2001 and 2002, there were a multitude of credit scoring bills introduced in the Kansas Legislature (along with other states throughout the country). Although not directly related to the insurance industry, this action commenced a conversation about the use of credit scores in insurance products. Based upon those discussions, the 2002 Kansas Legislature passed S.C.R. 1623. This resolution requested the Kansas Commissioner of Insurance to study the use of insurance scoring reports within the insurance industry. The multi-person task force established under S.C.R. 1623 met four times during the fall of 2002, the results of which were encompassed in a report submitted to the 2003 Kansas Legislature. During that same time frame, the National Conference of Insurance Legislators ("NCOIL") created a model act regarding the use of credit information in personal insurance. Finally, at the beginning of the 2003 session, the Kansas Association of Insurance Agents ("KAIA") also proposed a model bill to cover this subject. During the 2003 session, the Kansas Legislature had S.B. 144, which was the KAIA proposal, and S.B. 177, which was the NCOIL version. The chairs of both the House and Senate FI&I committees requested that the parties continue to meet with the newly-elected insurance commissioner in an attempt to procure a model bill that could be supported by all parties. After numerous meetings with the Kansas Insurance Department, a compromise bill was formulated, and ultimately it was included in H.B. 2071, which was passed by the Kansas Legislature.

The outcome is the creation of the Kansas Insurance Score Act (K.S.A. 40-5101, *et seq.*). The Act provides the standard applicability and definition sections and outlines several broad areas affecting the use of insurance scores in rate making.

555 South Kansas Avenue, Suite 101  
Topeka, KS 66603  
Telephone: (785) 233-1446  
Fax: (785) 233-1939

During last year's session, four bills (S.B. 24, S.B. 172, S.B. 206 and H.B. 2053) were introduced to eliminate or curtail the use of insurance scoring. Those bills were not acted upon, and at the request of both chairs, industry was directed to meet with the authors of the bills to determine what, if any, additional action needed to be taken in this area.

On December 1, 2009, various representatives of the insurance industry met with several legislators to discuss the current state of the law in Kansas and what other additional activities have occurred throughout the country. That meeting resulted in several items that the group believed warranted further exploration and may lead to avoidance of some unintended consequences of the insurance credit score law. Those items are:

1. consider adding the new extraordinary life circumstances NCOIL amendment to the Kansas law;
2. eliminate or amend the mandatory three-year look-back statute (K.S.A. 40-5104(g)(3)(C)); and
3. amend or eliminate the mandatory adverse action notice regarding best possible rates (K.S.A. 40-5103(a)(2)).

After the Joint Committee meeting of January 21, 2010, these three items were present in H.B. 2563. H.B. 2563 eventually became Sub. H.B. 2390. We believe that the new NCOIL language in the bill will provide additional safeguards for the consumer. Also, the changes on "look back" and "best possible rate" will eliminate some of the confusion that surrounds insurance scoring.

Thus, we respectfully request that the Committee act favorably on Sub H.B. 2390. This bill passed the House by a vote of 108-11.

It is my hope that this information has been helpful to the Committee, and I would be happy to discuss questions at the appropriate time.

Respectfully submitted,



William W. Sneed

WWS:kjb



**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  
AMERICAN INSURANCE ASSOCIATION  
HOUSE INSURANCE COMMITTEE  
HOUSE BILL 2390  
March 17, 2010

Mr. Chairman and members:

I am writing on behalf of the American Insurance Association (AIA), a trade association comprised of over 350 member companies which write all lines of property and casualty insurance in all 50 states.

The members of the American Insurance Association support the use of credit-based insurance scoring in the development of insurance rates for auto and homeowners insurance. Credit information is a valuable predictive tool in estimating risk and in setting appropriate rates for consumers. There is a general recognition among consumers, regulators and lawmakers that use of this tool is both fair and reliable when properly regulated.

Kansas, as one of the early states to adopt the basic NCOIL model for regulation of insurance scoring, now has considerable experience with the process and the public concerns. Most of our fellow Kansans are beneficiaries of the insurance scoring process and accept it as an ordinary part of insurance pricing. In fact, as Assistant Insurance Commissioner Bob Tomlinson pointed out to the joint meeting on this topic early this year, the abolition of such scoring would have a negative impact on the rates of most insureds. He noted further that if lawmakers are hearing some complaints now about the use of insurance scoring, you will hear lots more if the practice were suddenly halted. Although scoring is useful and generally accepted, some feel our regulation of it can be improved. Hence, HB 2390.

The "extraordinary life circumstances" exception, contained in New Section 1 of the bill, was adopted by NCOIL to address those cases where changes in a person's life may be so unusual and difficult that the use of an insurance score should be reconsidered. This new section may be important today as we deal with the dislocations of our military families due to foreign conflict and with the hardships brought on by the current recession.

Section 2 of the bill deletes language from existing law which varied from the original language of the NCOIL model and which is contrary to the requirements in most states. Requiring notice to a consumer when he or she is being quoted a rate which is "less than the best possible rate" creates a great deal of confusion, misunderstanding, unnecessary worry and considerable work for the Kansas Insurance Department, insurance agents and

*FI&I Committee*  
*3-17-10*  
*Attachment 3*

lawmakers who must field the many questions that often follow such notifications. A person may be offered a better rate than they had before or one that is better because of their good credit rating but upon receiving the required notice, they will be left with the impression that they are somehow being cheated because they didn't get the "best possible" rate available. Such factors as claim history or driving record may be the biggest contributing factor but the adverse notice must still go out. The U.S. Supreme Court referred to this type of notice as "hypernotification." In our view, it causes more harm than good. Kansas should return to the original NCOIL notice requirements and join the majority of other states.

Section 3 of HB 2390 strikes another provision which differs from the original NCOIL model. While giving insureds the option of requesting that their insurance score be reviewed is a good and workable provision of current law, requiring insurance companies to rescore their entire list of insureds every three years creates confusion for consumers. While some companies may want to review their ratings every three years, others do not. They are familiar with their customers' risks and shaking up the mix of consumers may only drive some good customers away. This is especially true when the "best possible rate" notice of current law is required following one of these mandated three year reviews.

AIA believes that the changes proposed in HB 2390 improve an otherwise sound regulatory scheme. So while we can live with the current system, we think consumers, insurers, regulators and lawmakers will have less trouble, confusion and difficulty understanding the use of credit information in insurance pricing with the passage of HB 2390. Thank you for consideration of our views.

# Kansas Association of Insurance Agents



**Testimony on House Substitute for House Bill 2390  
Before the Senate Financial Institutions & Insurance Committee  
By Kerri Spielman  
March 17, 2010**

Thank you, Madam Chair and members of the Committee, for the opportunity to offer testimony on House Substitute for House Bill 2390. My name is Kerri Spielman and I'm representing the Kansas Association of Insurance Agents. We have approximately 435 member agencies across the state and another 110 branch offices that employ more than 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

### **Extraordinary Times, Extraordinary Considerations**

We support the concept behind the provision that would allow consumers to request consideration for an extraordinary life circumstance. There are certainly times when life events demand extra consideration. Our members frequently work with insurance companies on their clients' behalf when they may be struggling with financial difficulties for some unusual reason.

### **Elimination of the Every 3-Year Credit Run Requirement**

We support eliminating the requirement that insurance companies run policy holders' credit every three years. Today, consumers are very "credit score aware". At any time, they can request insurance companies check their credit scores in an attempt to improve their insurance score which may result in lower premiums. During difficult economic times, it works to the consumers' benefit to not have an insurance company running their credit score simply because they are required to by state statute.

### **Transparency in Insurance Scores**

We would like to ask that the committee consider one additional amendment to the Kansas Insurance Score Act. We support a provision that would require insurance companies to file with the Kansas Insurance Department, in descending order of importance, a list of all the factors they consider when calculating insurance scores. Insurance companies will be the first to tell you that a consumer's premium cannot be increased solely based on a change in their credit score. The credit score is just one factor in their insurance score which is what companies use to calculate premiums. Insurance companies will be the first to tell you that their insurance scoring formulas are proprietary. We agree with their position and we are not asking for the formulas – just a list of those factors that are included. Not allowing consumers to know what factors are included in a formula that may affect their premium is the equivalent of assigning grades to students without them knowing what the grade is based on so that they may correct an issue. We believe transparency in Insurance Scores would result in better, smarter consumers.

Thank you for the opportunity to offer testimony on House Substitute for HB 2390.

*FI&I Committee  
3-17-10  
Attachment 4*





American Family Insurance Group  
3216 N. Ten Mile Drive; Suite A  
Jefferson City, Missouri 65109  
Phone (573) 893-9210  
Fax (877) 888-1842  
Email: [dmonaghan@amfam.com](mailto:dmonaghan@amfam.com)

---

David Monaghan, CPCU  
Government Affairs Counsel

March 17, 2010

Senator Ruth Teichman  
Kansas State Capitol  
Room 236-E  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

Re: American Family Insurance's support for House Bill 2390

Dear Chairman Teichman and Members of the Senate Financial Institutions and Insurance Committee:

American Family Insurance insures approximately sixteen percent of the automobiles and homes in the state. We offer insurance products through some 250 agents who reside throughout the state.

This letter serves to indicate American Family's support for House Bill 2390. Credit-based insurance scoring is an objective tool that benefits most policyholders. We recognize that some events which may damage an individual's credit history are beyond the control of the individual. House Bill 2390 requires insurers to provide exceptions to the insurer's rating plan for consumers whose credit information has been impacted by extraordinary life circumstances. Under the legislation, extraordinary life circumstances include job loss, divorce, identity theft, death of a family member, and catastrophic events.

When any insurance company charges a customer a higher premium due to credit-based insurance scoring they are required by federal law to send the customer a letter known as an "adverse action notice." Under Kansas law, insurers are also required to send an "adverse action notice" to any customer who does not receive the "best possible rate." So, in Kansas, many customers who enjoy lower premiums because of credit-based insurance scoring still receive "adverse action notices." House Bill 2390 would modify the current law so only customers who pay higher premiums because of credit-based insurance scoring will receive "adverse action notices."

House Bill 2390 provides important consumer protections. It requires insurers to provide exceptions to their rating plans to assist individuals who experience extraordinary life circumstances. The measure would also eliminate the confusion for customers who receive "adverse action notices" even though they benefit from credit-based insurance scoring.

*FI Insurance*  
*3-17-10*  
*Attachment 5*

We appreciate the opportunity to offer testimony and urge you to support this legislation.

Sincerely,

A handwritten signature in cursive script that reads "David".

David Monaghan



FARMERS

11880 College Boulevard  
Suite 201  
Overland Park, Ks. 66210  
Bus 913.234.3902  
Fax 913.339.9558

March 17, 2010

To: Chairman Ruth Teichman and Senate Financial Institutions & Insurance Committee

From: Lee Wright, Farmers Insurance Government Affairs Representative

Subject: Insurance Scoring – HB 2390

Position: Support

Mr. Chairman and members of the Committee. Thank you for allowing Farmers Insurance to provide written testimony in **support of HB 2390** regarding Credit Based Insurance Scoring. Farmers is a personal and commercial lines property and casualty insurer with over 400 Agents writing business in Kansas and serving our state's insurance consumers since 1930.

HB 2390 provides three changes to the Kansas Insurance Score Act:

- 1) It adopts the Extraordinary Life Circumstances model language as developed by the National Council of Insurance Legislators (NCOIL).
- 2) It eliminates the adverse action notification requirement when the consumer is not receiving the best possible rate.
- 3) It removes the requirement that an insurer using insurance scoring for underwriting purposes must re-score the customer every three years.

Farmers continues to support the use of Insurance Scoring as an accurate underwriting tool. We believe the three changes being proposed to the existing act are consumer friendly measures. They should provide insurance customers some relief when they are impacted by certain life circumstances beyond their control and should eliminate the confusion and marketplace disruption created by re-scoring every three years and receiving a "less than best possible rate" adverse action notice.

We urge your support of HB 2390.

Thank you.

*FI & I Committee  
3-17-10  
Attachment 6*



Kansas Insurance Department  
Sandy Praeger, Commissioner of Insurance

---

**TESTIMONY ON  
Sub HB 2345**

**SENATE FINANCIAL INSTITUTION AND INSURANCE COMMITTEE  
March 17, 2010**

Madam Chairwoman and Members of the Committee:

Thank you for the opportunity to testify in support of Sub HB 2345. This bill would allow insurance companies to sell a hybrid insurance product that includes an annuity and long-term care insurance. The Pension Protection Act of 2006 included a provision that addressed the taxation of combination annuity plans featuring long-term care insurance. The rules apply only to nonqualified annuities coupled with tax-qualified long-term care. Nonqualified annuities are made with after-tax dollars that can accumulate tax deferred until the annuity payments are withdrawn. The Act states that effective January 1, 2010, long-term care insurance benefits paid out of these plans are paid as tax-free long-term care insurance benefits. Prior to this law, there was no mechanism that allowed for gains in a contract to be paid out on a tax-free basis. The benefit payout structure allows long-term care insurance benefit payments to be made from the annuity while waiving the surrender charges. The long-term care insurance payments will not be treated as taxable withdrawals.

Stand alone products for an annuity and long-term care have been around for years and life insurance products with long-term care benefits are currently being sold in Kansas. When talking to individuals about long-term care, they often are leery of paying premiums for something they may never use. The annuity/long-term care hybrid product would allow for the surrender and annuitization benefits even if the long-term care was never needed.

Sub HB 2345 allows the Insurance Department to approve the hybrid product and the licensed health agent in Kansas to sell the annuity/long-term care hybrid product.

This bill would allow Kansas consumers more choice in their decision-making for the future. It would increase the number of products available for sale in the state of Kansas by licensed insurance agents.

It is for these reasons that we ask the committee to recommend Sub HB 2345 favorable for passage.

Thank you for the opportunity to appear, and I would be happy to stand for questions at the appropriate time.

*FI&I Committee  
3-17-10  
Attachment 7*